

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Walter Ortega Cochancela,)
)
 Petitioner,)
)
 v.)
)
 Judith ALMODOVAR, Acting Director of the;)
 New York City Field Office of Immigration and,)
 Customs Enforcement; Kristi Noem, Secretary of;)
 the Department of Homeland Security;)
 Pamela Bondi, Attorney General,)
)
 in their official capacities,)
)
 Respondents.)
 _____)

Case No. **1:25-cv-7448**

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Walter Ortega Cochancela, is native and citizen of Ecuador. He entered the United States on March 22, 2023, and is an asylum seeker, fleeing persecution.
2. On December 20, 2023, the immigration officials initiated a removal proceedings against Petitioner, by serving him a Notice To Appear (“NTA”), at 130 Delaware Ave ste 300, Buffalo, NY 14202, for October 28, 2024.
3. Petitioner was recently detained during a regular Immigration and Customs Enforcement (“ICE”) check in, for no specific reason, nor due to any change in Petitioner’s status. Petitioner is presently detained at the Buffalo Federal Detention Center, located at Batavia, NY.
4. Just this past Friday, on September 5, 2025, the Immigration court granted Mr. Walter Ortega Cochancela release on bond. Yet, in defiant of the Court’s Order, ICE has declared that it will transfer Petitioner to a Texas detention facility.

5. **Petitioner’s prior detention was unlawful and unwarranted, since his legal status has not changed, and the immigration authorities failed to conduct a proper individual assessment** of Mr. Walter Ortega Cochancela.

6. Moreover, Petitioner’s continuous detention and ICE’s intent to transfer Petitioner to Texas from N.Y. is unlawful and unwarranted, since the Immigration Judge has already Ordered Petitioner released on Bond.

7. Pursuant to 28 U.S.C. § 2243, Mr. Walter Ortega Cochancela requests that the Court issue an Order to Show Cause directing ICE to file a return “within three days[,] unless for good cause additional time, not exceeding twenty days, is allowed,” justifying its unexplained decision to detain Mr. Walter Ortega Cochancela, in apparent excess of statutory authority.

8. Accordingly, to vindicate Petitioner’s constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Venue is proper because—on information and belief—Petitioner is detained at

Buffalo Federal Detention Center, located at Batavia, NY, which is within the jurisdiction of this Court.

PARTIES

13. Petitioner, Walter Ortega Cochancela, is native and citizen of Ecuador.

14. About three weeks ago, after attending his scheduled ICE check-in, ICE detained Mr. Walter Ortega Cochancela.

15. Judith Almodovar is the Acting Director of ICE's New York Field Office. In her official capacity, she is charged with carrying out the functions of that office, including by making and overseeing decisions regarding immigration detention throughout the City of New York, including Queens County. She therefore has custody over Petitioner, in that she can order his release from ICE custody.

16. Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"), which is ICE's parent agency. In her official capacity, she is charged with making determinations as to removability, asylum eligibility, and immigration custody, all of which are binding on DHS. She therefore has constructive custody over Petitioner, in that she has the capacity to order DHS to release Petitioner from custody.

17. Pamela Bondi is the Attorney General. In her official capacity, she is charged with making determinations as to removability, asylum eligibility, and immigration custody, all of which are binding on DHS. She therefore has constructive custody of Petitioner, in that she has the capacity to order DHS to release Petitioner.

STATEMENT OF FACTS

18. Mr. Walter Ortega Cochancela, left his home country of the Ecuador, and entered the United States for the first time, on March 22, 2023.

19. On December 20, 2023, the immigration officials initiated a removal proceedings against Petitioner, by serving him a Notice To Appear (“NTA), at 130 Delaware Ave ste 300, Buffalo, NY 14202, for October 28, 2024.

20. On October 28, 2024, Respondent was issued a notice for a master hearing, on June 11, 2025.

21. On June 11, 2025. Respondent was issued a notice for a master hearing, on July 9, 2025.

22. On August 13, 2025, Respondent was issued a notice for a master hearing, on August 26, 2025.

23. On August 26, 2025, Respondent was issued a notice for a master hearing, on September 9, 2025.

24. Since the initiation of the removal proceedings, Petitioner has religiously attended all his check-inns and hearings.

25. About three weeks ago, as Mr. Walter Ortega Cochancela, attended his regular ICE check-in hearing, and ICE detained him, without warning or apparent justification. At the moment, presumably, he remains detained at Buffalo Federal Detention Center, located at Batavia, NY.

26. However, ICE declared that they intend to transfer him immediately to a remote detention facility in Texas, far beyond the reach of his family, and attorneys. cf., e.g., *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025) (attempted transfer to ICE detention center in Louisiana); *Mahdawi v. Trump*, 136 F.4th 443 (2d Cir. 2025) (same).

LEGAL FRAMEWORK

I. Petitioner's Detention Is Unlawful Because It Violates His Due Process Rights

27. As the Supreme Court has repeatedly instructed, freedom “from government custody, detention, or other forms of physical restraint” is at “the heart” of what the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.”).

28. This is particularly true in the context of civil detention. See, e.g., *Addington v. Texas*, 441 U.S. 418, 425 (1979) (“This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.”); *Kansas v. Hendricks*, 521 U.S. 346, (1997) (requiring “strict procedural safeguards” to justify involuntary civil commitment of certain sex offenders); *Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil commitment “statute that place[d] the burden on the detainee to prove that he is not dangerous”).

29. Mr. Walter Ortega Cochancela is suffering a severe due process violation because of DHS’s decision to unilaterally detain him, in violation of an Immigration Judge’s order to release him on bond.

A. DHS is Detaining Petitioner in Violation of His *Procedural Due Process*

30. **Mr. Walter Ortega Cochancela’s circumstances are egregious. To allow an agency official to unilaterally detain a person after a judge has ordered his release, is a flagrant violation of due process.** And the time limits set forth in an automatic stay provision do not remedy the violation where DHS continues to appeal the immigration judge’s bond decision, resulting in indefinite detention.

31. In *Gunaydin v. Trump*, the court considered a similar circumstance, where the petitioner was detained pursuant to the automatic stay provision in spite of two rulings from an immigration judge ordering his release. No. 25-cv-01151, 2025 WL 1459154 (D. Minn. May 21, 2025). That court concluded that the petitioner’s detention pursuant to the automatic stay provision violated his procedural due process rights and ordered his immediate release. *Id.* at 10.

32. To determine whether a civil detention violates a detainee’s procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (applying Mathews test to a challenge involving discretionary noncitizen detention).

33. Pursuant to Mathews, courts weigh the following three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

34. The first Mathews factor requires consideration of the private interest affected by Respondents’ invocation of the automatic stay provision. This factor weighs heavily in Petitioner’s favor because Mr. Walter Ortega Cochancela’s interest in being free from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

35. As the court in *Carlos Javier Lopez Benitez v. Francis*, 25 civ. 5937 (DEH), stated, “the most significant liberty interest there is—the interest in being free from imprisonment” (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d cir. 2020)).

36. The second Mathews factor requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks. The automatic stay provision of § 1003.19(i)(2) creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement because the only people adversely effected by DHS's automatic stay are people who have already prevailed at a judicial hearing. DHS does not invoke this provision to stay decisions that are favorable to it. "Thus, the challenged regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions. Such a rule is anomalous in our legal system." *Gunaydin*, 2025 WL 1459154, at *7. 53.

37. Regarding the value of additional safeguards, there is a clear alternative to the automatic stay set forth in § 1003.19(i)(1), which also provides a process by which DHS can request an emergency stay of an immigration judge's custody determination from the BIA. Requesting a stay from an appellate court is the appropriate procedure because "a stay of an order directing the release of a detained individual is an especially extraordinary step" and such a decision should not be in the hands of the prosecutorial agency. *Id.* (internal quotations omitted).

38. The third Mathews factor, the Government's interest, also weighs in favor of granting this petition. The Government's only legitimate interest at stake is its interest in ensuring that people facing removal do not endanger the public or abscond during the pendency of their removal cases. This interest is easily protected by DHS's ability to seek an emergency stay from the BIA pursuant to § 1003.19(i)(1) of an immigration judge's bond decision.

39. Moreover, in our case, Petitioner has regularly attended all his ICE check-ins and court hearings. In fact ICE arrested him about three weeks ago, when he was doing his duty, to attend the ICE check ins.

40. **Lastly, and most relevant to determining the legality of discretionary noncitizen detention, the Honorable Court**, in *Carlos Javier Lopez Benitez v. Francis*, 25 civ. 5937 (DEH), stated that “before the Government may exercise such discretion to detain a person ‘§1226(a) and its implementation regulations require ICE officials to make an individualized custody determination’”. (quoting *Velesaca v. wolf*, No. 20 Civ. 2153, 2020 WL 7973940 (2d cir. Oct. 13, 2020).

41. As in *Carlos Javier Lopez Benitez v. Francis*, **here too, no individualized determination as to the factors such as his high flight risk or dangerousness occurred before ICE arrested Mr. Walter Ortega Cochancela**, about three weeks prior.

B. Continued Detention Of Petitioner Violates His *Substantive Due Process Right To Be Free From Arbitrary Detention*.

42. At a bare minimum, “the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting) (emphasis added).

44. To meet the strictures of due process, Mr. Walter Ortega Cochancela’s detention must “bear[] a reasonable relation to [the] purpose[s]” of civil immigration detention, which the Supreme Court has identified as mitigating flight risk and mitigating danger to the community. *See Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715 (1972)) (quotation marks omitted).

45. An Immigration Judge—after an adversarial hearing—found that Petitioner, Mr. Walter Ortega Cochancela had met his burden to prove he was neither a danger to the community

nor a flight risk. That Judge has ordered Mr. Walter Ortega Cochancela release on bond and DHS continues to invoke the automatic stay provision, overruling and rendering meaningless the Immigration Judge's bond determination.

46. Several district courts have considered similar challenges and found that the automatic stay provision violates detainees' substantive due process rights. See, e.g., *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675, 669 (D.N.J. 2003); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004); *Kambo v. Poppell*, No. SA-07-cv-800-XR, 2007 WL 3051601, at 20 (W.D. Tex. Oct. 18, 2007).

47. In light of the Immigration Judge's individualized finding, Respondents have not and could not show that Mr. Walter Ortega Cochancela's detention without bond is necessary to prevent flight or to mitigate danger.

II. The Proper Remedy Is Immediate Release

48. The proper remedy for Respondents' unilateral invocation of the automatic stay provision, overruling the reasoned decisions of the Immigration Judge, is to order Petitioner's release.

49. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (ordering release where detention became unlawful once condition release date had passed); see also *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF PROCEDURAL DUE PROCESS

50. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

51. DHS has unilaterally overruled an Immigration Judge's individualized determination that Petitioner does not present a risk to public safety or a risk of flight to impose indefinite detention on Petitioner. This merging of the prosecutorial and adjudicatory role creates an unacceptable risk of erroneous deprivation of Petitioner's most fundamental liberty interests.

52. The government's interest here is easily protected through an existing regulation that allows DHS to make an emergency request that the BIA stay an immigration judge's custody determination.

53. Petitioner's detention pursuant to an automatic stay provision therefore deprives him of his right to procedural due process, and he is entitled to immediate release.

54. The Due Process Clause of the Fifth Amendment protects the procedural rights of all persons in the United States, including noncitizens, from unlawful civil detention. Applying the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and in *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020), Petitioner's has been deprived of his right to procedural due process, and he is therefore entitled to immediate release.

55. Moreover, according to this Honorable Court, in *Carlos Javier Lopez Benitez v. Francis*, 25 civ. 5937 (DEH), before the Government can exercise the discretion to detain even a non-citizen, §1226(a) and its implementation regulations require immigration officials to make an **individualized custody determination, as to the factors such as his high flight risk or dangerousness occurred before ICE arrests an alien.**

COUNT TWO

Violation of Fifth Amendment Right to Due Process

56. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

57. The Due Process Clause of the Fifth Amendment protects the substantive right of all persons in the United States, including noncitizens, to be free from unjustified deprivations of physical liberty. U.S. CONST. amend. V; see generally *Reno v. Flores*, 507 U.S. 292 (1993).

58. “[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (quotation marks and citations omitted).

59. Petitioner’s detention does not serve the special justifications for immigration detention: mitigating flight risk and mitigating risk to the community. An Immigration Judge made an individualized determination that Petitioner met his burden to prove he was neither a danger to the community nor a flight risk. **That Judge has ordered Petitioner’s release on bond, period.**

60. Respondents’ insistence on invoking the automatic stay provision to force Petitioner to remain in indefinite detention despite these judicial decisions is therefore arbitrary as it does not serve a legitimate government interest.

61. Petitioner’s detention is not narrowly tailored to serve any other compelling state interest. **Petitioner’s detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.**

COUNT THREE
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
8 U.S.C. § 1254a 72.

62. Petitioner realleges and incorporates by reference each and every allegation contained above.

63. Section 1226(a) of Title 8 of the U.S. Code grants immigration judges the authority to re-determine custody status unless mandatory detention applies. The INA also empowers the BIA to review immigration judges' custody redeterminations.

64. Petitioner has been properly granted bond by an Immigration Judge. Accordingly, DHS's mandate that Petitioner must be held without bond in violation of the orders of the Immigration Judge is ultra vires to the INA.

65. DHS's actions eliminate the discretionary authority of immigration judges to determine whether an individual may be released, thereby exceeding the authority bestowed upon the agency by Congress.

66. Thus, Petitioner's detention violates Section 1226(a), and he is entitled to immediate release from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

- (1) Assume jurisdiction over his petition;
- (2) Enjoin Respondents from transferring Petitioner outside of this judicial district;
- (3) Direct Respondents to show cause within three days (or in no event more than twenty days) why the Petition should not be granted;
- (4) Order Petitioner's immediate release during the pendency of these proceedings;
- (5) Declare Petitioner's ongoing detention to be violative of the Due Process Clause of the Fifth Amendment;
- (6) Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1226(a);
- (7) Issue a writ of habeas corpus directing Respondents to release Petitioner;
- (8) Award reasonable attorney's fees and costs to Petitioner; and
- (9) Provide such other relief as the Court deems just and proper.

Dated: September 8, 2025
Queens, New York

/s/ Reuben S. Kerben, Esq.
Reuben S. Kerben, Esquire

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Mr. Walter Ortega Cochancela, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 8th day of September, 2025.

/s/ Reuben S. Kerben