

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Elisa Fontanelli as Next
of Friend of Juan Martin Bernal Garcia

Petitioner,

v.

LaDeon FRANCIS, New York Field Office
Director for U.S. Immigration and Customs
Enforcement; Paul ARTETA, Director of the
Orange County Correctional Facility; Anna C.
LITTLE, Acting Chief Immigration Judge,
Executive Office of Immigration Review; Sirce
E. OWEN, Acting Director, Executive Office of
Immigration Review; Pamela BONDI, Attorney
General of the United States; Kristi NOEM,
Secretary of Homeland Security; and Todd M.
LYONS, Acting Director, U.S. Immigration and
Customs Enforcement,

Respondents.

A-No.: 240479070

VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS

PRELIMINARY STATEMENT

1. Petitioner Juan Martin Bernal Garcia (“Mr. Bernal Garcia”) is a 27-year-old queer dancer from Colombia who first came to the United States three years ago.
2. Since he came to the United States, he has become a leader and staple member of a dance community in New York City. He is a beloved friend to dozens and a vibrant presence in every space he is a part of. He works at a restaurant, makes art, and supports his friends, loved ones, and pet cat.

3. On September 15, 2025, he was suddenly detained at Penn Station under alarming and likely unconstitutional circumstances.

PARTIES

4. Petitioner JUAN MARTIN BERNAL GARCIA (“Mr. Bernal Garcia”) has been suddenly detained and jailed in immigration detention. Upon information and belief, he is currently held in a New York detention facility, but it is unknown which one. Mr. Bernal Garcia asked immigration officials where he was being detained, and they purportedly refused to tell him where he was being held. However, the U.S. Customs and Immigration Enforcement locator currently provides the New York ERO office as the point of contact. The contact number provided on the official website for the New York ERO office is out of service. A mutual friend was also able to connect to the office Congressman Adriano Espaillat who informed him at 12:45 p.m. that they could confirm that Mr. Bernal Garcia was currently detained in New York City.
5. Respondent LADEON FRANCIS is named in his official capacity as the Field Office Director for ICE’s New York Field Office. He is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.
6. Respondent PAUL ARTETA is named in his official capacity as the Sheriff of Orange County and the Director of the Orange County Correctional Facility.
7. Respondent ANNA C. LITTLE is named in her official capacity as Acting Chief Immigration Judge for the Executive Office of Immigration Review (“EOIR”), the sub-agency within the Department of Justice (“DOJ”) that administers the

nation's immigration courts and the Board of Immigration Appeals ("Board"). She is responsible for oversight of the Varick Street Immigration Court and presides over removal and bond proceedings.

8. Respondent SIRCE E. OWEN is named in her official capacity as the Acting Director of EOIR. She is responsible for the policies and operations of the immigration courts.
9. Respondent PAMELA BONDI is named in her official capacity as the Secretary of the Department of Homeland Security ("DHS"). She directs each of the component agencies within DHS, including ICE.
10. Respondent KRISTI NOEM is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the DOJ.
11. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

JURISDICTION & VENUE

12. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2201 (Declaratory Judgment).
13. Venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. G.F.F. is incarcerated within this District; his immigration proceedings are venued here; the ICE office that controls the location of his detention is based in New

York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

STATEMENT OF FACTS

14. Mr. Bernal Garcia is a queer individual from Colombia who first came to the United States three years ago. On information and belief, he entered as a tourist at an airport in Arizona and later came to New York to be a part of the thriving dance and queer community.
15. On information and belief, Mr. Bernal Garcia has no prior arrests or criminal history.
16. He is an amazing dancer. That is why he has stayed in New York. Mr. Bernal Garcia is central to his community here in the city. He hopes to one day be a professional dancer.
17. He also came to New York to be able to express his queer identity safely. He has told the undersigned that Colombia is not safe for queer individuals like himself, and he believed he could find safety in New York as a queer individual and be able to live freely.
18. He is a selfless, loving individual who cares for everyone around him. He is someone who leaves a positive mark on the life of every person that he interacts with. He also takes care of his pet cat.
19. On September 15, 2025, Mr. Bernal Garcia's roommates and friends saw him off to work, and he left their shared home in his work clothes. When his coworker noticed that he didn't show up to work, they called his roommates and friends, and they started looking for him by calling local hospitals and police stations. At

approximately 10:30 p.m., Mr. Bernal Garcia contacted his roommates and friends from an unknown number and informed them that he believed he was in ICE detention. He informed them that that while he was at Penn Station, he went into the bathroom, and two plain clothes individuals approached him. During a brief phone call last night, Mr. Bernal Garcia told the undersigned that after the plain clothes individuals approached him, he was arrested and brought to another room inside of Penn Station. He was subsequently searched before being transferred to ICE detention, where he is currently being held. Mr. Bernal Garcia has not been able to contact anyone since he called his roommates at 10:30 p.m. on September 15, 2025.

20. Mr. Bernal Garcia told his roommates that suspects that he could have been targeted because of his race, accent, or gender orientation. It is unclear to him who arrested him and what authority they had to do so. Upon information and belief, they did not identify themselves, and they did not ask for Mr. Bernal Garcia's name or identification before they detained him.
21. He also informed his roommates that when he asked the officials at the detention center where he was being detained, they would not disclose his location to him.
22. Mr. Bernal Garcia does not currently have access to his medication, pre-exposure prophylaxis, which he is required to take daily.

CLAIMS FOR RELIEF

**COUNT ONE: VIOLATION OF THE SUBSTANTIVE DUE PROCESS PROTECTIONS
OF THE FIFTH AMENDMENT OF THE CONSTITUTION**

23. All foregoing allegations are repeated and realleged as though fully set forth herein.
24. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint “lies at the heart of the liberty that the Due Process Clause protects.” *Zadvydas*, 533 U.S. at 690.
25. To comply with the Due Process Clause, detention must always bear “some reasonable relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).
26. The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person’s attendance for a legal hearings adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690–91; *Lopez v. Sessions*, No. 18-cv-4189 (RWS), 2018 WL 2932726, at *10 (S.D.N.Y. June 12, 2018) (“In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight.” (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003))).
27. Mr. Bernal Garcia has a strong interest in attending any immigration proceedings and complying with immigration directives. He has incredibly strong community ties and is a dedicated member of a vibrant dance community. He also works at a

local restaurant. Upon information and belief, Mr. Bernal Garcia has never been arrested or convicted of any crime and poses no danger to the community. Quite the opposite, he is a queer dancer and artist who considers New York to be his home and safe haven. He is a leader and rock for his dance community. He is not a flight risk and has strong interest in being able to pursue affirmative relief, including but not limited to asylum and withholding of removal because of persecution for his queer identity in his home country.

28. Detention is constitutional only if it serves a lawful purpose, and here, there is none.
29. Second, when a noncitizen does not have an order of removal, the Due Process Clause requires that any deprivation of liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”); *Demore*, 538 U.S. at 528 (applying a less rigorous standard for “deportable [noncitizens]”). Here, Mr. Bernal Garcia has significant ties to the United States. His community is here, and he has multiple family members who are United States citizens.
30. Mr. Bernal Garcia’s continued detention is unrelated to the purposes justifying it as a constitutional matter and therefore contravenes the fundamental Due Process protections in the Fifth Amendment of the Constitution and is causing him substantial and irreparable harm.

**COUNT TWO: VIOLATION OF THE PROCEDURAL DUE PROCESS PROTECTIONS
OF THE FIFTH AMENDMENT OF THE CONSTITUTION**

31. All foregoing allegations are repeated and realleged as though fully set forth herein.
32. The Due Process Clause applies to all persons in the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 689; *see also Yick Wo v. Hopkins*, 118 U.S. 356, 368-369 (1886).
33. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment. *See Matthews v. Eldridge*, 424 U.S. 319, 332 (1976).
34. The Second Circuit analyzes procedural due process under the three-factor balancing test laid out by the Supreme Court in *Mathews*. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). These factors are “(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.’” *Id.* (quoting *Mathews*, 424 U.S. at 335).
35. *First*, the private interest affected by government action “is the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). As the *Velasco Lopez* court recognized, “commitment for any purpose constitutes a

significant deprivation of liberty that requires due process protection.” *Id.* (citing *Jones v. U.S.*, 463 U.S. 354, 361 (1984)). As the Second Circuit has repeatedly observed—in both the discretionary and mandatory detention contexts—“[c]ase after case instructs us that in this country liberty is the norm and detention ‘is the carefully limited exception.’ *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

36. *Second*, there is no indication that there has been any individualized determination that Mr. Bernal Garcia presents a flight risk or a danger to the extent that detention is necessary. And indeed, Respondents would be hard-pressed to show a justification for detaining Mr. Bernal Garcia, a beloved community member and Given that Mr. Bernal Garcia has lived peacefully in his community for the last three years, the lack of process given to him shows the high risk of erroneous deprivation by the Respondents’ actions.
37. *Third*, Respondents also do not have any interest in detaining noncitizens who are neither dangerous nor a flight risk, but they *do* have an interest in “minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 852.
38. In detaining Petitioner, Respondents have failed to provide him with the minimal procedural safeguards mandated by the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;

- 2) Enjoin Respondents from transferring Mr. Bernal Garcia outside the jurisdiction of this Court or from the United States pending the resolution of this case under the All Writs Act;¹
- 3) Issue a writ of habeas corpus directing Respondents to immediately release Mr. Bernal Garcia from custody on his own recognizance or on reasonable conditions of supervision.
- 4) In the alternative, the Court should direct Respondents to provide Petitioner with a constitutionally adequate, individualized hearing within fourteen days before an impartial adjudicator. At that hearing:
 - a. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;
 - b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and
 - c. The adjudicator must meaningfully consider Mr. Bernal Garcia's ability to pay if setting a monetary bond.
- 5) Award Mr. Bernal Garcia his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 6) Grant such further relief as the Court deems just and proper.

¹ See *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *Khalil v. Joyce*, No. 1:25-cv-1935 (JMF) (S.D.N.Y. Mar. 10, 2025), ECF No. 9. See also Order, *Ozturk v. Hyde*, No. 25-cv-374 at 68 (WKS) (D.Vt. Apr. 18, 2025), ECF No. 104 (ordering Petitioner's transfer from Louisiana back to Vermont).

Dated: September 16, 2025
New York, NY

Respectfully submitted,

/s/ 

Elisa Fontanelli



Brooklyn, NY, 11238

Next Friend

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

I am submitting this verification on behalf of Juan Martin Bernal Garcia because I am a personal friend of his. I know much of this information from my own personal interactions and friendship with Mr. Bernal Garcia. I know the information regarding his arrest and detention through a phone call that he had with his roommates. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: September 16, 2025
New York, NY

Respectfully submitted,

/s/ Elisa Fontanelli

Elisa Fontanelli



Brooklyn, NY, 11238

Next Friend