

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAMAY-TAMAY, NORMA BEATRIZ,)
 GONZALEZ BERMEJO, JUAN,)
 SHERLY DEYANEIRA GONZALEZ TAMAY)
)
 Petitioners,)
)
 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. 25-7984


**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioners, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, are asylum seekers from Ecuador. Petitioner Norma Tamay Tamay, entered the United States on July 26, 2021, at San Luis. Petitioner Juan Gonzalez Bermejo, entered the United States on July 26, 2021, at Mexicali.

2. On August 5, 2021, the immigration officials initiated a removal proceedings against Petitioners, by serving them a Notice To Appear (“NTA”), at 201 Varick St. 5th Floor , Room 507, New York, NY, 10014, on November 10, 2021.

3. Petitioners’ then-attorney,  submitted without Petitioners’ consent or knowledge, a false psychological evaluation of Petitioners, by Dr. Leovarado Lopez Alvaerado.

4. Not only were the reports false, but then-attorney, , never informed Petitioners of the submissions.

5. During Petitioners removal hearing, the Judge asked Petitioner Norma Beatriz, Tamay-Tamay, if she knew of Dr. Leovarado Lopez Alvaerado. Petitioner honestly answered that she did know the Psychologist. Due to Petitioners' then-attorney's submission of the false evaluation of Dr. Leovarado Lopez Alvaerado, of Petitioner, Norma Beatriz, Tamay-Tamay, the immigration judge doubted Petitioners credibility, which lead to the denial of Petitioners' asylum application, and the issuance of the removal order.

6. On November 15, 2021, Petitioners were ordered removed. On December 5, 2023, the Board of Immigration Appeals, affirmed the immigration Judge's removal order.

7. On September 19, 2025, Petitioners filed with the immigration court a Motion to Reopen ("MTR").

8. Petitioners were detained just a few days after filing the MTR, during a regular Immigration and Customs Enforcement ("ICE") check in, for no specific reason, **nor due to any change in Petitioner's status, nor was an individualized assessment conducted.** Petitioner is believed to be presently detained at an unknown location in NYC.

9. Pursuant to 28 U.S.C. § 2243, Petitioners, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, request 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. Nathaniel Romeo Rojas Acevedo.in apparent excess of statutory authority.

10. Accordingly, to vindicate Petitioners' constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

JURISDICTION

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

12. 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).

13. 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

14. Venue is proper because—on information and belief—Petitioners remain detained at 26 Federal Plaza, 11th floor, New York, NY 10278, which is within the jurisdiction of this Court.

PARTIES

15. Petitioner, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, are nationals and citizens of Ecuador.

16. On September 23, 2025, after attending their scheduled ICE check-in Immigration and Customs Enforcement (“ICE”) detained Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay.

17. 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 Petitioners, in that she can order their release from ICE custody.

18. 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 Petitioners, in that she has the capacity to order DHS to release Petitioners from custody.

19. 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 Petitioners, in that she has the capacity to order DHS to release Petitioners. Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay.

STATEMENT OF FACTS

20. Petitioners, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, are asylum seekers from Ecuador. Petitioner Norma Tamay Tamay, entered the United States on July 26, 2021, at San Luis. Petitioner Juan Gonzalez Bermejo, entered the United States on July 26, 2021, at Mexicali.

21. On August 7, 2021, Respondents were released on their own recognizance from detention.

22. On August 25, 2021, the U.S. Department of Homeland Security (“DHS”), issued Petitioners, Juan Gonzalez Bermejo and Petitioner Norma Tamay Tamay, two separate Notices to Appear (NTA), at 201 Varick St. 5th Floor , Room 507, New York, NY, 10014, on November 10, 2021.

23. After numerous notices of hearings, Petitioners were mailed a notice of hearing, to their then-attorney, [REDACTED] for an individual court hearing, scheduled for November 15, 2022, at 201 Varick St. 5th Floor , Room 507, New York, NY, 10014.

24. Petitioners' then-attorney, [REDACTED] submitted without Petitioners' consent or knowledge, a false psychological evaluation of Petitioners, by Dr. Leovarado Lopez Alvaerado.

25. Not only were the reports false, but then-attorney, [REDACTED] never informed Petitioners of the submissions.

26. During Petitioners removal hearing, the Judge asked Petitioner Norma Beatriz, Tamay-Tamay, if she knew of Dr. Leovarado Lopez Alvaerado. Petitioner honestly answered that she did know the Psychologist. Due to Petitioners then-attorney's submission of the false evaluation of Dr. Leovarado Lopez Alvaerado, of Petitioner, Norma Beatriz, Tamay-Tamay, the immigration judge doubted Petitioners credibility, which lead to the denial of Petitioners' asylum application, and the issuance of the removal order.

27. On November 15, 2021, Petitioners were ordered removed. On December 5, 2023, the Board of Immigration Appeals, affirmed the immigration Judge's removal order.

28. On September 19, 2025, Petitioners filed with the immigration court a Motion to Reopen ("MTR").

29. Petitioners arrived on September 23, 2025, at their scheduled September 23, 2025 ICE check-in, and submitted to the ICE officials proof that they filed the MTR on September 19, 2025. Nonetheless, ICE detained the Petitioners,

31. Pursuant to 28 U.S.C. § 2243, Petitioners, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, request 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 Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay in apparent excess of statutory authority.

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

33. Moreover, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay fear that ICE intends to transfer them to a remote detention facility beyond the reach of their family, and attorneys, here in New York. 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

34. Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, Detention is Unlawful Because It Violates their 5th Amendments Due Process Rights.

35. 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. *Zachrydas 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.”).

36. 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”).

A. DHS is Detaining Petitioners in Violation of Their Procedural Due Process

37. 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).

38. 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.

39. The first Mathews factor requires consideration of the private interest affected by Respondents’ detention of Petitioners. This factor weighs heavily in Petitioners’ favor because Mr. Nathaniel Romeo Rojas Acevedo interest in being free from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

40. 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)).

41. 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. There is very little doubt that the second

prong of Mathews favors Petitioners, as the challenged detention, overwhelmingly creates a risk of erroneous deprivation of individuals' private rights.

42. Regarding the value of additional safeguards, the court in *Carlos Javier Lopez Benitez v. Francis*, 25 civ. 5937 stated that “[a] person’s liberty cannot be abridged without adequate procedural protections”.

43. The third Matthews 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.

44. In our case, Petitioners has regularly attended all their ICE check-ins and court hearings. In fact ICE arrested Petitioners, when they were doing their duty, to attend the Ice check-in.

45. **Lastly, and most relevant to determining the legality of discretionary noncitizen detention, this 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).

46. 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 Petitioners**, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, on September 23, 2025.

B. Continued Detention Of Petitioners Violates Their Substantive Due Process Right To Be Free From Arbitrary Detention.

47. 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).

48. To meet the strictures of due process, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay’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).

49. Respondents will not be able to show that Petitioners’ detention is necessary to prevent flight or to mitigate danger.

FIRST CLAIM FOR RELIEF
VIOLATION OF PROCEDURAL DUE PROCESS

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

51. 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), Petitioners has been deprived of his right to procedural due process, and he is therefore entitled to immediate release.

52. 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.

SECOND CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process

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

54. 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).

55. “[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).

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that the Court:

- (1) Assume jurisdiction over their petition;
- (2) Enjoin Respondents from transferring Petitioners 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 Petitioners immediate release during the pendency of these proceedings;
- (5) Declare Petitioners' ongoing detention to be violative the Due Process Clause of the Fifth Amendment;
- (6) Issue a writ of habeas corpus directing Respondents to release Petitioners;
- (7) Award reasonable attorney's fees and costs to Petitioners; and
- (8) Provide such other relief as the Court deems just and proper.

Dated: September 25, 2025
Queens, New York

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

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

I represent Petitioners, Mrs. Norma Tamay-Tamay, Mr. Juan Gonzalez, and Sherly Dwyaneira Gonzalez Tamay, and submit this verification on their 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 25th day of September, 2025.

/s/ Reuben S. Kerben