

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RUPERTO VICENS MARQUEZ)
)
Petitioner,)
)
v.)
)
LUIS SOTO, Director, Delaney Hall;)
TODD M. LYONS, Acting/Director,)
U.S. Immigration and Customs Enforcement)
KRISTI NOEM, Secretary of the U.S.)
Department of Homeland Security; and)
PAM BONDI, Attorney General of the)
United States, in their official capacities)
)
Respondents.)
_____)

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

**ORAL ARGUMENT
REQUESTED**

INTRODUCTION


1. The Petitioner, Ruperto Vincens-Marquez is a 38-year-old native, and citizen of Mexico, who last entered the United States without inspection in 2007 at the U.S.-Mexico border at Arizona and has continuously resided in the United States for over 18 years.

2. Petitioner was detained in the morning of October 17, 2025 while driving on his way to work with a passenger in Atlantic Highlands, NJ by ICE (U.S. Immigration and Customs Enforcement) officers, and is currently being held at Delaney Hall detention facility, in Newark, NJ.

3. Petitioner was not a target of ICE who were looking for Petitioner’s passenger who was wearing an ankle monitor.

4. On May 3, 2019, Petitioner previously filed for asylum pursuant to INA 208 et. seq., 8 U.S.C. 1158 et seq., on Form I-589, Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture, as an applicant for asylum, and refugee status, as defined in 8 U.S.C. §1101(a)(42)(A).

5. On November 20, 2019, Petitioner filed an application on Form EOIR 42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents pursuant to INA § 240A(b), 8 U.S.C. § 1229b(b), as relief from removal.

6. Petitioner is currently scheduled for an individual merits hearing (final hearing) on May 25, 2028 under Alien Registration No.  in Immigration Court before an Immigration Judge

7. Yesterday, on Thursday, October 23, 2025, Petitioner was informed by security officers at Delaney Hall in Newark, NJ of his imminent transfer tomorrow on Saturday, October 25, 2025 out Delaney Hall to another unknown location.

8. Petitioner is currently languishing in detention with information that he will be immediately transferred out of Delaney Hall without the opportunity for a bond hearing, away from his family and access to counsel.

9. Pursuant to a recently issued BIA (Board of Immigration Appeals) decision, *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) stripped bond jurisdiction from Immigration Judges over “applicants for admission” processed under INA §235, 8 U.S.C. §1225.

10. Petitioner’s only criminal history – over fifteen years ago – is a 2010

disorderly conduct plea of guilty.

11. Petitioner is not a danger to the community or a national security risk.

12. Petitioner is married and has one U.S. citizen daughter eight-years-old.

13. Petitioner is gainfully employed in the restaurant industry and has paid his taxes.

14. Petitioner has valid work authorization and valid driver's license.

15. Petitioner's detention is unconstitutional, pursuant to the Fifth Amendment to the United States Constitution's right to Due Process and is unlawful pursuant to a long-standing statutory and regulatory practice of DHS releasing from detention

16. Petitioner was informed yesterday, on October 23, 2025, by a security officer in Delaney Hall, that he was going to be transferred from Delaney Hall to another location – the next day – Saturday October 25, 2025.

17. Petitioner is in imminent danger and threat of transfer from this jurisdiction tomorrow, October 25, 2025 away from his family and access to counsel.

18. Petitioner's release from custody is not reasonably foreseeable and is futile because DHS has recently changed its policy from releasing noncitizens from detention pursuant to 8 U.S.C. § 1226 to a policy of asserting mandatory detention, nationwide, pursuant to 8 U.S.C. §1225 without a right to a bond hearing. *See, Yajure Hurtado, Id.*

19. Therefore, exhaustion would be futile and is not required.

20. Habeas corpus review is necessary and a temporary and permanent injunction

is requested immediately enjoining Respondents from removing, relocating, transferring Petitioner from this jurisdiction, unless provided a bond hearing by an Immigration Judge; or in the alternative, releasing Petitioner from custody on his own recognizance, is critically necessary, pending a hearing on this matter.

21. Accordingly, to vindicate the Petitioner's rights to Due Process and unlawful custody pursuant to the U.S. Constitution, and in violation of federal statutes and regulations, this Court should grant the instant petition for a writ of habeas corpus.

22. Absent an order from this Court, the Petitioner will be unlawfully and mandatorily detained, immediately transferred out of this jurisdiction for the foreseeable future, in violation of his due process rights, and in violation of federal statute and regulation.

23. Petitioner has not previously sought or requested a bond hearing from the Immigration Judge, in which an individual merits hearing has been scheduled before an Immigration Judge, because the same would be futile. *See, Matter of Yajure Hurtado*, 29 I&N Dec. (BIA 2025).

24. Nor has Petitioner sought or obtained a previous order to show cause for the relief requested herein in any court or jurisdiction.

25. Petitioner has provided notice to Respondents' counsel, on Friday, October 24, 2025, by calling the United States Attorney's Office at 1:35 p.m. and the undersigned left a voice message of the filing, prior to filing this Petition for Writ of Habeas Corpus and for an Order to Show Cause for a Restraining Notice and Preliminary and Permanent Injunction.

JURISDICTION

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

27. 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).

28. 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

29. Venue is proper because Petitioner is detained at Delaney Hall, detention facility in Newark, New Jersey, which is within the jurisdiction of this District.

30. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District, Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

31. The Court must grant the petition for writ of habeas corpus and issue an order to show cause (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief.

32. If an order to show cause is issued, the Court must require respondents to file

a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

33. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

34. Petitioner is a native and citizen of Mexico, who last entered the U.S. without inspection at the U.S.-Mexico border, in 2007. Petitioner has continuously resided in the U.S. for over 18 years. Petitioner is currently detained at the Delaney Hall detention facility, in Newark, New Jersey, since October 19, 2025. Delaney Hall is located in Newark, New Jersey. Petitioner is a resident of Atlantic Highlands, Monmouth County, New Jersey. Petitioner is in the custody, and under the direct control, of Respondents and their agents.

35. Respondent Luis Soto is the Director of Delaney Hall detention facility, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Luis Soto has authority to release Petitioner. He is sued in his official capacity.

36. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director, United States Immigration and Customs Enforcement.

37. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention/custody. Respondent Noem is a legal custodian of Petitioner.

38. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Noem is a legal custodian of Petitioner.

STATEMENT OF FACTS

39. Petitioner is a 38-year-old native and citizen of Mexico. The Petitioner last arrived in the United States in 2007 and has continuously resided in the United States for over 18 years.

40. On the morning of October 17, 2025, Petitioner was detained by ICE (Immigration and Customs Enforcement) while driving to work in Atlantic Highlands, NJ with a passenger who was wearing ankle monitor and was a target of ICE, not Petitioner.

41. Petitioner has no criminal history except for a misdemeanor conviction in 2010.

42. Petitioner is currently being held at Delaney Hall, NJ.

43. Yesterday, on Thursday, October 23, 2025, Petitioner was informed by a

security officer in Delaney Hall, Petitioner will be immediately transferred tomorrow, Saturday, October 25, 2025.

44. Consequently, Petitioner is filing this Petition for a Writ of Habeas Corpus and Restraining Notice and Preliminary Injunction to enjoin Respondents from unlawful detention and immediate and impending transfer from this jurisdiction, away from his family and access to counsel.

45. Petitioner previously filed for asylum, through the undersigned counsel, pursuant to INA § 208 et. seq., on Form I-589 Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture, on May 3, 2019.

46. On July 12, 2019, Petitioner was served with an NTA (Form I-862, Notice to Appear), charging him with removability under INA § 212(a)(6)(A)(i) as an alien present in the U.S. without being admitted or paroled or who arrived in the U.S. at any time or place other than as designated by the Attorney General and INA § 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card or other suitable travel document.

47. On November 20, 2019, Petitioner filed for relief from removal from the United States an application for Cancellation of Removal, under INA § 240A(b), 8 U.S.C. §1229b(b) for certain non-permanent residents of the United States, as the Petitioner has one qualifying, U.S. citizen daughter, under 21-years-old and Petitioner has resided continuously in the U.S. for at least ten years.

48. Petitioner is married and has one United States citizen daughter, who is eight

years old.

49. Petitioner is gainfully employed in the restaurant industry and has paid taxes for thirteen years since 2012.

50. Petitioner has a valid driver's license and work authorization.

51. Petitioner is in imminent threat and danger of being transferred by ICE from Delaney Hall, where Petitioner has been detained since his arrest on October 19, 2025, while driving to work.

52. If removed or transferred from Delaney Hall, in Newark, NJ, Petitioner will be away from his family and access to counsel, if the Respondents are not immediately enjoined from transferring, relocating or moving Petitioner from this jurisdiction.

53. In addition, Immigration Judges across the country have been denying custody redetermination requests for noncitizens similarly situated as the Petitioner, based on lack of jurisdiction, and relying on, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(IJ properly held he lacked authority to hear the respondent's request for a bond as an applicant for admission and is subject to mandatory detention under § 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)).

54. *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) has been held to be unlawful in numerous petitions for review in cases very similar to the Petitioner's case, including in this district, U.S. District Court of New Jersey. *See, Rivera Zumba v. Pam Bondi*, 25-cv-14626 (D.N.J. Sept. 26, 2025) Katharine S. Hayden, U.S.D.J. decision and other cases across the country.

55. Therefore, Petitioner seeks habeas corpus relief that is necessary for

adjudication of his request for a bond hearing and release from unlawful custody and for a custody redetermination, from Delaney Hall, the facility where he is currently being detained before he is immediately transferred or removed out to another location out of this Court's jurisdiction.

LEGAL FRAMEWORK

56. This Court possesses jurisdiction to issue a writ of habeas corpus and an order to show cause, to order Respondents from transferring, and removing Petitioner and release of Petitioner on bond pursuant to § 236(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), when in violation of the U.S. Constitution's Due Process Clause and violations of federal statute and regulation.

57. Petitioner is a noncitizen who entered the United States without inspection or parole in 2007 at the U.S.-Mexico border in Arizona and was not detained by DHS/ICE or CBP (U.S. Customs & Border Patrol) until October 19, 2025, while driving to work with a passenger, in Atlantic Highlands, N.J.

58. The passenger in Petitioner's vehicle was an ICE target – not Petitioner.

59. On May 3, 2019, Petitioner previously filed an application for asylum on Form I-589 Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); INA § 208 *et. seq.*, 8 U.S.C. §1158 *et. seq.* (asylum), INA § 241(b)(3), 8 U.S.C. §1231(b)(3)(withholding of removal), and 8 C.F.R. § 208.16-208.18 (CAT).

60. For decades, DHS took the position that noncitizens like Petitioner were eligible for release on bond pursuant to INA § 236(a), 8 U.S.C. § 1226(a), unless they fell under the mandatory detention provisions of INA § 236(c).

61. However, on July 8, 2025, DHS issued an internal memo that abruptly changed its longstanding position. DHS now takes the position that *all* noncitizens who entered the U.S. without inspection or parole are actually “applicants for admission” pursuant to INA § 235(b), 8 U.S.C. § 1225(b) and therefore are ineligible for release on bond regardless of how long they have resided in the United States.

62. DHS’ new position is without legal support, and this Court should find that DHS’s new interpretation of INA § 235(b), 8 U.S.C. § 1225(b) violates the Respondent’s right for a bond hearing under the U.S. Constitution’s Due Process Clause, and that a Writ of Habeas Corpus and an Order to Show Cause should issue and show cause why Respondents should not be immediately enjoined from transferring Petitioner to another jurisdiction and why Petitioner should not be immediately released from custody or in the alternative hold a bond hearing.

63. The Writ of Habeas Corpus and an Order to Show Cause to order Respondents be immediately enjoined and for Petitioner’s immediate release or order a bond hearing is necessary to vindicate the Petitioner’s Due Process rights, based on the following reasons.

64. First, as the Supreme Court has previously noted, INA § 236, 8 U.S.C. § 1226 is the default rule for discretionary detention. It applies to anyone who is detained

“pending a decision on whether the [noncitizen] is to be removed from the United States.” *See, Jennings v. Rodriguez*, 138 S. Ct. 830, 200 L. Ed.2d 122 (2018).

65. Noncitizens detained under INA § 236, 8 U.S.C. § 1226 are eligible for custody redetermination hearings unless they fall under the mandatory detention provisions of INA § 236(c), 8 U.S.C. § 1226(c).

66. The carve out under § 236(c), 8 U.S.C. § 1226(c), including the most recent passage of the Laken Riley Act (“LRA”), illustrates that Congress intended INA § 236, 8 U.S.C. § 1226 to serve as the default detention authority for individuals like Respondent. When Congress creates specific exceptions to a statute’s applicability, it proves that absent those exceptions, the statute generally applies.

67. Second, canons of statutory interpretation, legislative history, and longstanding agency practice clearly demonstrate that Congress *did not* intend noncitizens like Petitioner to be subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

68. DHS’ position runs contrary to how INA § 235(b), 8 U.S.C. § 1225(b) has been consistently applied in the past and finds no basis in the context of the statutory schemes governing immigration detention.

69. To find otherwise would render significant parts of INA § 236(a), 11 U.S.C. § 1226(a) obsolete, redundant or superfluous, which clearly Congress did not intend to do.

70. Third, DHS’ position is not supported by any precedential Board of Immigration Appeals (“BIA” or “Board”) case law. *Matter of Q. Li* concerned a noncitizen who was detained shortly after crossing the border and who was subsequently

released on parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), but later re-detained.

71. Under those circumstances, the Board found that the noncitizen was an applicant for admission and subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

72. Crucially, the Board's holding reiterated the well-established understanding that INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border.

73. This interpretation is also supported by the Supreme Court's decision in *Jennings v. Rodriguez* and several recent district court decisions that have granted preliminary injunctive relief and enjoined the application of INA § 235(b), 8 U.S.C. § 1225(b) to individuals similarly situated to Petitioner.

74. The Respondents' position is further undercut by *Matter of Akhdemov*, 29 I&N Dec. 166 (BIA 2025) in circumstances much like the Petitioner, applied INA § 236(a), 8 U.S.C. § 1226(a) to noncitizens already in the U.S. and afford them a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

75. The allegations in the above paragraphs 1- 74 are realleged and incorporated herein.

76. Petitioner is currently being detained at the Delaney Hall detention facility in Newark, New Jersey, since October 19, 2025, in violation of the Petitioner's rights to seek a bond hearing pursuant to INA § 236(a), 8 U.S.C. §1226(a).

77. If Petitioner were to make a motion for a bond hearing, it would be denied based on the Immigration Court's lack of jurisdiction.

78. Thus, it would be futile to pursue continued administrative remedies in this case, the Petitioner would be prejudiced if bond hearing relief were not immediately granted, and Petitioner would be irreparably harmed.

79. Consequently, for these reasons, Petitioner's unlawful detention without the right to a bond hearing violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1226(a), INA § 236(a) and Implementing Regulations

80. The allegations in the above paragraphs 1-79 are realleged and incorporated herein.

81. INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border.

82. Because Petitioner entered the U.S. in 2007, and has been present in the U.S. for over 18 years, and was detained in the interior, Petitioner should be afforded a bond hearing.

83. Petitioner's detention is unlawful in violation of 8 U.S.C. § 1226(a), INA § 236(a) and the writ of habeas corpus and an order to show cause should be granted for the immediate release of the Petitioner or in the alternative order a bond hearing.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, 8 U.S.C. § 1226(a), INA §236(a).
- (4) Issue a Writ of Habeas Corpus ordering Respondents release Petitioner immediately or in the alternative;
- (5) Issue an Order to Show Cause to Enjoin the imminent transfer, removal, relocation of Petitioner to another location, outside of the jurisdiction of this Court;
- (6) Schedule a bond hearing before an Immigration Judge and, at such hearing, and afford Petitioner to be released from custody;
- (7) That this Court retain jurisdiction of this matter;
- (8) Award Petitioner attorney's fees and costs under the Equal Access to Justice

Act, and on any other basis justified under law; and

- (9) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Martin W. Chow

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Dated: October 24, 2025

New York, NY

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

I represent Petitioner, Ruperto Vicens Marquez 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 24nd day of October, 2025.

/s/ Martin W Chow

Martin Chow, Esq.