

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Lauro Vicente MARCA LEMA, a/k/a Victor )  
Antonio Ramirez Lozano, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
Luis SOTO, Director of the Delaney Hall )  
Detention Facility; John Tsoukaris, Director of the )  
Newark Field Office of Immigration and Customs )  
Enforcement; Kristi Noem, Secretary of the )  
Department of Homeland Security; Pamela Bondi, )  
Attorney General, )  
 )  
Respondents. )  
\_\_\_\_\_ )

Case No.: 25-cv-17098

**VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS  
AND COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

Agency No.: A 

**INTRODUCTION**

1. Lauro Vicente Marca Lema, Petitioner, entered the United States without inspection in 1999. He welcomed a United States citizen son in 2003. In 2014, Immigration and Customs Enforcement (“ICE”), an arm of the Department of Homeland Security (“DHS”), detained him following a conviction for driving under the influence. Shortly thereafter, ICE released him on bond. After his release on bond, ICE agreed that the immigration judge (“IJ”) presiding over Petitioner’s removal proceedings should administratively close Petitioner’s deportation case, explaining that he was not an enforcement priority. The case was closed, the bond was canceled, and Petitioner had no further contact with law enforcement for over a decade—during which Petitioner lived, worked, and paid taxes in the United States.

2. On October 7, 2025, as Petitioner was leaving a job site in the Bronx (he has spent the last three years employed as an iron worker in the construction industry), ICE agents stopped him. The agents asked him to identify individuals in two photographs they provided. When

Petitioner could not do so, the ICE agents detained him instead. To date, ICE has offered no explanation or justification for re-detaining Petitioner, who is currently imprisoned at the Delaney Hall Detention Facility in Newark, New Jersey.

3. Pursuant to 28 U.S.C. § 2243, Petitioner requests that the Court issue an Order to Show Cause directing the Government 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 Petitioner.

4. If ICE cannot point to any justification for its unexplained decision to re-detain Petitioner, then his re-detention is violative of due process and he should be immediately released. At the absolute minimum, the Court should order that he be afforded a bond hearing at which ICE must justify his continued detention by clear and convincing evidence.

#### **JURISDICTION**

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

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. 1331 (federal question).

7. This Court may order relief under the habeas statute, 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651.

#### **VENUE**

8. Venue is proper because Petitioner is detained, and his immediate custodian resides, in New Jersey, within the territorial jurisdiction of this Court.

## **PARTIES**

9. Petitioner is an Ecuadoran national who has resided in the United States since 1999. He is the father of one United States citizen son. At the time of his recent arrest by ICE, he was employed as an ironworker in New York.

10. Respondent Luis Soto is the Director, *i.e.*, warden, of the Delaney Hall Detention Facility in Newark, New Jersey. As such, he is Petitioner's immediate custodian.

11. John Tsoukaris is the Director of ICE's Newark Field Office. In his official capacity, he is charged with carrying out the functions of that office, including by making and overseeing decisions regarding immigration detention throughout New Jersey. He therefore has constructive custody over Petitioner, in that he can order his release from ICE custody.

12. Respondent Kristi Noem is the Secretary of DHS, which is ICE's parent agency. In her official capacity, she oversees and directs the activities of ICE, including its detention operations in New Jersey and elsewhere. She therefore has constructive custody of Petitioner, in that she can direct ICE to release him from custody.

13. Respondent 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 and its components. She therefore has constructive custody of Petitioner, in that she has the capacity to compel ICE to release him.

## **STATEMENT OF FACTS**

14. An Ecuadoran national, Petitioner crossed the southern land border into the United States in 1999. Under pressure from a smuggler, he furnished an alias—Victor Antonio Ramirez Lozano—and claimed Mexican nationality. It is unclear what, if any, immigration proceedings took place immediately following Petitioner's 1999 entry. Suffice it to say, he was apparently not

prevented from entering the United States, and he subsequently established residency in the State of New York. On October 16, 2003, he had a son. *See* Exh. A (birth certificate).

15. In early 2014, Petitioner was arrested by police for driving under the influence. *See* Exh. B (certificate of disposition). He pleaded guilty to violating NYVTL § 1192.1, and received a sentence of a one-year conditional discharge, ninety-day license suspension, and \$300 fine. *See id.* While these criminal proceedings were pending, ICE issued a detainer, *see* Exh. C (immigration detainer), and a warrant for Petitioner's arrest, *see* Exh. D (warrant for arrest of alien). ICE took Petitioner into custody, but shortly thereafter made the decision to release him on bond of \$10,000. *See* Exhs. E (notice of custody determination), F (immigration bond).

16. After placing him in removal proceedings before an IJ in January of 2014, *see* Exh. G (notice to appear), ICE determined that Petitioner was not a priority for enforcement, and in September of that following year agreed that the removal proceedings should be administratively closed, *see* Exh. H (IJ order). ICE canceled the immigration bond shortly thereafter. *See* Exh. I (bond cancellation notice). At liberty, and with the prospect of deportation no longer looming over him, Petitioner returned to his day-to-day life in the United States. He raised his son, maintained gainful employment, paid his taxes, and had no further contact with law enforcement.

17. On October 7, 2025, as Petitioner left his worksite for the day, he was stopped by a group of ICE agents. The agents asked Petitioner if he could identify the individuals depicted in two photographs which they showed him. Petitioner could not. ICE agents then surrounded him, and began inquiring about *his* immigration status. When he refused to answer questions, ICE agents seized him and took him into custody.

18. On information and belief, Petitioner has not received an individualized hearing before a neutral decisionmaker to assess whether his recent re-detention was warranted due to dangerousness or flight risk.

### LEGAL BACKDROP

19. “[C]ivil immigration detention is typically justified only when a noncitizen presents a risk of flight or danger to the community.” *J.A.E.M. v. Wofford*, No. 25 Civ. 1380 (KES), 2025 WL 3013377, at \*3 (E.D. Cal. Oct. 27, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). “A protected liberty interest may arise from a conditional release from physical restraint. Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.” *Id.* (citation omitted) (citing *Young v. Harper*, 520 U.S. 143, 147–49 (1997)). “Due process ‘is a flexible concept that varies with the particular situation.’ The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors.” *Id.* at \*6 (quoting *Zinerman v. Burch*, 494 U.S. 113, 127 (1990), which in turn cites 424 U.S. 319, 335 (1976)).

20. Beginning in May of this year, ICE has pursued an aggressive new enforcement campaign targeting people who are in removal proceedings at their homes, places of business, and even as they attended mandatory immigration court hearings or other immigration appointments. Individuals have been arrested seemingly without regard to whether they have pending applications for asylum or other relief. This “coordinated operation” is “aimed at dramatically accelerating deportations.”<sup>1</sup> These aggressive tactics appear to be motivated by the imposition of

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<sup>1</sup> Arelis R. Hernández and Maria Sacchetti, “Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push,” *Washington Post* (May 23, 2025), available at [www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/); see

a daily quota of 3,000 ICE arrests.<sup>2</sup> In part as a result of this campaign, ICE’s arrests of noncitizens with no criminal record have increased more than 800% since before January.<sup>3</sup> It represents a stark departure from the government’s prior practice of re-detaining noncitizens only after a material change in circumstances such as a criminal arrest. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice).

21. At the same time, the Board of Immigration Appeals (“BIA”) has advanced novel interpretations of the immigration detention statutes. In *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), it held for the first time that individuals who (like Petitioner) were paroled into the United States without first receiving a CFI, remained subject to mandatory detention under section 235 of the INA, 8 U.S.C. § 1225, as opposed to discretionary detention under INA § 236, 8 U.S.C. § 1226, regardless of how much time had passed since their initial entry. Shortly thereafter, it expanded its mandatory § 1225 detention rule to cover all persons present in the United States without admission, irrespective of their time and manner of entry. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).<sup>4</sup>

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*also* Hamed Aleaziz, Luis Ferré-Sadurní, and Miriam Jordan, “How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests,” *N.Y. Times* (May 30, 2025), *available at* [www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html](http://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html).

<sup>2</sup> Ted Hesson and Kristina Cooke, “ICE’s Tactics Draw Criticism as it Triples Daily Arrest Targets,” *Reuters* (Jun. 10, 2025), *available at* [www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/](http://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/).

<sup>3</sup> José Olivares and Will Craft, “ICE Arrests of Migrants with No Criminal History Surging under Trump,” *The Guardian* (Jun. 14, 2025), *available at* [www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures](http://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures).

<sup>4</sup> Given the existence of these precedents, any attempt at administrative exhaustion would be futile.

22. “In recent months, many district courts across the country have grappled with the [] issue, and it appears that all but one of them has rejected [ICE’s] position and concluded that an alien in Petitioner’s situation (i.e., an alien who entered the United States without inspection, never formally applied for admission, and has been living in the United States for years or decades) is entitled to a bond hearing under § 1226(a).” *Echevarria v. Bondi*, No. 25 Civ. 3252 (DWL), 2025 WL 2821282, at \*4 (D. Ariz. Oct. 3, 2025) (citing *Hasan v. Crawford*, 25 Civ. 1408 (LMB), 2025 WL 2682255 at \*9 (E.D. Va. Sep. 19, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025); *Pizarro Reyes v. Raycraft*, No. 25 Civ. 12546 (RJW), 2025 WL 2609425, \*7 (E.D. Mich. Sep. 9, 2025); *Barrera v. Tindall*, No. 25 Civ. 541 (RGJ), 2025 WL 2690565, \*5 (W.D. Ky. Sep. 19, 2025); *Vazquez v. Feeley*, No. 25 Civ. 1542 (RFB), 2025 WL 2676082, \*16 (D. Nev. Sep. 17, 2025)). “The one apparent exception is *Chavez v. Noem*, which recently concluded that ‘aliens present in the United States who have not been admitted’ are, ‘[b]y the plain language of § 1225(a)(1), . . . applicants for admission and thus subject to the mandatory detention provisions of ‘applicants for admission’ under § 1225(b)(2).” *Id.* (quoting No. 25 Civ. 2325 (CAB), 2025 WL 2730228, at \*4 (S.D. Cal. Sep. 24, 2025)) (alterations in *Echevarria*).

23. Courts in this district have not bucked the overall trend. *See, e.g., Zumba v. Bondi*, No. 25 Civ. 14626 (KSH), 2025 WL 2753496, at \*9 (D.N.J. Sep. 26, 2025) (“Notably, this Court need not defer to the September 5, 2025 BIA decision, *Matter of Yajure Hurtado*, and its newly-minted interpretation of § 1225(b)(2)(A). The BIA decision relies on respondents’ ‘plain language’ reading of §§ 1225(a)(1), (b)(2), which the Court rejects.” (citations omitted)); *Bethancourt Soto v. Soto*, No. 25 Civ. 16200 (CPO), 2025 WL 2976572, at \*7 (D.N.J. Oct. 22, 2025) (“The BIA’s contrary conclusion in *Matter of Yajure Hurtado*, does not alter this result. This Court owes no deference to an agency interpretation that conflicts with the statute’s unambiguous text.” (citations

omitted)); *Lomeu v. Soto*, No. 25 Civ. 16589 (EP), 2025 WL 2981296, at \*8 (D.N.J. Oct. 23, 2025) (“Respondents’ interpretation of § 1225(b)(2)(A) is incompatible with the overall statutory scheme, which the Supreme Court in *Jennings* described as (1) deciding who may *enter* the country under § 1225(b); and (2) deciding who may *remain* in the country after entering under § 1226(a), (c). Respondents completely ignore the plain and longstanding distinction in U.S. immigration law between those noncitizens who are entering the country and those who remain after entering, focusing instead on the definitions of ‘applicant for admission’ and misreading a misreading of the statutory phrase ‘seeking admission’ to include the past-tense, an alien who already entered the country without inspection under § 1225.” (citing *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018))); *Ayala Amaya v. Bondi*, No. 25 Civ. 16428 (ESK), 2025 WL 3033880, at \*2 (D.N.J. Oct. 30, 2025) (“The vast majority of courts confronting this precise issue have rejected respondents’ interpretation, and the BIA’s interpretation in *Hurtado*, as contradictory to the plain text of § 1225. I am persuaded by the comprehensive reasoning of these courts and find that § 1226(a) applies to petitioner’s detention.” (citations omitted) (collecting cases)).

**FIRST CLAIM FOR RELIEF**  
**Violation of Fifth Amendment Right to Due Process**

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

25. Applying the *Mathews* factors in this case, Petitioner’s unexplained re-detention violates due process, and he is entitled to release pending a pre-deprivation bond hearing.

26. “Here, the first factor weighs heavily in Petitioner’s favor, as the official action has deprived him of his physical liberty.” *Bethancourt Soto*, 2025 WL 2976572, at \*8 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (“[T]he most elemental of liberty interests [is] the interest in being free from physical detention by [the] government.”)); *Zadvydas*, 533 U.S. at 690 (“Freedom

from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.”)).

27. “Similarly, the second *Mathews* factor weighs heavily in Petitioner's favor, as he is presently and *erroneously* detained under the mandatory detention provisions of § 1225, without an opportunity for a bond hearing.” *Bethancourt Soto*, 2025 WL 2976572, at \*8 (emphasis in original). And “the record demonstrates that no individualized determination was made prior to or contemporaneously with the decision to detain Petitioner in [October] 2025, and there was no change in circumstances between the time DHS released Petitioner on bond to his re-arrest and detention. Thus, the risk of erroneous deprivation of Petitioner’s liberty interest is high. *Artiga v. Genalo*, No. 25 Civ. 5208 (OEM), 2025 WL 2829434, at \*9 (citations omitted).

28. “Finally, the third *Mathews* factor, the Government's interests in detaining noncitizens are typically ‘ensuring the appearance of aliens at future immigration proceedings’ and ‘preventing danger to the community.’” *Bethancourt Soto*, 2025 WL 2976572, at \*8 (quoting *Zadvydas*, 533 U.S. at 690). Here, the third factor favors Petitioner, whose criminal record is de minimis—as evidenced by ICE’s earlier decision to release him when the conduct at issue was still recent—and whom ICE previously told an IJ was not an enforcement priority. Moreover, even if “the government has a strong interest in enforcing the immigration laws, the government’s interest in detaining petitioner without a hearing is ‘low.’” *J.A.E.M.*, 2025 WL 3013377, at \*7 (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)). “In immigration court, custody hearings are routine and impose a ‘minimal’ cost.” *Id.* (quoting *Doe v. Becerra*, No. 25-Civ. 647 (DJC), 2025 WL 691664, at \*6 (E.D. Cal. Mar. 3, 2025)). “If the government wishes to re-arrest [petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low.” *Id.* (quoting *Ortega, supra*) (alteration in *J.A.E.M.*).

29. “Respondents’ ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.” *Artiga*, 2025 WL 2829434, at \*9 (citing *J.U. v. Maldonado*, No. 25 Civ. 4836 (OEM), 2025 WL 2772765, at \*10 (E.D.N.Y. Sep. 29, 2025)). “Given the absence of any deliberative process prior to or contemporaneous with the deprivation of Petitioner’s liberty, formerly granted and approved by Respondents, a writ of habeas corpus is the only form of relief and the most appropriate remedy.” *Id.* “A person’s liberty cannot be abridged without ‘adequate procedural protections.’” *Id.* (quoting *Zadvydas*, 533 U.S. at 690). Petitioner received *no* process whatsoever prior to his re-detention. “And no process at all is plainly inadequate.” *Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 2774452, at \*10 (S.D.N.Y. Sep. 28, 2025).

**SECOND CLAIM FOR RELIEF**  
**Violation of Section 236(a) of the INA, 8 U.S.C. § 1226(a)**

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

31. ICE has taken the position that individuals like Petitioner are subject to mandatory detention under 8 U.S.C. § 1225. *See Yajure Hurtado, supra*. Because such a reading of the statute “(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice,” *Lepe v. Andrews*, No. 25 Civ. 1163 (KES), 2025 WL 2716910, at \*4 (E.D. Cal. Sep. 23, 2025), the Court should reject it, as a near-unanimous chorus of district judges throughout the Nation has done.

32. And because Petitioner’s re-detention was carried out pursuant to this flawed reading of the INA, it should be considered unreasonable *ab initio* and the Government should be ordered to release Petitioner immediately. *See, e.g., Zumba*, 2025 WL 2753496, at \*11 (“For the

reasons set forth above, petitioner's mandatory detention under § 1225 violates the INA and the Due Process Clause of the Fifth Amendment. The Court grants the writ of habeas corpus and orders respondents to release petitioner from detention within 24 hours. Following her release, respondents are permanently enjoined from rearresting or otherwise detaining petitioner under § 1225 and may not arrest or otherwise detain petitioner under § 1226(a) for 14 days.”); *Bethancourt Soto*, 2025 WL 2976572, at \*9 (citing *Zumba, supra*); *Lomeu*, 2025 WL 2981296, at \*9 (“Lomeu is unlawfully detained under § 1225(b)(2)(A). The statute and her constitutional right to due process require that she be provided immediate release from unlawful detention.”).

33. At a bare minimum, and in the alternative, the Court should declare that Petitioner’s custody is governed by 8 U.S.C. § 1226(a), and direct the Government to provide him with a bond hearing before an IJ and release him absent a showing that he is a flight risk or danger to the community. *See Ayala Amaya*, 2025 WL 3033880, at \*3 (“Accordingly, I find that petitioner's mandatory detention pursuant to § 1225(b)(2)(A) violates the laws of the United States and petitioner's due process rights. Respondents are ordered to treat petitioner as detained under § 1226(a) and provide him with an individualized bond hearing.”).

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that the Court:

- (1) Assume jurisdiction over this petition;
- (2) Direct Respondents to show cause within three days (or in no event more than twenty days) why the Petition should not be granted;
- (3) Declare Petitioner's ongoing detention to be violative of 8 U.S.C. § 1226 as well as the Due Process Clause of the Fifth Amendment;
- (4) Issue a preliminary injunction or writ of habeas corpus directing Respondents to immediately release Petitioner, or at minimum afford him a bond hearing; and
- (5) Provide such other relief as the Court deems just and proper.

Dated: October 31, 2025  
Kew Gardens, New York

By: /s/ Perham Makabi  
Perham Makabi, Esq.  
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8015 Lefferts Blvd, Ste 1R  
Kew Gardens, NY 11415  
(718) 261-6780

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

I represent Petitioner, Lauro Vicente Marca Lema, 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 31<sup>st</sup> day of October, 2025.

By: /s/ Perham Makabi  
Perham Makabi, Esq.  
LAW OFFICE OF PERHAM MAKABI  
8015 Lefferts Blvd, Ste 1R  
Kew Gardens, NY 11415  
(718) 261-6780

**Table of Exhibits**

- Exh. A:** Child's Birth Certificate (Oct. 22, 2003)
- Exh. B:** Certificate of Disposition (Aug. 27, 2014)
- Exh. C:** Immigration Detainer – Notice of Action (Jan. 18, 2014)
- Exh. D:** Warrant for Arrest of Alien (Jan. 23, 2014)
- Exh. E:** Notice of Custody Determination (Jan. 28, 2014)
- Exh. F:** Immigration Bond (Feb. 14, 2014)
- Exh. G:** Notice to Appear (Jan. 23, 2014)
- Exh. H:** Order of the Immigration Judge (Sep. 4, 2015)
- Exh. I:** Notice – Immigration Bond Cancelled (Sep. 21, 2015)