

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

Manuel CUNGACHI MOROCHO, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Luis SOTO, Warden 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, U.S. Department of Justice )  
 )  
 Respondents. )  
 )

Case No.: 25-cv-18077

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

Agency No.: A 

**INTRODUCTION**

1. Manuel Cungachi Morocho, Petitioner, is a forty-seven-year-old from Ecuador. He entered the United States without inspection from Ecuador in October 1998. Undocumented, he took up residence in Newark, NJ., where he welcomed a United States citizen son. Like many undocumented immigrants, he found a job in construction.

2. Petitioner resides at  Newark NJ 07108, with his wife Rosa and their son Michael Alexander Guaman Quito (19 years old) who is a US Citizen. His sister is a Permanent Resident, named Maria Mercedes Cungaghi.

3. To Petitioner’s credit, he applied **affirmatively** for asylum, based on being an Indigenous Kichwa, and therefore was not in removal proceedings at the time of his arrest. USCIS received his affirmative application for asylum on April 22, 2024.

4. Petitioner was issued an employment authorization document by USCIS valid from December 2, 2024 through December 1, 2029.

5. On Friday, November 28, 2025 at approx. 9AM Manuel was driving to work from his house.

6. Shortly after leaving his house, he arrived at home depot, picked up some supplies for his job, and was suddenly pulled over by Immigration and Customs Enforcement (“ICE”) agents, who proceeded to arrest Petitioner and four co-workers who were all in the same vehicle.

7. Petitioner was arrested before he was issued a Notice To Appear (“NTA”). Petitioner remains in ICE custody at the Delaney Hall Detention Facility in Newark, New Jersey. To date, ICE has not explained its decision to detain Petitioner.

8. Upon information and belief ICE failed to conduct any assessment of Petitioner, prior to his arrest, and surely did not afford Petitioner a right to be heard regarding his arrest.

9. Petitioner’s detention was unlawful and unwarranted, since he was not in removal proceedings at the time of his arrest (he was not served a NTA before or contemporaneously with his arrest); his legal status has not changed from the time he entered the United States in October 1998. On the contrary since his arrival to the United States, Petitioner applied Affirmatively for Asylum, and was granted an Employment Authorization Document (EAD).

10. Furthermore, upon information and belief, ICE failed to conduct an individual assessment, or “any” process of Petitioner, Mr. Manuel Cungachi Morocho, prior or contemporaneously to his detention.

12. Pursuant to 28 U.S.C. § 2243, Mr. Manuel Cungachi Morocho, 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. Manuel Cungachi Morocho, in apparent excess of statutory authority.

13. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of Habeas Corpus.

### **JURISDICTION**

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

15. 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).

16. 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**

17. Venue is proper because—on information and belief—Petitioner is detained, and his immediate custodian is located, in New Jersey, within the territorial jurisdiction of this Court.

### **PARTIES**

18. Petitioner is an Ecuadoran national who has lived in the United States without authorization since 1998. At the time of his recent arrest by ICE, he was residing in Newark, New Jersey, and employed in construction.

19. 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.

20. 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.

21. 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.

22. 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**

23. Petitioner, then a teenager, entered the United States through the southern border in October 1998 after fleeing difficult conditions in Ecuador. He settled in Newark, New Jersey, where he worked steadily in construction and built a life rooted in hard work and responsibility. In April 2024, he took the courageous step of filing an affirmative application for asylum with USCIS, seeking protection through the lawful process. Like many adults adapting to life in a new country, Petitioner made mistakes. He was arrested for DUI and traffic-related violations in 2013 and again in 2019. He accepted responsibility, completed all required classes and court-mandated programs, and has had no issues with law enforcement since. These incidents reflect past mistakes, not ongoing conduct. Aside from those already resolved matters, Petitioner has lived a quiet, law-abiding life in the United States for over two decades.

24. On Friday, November 28, 2025 at approx 9 AM Manuel was driving to work from

his house. About 5 mins after leaving his house, he arrived at home depot, picked up some work supplies on his way to the job site. Leaving Home Depot Petitioner was suddenly pulled over by ICE agents, and he was arrested with four co-workers who were all in the same vehicle.

25. Petitioner was taken into custody, on information and belief without warrant, and eventually transferred to the Delaney Hall Detention Facility, where he remains imprisoned at this time.

26. Mr. Manuel Cungachi Morocho, fears that ICE intends to transfer him to a remote detention facility beyond the reach of his family, and attorneys, here in New Jersey. 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**

28. 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.”).

29. 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 Petitioner in Violation of His Procedural Due Process**

30. “[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)).

31. 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).

32. 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.

33. The first Mathews factor requires consideration of the private interest affected by Respondents' detention of Petitioner. This factor weighs heavily in Petitioner's favor because Mr. Juan Carlos, Cajamarca Cajamarca's, interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

34. As the court stated in *Carlos Javier Lopez Benitez v. Francis*, 25 civ. 5937 (DEH), "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)).

35. 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.

36. There is very little doubt that the second prong of Mathews favors Petitioner, as the challenged detention, overwhelmingly creates a risk of erroneous deprivation of individuals' private rights.

37. **The Court** stated in *Carlos Javier Lopez Benitez v. Francis*, 25 civ. 5937 (DEH), 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**". (emphasis added) (quoting *Velesaca v. Wolf*, No. 20 Civ. 2153, 2020 WL 7973940 (2d cir. Oct. 13, 2020). (quotation marks and citation omitted)

38. 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 contemporaneously or before** ICE arrested Mr. Manuel Cungachi Morocho's, on November 28, 2025.

39. 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”.

40. The third *Mathews* factor—the Government’s interest—also weighs in favor of granting the petition. The Government’s legitimate interests are limited to ensuring that noncitizens facing removal do not pose a danger to the community or abscond during the pendency of removal proceedings.

41. Here, Petitioner does not present a danger to the public. Although he was arrested for DUI-related offenses in 2013 and 2019, he took full responsibility, completed all court-mandated programs, and has had no subsequent criminal issues. His record over the past several years demonstrates rehabilitation and stable, law-abiding conduct. Moreover, there is no risk of absconding, as Petitioner is not in removal proceedings and has affirmatively sought protection by filing for asylum with USCIS.

42. **Furthermore**, Mr. Manuel Cungachi Morocho’s **Procedural Due Process rights have been violated since he was detained before he was actually subject to removal proceedings**. Under the plain text of 8 U.S.C. § 1226(a), ICE’s authority to detain arises only ‘pending a decision on whether the alien is to be removed’. No such proceedings existed here.

43. Moreover, the District Court’s recent decision in *Gopie v. Lyons*, No. 25-cv-05229-SJB (E.D.N.Y. Nov. 13, 2025), confirms that ICE lacks authority to detain a noncitizen when no Notice to Appear (“NTA”) has been issued prior to arrest. The court held that 8 C.F.R. § 1236.1(b) requires the issuance of an NTA *before* the government may execute an arrest warrant, and that an arrest carried out in the absence of a prior NTA is unlawful and warrants immediate release.

44. 8 C.F.R. § states, “*At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest.*” (emphasis added). **The statute clearly requires the issuance of the NTA prior to an arrest.**

45. **Lastly,** The INA provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added). Thus, “the issuance of a warrant is a ‘necessary condition’ to justify discretionary detention under the statute.” *Astudillo v. Hyde*, No. 25 Civ. 551 (JJM), 2025 WL 3035083, at \*4 (D.R.I. Oct. 30, 2025) (quoting *Chogllo Chafra v. Scott*, No. 25 Civ. 438 (SDN), 2025 WL 2688541, at \*11 (D. Me. Sep. 22, 2025)).

46. “Because the Government failed to obtain a warrant as required by statute, [Petitioner] may not be detained and must be immediately released.” *Id.*; accord *Chiliquinga Yumbillo v. Stamper*, No. 25 Civ. 479 (SDN), 2025 WL 2783642, at \*5 (D. Me. Sep. 30, 2025) (quoting *Chogllo Chafra, supra*); *J.A.C.P. v. Wofford*, No. 25 Civ. 1354 (KES), 2025 WL 3013328, at \*8 (E.D. Cal. Oct. 27, 2025) (same).

47. Upon information and belief, ICE did not issue Petitioner a warrant prior to his arrest. Mr. Manuel Cungachi Morocho’s detention was therefore unlawful from its inception and cannot be justified by any post-hoc filing of an NTA.

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

48. 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).

49. To meet the strictures of due process, Mr. Manuel Cungachi Morocho'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).

50. Respondents cannot show that Petitioner's detention without bond is necessary to prevent flight or protect the community. He has lived in the United States for more than two decades, he lives with his wife, has a U.S. citizen son, and a lawful permanent resident sister—all deep, stabilizing family ties that eliminate any risk of flight. His two arrests were resolved years ago with full compliance, and nothing in his recent history suggests any present danger to the community. There is simply no constitutionally valid basis for continued detention.

### **FIRST CLAIM FOR RELIEF**

#### **VIOLATION OF PROCEDURAL DUE PROCESS**

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

52. 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.

53. In particular, the Court stated, in *Carlos Javier Lopez Benitez v. Francis*, 25 civ. 5937 (DEH), that before the Government can exercise the discretion to detain 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.

54. Furthermore, Mr. Manuel Cungachi Morocho's Procedural Due Process rights have been violated since he was detained when he was not in any removal proceedings. the District Court, in *Gopie v. Lyons*, 1:25-cv-05229, stated that 8 C.F.R. § 236.1(b) requires the issuance of a NTA prior to arrest, **and if the ICE fails to do so, that alone is sufficient to release the Petitioner.**

55. 8 C.F.R. § states, "At the time of issuance of the notice to appear, or at *any time thereafter* and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest." **The statute clearly requires the issuance of the NTA prior to an arrest.**

56. Lastly, The INA provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). Thus, "the issuance of a warrant is a 'necessary condition' to justify discretionary detention under the statute." *Astudillo v. Hyde*, No. 25 Civ. 551 (JJM), 2025 WL 3035083, at \*4 (D.R.I. Oct. 30, 2025) (quoting *Chogllo Chafra v. Scott*, No. 25 Civ. 438 (SDN), 2025 WL 2688541, at \*11 (D. Me. Sep. 22, 2025)).

57. Upon information and belief, ICE did not issue Petitioner a warrant prior to his arrest. Mr. Manuel Cungachi Morocho's detention was therefore unlawful from its inception and cannot be justified by any post-hoc filing of an NTA.

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

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

59. 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).

60. “[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, 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 8 U.S.C. § 1231 as well as the Due Process Clause of the Fifth Amendment;
- (6) Issue a writ of habeas corpus directing Respondents to release Petitioner;
- (7) Award reasonable attorney’s fees and costs to Petitioner; and
- (8) Provide such other relief as the Court deems just and proper.

Dated: December 1, 2025  
Kew Gardens, NY

/s/ Jonathan Cole Lipsitz, Esq.  
Jonathan Lipsitz, Esquire  
Kerben Law Firm, P.C.  
8002 Kew Gardens Road, Suite 307  
Kew Gardens, NY 11415

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

I represent Petitioner, Mr. Manuel Cungachi Morocho, 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 1st day of December, 2025.

/s/ Jonathan Cole Lipsitz