

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

Melfin Oswaldo Moscoso,)
)
 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.: 2:25-cv-18645

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



Agency No.: A 

INTRODUCTION

1. Melfin Oswaldo Moscoso, Petitioner, is a thirty-six-year-old from He entered the United States without inspection from Guatemala in 2008, at the Texas border.

2. Undocumented, he took up residence in Brentwood NY., where he welcomed three United States citizen children.

3. Like many undocumented immigrants, Petitioner found a job in Construction, as an owner of the construction Company, A&L 2 Brothers Quality Construction Corp.

4. Petitioner resides at  Brentwood NY, NY, 11717, with his wife, Yoselin E. Rosales Geronimo (Exhibit A), a U.S. Citizen, and his three children 

 and 

5. On October 4, 2021, Petitioner filed a 1601A – Provisional Unlawful Presence Waiver, and it was received on October 16, 2021. (Exhibit B)

6. On October 22, 2024, Petitioner was granted a I-131 Application form for Travel Documents, Parole Documents, and Arrival/Departure Records, valid from October 22, 2024, through October 21, 2029. (Exhibit C)

7. Petitioner traveled outside the U.S. and re-entered lawfully using his advanced Parole.

8. Petitioner, filed an Adjustment of Status, using his lawful entry via Advance Parole, which was still pending

9. On October 22, 2024, was granted a I-765 form Application for Employment Authorization (“AES”), from October 22, 2024 valid through October 21, 2029. (Exhibit D)

10. On July 25, 2025, Petitioner was granted an I-360 **Petition for Amerasian, Widow(er), or Special Immigrant.**

11. On December 10, 2025, while picking up a coworker, **without warning or apparent justification**, Petitioner was apprehended by Immigration and Customs Enforcement (“ICE”) agents, without “any” process at all.

12. Upon Information and Belief, Petitioner remains in ICE custody at the Delaney Hall Detention Facility, at 451 Doremus Avenue, Newark NJ. To date, ICE has not explained its decision to detain Petitioner.

13. Upon Information and Belief, Petitioner has no criminal history in the United States.

14. Upon information and belief ICE failed to conduct an individual assessment, or “any” process of Petitioner, prior or contemporaneously to his detention, and surely did not afford Petitioner “notice” of his detention, to allow him a chance to be heard on the detention, prior to snatching away his freedom.

15. 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); and his legal status has not changed from the time he entered the United States in 2008.

16. **On the contrary, since his arrival to the United States, Petitioner** was granted a myriad of applications, that are granted to aliens that the government has decided to grant Lawful Permanent Residency.

17. Petitioner was granted a Form 1601A – Provisional Unlawful Presence Waiver- on October 16, 2021. Furthermore, Petitioner was granted a I-131 Application form, for Travel Documents, Parole Documents, and Arrival/Departure Records, valid from October 22, 2024, through October 21, 2029.

18. Moreover, Petitioner traveled outside the U.S. and re-entered lawfully using his Advanced Parole.

19. Subsequently, Petitioner, filed an Adjustment of Status, using his lawful entry via Advance Parole, which was still pending

20. Also, on October 22, 2024, Petitioner was granted a I-765 Application, for Employment Authorization ("AES"), from October 22, 2024 valid through October 21, 2029.

21. Lastly, on July 25, 2025, Petitioner was granted a I-360 Petition for Amerasian, Widow(er), or Special Immigrant.

22. Pursuant to 28 U.S.C. § 2243, Mr. Melfin Oswaldo Moscoso, 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” justifying its unexplained decision to detain Mr. Melfin Oswaldo Moscoso, in apparent excess of statutory authority.

23. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant Petition for a Writ of Habeas Corpus.

JURISDICTION

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

25. 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).

26. 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

27. 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

28. Petitioner is a national who has lived in the United States without authorization since 2008. At the time of his arrest by ICE, Petitioner was living in Brentwood NY., working in Construction, as an owner of the construction Company, A&L 2 Brothers Quality Construction Corp.

29. 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.


30. 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.

31. 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.

32. 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

33. Petitioner, only 19 years old, entered the United States through the Texas border in 2008, after fleeing difficult conditions in Guatemala. He settled in  Brentwood NY, where he worked steadily in construction, to support his three children, and built a life rooted in hard work and responsibility.

34. Petitioner has lived a quiet, law-abiding life in the United States for over seventeen years.

35. On December 10, 2025, while picking up a coworker, **without warning or apparent justification**, Petitioner was apprehended by ICE agents, without "any" process at all.

36. Upon Information and Belief, Petitioner remains in ICE custody at the Delaney Hall Detention Facility, at 451 Doremus Avenue, Newark NJ. To date, ICE has not explained its decision to detain Petitioner.

37. Mr. Melfin Oswaldo Moscoso, fears that ICE intends to transfer him to a remote detention facility beyond the reach of his family, and attorneys, here in New Jersey, **where he would not be able to participate in his Habeas hearing.** 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

38. 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.”).

39. 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

40. “[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)).

41. 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).

42. 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.

43. 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. Melfin Oswaldo Moscoso’s, interest in being free from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

44. 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)). Moreover, his legal status has not changed from the time she entered the United States in July of 2005. **On the contrary since his arrival to the United States**, Petitioner was granted a myriad of applications, that are granted to aliens that the government has decided to grant Lawful Permanent Residency.

45. Petitioner was granted a Form 1601A – Provisional Unlawful Presence Waiver- On October 16, 2021. Petitioner was granted a I-131 Application form, for Travel Documents, Parole Documents, and Arrival/Departure Records, valid from October 22, 2024, through October 21, 2029.

46. Moreover, Petitioner traveled outside the U.S. and re-entered lawfully using his Advanced Parole. Petitioner, filed an Adjustment of Status, using his lawful entry via Advance Parole, which was still pending. Also, on October 22, 2024, Petitioner was granted a I-765 Application, for Employment Authorization ("AES"), from October 22, 2024 valid through October 21, 2029.

47. Lastly, on July 25, 2025, Petitioner was granted a I-360 Petition for Amerasian, Widow(er), or Special Immigrant.

48. 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.

49. 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.

50. 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)

51. 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. Melfin Oswaldo Moscoso, on December 10, 2025, nor was he afforded notice of his detention or a chance to be heard, before his freedom was snatched from him.

52. 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”.

53. 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.

54. Here, Petitioner does not present a danger to the public, nor is there any risk of absconding during his removal proceedings, **as Petitioner is not in removal proceedings, and has affirmatively sought protection by filing for asylum with USCIS.**

55. **Furthermore, Mr. Melfin Oswaldo Moscoso’s Procedural Due Process rights have been violated since she was detained before she 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.

56. Moreover, the District Court’s recent decision in *Gopie v. Lyons*, No. 25-cv-05229-SJB (E.D.N.Y. Nov. 13, 2025), confirmed 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.

57. 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.

58. **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 Chafila v. Scott*, No. 25 Civ. 438 (SDN), 2025 WL 2688541, at *11 (D. Me. Sep. 22, 2025)).

59. “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 Chafila, supra*); *J.A.C.P. v. Wofford*, No. 25 Civ. 1354 (KES), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (same).

60. Upon information and belief, ICE did not issue Petitioner a warrant prior to his arrest. Mr. Melfin Oswaldo Moscoso’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.

61. 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).

62. To meet the strictures of due process, Melfin Oswaldo Moscoso’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).

63. 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 seventeen years, with his three children, which two of them are U.S. citizens.—all deep, stabilizing family ties that eliminate any risk of flight. There is simply no constitutionally valid basis for continued detention.

FIRST CLAIM FOR RELIEF
VIOLATION OF PROCEDURAL DUE PROCESS

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

65. 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.

66. 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.

67. Furthermore, Mr. Melfin Oswaldo Moscoso's Procedural Due Process rights have been violated since he was detained when she 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.**

68. 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.**

69. 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 Chafila v. Scott*, No. 25 Civ. 438 (SDN), 2025 WL 2688541, at *11 (D. Me. Sep. 22, 2025)).

70. Upon information and belief, ICE did not issue Petitioner a warrant prior to his arrest. Mr. Melfin Oswaldo Moscoso'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

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

72. 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).

73. “[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 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 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 15, 2025
Kew Gardens, NY

/s/ Jonathan Lipsitz, Esq.
Jonathan Lipsitz, Esquire
Kerben Law Firm, P.C.
8002 Kew Gardens Road, Suite 307
Kew Gardens, NY 11415
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Melfin Oswaldo Moscoso, 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 15th day of December, 2025.

/s/ Jonathan Lipsitz