UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Marlon Omar Vargas Chacon, Petitioner, v. Eric Rokosky, Warden of Elizabeth Contract 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, in their official capacities, Respondents.	Case No. 2:26:-cv- 00119 **VERIFIED PETITION FOR WRIT HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE RELIEF** File No. A [redacted]

INTRODUCTION

1. Petitioner, Marlon Omar Vargas Chacon, is a twenty--eight--year-old national of Ecuador who has resided in the United States since September 2021. Petitioner initially entered the United States in August 2020 through Texas, and was detained upon entrance for approximately one month.

2. He was placed in expedited removed proceedings, and upon information and belief was not afforded a Credible Fear Interview. He sought asylum based on persecution by [redacted] Petitioner was denied asylum, as the Judge wrongly determined that Petitioner did not meet asylum standard, because internal relocation was considered a possibility.

3. On September 16, 2020, an Immigration Judge, at 566 Veteran Drive, Suite 101 Pearlsall, Texas 78061, issued a Decision of a final order of removal.

4. Upon only few months since returning to Ecuador, Petitioner's [redacted] in August 2020. Petitioner had no choice, fled Ecuador again to save his life, as he knew that otherwise he [redacted]

5. Petition re-entered the United States on September 2021. He re-entered without inspection, and until his arrest, he was not placed in removal proceedings, nor did the Immigration & Customs Enforcement ("ICE"), re-instate his Notice to Appear ("NTA"), or removal order from September 16, 2020.

6. Upon his arrival he took up residence in Astoria, NY. Like many undocumented immigrants, Petitioner found a job in construction. However, after he recognized individuals associated with [redacted] he relocated to [redacted] for personal safety to reduce risk of gang-related harm.

7. Once settled in the U.S. he consulted an immigration attorney to explore reopening his prior removal Order. He was correctly advised by the attorney that opening a motion to reopen was not legally viable.

8. Petitioner has lived over four years since he re-entered the U.S. without any criminal history. Which is consistent with his clean record in Ecuador without any criminal record.

9. On January 5, 2026, ICE officers were conducting a general enforcement operation in his area of residence. At approximately 9:00 a.m., as Petitioner was walking to work at 9:00 a.m., **without warning or apparent justification,** he was stopped by ICE agents, who simply

arrested him and loaded him into a van with several other Hispanic men. Petitioner was not targeted by name, in fact he was the fifth person detained in this incident

10. The re-instatement of a prior removal Order is not automatic. At the time of Petitioner's arrest, ICE had not re-instated Petitioner's removal order, and NTA from August 2020, nor was Petitioner issued a warrant authorizing his arrest or detention.

11. Petitioner is currently detained at Elizbeth Contract Detention Facility, at 625 E. Van Street, Elizabeth, NJ. His detention is unlawful because it was effectuated without statutory authority and without the individualized procedural protections required by the Due Process Clause of the Fifth Amendment, such as an individual assessment, or "any" process, prior or contemporaneously to his detention.

12. Moreover, Petitioner's legal status has not changed from the time he entered the United States in September 2021. Rather, he was detained unlawfully in a random, non-targeted nature of detention.

13. Even if Respondents claim that Petitioner is subject to reinstatement of removal under 8 U.S.C. § 1231(a)(5), however, the reinstatement was **not initiated** at the time of arrest. And although it may be later initiated, yet detention authority still requires a warrant and a NTA, **and Due Process violations at arrest cannot be cured retroactively.**

14. Petitioner therefore seeks immediate release through this petition for a writ of habeas corpus.

15. Pursuant to 28 U.S.C. § 2243, Mr. Marlon Omar Vargas Chacon, 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 Petitioner, in apparent excess of statutory authority.

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

JURISDICTION

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

18. 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).

19. 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

20. Venue is proper in this District because Petitioner is detained at Elizbeth Contract Detention Facility, at 625 E. Van Street, Elizabeth, NJ., which lies within the District of New Jersey.

PARTIES

21. Petitioner is an Ecuadorian national who has lived in the United States without authorization since 2021, for over 4 years.

22. Eric Rokosky, is the Warden of Elizabeth Contract Detention Facility, in Elizabeth New Jersey. As such, he is Petitioner's immediate custodian.

23. 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.

24. 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 Philadelphia, PA and elsewhere. She therefore has constructive custody of Petitioner, in that she can direct ICE to release him from custody.

25. 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

26. Petitioner, re-entered the United States through Mexico, where he lawfully obtained a tourist visa. Petitioner re-entered the U.S. after [redacted] when he initially fled Ecuador. [redacted] just a few months after Petitioner was deported back to Ecuador in 2020. Petitioner has lived a quiet, law-abiding life in the United States for over four years.

27. On January 5, 2026, **without warning or apparent justification,** Petitioner detained by ICE on his way to work. Petitioner was not targeted by name, rather, he was detained unlawfully in a random, non-targeted nature of detention.

28. Petitioner Mr. Marlon Omar Vargas Chacon, fears that ICE intends to transfer him to a remote detention facility beyond the reach of his family, and attorneys, here in Elizabeth, N.J. 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

29. 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.").

30. 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. Petitioner's Detention Violates Procedural Due Process Under the Fifth Amendment

31. "[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)).

32. "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 *Zinermon v. Burch*, 494 U.S. 113, 127 (1990), which in turn cites 424 U.S. 319, 335 (1976)).

33. 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).

34. 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.

35. 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. Marlon Omar Vargas Chacon's, interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004).

36. 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)).

37. 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.

38. The risk of erroneous deprivation here is extreme. ICE made no individualized custody determination before arresting Petitioner. No assessment of flight risk or dangerousness occurred contemporaneously with his detention, nor was Petitioner afforded notice or an opportunity to be heard prior to the deprivation of his liberty.

39. In fact ICE has not conducted *any* process to Petitioner, not to mention to allow him notice and the right to be heard, before his freedom was taken from him.

40. Courts have consistently held that § 1226(a) and its implementing regulations require such individualized determinations. See, e.g., *Carlos Javier Lopez Benitez v. Francis,* No. 25-cv-5937. ("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). (quotation marks and citation omitted)

41. 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".

42. The third Mathews 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. The Government's legitimate interests are not meaningfully burdened by requiring

constitutionally adequate procedures—particularly where, as here, Petitioner has no criminal history and poses no danger to the community.

43. Accordingly, Petitioner's detention violates procedural due process.

B. Petitioner's Continued Detention Violates Substantive Due Process

44. 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).

45. To meet the strictures of due process, Mr. Marlon Omar Vargas Chacon'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).

46. Respondents will not be able to show that Petitioner's detention without bond is necessary to prevent flight or to mitigate danger.

C. Petitioner Is Subject to 8 U.S.C. § 1226(a), Not Mandatory Detention Under § 1225(b), Per The Supreme Court in Jennings, and The Majority Of The District Courts

47. The Government appears to take the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), and therefore is not afforded any process at all, and not 8 U.S.C. § 1231, **as they had no way to know at the time of his arrest, that he had a prior removal order—since they didn't even identify him prior to his arrest.**

48. 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."

49. ICE's legal position is based on the Board of Immigration Appeals ("BIA") 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 were paroled into the United States years ago without ever being placed in expedited removal proceedings were subject to mandatory detention under 8 U.S.C. § 1225. Shortly thereafter, it expanded this mandatory detention holding to cover all persons present in the United States without admission, irrespective of their time and manner of entry. *See In the Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025).

50. However, such a position contradicts the ruling from the Supreme Court. The United States Supreme Court has recognized that noncitizens "already in the country" are governed by § 1226(a). "8 U.S.C. § 1226(a)…provides for discretionary authority to detain other noncitizens who are '**already in the country**'". (emphasis added) *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

51. Similarly, Judge Edwards in Louisiana (among others), agreed that the Government's theory conflicts with its precedent, most notably with *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as has explained:

> Petitioner is likely to succeed on the merits of his habeas claim. As an "alien already present in the United States," he is subject to Section 1226, not Section 1225, and is thus not subject to mandatory detention. *See Kostak v. Trump*, 2025 WL 2472136, at **2–3 (W.D. La., 2025) (holding that mandatory detention of aliens like Petitioner "under Section 1225 was erroneous..." and that they are instead subject to Section 1226); *see also Lopez Santos v. Noem*, 2025 WL 2642278, at **3–5 (W.D.La., 2025) (Doughty, C.J.) (holding same). What the BIA thinks of the matter, as expressed *In the Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), is of no moment, as it is principally *our* job to interpret statutes. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). "And the Court respectfully

> disagrees with how the BIA reads §§ 1226(a) and 1225(b)(2)(A) in conjunction with one another." *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6 (E.D.Mich., 2025). So does the Supreme Court. *See Jennings*, 583 U.S. at 297–303. And the Court is not going to say—effectively—that there is no difference between the two, when the Supreme Court has said that there is. *See id.* Plainly, "arriving" means "arriving," *see Pizarro Reyes*, 2025 WL 2609425, at *5 (discussing Section 1225), "already present" means "already present," *see Jennings*, 583 U.S. at 303 (discussing Section 1226), and there is no synonymy, nor ambiguity, between.

Ventura Martinez v. Trump, 25 Civ. 1445 (JE), 2025 WL 3124847, at *2 (Oct. 22, 2025) (W.D. La. Oct. 22, 2025) (emphasis in original).

52. Moreover, the fundamental unfairness of ICE's tactics has not escaped judicial notice. **Almost every court to weigh the constitutionality of ICE's arrests** at mandatory immigration court hearings or other immigration appointments, **have found that they at the minimum probably violated due process.** *See Hernandez v. Wofford*, No. 25 Civ. 986 (KES), 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025) (granting temporary restraining order), 2025 WL 2624226 (E.D. Cal. Sep. 10, 2025) (preliminary injunction); *Cordero Pelico v. Kaiser*, No. 25 Civ. 7286 (EMC), 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025); *Patel v. Almodovar*, No. 25 Civ. 15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Francois v. Wamsley*, No. 25 Civ. 2122 (RSM), 2025 WL 3063251 (W.D. Wash. Nov. 3, 2025); *Diallo v. Maldonado*, No. 25 Civ. 5740 (DG), 2025 WL 3158295 (E.D.N.Y. Nov. 12, 2025); *Orozco Acosta*, No. 25 Civ. 9601 (HSG), 2025 WL 3229097 (N.D. Cal. Nov. 19, 2025).

53. Further, the Government's novel mass detention theory has received a chilly reception before our Nation's District courts. *See,* e.g., *Hyppolite v. Noem,* No. 25 Civ. 4304 (NRM), 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) ("[S]ince Respondents began to broadly invoke § 1225(b)(2)(A) to justify the mandatory detention of noncitizens who already reside within the United States, well over a dozen federal courts around the country have rejected

Respondents' novel and illogical interpretation of the INA." (citing *Lopez Benitez,* 2025 WL 2371588; *Mata Velasquez,* 2025 WL 1953796; *Lepe v. Andrews,* No. 25 Civ. 1163 (KES), 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Barrera v. Tindall,* No. 25 Civ. 541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sep. 19, 2025); *Pablo Sequen v. Kaiser,* No. 25 Civ. 6487 (PCP), 2025 WL 2650637 (N.D. Cal. Sep. 16, 2025); *Pizarro Reyes v. Raycraft,* No. 25 Civ. 12546 (RJW), 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025); *Doe v. Moniz,* No. 25 Civ. 12094 (IT), 2025 WL 2576819 (D. Mass. Sep. 5, 2025); *Garcia v. Noem,* No. 25 Civ. 2180 (DMS), 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025); *Lopez-Campos v. Raycraft,* No. 25 Civ. 12486 (BRM), 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump,* No. 25 Civ. 1093 (JE), 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *dos Santos v. Noem,* No. 25 Civ. 12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa,* No. 25 Civ. 2157 (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde,* No. 25 Civ. 11571 (JEK), 2025 WL 1869299 (D. Mass. Jul. 7, 2025))); see also *Echevarria v. Bondi,* No. 25 Civ. 3252 (DWL), 2025 WL 2821282, at *4 (D. Ariz. Oct. 3, 2025) (relying on some of the same cases as Hyppolite, while also 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); and *Vazquez v. Feeley,* No. 25 Civ. 1542 (RFB), 2025 WL 2676082, at *16 (D. Nev. Sep. 17, 2025)).

54. The Government's new mandatory detention theory is also inconsistent with its own behavior over the past three decades. *See, e.g.*, *Choglo Chafla v. Scott*, No. 25 Civ. 437 (SDN), 2025 WL 2688541, at *8 (D. Me. Sept. 22, 2025) ("The BIA's decision in *Yajure Hurtado* also is at odds with decades of DHS's own practices, which the opinion acknowledges.").

D. Even If Respondents Claim That Petitioner Is Subject To Reinstatement Of Removal Order Under 8 U.S.C. § 1231(a)(5), However, Reinstatement Is Not Automatic, And Retroactive Validation Is Disfavored. ICE Lacked Statutory Authority To Arrest And Detain Petitioner.

55. Reinstatement of a prior removal order under § 1231(a)(5) is an administrative act that occurs only after DHS verifies illegal reentry and applies the reinstatement process. It is not automatic upon arrest, rather an officer must make specific factual findings before a prior removal order is reinstated, and cannot retroactively justify unlawful detention.

56. The 9th circuit court in *Alcala v. Holder,* 563 F.3d 1009, 1013 (9th Cir. 2009)., stated "Reinstatement of a prior order of removal is not automatic." "[W]hen an alien subject to removal leaves the country, the removal order is deemed to be executed. If the alien reenters the country illegally, the order may not be executed against him unless it has been reinstated by an authorized official." *Id.* (internal quotation marks omitted). *See also* Lin v. Gonzales, 473 F.3d 979, 982-83 (9th Cir. 2007) (agency erred in finding that original deportation order was automatically reinstated upon petitioner's illegal reentry where the agency did not comply with 8 C.F.R. § 241.8(a) and (b)).

57. Supreme Court and appellate precedent establish a strong presumption against retroactive application of immigration law that would attach new legal consequences to past conduct without clear congressional intent: *See Vartelas v. Holder,* 566 U.S. 257 (2012), "...statutes are presumed to operate only prospectively, and retroactive application is disfavored...").

58. In our case, ICE lacked statutory authority to arrest Petitioner, since at the time of his arrest, Petitioner was not in removal proceedings; his past NTA was not re-instated, and he had not been served with a warrant.

59. Under 8 U.S.C. § 1226(a), ICE's authority to detain arises only "pending a decision on whether the alien is to be removed." Where no removal proceedings have commenced, that authority does not exist.

60. Federal regulations confirm this limitation. 8 C.F.R. § 236.1(b) authorizes arrest "at the time of issuance of the notice to appear, or at any time thereafter." Courts have held that arrest in the absence of a prior NTA violates the INA and requires immediate release. *See Gopie v. Lyons,* No. 25-cv-05229 (E.D.N.Y. Nov. 13, 2025).

61. Moreover, discretionary detention under § 1226(a) requires a warrant. 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). "[T]he issuance of a warrant is a necessary condition to justify detention." *Astudillo v. Hyde,* 2025 WL 3035083, at *4. (D.R.I. Oct. 30, 2025) (quoting *Chogllo Chafla v. Scott*, No. 25 Civ. 438 (SDN), 2025 WL 2688541, at *11 (D. Me. Sep. 22, 2025)).

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

63. Because ICE obtained neither a re-instated NTA nor a warrant prior to arresting Petitioner, his detention was unlawful from its inception and cannot be cured by post-hoc filings.

FIRST CLAIM FOR RELIEF
STATUTORY AND REGULATORY VIOLATIONS

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

65. 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.**

66. In our case, as detailed *supra,* Petitioner was detained on his way to work, prior to ICE re-instating his NTA. Therefore, Petitioner's arrest was unlawful from its inception, according to the three-part test set forth in *Mathews v. Eldridge* and cannot be justified by any post-hoc filing of an NTA.

67. Further, 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).

68. In our case, as detailed *supra,* ICE did not issue Petitioner a warrant prior to his arrest. Mr. Marlon Omar Vargas Chacon's detention was therefore unlawful from its inception and cannot be justified by any post-hoc issuance of a warrant.

SECOND CLAIM FOR RELIEF

VIOLATION OF PROCEDURAL DUE PROCESS

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

70. 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.

71. In particular, here, **no individualized determination regarding the factors, such as his high flight risk or dangerousness occurred** contemporaneously or before ICE arrested Mr. Marlon Omar Vargas Chacon, on January 9, 2025. In fact no process **at all** was conducted prior to Petitioner's arrest.

THIRD CLAIM FOR RELIEF
VIOLATION OF SUBSTANTIVE DUE PROCESS

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

73. 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).

74. "[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).

FOURTH CLAIM FOR RELIEF
VIOLATION OF SECTION 236(a) OF THE INA, 8 U.S.C. § 1226(a)

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

76. The Government appears to take the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), **as they had no way to know at the time of Petitioner's arrest, that he had a prior removal order—since they didn't identify him prior to his arrest.** 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*, 2025 WL 2716910, at *4, the Court should reject it, as a chorus of District Judges throughout the Nation has done, *cf. Buenrostro-Mendez*, 2025 WL 2886346, at *3 ("The court need not repeat the 'well-reasoned analyses' contained in these opinions and instead simply notes its agreement." (quoting *Chogllo Chafla*, 2025 WL 2688541, at *5)).

77. Because Petitioner's detention was carried out pursuant to a 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 v. Bondi*, No. 25 Civ. 14626 (KSH), 2025 WL 2753496, at *11 (D.N.J. Sep. 26, 2025) ("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 re-arresting 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*).

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 from custody pending resolution of this matter. In the alternative, and consistent with the Court's equitable habeas authority as recognized in *Reno v. Mapp*, 241 F.3d 221 (2d Cir. 2001), order Petitioner's release upon the posting of a reasonable bond set by this Court.

(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: January 8, 2026
Kew Gardens, New York

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

I represent Petitioner, Mr. Marlon Omar Vargas Chacon, 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 8th day of January, 2026

/s/ Jonathan Lipsitz, Esq.