

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KELVIN GERARDO SILVA LUCENA)
Petitioner,)
)
)
v.)
)
LUIS SOTO, Warden, Delaney Hall Detention)
Facility; **JOHN TSOUKARIS**, Director of Newark)
Field Office, U.S. Immigration and Customs)
Enforcement; **KRISTI NOEM**, Secretary of the)
U.S. Department of Homeland Security;)
PAMELA BONDI, Attorney General of the United)
States; and **TODD LYONS**, Director, Immigration)
and Customs Enforcement, in their official)
capacities,)
Respondents.)
_____)

**APPLICATION FOR ISSUANCE
OF ORDER TO SHOW CAUSE**

1. Pursuant to 28 U.S.C. § 2243, Petitioner, Mr. Silva Lucena respectfully requests that this Court “forthwith” issue an order directing Respondents to show cause why the petition for a writ of habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241 should not be granted.
2. Petitioner challenges unlawful civil immigration detention in violation of the Fifth Amendment Due Process Clause and the Administrative Procedure Act. See Petition for Writ of Habeas Corpus, Dkt. No. 1.
3. The federal habeas corpus statute provides that “[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

4. Section 2243 further provides that the writ or order to show cause “shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.”
5. Section 2243 further provides that the court shall hold a hearing on the writ or order to show cause “not more than five days after the return unless for good cause additional time is allowed.” In addition, Section 2243 states that the court “shall summarily hear and determine the facts, and dispose of the matter as law and justice require.”
6. Pursuant to Section 2243, Petitioner requests that the Court immediately issue an Order to Show Cause directing Respondents to file a return within three days of the Court’s order, showing cause, if any, why the writ of habeas corpus should not be granted, and to provide Petitioner an opportunity to file a reply within 5 days after Respondents file the return.
7. Giving Respondents additional time to respond is inappropriate because Petitioner faces irreparable harm from his ongoing unlawful deprivation of physical liberty. Mr. Silva Lucena is detained at Delaney Hall Detention Facility under restrictive, jail-like conditions that limit his access to family and counsel, he is the primary financial support for his family, including a minor child, and he faces the risk of transfer out of this District, which would impair this Court’s jurisdiction and moot the relief sought.

/s/ Stephanie M. Duque Isern

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**PROPOSED ORDER
TO SHOW CAUSE**

Upon consideration of Petitioner's Application for Issuance of Order to Show Cause pursuant to 28 U.S.C. § 2243 and Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1), IT IS HEREBY ORDERED that:

1. Respondents shall file a return on the Order to Show Cause why the Petition for Writ of Habeas Corpus should not be granted by no later than three (3) days from the date of this Order;
2. Petitioner shall have an opportunity to file a reply by no later than two (2) days after Respondents file their return;
3. The Court reserves the right to schedule a hearing on short notice if deemed necessary; and
4. Service of this Order shall be made by Petitioner on the United States Attorney for the District of of New Jersey by electronic means on the same day this Order is entered, and shall constitute good and sufficient service.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE