

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MANUEL EFRAÍN ROCANO ONCE

Petitioner

v.

KENNETH GENALO, NYC Director,  
Enforcement & Removal Operations,  
U.S. Immigration and Customs Enforcement;

TODD LYONS, Acting Director, U.S. Immigration  
and Customs Enforcement;

KRISTI NOEM, Secretary of the U.S. Department of  
Homeland Security; and

PAMELA BONDI, Attorney General of the United States,

Respondents.

A#



(Emergency Application)

Case No. \_\_\_\_\_

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PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241) AND  
EMERGENCY MOTION FOR ORDER TO SHOW CAUSE & TEMPORARY  
RESTRAINING ORDER

1. (“Petitioner”), a 47-year-old Guatemalan national, a husband, and a father to an American child, who has lived in the U.S. for twenty-three years without a single arrest, was arrested this morning in the streets of Queens in an illegal operation by ICE.
2. Mr. Rocano, by counsel, challenges his arrest and detention by Immigration and Customs Enforcement (ICE) through this writ of habeas corpus pursuant to 28 U.S.C. § 2241 and moves for emergency relief by way of an Order to Show Cause and a Temporary Restraining Order.

3. ICE seized him today in a warrantless arrest and is now detaining him without any contemporaneous, individualized custody determination as required by the Fourth Amendment, the Due Process Clause of the Fifth Amendment, and the governing detention statutes and regulations.

4. This petition is filed on an emergency basis to prevent the petitioners' imminent unlawful transfer or removal from this jurisdiction.

5. The Petitioner is apparently currently in ICE custody in Brooklyn at a temporary stop and is expected to be transferred en route to another detention facility.

6. Since has limited telephone access and no right to counsel, counsel has received only very basic information.

7. DHS controls the relevant file documents and did not provide the petitioner access to any detention documents, much less the full administrative file. The factual allegations here are pleaded upon information and belief, except where otherwise indicated.

8. With the permission of this Court, Petitioner reserves the right to amend and supplement this petition as more facts become available.

9. Petitioner seeks immediate habeas relief, including an order prohibiting transfer,
1. an order compelling Respondents to produce Petitioner and identify his precise location,
  2. an order compelling production of the DHS administrative record (A-file) and all arrest/custody documentation, and
  3. an order requiring a lawful custody determination within 24–48 hours or, in the alternative, Petitioner's immediate release.

PRELIMINARY STATEMENT

10. This is an emergency habeas case about a basic constitutional and statutory boundary: the Government may not stop a person on a public street, seize him without presenting a warrant or articulating lawful cause, and then detain him while refusing to disclose where he is and without any prompt, individualized custody determination required by the immigration detention framework.

11. Civil immigration detention is a profound deprivation of liberty, and due process demands meaningful safeguards at the moment the Government chooses to restrain someone's freedom.

12. Courts in this District repeatedly grant habeas relief where ICE detains people without making the individualized assessment that § 1226(a) and the implementing regulations require, and where ICE attempts to justify detention after the fact rather than through contemporaneous process. See, e.g., *Lopez Benitez v. Francis*, No. 25 Civ. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (Ho, J.) (granting habeas relief; explaining that due process must constrain the Government's wide discretion to detain under § 1226(a)); *Kelly v. Almodovar*, No. 25 Civ. 6448, 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025) (Torres, J.) (ordering immediate release where ICE's process was defective and stressing that post-hoc "re-determination" is not a substitute for initial deliberative custody decision); *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (Daniels, J.) (granting habeas; ordering immediate release in a re-detention/no-process scenario); *Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (Torres, J.) (granting habeas; ordering immediate release); *Gonzalez v. Joyce*, No. 25 Civ. 8250, 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) (Torres, J.) (granting relief and rejecting detention practices inconsistent with lawful process).

13. Petitioner is currently incommunicado "in transit," and ICE has refused to provide his precise location. That alone jeopardizes this Court's ability to grant effective relief.

14. Petitioner therefore seeks immediate judicial intervention to prevent transfer, compel disclosure, require production, and enforce the statutory and constitutional requirement of a prompt, individualized custody determination.

JURISDICTION AND VENUE

15. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody under the color of United States authority and challenges the legality of that custody as unconstitutional and in violation of statute and regulation.


16. Venue is proper in the Eastern District of New York because Petitioner was seized in New York, is believed to have been initially held at or processed through 26 Federal Plaza and/or related ICE facilities within this District, and Respondents direct, control, and administer Petitioner's detention and transfer decisions in and from this District.

17. This Court has authority to issue a temporary restraining order and preliminary injunctive relief "as law and justice require," including to prevent transfer that would impair the Court's jurisdiction and ability to order effective habeas relief.

PARTIES

18. Petitioner Manuel Efraín Rocano Once is a national from Guatemala present in the United States.

19. He has resided in New York for years, has a fixed address, and has no criminal charges.

20. Petitioner's permanent address is 

21. Respondent Kenneth Genalo is the NYC Director of Enforcement & Removal Operations, ICE, and is a legal custodian of Petitioner.

22. Respondent Todd Lyons is the Acting Director of ICE and is responsible for ICE detention policies and practices.

23. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and is responsible for DHS policies and enforcement practices affecting detention.

24. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity in connection with the federal custody at issue.

#### FACTUAL ALLEGATIONS

9. On the morning of January 17, 2026, while leaving his home in En route to work in Elmhurst, Queens, the Petitioner was stopped and apprehended by individuals later identified as ICE officers.
10. The officers did not present a warrant, did not articulate any lawful basis for the stop or arrest, and did not advise Petitioner of any rights.
11. Petitioner cooperated and engaged in no criminal conduct. Nevertheless, he was taken into custody, transported to an ICE facility, and remains detained.
12. Petitioner has no criminal charges.
13. Counsel and the Petitioner's family have repeatedly attempted to obtain the Petitioner's current location.
14. The ICE detainee locator instructs attorneys to contact ICE directly for information, but these phone lines are consistently unstaffed, and calls always go unanswered, resulting in no public accountability.
15. Petitioner has remained detained without any meaningful opportunity to request release, and without any contemporaneous individualized custody determination as required by the detention statutes and implementing regulations.

16. Petitioner's warrantless street arrest and continued detention are arbitrary and unlawful, effected without due process of law and in violation of the Fourth and Fifth Amendments and the immigration detention statutes and regulations.
17. Petitioner currently qualifies for immigration relief as he is eminently qualified for Cancellation of Removal, which would result in legal permanent residence.
18. Petitioner has a US-born citizen child, a nine-year-old daughter, who would suffer an extreme and unusual hardship, since she suffers from Neurofibromatosis Type 1 (NF1), if he were to be removed from the United States.
19. Neurofibromatosis Type 1 (NF1) is a serious, lifelong illness that requires constant medical care for the rest of her life, something that is not available to her in Petitioners' native country of Ecuador.
20. He can only apply for relief from cancellation of removal, while in removal proceedings before an immigration judge.
21. **However, an I-42B cancellation of removal application, which the Petitioner will file in this case, typically takes several years to prepare for adjudication before the immigration judge.**
22. Petitioner should be released now so that he can prepare his defense as a free man, not in a jail cell.
23. Petition represents no flight risk and is not dangerous.
24. He should especially be released now in light of the due process and detention statutes violations committed by ICE against him in this case.

CLAIMS FOR RELIEF

CLAIM ONE

UNLAWFUL WARRANTLESS SEIZURE AND ARREST IN VIOLATION OF THE  
FOURTH AMENDMENT AND 8 U.S.C. § 1357 (A) (2)

- 25 The Fourth Amendment applies to civil immigration arrests in the interior of the United States. Warrantless civil immigration arrests are strictly limited, including by 8 U.S.C. § 1357(a)(2), which permits warrantless arrest only when statutory prerequisites are satisfied, including probable cause and the likelihood of escape.
- 26 Here, ICE officers stopped Petitioner on a public street while he was leaving his home, presented no warrant, articulated no probable cause, and provided no lawful basis for seizure. Petitioner's arrest was therefore unreasonable under the Fourth Amendment and ultra vires as a matter of statutory authority.

CLAIM TWO

DETENTION WITHOUT A CONTEMPORANEOUS, INDIVIDUALIZED CUSTODY  
DETERMINATION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH  
AMENDMENT AND 8 U.S.C. § 1226(A) AND IMPLEMENTING REGULATIONS

26. Section 1226(a) authorizes discretionary detention or release pending removal decisions. Because the Government possesses broad discretion to decide whether to detain, due process requires procedures that constrain arbitrary detention and ensure that discretion is actually exercised through an individualized assessment. See *Lopez Benitez v. Francis*, 2025 WL 2371588, at \*10 (S.D.N.Y. Aug. 13, 2025) (Ho, J.) (explaining that due process must account for the Government's wide discretion to arrest and detain under § 1226(a)).

27. The governing regulatory scheme requires a prompt custody determination following arrest. ICE must decide—based on individualized facts—whether detention is necessary and whether release conditions can reasonably assure appearance and safety.
28. Courts in this District have held that when ICE detains a person but cannot show a contemporaneous, individualized custody determination, detention violates due process and the statutory/regulatory detention framework, and habeas relief is warranted.
29. In *Kelly v. Almodovar*, Judge Torres emphasized that an immigration-judge bond proceeding is a custody “re-determination” and is not a substitute for ICE’s obligation to make the initial custody decision through a deliberative process prior to or contemporaneous with the loss of liberty. *Kelly*, 2025 WL 2381591, at \*3.
30. Judge Bulsara’s reasoning in *Gopie v. Lyons* is directly instructive on this point. There, the court granted the writ where ICE failed to make a lawful initial custody determination contemporaneous with arrest and attempted to justify detention after the fact.
31. The decision underscores that post-hoc paperwork is not a cure for a liberty deprivation already inflicted without lawful process. *Gopie* further explains—citing SDNY precedent—that habeas is available to remedy a defect in the process governing detention under § 1226(a).
32. Petitioner’s case is stronger still. Unlike the common “redetention at a check-in” scenario, this case begins with a warrantless street stop and seizure. ICE then compounded that constitutional problem by holding Petitioner “in transit” without disclosing his location and without any prompt individualized custody determination.

33. Petitioner has a fixed residence, no criminal charges, longstanding ties, and a stable address. The Government's failure to make, document, and provide any contemporaneous individualized custody determination renders this detention arbitrary and unlawful.
34. Respondents cannot lawfully recharacterize Petitioner's interior street arrest in Brooklyn as detention of certain noncitizens "seeking admission"—i.e., the statutory framework for inspection and admission—whereas § 1226(a) governs discretionary detention of noncitizens already present in the United States pending removal proceedings.
35. In *Lopez Benitez v. Francis*, Judge Ho explained that § 1225(b)(2)(A) "requires mandatory detention of certain noncitizens' seeking admission' to the country," while § 1226(a) supplies "discretionary authority to detain other noncitizens who are 'already in the country.'" 2025 WL 2371588, at \*4 (S.D.N.Y. Aug. 13, 2025). In other words, DHS cannot collapse the INA's two detention tracks to transform an interior apprehension into a border-inspection detention regime. Judge Torres applied that same rule in *Gonzalez v. Joyce*, holding that the petitioner was "not subject to mandatory detention as a noncitizen 'seeking admission' ... under 8 U.S.C. § 1225, but rather may be subject to detention only on a discretionary basis under § 1226," expressly relying on *Samb v. Joyce*, 2025 WL 2398831, at \*3 (S.D.N.Y. Aug. 19, 2025).
36. Accordingly, because Petitioner was seized inside the United States after twenty-two years of residence—rather than encountered in the inspection/admission process—Respondents' only plausible detention authority is § 1226(a), which in turn requires a genuine, contemporaneous exercise of discretion and constitutionally adequate

process; as Gonzalez further explains, where there is “nothing to suggest that DHS exercised any discretion at all ... in contravention of the basic procedural requirements of § 1226(a),” the detention is unlawful. 2025 WL 2961626, at \*4 (S.D.N.Y. Oct. 19, 2025 quoting *Lopez Benitez*, 2025 WL 2371588, at \*11).

### CLAIM THREE

#### FAILURE TO FOLLOW MANDATORY DETENTION REGULATIONS AND PROCEDURES RENDERS CUSTODY UNLAWFUL UNDER ACCARDI

37. Under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), when an agency fails to follow its own binding regulations that are intended to protect individual rights, agency action is unlawful.
38. The immigration detention scheme contains mandatory procedural protections for arrest processing and custody determinations. Where ICE fails to comply with those procedures—especially in the immediate aftermath of a warrantless arrest—continued detention is unlawful and habeas relief is warranted.
39. SDNY courts have repeatedly granted habeas relief and ordered immediate release when DHS/ICE’s process is defective, and the Government cannot show lawful custody authority and meaningful process. See, e.g., *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (ordering immediate release); *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release).

### CLAIM FOUR

#### IMMEDIATE RELEASE IS THE PROPER HABEAS REMEDY; A BELATED BOND HEARING DOES NOT CURE AN ALREADY-COMPLETED CONSTITUTIONAL STATUTORY VIOLATION

40. The “typical remedy” for unlawful executive detention is release. See *Munaf v. Geren*, 553 U.S. 674, 693 (2008), as applied by SDNY courts in this line of cases. See, e.g., *Tumba Huamani v. Francis*, 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025) (granting habeas; ordering immediate release).
41. In EDNY and SDNY’s 2025 decisions, courts have repeatedly rejected the notion that a later immigration-court proceeding cures the absence of a lawful initial custody decision by ICE. *Kelly* explains that a bond hearing is not a substitute for ICE’s initial deliberative decision. *Kelly*, 2025 WL 2381591, at \*3.
42. *Gopie* likewise rejects “process later” rationales in the context of § 1226(a) custody determinations and emphasizes that due process required an individualized custody determination at or before arrest, not after.
43. Petitioner therefore seeks immediate habeas relief that is effective now, including release absent proof of lawful arrest authority and a contemporaneous, individualized custody determination.

#### CLAIM FIVE

#### EXHAUSTION IS NOT REQUIRED BECAUSE RELIEF IS URGENT AND ADMINISTRATIVE REMEDIES ARE INADEQUATE AND FUTILE

44. Exhaustion is prudential in many immigration habeas contexts and is not required where administrative remedies are inadequate, futile, or incapable of addressing the constitutional injury at issue.
45. The gravamen here is the Government’s warrantless seizure and detention, without a contemporaneous, individualized custody determination and without even disclosing Petitioner’s location. Administrative bond processes cannot retroactively supply the constitutional prerequisites for a street seizure, cannot cure a completed due-process

violation, and cannot restore the statutory requirement that ICE actually exercise individualized discretion at the moment it deprives a person of liberty.

46. EDNY & SDNY decisions in this line recognize that habeas remains available to challenge a defect in the process governing detention under § 1226(a). See *Lopez Benitez*, 2025 WL 2371588; see also SDNY decisions granting immediate release where ICE's process was defective.

#### CLAIM SIX

#### DUE PROCESS REQUIRES IMMEDIATE PRODUCTION OF THE DHS ADMINISTRATIVE RECORD, INCLUDING THE A-FILE, ARREST DOCUMENTATION, AND CUSTODY RECORDS

47. Meaningful habeas review is impossible where the Government refuses to disclose where it is holding the detainee and withholds the basic record of arrest and custody authority. Petitioner seeks prompt production of the DHS administrative record, including the A-file, Form I-200/I-286 (if any), any NTA (if any), any "Notice of Custody Determination," any custody classification notes, any statements or reports by arresting officers, and any transfer orders.

48. Courts regularly compel production of materials necessary to test the legality of custody in expedited habeas proceedings, particularly where detention is ongoing and irreparable harm is accruing daily.

#### REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

- A. Issue an Order to Show Cause and Temporary Restraining Order prohibiting Respondents from transferring Petitioner into or out of this District and requiring Respondents to identify Petitioner's precise location immediately;
- B. Grant the writ of habeas corpus and order Petitioner's immediate release, or, at minimum, order Respondents to conduct a lawful, contemporaneous custody determination within 24–48 hours supported by documentation showing lawful arrest authority and individualized deliberation, and order release if Respondents cannot make that showing;
- C. Order Respondents to produce Petitioner forthwith and to produce the DHS administrative file and all arrest/custody and transfer records immediately;
- D. Grant such other relief as the Court deems just and proper.

Dated: January 17, 2026  
New York, NY

Respectfully submitted,

*/s/ S. Michael Musa-Obregon*

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