

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MODESTO A. LUCERO BUENO,

Petitioner,

No. 26-cv-00857

v.

ORDER

PAM BONDI *et al.*,

Respondents.

THIS MATTER comes before the Court by way of Petitioner’s counseled Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1); and

WHEREAS, Petitioner is a native and citizen of Ecuador who entered the United States without inspection in 2006. (*Id.* at ¶ 13). He has remained continuously in the United States for the past two decades. (*Id.* at ¶ 14). Petitioner has no prior removal orders and has never previously been detained. (*Id.* at ¶ 21). On January 12, 2026, U.S. Immigration and Customs Enforcement (“ICE”) agents detained Petitioner while he was stopped at a red light and took him into custody. (*Id.* at ¶¶ 15–16). Petitioner is currently detained at Delaney Hall Detention Facility in Elizabeth, New Jersey, and has been detained for at least sixteen days as of January 27, 2026. (*Id.* at ¶¶ 17–18). He has been issued a Notice to Appear but has not been placed into expedited removal proceedings and no credible fear interview has been conducted. (*Id.* at ¶ 19). He alleges that he is being detained unlawfully. (*Id.* at ¶¶ 1, 3); and

WHEREAS, Petitioner alleges that following his detention he has not been afforded a bond hearing, (*Id.* at ¶¶ 2, 26; Pet’r’s Br., ECF No. 2), presumably based on Respondents’ position

that he is subject to mandatory detention and ineligible for bond pursuant to the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); and

WHEREAS, under this Court's recent decisions in *Bethancourt-Soto v. Soto*, No. 25-16200, 2025 WL 2976572 (D.N.J. 2025) and *Rodriguez v. Rokosky*, No. 25-17419, 2025 WL 3485628 (D.N.J. Dec. 3, 2025), non-citizens apprehended inside the United States after residing here for an extended period can only be detained under 8 U.S.C. § 1226, which requires an opportunity to seek bond;¹ and

WHEREAS, the statutory or other legal authority for the detention of Petitioner, like many others who have filed applications before this Court, is unclear and dubious; therefore

IT IS HEREBY on this 28th day of January, 2026,

ORDERED that the Court shall hold a hearing via Microsoft Teams on Friday, January 30, 2026, at 12 p.m. at which Respondents shall produce at least one witness with personal knowledge and/or institutional knowledge sufficient to testify competently regarding Petitioner's immigration proceedings and history thereof, as well as his detention history, the basis for his detention, and Respondents' efforts to effectuate removal; and it is further

ORDERED that Respondents shall file and serve an expedited answer by 5 p.m. on Thursday, January 29, 2026, which shall respond to the Petition paragraph by paragraph, and a legal memorandum, or letter brief, which

(1) identifies the specific statutory or other legal authority upon which Petitioner was

¹ Federal courts have in near unanimity similarly rejected arguments of mandatory detention in approximately 300 cases to date, a number which climbs with every passing day. *See, e.g., Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *4–5 (E.D. Pa. 2025) (noting “the law is clear” and that “of the 288 district court decisions to address the issue, 282 have determined that § 1226(a) applies or likely applies in situations similar to those presented here. Those decisions are plainly correct.”); *see also* App., *Demirel*, 2025 WL 3218243 (ECF No. 11-1) (collecting cases).

- initially detained and upon which they rely for any assertion that Petitioner’s detention is lawful;²
- (2) sets forth all procedural due process provided to Petitioner prior to his detention and includes all related documents;
- (3) identifies whether there is a final order of removal for Petitioner and, if so,
- a. the date thereof;
 - b. the total number of days detained and the specific dates thereof (including the cumulative amount of days of detention for any separate periods of detention);
 - c. all efforts made since the date of the final order of removal to effectuate Petitioner’s removal and the results thereof;
 - d. all efforts made since the date of Petitioner’s detention to effectuate Petitioner’s removal and the results thereof;
- (4) sets forth any and all alleged changed circumstances upon which Respondents claim Petitioner’s detention is lawful;
- (5) states whether Petitioner has received a bond hearing and if not, why not, and if so, provides
- a. a full and complete copy of any decision of the immigration court as to bond;
 - b. a full and complete copy of any transcript (recorded or transcribed) of any such proceedings; and

² The Government is explicitly reminded that it may not unlawfully detain an individual under 8 U.S.C. § 1225(b) and later attempt to justify that detention under § 1226 through alternative, retrospective, or *post hoc* reasoning advanced during litigation. *See, e.g., Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379, at *7 & n.4 (E.D. Mich. Aug. 29, 2025) (citing cases) (“The Court cannot credit this new position that was adopted *post-hoc*, despite clear indication that Lopez-Campos was not detained under this provision.”); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 486 (S.D.N.Y. 2025) (releasing petitioner and explaining that the court “cannot credit Respondents’ new position as to the basis for . . . detention, which was adopted *post hoc* and raised for the first time in this litigation”); *Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 46 n.8 (M.D. Pa. 2025) (releasing petitioner and discussing the impropriety of allowing the government to proceed on “*post hoc* justifications for detention”). Accordingly, to the extent that Petitioner was initially unlawfully detained under § 1225(b), a bond hearing will not cure such a defect. “Petitioner’s arrest and detention were blatantly unlawful from the start[;] the only commensurate and appropriate equitable remedy to even partially restore [Petitioner] is to immediate[ly] release him and enjoin the Government from further similar transgressions.” *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 366, 371–73 (S.D.N.Y. 2019).

c. the factual and legal basis upon which they claim any such proceeding was fundamentally fair.

(6) identifies the current status of any and all immigration proceedings related to Petitioner, including but not limited to his application for asylum;

(7) to the extent not specified above, otherwise fully responds to the allegations and grounds in the Petition, on a paragraph-by-paragraph basis, and includes all affirmative defenses Respondents seek to invoke; and

(8) serves with the response and/or answer a certification attesting as to the completeness and authenticity of all documents produced and information provided in response to this Order; and it is further

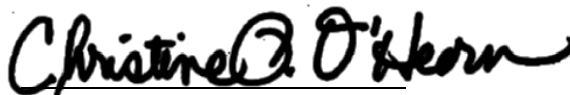
ORDERED that, given that Petitioner has already been detained for a period of time, failure to comply with this Order shall result in an Order of immediate release without further notice or an opportunity to be heard; and it is further

ORDERED that because the Petitioner is currently detained by ICE in the State of New Jersey, and the Court has issued an expedited briefing schedule, to preserve the status quo, including Petitioner's continued access to counsel, during the briefing and hearing process and until the Court issues a decision in this matter, and pursuant to the All Writs Act, 28 U.S.C. § 1651, Petitioner shall remain in the State of New Jersey and shall not be transferred outside the State of New Jersey until further order of the Court; and it is further

ORDERED that, in light of this Order, Petitioner's Motion for an Order to Show Cause, (ECF No. 3), is **DENIED** as moot; and it is further

ORDERED that the Clerk of the Court shall serve a copy of the Petition, (ECF No. 1), and this Order upon Respondents by regular mail, with all costs of service advanced by the United States; and it is finally

ORDERED that the Clerk of the Court shall forward a copy of the Petition, (ECF No. 1), and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov.


CHRISTINE P. O'HEARN
United States District Judge