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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

NADIA CRISTINA DA ROCHA ROSADO Petitioner, [redacted] v. **FRED FIGUEROA**, Warden, Eloy Detention Center; **JOHN CANTU**, Field Office Director, ICE Phoenix Field Office; **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; and, **PAMELA BONDI**, Attorney General of the United States, in their official capacities Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Nadia Cristina da Rocha Rosado (hereinafter referred to as "Nadia," "Ms. Rosado," or "Petitioner") seeks to file this Petition for Writ of Habeas Corpus with the Court.
2. Ms. Rosado is a Brazilian citizen who entered the U.S. on October 12, 2018. Before detention, Ms. Rosado was residing at 49 Pearl Street, Milford, MA, 01757. She is currently detained at the Eloy Detention Center, located at 1705 East Hanna Road, Eloy, Arizona, 85131.
3. Ms. Rosado filed her I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture, on November 10, 2022. She is

currently scheduled for a Master Calendar Hearing before the Chelmsford Immigration Court in Chelmsford, Massachusetts, on July 9, 2026, at 01:30 p.m.

4. On April 30, 2025, Ms. Rosado was detained by Immigration and Customs Enforcement ("ICE"). Ms. Rosado was then transferred out of Massachusetts (her state of residence) to Eloy, Arizona, where she remains detained.

5. To date, her removal proceedings case has not yet been transferred to Arizona, and her next immigration hearing is still scheduled for July 9, 2026, in Chelmsford, Massachusetts.

6. On April 22, 2025, Petitioner attempted to set a Bond Hearing before the Immigration Court, as she is not a danger to the community, and she is not a flight risk. However, the Immigration Court denied her a Bond Hearing on jurisdictional grounds.

7. Petitioner has been detained for almost two months without any opportunity to have a hearing before an Immigration Judge – or any impartial adjudicator – to consider her release.

8. Petitioner's detention violates both the Fourth and Fifth Amendments of the United States Constitution.

9. Accordingly, to vindicate Petitioner's statutory and constitutional regulatory rights, this Court should grant the instant petition for a writ of habeas corpus. Ms. Rosado requests that this Court immediately release her from detention, also enjoining Respondents from re-detaining her unless there are changes in the circumstances that would justify detention.

JURISDICTION

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

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question).

12. 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

13. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, and the Petitioner is currently detained within the jurisdiction of this District. 28 U.S.C. § 2241.

PARTIES

14. Petitioner is a Brazilian citizen who entered the U.S. on October 12, 2018. She has been living in this country for almost 7 years. She is detained at Eloy Detention Center, in Eloy, Arizona, is in custody and under the direct control of Respondents and their agents.

15. Respondent, Fred Figueroa, is named in his official capacity as the Warden of Eloy Detention Center. Mr. Figueroa has custody over Ms. Rosado because ICE contracts the Eloy Detention Center to house immigration detainees, including Ms. Rosado.

16. Respondent, John Cantu, Field Office Director at Phoenix Field Office, is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. He is a legal custodian of Petitioner and has the authority to release her.

17. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of U.S. Department of Homeland Security ("DHS"). Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

18. Pamela Bondi, Attorney General of the United States, is sued in her official capacity and as the legal representative of the U.S. government.

STATEMENT OF FACTS

19. Ms. Rosado was born in Inhapim, Minas Gerais, Brazil, on July 22, 1986. She is a Brazilian citizen who entered the U.S. on October 12, 2018. Before detention, Ms. Rosado was residing at 49 Pearl Street, Milford, MA, 01757. She is currently detained at the Eloy Detention Center, located at 1705 East Hanna Road, Eloy, Arizona, 85131.

20. Ms. Rosado filed her I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture, on November 10, 2022. She is currently scheduled for a Master Calendar Hearing (preliminary hearing) before the Chelmsford Immigration Court on July 9, 2026, at 01:30 p.m.

21. On April 30, 2025, Ms. Rosado was detained by Immigration and Customs Enforcement ("ICE"). Ms. Rosado was apprehended at her house, when officers came to arrest her son. Before allowing them to enter, she asked if they had a warrant, and asked them to show any warrant in their possession prior to allowing them to come in. Once the officers showed the warrant, she allowed them to enter, but they also detained her, claiming that she obstructed their operation by asking to see the warrant.

22. Following her detention, Petitioner was transferred from Massachusetts to Eloy, Arizona, where she remains detained.

23. To date, her immigration case has not yet been transferred to Arizona, and her next immigration hearing is still scheduled for July 9, 2026, at Chelmsford, Massachusetts.

24. On April 22, 2025, Petitioner attempted to set a Bond Hearing before the Immigration Court. However, the Immigration Court denied jurisdiction over Petitioner's case, claiming that she was an "arriving alien," meaning "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." 8 CFR § 1001.1 (q).

25. Petitioner, through Undersigned Counsel, objected to the Immigration Judge's finding, arguing that the hearing was for a custody redetermination, and that her custody was not as an arriving alien, since she had been living in the United States for almost seven years prior to detention. Petitioner also cited documents showing that she was no longer an arriving alien; documents detailing the circumstances surrounding her detention; and the "Notice of Custody Determination" issued by the Department of Homeland Security, which clearly does not identify her as an arriving alien. Despite these assertions, the Immigration Judge disregarded the latter document after DHS's counsel affirmed that it was a "typo."

26. The reason for Petitioner's detention remains unclear, especially as she did not have an opportunity to be heard by an Immigration Judge to consider the reasons for her

detention. Petitioner is also not tied to any reasonably foreseeable removal. Petitioner has only lived in Massachusetts while in the United States, where her legal counsel is also physically present. Transfer of Petitioner to Massachusetts will allow her to receive appropriate legal representation, and to avoid potential illegal measures by the government due to incorrect screenings, as recently reported by the press.[1]

27. Petitioner's detention violates both the Fourth and Fifth Amendments of the United States Constitution. Petitioner is being detained without even having an opportunity to have a bond hearing, in a facility that is reported to have violated several human rights and failed to provide minimum conditions to their inmates.[2][3]

LEGAL FRAMEWORK

28. Under 8 U.S.C. § 1357(a)(2), ICE officers may conduct warrantless arrests if there is "reason to believe that the alien [] [to be] arrested is [present] in the United States in violation of any [U.S. immigration] law and is likely to escape before a warrant can be obtained for [the] arrest." The "reason to believe" standard requires ICE officers to have probable cause that an individual is in the United States in violation of U.S. immigration laws and probable cause that the individual is likely to escape before a warrant can be obtained for the arrest. *Nava v. Dep't of Homeland Sec.*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020). Mere presence within the United States in violation of U.S.

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[1] Patrick Smith & Gary Grumbach, *A Man Was Sent to El Salvador Due to 'Administrative Error' Despite Protected Legal Status*, NBC News, Apr. 1, 2025, available at https://www.nbcnews.com/news/us-news/man-was-sent-el-salvador-due-administrative-error-protected-legal-stat-rcna199010.

[2] Daniel Gonzales, *Rep. Yassamin Ansari describes 'sickening' conditions at Eloy migrant detention center,* AzCentral, May 29, 2025, available at: https://www.azcentral.com/story/news/politics/immigration/2025/05/29/ansari-calls-conditions-at-eloy-detention-center-sickening/83930087007/

[3] Sahara Sajjadi, *Detained Immigrants at Eloy detail dehydration, lack of medical care, and mistreatment,* The Copper Courier, May 30, 2025, available at: https://coppercourier.com/2025/05/30/detained-immigrants-at-eloy/

immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained. *Id.*

29. The Supreme Court held in *Zadvydas v. Davis* that civil incarceration is only acceptable "in certain special and narrow non-punitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest." 533 U.S. 678, 690 (2001). The Supreme Court further established the principle that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'"). The Ninth Circuit has also recognized that individuals detained under non-mandatory detention, especially Section 1226(a), are entitled to several protections including "several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change. *See generally* 8 U.S.C. § 1226(a)(1)–(2); 8 C.F.R. §§ 236.1, 1003.19." *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022)

30. Under 8 U.S. Code § 1225, "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." Applicants for admission are among the

individuals who can be placed in expedited removal, in which case they are subject to mandatory detention. INA § 235(b)(1)(B)(i)(IV).

31. If an applicant for admission is not placed in expedited removal proceedings under INA § 235 or is later placed in removal proceedings under INA § 240, detention is no longer mandatory. In these cases, noncitizens are sometimes released from custody and allowed to remain in the United States for the duration of their proceedings. 8 U.S. Code § 1226 (a).

32. However, where an individual who was placed in proceedings as an arriving alien is released into the United States, and is later detained for a different reason, the Immigration Courts have refused to claim jurisdiction over their custody redetermination. 8 CFR § 1003.19 (h)(1)(i)(B); *see also Matter of X-K-*, 23 I&N, Dec. 731 (BIA 2005) ("There is no question that Immigration Judges lack jurisdiction over arriving aliens who have been placed in section 240 removal proceedings, because they are specifically listed at 8 C.F.R. § 1003.19(h)(2)(i)(B) as one of the excluded categories.")

33. Ms. Rosado's detention by DHS violates her rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, as well as her rights under the Fourth Amendment of the United States Constitution. The habeas petition is the only way for the Petitioner to have her custody analyzed by a Court, since the Immigration Courts have denied jurisdiction.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

34. Ms. Rosado's detention by DHS violates her rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. The allegations in the above paragraphs are re-alleged and incorporated herein. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

35. The Supreme Court has also established that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'")

36. Here, there is no reason to justify Petitioner's detention. Petitioner has been living in the United States for over six years, where she strong ties to the community.

37. Petitioner has also been unable to have a bond hearing before an Immigration Court because the Court previously denied jurisdiction to hear her custody redetermination request. Therefore, Petitioner is being held in custody without the possibility of having

her case reviewed by an Immigration Judge – despite not being subject to mandatory detention.

38. In *Jennings v. Rodriguez,* the Supreme Court makes a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 804 F. 3d 106. The opinion of the Supreme Court recognizes that "§ 1226 applies to aliens already present in the United States. . . ." and that "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" § 1226(a). As long as the detained alien is not covered by § 1226(c), the Attorney General "may release" the alien on "bond . . . or conditional parole." § 1226(a). Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. *See* 8 CFR §§ 236.1(d)(1), 1236.1(d)(1).

39. The Ninth Circuit has long recognized that individuals held in detention under § 1226(a) have the right to a bond hearing in which the government needs to show by clear and convincing evidence that continued detention is justified. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

40. Here, Petitioner has been living in the United States for more than six years prior to her detention, and the reason for her current detention is not related to her first detention as an "applicant for admission." In the present case, there is not the issue of a continued detention of someone who is trying to enter the country, but rather a new detention – on a new warrant – for someone who has been in the country for over six years.

41. In fact, the Notice of Custody Determination issued by the Department of Homeland Security states that the Petitioner was detained under Section 236 of the Immigration and Nationality Act. The document clearly shows that Petitioner is detained under 1226(a).

42. Unfortunately, Immigration Courts have refused to claim jurisdiction over individuals in Petitioner's situation, allowing them to be detained indefinitely without the opportunity to at least have their custody decision reviewed by an immigration judge. 8 CFR § 1003.19 (h)(1)(i)(B); *see also Matter of X-K-*, 23 I&N, Dec. 731 (BIA 2005). There is a complete lack of reasonableness by the Immigration Courts in failing to differentiate those considered to be "arriving aliens," which the statute refers to as noncitizens coming through the border, and noncitizens who have been in the U.S. for several years who are now being detained for separate reasons based on the new presidential administration's anti-immigration policies.[4]

43. This interpretation by the Immigration Courts directly violates the Ninth Circuit in *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) and also in *c,* 638 F. 3d at 1200.

44. Petitioner cannot be expected to be reasonably removed from the country, and her detention violates the Due Process Clause of the Fifth Amendment. DHS has failed to demonstrate that she is a danger to the community or a flight risk, and the government has failed to give her an opportunity to have her custody reconsidered by an immigration judge. Furthermore, as an alternative to detention, ICE could employ its

[4] Lauren Kaori Gurley, et. al., *ICE sets quotas to deliver on immigration crackdown on employers*, The Washington Post, June 11, 2025, available at: https://www.washingtonpost.com/business/2025/06/11/trump-immigration-ice-crackdown-employers/

Intensive Supervision Appearance Program ("ISAP").[5] Government data suggests that this program has been highly successful in preventing flight risk.[6]

COUNT TWO

Violation of Fourth Amendment Right to Protection from Unreasonable Searches and Seizures by the Government

45. In *United States v. Brignoni–Ponce*, 422 U.S. 873, 95 S.Ct. 2574 (1975), the Supreme Court sought to determine what standard of proof, if any, an immigration officer must apply to stop and detain individuals to investigate their immigration status. *See* 422 U.S. at 880–82, 95 S.Ct. 2574. The Court stated that, just as in the criminal context, an immigration officer "must have a reasonable suspicion" to justify briefly stopping individuals to question them "about their citizenship and immigration status...but any further detention...*must be based on ... probable cause.*" *Id.* at 881–82, 95 S.Ct. 2574 (emphasis added) (citing *Terry v. Ohio,* 392 U.S. 1, at 29, 88 S.Ct. 1868); *see also id.* at 884 ("[T]he Fourth Amendment ...forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens.").

46. The First Circuit has required that immigration officers have reasonable suspicion to briefly stop individuals to question them regarding their immigration status and probable cause for any further arrest and detention. *See, e.g., United States v. Mendez-de Jesus,* 85 F.3d 1, 3 (1st Cir.1996) (recognizing that *Brignoni–Ponce* stands for "the principle that an individual may not be [briefly] detained for questioning about

[5] *ERO Alternatives to Detention Infographic*, U.S. Immigration and Customs Enforcement, Apr. 2021, available at https://www.ice.gov/doclib/detention/atdInfographic.pdf.
[6] *Immigration: Alternatives to Detention (ATD) Programs*, Congressional Research Service, Jul. 8, 2019, available at https://crsreports.congress.gov/product/pdf/R/R45804 (citing GAO study of ISAP program where 99% of those monitored returned to court).

citizenship absent reasonable suspicion that the person is an illegal alien"); *Lopez v. Garriga,* 917 F.2d 63, 69 (1st Cir.1990) (noting that detention to inquire about an individual's immigration status is "a seizure and implicate[s] the [F]ourth [A]mendment" (citing *Immigration & Naturalization Serv. v. Delgado,* 466 U.S. 210, 216–17, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984); *Terry,* 392 U.S. at 21, 88 S.Ct. 1868)); *Navia–Duran v. Immigration & Naturalization Serv.,* 568 F.2d 803, 809 n. 7 (1st Cir.1977) (recognizing that an immigration arrest and detention needs to be "supported by probable cause or reasonable suspicion").

47. Statutory authority for warrantless enforcement actions is provided in 8 U.S.C. § 1357. Under 8 U.S.C. § 1357(a)(2), ICE officers may conduct warrantless arrests if there is "reason to believe" that the potential arrestee (1) "is in the United States in violation of [an immigration] law or regulation" and (2) "is likely to escape before a warrant can be obtained for his arrest." *Nava v. Dep't of Homeland Sec.*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020). Mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained. *Id.*

48. Courts have consistently held that the "reason to believe" phrase in § 1357 "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause." *Au Yi Lau v. United States Immigration & Nat. Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971); *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu,* 519 F.2d 494, 496 (7th Cir.1975) ("The words [in §

1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana,* 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

49. Petitioner's arrest, which led to her subsequent detention, was unlawful and in violation of her rights under the Fourth Amendment to the United States Constitution. The allegations in the above paragraphs are re-alleged and incorporated herein. The ICE officers who arrested her abused their power by claiming that Petitioner was obstructing their activity simply because she asked to see the judicial warrant prior to allowing them to enter her home. Petitioner was not the object of the warrant, and the officers abused the authority given by the warrant by arresting Petitioner upon their entry into her home.

50. The prohibition set by the Fourth Amendment and reinforced by the Supreme Court in *Payton v. New York* establishes that the police, including Immigration and Customs Enforcement, are prohibited from entering a suspect's home without a warrant. *Payton v. New York*, 445 U.S. 573, 589-90, 596 (1980). This prohibition has also been long supported by the First Circuit, which has observed that "[t]he Fourth Amendment has drawn a firm line at the entrance to the house, and warrantless entries into a home are presumptively unreasonable." *Morse v. Coultier*, 869 F.3d 16 (1st Cir. 2017).

51. For these reasons, Petitioner's arrest and detention violate 8 U.S.C. § 1357(a)(2), as well as the Fourth Amendment of the United States Constitution.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why Petition should not be granted within three days.

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, as well as the Fourth Amendment.

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Vinicius Damasceno

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Dated: June 19, 2025

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

I represent Petitioner Nadia Cristina da Rocha Rosado, and I submit this verification on her 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 23th day of June, 2025.

/s/ Vinicius Damasceno
Vinicius Damasceno, Esq.

CERTIFICATE OF SERVICE

I, Vinicius Damasceno, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: June 23, 2025

/s/ Vinicius Damasceno
Vinicius Damasceno, Esq.