

1 Marcelo Gondim, SBN 271302
2 Gondim Law Corp.
3 1880 Century Park E, Suite 400
4 Los Angeles, CA 90067
5 Telephone: 323-282-7770
6 Email: court@gondim-law.com
7 Counsel for Petitioner

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Franyelit Stefany Ponte-Guanare,

Petitioner,

vs.

John Archambeault, et al.,

Respondents.

Case No.: 3:25-cv-02081-TWR-KSC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1
2
3 1. Petitioner Franyelit Stefany Ponte-Guanare challenges her ongoing detention
4 without access to bond hearing. She was arrested well inside the United States and initially
5 released on her own recognizance—not paroled under INA § 212(d)(5). The immigration
6 court later denied her bond request, relying on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA
7 2025), which misclassifies all individuals 'present without admission' as subject to INA §
8 235(b)(2)(A).
9

10
11 2. This interpretation was recently expanded in *Matter of Yajure Hurtado*, 29 I&N
12 Dec. 216 (BIA 2025). These decisions strip immigration judges of bond jurisdiction for
13 nearly all noncitizens who entered without inspection, even if arrested years later in the
14 interior.
15

16 3. In the Ninth Circuit, such a position is unlawful. Long-standing precedent,
17 including *Martinez v. Clark*, 36 F.4th 1219 (9th Cir. 2022), confirms that interior arrests
18 fall under § 236(a), which expressly provides for bond hearings. Under *Loper Bright v.*
19 *Raimondo*, 144 S. Ct. 2244 (2024), this Court must interpret the statute de novo, without
20 deference to the BIA's expansive reading.
21

22 4. Petitioner has now been detained for months, with no individualized determination
23 of necessity. This violates both statutory requirements and constitutional protections under
24 the Fifth Amendment. Habeas relief is urgently needed.
25

26
27 **STATEMENT OF RELEVANT FACTS**
28

1 5. Petitioner entered the U.S. near El Paso, Texas on September 10, 2023, and was
2 later released on her own recognizance pending removal proceedings. She was never
3 granted parole under INA § 212(d)(5). After a missed hearing due to inadequate
4 instructions, an *in-absentia* removal order was issued. Petitioner successfully moved to
5 reopen proceedings, vacating that order.
6

7 6. On May 21, 2025, while complying with ICE inspection, she was re-detained and
8 has remained in ICE custody since. On July 25, 2025, the Immigration Judge denied bond
9 solely because of *Matter of Q. Li*, ruling that the court lacked jurisdiction to hold a bond
10 hearing.
11

12 7. Petitioner is married to a U.S. Army servicemember and has pending Parole-in-
13 Place and family-based immigration applications. However, due to a defect in the
14 marriage certificate, Petitioner is trying to marry her partner again, so she can seek relief.
15 This has been very challenging due to the fact that her partner has limited time away from
16 her military base abroad and the petitioner is in detention in California. Additionally, the
17 conditions at Otay Mesa Detention Center are unsafe and abusive, compounding the harm
18 of her prolonged detention.
19
20
21

22 **LEGAL STANDARD FOR HABEAS RELIEF**

23

24 8. Habeas corpus is the proper vehicle to challenge unlawful civil detention. *Jennings*
25 *v. Rodriguez*, 138 S. Ct. 830, 839 (2018). Immigration detention without statutory or
26 constitutional authority constitutes unlawful custody redressable under 28 U.S.C. § 2241.
27
28

1 9. The Court retains jurisdiction under the Suspension Clause, Article I, § 9, cl. 2,
2 which prohibits Congress or an agency from stripping courts of their power to review the
3 legality of detention.
4

5
6 **ARGUMENT**

7 **A. The Court Has Jurisdiction Under 28 U.S.C. § 2241 and the Suspension**
8 **Clause**
9

10 10. The Supreme Court has held that challenges to detention remain cognizable in
11 habeas even in the immigration context. *Jennings*, 138 S. Ct. at 839. INA § 1252(b)(9)
12 does not bar individual habeas petitions attacking detention itself. The Ninth Circuit
13 reaffirmed this in *Aleman Gonzalez v. Barr*, 955 F.3d 762, 770 (9th Cir.2020).
14
15

16 11. Petitioner's Detention is Governed by § 236(a), Not § 235(b)(2)(A)
17 Under Ninth Circuit precedent, DHS must detain noncitizens arrested inside the U.S.
18 under § 236(a), which provides for bond hearings. See *Martinez v. Clark*, 36 F.4th 1219,
19 1223 (9th Cir. 2022). Section 235(b)(2)(A) applies only to individuals seeking admission
20 at ports of entry.
21
22

23 **B. *Matter of Q. Li* and *Matter of Yajure Hurtado* Are Not Controlling After**
24 **Loper Bright Loper Bright overruled Chevron deference.**
25

26 12. Courts now interpret statutes de novo without giving special weight to agency
27 interpretations. Thus, the BIA's decisions are merely persuasive and cannot override
28

1 Ninth Circuit precedent.

2
3 **C. Prolonged Detention Without a Bond Hearing Violates the Fifth**
4 **Amendment**

5
6 13. Even if § 235(b)(2)(A) applied, prolonged detention without individualized review
7 violates due process. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538
8 U.S. 510 (2003); *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008).
9

10 **D. Delay in BIA Bond Appeals Violates Due Process**

11
12 14. BIA bond appeals average 204 days, sometimes over a year. This delay denies
13 meaningful review, unlike the prompt review required for criminal pretrial detention. See
14 *United States v. Salerno*, 481 U.S. 739, 752 (1987).
15

16 15. At its core, this case is about liberty and the rule of law. The petitioner has been
17 detained for months without a meaningful opportunity to challenge the basis of that
18 detention. She is not challenging her removal order here. She is challenging the
19 government's refusal to even provide her a bond hearing — a refusal grounded in a
20 misinterpretation of the Immigration and Nationality Act and perpetuated by recent BIA
21 decisions like *Matter of Q. Li* and *Matter of Yajure Hurtado*.
22
23

24 16. The government asks this Court to force petitioner to spend many more months —
25 potentially years — pursuing a BIA appeal and then a petition for review to the Ninth
26 Circuit. But that path is neither required by statute nor consistent with the Constitution. It
27
28

1 is, in fact, a dead end for several reasons:

2 17. First, Supreme Court precedent makes clear that habeas review remains available
3 for challenges to detention. In *Jennings v. Rodriguez* and *Demore v. Kim*, the Court
4 confirmed that district courts retain jurisdiction over claims like this, which go to the *fact*
5 of *detention*, not the validity of a removal order. Section 1252 was never intended to strip
6 this Court of its historic power to prevent unlawful imprisonment.
7

8 18. Second, exhaustion here would be futile. The BIA cannot grant the relief petitioner
9 seeks because it is bound by its own precedents — including *Q. Li* and *Yajure Hurtado* —
10 which categorically deny immigration judges jurisdiction to conduct bond hearings in
11 cases like this one. Even if petitioner filed an appeal tomorrow, the outcome is
12 predetermined. Moreover, the BIA takes on average 204 days to decide a bond appeal —
13 nearly seven months of additional detention. Many cases take a year or more. That kind
14 of delay is not meaningful review; it is the very definition of injustice.
15

16 19. Third, the Constitution forbids leaving someone without a prompt, effective
17 mechanism to test the legality of their confinement. The Suspension Clause guarantees
18 the right to habeas corpus unless Congress provides an adequate and effective substitute.
19 Here, there is no adequate substitute. A multi-year process culminating in a petition for
20 review at the Ninth Circuit is not a real remedy — it is an illusory one. During that time,
21 petitioner will remain imprisoned without ever having had an individualized custody
22 determination by a neutral decision-maker.
23

24 20. Petitioner's particular circumstances illustrate why this matters. She has deep ties
25
26
27
28

1 to the United States, including a U.S. citizen partner who is currently deployed on active-
2 duty military service. She has no criminal history, poses no danger to the community, and
3 has consistently complied with her obligations. Yet, because of a misclassification of her
4 status and a sweeping, erroneous reading of the statute, she is being treated as if she is
5 perpetually arriving at the border — as though the years she has lived here count for
6 nothing.
7

8
9 21. This is not what Congress intended when it enacted sections 235 and 236 of the
10 INA. It is not what the Constitution permits.

11
12 22. The Respondent's position would turn habeas corpus into a hollow promise. It
13 would leave petitioner, and countless others like her, detained indefinitely without judicial
14 review, solely because of the method of their initial entry. That result cannot stand.

15
16 23. We therefore respectfully urge this Court to exercise its jurisdiction under 28 U.S.C.
17 § 2241 and grant the relief requested:

18 24. Order petitioner's immediate release, or at minimum,

19
20 25. Require the government to provide a prompt, individualized bond hearing under §
21 236(a) within ten days, without relying on *Q. Li* or *Yajure Hurtado*.

22
23 26. Liberty delayed is liberty denied. The Constitution demands more than delay,
24 futility, and bureaucracy. It demands timely judicial oversight when the government locks
25 someone away. Today, petitioner asks this Court to fulfill that constitutional promise.

26 **E. Other recent District Court findings.**
27
28

1 27. The recent decision in *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK (D. Mass. Sept.
2 9, 2025), directly supports petitioner's position that habeas relief is both appropriate and
3 necessary. In *Sampiao*, the court held that exhaustion of administrative remedies was not
4 required where a petitioner faced prolonged detention while the government's appeal of
5 a favorable bond decision was pending before the BIA. The court found that the BIA's
6 average processing time for bond appeals exceeded **200 days**, meaning the petitioner
7 would "endure several additional months of detention that may be unlawful," constituting
8 irreparable harm if forced to wait. The court emphasized that where a detainee's liberty
9 interests "weigh heavily against requiring administrative exhaustion," habeas relief is
10 proper, particularly because an Immigration Judge had already granted bond and the
11 factual record was straightforward. This ruling mirrors the circumstances here: petitioner
12 has already been denied a meaningful bond hearing due to the BIA's precedents, and any
13 BIA appeal would be futile and unreasonably delayed. As in *Sampiao*, requiring
14 exhaustion would result in unlawful, prolonged detention and violate fundamental due
15 process protections. Thus, immediate habeas review is warranted to safeguard
16 petitioner's liberty and to prevent the type of indefinite detention the *Sampiao* court
17 expressly condemned.

18 28. Numerous district courts have disagreed with the government's new interpretation
19 of § 235(b)(2) and subsequently granted relief to habeas petitioners (often on due process
20 grounds). Below is a non-exhaustive list of relevant decisions:
21
22
23
24
25
26
27
28

**F. Recent District Court Decisions Rejecting Matter of Yajure Hurtado's
Interpretation**

29. Federal district courts across multiple circuits have consistently rejected the government's position that noncitizens who previously entered without inspection and were later apprehended in the interior are subject to mandatory detention under INA § 235(b)(2). These courts instead hold that INA § 236 governs detention for such individuals and preserves access to bond hearings before an Immigration Judge. The following decisions, grouped by circuit, illustrate the growing consensus against *Matter of Yajure Hurtado*.

G. First Circuit

30. District courts within the First Circuit have been particularly active in issuing habeas relief and rejecting the government's new interpretation of INA § 235(b)(2).

- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)
- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025)
- *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)
- *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025)

1 31. These cases uniformly hold that individuals arrested in the interior after living in
2 the United States are detained under § 236(a) and are entitled to a bond hearing. In
3 particular, *Sampiao* directly disagreed with the BIA's reasoning in *Yajure Hurtado*,
4 finding that INA § 235(b)(2) does not apply in these circumstances.
5

6 **H. Second Circuit**

7 32. Courts within the Second Circuit have also struck down the government's
8 expansive reading of § 235(b)(2).
9

- 10 • *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- 11 • *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)
- 12

13 **I. Fourth Circuit**

- 14 • *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)
- 15

16 **J. Fifth Circuit**

- 17 • *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)
- 18

19 **K. Sixth Circuit**

- 20 • *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)
- 21

22 **L. Eighth Circuit**

23 33. The District of Nebraska and District of Minnesota have issued numerous decisions
24 rejecting *Yajure Hurtado*'s interpretation:
25

- 26 • *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- 27 • *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- 28 • *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)

- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
- *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025)

M. Ninth Circuit

34. Courts within the Ninth Circuit have not only rejected *Yajure Hurtado* but have also explicitly noted that its issuance makes BIA administrative exhaustion futile.

- *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

N. Key Ninth Circuit Trend:

35. In *Zaragoza Mosqueda*, the court expressly held that requiring prudential exhaustion of administrative remedies was **futile** given the binding nature of *Matter of Yajure Hurtado*. This supports our position that habeas review in district court is appropriate and necessary without first appealing to the BIA.

O. Summary

1 36. Across **seven circuits**, federal district courts have consistently:

- 2 • Rejected DHS's interpretation of INA § 235(b)(2) as applying to noncitizens
3 apprehended in the interior after an unlawful entry.
4
5 • Affirmed that § 236(a) provides the statutory framework for discretionary detention
6 and bond hearings.
7
8 • Found that *Matter of Yajure Hurtado* improperly strips immigration judges of
9 jurisdiction and is contrary to the statutory scheme, Supreme Court precedent
10 (*Jennings v. Rodriguez*), and decades of practice.

11 37. These decisions create a strong foundation for arguing that petitioner's detention is
12 unlawful and that immediate habeas relief is warranted without exhausting BIA
13 administrative remedies.
14

15
16 **REQUEST RELIEF**
17

18 Petitioner respectfully requests that this Court:

- 19 1. Declare that Petitioner is detained under INA § 236(a), not § 235(b)(2)(A);
20
21 2. Order Respondents to provide a bond hearing before an immigration judge within
22 10 days, with the government bearing the clear and convincing burden;
23
24 3. Alternatively, if § 235(b)(2)(A) applies, order a constitutionally adequate hearing or
25 immediate release;
26
27 4. Declare that *Matter of Q. Li* and *Matter of Yajure Hurtado* are inconsistent with
28 Ninth Circuit law;

1 5. Award attorneys' fees under the EAJA, 28 U.S.C. § 2412.
2

3 **CONCLUSION**
4

5 The Ninth Circuit has consistently protected the right to a bond hearing for
6 noncitizens arrested in the interior. The BIA's recent decisions cannot override circuit
7 precedent or the Constitution. Petitioner's ongoing detention without judicial review is
8 unlawful. This Court should grant the writ of habeas corpus and order immediate relief.
9

10 Respectfully submitted,
11

12 /s/ Marcelo Gondim

13 Marcelo Gondim (SBN 271302)
14 Gondim Law Corp.
15 1880 Century Park East, Suite 400
16 Los Angeles, CA 90067
17 Telephone: 323-282-777
18 Email: court@gondim-law.com

19 *Attorney for Petitioner*
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record at the following email addresses:

Erin.Dimbleby@usdoj.gov

Brenda.Seyler@usdoj.gov

Date: September 19, 2025

/s/ Marcelo Gondim

Marcelo Gondim (SBN 271302)
Gondim Law Corp.
1880 Century Park East, Suite 400
Los Angeles, CA 90067
Telephone: 323-282-7770
Email: court@gondim-law.com
Attorney for Plaintiff