

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MICHELY PAIVA ALVES,

Petitioner,

V.

U.S. DEPARTMENT OF JUSTICE, et al

Respondents.

Civil No. 3:25-CV-00306-KC

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS AND PRELIMINARY INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE HENDRIX:

Petitioner MICHELY PAIVA ALVES (“Ms. Alves”) respectfully moves this Court to consider her previously filed petition for a writ of habeas corpus and application for a preliminary injunction, filed on August 11, 2025 (ECF No. 1). Petitioner is currently scheduled for an in-person hearing on the petition today, pursuant to the Court’s Order, dated September 12, 2025. *See* ECF No. 9. For the reasons that follow, Petitioner asks that that the Court, after considering the factual and legal context of Ms. Alves’s petition, either conduct an individualized bond hearing itself, or order that Respondents conduct an individualized bond hearing within seven (7) days.

INTRODUCTION

This case presents a fundamental question: may the government detain a noncitizen who has already demonstrated a credible fear of persecution for more than eight months, without any opportunity for a bond hearing or individualized determination of necessity? Petitioner submits that the Constitution requires more. Although Congress

authorized initial detention of arriving asylum seekers under 8 U.S.C. § 1225(b), the Fifth Amendment prohibits DHS from jailing such individuals indefinitely without a hearing to determine whether detention serves any legitimate government interest. The writ of habeas corpus exists precisely to prevent such executive overreach.

This Court has already recognized the constitutional stakes. In its September 12, 2025, Order, the Court directed the parties to present evidence and argument as to whether Ms. Alves's detention is "reasonable" under factors including the duration of detention, the likelihood of continued detention, the reasons for delay, and whether the conditions of confinement meaningfully differ from punishment. *See* ECF No. 9, Order Setting Hearing. As explained below, each factor favors relief.

BACKGROUND

Petitioner entered the United States on January 21, 2025, seeking protection from persecution in Brazil. She was promptly detained at the El Paso Processing Center. After an asylum officer determined that she possessed a credible fear of persecution, Petitioner was referred for full removal proceedings before an immigration judge. Despite this finding, she has remained in continuous custody for more than eight months. *See* ECF No. 9, Order Setting Hearing.

On August 27, 2025, DHS served her with a Notice to Appear, commencing proceedings under INA § 240. Petitioner's first immigration court hearing was scheduled for September 18, 2025, but as of today, her case remains unresolved, and the matter was rescheduled to October 28, 2025, at 9:30 MDT.¹ Petitioner filed this habeas action pro se

¹ Petitioner would ask that the Court take judicial notice of Petitioner's next scheduled immigration court hearing, which can be confirmed by entering Petitioner's case number, A# [REDACTED] via EOIR Automated Case Information, *available at* <https://acis.eoir.justice.gov/en/caseInformation>.

on August 11, 2025, seeking release or a bond hearing. The Court enjoined her transfer or removal, and set this matter for hearing. *See* ECF No. 9, Order Setting Hearing.

ARGUMENT

I. Habeas Jurisdiction Is Proper

Habeas corpus has always been available to test the legality of detention. *See Boumediene v. Bush*, 553 U.S. 723, 746 (2008). Nothing in the Immigration and Nationality Act strips this Court of jurisdiction over constitutional claims. Indeed, the Supreme Court has made clear that 8 U.S.C. § 1226(e) and similar provisions do not bar review of “statutory or constitutional challenges.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018). Petitioner’s claim falls squarely within the heartland of habeas: she challenges the lawfulness of her ongoing detention, not the merits of her removal case.

II. Prolonged Mandatory Detention Without Bond Violates Due Process

A. The *Mathews v. Eldridge* Framework

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), due process requires balancing the private interest, the risk of erroneous deprivation, and the government’s interests. Petitioner’s liberty interest is among the most fundamental recognized by the Constitution. The risk of error is extreme, because DHS categorically denies bond hearings to arriving asylum seekers regardless of their individual circumstances. And while the government has an interest in enforcing immigration law, that interest can be met by less restrictive means—such as bond or supervised release. Under *Mathews*, due process requires individualized review.

B. Persuasive Authority Supports Petitioner

Just days ago, a federal court applied this very analysis in *Maldonado Vazquez v. Feeley*, holding that DHS's reliance on the automatic stay provision and categorical detention rules violated due process. *See Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, at *37-38 (D. Nev. Sept. 17, 2025) (slip op.). Applying *Mathews*, the court concluded that prolonged detention without individualized review was unconstitutional. Ms. Alves's situation is no different.

The Fifth Circuit has not squarely resolved this question, but district courts within the Circuit have recognized the constitutional problems posed by indefinite detention. In *Kostak v. Trump*, No. 3:25-1093, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025), the court acknowledged that habeas remains available to challenge prolonged immigration detention and that categorical reliance on § 1225(b) raises "serious constitutional concerns." Together, these authorities confirm that Ms. Alves's continued detention is unconstitutional.

C. Historical Practice Confirms the Constitutional Baseline.

For decades before *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), asylum seekers who passed a credible fear interview and were placed in INA § 240 proceedings were considered eligible for bond. The Board of Immigration Appeals repeatedly affirmed this practice in unpublished decisions, including but not limited to:

- *E-J-E-B-*, AXXX XXX 122 (BIA Nov. 13, 2015) (ordering release on \$10,000 bond after positive CFI);
- *E-J-H-R-*, AXXX XXX 824 (BIA Mar. 31, 2016) (sustaining appeal, releasing on \$7,500 bond; CFI finding noted);

- *A-M-C-*, AXXX XXX 228 (BIA June 20, 2016) (remanding to set reasonable bond after CFI);
- *J-D-V-P-*, AXXX XXX 822 (BIA Mar. 22, 2016) (remanding for bond despite IJ's no-bond order; asylum application filed following CFI); and
- *T-M-*, AXXX XXX 401 (BIA Apr. 5, 2016) (setting \$20,000 bond for recent arrival after CFI).

See Appendix A.

Together, these decisions reflect the long-settled understanding that credible fear findings entitled arriving asylum seekers to individualized custody determinations—a long-standing policy utilized by both Democratic and Republican administrations from which Respondents now depart arbitrarily. The abrupt reversal in *Matter of M-S-* cannot erase decades of consistent practice, nor can it authorize indefinite detention without constitutional oversight.

III. This Court's September 12 Order Requires a Finding of Reasonableness.

In its September 12 Order, this Court directed the parties to address whether Petitioner's detention is "reasonable" under the *German Santos* factors. See ECF No. 9 - Order Setting Hearing. Each factor favors relief:

1. **Duration:** Eight months is well beyond what courts have considered reasonable for civil detention pending asylum proceedings.
2. **Likelihood of Continued Detention:** Proceedings have only just begun and could last another year or more.
3. **Reasons for Delay:** None attributable to Petitioner; delays result solely from government procedures.

4. **Conditions of Confinement:** Her detention at El Paso Processing Center is materially indistinguishable from criminal incarceration, contrary to the civil nature of immigration detention.

Taken together, these factors confirm that Ms. Alves's detention is unreasonably prolonged and violates due process.

IV. The Appropriate Remedy Is to Conduct an Individualized Bond Hearing.

The Court should grant the writ of habeas corpus. Therefore, at minimum, the Court should order DHS to provide Petitioner a bond hearing before an immigration judge within seven days, at which the government must demonstrate by clear and convincing evidence that Petitioner is a danger to the community or a flight risk. See *German Santos*, 965 F.3d at 214. If no such hearing is provided, the Court should order her immediate release under reasonable conditions of supervision.

Congress may authorize *initial* detention under § 1225(b), but the Constitution does not permit DHS to imprison an asylum seeker for eight months—and counting—without any individualized determination of necessity. The Due Process Clause, the Suspension Clause, and centuries of habeas tradition dating back to the Magna Carta require more. Ms. Alves respectfully asks this Court to grant her habeas petition and order her immediate release or, at minimum, require a prompt bond hearing.

CONCLUSION & PRAYER

For the foregoing reasons, Petitioner asks that the court grant Petitioner's petition for a writ of habeas corpus and grant preliminary injunctive relief in the interim.

DATE: September 22, 2025.

Respectfully submitted,

THE LAW OFFICE OF JOHN M. BRAY, PLLC
911 N. Bishop Ave.
Dallas, Texas 75208
Tel: (855) 566-2729
Fax: (214) 960-4164
Email: john@jmblawfirm.com

By: /s/ John M. Bray
John M. Bray
Texas Bar No. 24081360
ATTORNEY FOR PETITIONER-PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing *Plaintiff's Memorandum of Law In Support of Petition for Writ of Habeas Corpus and Preliminary Injunctive Relief*, as well as any and all attachments thereto, on Counsel for Respondents-Defendants by serving the same via email to Ms. Lacy McAndrew, Assistant U.S. Attorney for the Western District of Texas, via Lacy.McAndrew@usdoj.gov and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner-Plaintiff

DATE: September 22, 2025.