

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

YEISON EDUARDO MOLINA TREJO )

Case No. 25-842

Petitioner, )

v. )

**PETITION FOR WRIT  
OF HABEAS CORPUS**

PATRICIA HYDE, in her official capacity as )  
Acting Boston Field Office Director, )

Immigration and Customs Enforcement; )

TODD M. LYONS, in his official capacity as )

Acting Director, U.S. Immigration and Customs )  
Enforcement; )

PETE R. FLORES, in his official capacity as )

Acting Commissioner For U.S. Customs and )  
Border Protections; )

KRISTI NOEM, in her official capacity as )

Secretary of the United States Department of )  
Homeland Security; )

MARCO RUBIO, in his official capacity as )

Secretary of State; )

PAMELA BONDI, in her official capacity as )

U.S. Attorney General; )

GREG HALE, in his official capacity as )

Superintendent Of Northwest State )  
Correctional Facility; and )

DAVID W. JOHNSTON, in his official capacity )

as Vermont Sub-office Director of Immigration )  
and Customs Enforcement; )

Respondents. )

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**INTRODUCTION**

1. This case presents a request for immediate relief on behalf of Petitioner, Mx. Yeison Eduardo Molina Trejo, a civil immigration detainee held by Respondents at the Northwest State Correctional Facility (NWSCF) in St. Albans, Vermont. They are at imminent risk of sexual assault and bodily harm due to their non-binary gender identity and lack of receiving appropriate medication.
2. Petitioner entered the United States without admission or inspection around November 2022. They were ordered removed *in absentia* due to being hospitalized at the time of their preliminary hearing in immigration court on December 14, 2022. They, by and through their legal counsel, submitted an emergency motion to stay removal and motion to reopen their removal proceedings with the immigration court on October 16, 2025.
3. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention based on their own policy issued on July 8, 2025 and the Board of Immigration Appeals' September 5, 2025 decision holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
4. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

5. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
6. Accordingly, due to the danger they are in as a non-binary person, due to their unmet medical needs, and due to their unlawful detention, Petitioner seeks a writ of habeas corpus requiring that they be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

### **JURISDICTION**

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Northwest State Correctional Facility in St. Albans, Vermont.
8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the District of Vermont, the judicial district in which Petitioner currently is detained.
11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Vermont.

### **REQUIREMENTS OF 28 U.S.C. § 2243**

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

#### **PARTIES**

14. Petitioner Mx. Molina Trejo is a citizen of Honduras who has been in immigration detention since on or around October 9, 2025. After arresting Petitioner at the Canadian border, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
15. Respondent Greg Hale is the Superintendent of Northwest State Correctional Facility, where Petitioner is detained. He has immediate physical custody of Petitioner and is sued in his official capacity.
16. Respondent David W. Johnston is the Vermont Sub-Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations. As such, David W. Johnston is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

17. Patricia Hyde is the Acting Boston Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations. As such, Patricia Hyde is Petitioner's custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.
18. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible for ICE's actions in detaining non-citizens and is sued in his official capacity.
19. Pete R. Flores is the Acting Commissioner for U.S. Customs and Border Protections. He is responsible for CBP's actions in detaining people near the border and is sued in his official capacity.
20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
21. Marco Rubio is the Secretary of State of the United States. He is responsible for the administration and enforcement of the Immigration and Nationality Act and other laws relating to immigration. He is sued in his official capacity.
22. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

#### FACTS

23. Petitioner suffered  in their native Honduras and in Mexico, where they won asylum from Honduras. Petitioner entered the United States

around November 2022 with the intent to seek asylum and has not left the United States since. They were ordered removed *in absentia* due to being hospitalized at the time of their preliminary hearing in immigration court on December 14, 2022. They did not become aware of the removal order until two years later.

24. Petitioner, by and through their legal counsel, submitted an emergency motion to stay removal and motion to reopen their removal proceedings with the immigration court on October 16, 2025 on the basis of their extreme fear of being returned to either Honduras or Mexico.
25. They U.S. Customs and Border Patrol arrested Petitioner at the Canadian border on or around October 9, 2025. Petitioner has been detained at NWSCF since.
26. Petitioner identifies as non-binary and has feminine aspects to their appearance but is being held in a men's prison. They have already suffered from sexual harassment at the hands of men in NWSCF because of their non-binary appearance, including men making unwanted and threatening sexual advances toward them.
27. Petitioner has neuropathy due to receiving past radiation and chemotherapy for liver cancer. They require multiple medications to manage the neuropathy, including  Petitioner is currently not receiving all their medications and the medications they are receiving are not on the correct schedule.
28. Petitioner is in significant physical and emotional pain due to not being on their correct medication schedules. They were told by NWSCF they need to wait for a psychiatrist appointment to get on the correct medication schedule.

29. Petitioner entered the U.S. around November 2022. On information and belief, the Department of Homeland Security (“DHS”) has alleged that Petitioner was not previously admitted or paroled into the United States.
30. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at \*23 (D.D.C. Aug. 29, 2025).
31. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not currently “seeking admission” to the United States. *See Aguiriano Romero v. Hyde*, \_\_ F.3d \_\_, No. 25-11631, 2025 WL 2403827, at \*1, 8-13 (D. Mass. Aug. 19, 2025) (Murphy, J.).
32. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.
33. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1231(a) because even though they have a removal order, that removal order was put into effect in December 2022. The “removal period” in which DHS shall detain a person ordered removed only lasts for 90 days after a removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A). Additionally, Petitioner has filed a motion to reopen their removal proceedings due to never having had the opportunity to apply for asylum.

34. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Aguiriano*, 2025 WL 2403827, at \*1, 8-13 (collecting cases).
35. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because they have not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).
36. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).
37. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon their request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
38. Petitioner requests release on humanitarian grounds or, in the alternative, such a bond hearing.

### **LEGAL FRAMEWORK**

39. Based on this allegation that Petitioner entered the U.S. without being inspected and admitted, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

40. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. This decision purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.<sup>1</sup>
41. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.
42. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.
43. Petitioner is being irreparably harmed by their ongoing unlawful detention without a bond hearing. *See Aguiriano*, 2025 WL 2403827, at \*6-8 (no exhaustion required because “[o]bviously, the loss of liberty is a . . . severe form of irreparable injury” (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because “[a] loss of liberty may be an irreparable harm”); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021)

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<sup>1</sup> The BIA's reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). *See also* Order dated Sept. 8, 2025, *Alfredo Jose Jimenez v. FCI Berlin, Warden*, Case No. 25-cv-326-LM-AJ (D.N.H.) (Slip op. at 24, n. 9) (“the court is not persuaded by the BIA's analysis in” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)).

(citing *Bois v. Marsh*, 801 F.2d 462 468 (D.C. Cir. 1986), for proposition that “[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest”). Their loss of liberty is particularly egregious given that Petitioner is being sexually harassed in detention and is suffering physical and mental anguish due to not have appropriate access to their medications.

44. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding “exhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation” of the relevant statute).
45. There is no statutory requirement for Petitioner to exhaust administrative remedies. *See Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at \*4 (D. Mass. July 7, 2025) (“[E]xhaustion is not require by statute in this context.”).
46. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

### CLAIMS FOR RELIEF

#### COUNT ONE

#### **Violation of Fifth Amendment Right to Due Process--Unlawful Punishment; Freedom from Cruel Treatment and Conditions of Confinement**

47. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
48. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process Clause] protects."

*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Fifth Amendment to the U.S. Constitution establishes due process protections for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas*, 533 U.S. at 693 (internal quotations omitted)). The Fifth Amendment further guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The government violates this substantive due process right when it subjects civil detainees to treatment and conditions of confinement that amount to punishment or does not ensure the detainees' safety and health.

49. Respondents have violated Petitioner's Fifth Amendment substantive due process rights by subjecting them to conditions of confinement that amount to punishment. Petitioner is suffering from debilitating physical and psychological symptoms due to Respondents not administering appropriate medications to Petitioner. Petitioner is also suffering from sexual harassment and fear of sexual assault due to Respondents detaining Petitioner in a facility that does not match their gender identity.

## **COUNT TWO**

### **Violation of 8 U.S.C. 1226(a) and Associated Regulations**

50. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
51. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
52. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing.  
*See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
53. Petitioner has not been provided with a bond hearing as required by law.
54. Petitioner's continuing detention is therefore unlawful.

**COUNT THREE**

**Violation of Fifth Amendment Right to Due Process  
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))**

55. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
56. Because Petitioner is a person arrested inside the United States and are subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receives a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.
57. Petitioner has not been provided with a bond hearing as required by law.
58. Petitioner's continuing detention is therefore unlawful.

**COUNT FOUR**

**Violation of Fifth Amendment Right to Due Process  
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)**

59. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
60. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).
61. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. CONST. amend. V.
62. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally,

may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still “on the threshold”).

63. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001).
64. The Supreme Court has thus “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).
65. Petitioner was arrested inside the United States and are being held without being provided any individualized detention hearing.
66. Petitioner’s continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

**COUNT FIVE**  
**Violation of Fifth Amendment Right to Due Process**

**(Substantive Due Process)**

67. Petitioner incorporates the preceding paragraphs as if fully set forth herein.
68. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a “reasonable relation” to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).
69. Petitioner’s detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

**PRAYER FOR RELIEF**

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

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the District of Vermont;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Declare that Petitioner’s detention is unlawful.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on conditions this Court deems just and proper, or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 USC § 1226(a) within seven days;
- (6) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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/s/ Jill Martin Diaz  
Jill Martin Diaz, Esq.  
Vermont Asylum Assistance Project  
P.O. Box 814, Elmwood Ave.  
Burlington, VT 05402  
jill@vaapvt.org  
*Pro Bono Counsel for Petitioner*

DATED this 17<sup>th</sup> day of October 2025.