UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GENESIS ARIANNY PEREZ-PUERTA.	§	
	§	
	§	
Petitioner,	§	
v.	§	**NO. SA-25-CV-01476-OLG**
	§	
JOSH JOHNSON, ACTING DALLAS.	§	
FIELD OFFICE DIRECTOR,	§	
et al.,	§	
	§	
Respondents.	§	

PETITIONER'S REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

INCORPORATION BY REFERENCE

1. Petitioner incorporates by reference the argument and record citations in Dkt. 1 and 3 and the Exhibits to be filed in conjunction with this Reply. Reply adds updated Exhibits and authorities and does not seek relief beyond what the prior motion requested, except as expressly noted in Section 54.

INTRODUCTION

2. Respondents' opposition does not justify continued detention. The immediate custodian has not filed a verified return. The record confirms that Petitioner is detained under 8 U.S.C. § 1226(a) and is eligible for release or a constitutionally adequate custody hearing. Petitioner's amended filing adds evidentiary exhibits including Form I-589 and Temporary

Protected Status (TPS) and does not add a new claim or a new party. Petitioners counsel learned of the existence of the latter documents only on December 3, 2025.

PROCEDURAL POSTURE

3. Service order issued November 17, 2025, by the Honorable Orlando L. Garcia, United States District Judge.
4. USPS tracking shows service on Warden Rose Thompson on November 20, 2025 at Karnes County Residential Center, 409 FM-1144, Karnes City, TX 78118.
5. Petitioner provided Service to Mary F. Kruger, Chief, Civil Division, 601 NW Loop 410, Suite 600, San Antonio, TX 78216, with the return receipt indicating service by mail on November 21, 2025 *See* Docket __.
6. The United States Attorney's Office, through Justin R. Simmons, US Attorney, in a Response filed by Anne Marie Cordova, Assistant United States Attorney, responded for DHS/ICE on November 25, 2025. *See* Docket #__.
7. No verified return from the custodian had been filed and no extension sought by December 1, when Petitioner filed for Nunc Pro Tunc acknowledgement of Service on respondent Warden.
8. Later that day, the Court entered that return receipt, which showed receipt by Warden on November 20, 2025.
9. Petitioner does not have actual knowledge whether the US Attorney received the packet from the Attorney General, though the Response intimates that they did not (e.g., Petitioner's husband "allegedly" filed an I-130).
10. Counsel for Petitioner is admitted *ad pro hac vice* in the Western District for this case; therefore, he could not file the Exhibits electronically until after the initial filing was

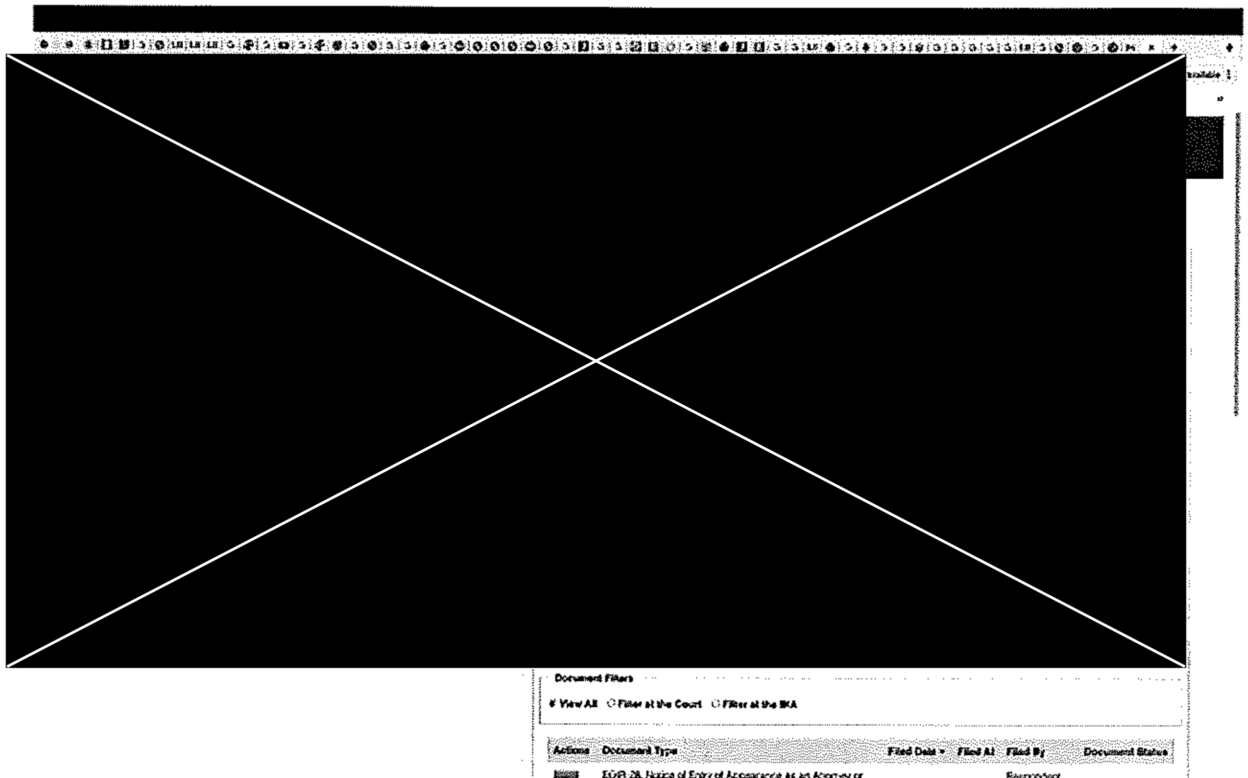
uploaded; therefore, the documents are being filed to ensure the Court can consider the Exhibits incorporated by reference.

11. Petitioner has filed an Appendix in CM/ECF, with Exhibits 1-4 the same as were originally filed with the Court by mail and served upon the US Attorney General by mail contemporaneously with the Petition and TRO. Exhibit 5, Petitioner's Form I-589 and Supporting Documents, as well as Exhibit 6, Petitioners TPS application, grant, and application for renewal are included. The latter two are newly included as additional evidence for the same issues raised in the original Petition and TRO. This is to ensure the Court can consider the exhibits incorporated by reference.
12. Now Petitioner files this Reply to Response by Government Respondents, inclusive of new evidence and additional facts to support the claims previously raised.

FACTS

In addition to the facts stated in the original filing:

13. Petitioner was issued an Order of Release on Recognizance under 8 U.S.C. §1226January 14, 2022, conditioned on the following principles: 1) no consorting with criminals or gang members, 2) not to commit crimes while Released, 3) that any violation of 1-2 could result in revocation of her *employment authorization document* [emphasis added], 4) and that any violation of these conditions may result in being taken in to ICE custody or being criminally prosecuted. *See* Exhibit 5C5-8.
14. At that same time, Petitioner was issued a Notice to Appear on February 14, 2028. *See* Exhibit 5C9-11As of the filing date of this Reply, it is still marked "Case Pending." *See* below



15. Petitioner filed a form I-589 Application for Asylum with Supporting Documents. dated December 16, 2022. See Exhibit 5A. It has been nearly three years since that filing, much more than 180 days allowed for review by statute. *See* 8 U.S.C. 1158(c)(5)(A)(iii).

16. Petitioner had permission to work in the United States (*See* Exh. 5C5-8) and has done so. *See* Exhibit 1c (Employment Reference and 17 Letters Attesting to Good Character (includes supervisor).

17. Petitioner filed for Temporary Protected Status (TPS, See Exhibit 6) on October 23, 2023.

18. Petitioner was granted TPS (also Exhibit 6) on May 31, 2024, through Apri 2, 2025.

19. Petitioner married on December 27, 2024, to a U.S. Citizen born and raised. *See* Exhibits 1b, 1d.

20. Petitioner's husband filed a form I-130 submitted on March 29, 2025, Receipt No. *See* Exhibit 1a.

21. Petitioner duly filed for renewal of TPS and received a Form 797-C indicating receipt. *See* Exhibit 6. She had no reason to think she had been denied renewal.

22. DHS revoked TPS for its 2023 Designation and the Supreme Court granted a stay to leave the revocation in place on October 3, 2025. The case is remanded to the Ninth Circuit. *Noem v. National TPS Alliance, et al* 606 U.S. __ (2025).[1] To be clear, there has been no ruling on the merits on October 3 without ruling on the merits. This casts doubt over Petitioner and 350,000 Venezuelans that heretofore resided in the U.S. with legal status. *See* Exhibit 6.

23. Petitioner did not violate the terms of her Release on Recognizance, and she has no criminal record.

24. Petitioner was taken into custody by ICE on October 17, 2025. No violation of her release on Recognizance was stated.

25. Petitioner was detained on October 17, 2025 (See Exhibit 3) with no violation of her Release on Recognizance stated. This had heretofore been good until her Individual Hearing Date of February 14, 2028. *See* Exhibit 4.

26. Petitioner's Motion for Bond was denied on October 30, 2025. *See* Exhibit 2.

PETITIONER PATHS TO PERMANENCE

1. HER I-130 BY MARRIAGE

27. Petitioner's I-130 speaks for itself. There is substantial proof in Exhibits 1-2 to show the marriage's validity and reality. It is only a matter of time before the I-130 is granted.

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[1] Fresh enough to lack a page number.

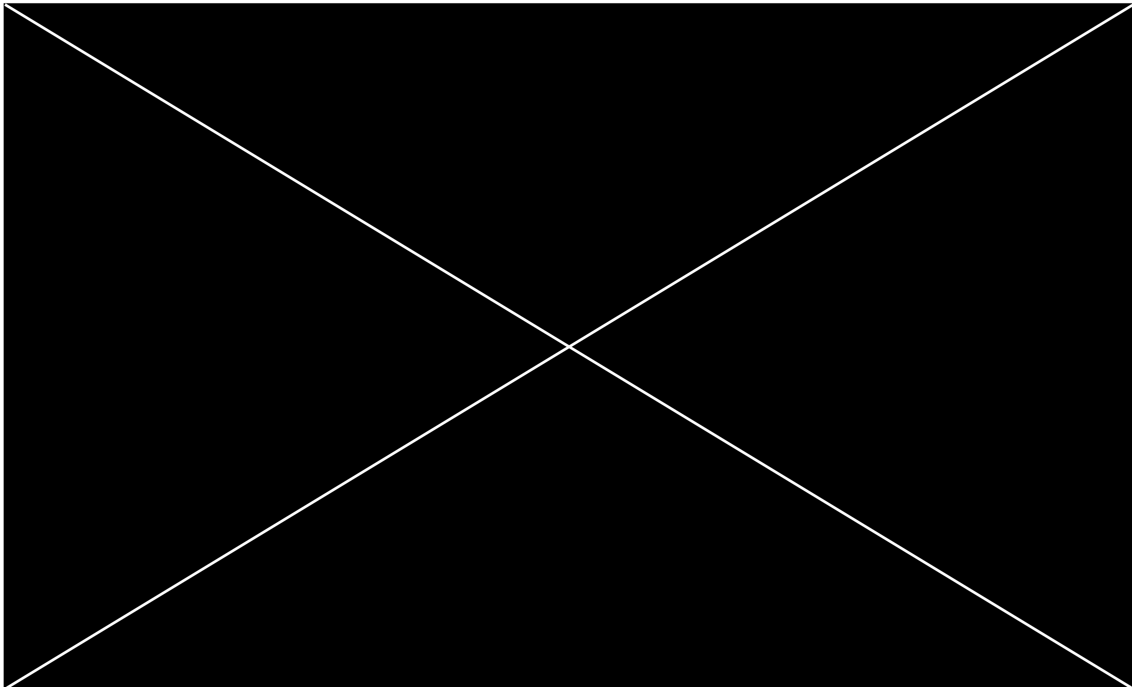
28. Will this Court, or if appealed, the Fifth Circuit, agree? Respondent pleas for such agreement, and whether yes or no here, feels this may be appealed to the Fifth Circuit. If disagreement between U.S. Circuits then exists, the sooner the case is appealed to the Supreme Court, the better, as ten or hundreds of thousands, if not millions, may be affected by the DHS/ICE policy and ultimate adjudication thereof.

2. **<u>TEMPORARY PROTECTED STATUS</u>**

29. Petitioner had TPS from or still has TPS status, dependent upon litigation mentioned above, for which the merits have not yet been ruled upon. In light of her other equities, it strikes as anything but equitable to remove her while this litigation cycles through the courts. See *Noem v. National TPS Alliance.*

3. **<u>ASYLUM</u>**

30. Finally, there is Petitioner's I-589 Application for Asylum. Her case for political persecution



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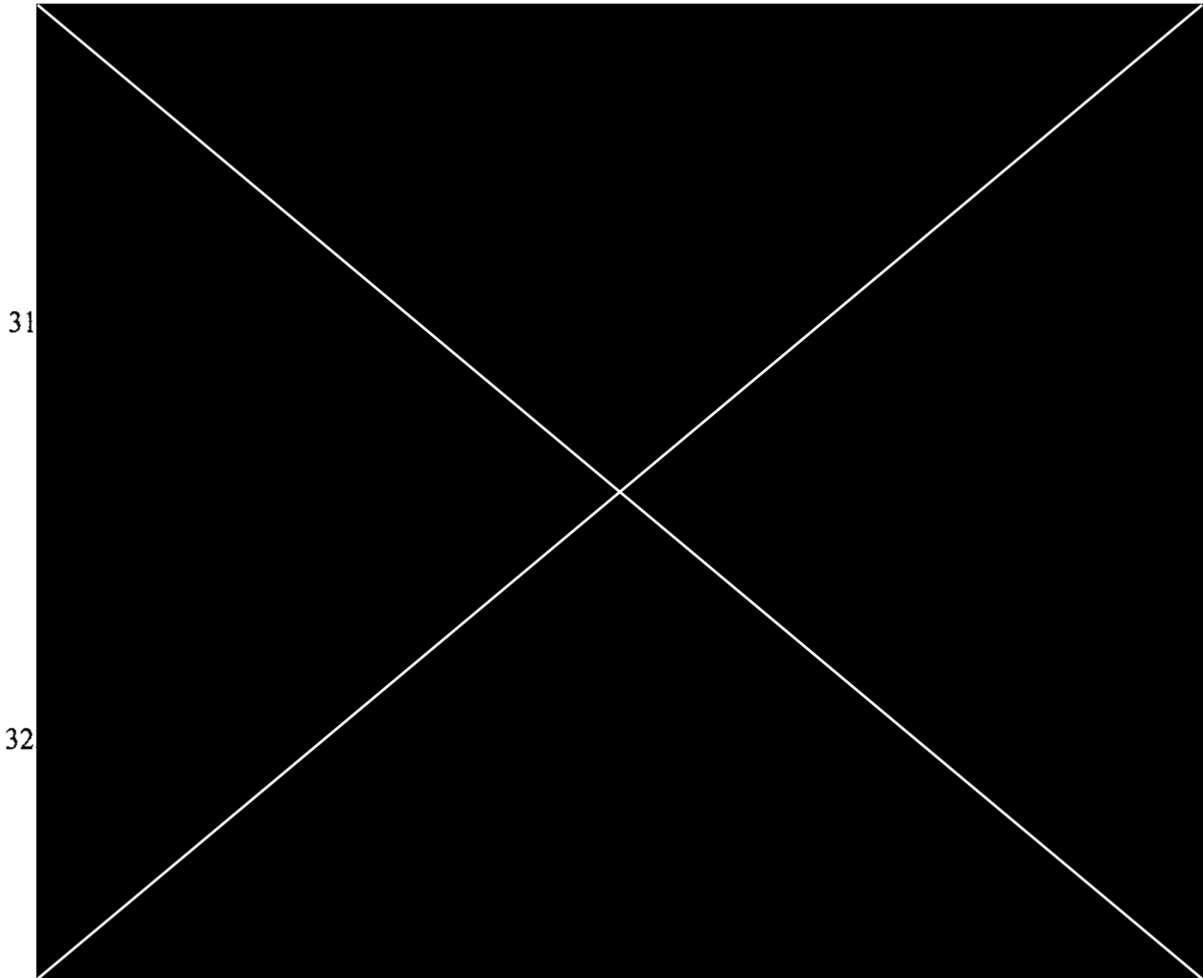

While one can argue that these actions seem incongruous with the ending of TPS by DHS, it is inarguable that one cannot be repatriated by plane at present, and "Boating to Venezuela" is, in all seriousness, a bad idea.

33. Detention is excessive in relation to its purposes. "Public benefit" is clearly a calculus, and it can be tangible or intangible. Intangibles can be tallied, if not measured the same way by all. Both Respondent's release, and grant of asylum, in a world where immigration judges are allowed to make judgments, stand a very good chance under these measures.

34. Finally, by statute her outcome should have occurred six months after filing. 8 U.S.C. §1158(d)(5)(A)(iii). Filed near the end of 2022, it has been nearly three years.

ARGUMENT

35. The Government's argument against Jurisdiction and Likelihood of Success are undertaken in the Response in an effort to disqualify Petitioner.

36. The government's argument hinges upon three items: 1) the validity of DHS/ICE policy promulgated in 2025 to deny that immigration courts have jurisdiction over bond issues in concert with 2) the Board of Immigration Appeals decision in *Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025*)*, for which the chief support for this statutory interpretation is 3) *Jennings v. Rodriguez,* 583 U.S. 281 (2018). In fact, Jennings is essentially copied in *Hurtado* and in all Denial of Bond Orders by immigration judges, including in this case. *See* Exhibit 2. In other words, if one were to read the Order denying bond, one reads the pull-quotes from *Jennings,*[2] but with two key additions.

37. In their standard form Denial of Bond, Respondents use two sentences that bootstrap a conclusion to *Jennings* that Justice Alito, writing for a 6-3 majority, did not make. The first sentence is "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." Cited to *Hurtado.*

38. The second invention of the BIA on the Denial of Bond form is, after citations stating that mandatory detention is required for the duration of removal proceedings, in which the BIA is also cribbing paragraphs from *Jennings,* this time without citation, it then adds its own BIA-invented conclusion, "Thus, an Immigration Judge lacks authority to hear a bond. [*Citing*] *Matter of M-S*, 27 I&N Dec. 509, 515-19 (A.G. 2019)." It is not until midway through the

[2] Justice Alito should receive royalties.

next paragraph, when the Order returns to quoting *Jennings*, that the BIA cites *Jennings*. Then the BIA quotes *Hurtado* at 218, 3rd paragraph, wherein it cites *Jennings*.

39. Justice Alito did not state either nearly identical idea in *Jennings,* wherein the Court conducted a painstaking review deconstructing the INA and many of its machinations. In fact, the Supreme Court was ruling on length of detention, and whether an alien could be held for the length of proceedings. They said one could, albeit without specifically stating whether two years, four months is excessive. Alas, the Court took the opportunity to invalidate *Zadvydas* v. Davis, 533 U.S. 678 (2001), in which the Ninth Circuit interpreted that a vague section of the INA called for a bond hearing every six months. *Jennings* at 287. Yet in doing so the Court *Jennings* never reached the idea that bond should be denied in immigration cases "across the Board."[3] In fact, the Court specifically acknowledged remedies, via bond or other method, stating that

> *Zadvydas*'s reasoning is particularly inapt here because there is a specific provision authorizing release from §1225(b) detention whereas no similar release provision applies to §1231(a)(6). With a few exceptions not relevant here, the Attorney General may "for urgent humanitarian reasons or significant public benefit" temporarily parole aliens detained under §§1225(b)(1) and (b)(2). 8 U.S.C. §1182(d)(5)(A). *Id.*

40. To state this even more plainly, the *Jennings* Court not only stated release/bond remedies exist for the sections argued by Respondents to have none, it also called out sections that specifically prohibit bond, never naming §§1225(b)(1) and (b)(2) among them. This is consistent with §1226, which grants the Attorney General the right to detain and release detainees. Immigration judges are appointed by the Attorney General to preside over DHS/ICE enforcement proceedings. "The primary mission of the Executive Office for

[3] Quotations are counsel's around an old saw. Now he knows what that expression means.

Immigration Review (EOIR)," wherein immigration judges sit, "is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings." *See* https://www.justice.gov/eoir/about-office. Authority over enforcement was transferred to the Department of Homeland Security in its formation law in 2002—the period following the attacks on 9/11/01. *See* Homeland Security Act of 2002, Public Law 17-296, §§402, 403, 441.

41. Petitioner was Released on Recognizance under §1226(a), which vests the Attorney General with the power to release an arrested alien on bond or conditional parole. Respondent's release sheet states it occurred under §1226(a) (a.k.a Section 236 of the INA). *See* Exhibit 5C5. This is why Respondent pleads that is the statute under which she is being held, is per the power of the Attorney General to detain or release under §1226(a). There is no accusation by DHS/ICE of Respondent violating her release conditions. There was no reason to arrest her, none given at the time, as she could simply continue to obey the law, work and live with her American husband. If we are to accept that mandatory detention applies to her as an asylum seeker by plain language under §§1225(b)(1) and (b)(2), we can also accept the plain language of §1226(a) that authorizes Petitioner's release. Without either statute expressly prohibiting the function of the other, they present as a 1) detention, with 2) options to be released, living side by side, without conflict. She was, in fact, detained when she entered the country, but she was released without jail. *See* Exhibit 5C5-11.

42. Surely if Justice Alito had meant to exclude bond in all cases in *Jennings*, thereby taking jurisdiction over INA matters away from immigration judges, the rightfully anointed administrative arm under the DOJ, he would have written it. Living in or out of detention is a

fundamental element of immigration law. Why relieve the DOJ of their statutory function? In reverse method of stating Petitioner's point, Justice Alito did not rule that immigration judges can no longer decide bond cases. Nor did he state that they could set them and hear them, but in doing so state that they do not have jurisdiction, thereby denying bond motions on such basis. Do all this without a specific statutory or Article III court-ordered prohibition? In *Jennings*, the Court made clear it did not want judges straying from the statutes unless required, adhering to "the canon of constitutional avoidance," which "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one [plausible] construction." *Clark* v. *Martinez*, 543 U.S. 371, 385, as quoted in *Jennings* at 543 U.S. 371. Not having jurisdiction would be a one-time ruling (?) for 1) an Article III court 2) with jurisdiction 3) to apply, and 4) for the DOJ/DHS/ICE to follow. It would not be a "policy change" as announced by the DOJ/BIA to make new law without its passing by Congress, much less being vetoed or signed into law by the President.

43. In Respondent's case (and many others, as common practice in an administrative agency multiplies exponentially), the immigration court held a Bond Hearing with a pre-determined outcome, not a finding of fact followed by a determination. *See* Exhibit 2. It was *res judicata* based on the Notice to Appear stating the most generic "You are in the United States without being admitted." It is hard to comprehend the lost human capital in the EOIR making a charge in a Notice to Appear, setting a bond hearing for nearly every request, requiring briefs and a formal hearing, then denying the bond based on lack of jurisdiction. Why go through the exercise, except to paper up a claim that Due Process is being provided, when in fact it is all Process with nothing Due to the detained.

44. The previous paragraph stated one "public benefit" to support release of a detainee with no criminal record. This is the reduction of spent human capital, i.e. taxpayer expense. To put this literally, The National Immigration Forum and the American Immigration Lawyers Association have estimated per day inmate cost at $150-$250. That is a wide range, but in Respondents case, two years four months is 823 days, give or take a day or two. This amounts to between $123,450 and $213,250 charged to the American taxpayer or Respondent's detention, with so much as an accused crime, not even a traffic ticket. It's a civil violation, whereas its criminal equivalent, Trespassing, you'd be hard-pressed to get two years. Cutting that detention expense is a public benefit, which traditionally has been offered to quaqlified detainees, thus meeting the test in *Loper*. Petitioner presents an extreme case of a political asylum seeker from a country's government designated narco-terrorist, directly accused as such by the US DOJ (*See* Exhibit 5). To take this reasoning further, if DHS/ICE fills the 1.6 million beds soon to be available for detention as authorized by the *One Big Beautiful Bill Act*, Pub. L. No. 119-21, this is a cost of $240 million to $400 million per day, $1.6 billion to $2.8 billion per week, $83.2 billion to $145.6 billion per year, or roughly 10 to 20 percent of the Department of War budget. If this estimate seems too high, divide it in half—the ambition is there--and it still seems massive, from the yearly budget expense down to the singular expense of housing Ms. Perez-Puerta. She would otherwise be supporting herself by working and paying taxes while attempting to obtain a positive outcome in immigration court.
45. One meaning of "public benefit" can be to help the public financially. Another is to keep criminals locked away. Detaining Petitioner accomplishes neither.
46. A third public benefit is to keep families together where reasonable under the circumstances. (Please bear with counsel. He attended the funeral of a 46-year-old man on December 3, 2025.

He left behind a loving family-- a wife and three young children—after suffering a dreadful disease. Overflowed by 100 a Methodist church in Highland Park, Texas, that seats 800. This was a testament to, as the minister characterized it, Eulogy Success, not Business Success; i.e., a testament to character, a beloved figure who touched many lives with friendship and kindness.) It is a simple truism to state that a spouse coming home at night to their partner in life is a public benefit that cannot be oversold, and that being present for friends and co-workers has value for the populace we cannot measure.

47. It is against this backdrop that Respondent's argument of "no net gain" is seen in stark relief. *See* Response at 2. This means Petitioner has no real use for release from jail (granted habeas and/or awarded injunctive relief) while her immigration proceedings are pending. The idea that, because she may lose her case (or is it assumed by Respondents?), she may as well spend the interim in jail, because 'it's all the same, really,' is extraordinary. She has not even been accused of a crime. This is an administrative act, not the follow-up to armed robbery of a liquor store. To anyone who agrees that being in jail is the same as being out of jail, counsel invites them to be The People's Guest at Karnes County Residential Center for a couple months. Just for the cuisine! We taxpayers are apparently happy to pick up the check.

48. Going back a few paragraphs to reanimate the discussion of announced policy as an alteration of encoded statute, it is helpful to return to the DHS/ICE policy that led to *Hurtado*; specifically the interpretation, with absolute certainty, on repeat in *Hurtado*, of that which neither the INA, nor the Supreme Court, has said it says: that asylum seekers need to be jailed with no exceptions for the length of their immigration proceedings. In its Section III.B., Respondents look to cases that called out vagaries in the INA statutes and interpreted them

by a particular methodology of construction, then announce the argument as statutory text that is "unambiguous." Response at 5.

49. The Fifth Circuit has looked at the issues related to statutory interpretation directly, albeit in distinguishable circumstances, in both INA cases and not. Respondents bring what seems like, at first blush, might be on point, though Petitioner no longer agrees that the terms "admitted" versus "applicant for admission" are dispositive to our outcome. The issues will resolve in Petitioner's favor if an exception or cause is ruled to grant Admission, and in the meantime get out of Karnes. Respondent's example promotes the sorting of "nuances associated with the terms 'admitted' and 'admission' while analyzing a different INA provision that is not at issue here (8 U.S.C. § 1182(h))," Response at 6, *citing Martinez v. Mukasey,* 519 F. 3d 532, 541–42 (5th Cir. 2008). While calling into question the clarity of the INA, *Martinez* expressly states that

> ...[W]e first accord substantial deference, if warranted, to the BIA's interpretation of the INA. *Omari v. Gonzales*, 419 F.3d 303, 306 (5th Cir.2005) (quoting *Smalley v. Ashcroft*, 354 F.3d 332, 335-36 (5th Cir.2003)). Having afforded any necessary deference, we then "review de novo whether the particular statute that the prior conviction is under falls within the relevant INA definition." Id. (citations omitted). [Their parenthetical].

50. *Martinez*, *Omari* and *Smalley* are all progeny of *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984). In sum, *Chevron* required courts to defer to an administrative agency's reasonable interpretation of an ambiguous statute for which that the agency is responsible. *Smalley* announces itself as giving "*Chevron* deference" in the context of the BIA's interpretation of a crime involving moral turpitude (CIMT). *Smalley* at 335-36. The other cases follow suit in their respective subject matters as to *Chevron.*

51. All of these cases either do or would proclaim deference to the BIA, or administrative agencies in general. That concept of deference is no longer good law. Last year, here came *Loper Bright Enterprises v. Raimondo* 603 U.S. 369 (2024), in which the Supreme Court overruled *Chevron* deference with a 6-3 vote. In reaching its conclusion, the Court found that when federal agency rulemaking goes beyond administering laws as passed by Congress, the agency instead engages in legislating. The majority opinion noted that under the Separation of Powers doctrine, the framers of the Constitution envisioned that courts would have the final interpretation of law — not the Executive Branch. The Court held that the judiciary has the sole prerogative to interpret the law, and that Congress's Administrative Procedure Act of 1946 (APA) indicates agencies are not entitled to deference when interpreting statutes. The Court's decision (authored by Chief Justice Roberts) emphasizes the text of the APA, which is designed to impose a "check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in the legislation creating their offices." Op. 13 (citations omitted). The BIA's invention of jurisdiction blocks previously unstated is an example of such zeal.

52. While eliminating *Chevron* doctrine deference, the Supreme Court's decision did not instruct lower courts to completely ignore agency expertise, particularly when the agency interpretation has been long-standing and "consistent over time." Op 8, 16-17. In the instant case, this could be interpreted to require return to the general manner in which DHS/ICE and the immigration courts operated for decades before *Hurtado*, not the sea change prompted by *Hurtado* two months ago. *Hurtado* and its kin forced a 180 at very high speed, completely altering the rules related to detention, as well as removing the plain-language grant of

authority to the Attorney General, The Eastern District has already cited *Loper* in *Texas v Becerra,* 6:24-cv- 211-JDK (ED Tex, 2024).

53. Other courts have already ruled against *Hurtado.* Dozens of district courts in the US have issued opinions rejecting the BIA's interpretation that immigrants who entered the US without inspection are ineligible for bond hearings. These decisions often appear as unpublished orders or in specific habeas corpus petitions. Some key examples: U.S. District Court for the Western District of Washington: the primary class-action case is *Rodriguez Vazquez v. Bostock*, Case No. 2:25-cv-05240-TMC, in which Judge Tiffany M. Cartwright found the ICE policy of denying bond hearings to be a violation of the Immigration and Nationality Act; U.S. District Court for the District of Massachusetts (First Circuit): Multiple judges have ruled against the government's position in cases such as *Romero v. Hyde*, *Martinez v. Hyde*, and *Gomes v. Hyde*; U.S. District Court for the Eastern District of New York (Second Circuit): A case involving Mario Artiga challenged the policy in this district; U.S. District Court for the Eastern District of Michigan (Sixth Circuit): The court in *Contreras-Cervantes v. Raycraft* noted that the "overwhelming majority" of district courts disagree with the BIA's interpretation; U.S. District Court for the Southern District of Texas (Fifth Circuit): Multiple habeas petitions have been filed and granted; U.S. District Court for the Northern District of California (Ninth Circuit): The class action *Maldonado Bautista v. Noem* is pending there.
54. The collapse of *Chevron*, and the rise of *Loper* maker clear that *Hurtado* is ripe for review by this Court. In addition to relief requested in the original Petition and TRO, Petitioner pleads that *Hurtado* and any other case stripping the immigration courts of jurisdiction should be overturned.

THE TRO FACTORS FAVOR IMMEDIATE RELIEF

1. Likelihood of success on the merits,
2. Irreparable harm from continued confinement,
3. Balance of equities,
4. Public interest,
5. The custodian's noncompliance with § 2243 warrants an order to show cause and conditional relief.

REQUESTED RELIEF

Petitioner respectfully requests that the Court:

1. Grant the Petition and order immediate release on appropriate conditions, or
2. In the alternative, order a custody hearing within 48 hours with the safeguards described above and require written findings, and
3. Enjoin transfer of Petitioner outside this District without prior leave of Court pending compliance and final disposition, and
4. Grant such other relief as the Court deems just.

December 4, 2025

Respectfully submitted,

/s/ Sean P. Cordobés
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