

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

MARIA BELTRAN-MENJIVAR,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 1:25-cv-253-H

**PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION &  
MOTION FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

Petitioner, Maria Beltran-Menjivar, is a pregnant mother with no criminal history who has been living in the U.S. for more than 13-years after being released by DHS pursuant to 8 U.S.C. § 1226 to allow her 8 U.S.C. § 1229a proceedings to be adjudicated on the non-detained docket. It is undisputed that under the relevant laws as they were interpreted in 2012 Mrs. Beltran-Menjivar was entitled to the protections and procedures of 8 U.S.C. § 1226, including a bond hearing before an IJ. It is also undisputed that she showed up to every hearing and/or required check-in with ICE. This included the check-in at the Dallas ICE-ERO Field Office a few weeks ago where she was suddenly arrested and detained by ICE. A bond was not set and she currently will have no opportunity for a bond hearing before an IJ. The government makes no attempt to provide any justification for her detention beyond its claim that its allowed to detain her for the duration of proceedings based on decisions issued nearly seven years after her release which completely changed the way the relevant statutes are applied.

The instant petition and accompanying motions ask this Court to answer one question: Does the U.S. constitution permit Mrs. Beltran's civil detention, under the specific facts presented here, on nothing more than the government's claim that decisions issued years after her release says they (ICE) can subject her to detention for the duration of proceedings—and thus, no additional justification (e.g. flight or danger) is required? In this case, involving a pregnant mother who was released thirteen years ago pursuant to § 1226 and has been treated as though her liberty would not be taken while § 1229a

proceedings were pending provided she did everything she was asked, the answer to this question surely must be: No.

For the reasons set forth below, Petitioner respectfully requests the Court grant the relief requested by finding her detention based on the retroactive application of *Matter of M-S-* and *Matter of Hurtado* unconstitutional either because it violates the principle against retroactivity or based on a violation of her Fifth Amendment due process rights.

### **RELEVANT FACTS UNDISPUTED BY THE GOVERNMENT'S RESPONSE**

The following is a non-exhaustive list of some of the most relevant facts and procedural circumstances which, after the government's response was filed, appear to be undisputed:

- When Mrs. Beltran-Menjivar entered the country without inspection and was placed in § 1229a proceedings after she was found to have a credible fear, there is no question that she was entitled to a bond hearing before an IJ under EOIR's interpretation of § 1225(b)(2)(A), § 1226, and 8 C.F.R. § 1003.19, as articulated in *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005).<sup>1</sup>
- Mrs. Beltran was released pursuant to an order of recognizance issued on a Form I-220A, as indicated on such forms, release in that regard is pursuant to § 1226.<sup>2</sup>
  - Mrs. Beltran has complied with every direction from ICE to check in at its field office pursuant to that release in 2012.<sup>3</sup>
  - For nearly 13-years, Mrs. Beltran was treated as though she was subject to § 1226.<sup>4</sup>

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<sup>1</sup> (ECF No. 1 pp. 15-17; ECF No. 11 p. 13.)

<sup>2</sup> (Reply Ex. 1 – Sample Form I-220A; Reply - Ex. 2 – I-220A Continuation Form.)

<sup>3</sup> (Reply - Ex. 2 – I-220A Continuation Form.)

<sup>4</sup> (ECF No. 1 pp. 16-17, 65-66, 72.)

- The § 1229a proceedings initiated by DHS in 2012 continued on the non-detained docket for the last thirteen years and remain pending. On April 26, 2023, Mrs. Beltran filed an application for cancellation of removal pursuant to 8 U.S.C. § 1229b(b) and a final in-person hearing on that application was scheduled for May 20, 2026;<sup>5</sup>
- Mrs. Beltran is currently pregnant, nothing about her circumstances as they relate to her § 1229a proceedings changed in the last decade. Nonetheless, a few weeks ago, Mrs. Beltran was arrested and detained when she went to the Dallas ICE-ERO Field Office as directed in accordance with the release on her own recognizance.<sup>6</sup> The government did not then and does not now claim her detention when checking in was based on her doing anything since 2012 when she entered EWI.
- The government's response does not provide a single permissible justification for Mrs. Beltran's current detention.<sup>7</sup> It does not and cannot claim she is a flight risk. Likewise, with no criminal history to speak of, the government's response does not and cannot claim she is a danger.<sup>8</sup> In fact, the government's response makes no attempt to justify her current civil detention after 13-years of being released pursuant to § 1226 and in accordance with the undisputed interpretation of the law at the time.

### ARGUMENT

At the outset, it is important to point out that the Government asks this Court to find Mrs. Beltran-Menjivar's current detention constitutional under facts that no court has ever found past constitutional muster. The government's response was completely devoid of a single case supporting its position that comes close to the facts here. This is no doubt the result of the fact that no court has ever suggested that the U.S. government may release an

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<sup>5</sup> (Reply – Ex. 3 – EAD Application Package which Includes Proof of Filing the Relief Application and the Final Hearing Notice.)

<sup>6</sup> (ECF No. 1 pp. 15-17.)

<sup>7</sup> (Compare ECF No. 1 pp. 15-17 and 60-73 with ECF No. 11 in its entirety.)

<sup>8</sup> (*Id.*)

EWI alien pursuant to § 1226 in accordance with the undisputed law at the time, and then, thirteen years later suddenly rip her from her life while her proceedings are still pending, without any violations of the law or her release conditions, and without even attempting to justify such detention with a valid basis (flight or danger).

The reason courts have never alluded to detention under the circumstances and facts of this case being constitutionally permissive is because such detention violates the repeated unequivocal statements made by the Supreme Court indicating that there must be a purpose served by civil detention. Specifically, the Supreme Court has explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all “persons” within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.<sup>9</sup>

Moreover, *Zadyvdas* left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the

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<sup>9</sup> *Zadyvdas v. Davis*, 533 U.S. 678, 693–94 (2001)

community.<sup>10</sup> Where no such justification exists detention without due process is unconstitutional.<sup>11</sup>

Here, the notion that Petitioner, who is not a flight risk or danger to anyone may be held without a bond hearing to determine if there is a special justification for such detention is contrary to the due process everyone was once afforded in this country.

Before moving on, it is important to point out that the actual mandatory detention provisions, § 1226(c), § 1231, and 8 C.F.R. § 1003.19(h)(ii), are simply a codification of circumstances typically believed to be indicative of flight risk or danger to the community. Whether it be as a result of having no ties in the U.S. for arriving aliens, or a criminal conviction indicative of danger, these detention provisions all are rooted in flight risk and danger, which are the only two justifications for depriving a human being of their liberty.

- I. **The government has repeatedly stated (in other litigation) that filing a habeas petition is the appropriate vehicle for aliens like Mrs. Beltran-Menjivar to challenge her detention as unconstitutional—including the *Jennings* and *Padilla* litigation it cites to as support for denying Mrs. Beltran-Menjivar any process whatsoever.**

The fact that a habeas petition like the instant one is not just a vehicle, but *the most appropriate vehicle* for Mrs. Beltran-Menjivar to challenge her detention as unconstitutional is just that—a fact. Nonetheless, the government argues that Mrs. Beltran-Menjivar is not entitled to habeas relief and cites to litigation in *Padilla v. Immigr. &*

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

*Customs Enft.*, to support this claim.<sup>12</sup> But in that exact case the government "insist[ed] that plaintiffs' detention without bond does not present due process concerns because each individual alien can file a habeas petition to challenge the legality of his or her detention."<sup>13</sup>

Likewise, every time the Solicitor General was pressed during oral arguments in *Jennings* on various case specific circumstances that may present constitutional questions about a particular alien's detention, the response was always that habeas petitions were available for such as applied challenges.<sup>14</sup> Simply put, every time the government has been forced to defend its application of mandatory detention to aliens for the duration of § 1229a proceedings in the context of a class action or nationwide injunction type of law suit, it has responded to constitutional concerns by pointing out both that habeas petitions are the appropriate vehicle for such claims and that habeas petitions provide ample constitutional protection to ensure aliens like Mrs. Beltran-Menjivar are not unlawfully detained.

In sum, the government's attempt to claim that a habeas petition is not appropriate here or are somehow barred by class action litigation in another part of the country, contradict its own repeated statements in the same litigation on immigration detention. Moreover, if aliens who have been permitted to live here for thirteen years do have procedural and substantive due process rights that prevent them from being arbitrarily

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<sup>12</sup> (ECF No. 11 pp. 15-20.)

<sup>13</sup> *Padilla v. Immigr. & Customs Enft.*, 953 F.3d 1134, 1145–46 (9th Cir. 2020), *cert. granted, judgment vacated*, 141 S. Ct. 1041 (2021).

<sup>14</sup> (See e.g., ECF No. 1-2 pp. 18-25.)

detained, it difficult to imagine facts which better illustrate when such detention is unconstitutional.

**II. The Doctrine Against Retroactivity—Repeatedly Applied in the Immigration Context—Compels Petitioner's Release.**

The government's response attempts to dismiss Mrs. Beltran-Menjivar's retroactivity arguments as inapplicable when in fact these arguments provide the most straightforward basis for granting Mrs. Beltran's release. This is illustrated by the government's own contentions on the issue, which are: (1) *Matter of Hurtado* does not apply because *Matter of M-S-* controls; and (2) the doctrine of retroactivity applies only "if the statute is punitive." Both arguments fail.

First, the government claims that *Matter of M-S-* not *Matter of Hurtado* controls Mrs. Beltran-Menjivar's detention, and as a result, the government appears to argue there is no retroactivity problem.<sup>15</sup> But this argument simply replaces the retroactive application of one case for the retroactive application of another case—the 2019 AG decision of *Matter of M-S-*. That decision left no doubt that it was announcing a complete change from the previous 14+ years of practice by explicitly overruling *Matter of X-K-* and stating in a footnote that the decision would not be effective for 90-days due to the significant change it made in the law.<sup>16</sup> Regardless of which one of the two administrative decisions (*M-S-* and *Hurtado*) drastically changing who is subject to mandatory detention for the duration of § 1229a proceedings the government claims is applicable to Mrs. Beltran-Menjivar, both

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<sup>15</sup> (ECF No. 11 p. 23.)

<sup>16</sup> *Matter of M-S-*, 27 I. & N. Dec. 509, 519 n. 8 (2019).

came years after she had been released pursuant § 1226, and therefore, application of either would be retroactive.

In its second attempt to dispense with the retroactivity problem it faces, the government claims that retroactivity is limited to "punitive" statutes.<sup>17</sup> The government's claim in this regard, however, is based on inapposite case law concerning sex offender registration.<sup>18</sup> The fact that the government relies on sex offender jurisprudence, rather than addressing the Supreme Court precedents specific to immigration proceedings cited by Mrs. Beltran-Menjivar, is telling of the faulty premise on which the government's argument rests.

A. Under *Vartelas*, the Inquiry is Whether New Consequences Attach to Past Events.

The Supreme Court provided the controlling standard for the retroactivity doctrine in *Vartelas v. Holder*, 566 U.S. 257 (2012). Reaffirming *Landgraf*, the Court held that the "essential inquiry... is 'whether the new provision attaches new legal consequences to events completed before its enactment.'"<sup>19</sup> In *Vartelas*, the "new disability" was the petitioner's inability to travel abroad without facing removal proceedings upon return—a consequence based on a criminal case completed prior to IIRIRA.<sup>20</sup> Crucially, *Vartelas*

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<sup>17</sup> (ECF No. 11 p. 23-24.)

<sup>18</sup> (*Id.*)

<sup>19</sup> *Vartelas v. Holder*, 566 U.S. 257, 273 (2012) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 282 (1994)).

<sup>20</sup> *Id.* at 269-71.

confirmed (again) that a petitioner need not demonstrate "reliance" on the prior law for the new law to be unconstitutional under the retroactivity doctrine.<sup>21</sup>

This prohibition against retroactivity applies with equal force to administrative decisions that overturn longstanding rules. When applying the doctrine of retroactivity in the administrative context the Fifth Circuit discussed the general rule/analysis in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019) stating:

[T]he leading case on administrative retroactivity instructs that any disadvantages from the 'retroactive effects' of deciding a 'case of first impression ... must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles. To apply that instruction, this court balances the ills of retroactivity against the disadvantages of prospectivity. If that mischief [of prospectivity] is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.<sup>22</sup>

In sum, retroactivity in the immigration context requires determining whether a new disability is being imposed on past conduct, and in the context of an administrative decision purporting to completely change the interpretation/application of laws, requires balancing the ills of retroactivity against the disadvantages of prospectivity. Simply put, the Constitution forbids the retroactive application of a new disability to past acts, regardless of whether that disability arises from a statute or an agency decision.

#### B. Application to Mrs. Beltran-Menjivar

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<sup>21</sup> *Id.* at 72 ("[T]he Government acknowledges, th[is] Court has not required a party challenging the application of a statute to show [he relied on prior law] in structuring his conduct.)(internal quotations omitted).

<sup>22</sup> *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019), *as revised* (Apr. 26, 2019)(internal quotations and citations omitted)(cleaned up extensively).

It is beyond dispute that *Matter of M-S-* articulated a complete departure from the prior rule, which allowed bond hearings before IJs for aliens who entered without inspection (EWI), were processed for ER, then placed in § 1229a proceedings after a positive credible fear finding was made in Mrs. Beltran-Menjivar's position. The decision expressly delayed its own effective date precisely because it would otherwise capture countless EWI aliens who had previously been released pursuant to § 1226 and *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005).

Mrs. Beltran was released 13 years ago and has since fully complied with every instruction given to her. To now subject her to § 1229a proceedings while detained, pregnant, and stripped of a bond hearing—based solely on a rule articulated seven years (or thirteen in the case of *Hurtado*) after her release and conduct—is the definition of imposing a "new disability" for past conduct.

Furthermore, this case demonstrates the many ills of retroactive application versus prospective application. Foremost among the many ills of retroactive application is the indisputable fact that it violates the core "due process interests in fair notice, reasonable reliance, and settled expectations."<sup>23</sup> Mrs. Beltran-Menjivar was released thirteen years ago and has reported to ICE as directed ever since. She has obeyed every instruction from the IJ to appear for hearings and timely file applications for relief. In short, she was given every reason to believe that as long as she did what was asked of her and did not violate

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<sup>23</sup> *Monteon-Camargo*, 918 F.3d at 430 (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015) (Gorsuch, J.)).

the law, she would remain free from restraint while her § 1229a proceedings were pending. These expectations were repeatedly confirmed over the last thirteen years. As a result of these expectations, she has an eight-year-old, is pregnant with another child, and built a life here. She did so because she expected that if she did her part (complied with everything and attended all hearings) that she would remain free from restraint until a final decision is made on her applications for relief before the IJ.

To be clear, Mrs. Beltran-Menjivar has always understood that if, at the conclusion of her § 1229a proceedings, she was ordered removed that she would have to leave. Her final hearing on her application for relief, however, was scheduled for May 20, 2026 when she was suddenly detained with no opportunity to take care of anything—much less the fragile emotions of her eight-year-old child.

The retroactive application of *M-S-* without any warning to Mrs. Beltran-Menjivar has many obvious ills: (1) she is currently having to suffer through her first trimester of pregnancy in ICE detention, (2) neither she nor her eight-year-old child had any reason to believe they would not see each other again when they left each other the morning she was detained unexpectedly by ICE, (3) she is currently being deprived of her liberty, ability to care for her child, and earning money to support her family based on her validly issued work authorization, and (4) retroactive application of *Matter of M-S-* thirteen years after release results in mandatory detention of an EWI alien who has been permitted to establish a life here for thirteen years under a statute which no matter when it has been interpreted was meant to apply only to those EWI aliens whose constitutional interests were minimal due to the fact that they were encountered near the border and shortly after entry.

The list of "ills" from retroactive application could go on, but it hardly seems necessary given the seemingly impossible task of imagining a single ill resulting from prospective application of *M-S-*. Mrs. Beltran-Menjivar cannot think of a single ill of prospective application only. And the government makes no attempt to provide one. Accordingly, it is Mrs. Beltran-Menjivar's position that retroactive application of either *Matter of M-S-* or *Matter of Hurtado* to her violates the rule against retroactivity.

C. Even Under the Government's "Punitive" Theory, Retroactivity Applies

Finally, the government's reliance on *Does 1-7 v. Abbott*, 945 F.3d 307 (5th Cir. 2019)—a sex offender registry case—ultimately supports Mrs. Beltran. In that case, the Fifth Circuit applied an "intents-effects" test: "If the intention of the legislature was to impose punishment, that ends the inquiry."<sup>24</sup> At its simplest, this test looks to whether the new law was meant to punish certain conduct.<sup>25</sup>

Here, the government has repeatedly argued in similar cases that Congress intended to subject EWI aliens to mandatory detention specifically to *target and deter* such conduct. While Petitioner maintains that IIRIRA's goal was not "mandatory detention for the duration of removal proceedings,"<sup>26</sup> if the government's assertions regarding deterrence are accepted, then the statute is punitive under the very test they cite. Consequently, even if the Court accepts the government's premise that detention is a deterrent punishment for

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<sup>24</sup> *Does 1-7 v. Abbott*, 945 F.3d 307, 314 (5th Cir. 2019)

<sup>25</sup> *Id.*

<sup>26</sup> (ECF No. 1 at 40-60.)

EWI aliens, the retroactivity analysis still ends in Mrs. Beltran's favor, barring the application of *Matter of M-S-* to her case.

**III. The government's attempt to switch Mrs. Beltran-Menjivar from being subject to § 1226 to being subject to § 1225(b)(2)(A) has been attempted and rejected in other cases.**

The government implicitly argues without providing any supporting authority (implicit or explicit) that DHS can simply decide to switch which "detention statute" an alien is subject to—and that it can do so whenever it wants and without any justification whatsoever. Indeed, that is precisely the facts here. Mrs. Beltran-Menjivar was released in 2012 pursuant to § 1226 and in accordance with the undisputed law at the time, then suddenly and without reason, ICE detained her 13-years later at a check-in based on decisions issued years after her release that constitute a complete reversal of position. This attempt by the government to switch her detention is not new to this case. Indeed, it seems to be an argument attempted—and rejected—from coast to coast.

For example, the facts with respect to entry and encounter were nearly identical for the alien in *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025).

There the government did not attempt to claim she was detained under 8 U.S.C. § 1225(b)(1), but did attempt to claim that it was allowed to switch her from § 1226 detention to § 1225(b)(2)(A) detention for the same reason (she could have been subjected to expedited removal). The court rejected the government's attempt to make such a switch, explaining:

The Government concedes that Ms. Salcedo Aceros is currently in full removal proceedings under Section 1229, and that while those proceedings are live, she cannot be simultaneously subjected to Section 1225(b)(1)'s expedited removal proceedings. But the Government asserts that it may nevertheless detain Ms. Salcedo Aceros under Section 1225(b)(2). . . . In other words, the Government's position is that whether Ms. Salcedo Aceros is in full removal proceedings or not, and regardless of the authority under which it initially detained her, it may at any time subject her to detention without the possibility of release on bond because she is an "applicant for admission" who is "seeking admission" and thus subject mandatory detention under § 1225(b)(2).

The Government's argument does not hold. As a preliminary matter, whether the Government may have had the power to detain Ms. Salcedo Aceros under 1225(b), the reality is that the detention authority consistently applied by the government to Ms. Salcedo Aceros since her arrival in the United States has always been § 1226. In 2024, the Government placed Ms. Salcedo Aceros in normal removal proceedings under Sections § 1229, not § 1225(b)(1), and chose to release her on conditional parole under § 1226(a), not hold her in detention under § 1225(b)(2). These actions created a reliance interest in her continued freedom, so long as she abided by the terms of her release. . . .

Sections 1226(a) and 1225(b) cannot be applied simultaneously. . . . It is not possible for Ms. Salcedo Aceros to be simultaneously subject to both detention regimes. She was and is subject to Section 1226(a), not 1225(b).

Ms. Aceros enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply "switching tracks."<sup>27</sup>

Moving across the country to Illinois, a district court there, like here, all of the documents issued to the alien from his encounter with ICE after entering indicated:

the Government has consistently treated Patel as detained under the authority of Section 1226(a) since the date he was first apprehended after crossing the border, and settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2).<sup>28</sup>

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<sup>27</sup> *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at \*7–8 (N.D. Cal. Sept. 12, 2025) (cleaned up).

<sup>28</sup> *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at \*6 (N.D. Ill. Oct. 24, 2025).

These facts are identical to the ones here. This led the court in *Patel* to conclude " the Government has affirmatively decided to treat Patel as being detained under Section 1226(a) and it cannot now be heard to change its position to claim that he is detained under Section 1225(b)."<sup>29</sup>

Though there are likely many other cases finding similarly, Mrs. Beltran-Menjivar believes the point has been made.

These decisions and common sense indicate, the government may not be permitted to consistently treat an alien as though they are subject to § 1226 then suddenly, without a valid change of law or circumstance, change their mind and claim such person is subject to having their liberty stripped from them.

It was not Mrs. Beltran-Menjivar or the aliens in the cases discussed above who made the decision to consistently treat them as though they are subject to § 1226, release them into the U.S., allow them to establish a life here to include providing Mrs. Beltran-Menjivar with work authorization in conjunction with her pending applications, and then suddenly without warning, reason, or legal basis, rip the rug out from under her by arresting her at a

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<sup>29</sup> *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at \*6 (N.D. Ill. Oct. 24, 2025) (cleaned up). (citing *Kennedy v. Kijakazi*, No. 22-2258, 2023 WL 1990303, at \*3 (7th Cir. Feb. 14, 2023), quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) (the "*Chenery* doctrine requires [an] agency to 'defend its actions based on the reasons it gave when it acted' in the interest of promoting agency accountability, instilling confidence in agency decisions, and maintaining an orderly process of review."); *Lopez-Campos*, 2025 WL 2496379, at \*7 ("It was not until Lopez-Campos requested a custody redetermination hearing (bond hearing) that Respondents claimed his detention was under Section 1225(b)(2)(A). The Court cannot credit this new position that was adopted post-hac, despite clear indication that Lopez-Campos was not detained under this provision."); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 237188, at \*5 (S.D.N.Y. Aug. 13, 2025) (same); *E.C.*, 2025 WL 2916264, at \*8 (rejecting Respondents' claim that Section 1225(b) should apply where they "have presented no evidence that the ... NTA was rescinded or that a new one was issued, nor any determination by ICE/DHS that Petitioner is detained under § 1225(b), other than the arguments made by Respondents in their briefing.")).

check-in of all places and then claiming her detention after thirteen years of law abiding release is mandatory. Surely, such actions epitomize a violation of the fundamental principles of due process and fairness once rooted in this country's values.

In sum, the evidence shows the government treated her in accordance with the law at the time of her encounter which entitled her to the bond procedures set forth in § 1226. DHS released her on her own recognizance pursuant to § 1226 in 2012 and cannot be permitted to claim thirteen years later that she is subject to mandatory detention under a provision applicable to recent entrants encountered at the border. For this reason alone, it is Mrs. Beltran-Menjivar' position that her detention without being afforded such hearing is unlawful.

**IV. Mrs. Beltran-Menjivar has demonstrated that her current detention violates the due process clause of the Fifth Amendment, and as a result, she is entitled to the relief sought by this Petition: an order enjoining the government from continuing to unlawfully detain her.**

The purpose of 28 U.S.C. § 2241 is to enjoin the government from continuing to unlawfully detain a person. Meanwhile, the purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm until the court makes a final decision the relief sought.<sup>30</sup> To obtain an injunction, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable harm;

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<sup>30</sup> *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

(3) the threatened injury outweighs any harm the order might cause the defendant; and (4) the injunction will not disserve the public interest.<sup>31</sup>

Mrs. Beltran-Menjivar is likely to succeed on the merits of her claims.

A. Mrs. Beltran-Menjivar is likely to succeed on the merits of her claims that her detention without a bond hearing thirteen years after her release pursuant to § 1226 is unconstitutional.

Mrs. Beltran-Menjivar is substantially likely to succeed on the merits of her claims that her detention is unconstitutional. As indicated above, the simplest route to this result is likely the retroactivity doctrine. But her detention is also unconstitutional under the Due Process Clause of the Fifth Amendment. This conclusion is bolstered by the fact that the government cannot point to a single case with comparable facts—thirteen years of abiding by the laws and instructions she was provided after being released pursuant to § 1226 in accordance with the indisputable law at the time—where a court held the government could suddenly detain the alien for the duration of § 1229a proceedings without flight or danger as a justification.

Moreover, as alluded to above, the government is trying to apply a statute that, at best, was only meant to apply to aliens near the border who had recently entered. The constitutional concerns in those cases are certainly minimal as explained in Mrs. Beltran-Menjivar's previous filings. But Mrs. Beltran-Menjivar is no longer a recent entrant, her current detention was not the result of an arrest near the border, and she cannot be said to suddenly be detained under § 1225(b).

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<sup>31</sup> *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

The conclusion that her current detention violates the due process clause is further demonstrated by the application of the *Matthews* factors to her case.

B. Her detention violates due process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.<sup>32</sup> To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Matthews*, courts weight the following factors:

(1) the private interest that will be affected by the official action;

(2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

(3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.<sup>33</sup>

Mrs. Beltran-Menjivar addresses the *Matthews* factors in turn.

*Private interest.* It is undisputed Mrs. Beltran-Menjivar has a significant private interest in being free from detention. "The interest in being free from physical detention" is "the most elemental of liberty interests."<sup>34</sup> Moreover, when assessing the private interest,

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<sup>32</sup> *Demore v. Kim*, 538 U.S. 510, 523 (2003).

<sup>33</sup> *Matthews*, 424 U.S. at 335.

<sup>34</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

courts consider the detainee's conditions of confinement, specifically, "whether a detainee is held in conditions indistinguishable from criminal incarceration."<sup>35</sup>

Petitioner's private interest is the right to be free from government detention. Being free from physical detention by the government is at the core of due process protection, and "is the most elemental of liberty interests."<sup>36</sup> In our country, "liberty is the norm, and detention without trial "is the carefully limited exception."<sup>37</sup> Petitioner's interest in being free from government detention is magnified by the fact that she has a family, including an 8-year-old child, who loves and depends on her.

Mrs. Beltran-Menjivar's circumstances are even more exaggerated because she is currently pregnant and in her first trimester. She is in a very fragile place physically and in the worst possible place to deal with a pregnancy. She is extremely concerned about what she faces in detention as a pregnant woman without access to the necessary medical treatment for pregnancy. She fears what would happen if something goes wrong in her pregnancy.

What's more, detention at a remote detention center miles away from major cities in Texas and with limited visiting hours makes it unnecessarily difficult for her family to see her. And, even when they do, they are separated by a glass barrier that prevents them

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<sup>35</sup> *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at \*7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

<sup>36</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

<sup>37</sup> *Id.*

from touching and hugging one another. While detained, Petitioner is unable to financially provide for her family or be there for her young child.

Finally, courts in recent months have repeatedly found that aliens who have entered without inspection and been undetected have a liberty interests protected by due process. As Judge Cardone of the Western District of Texas explained, "courts have found that because the petitioners established a life here—albeit without authorization—they possessed a strong liberty interest in their freedom from detention."<sup>38</sup> Here, the liberty interest is surely greater given that the government has been fully aware of and implicitly acquiesced to her presence here while her § 1229a proceedings continued on the non-detained docket.

The first *Matthews* factor supports Mrs. Beltran-Menjivar's claim of a Fifth Amendment violation.

*Risk of erroneous deprivation.* Under this factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks."<sup>39</sup> Whether it be based on retroactivity, the fact that no court has ever come close to approving of the mandatory detention of an individual in similar circumstances to Mrs. Beltran-Menjivar's,

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<sup>38</sup> *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at \*4 (W.D. Tex. Oct. 21, 2025)(citing *Sanchez Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at \*1, 7 (W.D. Mich. Oct. 17, 2025); *Chogollo Chafila v. Scott*, Nos. 25-cv-437, 438, 439, 2025 WL 2688541, at \*1, 10 (D. Me. Sept. 22, 2025).

<sup>39</sup> *Id.* at \*8.

or the fact that DHS cannot suddenly subject someone to mandatory detention under § 1225 after spent thirteen years treating that individual like they were subject to § 1226, there is more than ample evidence that Mrs. Beltran-Menjivar's current detention is resulting in an erroneous deprivation of her rights and liberty.

Here, where ICE has previously treated her consistently like she is subject to § 1226 including when she was released pursuant to § 1226 in 2012 there is an undeniable risk of erroneous deprivation. Moreover, if a bond hearing was held, an IJ would likely set a bond for Petitioner. She has a family that needs her, is currently pregnant, possesses a full-time job, and has strong ties to the area. She does not have any reason to flee or not return to court when called upon and has demonstrated compliance with court orders. She has no criminal history to indicate that she would be a danger to society.

This *Matthews* factor weighs in favor of Mrs. Beltran-Menjivar, too.

*Respondents' competing interests.* Under this factor, the court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents' interests.<sup>40</sup> The government has no valid interest in depriving Mrs. Beltran-Menjivar of a bond hearing. The government's interest is supposed to be in upholding the Constitution and laws, both of which are plainly violated by its recent actions and continued unlawful detention of a pregnant woman it released pursuant to § 1226 more than a decade ago and detained when she, as she always had, reported as directed to ICE's Dallas Field Office. Depriving anyone of their liberty is a serious thing that should only be done as

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<sup>40</sup> *Matthews*, 424 U.S. at 335.

punishment or when necessary to prevent flight or danger to the community. Mrs. Beltran-Menjivar is not a flight risk nor a danger to the community. Nor is Mrs. Beltran-Menjivar described in any of the provisions of 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19 which would subject her to mandatory detention without the right to a bond hearing before an IJ. Accordingly, the government's interest in upholding the Constitution and immigration laws is fulfilled through the relief sought by Mrs. Beltran-Menjivar's habeas petition.

To balance liberty interests against interests in assuring appearance and safety, the INA explicitly provides bond hearings for noncitizens who are not described in § 1226(c) or 8 C.F.R. § 1003.19(h). The government, however, wants to detain everyone without any regard to whether they are a danger or a flight risk.<sup>41</sup> On balance, the private interests affected and the risk of erroneous deprivation under the current procedures greatly outweigh the government's interest in detaining anyone they want regardless of whether it is necessary or lawful. Petitioner's arbitrary detention without a bond hearing by a neutral adjudicator violates Petitioner's substantive due process rights as guaranteed by the Fifth Amendment.

Because all three *Matthews* factors favor Mrs. Beltran-Menjivar's position, this Court should determine that Mrs. Beltran-Menjivar is likely to succeed in demonstrating

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<sup>41</sup> *Jacinto v. Trump*, 2025 WL 2402271, at \*4 ("The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake.").

that her detention without a bond hearing despite being consistently treated like she is subject to § 1226 contravenes her due process rights under the Fifth Amendment.<sup>42</sup>

C. Mrs. Beltran-Menjivar Faces Immediate and Irreparable Harm.

A movant “must show a real and immediate threat of future or continuing injury apart from any past injury.”<sup>43</sup> Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that “[f]reedom from imprisonment . . . lies at the heart of the liberty” protected by the Due Process Clause.<sup>44</sup> Each day Mrs. Beltran-Menjivar remains in custody, she is irreparably harmed by the loss of her fundamental liberty—a cruel irony for a woman who spent thirteen years being allowed to build a life here and had every reason to believe she would not be stripped of her liberty when she showed up to her ICE check-in.

The harm is not merely abstract. Mrs. Beltran-Menjivar has already been subjected to extended unlawful detention and all the humiliating and degrading things that go along with it: locked in a cage, cuffed, chained, and strip searched. This is even more humiliating and frightening as a pregnant woman. She fears what might happen to her if she remains in custody throughout her pregnancy and is very concerned about the medical treatment she will receive. Absent relief from this Court, Mrs. Beltran-Menjivar will remain detained and potentially moved again, in what is becoming an increasingly long removal proceeding

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<sup>42</sup> See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at \*1 (W.D. Tex. Sept. 8, 2025).

<sup>43</sup> *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

<sup>44</sup> *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

process, and as a result, denied her liberty, removed from her livelihood and freedom, and removed from what had previously been a community. Absent relief from this Court, Mrs. Beltran-Menjivar will remain detained in what is becoming an increasingly long removal proceeding process, and as a result, denied his liberty, removed from his livelihood and freedom, and removed from what had previously been a community where she belongs.

D. The Balance of Equities and Public Interest Weighs in Mrs. Beltran-Menjivar's Favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—“merge when the Government is the opposing party.”<sup>45</sup> Here, the balance of hardships weighs overwhelmingly in Mrs. Beltran-Menjivar's favor. The injury to Mrs. Beltran-Menjivar—unconstitutional detention and risk to her well-being—is severe and immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.<sup>46</sup>

Conversely, the harm to Respondents is nonexistent. Mrs. Beltran-Menjivar is not among those Congress proscribed for mandatory detention. Nor is Mrs. Beltran-Menjivar a danger to the community or a flight risk. Moreover, to the extent the government disagrees with any of these statements, it has the same recourse it has had for decades: making those arguments to a neutral adjudicator during a bond hearing pursuant to § 1226. Surely, Respondents cannot claim any, much less substantial, harm would be caused by

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<sup>45</sup> *Nken v. Holder*, 556 U.S. 418, 435 (2009).

<sup>46</sup> *Id.* at 436 (describing public interest in preventing noncitizens “from being wrongfully removed, particularly to countries where they are likely to face substantial harm”); see also *Rosa v. McAleenan*, 583 F. Supp. 3d 840 (S.D. Tex. 2019).

affording Mrs. Beltran-Menjivar a bond hearing, just as it has to similarly situated noncitizens for decades in accordance with the INA's statutory scheme.<sup>47</sup> Furthermore, the public interest is served by preserving "life, liberty, and happiness" and by preventing the waste of taxpayer resources on unlawful and unnecessary detention.

E. Mrs. Beltran-Menjivar Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.

Mrs. Beltran-Menjivar seeks injunctive relief to maintain the status quo by requiring ICE to either immediately release her or promptly make her detention lawful by providing her with a bond hearing before a neutral IJ.

**V. Mrs. Beltran-Menjivar has fully addressed *Hurtado* and the government's new position that § 1225(b)(2)(A) applies to all EWI aliens in her previous filings and the government's response does nothing to cast doubt on those positions.**

Because the government focused its response on claiming that Mrs. Beltran-Menjivar is subject to mandatory detention under *Matter of M-S-* rather than *Matter of Hurtado*, this reply has focused on arguments related to the former position. That being said, Mrs. Beltran-Menjivar has fully detailed her arguments on the later issue in all her previous filings and continues to stand by those arguments whether mentioned in this filing or not. Though Mrs. Beltran-Menjivar believes this case is most appropriately and easily resolved on constitutional grounds, if this court disagrees and finds *Hurtado* would be applicable, Mrs. Beltran-Menjivar arguments against its application are fully addressed in her habeas petition.

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<sup>47</sup> See *Martinez*, 2025 WL 2598379, at \*5.

**VI. The Court's habeas jurisdiction allows it to determine whether Petitioners are being unlawfully detained, and if so, to remedy it by ordering their immediate release.**

It is Petitioners' position that (1) ordering their immediate release is the most appropriate remedy under the statute, and (2) to the extent that courts have found the government's detention of similarly situated aliens unlawfully detained and ordered a bond hearing within 24-hours, such an order is not ordering the government to conduct a bond hearing; rather, it is simply providing the government with notice the detention is unlawful and short window to cure the detention's unlawfulness. That being said, Petitioner believes the most appropriate remedy at this point is to simply order release.

**CONCLUSION**

For the foregoing reasons, Petitioner Mrs. Beltran-Menjivar respectfully requests that the Court immediately grant his petition and motion for preliminary injunction by ordering her immediate release from ICE custody.

RESPECTFULLY SUBMITTED,

*/s/ Dan Gividen*

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on November 25, 2025.

/s/ Dan Gividen  
DAN GIVIDEN  
Attorney for Defendant