

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

ROGELIA DE LEON LOPEZ and JUANA
CASTILLO AVELAR,

Petitioners

v.

Case No.

SCOTT LADWIG, in his official capacity as
Acting Field Office Director of the New
Orleans Field Office of U.S. Immigration
and Customs Enforcement, Enforcement and
Removal Operations;

Warden, South Louisiana ICE Processing
Center;

TODD LYONS, in his official capacity as
Acting Director and Senior Official
Performing the Duties of the Director of U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security; and

PAMELA BONDI, in her official capacity as
Attorney General of the United States,

Respondents.

VERIFIED PETITION
FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

PRELIMINARY STATEMENT

1. Petitioners Rogelia de Leon Lopez and Juana Castillo Avelar, through counsel, seek a writ of habeas corpus under 28 U.S.C. § 2241, challenging the legality of their continued detention by Immigration and Customs Enforcement (“ICE”).

PARTIES

2. Petitioner Rogelia de Leon Lopez is a 32-year-old pregnant woman currently detained by ICE at the South Louisiana ICE Processing Center (“SLIPC”) in Basile, Louisiana. She has been in immigration detention since September 4, 2025, when she was detained at a workplace raid in New York
3. Juana Castillo Avelar is a 44-year-old woman with chronic and acute medical conditions, currently detained by ICE at SLIPC. She has been in immigration detention since September 4, 2025 when she was detained at a workplace raid in New York.
4. Respondent Scott Ladwig is ICE’s Acting Field Office Director for the New Orleans Field Office of ICE Enforcement and Removal Operations (“NOLA ICE”). As Field Office Director, Respondent Ladwig oversees ICE’s enforcement and removal operations in the New Orleans Area of Responsibility (“AOR”), which includes Louisiana. Petitioners are currently detained within this AOR and, as such, Respondent Ladwig is a legal custodian of Petitioners. He is sued in his official capacity.
5. Respondent Warden is the Warden of the South Louisiana ICE Processing Center (“SLIPC”) in Basile, Louisiana, where Petitioners are currently detained. Respondent Warden is responsible for the operation of SLIPC and is the immediate physical custodian of Petitioners and thus a legal custodian. The Warden is sued in their official capacity.
6. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE, and as such is a legal custodian of Petitioners.
7. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, she is responsible for overseeing ICE’s day-to-day operations, supervising approximately 20,000 ICE employees,

including Respondent Lyons. Secretary Noem is the ultimate legal custodian of Petitioners.

8. Respondent Pamela Bondi is the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Petitioners' removal and bond proceedings, including the standards used in those proceedings, and as such, she is a legal custodian of Petitioners. She is sued in her official capacity.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), Art. I § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act).
10. This Court may grant relief pursuant to 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 2201 (Declaratory Judgment Act).
11. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008) (same).
12. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioners are detained within the Western District of Louisiana, their immediate physical custodian

is located within this District, and a substantial part of the events giving rise to this petition occurred and continue to occur within this District.

13. Exhaustion of administrative remedies in the immigration habeas context is prudential, not statutory. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003); *Buenrostro Mendez v. Bondi*, 2025 U.S. Dist. LEXIS 201967 at *5 (S.D. Tex. Oct. 7, 2025). Exhaustion in this case is excused for multiple reasons. First, exhaustion is futile because the agency has issued a binding, precedent decision that forbids an immigration judge from granting bond to Petitioners. *See Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232 at *31 (W.D. Tex. Sept. 22, 2025) (noting that appealing an IJ’s jurisdictional dismissal of bond is “almost certainly a futile exercise” after the BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)). Second, this petition presents substantial constitutional questions. *See id.* (“[t]o wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate [the petitioner’s] alleged constitutional injury—detention without a bond hearing.”).

FACTUAL ALLEGATIONS

14. Ms. De Leon Lopez fled violence in Guatemala and came to the United States in 2018 and asked for asylum. Since then, she has lived with her family, including a minor child, in upstate New York, where she was employed at Nutrition Bar Confectioners. She has a pending application for asylum.
15. Ms. Castillo Avelar came to the United States from Honduras approximately 20 years ago. Since then, she has lived in Aurora, New York with her family, including three U.S. citizen children under the age of 18, one of whom requires specialized medical care. She has a pending application for cancellation of removal.

16. Ms. De Leon Lopez and Ms. Castillo Avelar were arrested collaterally during an immigration enforcement raid that occurred on September 4, 2025, at their place of employment, Nutrition Bar Confectioners.
17. At the raid, Ms. De Leon Lopez specifically informed immigration officials that she was pregnant and was nevertheless detained.
18. Immigration authorities initially detained Petitioners in New York and then transferred them to SLIPC, where they remain today.
19. At the time of her arrest by immigration officials, Ms. De Leon Lopez was approximately three months pregnant. Immigration officials handcuffed and chained her across her belly for several hours of transit between New York and Louisiana.
20. Ms. De Leon Lopez is not able to consistently meet her nutritional needs or the nutritional needs of her baby while detained at SLIPC. There are long periods between meals, which often consist of cold, canned food that she cannot stomach. She has almost no access to fresh fruits or vegetables. She has relied on purchasing food from commissary to attempt to supplement her caloric and nutritional needs. To date, she has lost approximately 10 pounds during her detention.
21. Ms. De Leon Lopez has had difficulty sleeping since she was detained. SLIPC has not provided Ms. De Leon Lopez with a pillow. As such, and since she tries to sleep on her side due to her pregnancy, she experiences pain and discomfort when trying to sleep.
22. The conditions of detention, separation from her family, and uncertainty have caused Ms. De Leon Lopez distress and exacerbated preexisting mental health issues.
23. Ms. De Leon Lopez is scheduled for her next Master Calendar Hearing on December 2, 2025, at which she will be represented by the Worker Justice Center of New York.

24. Ms. Castillo Avelar suffers from anemia, which is a blood disorder characterized by insufficient red blood cells or hemoglobin in the blood, causing a lack of oxygen in the body. It can be life threatening if not properly managed.
25. At the time of the raid, she was receiving a series of prescribed IV vitamin infusion treatments that were interrupted by her detention and have not since been continued.
26. Ms. Castillo Avelar has felt ill since arriving at the detention center and has received inadequate medical care.
27. Ms. Castillo Avelar suffered from a urinary tract infection for two weeks, for which she did not receive antibiotics or medical attention despite her requests for care.
28. In or around October 2025, Ms. Castillo Avelar fainted in the dining area. After regaining consciousness, she began vomiting and having trouble breathing, and was hospitalized. She was found to have low levels of iron. Now she is receiving iron supplements.
29. However, Ms. Castillo Avelar continues to experience muscle pain, nausea, and exhaustion, as she struggles to sleep given her pain. Respondents informed her that they would only schedule her for another medical appointment if she took the oral iron supplement for a month and her pain persisted. When she asked for help with pain at an appointment, Respondents provided her only about one day's worth of Tylenol and left her to purchase Tylenol and vitamins from commissary at her own expense.
30. Ms. Castillo Avelar is scheduled for an Individual Hearing on her application for Cancellation of Removal on January 15, 2026.

LEGAL FRAMEWORK

A. Petitioners are Being Subjected to Unlawful Mandatory Detention, in Violation of the Immigration and Nationality Act (“INA”) and Federal Regulations

31. Ms. De Leon Lopez and Ms. Castillo Avelar are unlawfully detained at SLIPC because Respondents have, upon information and belief, concluded that they are subject to mandatory detention and, therefore, an immigration judge cannot assess the merits of their request for release from detention.
32. The Executive Office for Immigration Review (“EOIR”) has recently 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, as all such persons are detained under 8 U.S.C. § 1225(b)(2)(A) and therefore the immigration court lacks authority to assess eligibility to release on bond. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This interpretation, which contravenes decades of prior case law, has been soundly rejected by the vast majority of federal courts around the country to consider it. *See infra* ¶¶ 42-48.
33. Petitioners’ 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 Ms. De Leon Lopez and Ms. Castillo Avelar, who previously entered and have been residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on recognizance or bond.
34. The INA describes three detention authorities that pertain to the majority of detained noncitizens in removal proceedings.
35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a; *see also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (“Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of [a noncitizen]

‘pending a decision on whether the [noncitizen] is to be removed . . . [and] [e]xcept as provided in [1226(c)],’ the Attorney General ‘may release’ [a noncitizen] detained under § 1226(a) ‘on . . . bond’”). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

36. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals who are “seeking admission,” described under § 1225(b)(2).

37. Lastly, the INA also provides for detention of noncitizens who have a final administrative order of removal, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). These provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

39. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

40. As a result, for nearly 30 years, most people who entered without inspection, and were later detained and placed in removal proceedings, received bond hearings upon request, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at the prior § 1252(a)).
41. On July 8, 2025, ICE, “in coordination with” the Department of Justice (DOJ), announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claimed that all persons who entered the United States without inspection were now subject to no-bond detention under § 1225(b)(2)(A). The policy purports to apply regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.
42. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

43. Since Respondents adopted these new policies, the majority of federal courts in the Fifth Circuit have rejected their new interpretation of the INA's detention authorities. *See Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Ventura Martinez v. Trump* (W.D. La. Oct. 22, 2025); *Buenrostro Mendez v. Bondi*, 2025 U.S. Dist. LEXIS 201967 at *6 (S.D. Tex. Oct. 7, 2025), *Padron Covarrubias v. Vergara*, 5:25-CV-112 (S.D. Tex. Oct. 8, 2025).
44. Similarly, dozens of district courts around the country have uniformly rejected this interpretation. *See, e.g., Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499, at *1 n.3 (W.D. Wash. Sept. 30, 2025) (citing over 20 district court decisions rejecting the government's position); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (collecting 20 cases in note 8 and accompanying discussion); *see also Hyppolite v. Noem et al.*, 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) (noting that the government conceded at oral argument that they were not "aware of any Article III court that had adopted their interpretation" of the statute).
45. Courts have almost uniformly rejected DHS's and DOJ's new interpretation, because it defies the plain text of the INA. *See Mugliza Castillo v. Lyons*, No. 25-cv-16219 (MEF), 2025 WL 2940990, at *1 (D.N.J. Oct. 10, 2025) ("But as a matter of plain-text reading, it is § 1226(a) that applies to people situated like the Petitioner, not § 1225(b)(2)(A)."). Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229a(a)(1). *See also Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025) (pending

motion for class certification of a “Bond Eligible Class,” granting partial summary judgment because *Hurtado* “unacceptably collapse[s] § 1226 into nonexistence under a wide-reaching interpretation of ‘applicants for admission’”).

46. The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025).
47. As district courts have found, the statutory bars to a bond hearing for inadmissible noncitizens with specific types of criminal history would all be rendered surplusage if in fact, *no* inadmissible noncitizens were eligible for bond. *See Artiga-Morales v. Bondi*, 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Hyppolite*, 2025 WL 2829511, at *10.
48. In contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). *See Rivera Zumba v. Bondi*, 2025 WL 2753496, at *8 (D.N.J. Sept. 26, 2025). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine

whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287.

49. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioners who have already entered and were residing in the United States at the time they were detained.

B. Petitioners’ Detention Without a Bond Hearing Violates the Procedural and Substantive Due Process Requirements of the Fifth Amendment

50. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001).
51. Procedural due process requires a custody hearing before an independent and impartial adjudicator. *See Marcello v. Bonds*, 39 U.S. 302, 307 (1955). In determining how much process is due noncitizens challenging ICE custody, courts balance “1) the private interest affected by the government action; 2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and 3) the government’s interest in maintaining the current procedures, including the function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail.” *Maniar v. Warden Pine Prairie Corr. Ctr.*, No. 6:18-CV-00544, 2018 WL 11544220, at *2 (W.D. La. July 11, 2018).

52. Petitioners' liberty interest is significant as "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioners, who both have minor children, also have a compelling interest in family integrity. See *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). DOJ's refusal to provide Petitioners with a bond hearing is keeping them detained and away from their families.
53. The risk of erroneous deprivation without a hearing is high. The purpose of immigration detention is to prevent dangerous noncitizens from harming members of the community and to prevent flight during removal proceedings. *Zadvydas*, 533 U.S. at 690-91; *Demore*, 538 U.S. at 527-28. Because "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," mandatory detention in situations other than those explicitly authorized by Congress "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Martinez*, 2025 WL 2598379, at *3. Detention without a hearing means that noncitizens are not provided with "an opportunity to contest the existence, nature, or significance of" any violations or an individualized assessment from a neutral arbiter. *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025). Detention without these protections runs a unacceptably high risk of depriving the liberty of non-dangerous individuals who present minimal flight risks. *Id.*
54. A restraint on liberty is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *Zadvydas v. Davis*, 533 U.S. at 690-92 (discussing

constitutional limitations on civil detention). Petitioners' detention does not serve these regulatory purposes and so violates Petitioners' rights to substantive due process under the Fifth Amendment.

C. Petitioners' Detention Without Adequate Medical Attention Violates Their Fifth Amendment Substantive Due Process Rights

55. The Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that “amount to punishment.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates a detained individual's substantive due process rights if it “takes [that] person into custody, severely limiting his ability to care for himself, and then is deliberately indifferent to his medical needs[.]” *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019); *see also Helling v. McKinney*, 509 U.S. 25, 32 (1993) (“[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., . . . medical care and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment.”). Where conditions put the life of the detained individual at risk, it warrants a court's intervention. *See also Basank v. Decker*, 449 F. Supp. 3d 205, 210 (S.D.N.Y. 2020) (ordering the release of detained migrants with chronic medical conditions whose health was worsened by detention conditions and viral illnesses).

56. The detriment and risk to petitioners' health and worsening conditions warrant the court's immediate intervention. Each passing day that Petitioners remain in detention, they are facing worsening health that puts them at risk of further medical complications, death, and in the case of Petitioner De Leon Lopez, stillbirth.

D. Petitioner De Leon Lopez’s Detention During her Pregnancy Violates the Administrative Procedure Act and *Accardi* Doctrine

57. The APA provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). When the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes, such that the agencies are bound to follow their own “existing valid regulations.” *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954). The *Accardi* doctrine also obligates agencies to comply with procedures it outlines in its internal manuals. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

58. ICE has promulgated guidance, that, upon information and belief, has not been rescinded, instructing that pregnant individuals should not be detained absent extraordinary circumstances. ICE Directive 11032.4, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*.²

59. This policy states that “ICE should not detain, arrest, or take into custody for an administrative violation of the immigration laws individuals known to be pregnant, postpartum, or nursing unless release is prohibited by law or exceptional circumstances exist.” *Id.* It notes that detention is necessary and appropriate in “very limited circumstances.” It additionally prohibits the use of restraints absent “extraordinary circumstances.” In detaining Petitioner De Leon Lopez, a pregnant woman, and

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<https://www.ice.gov/directive-identification-and-monitoring-pregnant-postpartum-or-nursing-individuals>

restraining her with restraints placed *over her pregnant belly* in transport, ICE violated its own Directive in violation of the APA and *Accardi* doctrine.

60. Officials at SLIPC are aware that Petitioner De Leon Lopez is pregnant and losing weight, and have failed to release her, in violation of 8 C.F.R. § 212.5(b)(2).
61. The violation of this directive and federal regulations is continuous and is affecting Petitioner De Leon Lopez's wellbeing as well as the wellbeing of her unborn child, as she is experiencing lack of sleep, distress, and weight loss.

E. Remedies in Immigration Habeas Petitions

62. The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).
63. The most appropriate remedy to directly resolve the ongoing constitutional violations both women are experiencing, and to prevent any further deterioration in their medical conditions, is to require Petitioners' release on recognizance without the use of alternatives to detention or other conditions.
64. In the alternative, the habeas court may require Respondents to conduct bond hearings for Petitioners with procedural safeguards requiring the government to bear the burden of justifying Petitioners' continued detention. A growing consensus of courts have remedied DOJ's 8 U.S.C. § 1225(a) / 8 U.S.C. § 1225(b) misclassification by "ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence." *Lopez-Arevelo*, WL 2691828, at *13 (collecting cases). Additional safeguards would reduce the risk of erroneous deprivation as a bond hearing "will allow an immigration judge conducting a

bond hearing to make a determination on specific facts whether continued detention is necessary to ensure presence at removal hearings and safety for the community.” *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025).

CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act

65. Petitioners incorporate by reference the allegations in the preceding paragraphs.
66. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States, such as Petitioners.
67. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention without review and violates the INA.

COUNT II

Violation of the Bond Regulations

67. Petitioners incorporate by reference the allegations of fact set forth in preceding paragraphs.
68. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred

to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

69. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioners.
70. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Fifth Amendment: Violation of Procedural Due Process

71. Petitioners incorporate by reference the allegations in the preceding paragraphs.
72. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioners have a fundamental interest in liberty and being free from official restraint.

COUNT IV

Fifth Amendment: Violation of Substantive Due Process

73. Petitioners incorporate by reference the allegations in the preceding paragraphs.
74. Immigration detention is civil, not punitive, and must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore*, 538 U.S. at 527. (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has stated that the purpose or civil

detention in this context is to “ensur[e] the appearance of aliens at future proceedings,” *Zadvydas*, 533 U.S. at 690, and to prevent flight, *Demore*, 538 U.S. at 528. Petitioners’ detention does not serve the purposes of civil detention as they pose no risk of flight or danger to the community.

75. Petitioners’ continued detention without a bond hearing violates their substantive due process rights. The deliberate indifference to Petitioners’ medical needs renders their detention punitive. Petitioners’ continued detention with inadequate medical care despite worsening medical conditions violates their substantive due process rights.

COUNT V

Violation of the APA, 5 U.S.C. § 706(2) and the *Accardi* doctrine

76. Petitioner De Leon Lopez incorporates by reference the allegations in the preceding paragraphs.
77. The APA provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). When the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes, such that the agencies are bound to follow their own “existing valid regulations.” *United States ex rel. Accardi Shaugnessy*, 347 U.S. 260, 266, 268 (1954). The *Accardi* doctrine also obligates agencies to comply with procedures it outlines in its internal manuals. See *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

78. By arresting, restraining, and continuing to detain Petitioner De Leon Lopez, Respondents are violating ICE's own Directive regarding the arrest, detention, and restraint of pregnant women.

79. Petitioner De Leon Lopez has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Declare that the refusal to allow Petitioner a bond redetermination hearing before an immigration judge violates the INA, APA, and Fifth Amendment's guarantee of Due Process;
- (3) Issue a writ of habeas corpus requiring that Respondents release Petitioners immediately; or, in the alternative, requiring that within 5 days, Respondents conduct bond hearings on the merits for Petitioners with procedural safeguards requiring the government to bear the burden of justifying Petitioner's continued detention by clear and convincing evidence.
- (4) Order further relief as this Court deems just and appropriate.

Dated: 11/25/25

s/ David J. Rozas

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* *Application for admission pro hac vice pending*

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioners because I am one of the Petitioners' attorneys. I have discussed with Petitioners the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

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