

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

IRENE MONTALVO SOLEDAD )

Petitioner, )

v. )

KEVIN JOYCE, SHERIFF, Cumberland )  
County Jail, PATRICIA HYDE, )  
Field Office Director, )  
TODD LYONS, Acting Director U.S. )  
Immigrations and Customs Enforcement, )  
and KRISTI NOEM, U.S. Secretary )  
of Homeland Security, )

Respondents. )

Case No. \_\_\_\_\_

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1. Petitioner, Irene Montalvo Soledad is currently detained at Cumberland County Jail in Portland, Maine.
2. Petitioner was arrested in Massachusetts by U.S. Immigration and Customs Enforcement (“ICE”) and/or other federal agents acting on ICE’s behalf on or about October 25<sup>th</sup>, 2025 having been involved in domestic violence incidents with her husband throughout 2025 as the victim and accused.
3. On information and belief, Petitioner is currently being held in ICE’s custody in the District of Maine.
4. Petitioner is present in the United States and, on information and belief, the Department of Homeland Security (“DHS”) has alleged or will allege that Petitioner was not previously

admitted or paroled into the United States.

5. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at \*23 (D.D.C. Aug. 29, 2025).
6. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently “seeking admission” to the United States. *See Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at \*1, 8-13 (D. Mass. Aug. 19, 2025).
7. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.
8. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Aguiriano*, 2025 WL 2403827, at \*1, 8-13 (collecting cases).
9. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because she has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).
10. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).
11. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon her request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11

F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

12. Petitioner requests such a bond hearing.
13. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.<sup>11</sup>
14. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.
15. Petitioner is being irreparably harmed by her ongoing unlawful detention without a bond hearing. *See Aguiriano*, 2025 WL 2403827, at \*6-8 (no exhaustion required because “[o]bviously, the loss of liberty is a . . . severe form of irreparable injury” (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because “[a] loss of liberty may be an irreparable harm”); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986), for proposition that “[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest”).
16. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by

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<sup>11</sup> The BIA’s reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). *See also Elias Escobar v. Hyde*, 2025 WL 2823324, at \*3 (D. Mass. October 3, 2025) (rejecting the BIA’s reasoning in *Matter of Yajure Hurtado* because, in part, “the decision is inconsistent with other BIA decisions and with decades of the Department of Homeland Security’s practice”; *Chogillo Chafila v. Scott*, 2025 WL 2688541, at \*7-8 (D. Me. Sept. 22, 2025) (same).

Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding “exhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation” of the relevant statute).

17. There is no statutory requirement for Petitioner to exhaust administrative remedies. *See Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at \*4 (D. Mass. July 7, 2025) (“[E]xhaustion is not required by statute in this context.”).
18. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).
19. Based on these well-established principles, this court has specifically rejected the argument that exhaustion is required in a detained noncitizen’s challenge to the BIA’s decision in *Matter of Yajure Hurtado*, supra:

a court may hear unexhausted claims in circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.” *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455,463 (D. Mass. 2010) (cleaned up). Such a circumstance “exists when substantial doubt exists about whether the agency is empowered to grant meaningful redress” as well as “when the potential decisionmaker ... can be shown to have predetermined the issue” *Id.*

*Inlago Tocagon v. Moniz*, 2025 WL 2778023 (Sept. 29 2025), at \*2.

20. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).
21. Venue is proper because Petitioner is being held in Maine.
22. Respondent Kevin Joyce is the Sheriff for Cumberland County Jail and petitioner’s immediate

custodian.

23. Respondent Patricia Hyde is the New England Field Office Director for U.S. Immigration and Customs Enforcement.
24. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.
25. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.
26. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

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

27. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
28. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
29. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
30. Petitioner's continuing detention is therefore unlawful.

#### **COUNT TWO**

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

31. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.
32. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
33. Several judges comprising the District Court for the District of Massachusetts have considered

the applicability of 8 U.S.C. § 1226(a) (rather than Section 1225) in these circumstances, the right of a similarly-situated detainee's right to receive a bond hearing, and the soundness of the BIA's position in *Matter of Yajure Hurtado*. These judges have all found Section 1226(a) to apply, concluded that access to a bond hearing was required, and, either expressly or implicitly, held the BIA's contrary view to be incorrect and unlawful. *See Rocha v. Hyde*, 2025 WL 2807692, at \*2 (D. Mass. Oct. 2, 2025) (Burroughs, J.) (“[a]s Respondents acknowledge in their opposition, “[o]ther sessions of this court, as well as other courts across the country, have determined that 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2), appl[ies] to aliens arrested and detained within the United States, even if such alien meets the definition of an applicant for admission as an alien present in the United States who has not been admitted”); *Mendoza v. Hyde*, C.A. No. 25-12815 (D. Mass. Oct. 1, 2025) (Kobick, J.) (not available in Westlaw) (“Mendoza is not an applicant for admission subject to mandatory detention under Section 1225(b). Noncitizens subject to detention under § 1226(a) have the right to request a bond hearing before an Immigration Judge, at which the government bears the burden to prove that continued detention is justified.”) (internal quotation marks omitted); *Reynoso Tejada v. Moniz*, C.A. No. 25-12731 (D. Mass. Oct. 1, 2025) (Sorokin, J.) (not available in Westlaw) (granting habeas petition, including rejection of government's argument that petitioner was detained under § 1225); *De Sousa v. Hyde*, C.A. No. 25-12736 (Murphy, J.) (D. Mass. Oct. 1, 2025) (not available in Westlaw) (ordering that “Petitioner receive a bond hearing under 8 U.S.C. s. 1226”); *Inlago Tocagon v. Moniz*, 2025 WL 2778023 (D. Mass. 2025) (Joun, J.); *Doe v. Moniz*, 2025 WL 2576819, at \*5 (D. Mass. 2025) (Talwani, J.); *Guerrero Orellana v. Moniz*, 2025 WL 2809996 (D. Mass. 2025) (Saris, J.); *Velasco-Luis v. Hyde*, C.A. No. 25-12747 (D. Mass. Oct. 6, 2025) (Stearns, J.) (not available in Westlaw) (adopting rationale of *Guerrero Orellana v.*

*Moniz, supra*).

34. Nearly every court nationwide to have considered these issues has come to the same conclusions. *See Guerrero Orellana v. Moniz, supra*, at \*5 (collecting cases).
35. Petitioner’s continuing detention is therefore unlawful.

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

36. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
37. The Fifth Amendment’s Due Process Clause specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. CONST. amend. V.
38. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still “on the threshold”).
39. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001).

40. The Supreme Court has thus “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).
41. Petitioner was arrested inside the United States and is being held without being provided any individualized detention hearing.
42. Petitioner’s continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

**COUNT FOUR**  
**Violation of Fifth Amendment Right to Due Process**  
**(Substantive Due Process)**

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

**PRAYER FOR RELIEF**

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

- (1) Assume jurisdiction over this matter;

- (2) Order that Petitioner shall not be transferred outside the District of Maine;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Declare that Petitioner's detention is unlawful.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper.
- (6) Grant any further relief this Court deems just and proper.

VERIFICATION PURSUANT TO 28 U.S.C § 2242

I, Molly McGee, submit this verification on behalf of the Petitioner because I am the Petitioner's primary attorney and because Petitioner is detained. I have reviewed the record in this matter. Based on personal knowledge and, on information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted,

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Dated: November 25, 2025

