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*Pro Hac Vice Motion Forthcoming*

Attorneys for Petitioner

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CERLY GLEYCE DE SOUZA MOITA,

Petitioner,

v.

GARRETT J. RIPA, Miami Field Office  
Director, Immigration and Customs  
Enforcement and Removal Operations  
("ICE/ERO"); TODD LYONS, Acting  
Director of Immigration Customs  
Enforcement ("ICE"); KRISTI  
NOEM, Secretary of the Department of  
Homeland Security ("DHS"); PAMELA  
BONDI, Attorney General of the United  
States, in their official capacities,

Respondents.

Case No.

**PETITION FOR WRIT OF HABEAS  
CORPUS**

### **INTRODUCTION**

1. Petitioner Cerly Gleyce de Souza Mota, by and through undersigned counsel, respectfully petitions this Honorable Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, seeking immediate relief from her ongoing and unlawful detention by U.S. Immigration and Customs Enforcement (ICE), which violates the laws and Constitution of the United States.

2. Petitioner has been detained since May 16, 2025, following her arrest by local law enforcement under circumstances that provided no legitimate basis for criminal prosecution. She has remained in ICE custody since July 15, 2025, where she continues to be detained without a lawful justification for her prolonged confinement.

3. Petitioner has no criminal record aside from the incident underlying her current detention. She poses no danger to the community and is not a flight risk. Prior to her detention, she remained in full compliance with USCIS requirements and had properly filed a pending asylum application pursuant to the procedural protections of 8 U.S.C. § 1229a. Her detention is therefore arbitrary, punitive, and inconsistent with both the statutory and constitutional safeguards afforded to asylum seekers.

4. Accordingly, to remedy the violation of Petitioner's statutory and Due Process rights, this Court should grant the instant petition for a writ of habeas corpus.

5. Petitioner asks this Court to find that she was unlawfully detained and order her release.

### **JURISDICTION**

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

7. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All-Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

### **VENUE**

9. Venue is proper in the Southern District of Florida because Petitioner is currently in Respondents' custody at the Broward Transitional Center in Pompano Beach, Florida. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred within this District, where Petitioner remains in ICE custody. See 28 U.S.C. § 1391(e).

10. For these same reasons, divisional venue is proper in the Fort Lauderdale Division pursuant to Local Rule 3.4 of the Southern District of Florida, as the facility where Petitioner is detained is located within Broward County.

### **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Courts have long recognized the significance of the habeas statute in

protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

13. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

### PARTIES

14. Petitioner, Cerly Gleyce de Souza Moita, is a 40-year-old citizen of Brazil who is currently present in the United States under parole status granted by the U.S. Department of Homeland Security. Petitioner has a pending asylum application filed in accordance with the Immigration and Nationality Act and applicable regulations.

15. Respondent Garrett J. Ripa is the Field Office Director for the Miami Field Office of Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”). The Miami Field Office is responsible for custody and enforcement decisions concerning non-citizens within its jurisdiction, including their arrest, detention, and custody status. The Miami Field Office’s area of responsibility includes the State of Florida and parts of the Caribbean region. Respondent Ripa is a legal custodian of Petitioner.

16. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”) and has authority over the operations and actions of ICE, including those of Respondent Garrett J. Ripa, the Field Office Director for the Miami Field Office. Respondent Lyons exercises supervisory authority over ICE detention facilities nationwide and is therefore a legal custodian of Petitioner.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

18. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

19. This action is commenced against all Respondents in their official capacities.

#### **STATEMENT OF FACTS**

20. Petitioner Cerly Gleyce de Souza Moita is a 40-year-old citizen of Brazil currently residing in the State of Florida under parole status granted by the U.S. Department of Homeland Security. She has a pending asylum application filed pursuant to the Immigration and Nationality Act (INA) and applicable regulations.

21. Petitioner entered the United States seeking protection after enduring years of [REDACTED] in Brazil. Her application for asylum remains pending before the U.S. Citizenship and Immigration Services (USCIS).

22. On or about November 13, 2024, removal proceedings were initiated against Petitioner under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Her individual hearing is currently scheduled for January 6, 2026, before the Immigration Court.

23. On May 16, 2025, Petitioner was arrested by local law enforcement in connection with a minor traffic incident in which, while stopped at a red light, her vehicle made minimal contact with another car.

24. Petitioner was arrested when she voluntarily appeared for questioning at her workplace. She was later transferred to the custody of U.S. Immigration and Customs Enforcement (ICE), where she has remained detained since that date.

25. Petitioner has no other criminal history, has complied fully with all immigration requirements, and poses no danger to the community or risk of flight. Prior to her detention, she maintained lawful parole status and was actively pursuing her asylum claim through the proper legal channels.

26. On September 23, 2025, a Custody Redetermination Hearing was held before an Immigration Judge, who denied Petitioner's request for bond. The Immigration Judge determined that Petitioner was subject to mandatory detention under INA § 235 and concluded that the Court lacked jurisdiction to redetermine custody under INA § 236.

27. As a result, Petitioner has remained in continuous ICE detention, despite her cooperation with immigration authorities, lack of criminal background, and pending asylum claim.

28. Petitioner's continued detention has caused her significant emotional and physical hardship and serves no legitimate governmental purpose, as there is no active removal order and her asylum proceedings remain unresolved.

29. Moreover, Petitioner suffers from a pre-existing and clinically documented renal condition, which has materially deteriorated while in ICE custody as a direct result of inadequate and inconsistent medical treatment. ICE is aware of her condition, yet has failed to provide the level of care required to prevent further harm.

30. The government's continued detention of an individual with a known and worsening medical diagnosis—without ensuring timely, appropriate, and effective treatment—constitutes not only deliberate indifference to a serious medical need but also a

violation of her substantive due process rights. See *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976) (holding that failure to provide necessary medical care to a detained individual violates the Constitution). Petitioner’s ongoing confinement under these circumstances is therefore not only unlawful but affirmatively dangerous to her health.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

31. Petitioner has exhausted her administrative remedies to the extent required by law.

32. She has fully cooperated with Respondents and has not delayed or obstructed her detention.

33. Petitioner’s only remedy is by way of this judicial action.

34. Any administrative appeal to the Board of Immigration Appeals would be futile because the Immigration Judge expressly relied on *Matter of Q.Li* to conclude that he lacked jurisdiction to conduct a custody redetermination hearing. As the IJ’s determination was based on binding BIA precedent, the Board would be compelled to reach the same result, rendering any appeal fruitless.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Procedural Due Process**

35. Petitioner restates and realleges all paragraphs as if fully set forth here.

36. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’

within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

37. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

38. Here, Respondents have chosen to detain Petitioner in an arbitrary manner and not based on a rational and individualized determination of whether she is a safety or flight risk, in violation of due process.

39. On information and belief, because no individualized custody decision has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents have deprived Ms. De Souza Moita of liberty without due process, in violation of her procedural due process rights under the Fifth Amendment of the U.S. Constitution.

40. Additionally, the Immigration Judge’s decision violated Petitioner’s procedural due process rights by issuing fundamentally contradictory and legally irreconcilable determinations. The IJ expressly concluded that he lacked jurisdiction to conduct a custody redetermination under INA § 236(a) because Petitioner was allegedly subject to mandatory detention under INA § 235. Yet, in the same written order, the IJ proceeded to perform an “alternative” merits analysis of the § 236(a) bond factors and denied bond. An adjudicator who disclaims jurisdiction cannot, in the same breath, adjudicate the merits. Such internal inconsistency renders the decision arbitrary, capricious, and unconstitutional, as it rests on reasoning that defies basic principles of judicial authority and logic.

41. The constitutional infirmity is compounded by the IJ’s reliance on unverified and unresolved criminal allegations to justify detention. The record contains no conviction,

judicial finding, or adjudicated determination that Petitioner committed any offense, including the allegation that she “left the scene of an accident with serious bodily injury.” Mere allegations cannot establish dangerousness or flight risk sufficient to justify the deprivation of liberty. Only a criminal court, not DHS or an Immigration Judge, has authority to determine whether Petitioner committed a criminal act. By relying on speculative accusations rather than proven facts, the IJ failed to provide the constitutionally required individualized custody determination.

42. Because the IJ’s bond denial rests on both a jurisdictional contradiction and unsupported criminal assertions, the decision lacks any rational basis and cannot withstand Fifth Amendment scrutiny. These defects independently render Petitioner’s continued detention unlawful.

## **COUNT TWO**

### **Violation of Fifth Amendment Right to Procedural Due Process**

43. Petitioner restates and realleges all paragraphs as if fully set forth here.

44. On May 15, 2025, the Board of Immigration Appeals issued a precedential decision that certain noncitizens who were initially detained by DHS while arriving in the United States, released, and then redetained, may be ineligible for individualized custody review before an Immigration Judge, claiming their detention is controlled by INA § 235(b), 8 U.S.C. § 1225(b). *Matter of Q.Li*, 29 I&N Dec. 66, 69-70 (BIA 2025).

45. Ms. De Souza Moita was paroled into the United States on April 27, 2022, pursuant to a Form I-94 issued by U.S. Border Patrol in El Paso, Texas.

46. To the extent that DHS submits that Ms. Da Silva Moita is precluded from individualized custody review before the immigration judge pursuant to *Matter of Q.Li*,

such preclusion is a violation of procedural due process rights to a custody redetermination hearing. It is further an unlawful application of the 8 U.S.C. § 1225(b).

### COUNT THREE

#### **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations Not in Accordance with Law and in Excess of Statutory Authority Unlawful Detention**

47. Petitioner restates and realleges all paragraphs as if fully set forth here.

48. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

49. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

50. The INA provides that Respondents may release an individual from custody based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the custody determination may be made only when warranted by an individual’s specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

51. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation

omitted).

52. By denying Petitioner an individualized bond determination and treating her detention as mandatory without legal basis, Respondents acted in excess of their statutory authority and in violation of the INA, implementing regulations, and the APA.

#### COUNT FOUR

##### **Unlawful Detention in Violation of *Maldonado Bautista v. Garland***

53. Petitioner restates and realleges all prior paragraphs as if fully set forth here.

54. The Immigration Judge denied Petitioner's bond request solely on the ground that he lacked jurisdiction, concluding that Petitioner was an "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A). That conclusion was predicated on the erroneous assumption that Petitioner remained detained pursuant to § 235, notwithstanding her prior parole into the United States under INA § 212(d)(5).

55. On November 25, 2025—after the Immigration Judge issued his decision—the United States District Court for the Central District of California issued a nationwide declaratory judgment in *Maldonado Bautista v. Garland*, Case No. 5:25-cv-01873-SSS-BFM, holding that DHS has improperly invoked INA § 235(b)(2)(A) in circumstances where detention is governed by INA § 236. *Maldonado Bautista* confirms that individuals who were not apprehended at entry and who were subsequently released or paroled cannot be categorically subjected to § 235(b)(2)(A) mandatory detention and are entitled to custody redetermination under § 236(a).

56. Petitioner was paroled into the United States pursuant to a Form I-94 issued by U.S. Border Patrol. By operation of statute, parole removes an individual from the scope of § 235(b)(2)(A). Accordingly, Petitioner is detained, if at all, under INA § 236(a), and is

entitled to an individualized custody redetermination hearing before an Immigration Judge. The IJ's contrary conclusion was legally incorrect when issued and is now expressly foreclosed by *Maldonado Bautista*.

57. Respondents' continued reliance on INA § 235(b)(2)(A) is ultra vires. The statutory predicate for mandatory detention no longer exists. Maintaining Petitioner's confinement under a legal theory repudiated by binding federal authority is arbitrary, contrary to statute, and violates the Due Process Clause of the Fifth Amendment.

58. Because Petitioner is detained under INA § 236(a) as a matter of law, and because the Immigration Court's jurisdictional determination cannot be reconciled with the nationwide holding in *Maldonado Bautista*, this Court must order Petitioner's immediate release or, in the alternative, direct Respondents to provide a prompt and constitutionally adequate bond hearing.

#### **PRAYER FOR RELIEF**

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

- (1) Assume jurisdiction over this matter.
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment.
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody.
- (5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval.

- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

DATED this 2<sup>nd</sup> day of December 2025.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 2, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which automatically serves all counsel of record.