

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

FATIMA ISSELA VELASQUEZ ANTONIO,)

Petitioner,)

v.)

WARDEN of Stewart Detention Center;)
KRISTIN SULLIVAN, Acting Director,)
Immigration and Customs Enforcement)
and Removal Operations (“ICE/ERO”))
Field Office, Atlanta;)
KRISTI NOEM, Secretary of the)
Department of Homeland Security (“DHS”);)
and PAMELA BONDI, Attorney General)
of the United States,)
in their official capacities,)

Respondents.)
_____)

Case No. 4:25-cv-00434

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Fatima Issela Velasquez Antonio, a citizen of Honduras, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the legality of her detention by Immigration and Customs Enforcement (“ICE”), a component of the U.S. Department of Homeland Security

(“DHS”). She is detained at the Stewart Detention Center in Lumpkin, Georgia, where she has been since November 18, 2025.

2. Petitioner entered the U.S. in 2017 as an unaccompanied minor child, has a valid work permit, and has a pending Form I-589 Application for Asylum with the United States Citizenship and Immigration Services (“USCIS”). She is also part of the J.O.P. Class.¹ Petitioner has no criminal history. Despite having a valid work permit and pending asylum application with USCIS, she was arrested on November 18, 2025, as part of a workplace raid, immediately placed into removal proceedings, and detained. Petitioner asserts her initial detention was illegal and in violation of her Fifth Amendment right to due process of law.

3. Petitioner thereafter requested release on bond, but the Immigration Judge (“IJ”) denied her request, holding that she lacked jurisdiction to adjudicate a bond motion pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which was legal error in violation of the Immigration and Nationality Act (“INA”) and Administrative Procedure Act (“APA”).

¹The “J.O.P. class” refers to the plaintiffs in a class-action lawsuit which challenged a 2019 USCIS policy that restricted asylum rights for certain individuals who were previously identified as Unaccompanied Alien Children (“UAC”). *See J.O.P. et al. v. U.S. Department of Homeland Security et al.*, Order Granting Mot. T.R.O. Aug 2, 2019, GJH-19-1944, D. Md. As a result of a recent settlement, the J.O.P. class includes those who were determined to be a UAC, have an asylum application pending with USCIS, and were 18 or older or had a parent/legal guardian available to care for them when they filed that application.

4. The issue presented in this action is nearly identical to those this Court has recently decided, finding that those petitioners' detention was governed by 8 U.S.C. § 1226(a). *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

5. To vindicate Petitioner's regulatory, statutory, and constitutional rights, Petitioner seeks a bond hearing immediately. Petitioner therefore asks this Court to grant the instant petition for a writ of habeas corpus, find that the Petitioner's detention is unlawful, and order Respondents to provide a bond hearing to Petitioner immediately under 8 U.S.C. § 1226(a).

6. Alternatively, the Court should order the immediate release of Petitioner.

JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

8. 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).

9. 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.*, and the All Writs Act, 28 U.S.C. § 1651.

10. “A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, . . . be brought in any judicial district in which a defendant in the action resides . . . See 28 U.S.C. § 1391(e).

11. The Supreme Court articulated in *Rumsfeld v. Padilla* the standard for determining if a court has jurisdiction to consider a habeas corpus petition, which breaks down into two subquestions— (1) who is the proper respondent to the petition, and (2) does the Court have jurisdiction over that respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

12. Under *Padilla*, the “immediate custodian” of the detained petitioner is the proper respondent in such habeas actions, which is typically the warden of the facility in which the petitioner is being housed. *See id.* at 443 (“The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”)

13. Here, under *Padilla*, the immediate custodian of the Petitioner, and thus the proper Respondent, is the Warden of the Stewart Detention Center in Lumpkin, Georgia. *See id.* Because this Court has jurisdiction over actions arising in Stewart, Georgia, the venue is proper in this case.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Petitioner has exhausted his administrative remedies to the extent required by law. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. However, “that does not mean that courts may disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense.” *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). “To properly exhaust administrative remedies, a petitioner must comply with an agency’s deadlines and procedural rules.” *Straughter v. Warden, FCC Coleman - Low*, 699 F. Supp. 3d 1304, 1306 (M.D. Fla. 2023) (citing *Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) (discussing the Prison Litigation Reform Act’s (PLRA) exhaustion requirement)). It is the Respondent’s burden to prove that the Petitioner has “failed to exhaust all available administrative remedies.” *Id.* at 1307.

15. However, in detention cases such as the Petitioner’s, appeals to the Board of Immigration Appeals (“BIA”) take several months or years. Thus, here, requiring the Petitioner to appeal her bond denial to the BIA to prudentially

exhaust is not efficient, would cause irreparable harm by continuing to deprive her of her liberty, and would be futile so long as *Matter of Hurtado* remains in effect. See *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992) *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause “undue prejudice to subsequent assertion of a court action” or “irreparable harm” to the petitioner, where there is “some doubt as to whether the agency was empowered to grant effective relief,” or where it would be futile because “the administrative body is shown to be biased or has otherwise predetermined the issue before it”) (internal quotation marks omitted). Additionally, the BIA cannot adjudicate constitutional issues, as it lacks the authority to rule that USCIS action violates the Constitution. Instead, constitutional claims are a matter for federal courts.

REQUIREMENTS OF 28 U.S.C. § 2243

16. 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 order to show cause 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.* (emphasis added).

17. 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) (emphasis added).

PARTIES

18. Petitioner is a noncitizen who is currently detained at the Stewart Detention Center. She is in the custody, and under the direct control, of Respondents and their agents.

19. Respondent Warden of the Stewart Detention Center is sued in their official capacity. Respondent Warden is the immediate custodian of the Petitioner.


20. Respondent Kristin Sullivan is sued in her official capacity as the Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Atlanta Field Office. Respondent Sullivan is a legal custodian of Petitioner and has authority to release her.

21. Respondent Kristi Noem is sued in her official capacity as the Secretary of the DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency

responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

22. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

23. Petitioner fled from Honduras and arrived in the U.S. on January 25, 2017, as an unaccompanied minor child. *See* Exh. A, Office of Refugee Resettlement, Verification of Release. She was sixteen years old. She fled because she saw  and because they also saw her, they targeted her for death as well. *See* Exh. B, Form I-589, Application for Asylum. Her mother passed away in Honduras in 2013. *See id.*

24. Petitioner was formally designated an Unaccompanied Alien Child and was placed in the care of the Office of Refugee Resettlement ("ORR"). *See* Exh. A, Office of Refugee Resettlement, Verification of Release. She was released

to her aunt on March 17, 2017, and went to reside with her in North Carolina. *See id.*

25. Petitioner filed Form I-589 with USCIS on August 29, 2019, which was received by USCIS on September 3, 2019. *See* Exh. B, Form I-589, Application for Asylum; *see also* Exh. C, Form I-589 Receipt Notice. That application remains pending with USCIS as of this writing.²

26. In Petitioner's Form I-589 submission, she asserted that her case was being filed with USCIS "after the Temporary Restraining Order barring implementation of the USCIS Memorandum issued on May 31, 2019 by John Lafferty, Chief, USCIS Asylum Division. HQRAIO 120/12a. Subject: Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children." *See* Exh. B, Form I-589, Application for Asylum. Under the Order entered in *J.O.P. et al. v. U.S. Department of Homeland Security et al.*, Order Granting Mot. T.R.O. Aug 2, 2019, GJH-19-1944, D. Md, the Department of Homeland Security

² Petitioner was initially placed into removal proceedings in January 2017. She failed to appear for her scheduled master calendar hearing on September 11, 2018, and the IJ ordered an *in absentia* order of removal against her. *See* Exh. G, Petitioner's 2019 Motion to Reopen. After filing her Form I-589 with USCIS, the Immigration Judge granted Petitioner's Motion to Reopen on October 10, 2019, advising Petitioner that she "must file I-589 with USCIS immediately" and that she "must advise the court of any decision rendered by USCIS." *See* Exh. H, 2019 IJ Order Granting Motion to Reopen. Years later, Petitioner and the DHS jointly filed a Motion to Dismiss Proceedings, which the IJ granted without prejudice on November 16, 2023. *See* Exh. I, 2023 IJ Order Granting Motion to Dismiss. Petitioner accordingly had no pending proceedings against her at the time of her 2025 arrest.

was “enjoined and restrained from applying their new asylum eligibility policy, as set forth in USCIS’s May 31, 2019 memorandum to bar individuals previously determined to be unaccompanied alien children (“UACs”) from seeking asylum before the agency.” *See id.* Further, the agency was “enjoined and restricted from rejecting jurisdiction over the application of any UAC” (as defined in 6 U.S.C. § 279(g)(2)), under the Trafficking Victims Protection Reauthorization Act (“TVPRA”)³ “whose application would have been accepted under the USCIS policy predating the May 31, 2019 memorandum.” *Id.* The T.R.O. was extended on August 13, 2019 through September 3, 2019. *See* Exh. B, Form I-589, Application for Asylum; *see also* *J.O.P. et al. v. U.S. Department of Homeland Security et al.*, Order Extending Mot. for T.R.O. Aug 13, 2019, GJH-19-1944, D. Md.

27. Accordingly, Petitioner asserted that USCIS must accept jurisdiction of her application, as she entered unaccompanied and was designated as a UAC per the TVPRA statute. *See* Exh. B, Form I-589, Application for Asylum; *see also* 8 U.S.C. § 1158(b)(3)(C) (“an asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.”).

³In 2008, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), Pub. L. 110–457, 122 Stat. 5044. Among other protections for unaccompanied children, the TVPRA grants USCIS initial jurisdiction over their asylum applications. TVPRA § 235(d)(7)(B), codified at 8 U.S.C. § 1158(b)(3)(C), INA § 208(b)(3)(C) (“An asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child . . .”).

28. Petitioner applied for and received a valid work permit from USCIS, valid from May 29, 2024 to May 28, 2029. *See* Exh. D, Form I-797 Notice of Action, Work Permit Approval. She received this work permit approval notice on May 30, 2024. *See id.*

29. Petitioner lived and worked in the U.S. without issue or arrests until November 18, 2025. As part of a targeted workplace raid, Immigration and Customs Enforcement (“ICE”) approached Petitioner, because of her race, on November 18, 2025, then arrested her when she presented them with an expired work permit. She had forgotten to keep her up-to-date work permit on her that day, though she was in fact lawfully working under her most recent work permit. *See* Exh. D, Form I-797 Notice of Action, Work Permit Approval.

30. Respondents immediately detained Petitioner and issued her a Notice to Appear (“NTA”). *See* Exh. E, 2025 Notice to Appear. The NTA designated her as someone who has “been admitted to the United States, but [is] removable for the reasons stated below.” The NTA noted that she: (1) had entered the U.S. “at or near unknown place, on or about unknown date,” (2) was not “admitted or paroled after inspection by an immigration officer,” and (3) was an “immigrant not in possession of” valid entry documents. *Id.* The NTA stated that Petitioner is removable under

INA § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I). It thus designated her as an “alien present without admission.” *See id.*

31. Petitioner requested a custody redetermination pursuant to 8 C.F.R. § 1236. *See* Exh. F, IJ Order Denying Change in Custody Status.

32. A custody redetermination hearing was held on November 25, 2025. *See id.* The Immigration Judge denied bond. *See id.* She found that she lacked jurisdiction to even consider the Petitioner’s bond argument because she is bound by *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The IJ summarized *Hurtado* as stating “Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *See* Exh. F, IJ Order Denying Change in Custody Status. The IJ never considered the Petitioner’s flight risk or danger to society. *See id.* The Petitioner reserved appeal. *See id.*

33. On November 20, 2025, a California district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting

partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautistav. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

34. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

35. A new custody hearing took place on December 2, 2025, at Petitioner's request, pursuant to the injunction in *Maldonado Bautista*. The immigration judge again denied the request on the basis of lack of jurisdiction.

36. Thus, the Respondents have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

37. Further, regardless of the nationwide injunction, Respondents' conduct violates fundamental principles of due process and renders Petitioner's detention unlawful under the INA, APA, and the U.S. Constitution.

38. Accordingly, the Court should grant the instant Petition, find the Petitioner’s detention unlawful, and order Respondents to provide a bond hearing to Petitioner immediately under 8 U.S.C. § 1226(a).

39. Alternatively, the Court should order the immediate release of Petitioner.

LEGAL FRAMEWORK

40. U.S.C. § 2241(c)(3) authorizes federal courts to grant habeas relief to prisoners or detainees who are “in custody in violation of the Constitution or laws or treaties of the United States.” Federal courts retain jurisdiction under § 2241 to review purely legal statutory and constitutional claims regarding the government’s detention authority, but jurisdiction does not extend to “discretionary judgment,” “action,” or “decision” by the Attorney General with respect to either detention or removal. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing, *inter alia*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)).

41. Petitioner asserts that (1) her Fifth Amendment right to due process of law was violated when the Respondents subjected her to mandatory detention with no individualized hearing her despite her valid pending I-589 with USCIS and entry as a UAC; (2) the Respondents’s actions violated both the INA and the APA when they detained her under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. §

1226(a); and (3) the Respondents' actions in denying Petitioner an individualized bond hearing for the second time on December 2, 2025, violated the nationwide injunction in *Maldonado Bautista*.

1. Due Process

42. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding her detention. As the Supreme Court has explained, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

44. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v.*

McAleenan, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA’s detention authorities).

45. To guarantee against arbitrary detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

46. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

47. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

48. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

49. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634

F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).

50. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because “numerous factors combine to magnify the risk of erroneous factfinding” including that “parents subject to termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he State’s attorney usually will be expert on the issues contested”). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

51. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen’s immigration records and other information that it can use to make its case for continued detention.

52. In light of these considerations, “[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and

convincing standard would be most consistent with due process.” *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

53. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE’s alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether further incarceration is warranted, particularly where the Petitioner was a UAC..

54. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: “the circumstances of their detention are

similar, so far as we can tell, to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); accord *Chavez-Alvarez v. U.S. Att’y Gen.*, 783 F.3d 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). “And in some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

55. These conditions and obstacles only further underscore the serious due process concerns that immigration detention poses for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding further detention.

2. *Unaccompanied Alien Children (“UAC”)*

56. UAC’s are statutorily defined as children lacking lawful immigration status in the United States, under age 18, and without either a parent or legal

guardian in the United States, or a parent or legal guardian in the United States who is available to provide care and physical custody. 6 U.S.C. §279(g)(2).

57. The TVPRA requires that the U.S. Border Patrol turns unaccompanied children over to ICE for transport to ORR within 72 hours of determining that they meet the UAC definition.

58. U.S. Citizenship and Immigration Services (“USCIS”) is responsible for the initial adjudication of asylum applications filed by unaccompanied children who are placed in formal removal proceedings. INA §208(b)(3)(C), 8 U.S.C. §1158(b)(3)(C).

59. The TVPRA requires that unaccompanied children who are not initially granted asylum by USCIS resume their formal removal proceedings before an EOIR immigration judge, who may also hear their claims for asylum. 8 C.F.R. §208.14(c)(1). Unaccompanied children therefore receive two opportunities to present their asylum claims, first with USCIS, and second during formal immigration court proceedings.

60. USCIS also has initial jurisdiction over asylum applications filed by unaccompanied children with pending claims in immigration court, with cases on appeal before the Board of Immigration Appeals, or with petitions under review with federal courts. INA §208(b)(3)(C), 8 U.S.C. §1158(b)(3)(C). USCIS must

take jurisdiction even if there is evidence that the UAC turned 18 or reunified with a parent or legal guardian after the UAC determination was made.

3. *INA*

61. The Petitioner is not properly detained under 8 U.S.C. § 1225(b)(2)(A), as Respondents assert, but under 8 U.S.C. § 1226(a). Under 8 U.S.C. § 1225(b)(2)(A):

in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title [i.e., removal proceedings].

62. Petitioner maintains that she is detained under 8 U.S.C. § 1226(a), which provides that:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) [mandating the detention of certain criminal aliens] and pending such decision, the Attorney General -

(1) may continue to detain the arrested alien; and

(2) may release the alien on -

(A) bond of at least \$1,500 with security approved by, and containing conditions described by, the Attorney General;

or (B) conditional parole; but

(3) may not provide the alien with work authorization ... unless the alien is lawfully admitted for permanent residence or otherwise would ... be provided such authorization.

63. “Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). Thus, the Court's “first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* (citing, *inter alia*, *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 477 (1992)).

4. *Maldonado Bautista Injunction*

64. Petitioner is a member of the Bond Eligible Class under *Bautista*, as she:

a. does not have lawful status in the United States and is currently detained at the Stewart Detention Center. She was apprehended by immigration authorities on November 18, 2025;

b. Was charged in the NTA as entering the United States without inspection over seven years ago at an “unknown” date and location; and

c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

See Maldonado Bautista, 2025 WL 3289861, at *11.

CLAIMS FOR RELIEF

COUNT ONE

Respondents Violated Petitioner’s Fifth Amendment Right to Due Process

Procedural Due Process

65. The allegations in the above paragraphs are realleged and incorporated herein.

66. 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.

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

68. Here, Petitioner is entitled to due process protections under the Fifth Amendment of the U.S. Constitution. Respondents' refusal to provide Petitioner with an individualized bond hearing—and the IJ's reliance on *Matter of Yauri Hurtado* to conclude that no jurisdiction exists—violated Petitioner's rights under the Due Process Clause.

69. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. Her interest in liberty and family unity is paramount; the Government's blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying her any opportunity to demonstrate eligibility for release; and the Government's interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

70. The Respondents have shown neither that the continued detention of petitioner following her initial detention is reasonably related to the original purpose nor that the *Mathews* tests are satisfied. And importantly, no procedural safeguards were provided to the Petitioner as the IJ found she had no right to a bond hearing under *Matter of Hurtado*.

71. Petitioner is a long-term resident of the United States arrested in the interior, yet DHS asserts mandatory detention under INA § 235 without initiating

expedited removal or processing her as an actual applicant for admission. The government’s reclassification of Petitioner as an “applicant for admission,” without statutory basis and without meaningful opportunity to contest that designation, deprives her of liberty without due process. Civil detention without an individualized determination of danger or flight risk is unconstitutional. *See Zadvydas*, 533 U.S. 678; *Demore*, 538 U.S. 510 (as limited by subsequent authority); U.S. Const. amend. V.

COUNT TWO

Statutory Violation: Petitioner is Detained Under INA § 236, Not § 235

72. The allegations in the above paragraphs are realleged and incorporated herein.

73. Here, the Petitioner is clearly not an “applicant for admission. Her NTA charged her as an “alien present without admission,” and thus, she should be treated by law as someone who has already entered the U.S. Accordingly, her detention is governed exclusively by INA § 236(a). Respondents did not process the Petitioner as an arriving alien, did not initiate expedited removal, and did not issue or reinstate a removal order. The IJ’s reliance on *Hurtado* was thus contrary to the statutory framework, which mandates bond jurisdiction in § 236(a) cases.

74. Further, contrary to the language of § 1225(b), § 1226(a) does not specify a class or classes of aliens who should be detained under the provision, but governs more generally the “apprehension and detention of aliens.” As opposed to the inspection regime for aliens entering the United States set forth in § 1225, the Supreme Court has characterized § 1226(a) as “authoriz[ing] the government to detain certain aliens already in the country pending the outcome of removal proceedings[.]” *Jennings*, 583 U.S. at 289 (emphasis added).

75. Petitioner was at work and targeted by ICE as part of a racially-driven raid on her place of employment. Indeed, she had been at liberty in the interior of the U.S. after being in the country for about eight years.

76. Additionally, Petitioner’s status as a former UAC means she was *necessarily* not detained under 8 U.S.C. § 1225. Because Petitioner filed her asylum application as a UAC under the JOP class settlement, DHS is legally prohibited from treating her as an arriving alien or applicant for admission; therefore, detention under INA § 235 is unavailable as a matter of law, and Petitioner must instead be detained under INA § 236(a). The *JOP v. DHS* class-action settlement was specifically designed to stop Respondents from stripping former UACs of their TVPRA protections after they turn 18. Under the JOP settlement, once an individual has been classified as a UAC and files an

asylum application with USCIS as a UAC, DHS must continue treating them as a UAC for asylum-processing purposes, even after they turn 18.

77. Respondents issued Petitioner a full Notice to Appear under INA § 239 and placed her in § 240 removal proceedings after arresting her at her workplace in 2025. Because Respondents did not issue, reinstate, or execute any expedited removal order, detention is governed by 8 U.S.C. § 1226(a). The IJ’s refusal to exercise bond jurisdiction contradicts the plain text of §§ 1225 and 1226, longstanding agency practice, and federal case law holding that DHS’s charging decision determines the statutory detention authority. By treating Petitioner as subject to § 1225(b) detention without statutory authorization, Respondents acted *ultra vires* and contrary to law.

78. Noncitizens processed under § 236 retain a statutory right to a bond hearing, and DHS may not defeat that right through post-hoc jurisdictional assertions. The IJ’s conclusion that *Hurtado* removes all bond jurisdiction whenever DHS claims § 235 authority grants the agency unfettered power to eliminate bond hearings for any noncitizen arrested in the interior, simply by re-labeling them as an “applicant for admission” without following statutory procedures for expedited removal. Such a reading raises grave Due Process concerns and cannot reflect congressional intent. Because Petitioner is detained

under § 236(a), she is entitled to an individualized custody hearing, and the IJ’s refusal to consider bond violated the INA.

79. Thus, Petitioner was entitled to a bond hearing “at the outset of detention” as established by existing federal regulations. *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

80. This Court came to the same conclusion in recent habeas decisions regarding the applicability of INA § 236 and § 235 to detained immigrants who had lived in the interior of the country for years before being arrested. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). Petitioner is therefore entitled to an immediate bond hearing.

COUNT THREE

Respondents Violated of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Not in Accordance with Law and in Excess of Statutory Authority Unlawful Detention

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

82. 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).

83. 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)).

84. 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).

85. Here, by categorically issuing the Petitioner and NTA while her affirmative asylum application remains pending with USCIS and detaining her, without any consideration of her individualized facts and circumstances, Respondents have violated the APA.

86. Respondents have made no finding that Petitioner is a danger to the community.

87. Respondents have made no finding that Petitioner is a flight risk.

88. By detaining the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to her facts or circumstances in the last several years.

89. Petitioner is a former unaccompanied child with a pending asylum case under USCIS jurisdiction pursuant to the TVPRA and the JOP class settlement. By charging her as “present without admission,” Respondents confirmed she is already present in the United States and not an arriving alien. Attempting to impose § 235 detention contradicts TVPRA protections, improperly reclassifies her, and violates federal law governing the treatment of former UACs.

90. The IJ’s refusal to conduct a bond hearing based on *Matter of Yauri Hurtado* constitutes final agency action that is contrary to statutory text, unsupported by facts, and irrational. Petitioner is a long-term U.S. resident apprehended at work in the interior, with no prior removal order. Applying *Hurtado* to Petitioner’s facts is arbitrary, capricious, and legally erroneous. The resulting deprivation of bond eligibility is therefore unlawful under the APA.

COUNT FOUR

Violation of the TVPRA and JOP Settlement Protections for Former UACs

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

92. Petitioner is a former UAC with a pending asylum application under USCIS jurisdiction pursuant to the TVPRA. Former UACs cannot be treated as arriving aliens for asylum jurisdiction or reclassified in ways that undermine their statutory protections.

93. Respondents' treatment of Petitioner as an arriving alien under § 235 contradicts the TVPRA, the JOP settlement, and controlling federal guidance. This unlawful reclassification directly caused the deprivation of a bond hearing and violates federal law.

COUNT FIVE

Respondents Violated Federal Judgment

Petitioner is a Valid Class Member under Maldonado Bautista

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

95. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite her clear entitlement to consideration for release on bond as a Bond Eligible Class member.

96. Immigration judges have informed class members in bond hearings that they have been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

97. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order that Respondents must immediately provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a).

98. Alternatively, the Court should order Petitioner’s immediate release.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment;
3. Declare that the Petitioner’s detention violates the INA;
4. Declare that the Petitioner’s detention violates the APA;
5. Declare that the Petitioner's Form I-589 is properly under USCIS jurisdiction;

6. Declare that Petitioner is entitled to a bond hearing under *Maldonado Bautista*;
7. Issue a Writ of Habeas Corpus ordering Respondents to order Respondents to conduct a bond hearing immediately, or in the alternative, release Petitioner from custody immediately;
8. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
9. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Brittany S. Pierce

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Counsel for Petitioner

Dated: 4 December, 2025

EXHIBITS

- EXH. A - Office of Refugee Resettlement, Verification of Release**
- EXH. B - Form I-589, Application for Asylum, and attachments**
- EXH. C - Form I-589 Receipt Notice**
- EXH. D - Form I-797 Notice of Action, Work Permit Approval**
- EXH. E - 2025 Notice to Appear**
- EXH. F - IJ Order Denying Change in Custody Status**
- EXH. G - Petitioner's 2019 Motion to Reopen**
- EXH. H - 2019 IJ Order Granting Motion to Reopen**
- EXH. I - 2023 IJ Order Granting Motion to Dismiss**

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Fatima Issela Velasquez Antonio, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 4th day of December, 2025.

s/Brittany S. Pierce
Brittany S. Pierce