UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

Perez Quintero, Migdalia Josefina
*Petitioner,*

v.

LaDeon FRANCIS, Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

*Respondents.*

Case No. 25-cv-10107

**FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Petitioner Ms. Perez Quintero is an asylum seeker from Venezuela who, as of the filing of this initial petition,[1] was in the physical custody of Respondents in 26 Federal Plaza, New York City. Respondent is a 50-year old home health aide worker, devoted wife, and loving grandmother originally from Venezuela, who was paroled into the United States on or around September 10, 2022.

2. On December 4, 2025, Petitioner was forcibly arrested by the Department of Homeland Security after reporting for an ICE check-in, notwithstanding the fact that Petitioner had filed a timely application for asylum and was lawfully present in the United States for years pursuant to a grant of Temporary Protective Status (TPS).

3. Petitioner entered outside a port of entry in or around September 10, 2022. Dkt. 8 at ¶ 6.

4. On September 11, 2022, Petitioner was granted parole and asked to report to Immigration and Customs Enforcement (ICE) within 60 days. Dkt. 6-1 at 3. To receive this grant of parole, Petitioner had "demonstrate[d] to the satisfaction of the [arresting] officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. 1236.1(c)(8). Determined not to be a danger or flight risk, Petitioner complied with all requirements and reported to ICE, where her check-in was rescheduled for December 2025.

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[1] "[A] habeas petitioner, like any civil litigant, is entitled to amend his petition . . . ." *Zarvela v. Artuz*, 254 F.3d 374, 382 (2d Cir. 2001), *as amended* (June 26, 2001), *as amended* (Aug. 17, 2001). [A] petition for habeas corpus "may be amended or supplemented as provided in the rules of procedure applicable to civil actions," namely Fed. R. Civ. P. 15(a). *Littlejohn v. Artuz*, 271 F.3d 360, 363 (2d Cir. 2001). Fed. R. Civ. P. 15(a)(1) allows amendment once as a matter of course within 21 days of service of the initial pleading, or 21 days after service of a responsive pleading.

5. Within the United States, Petitioner applied for, and was granted, Temporary Protected Status (TPS), which she held until the designation was recently terminated for the country of Venezuela. *See* "Temporary Protected Status Designated Country: Venezuela," U.S. Citizenship and Immigration Services, *available at* https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela.

6. This termination is currently being challenged, on the theory that the termination violated the Administrative Procedure Act (APA) and Equal Protection Clause of the U.S. Constitution. *See generally Nat'l TPS All., v. Noem*, No. 25-CV-01766-EMC (N.D. Cal. Dec. 10, 2025). The Northern District of California recently reaffirmed that the termination of Venezuela's 2023 TPS designation was in fact unlawful, and its summary judgment ruling in favor of plaintiffs is pending on appeal. *See Nat'l TPS All., v. Noem,* No. 25-CV-01766-EMC, 2025 WL 3539156, at *2 (N.D. Cal. Dec. 10, 2025).

7. In addition to TPS, Petitioner timely filed an application for asylum based on the persecution she suffered at the hands of the government of the current authoritarian regime in Venezuela. Her asylum claim is based on her political opinion and membership in a particular social group. She is also seeking protection under the Convention Against Torture.

8. With the employment authorization granted to Petitioner with her TPS, Petitioner had been working as a home health aide until the date of her detention.

9. Petitioner appeared at her check-in with ICE on December 4, 2025, as required, and was immediately taken into custody, without prior notice. She was served with a Notice to Appear, charging her as "an alien in the United States who has not been admitted or paroled."

Respondents did not make any individualized finding as to Petitioner's risk of flight or danger to the community before detaining her.

10. Petitioner has no criminal history in the United States or any other country, and there have been no changed circumstances warranting her detention since her release in 2022. To the contrary, Petitioner has complied with every request to appear by ICE, applied for and received TPS, and submitted a timely application for asylum.

11. Respondents assert that Petitioner is held pursuant to 8 U.S.C. § 1225(b) and therefore ineligible to be released on bond. Petitioners' detention on this basis violates the Immigration and Nationality Act, as Section 1225(b) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), which allows for release on conditional parole or bond.

12. As Respondents have violated, *inter alia*, the Immigration and Nationality Act ("INA") and Petitioner's due process rights, Petitioner seeks a writ of habeas corpus requiring that she be released immediately, or (at minimum) be permitted a bond hearing in which the government bears the burden of proving that she poses a flight risk or a danger to the community.

## JURISDICTION

13. Petitioner is in the physical custody of Respondents. At the time of this Petition's initial filing, Petitioner was detained at 26 Federal Plaza in New York, New York. Though Petitioner has since been transferred out of state, this Court retains jurisdiction over this Petition. *See Ozturk v. Hyde*, 136 F.4th 382, 392 (2d Cir. 2025) ("[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian,

the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.").

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

15. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

16. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of New York, the judicial district in which Petitioner was detained at the time of the initial filing of her Petition.

18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of New York.

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

20. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

**PARTIES**

21. Petitioner is a citizen of Venezuela and has been in immigration detention since December 4, 2025. After arresting Petitioner in New York, New York, ICE did not set bond and Petitioner is unable to obtain review of her custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

22. Respondent LaDeon Francis is the Director of the New York Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Francis is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity. Respondent Francis's address is New York ICE Field Office Director, 26 Federal Plaza, New York, New York 10278.

23. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of Immigration and Customs Enforcement. As the Acting Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and routinely transacts business in this District. He supervises Respondent LaDeon Francis. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

24. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

25. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. DHS's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

26. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

27. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. EOIR's address is 5107 Leesburg Pike, Falls Church, VA 22041.

## LEGAL FRAMEWORK

### I. Detention Authority

28. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

29. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally 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).

30. 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 seeking admission referred to under § 1225(b)(2).

31. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

32. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

33. The detention 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 earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

34. 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).

35. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, 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 § 1252(a)).

36. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

37. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

38. 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 are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

39. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

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[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

40. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *See generally Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

41. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *Barco Mercado v. Francis*, No. 25-CV-6582, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) ("[T]he administration's new position that all noncitizens who came into the United States illegally, but since have been living in the United States, must be detained until their removal proceedings are completed — has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, *in 350 of those cases* decided by over 160 different judges sitting in about fifty different courts spread across the United States."); *see also id. at* Appendix A.

42. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Barco Mercado v. Francis* Court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

43. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

44. Respondents' interpretation of Section 1225(b)(2) would also render superfluous a recent statutory amendment to Section 1226, added in 2025 by the Laken Riley Act. *See* 8. 8 U.S.C. § 1226(c)(1)(E). This provision makes a noncitizen subject to mandatory detention if he is (i) inadmissible for having entered without inspection "*and*" is (ii) charged with, arrested for, convicted of, or admits to committing certain crimes. *Id.* (emphasis added). Under Respondent's theory Section 1226(c)(1)(E)'s mandatory detention for noncitizens who are implicated in certain crimes, including those "present in the United States without being admitted or paroled," would be rendered meaningless since, in Respondents' view, "all noncitizens who have not been admitted" would already be subject to Section 1225(b)(2)'s mandatory detention authority. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

45. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

46. By 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). 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 v. Rodriguez*, 583 U.S. 281, 287 (2018).

## II. The *Maldonado Bautista v. Santacruz* Bond Denial Class

47. On November 20, 2025, the district court in *Maldonado Bautista v. Santacruz* 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 Bautista v. 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). 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.

48. Nonetheless, Respondents have blatantly refused to abide by the declaratory relief and have unlawfully ordered that noncitizen class members, including Petitioner, may be denied the opportunity to be released on bond.

## III. Release on Parole

49. DHS may release noncitizens on parole "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5).

50. Federal regulations specify that DHS may only release such individuals if they "present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b). These requirements—flight risk and danger—reflect constitutional constraints, since only individuals who pose a flight risk or danger may be civilly detained. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

51. The regulations contemplate parole for specific groups of individuals meeting these criteria including those "who have serious medical conditions in which continued detention would not be appropriate" and those "whose continued detention is not in the public interest." 8 C.F.R. 212.5(d)(b)(1), (5).

## IV. Civil Immigration Detention

52. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018); *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

53. To comport with due process, civil detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-691; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

54. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Mathews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest. Revocation of conditional release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole; probation; and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law

from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

55. Despite these baseline requirements, Respondents now regularly redetain individuals notwithstanding an earlier determination to release them and do so without according any notice or process whatsoever. These redetentions violate noncitizens' right to due process. *See Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (ordering the immediate release of a petitioner redetained by ICE because she "poses a risk of flight or a danger to the community" and her sudden redetention violated her right to due process); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (ordering the release of petitioner redetained after an immigration court hearing and concluding "Respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.").

## V. Release is the Only Appropriate Remedy

56. Numerous courts in this district have ordered immediate release in similar circumstances. *See, e.g., Rueda Torres v. Francis*, No 25 CIV. 8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025).

57. Despite this, Respondents have asserted that bond is an appropriate remedy, citing *Romero Perez v. Francis*, No. 25 CIV 8112, 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025). However, that case alone demonstrates why such bond hearings are futile and why outright release is required. In *Romero Perez*, notwithstanding Judge Koetl's order that a burden shifted bond hearing be held within seven days, the Immigration Judge first refused to hold a hearing on the merits, denying bond on a lack of jurisdiction, requiring that an emergency motion be filed

by Respondents. *See* Pet.'s Mot. To Enforce Nov. 6, 2025 Order 1, No. 25 CIV 8112 ECF No. 31 (Nov. 10, 2025). Following the emergency motion, the Immigration Judge held a second hearing to grant bail. However, as soon as bail was granted, Respondents invoked an automatic stay pursuant to 8 C.F.R.10034.19(i)(23) to bar the Petitioner's release. *See* Pet.'s Mot. To Enforce Nov. 6, 2025 Order 1, No. 25 CIV 8112 ECF No. 33 (Nov. 10, 2025). Petitioner was only released after he was denied twice the opportunity to be released and only after two emergency motions had to be filed with the court.

58. To avoid the complete undermining of Petitioner's actual release from detention, outright release – not a bond hearing – is necessary.

## FACTS

### I. Petitioner

59. Petitioner is a native Spanish speaker. Neither her nor her family has knowledge of English.

60. Petitioner suffers from multiple medical conditions, including diabetic kidney disease.

61. Petitioner has resided in the United States since September 10, 2022, when she was paroled into the country. Petitioner's subsequent check-in with ICE was scheduled for December 2025.

62. Because Petitioner was released on parole on September 11, 2022, she was determined not to be a risk of flight or a danger to the community. Her continued detention was determined not to be in the public interest.

63. In 2024, Petitioner applied for, and was granted, Temporary Protected Status (TPS), which she held until the designation was recently terminated—a termination that was

recently held to be unlawful. *Nat'l. TPS All., v. NOEM, et al.*, No. 25-CV-01766-EMC, 2025 WL 3539156, at *2 (N.D. Cal. Dec. 10, 2025).

64. Petitioner's subsequent check-in interview with ICE was scheduled for December 4, 2025. Prior to this interview, Petitioner and her family spoke with Father Eduardo Fabian Arias, her spiritual advisor, where she requested that he assist her in any way should she be detained. A friend of the family for over two years, Father Fabian agreed with Petitioner's request to file a habeas petition on her behalf should she be detained.

65. After Petitioner's TPS status was unlawfully revoked, Petitioner was complying with her check-in with ICE on December 4, 2025 when she was arrested and detained without a determination as to whether she was considered a flight risk or posed a danger to herself, others, or property.

66. Pursuant to *Matter of Yajure Hurtado* and *Matter of Q Li*, no immigration judge is able to consider Petitioner's bond request.

67. Upon detention at 26 Federal Plaza, Petitioner was denied access to legal counsel or a phone call.

68. Father Fabian filed a habeas petition pro se for Petitioner on December 4, 2025, while she was detained at 26 Federal Plaza in New York. *See* Dkt. 1 ("Pro Se Petition").

69. Petitioner was subsequently transferred out of state and continued to be denied access to counsel or a phone call until December 7, 2025, when she was finally transferred to her current detention facility in Louisiana.

70. Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years, in immigration custody, separated from her family and community.

71. While in custody, Petitioner has requested, and been denied, medication for her kidney disease. While she remains in detention, she risks a worsening of these medical conditions which, upon information and belief, will lead to irreparable damage to her kidneys and health.

## II. The Termination of Venezuela's TPS Designation

72. In announcing the vacatur of Venezuela's TPS designation in a "Fox and Friends" interview on January 29, 2025, Secretary Noem described Venezuelans in the United States as "dirtbags": "Today we signed an executive order within the Department of Homeland Security and a direction that we were not going to follow through on what he did to tie our hands, that we are going to follow the process, evaluate all of these individuals that are in our country, including the Venezuelans that are here and members of TdA [transnational gang Tren de Aragua]. Listen, . . . the people of this country want these dirtbags out. They want their communities to be safe . . . So, this is part of our plan to make sure we are protecting America and keeping it safe again, just like President Trump promised."[3]

73. This was not an isolated occurrence. Secretary Noem has repeatedly described immigrants, and particularly those from Venezuela, as "dirtbags."[4]

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[3] DHS Sec. Noem Announces End to Temporary Protected Status for Venezuelan Migrants, FOX AND FRIENDS (Jan. 29, 2025) at approx. 1:00, *available at* https://www.foxnews.com/video/6367942790112?msockid=30416397acd261bf24f1707bad68603 7 (emphasis added).

[4] @Sec_Noem, X (Jan. 28, 2025, 7:35 AM), *available at* https://x.com/Sec_Noem/status/1884264039158800547 ("Getting the dirt bags off the streets."); DHS Secretary Kristi Noem Joins Federal Agents on Immigration Raids in New York, CBS MORNINGS (Jan. 29, 2025) at approx. 1:10, *available at* https://www.youtube.com/watch?v=tODarHnNiNs ("These guys are dirtbags. They have come in and perpetuated violence in this country."). The CBS reporter who accompanied Secretary Noem on New York City raids she references reported that nearly half of those arrested had no criminal history.

74. The vast majority of Venezuelan TPS holders have no criminal history, including Petitioner, and in general people are ineligible for TPS if they have more than a single misdemeanor conviction. Nonetheless, Secretary Noem has also sought to disparage Venezuelan TPS holders as "criminals." At her confirmation hearing, Secretary Noem said: "[T]his extension [of TPS] of over 600,000 Venezuelans [] is alarming when you look at what we've seen in different states including Colorado with gangs doing damage and harming the individuals and the people that live there."[5]

75. She has also repeatedly conflated Venezuelan TPS holders with members of a Venezuelan gang which the Trump administration designated as a foreign terrorist organization. On the January 29 "Fox and Friends" interview, Secretary Noem described ending TPS for Venezuelans as necessary in order to "evaluate all of these individuals that are in our country, including the Venezuelans that are here and members of TdA," referring to Tren de Aragua.[6]

76. Secretary Noem also conflated TPS holders and Tren de Aragua gang members in the termination notice itself.

77. Secretary Noem's assertions are not just unsubstantiated; they are false. When investigative journalists sought to study claims about the gang's activity last year, "none of the

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[5] Homeland Security Secretary Nominee Gov. Kristi Noem Testifies at Confirmation Hearing, CSPAN (Jan. 17, 2025) at approx. 1:52:00, *available at* https://www.c-span.org/program/senatecommittee/homeland-security-secretary-nominee-gov-kristi-noem-testifies-at-confirmationhearing/654484.

[6] DHS Sec. Noem Announces End to Temporary Protected Status for Venezuelan Migrants, FOX AND FRIENDS (Jan. 29, 2025) at approx. 1:10, *available at* https://www.foxnews.com/video/6367942790112?msockid=30416397acd261bf24f1707bad68603 7.

[numerous] national, state, and local law enforcement agencies contacted in the U.S. reported any significant presence of Tren de Aragua" in their jurisdictions.[7]

78. DHS itself identified only 600 Venezuelan migrants "who may have connections" to Tren de Aragua—including not just members, but also victims, witnesses or subjects of interest.[8]

## CLAIMS FOR RELIEF

### COUNT I
### Violation of the INA

79. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

80. 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.

81. The only groups of individuals subject to expedited removal proceedings are noncitizens "arriving" in the United States and noncitizens who have "not been admitted or paroled into the United States" and cannot prove to the "satisfaction of an immigration officer" that they have been continuously physically present in the country for two years. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II); 8 C.F.R. §§ 235.3(b)(1)(ii); (b)(6).

82. Petitioner falls into neither category. She is not "arriving" because she has been in the U.S. for over three years, since her arrival in September 2022, and in addition, she was

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[7] Venezuela Investigative Unit, Is Venezuela's Tren de Aragua 'Invading' the US?, INSIGHT CRIME (Apr. 1, 2024), *available at* https://insightcrime.org/news/is-venezuelas-tren-de-araguainvading-us/ ("Police agencies in major urban areas across the United States – including Los Angeles, Phoenix, Dallas, San Antonio, and Denver – told InSight Crime that they had no reports of crimes committed by Tren de Aragua in their jurisdictions.").

[8] Julia Ainsley, DHS Is Seeking More than 600 Migrants for Possible Ties to Venezuelan Gang, NBC NEWS (Oct. 23, 2024), available at https://www.nbcnews.com/news/dhs-identified-600-migrants-possible-ties-venezuelan-gang-rcna176020.

paroled into the U.S. upon her arrival. *See* Dkt. 6-1 at 3. Respondents therefore violated their own regulations and guidance when they placed Petitioner in expedited removal and detained her.

83. In sum, the mandatory detention provision of § 1225(b)(2)(A) does not apply to Petitioner, who had already entered and was residing in the United States for years at the time she was apprehended.

84. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

**COUNT II**
**Violation of the Bond Regulations**

85. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

86. 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.

87. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

88. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**COUNT III**
**Violation of Fifth Amendment Right to Due Process**

89. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

90. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V; *see generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). 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.

91. Respondents are obligated to comply with Constitutional requirements for procedural due process, even while exercising their discretionary authority to detain noncitizens. *See Velasco Lopez*, 978 F.3d at 848 ("Detention during removal proceedings is a constitutionally valid aspect of the deportation process . . . . Our concern is . . . with the "important constitutional limitations' on that power's exercise.") (citing *Zadvydas*, 533 U.S. at 695).

92. The government made the reasoned decision to parole Petitioner, and then grant her TPS, while she pursued her asylum claim in the United States. In so doing, Respondents determined that she did not pose a danger or flight risk. But on December 4, 2025, she was not accorded any process prior to her sudden re-detention by ICE. Petitioner received neither notice nor an opportunity to be heard as to whether a change in custody status was warranted.

93. The Due Process Clause entitles Petitioner to meaningful process assessing whether her detention is justified. The sudden arrest and detention of Petitioner without an opportunity for her to contest her detention in front of a neutral adjudicator after he had been living and working in the United States for over three years provides insufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution. *See e.g., Chipantiza-Sisalema v. Francis,* No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *2 (S.D.N.Y. July 13, 2025) (ordering release of petitioner re-detained after immigration hearing, finding that her detention "violates her Fifth Amendment right to due process because ICE detained her without notice, an opportunity to respond, or an individualized determination that she poses a flight risk or a danger to the community"); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (ordering release of petitioner re-detained after an immigration court hearing and concluding "respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights."); *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment"); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) (ordering release of individual re-detained after an immigration court hearing based on finding that "the Mathews factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained.").

94. Respondents violated Petitioner's due process rights when they revoked her parole and subsequently arrested her. While ICE has discretion to revoke parole, it may not do so

in a manner devoid of due process. *See Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (stating that "due process, at a minimum" requires the government to afford meaningful notice and an opportunity to be heard and that the opportunity must be meaningful) (citing *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004)). "[B]efore the Government unilaterally takes away that which is sacred, it must provide *meaningful process.*" *Id.* (*citing to Rodriguez-Figueroa v. Barr,* 442 F. Supp. 3d 549, 564 (W.D.N.Y. 2020)) (emphasis in original). It is unlawful for the government to arrest a noncitizen who has been granted parole without complying with ICE's own regulatory requirements regarding the proper process for revocation of parole. *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 145 (W.D.N.Y. 2025) (citing *Y-Z-L-H v. Bostock*, 792 F.Supp.3d 1123, 1145-46 (D. Or. July 9, 2025). As to process, at minimum, a revocation of parole requires a case-by-case assessment in which an official with authority decides that "'the purpose for which parole was authorized' has been 'accomplish[ed]' or that 'neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen]' in the United States." *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. at 139 (quoting 8 C.F.R. § 212.5(e)(2)(i)); *see also Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) ("[A]n individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing"). Prior to revoking humanitarian parole, "there must be a hearing which will give assurance that the discretion of the Attorney General shall be exercised against a background of facts fairly contested in the open." *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610, 615 (2d Cir. 1958).

**COUNT IV**
**Violation of Fifth Amendment Right to Due Process**
**(Substantive Due Process Right to Medical Care)**

95. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

96. 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).

97. Petitioner's detention violates her rights under the due process clause by depriving her of liberty and access to urgent medical care for a serious and ongoing medical condition.

**COUNT V**
**Violation of the Equal Protection Guarantee of the Due Process Clause of the Fifth Amendment**

98. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

99. The Fifth Amendment contains an implicit guarantee of equal protection that invalidates any official action that in part reflects a racially discriminatory intent or purpose. Classifications based on race, ethnicity, or national origin receive exacting scrutiny, and even facially neutral policies and practices will be held unconstitutional when they reflect a pattern unexplainable on grounds other than race. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

100. Respondents' decisions to vacate the January TPS extension for Venezuela, and to terminate the 2023 Venezuela Designation, are unconstitutional because they were motivated, at least in part, by intentional discrimination based on race, ethnicity, or national

origin.

101. Petitioner's detention is the direct result of the unlawful vacatur and termination of the 2023 Venezuela Designation. Indeed, Respondents terminated the 2023 Venezuela Designation with the explicit discriminatory purpose of detaining and deporting Venezuelan citizens present in the United States, including Petitioner.

102. The INA states that a TPS holder "shall not be detained" on the basis of their immigration status. 8 U.S.C. § 1254a(d)(4). When Respondents unlawfully terminated the TPS designation for Venezuela, Petitioner was unlawfully deprived of her statutory protection from detention pursuant to her TPS status.

**COUNT VI**
**Violation of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1), 8 U.S.C. § 1252(e)(2); Administrative Procedure Act, 5 U.S.C. §§ 702, 706**

103. Petitioner repeat and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

104. 8 U.S.C. § 1225(b)(1) covers the "[i]nspection of aliens arriving in the United States and certain other aliens who have not been admitted or *paroled*." 8 U.S.C. § 1225(b)(1) (emphasis added). Section 1225(b)(1)(A)(iii)(II) further clarifies that "[a]n alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

105. To the extent that Respondents attempt to subject Petitioner to expedited removal, this is a violation of the INA. As Petitioner was paroled and has been residing in the United States since 2022, she is not subject to expedited removal.

106. Respondents' application of 8 U.S.C. § 1225(b)(1) to Petitioner after she was paroled and residing in the United States exceeds the government's statutory authority in

violation of the Immigration and Nationality Act and the Administrative Procedure Act.

107. Respondents' detention of Petitioner similarly violates the Administrative Procedure Act insofar as this detention violates Petitioner's due process rights under the Fifth Amendment.

## COUNT VII
### Violation of the INA:
### Request for Relief Pursuant to *Maldonado Bautista*

108. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

109. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

110. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

111. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

112. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

113. Petitioner is a member of the Bond Eligible Class, as she is a noncitizen in the United States without lawful status who (1) entered the United States without inspection; (2) was not apprehended upon arrival, but instead three years after entering the United States, and (3) is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security made its initial custody determination. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). *See also id.*

at *5 ("[C]lass members are noncitizens *who already arrived in the United States without inspection*, or will enter the United States and not face inspection.") (emphasis added).

114. After apprehending Petitioner, DHS placed her in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

115. By denying Petitioner a bond hearing under § 1226(a) and asserting that she is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the court's judgment in *Maldonado Bautista*.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;
b. Order that Petitioner shall not be transferred outside the Southern District of New York while this habeas petition is pending;
c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
e. Declare that Petitioner's detention is unlawful;
f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
g. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: December 15, 2025

/s/Kelly Jo Popkin
Kelly Jo Popkin, Esq.
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioners because I know them personally and know much of this information from my personal interactions with Petitioners' loved ones. On information and belief, I hereby verify the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: December 15, 2025

Eduardo Fabian Arias

[redacted]