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8 **UNITED STATES DISTRICT COURT FOR THE**  
9 **DISTRICT OF ARIZONA**

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12 Fany Yadira Montes Cueva,

13 Petitioner,

14 v.

15 Officer in Charge, Arizona Removal  
16 Operations Coordination Center; Field  
17 Office Director, Phoenix Field Office,  
U.S. Immigration and Customs  
18 Enforcement, Enforcement and Removal  
Operations; Todd Lyons, Acting  
19 Directo, U.S. Immigration and Customs  
20 Enforcement; Pamela Bondi, Attorney  
21 General of the United States; Kristi  
22 Noem, Secretary of Homeland Security,  
in their official capacities,

23 Respondents.  
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Case No.:

**EMERGENCY VERIFIED  
PETITION FOR WRIT OF  
HABEAS CORPUS AND  
COMPLAINT FOR DECLATORY  
AND INJUNCTIVE RELIEF**

**ORAL ARGUMENT REQUESTED**



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## INTRODUCTION

1. This case challenges the unlawful detention of Petitioner Fany Yadira Montes Cueva (“Petitioner” or “Ms. Montes”), who is currently in the custody of Immigration and Customs Enforcement (“ICE”) in Phoenix, Arizona. Petitioner, a native and citizen of Honduras, who has no criminal history whatsoever, is neither a flight risk nor a danger to the community. And yet, on December 3, 2025, ICE detained Petitioner at her asylum interview without affording her any due process.

2. Based on information and belief, Petitioner is at the Arizona Removal Operations Coordination Center, or AROCC for short, an ICE staging facility located at the Phoenix-Mesa Gateway Airport. Ms. Montes is likely to be removed at any moment without the Court’s intervention.

3. Born in Honduras, Ms. Montes has been in the United States for over twenty-three years, and has built a life with her partner and three exceptional United States citizen sons – 9, 17, and 21 years of age. She is the primary breadwinner for her family, and despite working four jobs, she is also the primary caregiver to her children and is dedicated to their well-being, education, and futures.

4. Ms. Montes fled Honduras to escape rampant gang violence,   so that she would be able to build the full life she has for her

1 family through her hard work—a testament to the hope and prosperity the United  
2 States offers those fleeing dire circumstances.

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4 5. Ms. Montes has a track record of attending any immigration-related  
5 appointments, including consistent attendance at her numerous biometrics'  
6 appointments. Despite this, she was detained by ICE while attending an asylum  
7 interview. Unbeknownst to Ms. Montes, an immigration judge had ordered her  
8 removed *in absentia* in 2002 – a removal predicated on a Notice to Appear issued  
9 that was, based on information and belief, deficient in that it lacked the required  
10 time, place, and location.  
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13 6. Ms. Montes is now diligently pursuing efforts to rescind the *in absentia*  
14 order of removal based on her lack of notice for the hearing she was meant to have  
15 attended. As demonstrated by her consistent efforts to secure work authorization and  
16 her pursuit of a legitimate claim to asylum, Ms. Montes has an established record of  
17 seeking to comply with immigration laws and is now, through a soon-to-be filed  
18 motion to reopen, actively challenging the order of removal entered *in absentia*.  
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22 7. Respondents' actions depriving Petitioner of her liberty violates the  
23 Due Process Clause of the Fifth Amendment to the U.S. Constitution, the  
24 Immigration and Nationality Act (“INA”) and implementing regulations, the  
25 Administrative Procedure Act (“APA”).  
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1 8. Petitioner brings this action for injunctive, habeas, and declaratory  
2 relief ordering Respondents to release her and allow her to return to her United States  
3 citizen children while she challenges the *in absentia* order of removal, and continues  
4 her pursuit of her asylum claim.  
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### 6 JURISDICTION

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8 9. This action arises under the Constitution of the United States and the  
9 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*  
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11 10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241  
12 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the  
13 United States Constitution (Suspension Clause).  
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15 11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C.  
16 § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All  
17 Writs Act, 28 U.S.C. § 1651.  
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### 19 REQUIREMENTS OF 28 U.S.C. § 2243

20 12. The Court must grant the petition for writ of habeas corpus or issue an  
21 order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is  
22 not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court  
23 must require respondents to file a return “within *three days* unless for good cause  
24 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).  
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27 13. Courts have long recognized the significance of the habeas statute in  
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1 protecting individuals from unlawful detention. The Great Writ has been referred to  
2 as “perhaps the most important writ known to the constitutional law of England,  
3 affording as it does a swift and imperative remedy in all cases of illegal restraint or  
4 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).  
5

## 6 PARTIES

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8 14. Petitioner FANY YADIRA MONTES CUEVA, a Honduran national,  
9 that has been residing in the United States for over twenty-three years. She has three  
10 United States citizen children. She is currently seeking to rescind an *in absentia*  
11 order of removal based. She was detained by ICE on December 3, 2025, and is  
12 currently in ICE custody in Phoenix, Arizona, and is therefore under the direct  
13 control of Respondents and their agents.  
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16 15. Respondent Officer in Charge is sued in his official capacity as the  
17 Officer in Charge at the Arizona Removal Operations Coordination Center. He has  
18 immediate physical custody of Petitioner pursuant to the facility’s contract with ICE  
19 to detain noncitizens. Respondent Officer in Charge is a legal custodian of Petitioner.  
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22 16. Respondent FIELD OFFICER DIRECTOR is sued in their official  
23 capacity as Director of Enforcement and Removal Operations of ICE’s Phoenix  
24 Field Office. Respondent is a legal custodian of Petitioner and has authority to  
25 release her.  
26

27 17. Respondent TODD LYONS is sued in his official capacity as Acting  
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1 Director of U.S. Immigration and Customs Enforcement. In this capacity,  
2 Respondent Lyons directs and oversees ICE's Enforcement and Removal  
3 Operations, the component agency responsible for Petitioner's detention.  
4  
5 Respondent Lyons is a legal custodian of Petitioner and has authority to release her.

6 18. Respondent KRISTI NOEM is sued in her official capacity as the  
7  
8 Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity,  
9 Respondent Noem is responsible for the implementation and enforcement of the  
10 Immigration and Nationality Act, and oversees U.S. Immigration and Customs  
11 Enforcement, the component agency responsible for Petitioner's detention.  
12  
13 Respondent Noem is a legal custodian of Petitioner.

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15 19. Respondent PAMELA BONDI is sued in her official capacity as the  
16 Attorney General of the United States and the senior official of the U.S. Department  
17 of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases  
18 and to oversee the Executive Office for Immigration Review ("EOIR"), which  
19 administers the immigration courts and the Board of Immigration Appeals.  
20  
21 Respondent Bondi is a legal custodian of Petitioner.  
22

## 23 **LEGAL FRAMEWORK**

### 24 **Due Process**

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26 20. "The Due Process Clause applies to all persons within the United  
27 States, including aliens, whether their presence here is lawful, unlawful, temporary,  
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1 or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified).  
2 “Freedom from imprisonment—from government custody, detention, or other forms  
3 of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690  
4 (2001).  
5

6 21. Under substantive due process doctrine, a restraint on liberty is only  
7 permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*,  
8 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate  
9 objectives of immigration detention: preventing danger to the community or  
10 preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92  
11 (discussing constitutional limitations on civil detention).  
12  
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14 22. “Procedural due process imposes constraints on governmental  
15 decisions which deprive individuals of liberty”. *Mathews v. Eldridge*, 424 U.S. 319,  
16 332 (1976) (citation modified). “The fundamental requirement of [procedural] due  
17 process is the opportunity to be heard at a meaningful time and in a meaningful  
18 manner.” *Id.* at 333 (citation modified).  
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22 23. The Supreme Court “has held that the Constitution requires some kind  
23 of a hearing before the State deprives a person of liberty or property.” *Zinermon v.*  
24 *Burch*, 494 U.S. 113, 127 (1990). Only in a “special case” where post-deprivation  
25 remedies are “the only remedies the State could be expected to provide” can post-  
26 deprivation process suffice. *Zinermon*, 494 U.S. at 985. Moreover, only where “one  
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1 of the variables in the *Mathews [v. Eldrige]* equation—the value of pre-deprivation  
2 safeguards—is negligible in preventing the kind of deprivation at issue” such that  
3 “the State cannot be required constitutionally to do the impossible by providing pre-  
4 deprivation process,” can the Government avoid providing pre-deprivation process.  
5

6 *Id.*

7  
8 **STATEMENT OF FACTS**

9 **Ms. Montes’ Life in the United States**

10 24. Ms. Montes grew up in Honduras – an impoverished country stricken  
11 by gang violence and criminality. Her family was regularly subjected to threats and  
12 extortion by gang members. [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 25. As there was no future for her in Honduras, Ms. Montes made the  
17 difficult decision to leave her family and home behind, and fled Honduras.  
18

19 26. Ms. Montes entered the United States in 2002, and, based on  
20 information and belief, shortly thereafter, settled in New York. She, along with her  
21 long-time partner, began a family and have three United States citizen sons.  
22


23 27. Ms. Montes has no criminal record.

24 28. To support her family, Ms. Montes works in senior care facilities, as  
25 well as a babysitter, nanny, and house cleaner.  
26

27 29. Her children describe her as the “rock” of the family, helping them  
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1 navigate college applications, attending their soccer matches, and ensuring they are  
2 in good health—all while juggling four jobs.

3  
4 **Relevant Immigration History**

5 30. Based on information and belief, Ms. Montes filed an application for  
6 asylum in 2016, based on her fear of persecution if returned to Honduras. This fear  
7 of future persecution stemmed not only from the rampant crime and violence that  
8 plagues Honduras, but also from 

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12 31. It was at her December 3, 2025, asylum interview that Ms. Montes  
13 was detained.

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15 32. In addition, Ms. Montes has applied for- and received- work  
16 authorization in the United States.

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18 33. Additionally, Ms. Montes' long-time partner was granted cancellation  
19 of removal by an immigration judge. To establish eligibility for cancellation of  
20 removal, her partner demonstrated, among other requirements, that his United  
21 States citizen children would face “exceptional and extremely unusual hardship”  
22 should he be removed from the United States, as well as demonstrating to an  
23 immigration judge that he merited relief as a matter of discretion.  
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26 34. Due to significant health concerns for one of his and Ms. Montes'  
27 children, and the close-knit nature of the family, the immigration judge found that  
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1 the hardship on his and Ms. Montes' children would be "exceptional and extremely  
2 unusual," and granted cancellation of removal.

3 35. Unbeknownst to Ms. Montes, she was ordered removed *in absentia*  
4 by an immigration judge sitting in San Antonio, Texas in 2002. Ms. Montes  
5 received no notice of the hearing at which she was ordered removed.  
6

7 36. Based on information and belief, the Notice to Appear issued to Ms.  
8 Montes was deficient as it lacked the required time, date, and place of the  
9 scheduled immigration hearing.  
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11 37. Based on the lack of notice, Ms. Montes intends to file in the coming  
12 days a motion to rescind the *in absentia* order and reopen her removal proceedings  
13 in immigration court.  
14

## 15 CAUSES OF ACTION

### 16 Count One

### 17 Violation of the Fifth Amendment of the U.S. Constitution

### 18 Due Process

19 38. Petitioner re-alleges and incorporates herein by reference, as if set  
20 forth fully herein, allegations 1 through 37.  
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22 39. Ms. Montes' liberty from immigration custody is protected by the Due  
23 Process Clause: "Freedom from imprisonment – from government custody,  
24 detention, or other forms of physical restraint – lies at the heart of the liberty that  
25 [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Her detention, and  
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1 loss of her liberty, without adequate notice and opportunity to contest such  
2 deprivation prior to her detention violated her due process rights.

3 40. The Supreme Court “has held that the Constitution requires some kind  
4 of a hearing before the State deprives a person of liberty or property.” *Zinermon v.*  
5 *Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case”  
6 where post-deprivation remedies are “the only remedies the State could be expected  
7 to provide” can post-deprivation process satisfy the requirements of due process.  
8 *Zinermon*, 494 U.S. at 985. Moreover, only where “one of the variables in the  
9 *Mathews [v. Eldridge]* equation—the value of pre-deprivation safeguards—is  
10 negligible in preventing the kind of deprivation at issue” such that “the State cannot  
11 be required constitutionally to do the impossible by providing pre-deprivation  
12 process,” can the government avoid providing pre-deprivation process. *Id.*

13 41. For twenty-three years, Ms. Montes has built life in the United States,  
14 and has thus gained a weighty liberty interest under the Due Process Clause of the  
15 Fifth Amendmen. *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v.*  
16 *Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-83  
17 (1972). Moreover, the Supreme Court has recognized that post-removal order  
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1 detention is potentially indefinite and thus unconstitutional without some limitation.  
2 *Zadvydas*, 533 U.S. at 701.

3 42. “Adequate or due, process depends upon the nature of the interest  
4 affected. The more important the interest and the greater effect of its impairment,  
5 the greater the procedural safeguards the[government] must provide to satisfy due  
6 process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (*en banc*)  
7 (citing *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Petitioner’s]  
8 liberty interest against the [government’s] interest in the efficient administration of”  
9 its immigration laws in order to determine what process he is owed to ensure that  
10 ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357.  
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15 43. Under the test set forth in *Mathews v. Eldrige*, this Court must consider  
16 three factors in conducting its balancing test: “first, the private interest that will be  
17 affected by the official action; second, the risk if an erroneous deprivation of such  
18 interest through the procedures used, and the probative value, if any, of additional  
19 or substitute procedural safeguards; and finally the government’s interest, including  
20 the function involved and the fiscal and administrative burdens that the additional or  
21 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing  
22 *Mathews v. Eldrige*, 424 U.S. 319, 335 (1976)).  
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26 44. Because, in this case, the provision of a pre-deprivation hearing was  
27 both possible and valuable to preventing an erroneous deprivation of liberty, under  
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1 *Mathews*, “the balance weighs heavily in favor of [Petitioner’s] liberty” and required  
2 a pre-deprivation hearing before a neutral adjudicator, such as an Immigration Judge,  
3 which ICE failed to provide.  
4

5 45. “Freedom from bodily restraint has always been at the core of the  
6 liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80  
7 (1992); *see also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from  
8 government custody, detention, or other forms of physical restraint—lies at the heart  
9 of the liberty that [the Due Process] Clause protects.”). Thus, there is a profound  
10 private interest at stake in this case, which must be weighed heavily when  
11 determining what process he is owed under the Constitution. *See Mathews*, 424 U.S.  
12 at 334-35.  
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16 46. The government’s interest in keeping Petitioner in detention without a  
17 due process hearing is low, and when weighed against Petitioner’s significant private  
18 interest in her liberty, the scale tips sharply in favor of releasing Petitioner from  
19 custody unless and until the government demonstrates that he is a flight risk or  
20 danger to the community. The *Mathews* test clearly favors Petitioner when the Court  
21 considers that the process Petitioner seeks is a standard course of action for the  
22 government. In the alternative, providing Petitioner with a hearing before this Court  
23 (or a neutral decisionmaker) to determine whether there is evidence that Petitioner  
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1 is a flight risk or danger to the community would impose only a *de minimis* burden  
2 on the government.

3 47. As immigration detention is civil, it can have no punitive purpose. The  
4 government's only interests in holding an individual in immigration detention can  
5 be to prevent danger to the community or to ensure a noncitizen's appearance at  
6 immigration proceedings. *See Zadvydas*, 533 U.S. at 690.  
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9 48. As to flight risk, Petitioner has significant family ties here in the United  
10 States, she has a viable asylum claim, and strong claim to reopen her removal  
11 proceedings.  
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13 49. Any efforts by ICE to detain Petitioner for the purpose of making her  
14 pursuit of such applications unduly burdensome and cumbersome and/or to  
15 circumvent an immigration judge's review of Petitioner's pending applications or to  
16 place itself in a better position would violate due process.  
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19 50. Release from custody until ICE assesses and demonstrated that  
20 Petitioner is a flight risk or danger to the community, or that her detention is not  
21 going to be indefinite, is far less costly and burdensome for the government than  
22 keeping her detained. As the Ninth Circuit noted in 2017, which remains true today,  
23 "[t]he costs to the public of immigration detention are 'staggering': \$158 each day  
24 per detainee, amounting to a total daily cost of \$6.5 million." *Hernandez*, 872 F.3d  
25 at 996. If, in the alternative, the Court chooses to order a hearing for Petitioner at  
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1 which the government bears the burden of justifying her continued detention, the  
2 government would bear no additional cost, rather than allowing Petitioner to sit in  
3 detention for days or weeks awaiting a hearing.  
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5 51. Releasing Petitioner from custody until she is provided a pre-  
6 deprivation hearing would decrease the risk of her being erroneously deprived of her  
7 liberty.  
8

9 52. Due process also requires consideration of alternatives to detention at  
10 any custody redetermination hearing that may occur. The primary purpose of  
11 immigration detention is to ensure removal if reasonably foreseeable. *Zadvydas*,  
12 533 U.S. at 697. Detention is not reasonably related to this purpose if, as here,  
13 removal is not actually foreseeable. Accordingly, alternatives to detention must be  
14 considered in determining whether Petitioner's re-incarceration is warranted.  
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18 **COUNT TWO**  
19 **Violation of Administrative Procedure Act**

20 53. Petitioner re-alleges and incorporates herein by reference, as if set  
21 forth fully herein, allegations 1 to 37.

22 54. Under the APA, a court shall "hold unlawful and set aside agency action  
23 . . . found to be . . . not in accordance with law" or "contrary to constitutional right,  
24 power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).  
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1 55. The APA's reference to "law" in the phrase "not in accordance with  
2 law," "means, of course, *any* law, and not merely those laws that the agency itself is  
3 charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293,  
4 300 (2003) (emphasis in original).

6 56. The *in absentia* removal order entered against Ms. Montes was the  
7 result of Ms. Montes not receiving Notice of her hearing, and predicated on a  
8 defective Notice to Appear. *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (a notice to  
9 appear is defective if it does not include the time and place of the initial hearing).

12 **RELIEF REQUESTED**

13 **WHEREFORE**, Petitioner respectfully requests this Court to grant the  
14 following:  
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- 16 a. Assume jurisdiction over this matter.
- 17 b. Enjoin Respondents from transferring the Petitioner from the  
18 jurisdiction of this District pending these proceedings.
- 19 c. Grant temporary and permanent injunctive relief staying the  
20 Petitioner's imminent removal.
- 21 d. Declare that Petitioner's detention violates the Immigration and  
22 Nationality Act, the Due Process Clause of the Fifth Amendment, and  
23 the Administrative Procedures Act.
- 24 e. Enjoin Petitioner's removal from the United States pending a final  
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1 decision on this habeas action.

- 2 f. Issue a Writ of Habeas Corpus ordering Respondents to release  
3 Petitioner immediately.  
4  
5 g. Award Petitioner attorney's fees and costs under the Equal Access to  
6 Justice Act, and on any other basis justified under law.  
7  
8 h. Grant such other relief as this Court may deem just and proper.  
9

10 Dated: December 7, 2025

Respectfully submitted,

11  
12 s/ Helena Tetzeli  
13 Helena Tetzeli  
14 (seeking admission pro hac vice)  
15 Florida Bar No. 0759820  
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22 *Attorney for Petitioner*  
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

1  
2 I represent Petitioner, FANY YADIRA MONTES CUEVA, and submit this  
3 verification on his behalf. I hereby verify that the factual statements made in the  
4 foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my  
5 knowledge and belief.  
6

7  
8 Dated this 7<sup>th</sup> day of December, 2025.

9  
10 /s/Helena Tetzeli

11 Helena Tetzeli  
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