


UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION  
CASE NO.: 3:25-cv-01466

KAREN JOHANA	)
MALDONADO-CACERES	)
(A  )	)
	)
Petitioner,	)
	)
vs.	)
	)
SCOTTY RHODEN, as Sheriff of	)
Baker County and custodian of the	)
Baker County Detention Center;	)
KRISTI NOEM, as United States	)
Secretary of Homeland Security;	)
TODD LYONS, as Senior Official	)
Performing the Duties of the Director	)
of U.S. Immigration and Customs	)
Enforcement; GARRETT J. RIPA,	)
as Field Office Director, U.S.	)
Immigration and Customs Enforcement;	)
and PAM BONDI, as United States	)
Attorney General;	)
	)
Respondents.	)
_____	)

**AMENDED<sup>1</sup> VERIFIED EMERGENCY**  
**PETITION FOR WRIT OF HABEAS CORPUS**  
**PURSUANT TO 28 U.S.C. § 2241**

Petitioner, KAREN JOHANA MALDONADO-CACERES (“Maldonado” or “Petitioner”), by undersigned counsel, hereby petitions this Honorable Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy her unlawful detention by Respondents. Petitioner seeks immediate release, or alternatively, an order requiring

<sup>1</sup> Amended to conform to the font requirements of M.D. Fla. L. R. 8.01(a), only.

Respondents to provide the custody review and bond procedures mandated by 8 U.S.C. § 1226. In support of this Petition, Petitioner alleges:

**PRELIMINARY STATEMENT**

This habeas petition presents a fundamental question of immigration detention law:

**May ICE refuse to provide a bond hearing to a long-term interior resident charged under INA § 212(a)(6)(A)(i) by retroactively invoking the mandatory-detention authority of INA § 235(b), even though the statutory scheme requires her detention—if any—to proceed under INA § 236(a)?**

The answer is, “no.”

Petitioner Karen Johana Maldonado-Caceres was arrested in the interior of the United States after more than a decade of continuous residence. She was recently taken into ICE custody at the Charlotte County Jail on a detainer after posting bond on a misdemeanor charge that the State of Florida later dropped and abandoned. ICE nevertheless classified her as an “arriving alien” and placed her in § 235(b)(2) mandatory detention—a statutory provision that applies only to applicants for admission and certain recent entrants encountered at or near a port of entry.

Petitioner is not an arriving alien. She was charged under INA § 212(a)(6)(A)(i) and placed in § 240 removal proceedings, which means that her custody is governed exclusively by INA § 236(a). Under § 236(a), detention is discretionary and subject to review by an Immigration Judge. ICE, however, refused to issue the required Form I-286, provided no notice of custody rights, and categorically denied Petitioner access

to a bond hearing—which ICE accomplished by reclassifying her under a statute that Congress did not authorize for individuals apprehended inside the United States.

This type of retroactive reclassification is neither accidental nor unique. Recently, federal courts have repeatedly condemned DHS’s patterned attempt to treat a noncitizen as a non-arriving alien for removability but as an arriving alien for detention, a practice that nullifies the statutory distinction between § 235(b) and § 236(a) and unlawfully converts discretionary detention into mandatory detention. ICE’s conduct here fits squarely within that prohibited pattern.

This case is not an isolated misapplication of the statutory scheme. Since the issuance of DHS’s July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission,” ICE officers nationwide have been directed to classify all noncitizens present without admission—even long-term interior residents—as “applicants for admission” subject to § 235(b)(2) mandatory detention. Courts across the country, including the Middle District of Florida, have already recognized that the Memorandum represents an unlawful attempt to circumvent the statutory limits of § 236(a) by rebranding ordinary interior arrests as border encounters. ICE’s treatment of Petitioner reflects this systemic and legally unsustainable shift.

The unlawfulness of ICE’s detention decision is compounded by its failure to follow binding regulations. Under 8 C.F.R. § 236.1(d)(1), ICE must issue a written custody determination on Form I-286 and advise the detainee of her right to seek a bond redetermination before an Immigration Judge. ICE ignored this mandatory

requirement entirely, rendering its detention decision invalid under the Accardi doctrine<sup>2</sup>, which prohibits agencies from departing from their own regulations.

Petitioner also holds a valid Bona Fide Determination and deferred-action grant issued by USCIS pursuant to the U-Visa Program and 8 C.F.R. § 214.14(d)(2). Although not the primary basis for habeas relief, this status underscores the arbitrary and internally inconsistent nature of ICE's decision to detain her as an "arriving alien" subject to mandatory removal detention.

Petitioner brings this action under 28 U.S.C. § 2241, the traditional vehicle for challenging the legality of federal custody. See Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 117 (2020). She also challenges ICE's detention decision under the Due Process clause of the Fifth Amendment and under the Administrative Procedure Act, 5 U.S.C. § 706(2), as arbitrary, capricious, and contrary to law.

Because ICE lacks statutory authority to detain Petitioner under § 235(b), failed to comply with mandatory custody procedures, and acted in a manner inconsistent with both the INA and DHS's own regulatory scheme, her detention is unlawful. Petitioner respectfully requests that this Court order her immediate release, or, in the alternative, direct ICE to provide her with a lawful custody determination under INA § 236(a) before an Immigration Judge.

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<sup>2</sup> Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954).

**EMERGENCY NATURE OF THE PETITION**<sup>3</sup>

As of the filing of this Verified Emergency Petition, Petitioner is physically in ICE custody but is being transported to an unknown location by unknown custodians. On the morning of filing, Petitioner contacted her fiancé, Richard Torres (“Torres”), from an unidentified airport. She had no knowledge of her destination, the facility to which she is being transferred, or the identity of the ICE officials to whom she is being handed over. ICE has provided her with no information, and the ICE Online Detainee Locator reflects “**No Records Found**” for Petitioner. *See* Exhibit 17.

Until November 26, 2025, Petitioner was detained at Baker County Detention Center in Macclenny, Florida. On the afternoon of that date, she informed Torres by telephone that numerous detainees were being moved by bus to an unknown destination and that she expected she would soon be transferred as well. Because of the very real possibility that Petitioner would be moved out of Florida or removed from the United States without notice or due process, undersigned counsel prepared a draft of this Emergency Petition through the night of November 27–28, 2025.

At approximately 7:50 a.m. on November 28, 2025, Torres notified counsel that Petitioner had surfaced—briefly—at Moshannon Valley Processing Center in Pennsylvania. Less than 24 hours later, on the morning of November 29, 2025, Torres received another brief call during which Petitioner stated she was at an unidentified

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<sup>3</sup> Because of the extreme time-sensitivity of this matter—Petitioner being in transit at an undisclosed location under ICE custody—the undersigned files this Verified Emergency Petition without the accompanying exhibits. Petitioner will promptly file all referenced exhibits under a Notice of Filing Exhibits as soon as practicable

airport awaiting transportation to yet another unknown location. She again expressed fear that she was being removed from the United States without the opportunity to be heard.

ICE has therefore placed Petitioner in a state of **legal invisibility**:

- her custodian cannot be identified,
- her location cannot be verified,
- she is being transferred across state lines within hours, and
- the public detainee-locator database shows no record of her whatsoever.

As a general rule, habeas jurisdiction lies in only one district: the district of confinement. Rumsfeld v. Padilla, 542, U.S. 426, 433 (2004). It is impossible under these circumstances, however, for counsel to identify the proper “district of confinement” or the immediate physical custodian. When a detainee is held in a concealed or undisclosed location and is subject to rapid, interstate transfers, courts have recognized that a petitioner “cannot be expected to file in the jurisdiction where she is held,” because “it is impracticable to require attorneys to file in every jurisdiction.” Demjanjuk v. Meese, 784 F.2d 1114, 1116 (D.C. Cir. 1986).

The Supreme Court explicitly acknowledges this “unknown-custodian” exception to Padilla’s district-of-confinement rule. Rumsfeld v. Padilla, 542 U.S. 426, 450 n.18 (2004) (“If the prisoner is held in an undisclosed location by unknown custodians, it is impossible to apply the immediate custodian and district of confinement rules.”).

Petitioner’s fast-moving series of transfers—including the transfer occurring on the morning of filing—demonstrate that her detention is not controlled by the warden of any transient facility, but by DHS officials implementing a nationwide policy governing detention authority (§ 235(b) vs. § 236(a)). ICE’s rapid intra-and-interstate movements of Petitioner appear designed to frustrate judicial review and to prevent counsel from accessing her or her custodian.

This Court’s exigent intervention is necessary to prevent Petitioner’s unlawful removal, continued incommunicado detention, or further retaliatory or obfuscatory transfers before judicial review can occur.

### **JURISDICTION**

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570.

2. The Court has *habeas corpus* jurisdiction pursuant to 28 U.S.C. § 2241 and Art. 1, § 9, cl. 2 of the United States Constitution (the “**Suspension Clause**”), because Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

3. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(a)(2)(B) (INA § 242(a)(2)(B)), because Petitioner is not challenging the denial of any

discretionary relief. *See Zadvydas*, 533 U.S. at 688 (“INA § 242 does not bar a claim challenging agency authority that does not implicate discretion.”). Nor is Petitioner asserting any claim arising from the decision or action of the Attorney General to commence proceedings, adjudicate cases, or execute a removal order; accordingly, the jurisdiction-stripping provision at 8 U.S.C. § 1252(g) is not triggered. Courts construe jurisdiction-stripping provisions narrowly, given the “presumption favoring judicial review of administrative action.” *Kucana v. Holder*, 558 U.S. 233, 251 (2010).

4. This Court may also exercise federal question jurisdiction under 28 U.S.C. § 1331, because Petitioner’s claims arise under the Constitution and laws of the United States, including the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (“APA), 5 U.S.C. § 701 *et seq.*

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

#### VENUE

6. Venue properly lies in the United States District Court, Middle District of Florida, pursuant to 28 U.S.C. § 1391(b)(2). Petitioner was apprehended in Port Charlotte, Florida, the locality where she resides, within the Middle District of Florida. Until November 26 or November 27, 2025, Petitioner was being detained by Immigration Customs and Enforcement (“ICE”) under the authority of Sheriff Scotty Rhoden, in the federal wing of the Baker County Detention Center, which is located within the Middle District of Florida.

7. Venue also lies in this judicial district pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are officers, employees, or agencies of the United States acting in their official capacities, and (i) Respondent Rhoden, Petitioner's last known custodian, maintains his office at 1 Sheriff's Office Drive Macclenny, FL 32063, (ii) a substantial part of the events giving rise to the claim occurred in this judicial district; and (iii) Petitioner resides in this judicial district, and no real property is involved in this action.

**APPLICATION FOR AN ORDER TO SHOW CAUSE**  
**(28 U.S.C. § 2243)**

8. The writ of habeas corpus has long occupied a celebrated role in Anglo-American jurisprudence, "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) (citation omitted) (emphasis added).

9. Under 28 U.S.C. § 2243, a Court must "forthwith" either grant the petition or issue an Order to Show Cause ("OSC"), unless the petition plainly demonstrates that the petitioner is not entitled to relief. If an OSC is issued, respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id.

10. Petitioner therefore respectfully requests that the Court issue an OSC directing Respondents to show cause why the Petition for Writ of Habeas Corpus should not be granted and why Petitioner should not be released from unlawful detention.

**APPLICATION FOR AN ANTI-TRANSFER ORDER**  
**(28 U.S.C. § 1651(a))**

11. Petitioner moves this Court, pursuant to its habeas jurisdiction under 28 U.S.C. § 2241 and its authority under the All Writs Act, 28 U.S.C. § 1651(a), for an emergency order prohibiting ICE from transferring her outside the reach of this Court or removing her from the United States while this habeas petition is pending.

12. The All Writs Act authorizes federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions.” 28 U.S.C. § 1651(a). This authority includes interim orders preserving the court’s existing or potential jurisdiction over a habeas action and preventing the government from defeating jurisdiction through strategic transfers or removal.

13. A temporary non-transfer order is necessary because ICE has repeatedly concealed Petitioner’s custodial location. As of the filing of this Petition, the ICE Online Detainee Locator returns “No Record Found” for Petitioner, and ICE has not disclosed where she is currently held, where she is being transported, or the identity of her custodial officer.

14. ICE is rapidly moving Petitioner across state lines. Within hours, ICE transferred Petitioner from Baker County Detention Center in Macclenny, Florida to Moshannon Valley Processing Center in Pennsylvania. On the morning of filing, Petitioner telephoned her fiancé from an unidentified airport, reporting that she was awaiting transport to yet another undisclosed destination. These serial, undisclosed

transfers render it practically impossible to identify the “district of confinement” or the immediate custodian at any given moment.

15. These fast-moving transfers directly threaten this Court’s ability to exercise and preserve its habeas jurisdiction. If ICE is permitted to continue transferring Petitioner without restraint—or to remove her from the United States—her claims will be mooted or rendered unreviewable before the Court can act.

16. Numerous courts have held that such transfers—when they threaten to moot a habeas petition or deprive a detainee of meaningful access to judicial review—justify injunctive relief. *See, e.g., Demjanjuk*, 784 F.2d at 1116; *Suri v. Trump*, 2025 WL 1806692, at 6–7 (4th Cir. July 1, 2025) (ICE’s secretive, rapid transfers justified keeping the case in the district filing, even though the petitioner was moved prior to the time of filing).

17. Given the immediacy of the harm and ICE’s continuing refusal to reveal Petitioner’s location or custodian, a temporary non-transfer order is necessary and appropriate in aid of this Court’s jurisdiction within the meaning of 28 U.S.C. § 1651(a).

18. Accordingly, Petitioner respectfully requests that this Court enter an order:

a. Prohibiting ICE and DHS from transferring Petitioner outside the territorial jurisdiction of the Middle District of Florida absent further order of this Court;

b. Prohibiting ICE and DHS from removing Petitioner from the United States while this habeas petition is pending;

c. Directing ICE and DHS to immediately disclose Petitioner's present physical location and the identity of her current custodial officer; and

d. Granting such other and further relief as the Court deems just and proper to preserve its jurisdiction and ensure meaningful review of Petitioner's claims.

### **PARTIES**

19. Petitioner **KAREN MALDONADO CACERES**, is a native and citizen of Honduras who has been residing for the past 10 years in North Port, Sarasota County, Florida, and Port Charlotte, Florida, and is presently detained by ICE. Her custodian at the time of filing is unknown.

20. Respondent **SCOTTY RHODEN** ("**Rhoden**") is sued in his official capacity as the Sheriff of Baker County, Florida, and the custodian of the Baker County Detention Center, the facility in which Petitioner was detained until ICE removed Petitioner from the jurisdiction on or about November 27, 2025. Rhoden is Petitioner's last known immediate physical custodian. 28 U.S.C. § 2243. Rhoden's office is located at 1 Sheriff's Office Drive, Macclenny, Florida 32063.

21. Respondent **KRISTI NOEM** ("**Noem**") is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("**DHS**"). Under the Homeland Security Act of 2002, Pub. L. 107-296, Noem is responsible for the administration of the DHS; the implementation and enforcement of the immigration

laws of the United States pursuant to 8 U.S.C. § 1103; the oversight of ICE, the agency responsible for Petitioner's detention, including the nationwide policies governing ICE's detention authority and the interpretation of 8 U.S.C. § 1225(b)(2); and the supervision of Respondent Ripa. Because Petitioner's continued detention arises from DHS-level statutory and policy determinations, Noem is a proper respondent in this action. Noem's address is U.S. Department of Homeland Security, Washington, District of Columbia, 20528.

22. Respondent **TODD LYONS** ("Lyons") is sued in his official capacity as Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement. In this role, Lyons is the senior official responsible for ICE's nationwide detention and removal operations and exercises supervisory authority over all ICE personnel involved in Petitioner's custody. Lyons is therefore a legal custodian of Petitioner and has the delegated authority to release her. Lyons' office is located at 500 12th St. SW, Washington, DC 20536.

23. Respondent **GARRETT J. RIPA** ("Ripa") is sued in his official capacity as Field Office Director, Miami Field Office, Immigration and Customs Enforcement. In this capacity, Ripa manages ICE Enforcement and Removal Operations ("ERO") for the entire State of Florida, Puerto Rico, and the U.S. Virgin Islands as well as the Migrant Operations Center in Guantanamo Bay, Cuba. Ripa is the senior ICE detention official in this judicial district and, in that role, is a legal custodian of Petitioner. Ripa exercises direct supervisory authority over Petitioner's continued

detention and has the delegated power to release her. Ripa's office is located at 2805 SW 145<sup>th</sup> Avenue, Miramar, Florida 33027.

24. Respondent **PAM BONDI** ("**Bondi**") is sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice ("DOJ"). The Executive Office for Immigration Review ("EOIR")—including the Immigration Courts and the Board of Immigration Appeals ("BIA")—is housed within DOJ and operates under the supervision and control of the Attorney General pursuant to 8 C.F.R. §§ 1003.0–1003.1. Because Petitioner seeks a constitutionally adequate custody hearing before an Immigration Judge, Bondi is the official responsible for the adjudicatory framework that Petitioner invokes. In addition, 8 U.S.C. § 1226 authorizes the arrest and detention of noncitizens "on a warrant issued by the Attorney General." Although many enforcement functions were transferred to DHS under the Homeland Security Act, the statutory detention scheme applicable to Petitioner remains textually lodged in the Attorney General. Petitioner's arrest, continued detention, and the denial of any custody hearing therefore arise under a statutory structure for which Bondi bears ultimate legal responsibility. Bondi's office is located at the United States Department of Justice, Washington, D.C. 20530.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25. The exhaustion requirement of 8 U.S.C. § 1252(d)(1) is not jurisdictional, but prudential. Kemokai v. U.S. Att'y Gen., 83 F.4<sup>th</sup> 886, 891 (11<sup>th</sup> Cir. 2023) (acknowledging the abrogation of prior Eleventh Circuit precedent interpreting § 1252(d)(1) as a jurisdictional bar by Santos-Zacaria v. Garland, 598 U.S. 411, 413

(2023). This Court may hear Petitioner's habeas petition because statutory exhaustion does not apply to detention challenges under 28 U.S.C. § 2241, and prudential exhaustion is unavailable or futile.

**A. Statutory exhaustion does not apply to detention challenges.**

26. The general habeas statute, 8 U.S.C. § 2241, contains no statutory requirement for Petitioner to exhaust administrative remedies. The INA mandates exhaustion only for review of final orders of removal, 8 U.S.C. § 1252(d)(1), but that provision has no application to custody or bond determinations, which are separate and apart from removal or deportation proceedings. Gornicka v. INS, 681 F.2d 501, 505 (7<sup>th</sup> Cir. 1982); *see also* Ulysee v. Dep't of Homeland Sec., 291 F. Supp. 2d 1318, 1324 (M.D. Fla. 2003) (§ 1252(d)(1) applies to removal orders, not detention).

**B. Prudential exhaustion is excused where no administrative remedy exists.**

27. Respondents may argue that Petitioner should seek administrative review of her detention under 8 U.S.C. § 1225(b). But no such remedy exists, because EOIR has no jurisdiction to redetermine custody for a § 1225(b)(2) detainee.


28. Prudential exhaustion cannot be required where no genuine opportunity for adequate relief exists or where an administrative appeal would be futile. Linfors v. United States, 673 F.2d 332, 334 (11<sup>th</sup> Cir. 1982).

29. In a recent binding published decision, the BIA held that a noncitizen who has not been admitted or paroled is subject to mandatory detention without bond under INA § 235(b)(2), even if that noncitizen has resided in the United States for

many years. Matter of Yajure Hurtado, 29 I&N Dec. 216, 221 (B.I.A. 2025). In light of Hurtado, any attempt to seek a custody redetermination or BIA review would be futile, because the BIA has expressly concluded that immigration judges lack jurisdiction to set bond for § 235(b)(2) detainees. *See* 8 C.F.R. § 1003.1(g)(2) (BIA precedents are binding).

30. Because the BIA has definitely ruled that it cannot grant custody relief to individuals detained under § 235(b)(2), any attempt by Petitioner to pursue an administrative bond redetermination or BIA review would be futile, and prudential exhaustion is therefore excused. *See* McCarthy v. Madigan, 503 U.S. 140, 146–49 (1992) (exhaustion is not required where the administrative remedy is inadequate or unavailable). *See also* Puga, *supra*, at \*2 (because the outcome of a bond appeal to the BIA is a foregone conclusion under Hurtado, any prudential exhaustion requirements are excused for futility.”).

### **FACTUAL AND PROCEDURAL BACKGROUND**

31. Maldonado is a native and citizen of Honduras. She was born on  in Bonito Oriental, Colón Department, Honduras. *See* Birth Certificate, Exhibit 1.

32. On or about December 1, 2013, Maldonado entered the United States in or near Brownsville, Texas, whereupon she was arrested and placed in removal proceedings. *See* executed Form I-220A, Order of Release on Recognizance (the “**KM Order of Release**”), attached as Exhibit 2. The Form I-220A which ICE issued to

Maldonado also provided that “[i]n accordance with Section 236 of the Immigration and Nationality Act,” Maldonado was “released on [her] own recognizance.”<sup>4</sup> The issuance of Form I-220A constitutes undisputable proof that DHS has treated Maldonado under § 236(a) since her entry without inspection in 2013.

33. Maldonado was accompanied by her son “KD,” who was less than three months old on the date of entry. *See* redacted Birth Certificate of KD, attached as Exhibit 3.

34. Like Maldonado, KD was arrested and placed in removal proceedings. ICE issued a substantially identical Form I-220 to KD which released him on his own recognizance in accordance with Section 236 of the Immigration and Nationality Act.” *See* Form I-220A, Order of Release on Recognizance (the “**KDCM Order of Release**”), attached as Exhibit 4. (The KM Release and the KDCM Release are collectively referred to as the “**Orders of Release**”).

35. The terms of the Orders of Release directed Maldonado and KD to participate in a supervised release program and to report to the Baltimore Field Office on January 17, 2014, for full removal proceedings under INA § 240. Exhibit 2; Exhibit 4.

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<sup>4</sup> As is plainly evident on the face of Form I-220A, a “release on recognizance” is conditioned on compliance with specific conditions. The Department of Homeland Security uses the phrase “release on recognizance” as another name for “conditional parole” under INA § 236(a)(2)(B). Ortega-Cervantes v. Gonzales, 501 F.3d 1111, 1115 (9<sup>th</sup> Cir. 2007).

36. Upon information and belief, ICE issued a Notice to Appear, I-862, to Maldonado and KD. *See* Form I-831, dated December 2, 2013, issued to KD (signed by Maldonado as legal guardian and containing “Mothers Right Index Fingerprint,” advising that a Notice to Appear was issued and filed with the Office of the Immigration Judge at Baltimore, Maryland),<sup>5</sup> attached as Exhibit 5.

37. Form I-831 is a continuation sheet to Form I-830 (the routing form used to transmit NTA’s to EOIR), which serves as a notification/summary from ICE to EOIR of the custody status of Maldonado and KD.


38. Upon information and belief, the Form I-830 EOIR notification of ICE action was never provided to the Office of the Immigration Judge in Baltimore, Maryland, and the Notices to Appear which were presumably issued to Maldonado and KD were never filed with the EOIR in Baltimore, Maryland. *See* EOIR Portal Case Information, attached as Exhibit 6 (reflecting that removal proceedings against Maldonado were first commenced on October 27, 2025, and reflecting no history of a prior issued NTA).


39. Upon her release at or near Brownsville, Texas, Maldonado traveled to Baltimore, Maryland, where she resided for approximately three months, after which she moved to and settled in North Port, Charlotte County, Florida.


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<sup>5</sup> While Maldonado’s signature on the Form I-831 issued to KD on December 1, 2013, could plausibly suggest that on December 1, a corresponding Notice to Appeal was also issued to Maldonado herself, Maldonado does not have in her possession a copy of her Notice to Appear, and the EOIR’s case lookup confirms that no NTA was filed with the immigration court in 2013 for either mother or infant.

40. Maldonado has resided continuously in Sarasota County, Florida and Charlotte County, Florida, since 2014.

41. On  Maldonado gave birth in Fort Myers, Florida to her daughter SC, who is a United States citizen. *See* redacted Birth Certificate of SC, attached as Exhibit 7; *see also*, redacted United States passport, SC, attached as Exhibit 8.

42. For approximately the past ten years, Maldonado has been working as a self-employed tile contractor, and has been paying United States federal income tax under Individual Taxpayer Identification Number (“ITIN”)  *See* IRS ITIN Renewal Notice dated August 16, 2021, attached as Exhibit 9.

43. On or about April 16, 2022, Maldonado was the victim of domestic violence when —her cohabiting partner and the father of her two minor children—struck her in the head in North Port, Sarasota County, Florida. *See* North Port Police Department Incident Report, attached as Exhibit 10.


44. As a result of this incident and her cooperation with law enforcement, Maldonado contemporaneously filed a Form I-918 Petition for a U-1 visa, together with a Supplement A, Petition for Qualifying Member of U-1 Recipient, on behalf of KD, and a Form I-765 Application for Employment Authorization, which were receipted by USCIS on May 21, 2024. *See* I-797C, Notices of Action, attached as Composite Exhibit 11.


45. On August 1, 2025, USCIS issued a Bona Fide Determination indicating that Maldonado's U-1 visa petition warrants a favorable exercise of discretion. *See* Form I-797 Notice of Action, attached as Composite Exhibit 12.

46. Pursuant to the Bona Fide Determination, Maldonado's application for employment authorization was approved. *Id.*

47. On even date, USCIS issued a Bona Fide Determination notice indicating that the Supplement A petition for KD also warranted a favorable exercise of discretion. *See* Exhibit 13.

48. The Bona Fide Determination Notices for Maldonado and KD (as beneficiary) expressly granted deferred action, preventing their removal from the United States during the waiting period for the U visas to become current. Exhibits 12 and 13.

49. On April 19, 2022, Maldonado filed a Petition for Injunction for Protection against Domestic Violence against  *See* Exhibit 14.

50. Upon information and belief,  self-deported to Honduras after the domestic violence incident, and Maldonado and her two children continued to reside in North Port, Florida.

51. In August 2023, Maldonado met her current fiancé, Torres. In approximately July 2024, Maldonado and her two children moved into Torres' home in Port Charlotte, Florida, where all four have since resided.


52. In November 2024, Torres and Maldonado were formally engaged, and they planned to be married during the last week of November 2025.

53. With the exception of a 2023 arrest for driving without a license, Maldonado has no criminal record in the United States or anywhere else in the world.

54. Maldonado has never been convicted of any crime which would subject her to mandatory detention under INA § 236(c).

55. On September 29, 2025, incident to an altercation between Maldonado and Torres, Maldonado was arrested and charged with a misdemeanor battery under § 784.03(1)(a)(1), Fla. Stat. Pursuant to the arrest, Maldonado was booked into Charlotte County Jail. *See* Exhibit 15.

56. Upon information and belief, ICE sent a Form I-200, Warrant for Arrest of Alien, to the Charlotte County Sheriff's Office, under authority of INA § 236(a), which authorizes the arrest/detention of noncitizens "on a warrant issued by the Attorney General."

57. On October 1, 2025, a cash bond was posted on behalf of Maldonado by Torres. *See* Charlotte County Court Docket, Case No.  attached as Exhibit 16.

58. Upon information and belief, Torres also informed the Charlotte County Sheriff that he wished not to press criminal charges against Maldonado and filed the necessary paperwork to abandon the case, as reflected by the "No Information" which was docketed on October 14, 2025. Id.

59. Within forty-eight hours of the posting of the bond, on or about October 3, 2025, ICE took Maldonado into custody and transported her to the South Florida Detention Facility ("**Alligator Alcatraz**"). Maldonado was held in detention in

Alligator Alcatraz for an unknown period of duration, until she was transported to Baker County Detention Center, where she was held until the eve of Thanksgiving or Thanksgiving Day (November 26 or November 27, 2025).

60. On or about November 26-28, Maldonado was transported to Moshannon Valley Processing Center in Clearfield County, Pennsylvania.

61. Within a day of her arrival at Moshannon Valley Processing Center, Maldonado was transported to an airport and is, at the time of filing of this petition, currently being transported to an unknown and unascertainable location.

62. At all times material, undersigned counsel has been unable to track the whereabouts of Petitioner through the Online Detainee Locator System (<https://locator.ice.gov/odls/#/search>). *See* Exhibit 17.

63. On October 27, 2025, DHS issued a Notice to Appear in INA § 240 removal proceedings. The Notice to Appear charged Maldonado with removability under (i) section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as an alien present in the United States without being admitted or paroled; and (ii) section 212(a)(7)(A)(i)(I) of the INA as an immigrant who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *See* Form I-862, Notice to Appear, attached as Exhibit 18.

64. By charging Maldonado under § 212(a)(6)(A)(i), DHS placed her squarely within regular removal proceedings under INA § 240—not as an “arriving alien” subject to detention under § 235(b).

65. Upon information and belief, Respondents failed to provide Maldonado with a Form I-286, Notice of Custody Determination. Had ICE complied with its regulatory duty to provide Maldonado with a custody determination, Maldonado would have been provided with notice of her right to a custody determination before an immigration judge.

66. Because 8 C.F.R. § 236.1(d)(1) requires notice of custody determination, this failure itself constitutes a violation of a mandatory agency regulation, rendering Respondents' action invalid under the Accardi doctrine.

#### **LEGAL FRAMEWORK**

**A. 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2), applies to Maldonado**

67. INA § 235 establishes procedures for inspecting *arriving* noncitizens seeking admission at ports of entry or their functional equivalents. INA § 235(b)(2)(A) mandates detention for an applicant for admission “if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). As the Supreme Court has explained, § 235(b) governs the detention of individuals “seeking entry” to the United States. Jennings v. Rodriguez, 583 U.S. 281, 285, 288, 297 (2018).

68. In contradistinction to 8 U.S.C. § 1225(b)(2), 8 U.S.C. § 1226(a) provides that an alien “**may** be arrested and detained pending a decision on whether the alien is to be removed from the United States.” (Emphasis added). Under 8 U.S.C. §

1226(a)(2), the Attorney General has the discretion to release a detained alien on bond or to release the alien on conditional parole.

69. Under this paradigm, noncitizens, like Maldonado, who were arrested inside the United States, served with an NTA, and charged under INA § 212(a)(6)(A)(i) (which necessarily places them into INA § 240 removal proceedings), fall squarely within the custody framework of INA § 236(a). The fact that DHS issued an NTA alleging removability under § 212(a)(6)(A)(i) confirms that Maldonado is being processed as a regular respondent in full removal proceedings, and not as an arriving alien.

70. Under INA § 236(a) and the corresponding regulation, 8 C.F.R. § 236.1(d)(1), DHS must advise such individuals of their bond eligibility and their right to seek custody redetermination before an immigration judge. Because DHS did not encounter Petitioner at a port of entry, did not place her in expedited removal, and did not rely on § 235(b) at the time of arrest, the border-encounter cases are irrelevant, and DHS cannot retroactively reclassify her to avoid its obligations under § 236(a).

71. DHS, ICE and the Attorney General have admitted that prior to July 8, § 1226(a) was the predominant form of detention authority for noncitizens arrested in the interior of the United States. Zumba v. Bondi, No. 25-14626, 2025 WL 2753496, at \*4 (D.N.J. Sept. 26, 2025) (“Respondents readily admit that if petitioner had been arrested on the basis of her inadmissibility prior to July 8, 2025, she would have been discretionarily detained under 8 U.S.C. § 1226(a) and eligible for a bond hearing.”).

72. On July 8, 2025, however, an internal memorandum from DHS to all ICE employees declared that, effective immediately, individuals present in the United States without admission or parole are to be treated as “applicants for admission” subject to mandatory detention under § 1225(b)(2), rather than discretionary detention under § 1226(a). See *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission*, AILA Doc. No. 25071607 (July 8, 2025) (the “ICE Memo”), <https://perma.cc/5GKM-JYGX>. This memorandum represents a drastic change from decades of preexisting law and practice.

73. The ICE Memo further provides that “[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that ‘arriving aliens’ have historically been treated.” *Id.* Thus, ICE has effectively declared *ipse dixit* that its own officers’ § 236(a) custody determinations—including Maldonado’s 2013 Order of Release—are nullified retroactively.

74. The July 8, 2025, ICE Memorandum is not merely a restatement of existing law; it is a substantive redefinition of statutory terms. Such an overreaching change to the scope of detention authority under § 1225(b)(2) constitutes a legislative rule requiring notice-and-comment procedures under 5 U.S.C. § 553. Because DHS issued the Memo without engaging in any APA-compliant rulemaking, it lacks legal force and cannot override the statutory limits Congress established in § 236(a).

75. The July 8 policy memorandum also reflects a deliberate attempt to transform discretionary detention into mandatory detention by administrative fiat. By directing officers to default to § 1225(b)(2), the Memo eliminates access to bond hearings for individuals whom Congress intended to be eligible for such hearings. Courts have repeatedly condemned such manipulation of classification authority to avoid judicial review and expand detention power beyond statutory limits.

76. In Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025), the BIA reinforced the policy change effectuated by the ICE Memo, holding that all noncitizens who are present in the United States without admission must be deemed “applicants for admission” as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and therefore must be detained for the duration of their removal proceedings.

77. A federal district court owes no deference to an agency interpretation which conflicts with a statute’s unambiguous text. Lopez Bright Enters. v. Raimondo, 603 U.S. 369, 400-401 (2024) (observing that while “agencies have no special competence in resolving statutory ambiguities,” “[c]ourts do”). *See also*, Zumba, *supra*, at \*9 (“[T]his Court need not defer to ... Hurtado, and its newly-minted interpretation of § 1225(b)(2)(A)"); Chang Barrios v. Shepley, No. 25-406, 2025 WL 2772579, at \*9 (D. Me. Sept. 29, 2025); Salcedo Aceros v. Kaiser, No. 25-06924, 2025 WL 2637503, at \*9 (N.D. Cal. Sept. 12, 2025).

78. In fact, innumerable federal district courts nationwide—including multiple decisions in the Middle and Southern Districts of Florida—have clarified that,

despite the ICE Memo and the Hurtado decision, long-term EWIs arrested inside the United States are detained under INA § 236(a), not § 235(b). Uniformly declining to defer to Hurtado in light of Loper Bright and stressing that district courts must exercise independent judgment and cannot simply accept agency expansion of § 1225(b)(2), these courts hold that individuals already living in the United States are “already in the United States” for Jennings purposes and are therefore entitled to custody review under § 236(a), and not subject mandatory detention as “arriving aliens.” *See, e.g., Vasquez Carcamo v. Noem*, No. 2:25-cv-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025) (collecting cases); Hinojosa Garcia v. Noem, No. 2:25-cv-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); Puga v. Ass’t Field Office Director, Krome North Service Processing Center, No. 25-24535-CIV-Altonaga, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025); Duvalon Boffill v. Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement, 2025 WL 3246868 (S.D. Fla. Nov. 20, 2025); Merino v. Ripa, No. 1:25-cv-24535-CIV-Altonaga (S.D. Fla. Oct. 15, 2025); Lopez v. Hardin, No. 25-cv-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (“every court to address the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extend time is appropriately classified under § 1226(a) and not § 1225(b)(2)). These courts consistently found that the ICE Memo and Hurtado contradict the statutory structure Congress enacted.

79. A reading of § 1225(b)(2) which treats all EWIs as § 1225(b)(2) “applicants for admission” is patently unlawful to the extent that it would render 8

U.S.C. § 1226(c), *Detention of Criminal Aliens*, superfluous and rewrite Congress's detention scheme. Oliveira Gomes v. Hyde, No. 1:25-cv-121571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

80. Similarly, in January 2025, the Laken Riley Act, Pub. L. No. 119-1, sec. 2, 139 Statute 3, 3 (2025), added section 1226(c)(1)(E) to 8 U.S.C. § 1226. That section “mandates detention for noncitizens who (i) are inadmissible, *inter alia* under 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Maldonado), and (ii) have been charged with, arrested for, or convicted of acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer, or any crime that results in death or serious bodily injury to another. Congress would have no reason to enact § 1226(c)(1)(E) if indeed the mandatory detention provisions of § 1225(b)(2) were intended to apply to all noncitizens present in the United States who have not been admitted. Puga, *supra*, at \*5.

**B. 8 U.S.C. § 1101(a)(15)(U) and Implementing Regulations**

81. On October 28, 2000, Congress created a new nonimmigrant visa classification, referred to as a U visa, through the passage of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). *See* Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533 (codified at 8 U.S.C. § 1101(a)(15)(U)). The U-Visa program provides protection to non-citizens who were victims of qualifying crimes and who assist law enforcement. Id.; *see also* 8 C.F.R. § 214.14(a)(5).

82. Congress enacted the U-Visa program to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute” certain serious crimes “while offering protection to victims of such offenses and keeping with the humanitarian interests of the United States.” VTVPA Pub. L. No. 106-386, Title V § 1513(a), 114 Stat. 1464, 1533. Providing a path to lawful status encourages victims to report crimes and cooperate with investigations.

83. Individuals are eligible for U nonimmigrant status if they: (1) are the victim of qualifying criminal activity that occurred in the United States or its territories or possessions; (2) have suffered substantial physical or mental abuse as a result; and (3) have been helpful to law enforcement in the detection, investigation, or prosecution of such criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U).

84. Under 8 U.S.C. § 1182(d)(14), INA § 212(d)(14), U-visa applicants may apply for a waiver of nearly any ground of inadmissibility (other than INA § 212(a)(3)(E) involving genocide, torture, or extrajudicial killing). This waiver authority—far broader than in most immigration contexts—allows USCIS to grant U-visa relief when doing so is in the public or national interest. A BFD approval necessarily reflects that USCIS has resolved any issues of inadmissibility, because USCIS cannot issue BFD deferred action and employment authorization without clearing admissibility.

85. To apply for a U visa, a petitioner must file with USCIS (1) a Form I-918, Petition for U nonimmigrant status; (2) a Form I-918, Supplement B, a certification from a recognized law enforcement official confirming that the non-

citizen has cooperated in the investigation or prosecution of criminal activity; (3) a personal statement; and (4) a Form I-192 (inadmissibility waiver). Derivative family members may be included on Form I-918 Supplement A.

86. USCIS may grant no more than 10,000 principal U visas per fiscal year. 8 U.S.C. § 1184(p)(2)(A). This cap has been reached every year since at least 2010, resulting in a substantial backlog and multi-year waitlist for eligible petitioners.

87. To address this backlog, USCIS provides interim protections—deferred action or parole—under 8 C.F.R. § 214.14(d)(2). These protections apply to petitioners and qualifying derivatives who are waitlisted due to the cap. While in deferred action, petitioners may apply for employment authorization. Deferred action suspends removal long enough for petitioners to receive ancillary benefits, including work authorization and a stay of removal.

88. On December 23, 2008, Congress expanded protections through the TVPRA, authorizing USCIS to grant employment authorization to any noncitizen with a *pending, bona fide* U-visa petition. 8 U.S.C. § 1184(p)(6). Congress knowingly created this protection because the statutory cap made years-long waits unavoidable.

89. The BFD process allows USCIS to make streamlined determinations of eligibility—including inadmissibility waivers—before a petitioner reaches the waitlist. A BFD necessarily includes a discretionary determination that the petitioner meets eligibility and admissibility requirements. Upon issuance, a BFD confers deferred action and protection from removal while the petition remains pending due solely to the statutory cap.

90. USCIS interprets “bona fide” to mean “made in good faith; without fraud or deceit.” In evaluating BFD eligibility, USCIS reviews initial evidence for completeness and accuracy, conducts background checks, and assesses national-security and public-safety factors as part of its discretionary determination. See USCIS Policy Manual, Vol. 3, Part C, Ch. 5.

91. The BFD process provides an opportunity for petitioners to receive work authorization and deferred action consistent with the TVPRA, ensuring meaningful protection during the often-years-long adjudication period.

92. Individuals granted deferred action are eligible for work authorization under 8 C.F.R. § 274a.12(c)(14). As USCIS has expressly recognized, deferred action is functionally available only to petitioners inside the United States because deferred action “defers removal,” an action irrelevant for petitioners abroad. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5. Thus, deferred action is not a courtesy; it is DHS’s own legal mechanism for suspending execution of removal during the pendency of a U-visa petition.

**CLAIMS FOR RELIEF**

**COUNT I**

**Violation of 8 U.S.C. § 1226**

93. Petitioner realleges paragraphs 1 through 92 as if fully set forth herein.

94. Petitioner’s continued detention without a bond hearing violates 8 U.S.C. § 1226, (INA § 236), because Petitioner was residing in the United States for more than eleven years prior to her being placed in removal proceedings. As such,

Respondents have unlawfully applied the mandatory detention provision of 8 U.S.C. 1225(b)(2) to Petitioner.

95. At all times material, Respondents have proceeded under 8 U.S.C. § 1226 in their encounters with Petitioner. Specifically, Petitioner was apprehended by Respondents when she first entered the United States in 2013, and DHS/ICE's Order of Release on Recognizance expressly stated that Petitioner was being released "[i]n accordance with section 236 of the [INA]" (8 U.S.C. § 1226(a)).

96. When DHS detains a non-citizen close to the border and releases the non-citizen on conditional parole under § 236(a)(2)(B), and then, years later, re-detains that non-citizen, DHS fails to reserve its right to treat petitioner in the same manner as that of any other "applicant for admission" to the United States. De Andrade v. Moniz, No. 25-CV-12455-FDS, --- F.Supp.3d ---, 2025 WL 2841844, at \*5 (D. Mass. Oct. 7, 2025).

97. Moreover, the NTA that DHS issued to Petitioner on or about October 27, 2025, did not classify her as an "arriving alien." Instead, the NTA charged Petitioner as "present in the United States [without admission or parole]." Exhibit \_\_. This classification places Petitioner squarely within section 1226. Pizarro Reyes v. Raycraft, No. 25-cv-12546, 2025 WL 2609425, at \*5 (E.D. Mich. Sept. 9, 2025) (ICE's selection of "present" rather than "arriving" on the NTA is evidence that § 1226 applied); Hyppolite v. Noem, No.25-4304, 2025 WL 2829511, at \*8 (same); Perez v. Berg, No. 25-cv-494, 2025 WL 2531566, at \*2 (D. Neb. July 24, 2025) (same).

98. By charging Petitioner under § 212(a)(6)(A)(i), DHS placed her squarely within regular removal proceedings under INA § 240—not as an “arriving alien” subject to detention under § 235(b).

99. Respondents’ decision to classify Petitioner under § 235(b)(2) is not the product of any statutory requirement but instead results from the July 8, 2025, ICE Memorandum directing officers to treat all individuals present without admission as “applicants for admission” subject to mandatory detention. This Memo unlawfully collapses the statutory distinction between §§ 235 and 236, retroactively nullifies prior § 236(a) custody classifications, and has been rejected by every district court to address it in the context of long-term interior residents. ICE may not expand Congress’s mandatory-detention scheme by administrative fiat.

100. Form I-286, Notice of Custody Determination, is the form DHS uses to notify a detained noncitizen of how DHS is classifying the detention and whether DHS is setting bond, denying bond, or finding the person subject to mandatory detention. It is the form by which the immigration office complies with 8 C.F.R. § 1236.1(d)(1), the regulation which requires that the detainee be notified of the custody determination and the right to immigration judge review. The requirement to issue Form I-286 was triggered when DHS charged Petitioner under § 212(a)(6)(A)(i) and not as an “arriving alien” subject to detention under § 235(b).

101. Respondents’ refusal or failure to provide Petitioner with a Form I-286 deprives Petitioner of the procedural protections guaranteed by the regulations and

renders DHS's continued detention arbitrary, unreviewable, and unlawful. *See Accardi*, 347 U.S. at 268 (the agency must abide by its own regulations).

102. In view of the foregoing, by subjecting Petitioner to the mandatory detention provision of § 1225(b), Respondents are violating 8 U.S.C. § 1226. Petitioner's detention is rightfully governed by the discretionary detention provisions of § 1226, and, as such, Petitioner is entitled to an individualized bond hearing before an immigration judge. Respondents cannot retroactively reclassify Petitioner to avoid their obligations under § 236(a).

**COUNT II**  
**Violation of 8 U.S.C. § 1101(a)(15)(U)**

103. Petitioner realleges paragraphs 1 through 92 as if fully set forth herein.

104. USCIS favorably granted Petitioner a Bona Fide Determination pursuant to 8 U.S.C. § 1101(a)(15)(U). The BFD confers deferred action under 8 C.F.R. § 214.14(d)(2), placing Petitioner in a DHS-recognized deferred posture during the pendency of her U-visa petition and entitling her to seek employment authorization and a stay of removal. Petitioner has successfully obtained employment authorization pursuant to this grant.

105. Under 8 C.F.R. § 214.14(c)(1), USCIS has exclusive jurisdiction over all petitions for U nonimmigrant status and the exclusive authority to determine *prima facie* eligibility and to determine whether a petitioner receives deferred action while awaiting a visa number. Although the statute references the Attorney General, the Homeland Security Act transferred these adjudicatory authorities to DHS, and DHS

delegated them to USCIS. See 6 U.S.C. § 271(b); DHS Delegation 0150.1; 68 Fed. Reg. 10922 (Mar. 6, 2003). ICE receives no adjudicatory authority under this delegation.

106. A grant of a BFD and its accompanying deferred action is a binding DHS determination made under 8 C.F.R. § 214.14. ICE, as an enforcement component of DHS, has no statutory or regulatory authority to nullify, disregard, or countermand a USCIS determination made pursuant to these binding regulations. Only USCIS may revoke a BFD or terminate deferred action, and none of Petitioner's DHS records reflect any such revocation.

107. Despite being a component of the same agency, ICE has disregarded USCIS's lawful adjudicatory determination by arresting and detaining Petitioner for purposes of removal. ICE may not initiate or pursue removal in a manner that effectively nullifies a status conferred by USCIS under binding regulation.

108. Respondents' refusal to honor Petitioner's facially valid and legally issued BFD, and the protections it conveys under DHS regulations, is arbitrary, capricious, and contrary to law.

109. Deferred action under § 214.14(d)(2) places a U-visa petitioner in a protected status expressly recognized by DHS as warranting deferral of removal during the pendency of the petition and authorizes the petitioner to request a stay of removal. By detaining Petitioner for purposes of removal while her removal is deferred by regulation, ICE has acted in a manner inconsistent with DHS's own intra-agency structure and beyond its lawful authority.

110. ICE's detention of Petitioner also conflicts with the regulatory structure of the U-visa program, which expressly presumes that individuals granted deferred action under 8 C.F.R. § 214.14(d)(2) will not be removed during the pendency of the petition. Detaining a person whom the agency has already determined should not be removed is an irrational and internally inconsistent exercise of agency power and exceeds ICE's statutory authority.

111. For these reasons, Respondents' detention of Petitioner—despite a valid outstanding BFD issuance and accompanying deferred action—violates 8 U.S.C. § 1101(a)(15)(U), the implementing regulations at 8 C.F.R. § 214.14, the Homeland Security Act's allocation of authority, and DHS's own regulatory structure.

### **COUNT III**

#### **Violation of the Due Process Clause of the Fifth Amendment (Unlawful, Arbitrary, and Procedurally Defective Detention)**

112. Petitioner realleges paragraphs 1–92 as if fully set forth herein.

113. The Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law. This protection applies fully to noncitizens within the United States, including those without lawful immigration status. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

114. Government detention violates the Fifth Amendment due process clause unless the detention is ordered in a criminal proceeding with adequate procedural protections. *Id.*, at 690, citing *United States v. Salerno*, 481 U.S. 739, 746 (1987).

115. Petitioner's detention violates procedural due process because ICE arrested and detained her without issuing a Form I-286, as required by 8 C.F.R. §

236.1(d)(1). This regulation mandates that DHS provide a written custody determination and advise the detainee of her right to seek review by an Immigration Judge. ICE never issued this notice. ICE's failure to comply with this mandatory procedural safeguard renders her detention unlawful under the Accardi doctrine, which requires agencies to follow their own binding regulations. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).

116. Petitioner's detention further violates substantive due process because it is arbitrary, irrational, and not reasonably tailored to meet the compelling government interests of protecting public safety or ensuring the alien's appearance at future hearings. Reno v. Flores, 507 U.S. 292, 3010-02 (1993). ICE arrested Petitioner despite a valid and ongoing grant of deferred action issued by USCIS pursuant to 8 C.F.R. § 214.14(d)(2). ICE may not lawfully detain Petitioner for purposes of removal where DHS—through USCIS—has placed her in a deferred posture and authorized her to maintain employment and seek a stay of removal.

117. ICE's abrupt reclassification of Petitioner as an "arriving alien" subject to § 235(b)(2) constitutes an arbitrary deprivation of liberty in violation of the Fifth Amendment. The government may not retroactively alter an individual's statutory detention category—particularly after more than a decade in the United States—solely to deny access to bond hearings or to manufacture mandatory detention. Such outcome-driven manipulation bears no rational relationship to any legitimate governmental purpose and violates substantive due process.

118. ICE's detention of Petitioner is arbitrary because it directly contradicts USCIS's lawful adjudication and the authority delegated to USCIS under the Homeland Security Act, 6 U.S.C. § 271(b). ICE possesses no adjudicatory authority over U-visa benefits, deferred action, or revocation of a BFD. Only USCIS may revoke deferred action. ICE has not alleged, and the administrative record does not reflect, any revocation or termination of Petitioner's BFD.

119. Detaining Petitioner also violates the basic due-process principle that the government may not deprive a person of liberty for a purpose it is legally forbidden to pursue. If Petitioner cannot lawfully be removed during the pendency of USCIS's deferred-action grant, then detention for the purpose of removal is by definition unlawful. *See Zadvydas*, 533 U.S. at 690, 699 ("Detention is justified only while "removal is reasonably foreseeable.").

120. Petitioner also possesses significant equities relevant to cancellation of removal and, potentially, a bona fide marriage exemption under 8 U.S.C. § 1229b(b)(1) and 8 U.S.C. § 1255(e)(3), 8 C.F.R. § 204.2(a)(1)(iii)(B). These equities—considered mandatory factors in any rational custody assessment—further underscore the arbitrariness of her detention and ICE's failure to consider legally relevant circumstances, rendering the detention constitutionally defective.

121. Respondents' detention of Petitioner is therefore unconstitutional because it lacks procedural safeguards, rests on no lawful statutory authority, and directly contradicts DHS's own binding regulatory determinations and structural allocations of authority.

**COUNT IV**

**Violation of the Administrative Procedure Act**

**(5 U.S.C. § 706 — Arbitrary, Capricious, Contrary to Law, and Ultra Vires Action)**

122. Petitioner realleges paragraphs 1 through 92 as if fully set forth herein.

123. Under the APA, courts must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. § 706(2)(A), (C).

124. ICE’s arrest and detention of Petitioner constitutes final agency action for APA purposes, because it imposes immediate and significant legal consequences, including a deprivation of liberty and the initiation of custodial removal proceedings without statutory or regulatory authority.

125. ICE acted contrary to law and in excess of its statutory authority because it detained Petitioner in a manner that nullifies a benefit granted by USCIS under 8 C.F.R. § 214.14(d)(2). USCIS alone holds adjudicatory authority to make U-visa determinations pursuant to the Homeland Security Act, 6 U.S.C. § 271(b), and DHS Delegation 0150.1. ICE has no authority to revoke, disregard, or countermand a valid BFD or to treat a U-visa petitioner as removable for detention purposes while deferred action is in place.

126. ICE’s detention is also arbitrary and capricious because the agency entirely failed to consider legally relevant factors, including:

- a. Petitioner’s valid and ongoing BFD grant;

- b. Petitioner's deferred-action status under 8 C.F.R. § 214.14(d)(2);
- c. The fact that only USCIS—not ICE—may revoke a BFD or terminate deferred action; and
- d. DHS's own intra-agency regulatory structure requiring ICE to honor USCIS's adjudicatory determinations.

127. By refusing to recognize the legal effect of USCIS's BFD grant and deferred-action status, ICE acted inconsistently with DHS's own regulations and failed to offer any reasoned explanation for its departure. An agency's unexplained deviation from its own regulatory framework is arbitrary and capricious under Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29 (1983).

128. ICE additionally violated the Accardi doctrine by failing to comply with mandatory regulatory procedures, including the requirement to issue a Form I-286 and provide notice of eligibility for custody review. 8 C.F.R. § 236.1(d)(1). An agency action taken in violation of binding regulations is invalid under 5 U.S.C. § 706(2)(A) and (C).

129. ICE also acted arbitrarily and capriciously by departing—without acknowledgment or explanation—from its own longstanding nationwide practice of treating individuals charged under § 212(a)(6)(A)(i) as subject to detention under § 236(a), not § 235(b)(2). An unexplained reversal of a well-established practice violates the APA. *See* FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009). ICE has offered no reasoned justification for abandoning the statutory and regulatory framework it uniformly applied for decades.

130. ICE's detention of Petitioner therefore constitutes agency action that is arbitrary, capricious, an abuse of discretion, contrary to law, and in excess of its statutory authority under 5 U.S.C. § 706. Petitioner is entitled to relief under the APA.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner, **KAREN JOHANA MALDONADO-CACERES**, prays that this Honorable Court:

1. Assume jurisdiction over the matter;
2. Issue an Order to Show Cause ordering Respondents to show cause within 3 days stating why this Petition should not be granted.
3. Enter an order compelling Respondents to return Petitioner to the Middle District of Florida and enjoining Respondents from transferring the Petitioner outside the jurisdiction of the Middle District of Florida pending the resolution of this case;
4. Declare that Respondents' failure to recognize and give full weight to a lawfully issued BFD grant by USCIS is in violation of the APA and the INA;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1101(a)(15)(U); *see also* 8 C.F.R. § 214.14, *et al.*;
6. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and
8. Grant any further relief this Court deems just and proper.

**EQUAL ACCESS OT JUSTICE ACT**

Maldonado has retained the undersigned counsel to represent her in this matter and has agreed to pay counsel a reasonable attorney's fee, plus costs and expenses. Maldonado therefore seeks an award of her attorney's fees and costs incurred in this lawsuit under The Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412.

Dated: December 1, 2025.

Respectfully submitted,

/s/Howard Jerome Levine  
Howard J. Levine  
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**COUNSEL'S VERIFICATION UNDER 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner as her attorney. I have extensively discussed with the Petitioner's fiancé Richard Torres the facts and events described in this Petition and I have reviewed all documentation made available to me. On the basis of those discussions and my review of the supporting documentation,

**I DECLARE UNDER PENALTY OF PERJURY** pursuant to 28 U.S.C. §1746, that the statements made and facts set forth in the foregoing Verified Emergency Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/Howard J. Levine  
Howard J. Levine, Esq.

December 1, 2025