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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION

GISLANE DOS SANTOS MATHEUS Petitioner, **WARDEN**, Eloy Federal Detention Center (CoreCivic); **DIRECTOR** of Phoenix Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement **KRISTI NOEM** Secretary of the U.S. Department of Homeland Security. Respondents.	Case No:_____ **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Gislane dos Santos Matheus (A# [redacted] is a citizen of Brazil who most recently arrived in the United States on or about May 25, 2022 through the U.S.-Mexico border without inspection.
2. She is currently a civil immigration detainee held at the Eloy Federal Detention Center (CoreCivic) under the authority of U.S. Immigration and Customs Enforcement ("ICE") since November 5, 2025. *See* Exhibit 1 ICE Detainee Locator.
3. On December 5, 2025, Petitioner's immigration counsel requested that she be released on bond through a custody redetermination under 8 C.F.R §1236. At the bond hearing the Immigration Judge ("IJ") acknowledged Maldonado[1] but declined jurisdiction under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), that according to him is still good law. The IJ determined that No action would be taken in the custody redetermination. *See* Exhibit 2 IJ Decision.
4. Prior to her transfer to Arizona, Petitioner was arrested in Orange County Florida on or about August 27, 2025 for allegedly committing Grand Theft and other crimes at an Amazon warehouse in May 2025. The State

[1] *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)

Attorney's office has not officially charged the Petitioner, and the case is pending in Florida.

5. On October 8, 2025 Petitioner was ordered released on her own recognizance pending the state criminal case. Petitioner was placed on ICE Hold and custody was to be transferred to ICE for detention under the Laken Riley Act.

6. Under the INA 287(g), a Memorandum of Agreement ("287(g) MOA") was entered between ICE and the Florida Orange County Corrections Department on February 26, 2025. After custody is transferred to ICE, the noncitizen may remain in the Law Enforcement Agency (LEA) jail or correctional facility for up to 48 hours. The noncitizen may be held longer only if there is an agreement under which the LEA is reimbursed for immigration detention. If there is no such agreement and the noncitizen is not transferred to an ICE field office or immigration detention facility within 48 hours, the noncitizen must be released from the LEA facility. *See* Exhibit 3 Memorandum of Agreement.

7. An addendum to modify the 287(g) MOA was signed on August 1, 2025 and added the following language to LEA Authorized Functions: "The power and authority to detain and transport, 8 U.S.C § 1357(g)(1) and 8 C.F.R § 287.5(c)(6), arrested aliens subject to removal to ICE-approved detention facilities; - Only upon a request of an ICE officer authorizing such action may participating LEA personnel transport the alien(s) to an ICE-approved

facility or ICE office for immigration purposes, and only participating LEA personnel whose ICE form 70-006 authorizes such action and who are authorized by their LEA to conduct transport operations, may conduct such action." *See* Exhibit 4 Addendum to Modify Memorandum of Agreement.

8. The addendum maintained all other provisions of the 287(g) MOA including the 48 hours release mandate. No other agreements were entered. *Id.*

9. Petitioner was taken by local law enforcement officers outside the facility and was repeatedly "booked out" and "booked back in" by LEA under ICE directive, without having committed any new criminal offense each time being assigned a new booking entry number. This violation of the 287(g) MOA restarted the detention clock and was deliberately employed to circumvent the forty-eight (48)-hour provision.

10. Since her state ordered release on October 8, 2025, Petitioner's was unlawfully held at the local jail and driven around for purposed of re booking until her transfer to an undisclosed ICE detention on or around October 20, 2025.

11. Petitioner's location did not appear in the ICE detainee locator system until on or about November 5, 2025.

12. The Laken Riley Act ("Act") was enacted in early 2025 and codified at 8 U.S.C. § 1226(c)(1)(E). Before enactment of the Act, § 1226(c) applied only to individuals convicted of specified crimes, not to those who had merely been arrested or charged. The Act purports to expand § 1226(c) to include

individuals who have been "arrested for" or "charged with" certain offenses within its mandatory detention provisions.

13. The Laken Riley Act is unconstitutional as it violates her Due Process rights by requiring mandatory detention based solely on unproven accusations without a bond hearing.

14. A constitutional challenge to the Laken Riley Act was recently brought up before the U.S. District Court District of Massachusetts. In *Doe v. Moniz et al*, 1:25-cv-12094-IT (Massachusetts District Court September 5, 2025) the Court granted Petitioner's Habeas petition and ordered a bond hearing.

15. This petition for a writ of habeas corpus challenges the legal basis for Respondents continuing to hold Petitioner without affording her an individualized custody determination on the theory that she is subject to mandatory detention under the Laken Riley Act and/or under 8 U.S.C. § 1225(b).

16. This Cout and multiple courts around the country have held that noncitizens who are arrested while residing in the United States and placed in standard removal proceedings are detained under 8 U.S.C. § 1226, even if they allegedly entered the country without inspection at an earlier time. *See Vargas-Murillo v. Bondi*, CV-25-03396-PHX-MTL (CDB) (D. Ariz. Nov. 25 2025); *Echevarria v. Bondi*, CV-25-03252-PHX-DWL (ESW) (D. Ariz. Oct. 3 2025); *Gomez v. Doe,* CV 25-03255 PHX JJT (CDB) (D. Ariz. Nov. 3 2025); *Alvarez v. Rivas*, 240 051 567, CV 25-02943 PHX GMS (CDB) (D.

Ariz. Oct. 7 2025).

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

18. Petitioner is challenging her unlawful and unconstitutional immigration detention by ICE as violative her Fifth Amendment right to procedural and substantive due process, and to seek enforcement of her rights as member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.)

19. Petitioner therefore seeks habeas relief to hold that § 1226(a) governs her

custody and to order Respondents to release Petitioner or at least provide her the individualized custody redetermination hearing before an immigration judge to which she is statutorily and constitutionally entitled.

JURISDICTION

20. Petitioner is in the physical custody of Respondents. She is detained at Eloy Federal Detention Center (CoreCivic) and under the direct control of Respondents and their agents "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2241(c)(3).

21. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. §1101 *et. seq.*

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

23. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis,* 533 U.S. 678, 687 (2001).

VENUE

24. Venue is proper because Petitioner is detained at Eloy Federal Detention Center (CoreCivic) located at 1705 E Hanna Road, Eloy, AZ 85151 which is within the jurisdiction of this District.

25. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District. 28 U.S.C. § 1391(e).

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

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

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

28. Petitioner is "in custody" for the purpose of §2241 because Petitioner was arrested and detained by Respondents.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

29. The agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of her due process rights, and it would therefore be futile for her to pursue administrative remedies. *Reno v. Amer-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claim).

PARTIES

30. Petitioner is a citizen of Brazil who most recently arrived in the United States on or about May 25, 2022 through the U.S.-Mexico border without inspection. She is detained at the Eloy Federal Detention Center (CoreCivic). She is in the custody, and under the direct control, of Respondents and their agents since on or about October 20, 2025.

31. Respondent WARDEN, Eloy Federal Detention Center (CoreCivic), is sued in his or her official capacity as the official responsible for overseeing Eloy Federal Detention Center, the facility where Petitioner is currently detained. The individual who occupies this position is not publicly disclosed. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.

32. Respondent FIELD OFFICE DIRECTOR, Phoenix Field Office, U.S. Immigration and Customs Enforcement, is sued in his or her official

capacity. The Phoenix Field Office is the Field Office that oversees the Eloy Federal Detention Center.

33. Respondent TODD LYONS the Acting Director U.S. Immigration and Customs Enforcement. Respondent LYONS has authority over the actions of ICE in general. Respondent LYONS is a legal custodian of Petitioner sued in his official capacity.

34. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner's detention and custody. Respondent NOEM is a legal custodian of Petitioner sued in her official capacity.

STATEMENT OF FACTS

35. The Petitioner is a citizen of Brazil who entered the United States on or about May 25, 2022 through the U.S.-Mexico border without inspection. She subsequently filed Form I-589 Application for Asylum and for Withholding of Removal, which is currently pending.

36. On August 26, 2025, Petitioner was arrested in Orlando, FL for an alleged incident that happened on May, 26 2025 on an Amazon Wherehouse. The police charges under Florida Statutes are Grand Theft 2nd degree $20,000 or more less than $100,00, Larceny – Coordinate with others over $3,000,

Scheme to Defraud (>$20,000, <$50,000), and Contributing to the Delinquency of a Minor.

37. On Wednesday, October 8, 2025, the Honorable Judge Vincent Chiu of the Ninth Judicial Circuit Court in and for Orange County, Florida, ordered that the Petitioner, be released on her own recognizance ("ROR") in the pending state criminal case, Case No. 2025-CF-010770-A-O.

38. The State Attorney's Office have not formally charged Petitioner nor has moved forward with prosecution to this date.

39. Following the issuance of the ROR Order, Petitioner satisfied all conditions of release imposed by the state court. Therefore, there was no remaining state-law basis for her continued detention.

40. Despite the issuance of a state-court release order on October 8, 2025, local authorities, acting upon an immigration detainer issued by ICE, continued to hold Petitioner until October 20, 2025, a period of approximately twelve (12) days, before ICE physically assumed custody. Petitioner remained in state custody well beyond the forty-eight (48)-hour period permitted by law and the 287(g) MOA.

41. Petitioner was taken by local law enforcement officers outside the facility and was repeatedly "booked out" and immediately "booked back in", without having committed any new criminal offense each time being assigned a new booking entry number.

42. On October 17th, 2025 Petitioner's criminal defense attorney filed a Habeas Corpus Petition against Orange County. Subsequently he filed a voluntary dismissal because three (3) days after the filing of the Habeas Corpus, ICE took custody of Petitioner moving her out of the jurisdiction. *See* Exhibit 5 Petition for Habeas Corpus and Voluntary Dismissal.

43. From October 20th 2025 until on or about November 5th, 2025, Petitioner's location was unknown to her immigration attorney, criminal defense attorney, and her family.

44. Petitioner's continued detention has caused severe hardship to her and her family in Florida, including emotional distress and financial instability.

LEGAL FRAMEWORK FOR IMMIGRATION DETENTION UNDER § 1225(b)(2)

45. The Immigration and Nationality Act ("INA") prescribes two statutory sections that govern a noncitizen's detention prior to a final order of removal: 8 U.S.C. §§ 1225 and 1226.

46. The detention provisions at 8 U.S.C. § 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.

47. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. See 8 U.S.C. § 1229a. Individuals detained under the authority of § 1226(a) are entitled to a

bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d).

48. 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).

49. Following 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) ("Despite 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... The effect of this change is that inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not. This procedure maintains the status quo . . .").

50. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings. 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 Immigration Judge 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)).

51. Respondents' new policy turns this well-established understanding on its head and violates the statutory scheme.

52. Indeed, prior to the BIA's change in position, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was already rejected by a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240 TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

53. Despite this finding from a federal court, on July 8, 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.

54. On September 5, 2025, the BIA issued an opinion adopting this approach to the detention statutes, see *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, further entrenching the government's interpretation of the governing detention statutes. Because this decision is precedential, it is binding on

immigration judges (absent contrary instructions from a federal court sitting in habeas).

55. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

56. 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, which "decid[e] the inadmissibility or deportability of [a] [noncitizen]."

57. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). 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.

58. 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).

59. The government's interpretation subjects all inadmissible noncitizens to 8 U.S.C. § 1225 and its mandatory detention provisions. But such a reading renders superfluous significant portions of 8 U.S.C. § 1226(c) that reference

inadmissible noncitizens, including 8 U.S.C. § 1226(c)(1)(E) that Congress enacted just months ago by passing the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

60. The new subsection makes a noncitizen subject to mandatory detention if he (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (the "inadmissibility criterion"); "and" (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the "criminal conduct criterion"). 8 U.S.C. § 1226(c)(1)(E) (emphasis added). By using the conjunction "and," the provision mandates detention only where the inadmissibility criterion and the criminal conduct criterion are both satisfied. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people who are alleged to have entered the United States without admission or parole.

LEGAL FRAMEWORK FOR IMMIGRATION DETENTION UNDER THE LAKEN RILEY ACT

61. The Supreme Court have recognized only one exception to the constitutional requirement for a bond hearing for § 1226 detainees. Under 8 U.S.C. § 1226(c), there is a narrow category of people who can be held in mandatory detention for a brief period of time, if the person has conceded removability and has been convicted of certain crimes following all of the due process afforded by a criminal adjudication. *See Demore v. Kim*, 538 U.S. 510, 513 (2003). For § 1226 detainees, the Supreme Court has never recognized any

other constitutionally permissible exception to the general bond hearing requirement of § 1226(a).

62. The Laken Riley Act, Pub. L. 119-1, 139 Stat. 3, is a new law enacted in 2025. It purports to expand mandatory detention under § 1226(c) to an entirely new category of people. Specifically, the Act requires detention for undocumented individuals who have merely been "arrested for" or "charged with" certain offenses, including such offenses as shoplifting, rendering this group of people categorically ineligible for release on bond or conditions. See 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act purports to move noncitizens who meet certain inadmissibility criteria (essentially, undocumented people) from Section 1226(a) to the mandatory detention category of Section 1226(c) based solely on the fact that the person "is charged with" or "is arrested for" certain crimes, including theft, larceny, and misdemeanor shoplifting. See 8 U.S.C. § 1226(c)(1)(E) (new mandatory detention grounds).

63. There is no requirement that the charge actually have been adjudicated in any court, or actually have resulted in a conviction. *See id.* Nor is there any express exception for arrests that did not result in charges, or for charges that were dismissed or otherwise favorably disposed, or even for charges that were tried and resulted in a finding of not guilty. *See id.* The Act triggers mandatory detention with absolutely no due process.

64. Unlike those subjected to mandatory detention under the preexisting 1226(c), people in mandatory detention under the new "arrested" or "charged" provisions of the Laken Riley Act will never receive any due process anywhere, no criminal proceeding to adjudicate guilt, and no immigration bond hearing to find flight risk or dangerousness. *See id.* Instead, their detention is based purely on the existence of an unproven accusation. *See id.*

65. The result is that without ever having been found guilty of anything or determined to be dangerous or a flight risk, they will likely spend many months, or even years, in jail.

66. Without any process, there is no reason to believe that Petitioner's continuing detention bears any "reasonable relation" to the purposes of the removal proceedings. See *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 531-32 (Kennedy, J., concurring). The Laken Riley Act unconstitutionally deprives Petitioner of the Due Process rights mandated by the Fifth Amendment and recognized as essential by our courts for years.

67. The U.S. District Court District of Massachusetts recently heard a Laken Riley Act challenge case. The Court reasoned that prior precedent such as "Demore and Zadvydas, addressed Due Process rights whose convictions "were obtained following the full procedural protections our criminal justice system offers."" *Demore,* 583 U.S. at 513; see also *Zadvydas,* 533 U.S. at 684-86.

68. In applying the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) factors the Court found that detention without a bond hearing violated the Petitioner's Due Process rights, granted Petitioner's Habeas petition, and ordered a bond hearing. See *Doe v. Moniz et al*, 1:25-cv-12094-IT (Massachusetts District Court September 5, 2025).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

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

70. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

71. Petitioner's private interests in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004); see also *Zadvydas v Davis*, 533 U.S. 678. 690 (2001) ("Freedom from imprisonment-form government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that [the Due process] Clause protects.")

72. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, courts must

weigh (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id. at 335.

73. Applying the Mathews test, Petitioner's liberty interest is paramount, and the risk of erroneous deprivation is extreme considering that Petitioner has been given an opportunity to be tried on the alleged charge and has not been adjudicated guilty. Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955).

74. Therefore, Petitioner's detention under the Laken Riley Act due to an arrest without a conviction violates the Due Process Clause of the Fifth Amendment.

75. Additionally, Petitioner's detention in the Florida Orange County jail post release order and in violation of the 287(g) MOA violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1226(a) and Implementing Regulations

Unlawful Denial of Bond Hearing

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

77. ICE's continued detention of Petitioner without the opportunity for her to obtain a bond hearing on the theory that she is subject to mandatory detention under 8 U.S.C. § 1225 contravenes the INA.

78. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled.

79. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231. The application of § 1225(b)(2) to bar Petitioner from receiving a custody redetermination hearing before an immigration judge violates the INA.

80. Rather, § 1225 applies to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those "already in the country" pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. See *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018).

81. Even if Petitioner appeals the immigration judge's potential denial of her bond motion, the DHS will detain Petitioner pending the appeal. Considering the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, the DHS is virtually guaranteed to win the appeal.

82. In *Matter of Yajure Hurtado*, the BIA held that all noncitizens who entered the United States without admission or parole, like Petitioner, are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are ineligible for bond hearings. It constitutes the BIA's affirmation of Respondents' faulty reimagining of the governing detention statutes.

83. This Court has rejected the BIA's reasoning in *Matter of Yajure Hurtado* and declined to follow it in granting habeas relief to petitioners in the District of Arizona. *See supra* at ¶ 15.

84. Petitioner's detention violates 8 U.S.C. § 1226(a). See 8 C.F.R. § 236 and §1003.19.

COUNT TWO

Violation of the INA:

Request for Relief Pursuant to *Maldonado Bautista*

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

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

87. 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.

88. 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."

89. 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).

90. 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 respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Enter an order mandating that Respondents show cause, returnable within three (3) days pursuant to 28 U.S.C. § 2243, as to why the relief requested in this petition should not be granted;

(3) Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody under reasonable conditions of supervision or, in the alternative, to release Petitioner unless they conduct a bond redetermination hearing or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226(a) as applied to Petitioner within seven days wherein Respondents must demonstrate that continued detention is justified;

(4) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Vanessa McCarthy Digitally signed by Vanessa McCarthy Date: 2025.12.16 12:42:06 -05'00'

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Dated: December 16, 2025

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

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

Dated this 16 day of December, 2025.

Vanessa McCarthy Digitally signed by Vanessa McCarthy Date: 2025.12.16 12:42:24 -05'00'

Vanessa McCarthy, Esq.
Florida Bar 109072
Pro Hac Vice Counsel for Petitioner