

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARTHA PATRICIA MARISCAL-DUARTE,

Petitioner,

v.

MARIA V. DE LEON, *in her official capacity* as Warden
of the South Texas Family Residential Center;

MIGUEL VERGARA, *in his official capacity* as Field
Office Director of the ICE San Antonio Field Office of
Enforcement and Removal Operations, U.S. Immigrations
and Customs Enforcement; U.S. Department of Homeland
Security;

TODD M. LYONS, *in his official capacity* as Acting
Director, Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

KRISTI NOEM, *in her official capacity* as Secretary, U.S.
Department of Homeland Security; and

PAMELA JO BONDI, *in her official capacity* as Attorney
General of the United States;

Respondents.

C/A No. 5:25-cv-01771

PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Agency Case No.

A #



INTRODUCTION

1. Petitioner-Plaintiff (“Petitioner”) is a citizen of Mexico who has resided in the United States for nearly twenty-five (25) years. She entered the United States in or around 2000 and has since established her permanent residence and livelihood in this country. On information and belief, Petitioner was apprehended by immigration authorities on August 8, 2025, and she remains in immigration detention pending removal proceedings. *See* Exhibit A (Form I-213 Record of Deportable/Inadmissible Alien).

2. Petitioner is a devoted wife and the mother of four United States citizen children, ages 24, 22, 20, and 16. *See* Exhibits B-C (Marriage Certificate; children's birth certificates.) She and her husband have built their lives entirely in the United States for more than two decades, purchasing their family home in 2005 and later acquiring an adjoining lot. *See* Exhibit D (property tax).
3. Petitioner is currently in removal proceedings and has a pending Form EOIR-42B application for Cancellation of Removal pursuant to INA § 240A(b)(1). *See* Exhibits E-F (Notice to Appear; EOIR-42B Payment Receipt). Her application is supported by extensive evidence demonstrating that her removal would result in exceptional and extremely unusual hardship to her qualifying United States citizen child, who suffers from Post-Traumatic Stress Disorder, Major Depressive Disorder, Generalized Anxiety Disorder, and Separation Anxiety Disorder, with symptom severity assessed at the 99.8th percentile. *See* Exhibit G (extract of Minor child's Comprehensive Psychological Evaluation).
4. In addition to her pending cancellation application, Petitioner has a pending Form I-360 VAWA ("Violence Against Women Act") self-petition with prima facie approval, further underscoring the strength of her immigration equities and her eligibility for relief. *See* Exhibit H (VAWA petition). She faces no disqualifying grounds that would warrant continued detention without a bond hearing.
5. Petitioner is currently detained at the South Texas Family Residential Center located at 300 El Rancho Way, Dilley, Texas 78017. *See* Exhibit I (ICE Form I-830E, Notice to EOIR: Alien Address).
6. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act ("INA"). *See*

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges (“IJs”). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

7. Petitioner’s detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. for two-and-a-half decades and who was only recently apprehended in the interior of the U.S., should not be considered an “applicant for admission” who is “seeking admission.” Rather, she should be detained pursuant to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.
8. Petitioner seeks declaratory relief that she is subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioner from custody or provide her with a bond hearing.

CUSTODY

9. Petitioner is currently in the custody of Immigration and Customs Enforcement (“ICE”) at South Texas Family Residential Center located at 300 El Rancho Way, Dilley, Texas 78017. *See* ICE Form I-830E, Notice To EOIR, Alien Address, Exhibit I. She is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

10. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 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.*
11. 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.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
12. 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).

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

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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.*
14. Petitioner is “in custody” for the purpose of § 2241 because Petitioner was detained by Respondents.

VENUE

15. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in Dilley, Texas, at the South Texas Family Residential Center. *See* Exhibit I (Notice to EOIR: Alien Address).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding. See *Fuller v Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir 2000).
17. Although Petitioner did request a custody redetermination, exhaustion is excused here because further administrative review would be futile. On September 5, 2025, the Immigration Judge expressly held that the court “lacks jurisdiction to redetermine the Respondent’s custody status because the Respondent is an applicant for admission subject to mandatory detention pursuant to section 235(b)(2)(A) of the INA.” See Exhibit J (Order of the Immigration Judge).
18. The Immigration Judge’s ruling was compelled by the Board of Immigration Appeals’ recent precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that individuals who entered the United States without inspection are deemed “applicants for admission” subject to mandatory detention under INA § 235(b)(2)(A). As a result, IJs are categorically deprived of authority to conduct bond hearings for individuals in Petitioner’s position. See also *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (recognizing that *Yajure Hurtado* renders administrative exhaustion futile).
19. Because IJs are bound by this precedential interpretation, any further request for bond or custody redetermination would be denied as a matter of law, rendering additional administrative exhaustion wholly ineffective and unavailable in practice. See *Aguilar v.*

Lewis, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999) (excusing exhaustion where administrative relief is foreclosed).

20. Moreover, the agency lacks jurisdiction to adjudicate Petitioner’s claim that her continued detention violates the Due Process Clause. Constitutional challenges to the legality of detention fall outside the scope of the agency’s authority, and exhaustion is therefore not required. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999) (exhaustion excused where the agency lacks jurisdiction to address constitutional claims).
21. Accordingly, Petitioner is not required to exhaust further administrative remedies. The administrative process has already confirmed that no bond hearing is available, and the agency is powerless to address the constitutional infirmities of Petitioner’s continued detention. Because the available procedures are ineffective, unavailable in practice, and futile, exhaustion serves no practical purpose and should be excused.

PARTIES

22. Petitioner is from Mexico and has resided in the United States since 2000. She is currently detained in the South Texas Family Residential Center in Dilley, Texas. *See* Exhibit I.
23. Respondent Warden is sued in her official capacity as Warden of the South Texas Family Residential Center. In her official capacity, Respondent Warden is Petitioner’s immediate custodian.
24. Respondent Miguel Vergara is sued in his official capacity as Field Office Director, San Antonio Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent Vergara is the legal custodian of Petitioner.

25. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.
26. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.
- Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

27. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.
28. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).
29. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).
30. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).
31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section

1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

32. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("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, aliens who are present without having been admitted or paroled (referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").
33. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).
34. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained

pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

35. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered “seeking admission” and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
36. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA’s text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
37. Defendants’ new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Defendants had applied § 1226(a) to people like the Petitioner. Defendants’ new policies are thus not only contrary to law but are arbitrary and capricious in violation of the Administrative Procedure Act (“APA”). They were also adopted without complying with the procedural requirements of the APA.
38. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court’s disagreement with BIA’s analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *see also Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), attached hereto as Exhibit

C, *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025), attached hereto as Exhibit D, and *Chafla v. Scott*, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025), attached hereto as Exhibit E.

39. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).
40. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather 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, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").
41. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See The Laken Riley Act*, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

42. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.
43. The Supreme Court has explained that § 1225(b) is concerned “primarily [with those] seeking entry,” and is generally imposed “at the Nation’s borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 “authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.* at 289 (emphases added).
44. Furthermore, § 1225(b)(2) specifically applies only to those “seeking admission,” and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are “coming or attempting to come into the United States.” The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer “seeking admission” or “coming [...] into the United States.” *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in INA § 235(b)(1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).
45. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. approximately twenty-five years ago.

STATEMENT OF FACTS

46. Petitioner is a citizen of Mexico.
47. Upon information and belief, Petitioner has resided in the U.S. since 2000.
48. Upon information and belief, Petitioner's only contacts with the criminal legal system consist of three (3) minor traffic-related matters under Florida Stat. § 322.03(1). One matter was dismissed, one resulted in a withhold of adjudication, and one remains pending solely because Petitioner was in ICE custody at the time the hearing was scheduled. None of these matters carry any immigration consequences.
49. She is now detained at the South Texas Family Residential Center. *See* Exhibit I.
50. Without relief from this Court, she faces continued detention without a bond hearing.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

51. Petitioner restates and realleges all paragraphs as if fully set forth here.
52. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
53. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
54. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
55. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 Unlawful
Denial of Release on Bond

56. Petitioner restates and realleges paragraphs 1-51.

57. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (“INS”) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.
58. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of 8 U.S.C. § 1252(b)(2)
Unlawful Detention Under This Provision

59. Petitioner restates and realleges paragraphs 1-51.
60. Title 8 U.S.C. § 1225(b) is concerned primarily with those seeking entry to the United States and is generally imposed at the Nation’s borders and ports of entry, where the Government must determine whether a noncitizen seeking to enter the country is admissible.
61. Upon information and belief, Petitioner has resided in the U.S. since 2000. She is therefore neither an arriving alien nor an alien who is now seeking admission to the United States.
62. Because 8 U.S.C. § 1252(b) does not apply to Petitioner, Respondents’ detention of her under this provision is unlawful.

COUNT IV
Violation of Fifth Amendment Right to Due Process

63. Petitioner restates and realleges paragraphs 1-51.
64. 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.
65. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).
66. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release.
67. Petitioner's private interest 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—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").
68. The risk of erroneous deprivation is exceptionally high. Petitioner has been present in the United States for two-and-a-half decades and has deep, well-established ties to her community. She is the mother of four United States citizen children, maintains strong family relationships, and owns real property in the United States.
69. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the

community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

70. Furthermore, the “fiscal and administrative burdens” of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.
71. Considering these factors, Petitioner respectfully requests that this Court order her immediate release from custody or provide her with a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;
2. Order that she not be transferred outside of this District;
3. Issue an Order to Show Cause ordering Respondents to show cause why her Petition should not be granted within three days;
4. Declare that Petitioner's detention is unlawful;
5. Issue a Writ of Habeas Corpus ordering Respondents to release her from custody or provide her with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;
6. Award her attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7. Grant her any further relief this Court deems just and proper.

Date: December 16, 2025

Respectfully submitted,

/s/Brian Scott Green

Brian Scott Green

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

I represent the Petitioner, Martha Patricia Mariscal Duarte, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 16th day of December 2025.

/s/Brian Scott Green
BRIAN SCOTT GREEN