

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Lina K. Herrera Maldonado,
Alien No. 

Petitioner,

v.

Warden, El Paso Processing Center;

Kristi Noem, in her official capacity as
Secretary, U.S. Department of Homeland
Security;

Pamela Bondi, in her official capacity as U.S.
Attorney General;

Respondents.

Case No. 3:25-cv-685

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2241 AND EMERGENCY RELIEF

INTRODUCTION

1. Petitioner, Lina K. Herrera Maldonado, has been in the physical custody of Respondents since November 22, 2025, and is currently detained at the El Paso Processing Center.

2. Petitioner is charged with being present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Petitioner is being detained unlawfully by Respondents because the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ), through the Executive Office of Immigration Review (EOIR), have concluded that Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2).

4. Petitioner's detention without the ability to be released on bond violates the plain language of the Immigration and Nationality Act (INA) and is contrary to decades of agency practice. Section 1225(b)(2)(A) of the INA does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond.

5. Petitioner's detention without a bond hearing violates her Fifth Amendment Due Process rights. Petitioner has a significant liberty interest in remaining out of custody, without a bond hearing she faces a significant risk of erroneous deprivation of her liberty, and the detention without bond of non-citizens like Petitioner, who is not a danger or flight risk, does not serve a legitimate government purpose.

6. Petitioner is a member of the nationwide "Bond Eligible Class" as certified by the U.S. District Court in the Central District of California on November 25, 2025, and is thus

eligible for release on bond pursuant to § 1226(a). *Maldonado Bautista v. Santaacruz*, 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. Santaacruz*, 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).

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION & VENUE

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ICE Detention Facility at El Paso Processing Center, located at 8915 Montana Ave., El Paso, Texas. *See* ICE Detainee Locator Search Results from December 17, 2025, attached hereto as **Exhibit 1**. 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).

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

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

11. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(e), because Respondents are employees, officers, and agencies of the United States, and because

Petitioner is detained at the El Paso Processing Center in El Paso, Texas, within this judicial district.

PARTIES

12. Petitioner Lina K. Herrera Maldonado was born in Colombia and has been living in the United States since May of 2023, and has been in immigration detention since November 22, 2025.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

14. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

15. Respondent Warden of the El Paso Processing Center has immediate physical custody of Petitioner where she is being detained, and is being sued in their official capacity.

PRUDENTIAL EXHAUSTION

16. "Where Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140 (1992). Conversely, only "the [p]rudential doctrine of exhaustion controls" where "a statute does not textually require exhaustion" *Taylor v. U.S. Treasury Dep't*, 127 F.3d 470, 475 (5th Cir. 1997).

17. No statute applicable to Petitioner's claims requires administrative exhaustion, thus Petitioner has no statutory obligation requiring her to exhaust other administrative

remedies prior to filing this petition. *See Linares v. Collins*, No. 1:25-CV-00584-RP, 2025 WL 2726549, at *4 (W.D. Tex. Aug. 12, 2025), *report and recommendation adopted*, No. 1:25-CV-584-RP, 2025 WL 2726067 (W.D. Tex. Sept. 24, 2025).

18. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge (IJ), because a recent BIA decision held that anyone, like Petitioner, who has entered the U.S. without inspection is now considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

REQUIREMENTS OF 28 U.S.C. § 2243

19. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift and imperative remedy* in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

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

STATEMENT OF FACTS

21. Petitioner entered the United States through the southern border on May 12, 2023. Three days later, on May 15, 2023, DHS issued a Notice to Appear (NTA) advising Petitioner that she had received parole on May 15, 2023 under 8 U.S.C. § 1182(d)(5) of the INA, and charging her with being present in the United States without being admitted or paroled under § 1182(a)(6)(A)(i). *See* Petitioner’s NTA dated May 15, 2023 attached hereto as **Exhibit 2**.

22. In March of 2024, Petitioner submitted a timely application for Asylum, Withholding of Removal and protection under the Convention Against Torture (“CAT”) to EOIR, within one year of entering the U.S.

23. Petitioner subsequently applied for and received an employment authorization document from DHS, and she has a valid Florida Driver’s License. Petitioner works as an airplane cleaner at an airport in South Florida, where she had to pass a rigorous background check.

24. Petitioner currently resides in Palm Springs, Florida with her partner and family.

25. On November 22, 2025 Petitioner was detained following a traffic stop in West Palm Beach, Florida, and later was transferred to the ICE detention facility at the Broward Transitional Center in Pompano Beach, Florida.

26. On Tuesday December 9, at about 8:30AM, ICE transported Petitioner via bus to a local Miami airport where she and other immigration detainees were to be transferred to ICE detention facilities throughout the U.S. Petitioner was then flown from Miami, Florida to Denver, Colorado, then to an airport in Ohio, then flown back to Miami, and later that day flown to El Paso, Texas where she arrived on Wednesday afternoon, on December 10. Petitioner was kept in chains while traveling from Tuesday morning until Wednesday afternoon with little to drink or eat.

27. Petitioner is currently detained at the El Paso Processing Center. *See Exhibit 1*.

28. There are no future hearings scheduled in Petitioner’s removal proceedings.

29. DHS’ new policy of mandatory detention and *Matter of Yajure Hurtado* effectively precludes any request for a bond redetermination by an IJ and makes it futile.

30. As a result, Petitioner remains in detention. Without relief from this Court, she faces the prospect of months, or even years, in immigration custody, separated from her partner and her community.

31. Petitioner's parole pursuant to 8 U.S.C. § 1182(d)(5) required a determination that she presents neither "a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b). Therefore, Petitioner is not a threat to national security and neither a danger to the community nor a flight risk.

32. Petitioner has not been accused or convicted of any crimes that would render her ineligible for release on bond under 8 U.S.C. § 1226(c).

ARGUMENT

Petitioner is detained under Section 1226 of the INA

33. There are two main statutory provisions that govern immigration detention: 8 U.S.C. § 1225, which subjects non-citizens to mandatory detention, and 8 U.S.C. § 1226 which provides that detention is discretionary and, if detained, a noncitizen may request a bond hearing before an immigration judge, where she "may secure [her] release if [she] can convince the officer or immigration judge that [she] poses no flight risk and no danger to the community." *Nielsen v. Preap*, 586 U.S. 392, 397-98 (2019).

34. The Supreme Court has explained that the mandatory detention scheme of 8 U.S.C. § 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Conversely, "[s]ection 1226 generally governs the process of arresting and detaining that group of aliens [already in the country]." *Id.* at 288.

35. EOIR regulations also provide that, in general, people who entered the country without inspection are not considered detained under § 1225 and that they are 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).

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

37. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ (hereinafter, “DHS Policy”) claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months or years.

38. On September 5, 2025, the BIA adopted this same position in a published decision holding that all noncitizens, like Petitioner, who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

39. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as the new DHS Policy. *See e.g., Cardona-Lozano v. Noem*, No. 1:25-CV-1784-RP, 2025 WL 3218244 (W.D. Tex. Nov. 14, 2025); *Hinojosa Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Patel v. Almodovar*, No. CV 25-15345 (SDW), 2025

¹ A copy of the internal DHS policy is available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>

WL 3012323 (D.N.J. Oct. 28, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

40. Courts have uniformly rejected DHS' and EOIR's new interpretation because it defies the INA. As the *Kostak* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner who were detained inside the U.S. See *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

Maldonado Batista Bond Eligible Class

41. On November 25, 2025, the Central District of California certified a nationwide "Bond Eligible Class" that includes those who, like Petitioner are:

noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista v. Santacruz, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025)

42. The *Maldonado* class certification extends a prior declaratory judgment, finding the new DHS Policy as unlawful and that Bond Eligible 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 v. Santacruz*, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025).

43. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

Irrespective of the Applicable Detention Authority,
Petitioner's Due Process Rights Were Violated

44. The Due Process Clause of the Fifth Amendment extends to noncitizens, including those who, like Petitioner, are in removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

45. Courts have applied a three-part balancing test to determine whether the process afforded in the civil immigration context was adequate:

- (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.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976); *see also Erazo Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025).

46. Immigration detainees, like Petitioner, have a significant private interest in being free from detention, which is “the most elemental of liberty interests.” *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). This interest also extends to parolees, as “the liberty of

a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *see also Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025).

47. Courts in other Judicial Districts have also found that noncitizens who received humanitarian parole under 8 U.S.C. § 1182(d)(5) have a significant liberty interest in their continued release, entitling them to due process protections. *See Rocha Chavarria v. Chestnut*, No. 1:25-cv-01755-DAD-AC, 2025 WL 3533606 (E.D. Cal. Dec. 9, 2025); *O.F.B. v. Maldonado*, No. 25-CV-6336, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025).

48. Petitioner is not a danger nor a flight risk, thus her detention without bond satisfies the second *Mathews* factor as it “creates a substantial risk that [she] may be erroneously deprived of [her] liberty.” *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 at *3 (W.D. Tex. Oct. 21, 2025).

49. Lastly, there is no Government interest in detaining Petitioner, who is neither a danger nor a flight risk, without a bond, that would outweigh Petitioner’s constitutional interest in her liberty. *See Id.*

50. Accordingly, regardless of whether Section 1225 or 1226 applies to Petitioner, she is being detained in violation of her Due Process rights under the Fifth Amendment.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA and Request for Relief Pursuant to *Maldonado Bautista*

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

52. The mandatory detention provision in 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

53. Moreover, Petitioner is a member of the nationwide Bond Eligible Class certified in *Maldonado Bautista*, and is subject to § 1226(a) and not § 1225(b)(2).

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

COUNT II

Violation of Due Process

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

56. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

57. Petitioner has a fundamental interest in liberty and being free from official restraint.

58. The government’s detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her due process rights.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside of the Western District of Texas while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a), within seven days, where the Government bears the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a flight risk;
- e. Declare that Petitioner's detention is unlawful; and
- f. Grant any other and further relief that this Court deems just and proper.

DATED: December 17, 2025

Respectfully submitted,

/s/Rolando Grillo
Rolando Grillo
Florida Bar No.: 96366
3540 Forest Hill Blvd, Ste 209
West Palm Beach, FL 33406
Tel: (561) 247-2391
Rolando@grilloesq.com

ATTORNEY FOR PETITIONER

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

I am submitting this verification on behalf of Petitioner, because I am Petitioner's attorney. I have discussed with the Petitioner the facts described in this petition. Based on those discussions, I hereby verify that the factual statements in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 17, 2025.

/s/Rolando Grillo
Rolando Grillo
Attorney for Petitioner