

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

TOMASA TINO REYNOSO DE LUIS

Petitioner,

-against-

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; **DAVID WESLING**, IN HIS OFFICIAL CAPACITY AS ACTING BOSTON FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; **DAVID JOHNSTON** VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; **TODD M. LYONS**, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; **PETE R. FLORES**, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER FOR U.S. CUSTOMS AND BORDER PROTECTIONS; **KRISTI NOEM**, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; **MARCO RUBIO**, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; **PAMELA BONDI**, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL; AND **JONATHAN TUREK**, SUPERINTENDENT, CHITTENDEN REGIONAL CORRECTIONAL FACILITY.

Case No.: 2:25-cv-921

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' ABBREVIATED RESPONSE TO
HABEAS PETITION**

I. INTRODUCTION

This case challenges the constitutionality of the Government's continued detention of Petitioner, Tomasa Tino Reynoso De Luis ("Ms. Reynoso De Luis" or "Petitioner"), sans any meaningful opportunity for review thereof. The Government violates her substantive right to due process under the Fifth Amendment by unlawfully detaining her, and her procedural right to the same by denying her this opportunity. Respondents initially posited that Ms. Reynoso De Luis' civil detention is mandatory, pursuant to 8 U.S.C. § 1225(b)(1), and by way of a ten-year-old Order of Expedited Removal under Section 235 of the Immigration and Nationality Act ("INA"). *See* Exh. 1 (Notice and Order of Expedited Removal). Perhaps unconvinced by the merits of their own argument, the Government then sought to alter their posture in this case by serving Ms. Reynoso De Luis with a Notice to Appear ("NTA") on December 22, 2025, directly after the status conference held by this Court on that same morning. *See* Exh. 2 (Notice to Appear). Ms. Reynoso De Luis is now to appear in immigration court on January 8, 2026, to face removal proceedings under INA § 240. *Id.* As a result, Respondents now argue that Ms. Reynoso De Luis' detention is properly governed by 8 U.S.C. § 1225(b)(2). The Government's meaning could not be more clear – they seek to subject Ms. Reynoso De Luis to mandatory detention regardless of her individual circumstances. Ms. Reynoso De Luis is, however, a person and not a statistic to fill a detention quota. Ms. Reynoso De Luis submits to this Court that her substantive and procedural rights to due process have been, and will continue to be violated, unless this Court grants her the relief she seeks through her petition for writ of habeas corpus ("Habeas Petition").

Ms. Reynoso De Luis is a mother to two children, a grandmother to two U.S. citizens, and a long-time resident of Rhode Island. She has been in the United States continuously since 2015, has applied for asylum on her path to permanent residency, and has received immigration benefits,

including employment authorization during the pendency of that application. Ms. Reynoso De Luis has been subjected to check-in requirements with Immigration and Customs Enforcement (“ICE”) throughout this process and has faithfully attended each and every one of them, even throughout the COVID-19 pandemic. She has no criminal record whatsoever. Her sudden arrest and subsequent detention occurred without any material change in circumstances that might rationally justify her loss of personal liberty.

By all available indicia, Ms. Reynoso De Luis has been arbitrarily and unlawfully detained. She now seeks the opportunity to be heard relative to her custody and asks that this Court consider whether the Government can articulate a legitimate interest in her continued detention, and if not, to order her immediate release. Alternatively, if the Court is assured that an immigration judge (“IJ”) would follow its lawful order to do so, Petitioner asks this Court to order a bond hearing be held under the discretionary standard of 8 U.S.C. § 1226(a). Finally, should the Court not be so assured, Petitioner requests this Court to exercise its inherent authority to hold its own bail hearing on the question of her custody.

II. DISCUSSION

Civil detention must occur pursuant to the Government’s statutory authority to do so, in compliance with its own regulations, and consistent with the principles enshrined within the United States Constitution. *See Diallo v. Joyce*, No. 25-cv-9909 (AS), at *2 (S.D.N.Y. Dec. 23, 2025). Here, the Government failed to do any of these things.

a. Petitioner’s Detention Lacked Proper Statutory and Regulatory Basis.

Respondents initially argued that Ms. Reynoso De Luis was subject to mandatory detention, pursuant to 8 U.S.C. § 1225(b)(1), by way of a ten-year-old Order of Expedited Removal under

INA § 235. *See* Exh. 1. This position is untenable and contrary to a plain reading of the statute. Section 235, codified as 8 U.S.C. § 1225, is titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing” and, in pertinent part, governs the “[i]nspection of [noncitizens] arriving in the United States and certain other [noncitizens] who have not been admitted or paroled.” 8 U.S.C. § 1225(b)(1). Removal under this section, commonly referred to as ‘expedited removal,’ applies to any noncitizen “who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the [noncitizen] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Notably, expedited removal decisions are made by immigration officers, lest the noncitizen indicate either an intention to apply for asylum or a fear of persecution. 8 U.S.C. § 1225(b)(1)(A)(i).

Here, Ms. Reynoso De Luis did in fact fear returning to Guatemala, her country of origin. She applied for asylum through the affirmative process before U.S. Citizenship and Immigration Services (“USCIS” or “the Agency”) on October 14, 2016. *See* Exh. 3 (Notice of Lack of Jurisdiction). Years later, on February 12, 2019, the Agency dismissed her application and referred her claim of fear to an asylum officer for consideration. *Id.* Under the Government’s own regulations, “[i]f [a noncitizen] subject to section 235(a)(2) or 235(b)(1) of the Act indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by a USCIS asylum officer in accordance with this section.” 8 C.F.R. § 208.30. In the instant matter, Ms. Reynoso De Luis waited nearly seven years from the time the Agency dismissed her application before receiving such a credible fear interview

(“CFI”) by an asylum officer. Her CFI was in fact conducted as recently as December 19, 2025, weeks after being arrested and detained by ICE. Ms. Reynoso De Luis was finally served with an NTA and placed in Section 240 removal proceedings on December 22, 2025.

It is thus abundantly clear from the Government’s own conduct that Ms. Reynoso De Luis cannot be subject to any prior removal order issued under Section 235. Reflecting this notion, the Government’s position thus shifts – they posit that Ms. Reynoso De Luis’ detention is now governed by 8 U.S.C. § 1225(b)(2). By shifting and tailoring their justifications for Ms. Reynoso De Luis’ detention, the Government demonstrates their disregard for the statutory framework, as created by Congress, by which a noncitizen may rightfully be detained. Ms. Reynoso De Luis’ initial detention on December 2, 2025, lacked either statutory or regulatory basis. So too does her current detention, as recently reframed under 8 U.S.C. § 1225(b)(2).

b. Petitioner’s Detention Violates Her Substantive and Procedural Rights to Due Process.

The Government violates Ms. Reynoso De Luis’ substantive right to due process by detaining her without basis in either statute or regulation. They violate her procedural right to due process by mischaracterizing the nature of her detention as mandatory, so as to deny her any meaningful opportunity for individualized review of her custody. The Supreme Court has recognized that “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 480 U.S. 739, 755 (1987). Indeed, the Court has “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979); *Salerno*, 480 U.S. at 755. The right to liberty “includes the right

to be free from arbitrary civil immigration detention,” *Rashid v. Trump*, 2025 WL 3210955, at *7 (D. Vt. Oct. 27, 2025).

The Second Circuit has applied the three-part test set out in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) as it pertains to determining the adequacy of process in the context of civil immigration detention. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In *Mathews*, the court explained these factors as such: “[f]irst, the private interest that will be affected by the official action; second, 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 finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

Here, Ms. Reynoso De Luis’ private interest in personal liberty weighs heavily. *See Velasco Lopez*, 978 F.3d at 851 (“the most significant liberty interest there is – the interest in being free from imprisonment.” (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004))). Her situation is, as Respondents have admitted, analogous with the petitioner in *Piedrahita-Sanchez v. Turek*, No. 25-cv-875, at *12 (D.VT. November 2025). In that case, your honor found that the petitioner “was detained without any pre-detention, individualized determination as to whether [s]he posed a flight risk or any risk of dangerousness, nor is there any indication that there was any material change in circumstances that triggered [Petitioner’s] sudden arrest and detention; rather, it appears [Petitioner] was detained simply because she was readily identified by Respondents as a noncitizen engaged in the process of petitioning for asylum as a legal path to remain in the United States.” (internal quotations omitted) (citing *Hyppolite v. Noem*, No. 25-cv-4304, 2025 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at *34-35 (E.D.N.Y. Oct. 6)). In the instant matter, Ms. Reynoso De

Luis was similarly detained without individualized determination relative to any perceived danger to the community or flight risk. Her arrest and subsequent detention occurred without any indication as to any material change in circumstances that might otherwise justify such a loss of personal liberty, as mandated by the system that Congress created and the U.S. Constitution itself.

The risk of an erroneous deprivation of Ms. Reynoso De Luis' personal liberty weighs heavily when the Government deprives her of procedural safeguards such as a bond hearing. As your honor noted in *Piedrahita-Sanchez*, “[t]he purpose of a bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people [who] are ultimately detained.” *Piedrahita-Sanchez v. Turek*, No. 25-cv-875, at *13-14 (internal quotations omitted) (citing *Hyppolite v. Noem*, No. 25-cv-4304, at *34-35). “An evidentiary hearing ... at which the Government bears the burden of proof would undoubtedly provide greater protection against an erroneous deprivation of [Petitioner’s] liberty.” *Rashid v. Trump*, 2025 WL 3210955, at *28.

Here, the Government posits their novel reinterpretation of the statutory framework surrounding detention of noncitizens to assert that Ms. Reynoso De Luis, a resident of Rhode Island for the past ten years, “continues to seek admission into the United States until she is either admitted, denied admission and removed, or voluntarily withdraws her application for admission pursuant to 8 U.S.C. § 1225(a)(4)” and is therefore subject to mandatory detention under 8. U.S.C. § 1225(b)(2). Respondents Abbreviated Response to Habeas Petition, at 4. This Court has found that the term ‘seeking admission’ means “those noncitizens presenting themselves at the border, or who were recently apprehended just after entering.” *Piedrahita-Sanchez v. Turek*, No. 25-cv-875, at *9. “Once again, this Court agrees with many other courts that: if all applicant[s] for admission

also are seeking admission, then the words seeking admission would be surplusage.” *Id.* (internal quotations omitted) (citing *Ortiz v. Freden*, No. 25-cv-960-LJV, U.S. Dist. LEXIS 217654, 2025 WL 3085032, at *15-16 (W.D.N.Y. Nov. 4, 2025)); *See also Walizada v. Trump*, No. 25-cv-00768, at *16 (D. VT. Dec. 11, 2025) (“§ 1225(b)(2)(A) applies only to those noncitizens who are actively ‘seeking admission’ to the United States, [and] it cannot, according to its ordinary meaning, apply to [noncitizens] ... residing in the United States for several years.”). Congress demonstrably did not intend to subject all noncitizens who entered the United States without inspection to mandatory detention during their removal proceedings. *Romero v. Hyde*, No. 25-11631-BEM, U.S. Dist. LEXIS 160622, 2025 WL 2403827, at *29 (D. Mass. Aug. 19, 2025) (Congressional intent was not expressed as to *detention* pending the outcome of the immigration proceedings, and “[r]ealistically speaking, if Congress’s intent was so clear, why did it take thirty years to notice?”). Accordingly, Ms. Reynoso De Luis’ detention cannot properly be governed by 8 U.S.C. § 1225(b)(2) and must therefore be analyzed under the discretionary framework of 8 U.S.C. § 1226(a).

As to the final part of the *Mathews* test, as was the case with the petitioner in *Piedrahita-Sanchez*, here too the Government does not have a significant interest in Ms. Reynoso De Luis’ continued detention. It is unauthorized under the statutory framework of Section 1225, and it serves no legitimate purpose. Ms. Reynoso De Luis has demonstrated a long and upstanding record of compliance with all supervisory requirements imposed by ICE and has no criminal history whatsoever. The Government cannot maintain that she is either a flight risk, or a danger to the community. Congress neither intended nor authorized the Government to detain a noncitizen postured as Ms. Reynoso De Luis is here. *Lopez Benitez v. Francis et al.*, No. 1:25-CV-05937-DEH, 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, *36 (S.D.N.Y. Aug. 13, 2025) (“The

Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate governmental purpose such as ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." (cleaned up)). The Government thus exceeds the authority granted to it by Congress by applying a mandatory detention framework to all noncitizens, such as Petitioner, who entered the United States without inspection, as such detention lacks any legitimate governmental purpose. "To require that the Government justify continued detention 'promotes the Government's interest – one we believe to be paramount – in minimizing the enormous impact of incarceration in cases where it serves no purpose.'" *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. 2024). The final *Mathews* factor thus weighs heavily in Ms. Reynoso De Luis' favor.

The Supreme Court has recognized that "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). "The notion of fair play animating [the Fifth] [A]mendment precludes an agency from promulgating a regulation affecting individual liberty or interest, which the rule-maker may then with impunity ignore or disregard as it sees fit." *Montilla v. I.N.S.*, 926 F.2d 162, 164 (2d Cir. 1991). Here, the Government willfully disregards the scope of authority granted to it by Congress, relative to the detention of noncitizens. By subjecting Ms. Reynoso De Luis to civil detention whilst depriving her the opportunity for review thereof, the Government violates her procedural right to due process under the Fifth Amendment to the United States Constitution.

c. Petitioner's Constitutional Claim Renders This Court the Proper Venue to Review Her Detention.

As a result of the Board of Immigration Appeals' ("the Board" or "BIA") recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), IJs have been stripped of the jurisdiction

to consider custody redetermination requests. Furthermore, IJs are not authorized to consider constitutional claims. *See e.g., Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (“[T]he BIA[] lack[s] ... authority to adjudicate constitutional questions[.]”); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 667 (D. N.J. 2003) (“The Immigration Court and [BIA] are courts of limited jurisdiction that cannot consider constitutional claims.”). This Court has recently ruled that it would thus be futile to order a bond hearing before an IJ where, as here, a petitioner has raised due process concerns pertaining to their civil detention. *Walizada*, No. 25-cv-00768, at *36. This logic is only further underscored by the Government’s recent record of willful disregard and non-compliance with the Central District of California’s order in *Maldonado Bautista v. Santacruz*, No. 25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Ms. Reynoso De Luis seeks review of her detention under the Due Process Clause of the Fifth Amendment and respectfully requests that this Court serve as the venue to conduct such review.

III. CONCLUSION

Ms. Reynoso De Luis’s continued civil detention is unlawful and unconstitutional in violation of her Fifth Amendment rights. The Government has failed to identify any valid statutory or regulatory authority justifying her detention and has instead shifted theories in an apparent effort to impose mandatory detention irrespective of her individual circumstances. That approach contravenes the statutory framework enacted by Congress and violates the Fifth Amendment’s guarantees of substantive and procedural due process.

Ms. Reynoso De Luis has resided in the United States for ten years and has demonstrated compliance with all immigration supervision, has deep community ties, and the absence of any criminal history or indicia of danger or flight risk. Her sudden arrest and prolonged detention

without individualized assessment and without access to a meaningful custody review unconstitutionally deprives her of her liberty. Accordingly, this Court should grant the Petition for Writ of Habeas Corpus and order Ms. Reynoso De Luis's immediate release. In the alternative, the Court should order that she receive a prompt bond hearing governed by the discretionary standard of 8 U.S.C. § 1226(a), at which the Government bears the burden of justifying her continued detention. Should the Court determine that such relief cannot be reliably effectuated by the immigration court, Petitioner respectfully requests that this Court exercise its inherent authority to conduct its own bail hearing to remedy the ongoing constitutional violations. Absent such relief, the Government's unlawful detention of Ms. Reynoso De Luis will continue to infringe upon her fundamental liberty interests in violation of the United States Constitution.

Respectfully submitted on this 24th day of December, 2025.

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** Motion for admission currently pending*

CERTIFICATE OF SERVICE

I, Nathan Virag, hereby certify that on December 24, 2025, I caused a copy of the foregoing PETITIONER'S REPLY TO RESPONDENTS' ABBREVIATED RESPONSE TO HABEAS PETITION to be served on Respondents through use of the CM/ECF system, which will send notification to all counsel of record.

/s/ Nathan Virag
Nathan Virag, Esq.