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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Daycy Noemi CONTRERAS-  
13 BARRAZA (  )

14 Petitioner,

15 v.

16 Kristi NOEM, Secretary, Department  
17 of Homeland Security;  
18 DEPARTMENT OF HOMELAND  
19 SECURITY (DHS);  
20 Pam BONDI, U.S. Attorney General;  
21 EXECUTIVE OFFICE FOR  
22 IMMIGRATION REVIEW (EOIR);  
23 Sirce OWEN, Acting Director of  
24 EOIR; ELOY IMMIGRATION  
25 COURT; Todd LYONS, Senior  
26 Official Performing the Duties of  
Director of Immigration and Customs  
Enforcement; IMMIGRATION AND  
CUSTOMS ENFORCEMENT (ICE);  
John Doe, Phoenix Field Office  
Director; IMMIGRATION AND  
CUSTOMS ENFORCEMENT; Fred  
FIGUEROA; WARDEN OF ELOY  
DETENTION CENTER,

Respondents.

Case No.:

**VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS**

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**PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28  
U.S.C. § 2241**

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner’s unlawful detention pursuant to the erroneous interpretation and application of the immigration laws by Respondents, as follows:

**INTRODUCTION**

1. Petitioner is currently detained by Immigration and Customs Enforcement (“ICE”) at the **Eloy Detention Center** in Eloy, Arizona pursuant to the Respondents’ new policy reinterpreting the immigration detention statutes to preclude Petitioner from eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a), and for a bond hearing under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new interpretation and policy, Respondents now consider Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of her removal proceedings.

2. Petitioner is a noncitizen who has resided in the United States since 2005. She is married to a U.S. citizen who filed a visa petition on her behalf so that she can process her immigrant visa to legally immigrate to the United

1 States. Upon being summoned to a visa petition interview set for April 1,  
2 2025, she was arrested by ICE before the completion of the interview.

3 3. Petitioner was arrested because she was subject to an *in absentia*  
4 removal order issued on July 14, 2005 by a New York Immigration Judge.  
5 The order was issued in her absence because she did not appear for a removal  
6 hearing. Petitioner did not receive the July 14, 2005 hearing notice and was  
7 unaware of the hearing and of the *in absentia* removal order issued against  
8 her. The *in absentia* order was based on an inadmissibility charge under 8  
9 U.S.C. § 1182(a)(6)(A)(i) for having entered the United States without  
10 admission or parole, i.e. without inspection.  
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14 4. On April 3, 2025, two days after Petitioner was detained by ICE, she  
15 filed a motion to reopen and rescind the *in absentia* order. Her removal  
16 proceedings were reopened by an Immigration Judge on June 13, 2025. The  
17 *in absentia* removal order was naturally rescinded. But Petitioner remains  
18 detained at the Eloy Detention Center without the opportunity for release or a  
19 bond. She was denied bond because Respondents now interpret the INA to  
20 subject those inadmissible under 1182(a)(6)(A)(i) for having entered the  
21 United States without admission or parole as being subject to mandatory  
22 detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release.  
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1 5. Petitioner was not granted bond by Immigration and Customs  
2 Enforcement (ICE) and therefore sought a custody redetermination before an  
3 Immigration Judge (IJ) at the Eloy Immigration Court. The IJ denied release  
4 based on lack of jurisdiction due to the new interpretation of the detention  
5 statute. In his order, the IJ stated that if he had jurisdiction, he would find that  
6 Petitioner was not a danger to the community and that any concerns about  
7 flight risk could be ameliorated with a bond. Petitioner's detention under the  
8 new interpretation violates the plain language of the INA and the regulations.  
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11 6. Subparagraph 1225(b)(2)(A) applies to individuals who are  
12 apprehended on arrival in the United States. It states that an "applicant for  
13 admission" who is "seeking admission" shall be detained for a removal  
14 proceeding. *Id.* It does not apply to individuals like Petitioner, who are  
15 arrested and detained by ICE after having entered and begun residing in the  
16 United States. Instead, such individuals are subject to a different statute, 8  
17 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That  
18 statute expressly applies to people who, like Petitioner, are charged as  
19 inadmissible for having entered the United States without admission or parole.  
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23 7. Petitioner therefore requests this Court to issue a writ of habeas corpus  
24 and order the Respondents to release her on a reasonable bond or provide her  
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1 with a bond hearing at which the IJ can set a bond that will address any  
2 concerns regarding flight risk.  
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#### 4 JURISDICTION

5  
6 8. Petitioner is in the physical custody of Respondents at the Eloy  
7 Detention Center, in Eloy, Arizona and is under the direct control of  
8 Respondents and their agents.  
9

10 9. This action arises under 28 U.S.C. § 2241 and the Immigration and  
11 Nationality Act (“INA”), 8 U.S.C. §1101 *et seq.* and its implementing  
12 regulations, the Administrative Procedures Act (APA), and the Due Process  
13 Clause of the U.S. Constitution.  
14

15 10. Jurisdiction is proper under 28 U.S.C. § 2241 (habeas corpus) and 28  
16 U.S.C. § 1331 (federal question), as the Petitioner is presently unlawfully  
17 detained under color of authority of the United States, and such custody is in  
18 violation of the laws of the United States.  
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20 11. This Court may grant relief pursuant to 28 U.S.C. § 2241; the  
21 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; the APA, 5 U.S.C. §§  
22 702, 706; the All Writs Act, 28 U.S.C. § 1651; and the Court’s inherent  
23 equitable powers.  
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**VENUE**

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2 12. Venue is proper in this District under 28 U.S.C. § 1391, in that this is  
3 an action against officers and agencies of the United States in their official  
4 capacities, brought in the District where a substantial part of the events or  
5 omissions giving rise to the Petitioner's claim occurred. Specifically, at least  
6 one Defendant is in this District, the Petitioner is detained in this District, and  
7 a substantial part of the events giving rise to the claims in this action took  
8 place in this District.  
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**PARTIES**

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14 13. The Petitioner, Daycy Noemi Contreras-Barraza, is a 56 year old  
15 undocumented immigrant from Guatemala who entered the United States on  
16 or about May 2, 2005 without inspection. She is currently detained by  
17 Respondents at the Eloy Detention Center. After she was arrested on April 1,  
18 2025, ICE did not set bond and on August 4, 2025, the IJ at the Eloy  
19 Immigration Court denied bond for lack of jurisdiction, all pursuant to the  
20 agencies' new interpretation of the immigration detention statutes.  
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23 14. Defendant Kristi Noem is the Secretary of the Department of Homeland  
24 Security. She is responsible for the implementation and enforcement of the  
25 INA, and oversees ICE, which is responsible for Petitioner's detention.  
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1 Respondent Noem has ultimate custodial authority over Petitioner and is sued  
2 in her official capacity.

3 15. Respondent Department of Homeland Security (DHS) is the federal  
4 agency responsible for implementing and enforcing the INA, including the  
5 detention and removal of noncitizens.  
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7 16. Respondent Pamela Bondi is the Attorney General of the United States  
8 and the most senior official in the U.S. Department of Justice (“DOJ”). She  
9 has the authority to interpret the immigration laws and adjudicate removal  
10 cases. The Attorney General delegates this responsibility to the Executive  
11 Office for Immigration Review (“EOIR”). She is sued in her is official  
12 capacity.  
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15 17. Respondent EOIR is the federal agency responsible for administering  
16 the immigration courts and the Board of Immigration Appeals (“the Board”).  
17 The Immigration Courts adjudicate cases including custody redeterminations  
18 in bond hearings and the Board is the appellate body that reviews appeals from  
19 the decisions of the immigration courts.  
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21 18. Respondent Sirce Owen is the Acting Director of EOIR and has  
22 ultimate responsibility for overseeing the operation of the immigration courts  
23 and the Board. She is sued in her official capacity  
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1 19. The Eloy Immigration Court is the adjudicatory body within EOIR with  
2 jurisdiction over the removal and bond cases of noncitizens detained in Eloy,  
3 Arizona.

4 20. Respondent Immigration and Customs Enforcement (ICE) is the  
5 agency within DHS responsible for implementing and enforcing the INA,  
6 including the detention and removal of noncitizens.  
7

8 21. Respondent Todd M. Lyons is the Acting Director of ICE and is sued  
9 in his official capacity. He is responsible for Petitioner's detention.  
10


11 22. Respondent John Doe is the Phoenix Field Office Director who  
12 oversees ICE operations in Arizona including detention. John Cantu was the  
13 former ICE Phoenix Field Office Director but was reassigned and a  
14 replacement has not been named. The Eloy Detention Center is under the  
15 jurisdiction of the Phoenix Field Office and its director. The Director  
16 overseeing ICE operations in Phoenix, Arizona is the immediate custodian of  
17 Petitioner and is named in his official capacity.  
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19 23. Respondent Fred Figueroa is the warden of the Eloy Detention Center.  
20 The Eloy Detention Center is the custodian of Petitioner, and the warden is  
21 named in his official capacity  
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## EXHAUSTION OF REMEDIES

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2 24. The Petitioner has exhausted her administrative remedies to the extent  
3 required by law, and her only remedy is by way of this judicial action. She  
4 requested a custody redetermination hearing before the IJ in Eloy, Arizona but  
5 it was denied due to lack of jurisdiction. Appealing the denial would be futile  
6 in light of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) that held  
7 that Immigration Judges lack authority to hear bond requests or to grant bond  
8 to noncitizens who are present in the United States without admission or  
9 parole. Petitioner also requested parole from DHS/ICE on August 15, 2025,  
10 which was subsequently denied on November 20, 2025.  
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## STATEMENT OF FACTS

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16 25. The Petitioner was born on , and is a native and citizen of  
17 Guatemala. She has resided in the United States since May 2005 and lives in  
18 Bell Gardens, California with her U.S. citizen husband Diego Antonio Flores.  
19 They were married on September 15, 2022. Petitioner is a business owner,  
20 pays her taxes, and has no criminal arrests or convictions anywhere.  
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23 26. On or about May 2, 2005, Border Patrol agents apprehended Petitioner  
24 in Harlingen, Texas. She was 35 years old at the time. On the same date, she  
25 was served with a Notice to Appear (NTA) that alleged she was present in the  
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1 United States without being admitted or paroled. The NTA directed her to  
2 appear for a hearing at the New York Immigration Court on June 23, 2005 at  
3 8:30am. The NTA charged her as inadmissible under INA § 212(a)(6)(A)(i),  
4 8 U.S.C. § 1182(a)(6)(A)(i), in that she was present in the United States  
5 without being admitted or paroled. Rather than designating Petitioner as “an  
6 arriving alien,” the NTA designated Petitioner as “an alien present in the  
7 United States who has not been admitted or paroled.”  
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10 27. Petitioner was released on her own recognizance. The Record of  
11 Deportable/Inadmissible Alien (Form I-213) from May 3, 2005, indicates that  
12 upon release she would be residing at [REDACTED]  
13 [REDACTED] Petitioner did not appear for the June 23, 2005 hearing but the IJ  
14 in New York continued the hearing and mailed a hearing notice directing her  
15 to appear for a hearing on July 14, 2005 at 9:30am. That notice listed her  
16 address as [REDACTED] Petitioner did  
17 not appear for that hearing and was ordered removed *in absentia*.  
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20 28. On April 24, 2023, Petitioner’s U.S. citizen husband filed a visa petition  
21 on her behalf. Petitioner was summoned for a visa petition interview set for  
22 April 1, 2025 in the Los Angeles Field Office, to which she and her husband  
23 appeared. During the interview, Petitioner was arrested by ICE based on the  
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1 *in absentia* removal order. She has been detained at the Eloy Detention Center  
2 since then.

3 29. On April 3, 2025, two days after she was detained, Petitioner, through  
4 counsel, filed a motion to reopen her removal proceedings with the New York  
5 IJ based on lack of notice and due process violations in that the address was  
6 incorrectly listed on the NTA and the subsequent notice of hearing, and based  
7 on *sua sponte* reopening. The IJ in New York granted Petitioner's motion on  
8  
9 June 13, 2025.

11 30. ICE did not set a bond for Petitioner and therefore on or about July 29,  
12 2025, she filed a request for a custody redetermination hearing with the Eloy  
13 Immigration Court seeking to be released on bond. The IJ scheduled a custody  
14 redetermination hearing in Eloy for August 4, 2025.

16 31. On August 1, 2025, DHS served Petitioner, via regular mail or email,  
17 with additional charges of inadmissibility under 8 U.S.C § 1182(a)(7)(A)(i)(I)  
18 for not being in possession of a valid unexpired immigrant visa, reentry  
19 permit, border crossing identification card, or other valid entry  
20 document...and a valid unexpired passport....”

23 32. On August 4, 2025, the IJ in Eloy denied the custody redetermination  
24 request because the “Court lacks jurisdiction.” Order of the IJ, Eloy, AZ, Aug.  
25 4, 2025. The IJ further stated that “if Court had jurisdiction, would find  
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1 [Petitioner] is not a danger, and that any concerns regarding flight risk could  
2 be ameliorated with a bond.” Order of the IJ, Eloy, AZ, Aug. 4, 2025.

3 33. On August 15, 2025, Petitioner filed a request for parole with  
4 DHS/ICE, that request was denied on November 20, 2025.

5  
6 34. On **December 11, 2025**, Petitioner refiled a custody redetermination  
7 request noting she was a class member under the certified class in *Lazaro*  
8 *Maldonado Bautista v. Ernesto Santacruz Jr.*, 5:25-cv-01873, (C.D. Cal.). On  
9 December 16, 2025, the IJ in Eloy found no jurisdiction but issued an alternate  
10 order of \$5,000 in bond noting that is the amount he would have set if he had  
11 jurisdiction. Order of the IJ, Eloy, AZ, December 16, 2025.

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14 35. Upon information and belief, venue of the removal proceedings was  
15 changed to Eloy. On September 24, 2025, the IJ in Eloy administratively  
16 closed the Petitioner’s removal proceedings upon her request because he  
17 found collateral relief in the form of an I-601A was not remote or speculative  
18 given the pending visa petition from her U.S. citizen spouse. He further found  
19 that the 601A could not be granted unless removal proceedings were  
20 administratively closed. DHS has since filed an appeal of the IJ’s order  
21 administratively closing Petitioner’s removal proceedings. The appeal  
22 remains pending before the Board.  
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1 36. On October 16, 2025, U.S. Customs and Immigration Service (USCIS)  
2 approved the visa petition filed for Petitioner by her U.S. citizen husband. An  
3 I-601A waiver application has since been filed for Petitioner and it is pending  
4 with USCIS. A receipt for the waiver application has not yet been issued.

5  
6 37. Petitioner remains detained at the Eloy Detention Center as a result of  
7 the Respondents' reinterpretation of the immigration detention statutes.  
8 Without the intervention of this Court, she faces continued detention for  
9 months or even years separated from her U.S. citizen husband who relies on  
10 her for financial and emotional support.  
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14 **LEGAL FRAMEWORK**

15 38. The INA prescribes three basic forms of detention for the vast majority  
16 of noncitizens in removal proceedings.  
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18 39. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in  
19 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a (describing  
20 removal proceedings in general). Individuals in § 1226(a) detention are  
21 generally entitled to a bond hearing at the outset of their detention, *see* 8  
22 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested,  
23 charged with, or convicted of certain crimes are subject to mandatory  
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1 detention until their removal proceedings are concluded, *see* 8 U.S.C. §  
2 1226(c).

3 40. Second, the INA provides for mandatory detention of certain recently  
4 arrived noncitizens, namely those subject to expedited removal under 8 U.S.C.  
5 § 1225(b)(1), and for other recent arrivals “seeking admission” under §  
6 1225(b)(2). *See Jennings v. Rodriguez*, 583 U.S. 281, 287, 289, 138 S. Ct. 830  
7 (2018) (explaining that § 1225(b)(2)’s mandatory detention scheme applies  
8 “at the Nations’ borders and ports of entry” to noncitizens “seeking admission  
9 into the United States.”).

10 41. Last, the INA also provides for detention of noncitizens who have  
11 already been ordered removed, including individuals in withholding-only  
12 proceedings. *See* 8 U.S.C. § 1231(a)-(b).

13 42. This case concerns the detention provisions at § 1226(a) and §  
14 1225(b)(2).

15 43. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as  
16 part of the Illegal Immigration Reform and Immigrant Responsibility Act  
17 (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-  
18 546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently  
19 amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat.  
20 3 (2025).

1 44. Following the enactment of the IIRIRA, EOIR drafted new regulations  
2 explaining that, in general, people who entered the country without inspection  
3 were not considered detained under § 1225 and that they were instead detained  
4 under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention  
5 and Removal of Aliens; Conduct of Removal Proceedings; Asylum  
6 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being  
7 applicants for admission, aliens who are present without having been admitted  
8 or paroled (formerly referred to as aliens who entered without inspection) will  
9 be eligible for bond and bond redetermination”).  
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12 45. Thus, in the decades that followed, most people who entered without  
13 inspection and were thereafter arrested and placed in standard removal  
14 proceedings were considered for release on bond and also received bond  
15 hearings before an IJ, unless their criminal history rendered them ineligible.  
16  
17 That practice was consistent with many more decades of prior practice, in  
18 which noncitizens who had entered the United States, even if without  
19 inspection, were entitled to a custody hearing before an IJ or other hearing  
20 officer. In contrast, those who were stopped at the border were only entitled  
21 to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No.  
22 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restated” the  
23 detention authority previously found at § 1252(a)).  
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1 46. On May 22, 2025, the Board issued an unpublished decision holding  
2 that all noncitizens who entered the United States without admission or parole,  
3 i.e. without inspection, are considered applicants for admission, and are  
4 therefore ineligible for IJ bond hearings under 8 U.S.C. § 1225(b)(2)(A).  
5

6 47. On July 8, 2025, ICE issued “Interim Guidance Regarding Detention  
7 Authority for Applicants for Admission” providing that all persons who  
8 entered the United States without inspection shall now be deemed subject to  
9 mandatory detention under § 1225(b)(2)(A). The policy applies regardless of  
10 when a person is apprehended, and affects those who have resided in the  
11 United States for years or even decades. The new policy rejected the well-  
12 established understanding of the statutory framework and reversed decades of  
13 agency practice.  
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16 48. On September 5, 2025, the Board issued *Matter of Yajure Hurtado*, 29  
17 I&N Dec. 216 (BIA 2025), wherein it held that Immigration Judges lack  
18 authority to hear bond requests or to grant bond to noncitizens who are present  
19 in the United States without inspection.  
20

21  
22 49. Respondents’ reinterpretation of the detention provision at § 1225(b)(2)  
23 that subjects noncitizens like Petitioner to mandatory detention without bond  
24 under § 1225(b)(2) rather than being eligible for bond under § 1226(a) has  
25 already been rejected by several federal courts. For example, after IJs in the  
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1 Tacoma, Washington immigration court stopped providing bond hearings for  
2 people who entered the United States without inspection and who have since  
3 resided here, the U.S. District Court in the Western District of Washington  
4 found that such a reading of the INA is likely unlawful and that § 1226(a), not  
5 § 1225(b), applies to noncitizens who are not apprehended upon arrival to the  
6 United States. *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, ---  
7 F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) (granting  
8 preliminary injunction). *See also Gomes v. Hyde*, No. 1:25-CV-11571-JEK,  
9 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas petition  
10 based on same conclusion); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025  
11 WL 2084238, at \*8 (D. Mass. July 24, 2025) (finding detention unlawful  
12 based on same conclusion); Order, *Bautista et al. v. Santacruz Jr. et al.*, No.  
13 5:25-CV-1873-BFM (C.D. Cal. July 28, 2025), Dkt. 14 at \*7-8 (granting  
14 temporary restraining order based on same conclusion); Opinion & Order,  
15 *Benitez v. Francis*, No. 1:25-CV5937-DEH (S.D.N.Y. August 8, 2025), Dkt.  
16 14 at \*10-18, 31 (granting habeas petition and directly ordering release from  
17 custody based on same conclusion).  
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23 50. Respondents' reinterpretation of the INA is not in accord with plain text  
24 of the statutory provisions. As the *Rodriguez-Vazquez* court and other courts  
25 explained, the plain text of the statutory provisions demonstrates that §  
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1 1226(a), not § 1225(b), applies to people like Petitioner who are present in the  
2 United States without being admitted or paroled but have resided in this  
3 country for years and even decades.

4  
5 51. Section 1226(a) applies by default to all persons “pending a decision  
6 on whether the [noncitizen] is to be removed from the United States.” These  
7 removal hearings are held under § 1229a, to “decid[e] the inadmissibility or  
8 deportability of a[] [noncitizen].” 8 U.S.C. § 1229a(a)(1).  
9

10 52. The text of § 1226 also explicitly applies to people charged as being  
11 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §  
12 1226(c)(1)(E). This year, Congress enacted the Laken Riley Act that added  
13 subparagraph (E) to section 1226(c). Subparagraph (E) excludes certain  
14 noncitizens who entered without inspection under § 1182(a)(6)(A) from §  
15 1226(a)’s default bond provision if in addition to being present without being  
16 admitted or paroled the noncitizen “is charged with, is arrested for, is  
17 convicted of, admits having committed, or admits committing acts which  
18 constitute the essential elements or any burglary, theft, larceny, shoplifting, or  
19 assault of a law enforcement officer offense...” 8 U.S.C. § 1226(c)(1)(E)(i)  
20 and (ii). Subparagraph (E)’s reference to persons inadmissible under §  
21 1182(6)(A), i.e., persons inadmissible for being present without being  
22 admitted or paroled, makes clear that, by default, such people are afforded a  
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1 bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,  
2 “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it  
3 “proves” that absent those exceptions, the statute generally applies. *Rodriguez*  
4 *Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove Orthopedic Assocs.,*  
5 *P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore  
6 leaves no doubt that it applies to people who face charges of being  
7 inadmissible to the United States, including those who are present without  
8 admission or parole.  
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10  
11 53. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry  
12 or who very recently entered the United States. The statute’s entire framework  
13 is premised on inspections at the border of people who are “seeking  
14 admission” to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz*  
15 *Martinez*, 2025 WL 2084238, at \*8 (“[O]ur immigration laws have long  
16 made a distinction between those [noncitizens] who have come to our shores  
17 seeking admission . . . and those who are within the United States after an  
18 entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S.  
19 185, 187 (1958))). Indeed, the Supreme Court has explained that this  
20 mandatory detention scheme applies “at the Nation’s borders and ports of  
21 entry, where the Government must determine whether a[] [noncitizen] seeking  
22 to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. at 287.  
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1 54. Accordingly, the mandatory detention provision of § 1225(b)(2) does  
2 not apply to people like Petitioner, who has already entered and was residing  
3 in the United States for decades at the time she was apprehended.

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6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**  
8 **VIOLATION OF 8 U.S.C. § 1226(a)**

9 55. Petitioner re-alleges and incorporates by reference the paragraphs  
10 above.

11  
12 56. The Petitioner is being detained in violation of law where she has been  
13 unlawfully denied release on bond.

14 57. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not  
15 apply to all noncitizens residing in the United States for years who are subject  
16 to the grounds of inadmissibility. As relevant here, it does not apply to those  
17 who previously entered the country and have been residing in the United  
18 States prior to being apprehended and placed in removal proceedings by  
19 Respondents. Such noncitizens are detained under § 1226(a) and are eligible  
20 for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or §  
21 1231.  
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25 58. Nonetheless, Respondents including DHS, ICE, and EOIR have  
26 reinterpreted § 1225(b)(2) to apply to noncitizens who are present in the

1 United States without admission or parole, like Petitioner, pursuant to the  
2 Board's precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216  
3 (BIA 2025) and ICE's July 8, 2025 "Interim Guidance Regarding Detention  
4 Authority for Applicants for Admission."

5  
6 59. The unlawful application of § 1225(b)(2) to Petitioner mandating her  
7 continued detention violates the INA.  
8  
9

10 **SECOND CLAIM FOR RELIEF**  
11 **VIOLATION OF THE REGULATIONS**  
12 **8 C.F.R. §§ 236.1, 1236.1, and 1003.19**

13 60. Petitioner re-alleges and incorporates by reference the paragraphs  
14 above.

15 61. In 1997, after Congress amended the INA through IIRIRA, EOIR and  
16 the then-Immigration and Naturalization Service issued an interim rule to  
17 interpret and apply IIRIRA. Specifically, under the heading "Apprehension,  
18 Custody, and Detention of [Noncitizens]," the agencies explained that  
19 "[d]espite being applicants for admission, [noncitizens] who are present  
20 without having been admitted or paroled (formerly referred to as [noncitizens]  
21 who entered without inspection) *will be eligible for bond and bond*  
22 *redetermination.*" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus  
23 made clear that individuals who had entered without inspection were eligible  
24  
25  
26

1 for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226  
2 and its implementing regulations.

3 62. Nonetheless, Respondents have reinterpreted sections 1226(a) and  
4 1225(b)(2) to apply to Petitioner who is present in the United States without  
5 being admitted or paroled since 2005.  
6

7 63. The application of § 1225(b)(2) to the Petitioner unlawfully mandates  
8 her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.  
9

10  
11 **THIRD CLAIM FOR RELIEF**  
12 **VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

13 64. Petitioner re-alleges and incorporates by reference the paragraphs  
14 above.  
15

16 65. The APA provides that a “reviewing court shall . . . hold unlawful and  
17 set aside agency action, findings, and conclusions found to be arbitrary and  
18 capricious, an abuse of discretion, or otherwise not in accordance with law.”  
19 5 U.S.C. § 706(2)(A).  
20

21 66. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not  
22 apply to all noncitizens residing in the United States who are subject to the  
23 grounds of inadmissibility. As relevant here, it does not apply to those who  
24 previously entered the country and have been residing in the United States for  
25 years prior to being re-arrested by Respondents. Such noncitizens are detained  
26

1 under § 1226(a) and are eligible for release on bond, unless they are subject  
2 to § 1225(b)(1), § 1226(c), or § 1231.

3 67. Nonetheless, Respondents have reinterpreted the relevant statutes so as  
4 to apply § 1225(b)(2) to bond eligible noncitizens like the Petitioner.  
5

6 68. Moreover, Respondents new interpretation of the statute is a change to  
7 decades of law and practice by the ICE, DHS, and EOIR. Respondents have  
8 failed to articulate reasoned explanations for their decisions, have considered  
9 factors that Congress did not intend to be considered; have entirely failed to  
10 consider important aspects of the problem; and have offered explanations for  
11 their decisions that run counter to the evidence before the agencies.  
12

13 69. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious,  
14 and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C.  
15 § 706(2).  
16

17  
18 **FOURTH CLAIM FOR RELIEF**  
19 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

20 70. Petitioner re-alleges and incorporates by reference the paragraphs  
21 above.  
22

23 71. The Due Process Clause of the Fifth Amendment forbids the  
24 government from depriving any “person” of liberty “without due process of  
25 law.” U.S. CONST. Amend. V. “Freedom from imprisonment—from  
26

1 government custody, detention, or other forms of physical restraint—lies at  
2 the heart of the liberty that Clause protects. *Zadvydas v. Davis*, 533 U.S. 678,  
3 690 (2001).

4  
5 72. “[T]he Due Process Clause applies to all ‘persons’ within the United  
6 States, including [noncitizens], whether their presence here is lawful,  
7 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. at 693.

8  
9 73. Respondents’ mandatory detention of Petitioner without consideration  
10 for release on bond violates her due process rights.

11 **FIFTH CLAIM FOR RELIEF**  
12 **Violation of the INA:**  
13 **Request for Relief Pursuant to Maldonado Bautista**

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

16  
17 75. As a member of the Bond Eligible Class, Petitioner is entitled to  
18 consideration for release on bond under 8 U.S.C. § 1226(a).

19 76. The order granting partial summary judgment in *Maldonado Bautista*  
20 holds that Respondents violate the INA in applying the mandatory detention  
21 statute at § 1225(b)(2) to class members.

22  
23 77. The order granting class certification in *Maldonado Bautista* further  
24 orders that “[w]hen considering this determination with the MSJ Order, the  
25  
26

1 Court extends the same declaratory relief granted to Petitioners to the Bond  
2 Eligible Class as a whole.”

3 78. Respondents are parties to *Maldonado Bautista* and bound by the  
4 Court’s declaratory judgment, which has the full “force and effect of a final  
5 judgment.” 28 U.S.C. § 2201(a).

6  
7 79. By denying Petitioner a bond hearing under § 1226(a) and asserting that  
8 she is subject to mandatory detention under § 1225(b)(2), Respondents violate  
9 Petitioner’s statutory rights under the INA and the Court’s judgment in  
10 *Maldonado Bautista*.

11  
12 **PRAYER FOR RELIEF**

13  
14 WHEREFORE, Petitioner respectfully requests that this Court:

- 15 1) Assume jurisdiction over this matter;  
16  
17 2) Determine that Respondents’ reinterpretation of sections 1225(b)(2) and  
18 1226(a) so as to deny consideration of bond to Petitioner on the basis of  
19 section 1225(b)(2) violates the INA, its implementing regulations, the APA,  
20 and the Due Process Clause;  
21  
22 3) Issue a Writ of Habeas Corpus requiring Respondents release Petitioner or  
23 set a reasonable amount of bond pursuant to 8 U.S.C. § 1226(a) or the Due  
24 Process Clause;

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4) Award Petitioner her costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, other statute; and

5) Grant such further relief as the Court deems just and proper.

Dated: December 19, 2025

Respectfully submitted,

/s/ Lewis R. Gilbreath  
Lewis R. Gilbreath  
Attorney for Petitioner  
Daycy Noemi Contreras-Barraza

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**VERIFICATION**

I, Lewis R. Gilbreath, hereby declare under penalty of perjury of the laws of the State of Arizona and the United States that the facts alleged in the foregoing Verified Petition for a Writ of Habeas Corpus are to the best of my knowledge true and correct.

Executed on this 19 day of December, 2025 in Phoenix,  
Arizona.

/s/ Lewis R. Gilbreath  
Lewis R. Gilbreath  
Attorney for Petitioner  
Daycy Noemi Contreras-Barraza

1 CERTIFICATE OF SERVICE

2  
3 I hereby certify that on the 19 of December 2025 I caused to be  
4 delivered by electronic delivery, a copy of the foregoing PETITION FOR A  
5 WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 to:

6 Timothy Courchaine, U.S. Attorney

7  
8 United States Attorney's Office for the District of Arizona  
9 Two Renaissance Square 40 N. Central Avenue,  
10 Suite 1800  
11 Phoenix, AZ 85004-4408

12 /s/ Lewis R. Gilbreath  
13 Lewis R. Gilbreath  
14 Attorney for Petitioner

15 CC:  
16 Kriti Noem, Secretary of Homeland Security  
17 U.S. Department of Homeland Security  
18 Washington, D.C. 20528

19 Pamela Bondi, Attorney General  
20 U.S. Department of Justice  
21 950 Pennsylvania Avenue, NW  
22 Washington, D.C. 20530-0001

23 Sirce Owen, Acting Director of EOIR  
24 U.S. Department of Justice  
25 950 Pennsylvania Avenue, NW  
26 Washington, D.C. 20530-0001

1 Todd Lyons, Senior Official  
2 Performing Duties of Director of ICE  
3 U.S. Department of Homeland Security/ICE  
4 Washington, D.C. 20528

5 John Doe, Field Office Director  
6 Department of Homeland Security  
7 Immigration & Customs Enforcement  
8 Office of Detention and Removal  
9 2035 N Central Ave  
10 Phoenix, Arizona 85004

11 Fred Figueroa, Warden of Eloy Detention Center  
12 CoreCivic  
13 Eloy Detention Center  
14 1705 E Hanna Rd  
15 Eloy, AZ 85131  
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