

JUDGE KATHLEEN CARDONE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
DEC 22 2025
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

MARIA BARAJAS TORRES AKA
ROCIO JIMENEZ ARIAS VIZCARRA,

CASE NO. _____

Petitioner

vs.

Respondent,

EP 25 CV 0717

WARDEN OF ERO EL PASO EAST MONTANA and
Santos Velasquez v. Warden of the ERO Camp East Montana et al.
AND THE ATTORNEY GENERAL OF THE STATE OF TEXAS

PETITION FOR A) WRIT OF HABEAS CORPUS
and) PURSUANT TO 28 U.S.C. § 2254) BY A
PERSON IN FEDERAL CUSTODY The Attorney General
of the State of Texas. (NOT SENTENCED TO DEATH)

INTRODUCTION

1. On December 12, 2025, Ms. Torres Barajas (also known as Rocio Jimenez Arias Vizcarra) was detained at a USCIS interview regarding her application for adjustment of status to lawful permanent resident (LPR) status. Prior to the interview, USCIS approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen son, who is over 21 years old. Given that she had an approved visa, she is prima facie eligible for adjustment of status. However, after approximately 25 minutes of the interview, the applicant was detained by Immigration and Customs Enforcement (ICE) based on allegations that she had a prior removal order from the United States.

JURISDICTION

2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
3. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). [If applicable: Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner is a noncitizen / whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) / whether Petitioner can prove by a preponderance of the evidence that she is an applicant eligible for adjustment of status to a lawful permanent resident (LPR) based on Section 245(i) of the Immigration and Nationality Act.
4. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

5. Venue is proper because Petitioner is detained at ERO EL PASO EAST MONTANA and/or ERO Camp East Montana, which is within the jurisdiction of this District.
6. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and reside in this District, and/or a substantial part of the events or omissions giving rise to her claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a

return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

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

PARTIES

9. Petitioner is an applicant for admission as a lawful permanent resident after USCIS approved Form I-130, Petition for Alien Relative on her behalf in 2025. The Petitioner is currently detained at ERO EL PASO EAST MONTANA and/or ERO Camp East Montana. She is in the custody, and under the direct control, of Respondents and their agents.

10. Respondent WARDEN OF ERO EL PASO EAST MONTANA and Santos Velasquez v. Warden of the ERO Camp East Montana, et al. is the Warden of ERO EL PASO EAST MONTANA and he/she has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Ms. Torres Barajas is a legal custodian of Petitioner.

11. Respondent Birdsong is being sued in their official capacity as the Acting Director of the Reno, Nevada Field Office of U.S. Immigration and Customs Enforcement. Respondents are the legal custodian of Petitioner and has the authority to release her.

12. Respondents are sued in their official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondents are responsible for the

implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement / U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention / custody. Respondents et al, are the/a legal custodian of Petitioner.

13. Respondent Abbot is sued in his official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondents is/are a legal custodian of Petitioner.

STATEMENT OF FACTS

14. Petitioner is a 50-year-old citizen Mexico. She has resided in the United States for over 25 years and is the mother to two (2) children, now adults, who are U.S. citizens by birth in the United States.

15. Ms. Torres Barajas (also known as Rocio Jimenez Arias Vizcarra) entered the United States from Mexico in approximately 1999.

16. On December 15th, 2025, she was detained at a USCIS interview regarding her application for adjustment of status to lawful permanent resident (LPR) status. Prior to the interview, USCIS approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen son, who is over 21 years old. Given that she had an approved visa, she is prima facie eligible for adjustment of status. However, after approximately 25 minutes of the interview, the applicant was detained by Immigration and Customs Enforcement (ICE) based on allegations that she had a prior removal order from the United States.

17. Following the Petitioner's USCIS interview at which she was detained by ICE, counsel for the applicant appeared at the Enforcement Removal Operations office in Reno, Nevada, to present a Motion for Stay (FORM I-246). At that point, counsel was informed that the I-130 had also been denied, along with Form I-485. However, the fact that USCIS had approved the I-130 Petition in 2025 was a deciding factor in the applicant attending her interview on December 12, 2025.

18. The sudden reversal of the I-130 decision and the fact that neither counsel nor the Respondent was ever provided the removal order at issue, either at the interview or via several FOIA requests submitted by counsel on the client's behalf, supports this request to stay deportation at this time.

19. Our office filed FOIA requests through CBP and USCIS between 2023 and 2025, and no notice of any removal order was ever produced. Similarly, ICE never provided a warrant or a history of any removal order as evidence justifying the detention of this mother of a United States citizen who has no criminal history. Without evidence establishing the evidence of a prior removal order, we ask that DHS/ICE stay the removal order at issue until the parties can obtain the relevant evidence to confirm identity and removability and/or inadmissibility in this matter.

20. The Petitioner has been detained since December 12, 2025, and remains in custody. Her counsel has filed a Motion for Bond Determination with the Las Vegas Immigration Court, and the Respondent has been scheduled for a hearing to be held on December 23, 2025. However, despite the fact that the Respondent has filed a Stay of Deportation (I-246) and a Motion for Stay with ICE and ERO in Reno, Nevada, according to information obtained since the filing of said motions and stay, it has been determined that the Petitioner was transferred to El Paso, Texas. She has been told that she will be deported within the next few days.

21. Yet to this date, the government has not served her or her counsel with the removal order it contends was entered against her over 25 years ago. We therefore submit the following request for habeas corpus as the Petitioner has been unlawfully detained, held in custody, transferred to another state, and threatened with deportation, all in violation of the United States Constitution.

22. The Petitioner submits that habeas review is necessary as her release by ICE is not reasonably foreseeable, especially given the threats the Petitioner has received about her imminent removal from the United States.

LEGAL FRAMEWORK

23. Accordingly, to vindicate Petitioner's Fourth, Fifth, Sixth, Eighth, 14th and/or 15th Amendment Rights, this Court should grant the instant petition for a writ of habeas corpus.

24. The Petitioner has never been convicted of any crime or offense, but she was detained by Immigration and Customs Enforcement (ICE) on December 12, 2025, while attending an interview connected with her Form I-485 Application for adjustment of status to lawful permanent resident (LPR) status.

25. Full date judgment of conviction was entered: *Although the Petitioner has not been convicted of any crime, she was detained by Immigration and Customs Enforcement (ICE) on December 15, 2025*

26. Did you appeal the conviction? Yes No X. Date appeal decided: / / . *No appeal has been filed in this matter, only a Stay of Deportation (Form I-246) and Request for Bond Determination have been filed with the Las Vegas Immigration Court and Executive Office for Immigration Review (EOIR)*

27. Did you file a petition for post-conviction relief or a petition for habeas corpus in the state court? Yes No X *There is no conviction to appeal.*

28. Do you have any petition, application, motion, or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? X *Yes . We have filed a Stay of Deportation with Immigration and Customs Enforcement (ICE) and/or Enforcement Removal Operations (ERO) in Reno, Nevada. In addition, we have filed a Motion for Bond Determination to the Immigration Court in Las Vegas, Nevada as at the time, the Respondent was detained in Reno, Nevada. A bond determination hearing was set on December 23, 2025.*

No. If yes, state the name of the court and the nature of the proceedings: . 7. Case number of the judgment of conviction being challenged: . Her A# in Removal Proceedings is A#078-080-333 and A# 089-770-558.

29. Length and terms of sentence(s): . *The Respondent has never been convicted of a crime but she was detained by ICE on December 12, 2025 after ICE claimed she had an alias, A# and order of removal order a completely different name. We are asking ICE to serve us said order of removal as we have not been able to confirm the authenticity of said order, or the identity of the Respondent alleged to be the Petitioner herein.*

. Start date and projected release date: *December 12, 2025, Release date is TBD.*

30. What was (were) the offense(s) for which you were convicted?: *The Petitioner has NO record of any arrest or conviction. She was arrested under suspicion of being previously removed from the United States.*

31. What was your plea? *The Petitioner has never been convicted of a crime so no plea was entered. She denies all allegations and charges as the government has not served any documents proving she is the same Respondent removed from the U.S. in approximately 1999.*

32. Who was the attorney who represented you in the proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself pro se (without counsel). *This is not applicable as the Petitioner has no record of conviction*

GROUND 1

33. The Petitioner alleges that she has been detained and placed in custody by Immigration and Customs Enforcement despite no record conviction. ICE has also deprived her of her liberty, without establishing her identity and/or the identity of the Respondent alleged to have been ordered removed in 1999. The Petitioner respectfully submits that this deprivation of her liberty and continued detention, as well as her potential removal from the United States are all unconstitutional, in violation of her 4th Amendment right(s) to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized", based on these facts:

34. On December 12, 2025, Ms. Torres Barajas (also known as Rocio Jimenez Arias Vizcarra) was detained at a USCIS interview regarding her application for adjustment of status to lawful permanent resident (LPR) status. Prior to the interview, USCIS approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen son, who is over 21 years old. Given that she had an approved visa, she is prima facie eligible for adjustment of status. However, after approximately 25 minutes of the interview, the applicant was detained by

Immigration and Customs Enforcement (ICE) based on allegations that she had a prior removal order from the United States.

35. On December 12th, 2025, counsel for the applicant appeared at the Enforcement Removal Operations office in Reno, Nevada, to present a Motion for Stay (FORM I-246). At that point, the officer who had detained the Petitioner alleged that the I-130 had also been denied, along with Form I-485. However, the fact that USCIS had approved the I-130 Petition in 2025 was a deciding factor in the applicant attending her interview on December 12, 2025.

We respectfully submit that the Petitioner was detained and remained in custody in violation of her Fourth Amendment Rights under the U.S. Constitution, which establishes the following:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

36. The continued detention of the Respondent and the sudden reversal of the I-130 decision and the fact that neither counsel nor the Respondent was ever provided the removal order at issue, either at the interview or via several FOIA requests submitted by counsel on the client's behalf, is a clear violation of the U.S. Constitution.

37. Prior to the USCIS interview, our office filed FOIA requests through CBP and USCIS between 2023 and 2025, and no notice of any removal order was ever produced. Similarly, ICE never provided a warrant or a history of any removal order as evidence justifying the detention of this mother of a United States citizen who has no criminal history. Although a bond hearing has

been set in this matter, without evidence establishing the evidence of a prior removal order, we ask that a habeas review be conducted and a stay of any potential removal order be set in place. We make this request so that the Petitioner can have an opportunity to be heard and so the parties can obtain the relevant evidence to confirm identity and removability and/or inadmissibility in this matter.

GROUND 2

38. The Petitioner alleges that any potential deportation and/or her continued detention are unconstitutional, in violation of her Fifth and Sixth Amendment right(s) as she has been deprived of life, liberty, or property, without due process of law based on these facts:

39. Ms. Torres Barajas, (also known as Rocio Jimenez Arias Vizcarra; A# ) the mother of two United States citizens (USCs), was detained and has been held in custody in violation of her constitutional rights. She has been deprived of an opportunity to have her day in Court. She was detained, is being held and has been threatened with deportation, despite the fact that she is *prima facie* eligible for adjustment of status pursuant to Section 245(i) of the INA and was present at the interview to determine her admissibility and/or eligibility. That interview was held on December 12, 2025 in Reno, Nevada.

40. Approximately 25 minutes into that interview, ICE agents detained, handcuffed, and took her away from her son, after they were physically separated under the guise of an interview scheduled to determine if she was eligible for adjustment of status. However, at the time of her detainment, ICE presented neither a warrant nor an order of removal establishing that our client was the individual alleged to have been removed many years ago. The only evidence provided was an old photograph, purported to be the beneficiary of the Form I-485 at issue before USCIS.

41. Yet, even if Ms. Torres Barajas was removed in 1999, she remains eligible for adjustment of status because she is the beneficiary of an approved visa petition, is a person of good moral character, and meets all other elements required for one to adjust status. In addition, she is eligible for discretion based on exceptional circumstances and hardship to her and/or her family, as she is the mother of two children who are citizens born in the United States. Therefore, under the totality of the circumstances, we respectfully request that the Court initiate a *habeas* review and enter a stay of her removal and/or deportation. Although counsel has submitted a request and motion for a stay of deportation (including form I-246) to ICE and ERO in Reno, Nevada, counsel was informed that the Petitioner has been transferred to a detention center in El Paso, Texas, and her removal from the U.S. is imminent.

42. On December 12, 2025, Ms. Torres Barajas (also known as Rocio Jimenez Arias Vizcarra) was detained at a USCIS interview regarding her application for adjustment of status to lawful permanent resident (LPR) status. Prior to the interview, USCIS approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen son, who is over 21 years old. Given that she had an approved visa, she is *prima facie* eligible for adjustment of status. However, after approximately 25 minutes of the interview, the applicant was detained by Immigration and Customs Enforcement (ICE) based on allegations that she had a prior removal order from the United States.

43. Following the interview at which the Petitioner was detained, counsel for the applicant appeared at the Enforcement Removal Operations office in Reno, Nevada, to present a Motion and Request for a Stay of Deportation (FORM I-246). ON that date, the officer who had detained the Petitioner alleged that the I-130 had also been denied, along with Form I-485. Counsel also returned to the ERO office on December 13th, 15th and 19th to make requested edits

and or additions to the Request for a Stay, per instructions from ERO. However, the fact that USCIS had approved the I-130 Petition in 2025 was a deciding factor in the applicant attending her interview on December 12, 2025.

44. The sudden reversal of the I-130 decision and the fact that neither counsel nor the Respondent was ever provided the removal order at issue, either at the interview or via several FOIA requests submitted by counsel on the client's behalf, supports this request to stay deportation at this time. Our office filed FOIA requests through CBP and USCIS between 2023 and 2025, and no notice of any removal order was ever produced. Similarly, ICE never provided a warrant or a history of any removal order as evidence justifying the detention of this mother of a United States citizen who has no criminal history. Without evidence establishing the evidence of a prior removal order, we ask that a habeas review be conducted, and that a stay on deportation be entered, so that the parties can obtain the relevant evidence to confirm identity and removability and/or inadmissibility in this matter.

45. For these reasons, the Petitioner's detention violates the Due Process Clause of the Fifth and Sixth Amendments.

GROUND 3

46. I allege that any potential deportation and/or my continued detention are unconstitutional, in violation of my 8th Amendment right to be free from cruel and unusual punishment, based on these facts: This request for a *habeas corpus* review of this matter is based on the fact that Ms. Torres Barajas was arrested without either a warrant or the record of removal being presented to counsel. Therefore, we respectfully submit that she was detained without good cause. To date, no court has upheld the validity of the order.

47. There is no bona fide reason why Ms. Torres Barajas, (also known as Rocio Jimenez Arias Vizcarra; A# ) the mother of two United States citizens (USCs), should be detained and deported without an opportunity to have her day in Court. She is *prima facie* eligible for adjustment of status pursuant to INA section 245(i) and was present at the interview to determine her admissibility and/or eligibility.

48. Approximately 25 minutes into that interview, ICE agents detained, handcuffed, and took her away from her son, after they were physically separated under the guise of an interview scheduled to determine if she was eligible for adjustment of status. However, at the time of her detention, ICE presented neither a warrant nor an order of removal establishing that our client was the individual alleged to have been removed many years ago. The only evidence provided was an old photograph, purported to be the beneficiary of the Form I-485 at issue before USCIS.

49. Yet, even if Ms. Torres Barajas was removed in 1999, she remains eligible for adjustment of status because she is the beneficiary of an approved visa petition, is a person of good moral character and meets all other elements required for one to adjust status. In addition, she is eligible for discretion based on exceptional circumstances and hardship to her and/or her family, as she is the mother to two children who are citizens born in the United States. Therefore, under the totality of the circumstances, we respectfully request that the Court initiate a *habeas* review and enter a stay of her removal and/or deportation. Although counsel has submitted a request and motion for a stay of deportation (including form I-246) to ICE and ERO in Reno, Nevada, counsel was informed that the Petitioner has been transferred to a detention center in El Paso, Texas and her removal from the U.S. is imminent.

50. On December 12, 2025, Ms. Torres Barajas (also known as Rocio Jimenez Arias Vizcarra) was detained at a USCIS interview regarding her application for adjustment of status to

lawful permanent resident (LPR) status. Prior to the interview, USCIS approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen son, who is over 21 years old. Given that she had an approved visa, she is prima facie eligible for adjustment of status. However, after approximately 25 minutes of the interview, the applicant was detained by Immigration and Customs Enforcement (ICE) based on allegations that she had a prior removal order from the United States.

51. On December 12th, 2025, counsel for the applicant appeared at the Enforcement Removal Operations office in Reno, Nevada, to present a Motion and Request for a Stay of Deportation (FORM I-246). ON that date, the officer who had detained the Petitioner alleged that the I-130 had also been denied, along with Form I-485. Counsel also returned to the ERO office on December 13th, 15th and 19th to make requested edits and or additions to the Request for a Stay, per instructions from ERO. However, the fact that USCIS had approved the I-130 Petition in 2025 was a deciding factor in the applicant attending her interview on December 12, 2025.

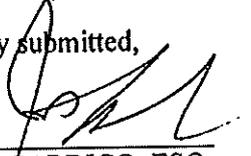
52. The sudden reversal of the I-130 decision and the fact that neither counsel nor the Respondent was ever provided the removal order at issue, either at the interview or via several FOIA requests submitted by counsel on the client's behalf, supports this request to stay deportation at this time. Our office filed FOIA requests through CBP and USCIS between 2023 and 2025, and no notice of any removal order was ever produced. Similarly, ICE never provided a warrant or a history of any removal order as evidence justifying the detention of this mother of a United States citizen who has no criminal history. Without evidence establishing the evidence of a prior removal order, we ask that a habeas review be conducted, and that a stay on deportation be entered, so that the parties can obtain the relevant evidence to confirm identity and removability and/or inadmissibility in this matter.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that the Petitioner's detention violates the Due Process Clause of the Fourth, Fifth, Sixth and Eighth Amendments to the U.S. Constitution.
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately / schedule a bond hearing before an immigration judge, and, at such hearing, release the Petitioner in accordance with due process of law and the United States Constitution.
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

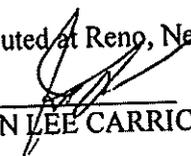
Respectfully submitted,



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DECLARATION UNDER PENALTY OF PERJURY I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at Reno, Nevada and/or El Paso, Texas on December 19th, 2025



JOHN LEE CARRICO, ESQ.