

reported to her local ICE Office in Midland, Texas, the day before, December 17, 2025, where a different officer said (in the presence of counsel) she could report Friday, December 19, 2025, to monitor the progress of her removal case. The decision to detain changed from one day to the next without cause or reason. ICE arrested Petitioner without producing any arrest warrant or other authorizing documentation to Petitioner or undersigned counsel. This unexplained seizure deprived Petitioner of any means to assess the legal basis for the arrest and leaves the Court with no evidence that the arrest was lawful.

Petitioner was charged in removal proceedings by issuance of a notice to appear on March 4, 2024. (Exh. 1) This charging document commenced removal proceedings under 8 U.S.C. 1229, INA § 239.

Petitioner entered the United States with two minor children. Their names are redacted for privacy reasons. Minor-child-one is now 14 years old; she is a teenage girl. Minor-child-two is 10 years old; he is a boy. They are in removal proceedings with their mother. (Petitioner's spouse arrived in the U.S. two years before them and is a lawful permanent resident). This family resides in Odessa, Texas.

Previously, Petitioner and family were detained for two days in March of 2024, before being released on their own recognizance, pursuant to form I-220A. (Exh. 2, 3)

Charged under 8 U.S.C. § 1182(a)(6)(A)(i), INA § 212(a)(6)(A)(i), Petitioner's presence in the United States is classified as someone who was apprehended in the interior United States, having come in without documents. This is the only charge under the INA. (Exh. 1)

Petitioner has attended several call-ins at the ICE-Enforcement and Removal Operations (ERO) Office in Midland, Texas. (Exh. 4) She has not missed a court hearing. (Exh. 5) The family has an application for asylum pending. (Exh. 6)

Petitioner has no criminal record, and there are no adverse immigration issues (such as fraud, or multiple INA violations) presented in her case.

Petitioner brings this habeas corpus petition because, based on Respondents' new and clear policy and practice, she will be mandatorily detained without judicial intervention. This case presents a single, purely legal question appropriate for habeas review: whether a noncitizen encountered inside the United States after entry, who was arrested, detained and issued paperwork according to 8 U.S.C. § 1229, then released on recognizance pursuant to 8 U.S.C. § 1226(a) (who is issued a work permit and reports regularly) may 18 months later be detained without a bond hearing. The Respondents' new policy is clear by virtue of the *Todd Lyons Memo* of July 8, 2025, in which the Secretary directs that all noncitizens who entered without documents are to be mandatorily detained without a bond hearing. (Exh. 7) Respondent Pamela Bondi, United States Attorney General, with authority over the Executive Office for Immigration Review, cemented said policy at the administrative level by virtue of the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). For this reason and as supported below, exhaustion of administrative remedies vis-a-vis requesting a bond hearing is futile; no immigration judge has authority (absent judicial intervention at the federal level) to conduct a bond hearing under the "without inspection" fact pattern presented because of *Matter of Hurtado*. See *Hernandez Fernandez v. Lyons*, 5:25-CV-00773-JKP 2025 LX 493117 | 2025 WL 2976923 (W.D. Tex. 2025).

In this petition, Petitioner does not challenge the initiation of removal proceedings, a discretionary relief decision, nor any discretionary custody determination. Hence there is no jurisdictional bar. *Cardona-Lozano v. Noem*, 1:25-CV-1784-RP, 2025 LX 528853, 2025 WL 3218244 (W.D. Tex 2025), citing *Nielson v. Preap*, 586 U.S. 392, 402 (2019). Multiple decisions in this District have held that under Petitioner's circumstances (entry without inspection, released

on recognizance, § 1229a removal proceedings) are entitled to a bond hearing under 8 U.S.C. § 1226(a). *Lopez-Arevalo v. Ripa*, EP-25-CV-337-K, 2025 LX 467042, 2025 WL 2691828 (W.D.Tex. Sept. 21, 2025); *Rojas v. Noem*, EP-25-CV-443-KC, 2025 LX 448717; 2025 WL 3038262 (W.D.Tex. Oct. 30, 2025); *Aviles v. Warden of Ero Camp E. Mont. Det. Facility*, EP-25-CV-585-KC, 2025 LX 591055, 2025 WL 3492611 (W.D. Tex Dec. 4, 2025). In further support of this position, the Seventh Circuit Court of Appeals rejected the Respondents' radical departure from established interpretation (and practice) in *Castanon-Nava v. Dep't of Homeland Sec.*, No. 25-3050, 2025 LX 524133 (7th Cir. 2025). Not a habeas action, but litigation regarding warrantless arrests and the extension of a consent decree, the government argued the appeals court lacked jurisdiction by virtue of 8 U.S.C. § 1225(f)(1) because--according to the Defendants--those noncitizens affected were detained under 8 U.S.C. § 1225(b)(2)(A): the mandatory detention power. In rejecting the government argument, the court observed that § 1225(a)(1)'s mandatory detention provision is limited to an applicant for admission seeking admission into the country. *Id.*, at 24, citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Leng May Ma v. Barber*, 357 U.S. 185 (1958).

Petitioner respectfully requests an order directing Respondents to provide a custody redetermination hearing under § 1226(a) within seven days, or in the alternative, to release Petitioner from custody subject to appropriate supervision.

JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's continued detention. Habeas jurisdiction is available to noncitizens challenging the statutory basis and/or constitutionality of immigration detention. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687

(2001); *INS v. St. Cyr*, 533 U.S. 289 (2001). Petitioner challenges only the government's stated legal conclusion that her detention is governed by 8 U.S.C. § 1225(b) rather than 8 U.S.C. § 1226(a). Such a "pure question of statutory interpretation" falls squarely within habeas jurisdiction.

2. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not impede judicial review. 8 U.S.C. § 1252(a)(5) and § 1252(b)(9) apply only to challenges to removal orders and claims arising from removal proceedings. Petitioner raises neither. Petitioner challenges the policy of continued detention without bond as unlawful under the United States Constitution and Immigration and Nationality Act. Section 1252(g) does not apply because Petitioner does not challenge the Attorney General's decision to commence proceedings, adjudicate proceedings, or execute any removal order. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(e) is inapplicable because Petitioner does not challenge the validity of any expedited removal order; as of this writing, Petitioner remains in full removal proceedings and is scheduled for a hearing on February 11, 2025.

3. Finally, Section 1252(a)(2)(B)(ii) does not apply because Petitioner is not seeking review of a discretionary custody determination, but a blanket policy of mandatory detention inspired by an abrupt departure from established law and procedure, combined with a break in how she was originally processed. (Exh. 7).

4. 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).

VENUE

5. Venue lies in this District under 28 U.S.C. § 2241(a) and (d), because Petitioner is detained at El Paso Processing Center, El Paso, Texas. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (proper respondent in a habeas petition is the immediate custodian in the district of confinement). The Assistant Field Office Director is a proper respondent, as the official with immediate physical custody over Petitioner. See *Id.* at 435. The additional federal officials are included in their official capacities because they possess legal authority over Petitioner's detention under the Immigration and Nationality Act. If so ordered, the Immigration Judge, under the auspices of the Attorney General will be required to conduct a bond hearing, and for this reason, Attorney General Bondi is named as a respondent.

PARTIES

6. Petitioner, **Dainelys Rodriguez Rios**, is a native and citizen of Cuba, detained by Customs and Border Protection on March 2, 2024, near Tecate, California. Shes brings this petition pursuant to 28 U.S.C. § 2241 to challenge the legality of her continued detention.

7. Respondent, **Pamela Bondi**, is named in her official capacity, as the Attorney General she presides over the Executive Office for Immigration Review; if so ordered, an Immigration Judge

8. Respondent, **Mary De Anda-Ybarra**, is named in her official capacity as Field Office Director (FOD), El Paso Field Office, U.S. Immigration and Customs Enforcement. The FOD for ERO's El Paso Field Office is responsible for the custody, detention, and removal operations for individuals arrested and detained within the geographic area encompassing Petitioner's place of confinement.

9. Respondent, **Angel Garite**, is named in his official capacity as Assistant Field Office Director, as supervisor of the El Paso Processing Center, he takes the role of "warden;"

10. Respondent, **Todd Lyons**, is named in his official capacity as Senior Official Performing the Duties of the Director of ICE. ICE exercises authority over the detention, custody, and supervision of noncitizens pursuant to the Immigration and Nationality Act.

11. Respondent, **Kristi Noem**, is named in her official capacity as U.S. Secretary of Homeland Security. The Secretary is the highest official within the DHS, which is charged with administering and enforcing federal immigration laws, including detention authority under the Immigration and Nationality Act (INA).

12. **U.S. Immigration and Customs Enforcement** is an agency within the Department of Homeland Security charged with the enforcement of immigration laws, including the detention and removal of noncitizens.

13. The **Department of Homeland Security** is the federal department responsible for administering and enforcing the Immigration and Nationality Act, including statutory authority governing the detention of certain noncitizens.

UNDISPUTED FACTS

14. Petitioner is a native and citizen of Cuba who entered the United States without inspection on March 2, 2024. She was accompanied by two minor children who are included in her immigration court case but are not detained nor included in this habeas action.

15. Petitioner and children were encountered by U.S. Border Patrol on or about March 2, 2024. They were detained two days. They were released on their own recognizance as documented by form I-220A. They were issued Notices to Appear commencing full removal proceedings under 8 U.S.C. 1229a. The sole charge is 8 U.S.C. § 1182(a)(6)(A)(i).

16. Form I-213 Record of Deportable Alien reads as follows regarding the determination to release:

The subjects do not appear to be a threat to national security, border security, or public safety. The subjects were released from the custody of the Department of Homeland Security safety. The subjects were released from the custody of the Department of Homeland Security (DHS) by "Order of Recognizance" (O.R.) pending their immigration hearing. This release was (DHS) by "Order of Recognizance" (O.R.) pending their immigration hearing. This release was authorized through proper channels in accordance with San Diego Sector protocols. authorized through proper channels in accordance with San Diego Sector protocols.

(Exh. 3.)

17. Petitioner is a 33-year old married female. Her spouse is a lawful permanent resident of the United States, and he has filed an I-130 marriage petition on her behalf (and the children's). It is pending with United States Citizenship and Immigration Services, (USCIS).

18. Petitioner is primarily a housewife. She did not work until she received valid employment authorization in June, 2025. Upon its receipt, she commenced working part time as an Uber driver. Her time is primarily devoted to her children.

19. Petitioner has no criminal record nor adverse immigration history beyond the solitary entry without inspection.

20. At a hearing on December 18, 2025, the Immigration Judge continued the case to February 11, 2026, due to pending unresolved legal issues and dueling motions by the parties. Asylum is pending. Hence removal proceedings remain open under 8 U.S.C. § 1229a. (Exh. 5)

21. On July 10, 2025, Secretary of Homeland Security Todd Lyons announced through a memorandum to DHS employees that (non-U.S. born) individuals encountered within the United States following entry without inspection would be processed under 8 U.S.C. § 1225(b) and held under mandatory detention. On September 5, 2025, the BIA issued a precedent decision that immigration judges did not have authority to redetermine custody of persons present without inspection. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and did not make any discretionary determination regarding custody.

EXHAUSTION OF REMEDIES

There is no statutory exhaustion requirement for habeas challenges to the legal basis of immigration detention under 28 U.S.C. § 2241. *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007). Immigration judges cannot rule on constitutional questions, and the timeframe for an initial bond request through the administrative appeals process (Board of Immigration Appeals) will take so long as to effectively deny review and relief.

Even if an exhaustion requirement generally applied, on this issue it would be futile to first seek a bond hearing before an immigration judge where it is a foregone conclusion that ICE and the immigration court will refuse to consider bond. *See Hernandez Fernandez v. Lyons*, 5:25-CV-00773-JKP 2025 LX 493117 | 2025 WL 2976923 (W.D. Tex. 2025). Both DHS and the Attorney General have made clear that their position; an individual in Petitioner's situation is not eligible for a bond hearing, even if she was initially processed and documented under the statutes (8 U.S.C. §§ 1229a and 1236(a)) that allow for custody redetermination by an immigration judge. As the Supreme Court has held, exhaustion is excused where “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Courts within this District have already held in identical circumstances that an administrative appeal would be futile because the result is predetermined by binding agency precedent. Because the agencies believe they lack authority to provide a custody redetermination under 8 U.S.C. § 1226(a), and are operating under that assumption, exhaustion of (non-existent) administrative avenues would be futile.

STATUTORY BACKGROUND

Section 1226(a) provides that, “[o]n a warrant issued by the Attorney General,” a noncitizen arrested and detained pending a decision on removal “may continue to be detained” or “may be released on bond” or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). The statute authorizes the Attorney General to make both the initial custody determination and subsequent custody redeterminations. Implementing regulations assign authority for custody redeterminations to Immigration Judges. See 8 C.F.R. § 1003.19(a).

Section 1225 governs the inspection and processing of applicants for admission. Under section 1225(b)(1) and (b)(2), certain applicants for admission who are determined to be inadmissible “shall be detained” pending further consideration of their application or removal. These provisions apply only to “applicants for admission” as defined by the Immigration and Nationality Act.

The INA defines “admission” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). With limited exceptions not relevant here, a noncitizen who has entered the United States without inspection is not considered an “applicant for admission” at a later date solely by virtue of being encountered inside the country. Rather, the term applies to individuals who present themselves for inspection at a port of entry or who are treated as seeking admission under specific statutory provisions.

Section 1182(a)(6)(A)(i) renders an individual inadmissible if they are “present in the United States without being admitted or paroled.” Section 1182(a)(7)(A)(i)(I) applies to “an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa” or other entry documents. The two grounds serve distinct statutory functions: §

1182(a)(6)(A)(i) describes unlawful presence after entry without inspection, while § 1182(a)(7) presumes an ongoing or contemporaneous “application for admission.”

Under § 1226(a), individuals detained pending removal proceedings are entitled to custody redeterminations before an Immigration Judge unless detained under statutory provisions that expressly withhold such authority. See 8 C.F.R. § 1003.19(h). By contrast, individuals detained under § 1225(b) are not eligible for bond redeterminations because detention is mandatory for applicants for admission falling within that section.

The Department of Justice’s 1997 regulations implementing the Illegal Immigration Reform and Immigrant Responsibility Act reaffirmed that noncitizens who entered without inspection and were later arrested inside the United States are detained under § 1226(a) and may seek bond before an Immigration Judge. See *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that aliens “arrested in the interior” fall under the Attorney General’s general detention authority).

In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court distinguished the detention schemes of §§ 1225, 1226, and 1226(c), holding that each operates according to its terms and that bond eligibility turns on the statutory authority under which the individual is detained. The Court reiterated that §§ 1225(b) and 1226(c) impose mandatory detention, while § 1226(a) allows discretionary release.

This case does not involve 8 U.S.C. § 1231 or post-removal-order custody. Petitioner is in pending § 1229a proceedings and subject only to the pre-order detention provisions of the INA.

LEGAL ARGUMENT

A. Application of mandatory detention under 8 U.S.C. § 1225(b) to Petitioner violates the Immigration and Nationality Act.

The statutory scheme governing immigration detention distinguishes between individuals detained as applicants for admission and seeking admission, and those detained after entry while removal proceedings are pending. In Petitioner's case, it is clear that Respondent DHS encountered Petitioner and her children already within the United States, issued a Notice to Appear in full removal proceedings under 8 U.S.C. § 1229a and processed her for release under 8 U.S.C. § 1226(a). Thereafter, she joined her lawful permanent resident spouse, enrolled her children in school, and became part of the Odessa community. She filed an application for asylum and was issued employment authorization, eventually becoming a part-time uber driver to assist with household finances.

Critically, on December 18, 2025, Petitioner had already been "inspected" and is not now properly classified as an arriving alien, or an "applicant for admission seeking admission" as referenced in 8 U.S.C. § 1225(b)(1) and (2). *Lopez- Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 at p. 27 (W.D. Tex. 2025); *Cardona-Lozano v. Noem*, 1:25 CV-1784-RP, 2025 LX 528853; 2025 WL 3218244 (W.D. Tex. 2025).

So-called mandatory detention (detention without a bond hearing) under 8 U.S.C. §1225(b), by contrast, applies only to persons who are processed as applicants for admission. The statute predicates mandatory detention on that status and references individuals who present themselves for inspection, who are placed in expedited removal screening, or who otherwise fall within the statutory definition of an applicant for admission. The definition of admission, set forth at 8 U.S.C. § 1101(a)(13)(A), requires lawful entry after inspection and authorization. Individuals

who enter without inspection are not transformed into applicants for admission seeking admission simply because they are later encountered inside the United States during enforcement operations.

ICE's charge of inadmissibility issued to Petitioner confirms the statutory classification that applies here: 8 U.S.C. 1182(a)(6)(A)(i), which applies to individuals present in the United States without admission or parole. That determination aligns with the statutory text and removes any foundation for detaining Petitioner under Section 1225(b).

Because removal proceedings are pending under Section 1229a and no statutory provision mandates custody, Petitioner falls squarely under Section 1226(a) as a matter of law. Under that provision, Immigration Judges retain authority to conduct custody redeterminations unless expressly divested of jurisdiction (e.g., for crime). Of note, the agency already determined that Petitioner does not pose a public safety risk. (Exh. 3)

As aforementioned, this Court, as well as others around the nation have repeatedly held that arrests of residents who entered without inspection and have already been residing in the United States fall under Section 1226(a); detention under Section 1225(b) is not authorized in such circumstances.¹ These decisions reflect the statutory structure enacted by Congress and the

¹ See, e.g., *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (sd. Sept. 22, 2025); *Vincens-Marquez v. Soto*, No. 25-16906 (KSH), 2025 WL 3097496 (D. N.J. Nov. 6, 2025); *Beltran, et. al v. Noem*, No. 25- cv-2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025); *Flores v. Olson*, 25 C 12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025); *Tomas Elias v. Hyde*, No. 25- cv-540-JJM-AEM, 2025 WL 3004437 (D. R.I. Oct. 27, 2025); *Aguilar Guerra v. Joyce*, 2:25-cv-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25 cv-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem*, No. 5:25- cv-02771-ODW (PDx), 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *N.A. v. Larose*, No. 25 cv-2384-RSH-BLM, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijov v. Kaiser*, No. 25-CV-06248-BLF, 2025

longstanding regulatory distinction between applicants for admission and individuals arrested within the United States. Petitioner's continued detention without access to a custody redetermination therefore rests on an error of law that warrants relief. Simply put, Petitioner entered the United States, was processed for full removal proceedings, and released on her recognizance. She is not an applicant for admission-seeking admission. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, | 2025 WL 2691828 (W.D. Tex. 2025).

B. Petitioner merits emergency injunctive relief.

In her prayer for relief, Petitioner seeks immediately an order that she not be transferred outside this Court's jurisdiction. She also seeks either immediate release or a bond hearing in front of an immigration judge. Injunctive relief, similar to a temporary restraining order under Rule 65 of the Federal Rules of Civil Procedure, requires a showing of (1) likelihood of success on the merits, (2) irreparable injury, (3) that the injury outweighs the threatened harm to the other party, and (4) the public interest. *Santiago v. Noem*, EP-25-CV-361-KC, 2025 LX 349750; 2025 WL 2606118, (W.D. Tex. 2025), citing *City of El Cenizo v. Texas*, 890 F.3d 164, 176 (5th Cir. 2018).

As demonstrated in argument above, the majority of the courts in this district and throughout the country have found that the Respondents' new interpretation of the detention statutes, combined with an abrupt series of arrests and detention with no notice, are in contravention of the law and Constitution. Thus, there is likelihood of success on the merits.

Petitioner and her family are presently separated and traumatized by her unjustified arrest

WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. 25-CV-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

on the cusp of the holiday season; her spouse works as a truck driver and she is responsible for two minor children getting to school, eating good meals, and doing their homework. While in detention, she is not able to assist her counsel in preparation of her asylum case. Hence irreparable harm exists.

On the other hand, Respondents are able to monitor Petitioner as they have for the last 19 months through supervision. She has always reported to court, so there is no injury in allowing her release. And it is in the public interest that the Constitution be upheld, and families be united, rather than wasting tax dollars detaining young mothers.

CLAIM FOR RELIEF

Count One

Foreclosure of Custody Redetermination Based on Legal Error

Petitioner realleges and incorporates the preceding allegations. Petitioner is detained during the pendency of removal proceedings and is not subject to any statutory provision mandating custody. Petitioner was initially processed under 8 U.S.C. § 1226(a) and during the last approximately 19 months has gained work authorization, obtained employment, and forged community ties in Odessa. She established a significant presence in this country and "built a life here." *Id.*, at 27. Contrary to Respondents' new policy, Petitioner is properly classified under the initial determination made almost two years ago. She is *not* an arriving alien seeking admission.

Where continued detention is based solely on misapplication of the governing statute, habeas corpus is the appropriate means to correct the classification and require the agency to conduct a custody redetermination or release Petitioner from custody.

Count Two

**Violation of the Due Process Clause of the Fifth Amendment to the
United States Constitution**

(Substantive Due Process)

Petitioner repeats and re-alleges the allegations contained in preceding paragraphs of this Petition-Complaint as if fully set forth herein. By Respondents' own calculation, she is not a flight risk nor a danger to the community. Respondents' arrest was unjustified.² Continued detention without a bond hearing is unlawful. Accordingly, she is detained in violation of her Constitutional right to due process under the Fifth Amendment.

Count Three

**Violation of the Due Process Clause of the Fifth Amendment to the
United States Constitution**

(Procedural Due Process)

Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition-Complaint as if fully set forth herein.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V; ; *see generally, Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

Petitioner's detention violates the Due Process Clause, as she was determined not to pose a danger or flight risk when released from custody on recognizance almost two years ago. She has

² Not only does Petitioner's custody status fall under 8 U.S.C. § 1226(a), but it is in violation of the "Re-detention" instructions of the July 8 Todd Lyons Memo. The memo specifically instructs that "this interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to § 235 detention. Rather, the custody provisions at INA § 235(b) (1)(B)(ii), (iii) (IV) , and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

since applied for asylum, received a work permit, and attended court hearings. There is no reason to change the analysis that she merits her liberty. Moreover, she was not accorded any due process at the time of arrest and detention by ICE on December 18, 2025. There was no opportunity to be heard. It is a foregone conclusion that now Respondents will invoke the July 8, 2025 mandatory detention policy, and the *Hurtado* precedent, to justify mandatory detention.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Issue an order to show cause under 28 U.S.C. § 2243 ordering Respondents to answer within 3 days;
- c. Enjoin Respondents from moving Petitioner outside the region of El Paso, Texas;
- d. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner for failure to provide notice and process; or alternatively,
- e. Issue a writ of habeas corpus ordering Respondents to provide Petitioner with an immediate custody redetermination before an Immigration Judge under Section 1226(a);
- f. Declare that Petitioner is detained under 8 U.S.C. 1226(a) and is not subject to mandatory detention under 8 U.S.C. § 1225(b);
- g. Enjoin Respondents from continuing to detain Petitioner without providing a custody redetermination consistent with Section 1226(a).
- g. Award such further relief as the Court deems just and proper.

Dated: December 26, 2025

Respectfully submitted,

/s/ Javier N. Maldonado
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³ Motion for Admission Pro Hac Vice is being filed contemporaneously.

VERIFICATION OF COUNSEL

I, Mary E.Kramer, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Mary E. Kramer
Mary E. Kramer

Certificate of Service

I hereby certify that on this 22nd day of December, I electronically filed the foregoing Petition for Habeas Corpus with the Clerk of Court using the CM/ECF system which will send a notice of electronic filing to the United States Attorney's Office, counsel for Respondents.

/s/ Javier Maldonado
Javier Maldonado
Attorney at Law

Counsel for Respondents:
Mary F. Kruger
U.S. Attorney's Office
Civil Division