UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Michael Jovanni Norori Tapia,	§	
Mari Cruz Molina Fitzgerald, and	§	
[redacted] Tapia,	§	
	§	
Petitioners,	§	
	§	
V.	§	
	§	
KRISTI NOEM, Secretary of the United States	§	
Department of Homeland Security;	§	Civil Case No. 5:26-cv-143
PAMELA BONDI, United States Attorney	§	
General;	§	
MIGUEL VERGARA, San Antonio Field Office	§	
Director for Enforcement and Removal, U.S.	§	
Immigration and Customs Enforcement,	§	
Department of Homeland Security;	§	
JOSE RODRIGUEZ JR, Warden, Dilley	§	
Immigration Processing Center, Dilley, Texas;	§	
UNITED STATES DEPARTMENT OF	§	
HOMELAND SECURITY;	§	
UNITED STATES IMMIGRATION AND	§	
CUSTOMS ENFORCEMENT;	§	
EXECUTIVE OFFICE FOR IMMIGRATION	§	
REVIEW;		
Respondents.		

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

1. Petitioners, through counsel, respectfully petition this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge their unlawful detention by Immigration and Customs Enforcement (ICE) at the Dilley Immigration Processing Center in Dilley, Texas. Petitioners seek immediate release under conditions no more restrictive than those in place before the detention at issue in this case. This petition raises constitutional claims and pure questions of law, over which this Court has jurisdiction.

I. INTRODUCTION

2. Petitioners are a family of Nicaraguan citizens who entered the United States on November 24, 2022, and were apprehended by immigration officials. They were placed in removal proceedings under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1182(a)(6)(A)(i), as aliens present in the United States without being admitted or paroled. On November 25, 2022, they were released on recognizance pursuant to 8 U.S.C. § 1226 and allowed into the United States. Petitioners have a pending asylum application before the Executive Office for Immigration Review (EOIR). They had their first immigration hearing on November 13, 2024, where the immigration judge (IJ) set an individual calendar hearing (ICH) for July 18, 2028, to address the merits of their asylum claims. Petitioners held valid Employment Authorization Documents (EADs) and were fully complying with their immigration processes. On January 2, 2026, Petitioners attended a scheduled ICE check-in appointment, where they were taken into custody without explanation and without any relevant changed circumstance to justify detention. They are now scheduled for a master calendar hearing (MCH) on February 4, 2026, in the detained docket.

3. As detailed in the precedent from this Court in *Traore v. Bondi*, No. SA-25-CV-01730-FB (W.D. Tex. Dec. 30, 2025), detention under § 1225(b) is inapplicable to individuals like Petitioners, who were charged under § 1182(a)(6)(A)(i) as present without admission or parole, released on recognizance, and later detained without a determination of inadmissibility under the specific grounds required for § 1225(b) detention. Instead, § 1226(a) governs, entitling Petitioners to release on conditional parole or bond. Numerous courts, including this one, have rejected the Federal Respondents' reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as contrary to the INA. See, e.g., *Mercado v. Lyons*, No. 5:25-CV-1623-JKP, 2025 WL 3654268 (W.D. Tex. Dec. 11, 2025); *Acea-Martinez v. Noem*, No. 5:25-CV-01390-XR (W.D. Tex. Oct. 28, 2025); *Guevara-Vasquez v. Thompson*, No. 5:25-CV-01372-XR (W.D. Tex. Nov. 25, 2025).

4. In light of this unlawful practice, Petitioners cannot seek release before ICE as they are subject to mandatory detention under the erroneous interpretation of law. The only remedy is for this Court to order their immediate release under conditions no more restrictive than those prior to detention, consistent with the habeas relief granted in *Traore* and similar cases.

II. JURISDICTION AND VENUE

5. Petitioners are in the physical custody of the Respondents at the Dilley Immigration Processing Center in Dilley, Texas.

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–1537.

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

8. This Court has jurisdiction under 28 U.S.C. § 2241 to review the lawfulness of Petitioners' detention, as this petition raises constitutional claims (Fifth Amendment due process violations) and pure questions of law (whether the Federal Respondents' interpretation of 8 U.S.C. § 1225(b), as applied to Petitioners, is erroneous when detention is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)).

9. Venue is proper as Petitioners are detained in Dilley, Texas, within the Western District of Texas.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. There is no statutory exhaustion requirement for habeas corpus petitions under 28 U.S.C. § 2241.

11. There are no administrative remedies available to Petitioners under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In this precedential decision, the BIA held that immigration judges lack authority to hear bond requests or grant bond to noncitizens who are present in the United States without admission or parole, classifying them as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), regardless of their time in the country. As a result, the IJ lacks jurisdiction to hear Petitioners' request for a bond redetermination hearing.

IV. PARTIES

12. Petitioners Michael Yovanni Norori Tapia (father), Mari Cruz Molina Fitzgerald (mother), and [redacted] (son) are a family of Nicaraguan citizens currently in ICE custody at the Dilley Immigration Processing Center in Dilley, Texas.

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

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

15. Respondent Miguel Vergara, or his counterpart, is the Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, San Antonio Field Office. He is Petitioners' immediate custodian and is responsible for Petitioners' detention and removal. He is sued in his official capacity.

16. Respondent Jose Rodriguez Jr., or his counterpart, Warden of the Dilley Immigration Processing Center, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at the Dilley Immigration Processing Center, where Petitioners are detained. He or she has immediate physical custody of Petitioners and is sued in his or her official capacity.

17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

18. Respondent Immigration and Customs Enforcement is the federal agency, branch of DHS, responsible for the enforcement of the INA, apprehension of non-citizens in the U.S., and detention and removal of noncitizens.

19. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

V. LEGAL FRAMEWORK

20. Under 8 U.S.C. § 1225(b), certain applicants for admission are subject to mandatory detention. However, as explained in *Traore v. Bondi*, No. SA-25-CV-01730-FB, at *9-10 (W.D. Tex. Dec. 30, 2025), this provision does not apply to individuals like Petitioners, who were charged under § 1182(a)(6)(A)(i) as present without admission or parole, not as arriving aliens, and who were not determined inadmissible under the specific grounds in § 1182(a)(6)(C) or (a)(7) within two years of entry. Section 1225(b)(1) requires detention for aliens in expedited removal, but Petitioners are in full removal proceedings under § 1229a. The BIA's interpretation in *Matter of Yajure Hurtado* is contrary to the plain language of the INA, legislative history, and decades of agency practice applying § 1226(a) to such individuals, which allows for release on bond or conditional parole.

21. Habeas petitioners must show they are "in custody in violation of the Constitution or laws or treaties of the United States" by a preponderance of the evidence. 28 U.S.C. §

2241(c)(3); *Traore*, at *3 (citing *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *4 (S.D. Tex. Sept. 26, 2025)).

22. Jurisdiction is not barred by 8 U.S.C. §§ 1252(g), 1225(b)(4), or 1252(b)(9), as Petitioners challenge the basis for detention, not a removal order or the decision to commence, adjudicate, or execute removal. *Traore*, at *5-8 (rejecting identical jurisdictional arguments).

VI. FACTS

23. Petitioners entered the United States on November 24, 2022, and were apprehended by immigration officials. They were issued a Notices to Appear (NTA) charging them under 8 U.S.C. § 1182(a)(6)(A)(i) as aliens present without admission or parole, placing them in full removal proceedings before an IJ. The NTA ordered appearance on April 18, 2024. On November 25, 2022, Petitioners were released on recognizance pursuant to 8 U.S.C. § 1226.

24. Petitioners have a pending asylum application before EOIR. They attended their first immigration hearing on November 13, 2024, where the IJ set an ICH for July 18, 2028. Petitioners held valid EADs, were employed, and complied with all conditions of release and immigration processes.

25. On January 2, 2026, Petitioners attended a scheduled ICE check-in appointment and were detained without explanation or modification of their release conditions. They are now scheduled for an MCH on February 4, 2026, in the detained docket and are held at the Dilley Immigration Processing Center.

26. Petitioners' detention is based on the Federal Respondents' reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which erroneously applies § 1225(b) to individuals like Petitioners. This conflicts with the NTA, their prior release, and the plain

language of the INA, as no determination of inadmissibility under § 1182(a)(6)(C) or (a)(7) was made within two years of entry.

27. Petitioners' detention causes ongoing irreparable harm, including family separation, psychological trauma to the minor child, who is in custody with only 4 years old, loss of employment, and inability to prepare for their asylum hearing. They have strong equities: a pending asylum claim, compliance with processes, and family ties in the United States.

VII. REQUEST FOR RELEASE

28. As in *Traore v. Bondi*, No. SA-25-CV-01730-FB, at *11 (W.D. Tex. Dec. 30, 2025), the only relief available through habeas is release from custody under conditions no more restrictive than those prior to detention. Petitioners lack lawful status but are entitled to release, as their presence in the country—even if unlawful—does not preclude habeas relief. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Traore*, at *11 (citing same).

29. Petitioners pose no danger or flight risk. They have no criminal records, have resided in the United States for over three years, maintained employment, and complied with release conditions. Their pending asylum claim provides strong incentive to appear. Immediate release on recognizance or reasonable conditions is warranted, especially given the family unit and harm to the minor child.

VIII. CLAIMS FOR RELIEF

A. Violation of the INA

30. Petitioners incorporate by reference the law and allegations of fact set forth in the preceding paragraphs.

31. The mandatory detention provision at 8 U.S.C. § 1225(b) does not apply to noncitizens like Petitioners, who entered without inspection over three years ago and were charged under § 1182(a)(6)(A)(i). Such individuals are detained under § 1226(a), entitling them to release on bond. *Traore*, at *9-10.

32. The application of § 1225(b) to Petitioners unlawfully mandates their continued detention and violates the INA.

B. Violation of Due Process

33. Petitioners incorporate by reference the law and allegations of fact set forth in the preceding paragraphs.

34. The government may not deprive a person of liberty without due process. U.S. Const. amend. V; *Zadvydas*, 533 U.S. at 690.

35. Petitioners have a fundamental liberty interest in freedom from restraint. Their detention without a bond hearing violates due process, as § 1226(a) requires such an opportunity.

C. The Detention Violates the APA

36. Under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A), agency actions, including custody determinations by DHS and EOIR, must be set aside if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See *Judulang v. Holder*, 565 U.S. 42, 55 (2011) (applying APA arbitrary-and-capricious review to BIA immigration decisions); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (requiring agencies to provide reasoned explanations for policy changes).

37. Respondents' decision to detain Petitioners during a scheduled check-in, after multiple prior compliant ICE check-ins where they had been released on their own recognizance,

with no intervening changes in circumstances, facts, or law specific to his case, is arbitrary and capricious. This abrupt shift deviates from DHS's established practice of allowing release for non-criminal individuals with strong equities during pending BIA appeals, without any articulated rationale. Such unexplained reversals violate the APA. See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (agencies must acknowledge and explain departures from prior policies).

38. Furthermore, the reliance on *Matter of Yajure Hurtado* to reclassify Petitioner under § 1225(b) represents an arbitrary agency-wide policy change, ignoring decades of post-IIRAIRA practice and DHS's own prior litigation positions (e.g., in *Jennings v. Rodriguez*). See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (historical bond eligibility for interior EWIs). This unacknowledged reversal, applied uniformly without individualized assessment, is capricious. See *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19-20 (2020) (striking down arbitrary termination of DACA).

39. As a remedy, the Court should set aside the unlawful detention decision and order Petitioners' immediate release as authorized under the APA and habeas authority. See 5 U.S.C. § 706(2); *Zadvydas v. Davis*, 533 U.S. 678, 692 (2001) (courts may order release to remedy unlawful detention). Similar relief has been granted in APA-challenged immigration cases. See, e.g., *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (enjoining arbitrary detention policy under APA).

IX. RELIEF REQUESTED

40. Petitioners pray that this Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Order that Petitioners shall not be transferred outside the Western District of Texas while this habeas petition is pending;

(c) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days under 28 U.S.C. § 2243;

(d) A writ of habeas corpus ordering the immediate release of Petitioners under conditions no more restrictive than those in place before the detention at issue in this case,

(e) Order Respondents to notify Petitioners' counsel by email of the exact location and time of release as soon as practicable and at least two hours before release;

(f) A declaration that Petitioners' detention is unlawful;

(g) Grant any other and further relief that this Court deems just and proper.

41. I declare under penalty of perjury that I am the Petitioners' attorney, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Respectfully submitted, January 13, 2026.

Patricio Garza Izaguirre
Attorney for the Petitioner
Garza & Narvaez, PLLC
7600 Chevy Chase Dr - STE 118
Austin, TX 78752
TX SBN 24087568

INDEX OF DOCUMENTS

Exhibit	
A	NTAs
B	Release on Own Recognizance(s)
C	EAD cards

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, and all the attached documents described in the index above, were served to the following by the CM/ECF system:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. BOBBY THOMPSON, Warden, South Texas Detention Complex, Pearsall, Texas;
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On January 13, 2026

Patricio Garza Izaguirre
Attorney for the Petitioner

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