

FILED.

JAN 07 2026

DIANA KARINA MENDOZA-
BARRETO, A# [REDACTED],
[REDACTED] MENDOZA-
BARRETO A# [REDACTED]
14108 NIGHTVIEW COVE, PELUGERVILLE, TX,
78660

Case No. [REDACTED] CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [REDACTED] DEPUTY CLERK

UNITED STATES DISTRICT
COURT WESTERN DISTRICT OF
TEXAS SAN ANTONIO DIVISION

SA26CA0045 JKP

Petitioner,

v.

KRISTI NOEM
SECRETARY OF THE U.S.
DEPARTMENT OF HOMELAND
SECURITY;

TODD M. LYONS
DIRECTOR, U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

MIGUEL VERGARA
FIELD OFFICE DIRECTOR, ICE ENFORCEMENT
AND REMOVAL OPERATIONS
(SAN ANTONIO FIELD OFFICE);

JOSE RODRIGUEZ JR.
WARDEN/ADMINISTRATOR, DILLEY
IMMIGRATION PROCESSING CENTER (SOUTH
TEXAS FAMILY RESIDENTIAL CENTER);

Respondents.

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER
TO SHOW CAUSE (INDIVIDUAL HABEAS CORPUS / 28 U.S.C. § 2241)**

Petitioner, by pro se, moves for an Emergency Temporary Restraining Order and Order to Show Cause restraining Respondents from detaining her under 8 U.S.C. § 1225(b)(2)(A), from removing or transferring her while this action is pending, and ordering her release under 8 U.S.C. § 1226(a) or, in the alternative, a prompt custody redetermination hearing under § 1226(a) before an Immigration Judge. In support, Petitioner states as follows:

INTRODUCTION

1. Petitioner Diana Karina Mendoza-Barreto ("Petitioner"), A# is a citizen and national of Colombia who entered the United States without inspection near San Ysidro, California, on or about August 29, 2023. She was placed in removal proceedings under 8 U.S.C. § 1229a, released on her own recognizance, and has since resided in the interior of the United States in the Austin-Pflugerville area of Texas. She was later taken into ICE custody during an immigration hearing in San Antonio, Texas, and is now detained at the South Texas Family Residential Center in Dilley, Texas, within this District.

2. On July 8, 2025, the Department of Homeland Security ("DHS") issued an "Interim Guidance Regarding Detention Authority for Applicants for Admission" (the "DHS Policy"), directing ICE to treat certain individuals, including those like Petitioner who entered without inspection but were arrested in the interior, as "applicants for admission" under 8 U.S.C. § 1225(b)(2)(A) and to subject them to mandatory detention without a bond hearing.

3. In *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.) (“*Maldonado Bautista*”), the United States District Court for the Central District of California has: (a) granted a temporary restraining order for the named plaintiffs; (b) on November 20, 2025, granted plaintiffs’ Motion for Partial Summary Judgment, declaring the July 8, 2025 DHS Policy unlawful; (c) on November 25, 2025, certified a nationwide “Bond Eligible Class” of similarly situated noncitizens; and (d) on December 18, 2025, clarified that the partial summary judgment order encompassed plaintiffs’ Administrative Procedure Act (“APA”) claim and granted classwide vacatur of the DHS Policy and entered final judgment as to those claims. The *Maldonado Bautista* court further explained that the core holding of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), is inconsistent with its determination that such class members are not “applicants for admission” subject to mandatory detention under § 1225(b).

4. Petitioner is similarly situated to the *Maldonado-Bautista* plaintiffs and certified class members: she entered without inspection, was arrested in the interior, is charged solely as inadmissible under 8 U.S.C.

§ 1182(a)(6)(A)(i), and is detained under the now-vacated DHS Policy without access to a bond hearing. ICE continues to classify and detain Petitioner under § 1225(b)(2)(A) and denies her custody redetermination under § 1226(a). Her detention is ultra vires, contrary to the Immigration and Nationality Act (“INA”), and violates due process and the APA.

5. Petitioner respectfully requests a narrowly tailored, individualized TRO that: (a) enjoins

Respondents from detaining her under § 1225(b)(2)(A); (b) prohibits her removal or transfer during the pendency of this action absent further order; And (c) requires her release under § 1226(a) or, at minimum, an expedited custody redetermination hearing under § 1226(a) before an Immigration Judge, or an order to show cause why her continued custody is lawful.

6. The specific relief requested is as follows:

- An order restraining Respondents from detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A) and requiring either her release under § 1226(a) or a prompt § 1226(a) custody redetermination hearing before an Immigration Judge;
- An order restraining Respondents from removing Petitioner from the United States or transferring her outside this District while this TRO is in effect;
- An order requiring Respondents to provide notice prior to any attempt to remove Petitioner after expiration of this TRO;
- An order directing Respondents to show cause why Petitioner's continued custody is lawful; and
- Waiver of security under Fed. R. Civ. P. 65(c).

PARTIES

7. Petitioner is a citizen and national of Colombia, born on  1997. She entered the United States without inspection near San Ysidro, California, on or about August 29, 2023. DHS issued her a Notice to Appear placing her in removal proceedings under 8 U.S.C. § 1229a. She has no prior removal order. A copy of the Notice to Appear is attached as **Exhibit A**.

8. Petitioner was released from DHS custody on her own recognizance and has resided in the interior of the United States, most recently at 14108 Nightview Cove, Pflugerville, Texas 78660.

9. Petitioner is the mother and primary caretaker of her minor son, [REDACTED] Mendoza-Barreto, A# [REDACTED] a citizen of Colombia born on [REDACTED] 2020, who is currently detained with her at the South Texas Family Residential Center.

10. Respondents are: (i) the Secretary of the U.S. Department of Homeland Security; (ii) the Director of U.S. Immigration and Customs Enforcement; (iii) the Field Office Director, ICE Enforcement and Removal Operations, San Antonio Field Office; and (iv) the Warden/Administrator of the South Texas Family Residential Center, as Petitioner's immediate custodian. Respondents are sued in their official capacities only.

JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's immigration detention and to grant habeas corpus relief, and under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including the INA and the APA.

12. Petitioner challenges only pre-final-order detention and the application of an unlawful detention policy. She does not seek review of any final order of removal, and her claims do not arise from, nor are they inextricably linked to, any removal order. Accordingly, 8 U.S.C. § 1252(a)(2) and § 1252(b)(9) do not strip this Court of jurisdiction over her claims.

13. Venue is proper in this District and Division under 28 U.S.C. § 1391(e) and § 2241 because Petitioner is detained at the South Texas Family Residential Center in Dilley, Texas, within the Western District of Texas, San Antonio Division, and a substantial part of the events and omissions giving rise to this action occurred in this District.

STATEMENT OF FACTS

14. Petitioner entered the United States without inspection near San Ysidro, California, on or about August 29, 2023.

15. DHS issued Petitioner a Notice to Appear commencing removal proceedings under 8 U.S.C. § 1229a. She has no prior removal order. See Exhibit A.

16. Petitioner was released from custody on her own recognizance and resided at 14108 Nightview Cove, Pflugerville, Texas 78660.

17. On or about December 10, 2023, Petitioner timely filed an affirmative application for

asylum. She has been granted employment authorization valid from June 5, 2025, to June 4, 2030.

18. has no criminal history and has never been charged with or convicted of any offense in the United States or Colombia. Her only basis for immigration enforcement is her manner of entry and immigration status.

19. Petitioner has consistently complied with all immigration requirements and attended her Immigration Court proceedings. Her next Master Calendar Hearing is scheduled for December 17, 2025, at 9:00 a.m., before the Pearsall Immigration Court in Pearsall, Texas.

20. Petitioner was taken into ICE custody during one of her Immigration Court hearings in San Antonio, Texas. She is currently detained at the South Texas Family Residential Center in Dilley, Texas, within the Western District of Texas. ICE custody and classification records reflecting her detention under 8 U.S.C. § 1225(b)(2)(A) are attached as **Exhibit B**.

21. Petitioner's minor son, [REDACTED] Mendoza-Barreto (A# [REDACTED]), is detained with her at the same facility.

22. If released, Petitioner has stable housing and support in Texas. She can reside with her relative, Yelzeht Jonayra-Barreto Castro, at 14108 Nightview Cove, Pflugerville, Texas 78660, and she has additional support from a U.S. citizen sponsor, Anzel Balzan, who has provided an affidavit of support and financial documentation.

23. On July 8, 2025, DHS implemented the “Interim Guidance Regarding Detention Authority for Applicants for Admission,” instructing ICE to treat certain noncitizens—including those like Petitioner who entered without inspection and were arrested in the interior—as “applicants for admission” under 8 U.S.C. § 1225(b)(2)(A), and to subject them to mandatory detention without bond hearings.

24. Pursuant to this DHS Policy, ICE has classified Petitioner as detained under § 1225(b)(2)(A), refused to consider her release under 8 U.S.C. § 1226(a), and denied her access to an individualized custody redetermination hearing before an Immigration Judge.

25. In *Maldonado-Bautista*, the district court: (a) granted a temporary restraining order for the named plaintiffs; (b) on November 20, 2025, granted plaintiffs’ Motion for Partial Summary Judgment, holding that the DHS Policy is contrary to the plain text of the INA and that individuals who, like Petitioner, entered without inspection and were arrested in the interior are properly detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A); (c) on November 25, 2025, certified a nationwide Bond Eligible Class of similarly situated noncitizens; and (d) on December 18, 2025, clarified that its order declared the DHS Policy unlawful under the APA, granted classwide vacatur of that policy, and entered final judgment as to the relevant counts of the Amended Class Complaint. The court further explained that the core legal conclusion of *Matter of Yajure Hurtado* cannot be reconciled with its ruling. Copies of the *Maldonado Bautista* TRO, summary judgment order, class certification order, and clarification order are attached as **Exhibits D, E, F, and G**.

26. Despite the *Maldonado-Bautista* judgment and classwide vacatur of the DHS Policy, ICE

continues to rely on § 1225(b)(2)(A) and the vacated policy as the basis for Petitioner's detention and denial of a bond hearing.

27. Without this Court's intervention, Petitioner faces ongoing, potentially prolonged detention without

any bond hearing and the risk of transfer or removal under an unlawful and vacated policy.

LEGAL STANDARD

28. A temporary restraining order is an extraordinary remedy issued to preserve the status quo and prevent irreparable harm before a full adjudication on the merits. Courts consider: (1) likelihood of success on the merits; (2) threat of irreparable harm; (3) balance of equities; and (4) the public interest. See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). The same standard applies to preliminary injunctions. The Supreme Court applies similar factors in evaluating stays of removal. See *Nken v. Holder*, 556 U.S. 418 (2009).

ARGUMENT

I. Petitioner Is Likely to Succeed on the Merits

A. The INA Requires Use of 8 U.S.C. § 1226(a), Not § 1225(b)(2)(A), for Interior Arrests Like Petitioner's

29. The INA establishes distinct detention authorities. Section 1225(b) governs certain “applicants for admission,” generally those who are “arriving” or encountered at or near the border. By contrast, 8

U.S.C. § 1226(a) authorizes the arrest and detention of noncitizens already present in the United States pending a decision on removability and expressly provides for discretionary release on bond or conditional parole.

30. DHS’s July 8, 2025 Policy collapses this statutory distinction by directing ICE to treat noncitizens who entered without inspection and are arrested in the interior as “applicants for admission” subject to mandatory detention under § 1225(b)(2)(A), solely because they are charged as inadmissible under 8

U.S.C. § 1182(a)(6)(A)(i), thereby eliminating bond hearings.

31. In *Maldonado-Bautista*, after analyzing the statutory text and structure, the district court held that the INA unambiguously requires that interior arrests of noncitizens who entered without inspection be governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and concluded that the DHS Policy is unlawful.

The court granted partial summary judgment to the plaintiffs, certified a nationwide Bond Eligible Class of similarly situated noncitizens, and granted classwide vacatur of the DHS Policy under the APA.

32. Petitioner falls within the same category as the Maldonado-Bautista plaintiffs and the certified class: she entered without inspection, has no prior removal order, was arrested in the interior, and is detained solely under 8 U.S.C. § 1182(a)(6)(A)(i) pursuant to the DHS Policy, without access to a bond hearing. Because the INA's text and Maldonado-Bautista's reasoning confirm that § 1226(a) governs Petitioner's custody, and because the DHS Policy has been vacated, Petitioner is likely to succeed on her claim that her detention under § 1225(b)(2)(A) is *ultra vires* and unlawful.

B. The DHS Policy and Petitioner's Detention Violate Due Process and the APA

33. By denying Petitioner any individualized custody determination or bond hearing, DHS has deprived her of a meaningful opportunity to seek release, contrary to the statutory scheme and due process. Under

§ 1226(a), noncitizens like Petitioner are entitled to an initial custody determination and the opportunity to seek bond before an Immigration Judge.

34. The DHS Policy is arbitrary, capricious, and not in accordance with law, and in excess of statutory authority, in violation of 5 U.S.C. § 706(2)(A) and (C). It contradicts the plain text and structure of the INA and departs from long-standing practice treating interior arrests after

entry without inspection as governed by § 1226(a), without a reasoned explanation. The Maldonado-Bautista court has already held the Policy unlawful under the APA and has vacated it on a classwide basis.

35. Petitioner's detention pursuant to a vacated policy and under the wrong statutory provision, without access to a bond hearing, violates the INA, due process, and the APA. At a minimum, she has raised serious questions going to the merits and, in fact, demonstrates a strong likelihood of success.

Petitioner Will Suffer Irreparable Harm Absent a TRO

36. Prolonged immigration detention without lawful authority and without a bond hearing constitutes irreparable harm. Petitioner's continued confinement represents an ongoing deprivation of liberty that cannot be remedied by monetary damages. The separation from her broader family and the impact of confinement on her and her minor child's physical, emotional, and psychological well-being are irreparable.

37. If Respondents remove or transfer Petitioner under an unlawful detention authority before this Court can rule, her habeas corpus claims could become moot or significantly more difficult to litigate, causing further irreparable harm. A TRO preserving the status quo is necessary to prevent this harm.

II. The Balance of Equities Favors Granting Relief

38. The balance of equities strongly favors Petitioner. A short-term TRO requiring either her release under § 1226(a), a prompt custody redetermination hearing under § 1226(a), or a sworn justification for continued detention imposes minimal burden on the government. ICE routinely conducts custody reviews and appears before Immigration Judges for bond hearings.

39. By contrast, denial of relief leaves Petitioner in unlawful detention without any individualized custody review under a policy that another federal court has declared unlawful and vacated on a classwide basis. The equities therefore weigh decisively in favor of temporary relief.

III. The Public Interest Supports the Requested TRO

40. public interest is served when the government adheres to statutes enacted by Congress, complies with final judgments of federal courts, and respects constitutional limits. A TRO ensuring that Petitioner is detained, if at all, under the proper statutory authority and with access to the procedural protections Congress provided advances these interests.

41. Ensuring that detention authority is exercised lawfully, and that individuals are not held under a vacated and unlawful policy, is consistent with the public's interest in fairness, regularity, and the rule of law.

SPECIFIC ACTS TO BE RESTRAINED

42. Petitioner seeks an order temporarily restraining Respondents, their officers, agents, employees, and all persons acting in concert with them from:

- a. Detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A) or treating her as an “applicant for admission” for purposes of mandatory detention based solely on her charge under 8 U.S.C. § 1182(a)(6)(A)(i);
- b. Removing Petitioner from the United States while this TRO is in effect;
- c. Transferring Petitioner from the South Texas Family Residential Center to any other detention facility outside the Western District of Texas, San Antonio Division, while this TRO is in effect, absent further order of this Court; and
- d. Taking any steps to effectuate her removal from the United States without first providing the notice required by the Court’s order.

REQUESTED RELIEF

43. Petitioner respectfully requests that the Court enter an individualized Temporary Restraining Order and Order to Show Cause providing the following relief:

- a. Detention Authority / Bond Hearing. Temporarily restrain Respondents from detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A). Require Respondents either (i) to release Petitioner

under reasonable conditions of supervision pursuant to 8 U.S.C. § 1226(a); or (ii) to provide Petitioner with an individualized custody redetermination hearing under § 1226(a) before an Immigration Judge within seven (7) days of the Court's order.

b. No Removal or Transfer. Temporarily restrain Respondents, and all those acting in concert with them, from removing Petitioner from the United States or transferring her outside this District during the pendency of this TRO, absent further order of the Court.

c. Notice of Removal. Require Respondents to provide at least seventy-two (72) hours' written notice to the Court and to Petitioner's counsel before any attempt to remove Petitioner after expiration of this TRO.

d. Show Cause. In the alternative to immediate release, order Respondents to show cause within seventy-two (72) hours of the Court's order why Petitioner's continued custody is lawful, by filing a sworn return identifying the statutory basis for detention and explaining how that basis is consistent with the INA and with the judgment and vacatur entered in *Maldonado-Bautista v. Noem*.

e. Security. Waive security under Federal Rule of Civil Procedure 65(c) in light of Petitioner's indigence and the fact that Respondents are the United States and its officers.

f. Hearing. Set an expedited hearing on whether this TRO should be converted into a preliminary injunction.

CERTIFICATION REGARDING NOTICE

(Fed. R. Civ. P. 65(b)(1)(B))

44. Petitioner certifies that immediate and irreparable injury will occur before Respondents can be heard in opposition. Petitioner is presently detained under an unlawful and vacated detention policy without access to a bond hearing and faces ongoing deprivation of liberty, as well as the risk of transfer or removal that could frustrate this Court's jurisdiction.

45. Petitioner has provided or will promptly provide notice of this filing to the United States Attorney's Office for the Western District of Texas and to agency counsel for Todd M. Lyons (ICE) 500 12th Street, SW Washington, DC 20536; Miguel Vergara (FIELD DIRECTOR OFFICE) 1777 NE Loop 410 Floor 15 San Antonio, TX 78217; Jose Rodriguez Jr. (WARDEN) 300 El Rancho Way, Dilley, TX 78017. Through U.S certified mail.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant this Emergency Motion for Temporary Restraining Order and Order to Show Cause and enter the accompanying proposed order.

Dated: 12/26, 2025

Respectfully submitted,

DIANA MENDOZA.
DIANA KARINA MENDOZA-BARRETO (PRO SE)

14108 NIGHTVIEW COVE, PFLUGERVILLE, TX, 78660