

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

Deysi Sandra CATOTA TOAPANTA (A )



Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Marisa Flores, Director, El Paso Field Office
Immigration and Customs Enforcement, and

Curtis Taylor, Major General, U.S. Army at
Camp Bliss.

Respondents.

Case No. 3:26-cv-121

**VERIFIED PETITION
FOR WRIT OF
HABEAS CORPUS**

Expedited Handling Requested

INTRODUCTION

1. Petitioner, Ms. Deysi Sandra CATOTA TOAPANTA, (“CATOTA TOAPANTA”), by and through her attorney, Brendan K. McBride, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement (“ICE”) to release COTOTA TOAPANTA from ICE detention, or in the alternative to enjoin their

transfer to a facility outside of the Western District of Texas and to provide Petitioner with a bond hearing to permit release pending the completion of any immigration proceedings.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, c. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

3. Federal question jurisdiction exists because CATOTA TOAPANTA seeks to challenge this custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

4. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (“DHS”). *Denmore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because CATOTA TOAPANTA is detained within the Western District of Texas.

6. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this district.

PARTIES

7. Petitioner is a citizen of Ecuador and a resident of Minneapolis, Minnesota, who is currently being held at the ERO El Paso Camp East Montana detention facility in El Paso, Texas. Petitioner is under the direct control of the respondents and has no scheduled release date.

8. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of CATOTA TOAPANTA.

9. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Western District of Texas, supervises the ICE field offices, and is legally responsible for pursuing CATOTA TOAPANTA detention and removal. As such, Respondent Noem is a legal custodian of CATOTA TOAPANTA.

10. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

11. Respondent Marisa Flores is being sued in her official capacity as the Field Office Director for the El Paso Field Office for ICE within DHS. In that capacity,

Field Office Director Marisa Flores has supervisory authority over the ICE agents responsible for detaining CATOTA TOAPANTA. The address for the El Paso Field Office is 1541 Montana Ave, Suite E, El Paso, Texas, 79936.

12. Respondent Major General Curtis Taylor is being sued in his official capacity as the Commanding General responsible for the ERO El Paso Camp East Montana Detention Center within the U.S. Army Fort Bliss. Because Petitioner is detained in the ERO El Paso Camp East Montana Detention Center, Major General Taylor has immediate day-to-day control over Petitioner.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

13. Petitioner is a 31 year old woman. She is a resident of Minneapolis, Minnesota and a citizen of Ecuador. She is also an asylum applicant, who has lived in the United States since her entry on August 10, 2023.

14. CATOTA TOAPANTA has an active pending asylum application (A ) , and does not have a final order of removal.

15. CATOTA TOAPANTA is a humble, dedicated and loving mother, wife, neighbor, and member of her community. CATOTA TOAPANTA has two young children (ages 5 and 6) who rely on her for love, care and support. She has been deeply involved in her community, where she has helped organize sports games (namely soccer and volleyball) for the neighborhood's children and families. In CATOTA TOAPANTA's free time, she would spend time with her family, friends and neighbors. She regularly attended church, with her husband, children and

neighbors, where she would pray for God's protection over all of their loved ones. As an expression of CATOTA TOAPANTA's deeply caring nature and appreciation for her community during the holiday season, she and her husband went to their children's school and gave gifts to the children's educators. They also expressed many thanks to the local food pantry, where the volunteers then gifted them several turkeys. CATOTA TOAPANTA chose to cook a community meal with these turkeys and invite several neighbors, as an expression of her care and appreciation. She has a strong, unwavering love for her partner, children and community.

16. Respondent ICE arrested CATOTA TOAPANTA on 1/10/2026. As CATOTA TOAPANTA and her family were arriving home, four ICE agents in masks and tactical gear approached them from unmarked vehicles and forcefully separated CATOTA TOAPANTA from her family. During this action, ICE agents broke windows and attempted to kick in the door of the home. They did not present a judicial warrant for this action.

17. Petitioner has been brought to ERO El Paso Camp East Montana detention facility in El Paso, Texas.

18. Detaining CATOTA TOAPANTA is an expensive and pointless endeavor. CATOTA TOAPANTA respectfully seeks the opportunity to return home and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

19. Pending the adjudication of this Petition, CATOTA TOAPANTA further seeks an order restraining the Respondents from transferring Petitioner to a location

outside of the State of Minnesota, so that the jurisdiction of this Court is not impeded, and so that Petitioner remains accessible to legal counsel and loved ones.

STANDARD OF LAW

20. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The “Great Writ” has been referred to by US Courts 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). A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C. § 22441(c)(3).

21. The Court must grant a petition for writ of habeas corpus or issue an order to show cause 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.*

22. Courts have jurisdiction to hear habeas petitions filed by noncitizens who have no final removal order, whose challenges to their arrest and detention are “independent of any future removal order.” *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025). Nor is a petitioner required to first exhaust administrative remedies where, as here, petitioner is not appealing a final order of removal. *Id.* at 6.

23. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

24. In July of 2025, Respondent DHS began ignoring the decades-long consensus of how 8 U.S.C. § 1225(b)(2) should be interpreted, which the Board of Immigration Appeals (“BIA”) articulated in a subsequent ruling. *In re: Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). Respondents suddenly claim that individuals who have been residing within the United States for more than two years are somehow “seeking admission,” simply because they may have pending claims for asylum or other forms of status.

25. However, this Court and the majority around the country have made clear that 8 U.S.C. § 1225(b)(2) only authorizes detention for noncitizens who are at the border seeking physical entry at the time of detention, not those who have lived within the United States for more than two years, and whose detention is discretionary and governed by 8 U.S.C. § 1226(a).

In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect. See *Lopez-Campos v. Raycraft*, — F. Supp. 3d —, — n.5, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); see, e.g., *Jimenez v. FCI Berlin, Warden*, — F. Supp. 3d —, — & n.9, 2025 WL 2639390, at *10 & n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *Lopez Santos*, 2025 WL 2642278, at *5; *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025).

Lopez-Arevelo, 2025 WL 2691828, at 8.

26. Here, Petitioner was apprehended within the United States, not at a border while seeking entry. Respondents wrongly assert 8 U.S.C. § 1225(b)(2) as a basis for detaining CATOTA TOAPANTA without a hearing, when instead the default rule is that detention of noncitizens residing within the U.S. must be pursuant to 8 U.S.C. § 1226(a). *See Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026). Here the Respondents are not purporting to invoke § 1226(a) as the basis for Petitioner's detention. The rule that Respondents invoke, 8 U.S.C. § 1225(b)(2), does not support Petitioner's ongoing detention.

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment Due Process

Respondents are Confining Petitioner without A Valid Legal Basis or any Semblance of Due Process.

27. Petitioner realleges and incorporates by reference the allegations contained above.

28. CATOTA TOAPANTA has due process rights as a resident of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

29. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural

safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

30. Here, all three factors favor the petitioner.

31. First, CATOTA TOAPANTA has a significant private interest at stake. A person's interest in freedom from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”). CATOTA TOAPANTA is wrongfully confined, a direct attack on Petitioner’s liberty interests.

32. Second, CATOTA TOAPANTA will continue to be deprived of this interest if the current procedure (detaining CATOTA TOAPANTA without a legal basis) is followed. There is no rational explanation for detaining CATOTA TOAPANTA. Respondents’ purported basis for detaining Petitioner under 8 U.S.C. 1225(b)(2) has been soundly rejected by this court. *See, e.g., Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026).

33. Lastly, the Government has no legitimate interest in refusing to follow its own rules. CATOTA TOAPANTA poses no safety threats to the community. Releasing Petitioner, or at a minimum holding a bond hearing, would in fact *save* the government the resources and expense of continued imprisonment.

34. The placement of CATOTA TOAPANTA detention pending the resolution of ongoing immigration proceedings violates CATOTA TOAPANTA's constitutional rights to due process guaranteed in the Fifth Amendment.

COUNT TWO

Immigration and Nationality Act, 8 U.S.C. § 1226

Petitioner's Ongoing Detention Pursuant to 8 U.S.C. § 1225(b)(2) is Unlawful because Petitioner is not Seeking Admission and therefore cannot be held under that Authority

35. Petitioner realleges and incorporates by reference each and every allegation contained above.

36. Respondents violate the Immigration and Nationality Act by attempting to apply mandatory detention through 8 U.S.C. § 1225(b)(2), to Petitioner.

COUNT THREE

Violation of the Administrative Procedure Act

Detaining Petitioner Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225(b)(2) violates the Administrative Procedure Act

37. CATOTA TOAPANTA re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

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

39. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

40. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens could properly be detained under § 1226(a), but would then be eligible for release on bond unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

41. Nonetheless, the Board has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

42. Respondents through its recent administrative decision failed to articulate any reasoned explanations for new interpretation of the Act. The Board's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

43. The application of § 1225(b)(2) to CATOTA TOAPANTA is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

REMEDY

44. An available remedy for Respondents' unlawful conduct as outlined in this complaint is for Petitioner to be released.

45. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas v. Davis*, 533 U.S. 678, 687, 690 (2001) (quoting *Jackson*

v. Indiana, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose, there is no indication that Petitioner’s detention was based on any facts that might indicate that Petitioner should be in custody.

46. Since Section 1225 does not apply to noncitizens who are in Petitioner’s situation—who have been detained while residing within the United States for more than two years, as opposed to those who are detained while in the process of physically entering the United States, the law that Respondents are using to detain Petitioner simply does not apply so as to authorize Petitioner’s detention. *See Lopez-Arevelo*, 2025 WL 2691828, at 8 and *Acosta Dominguez*, 2026 WL 67200.

47. When a habeas petitioner’s detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the “typical remedy” for “unlawful executive detention”).

48. Here, where detention is unlawfully based on 8 U.S.C. § 1225, which does not apply to Petitioner, release is an appropriate remedy.

REQUEST FOR ORDER TO SHOW CAUSE

49. Within three days, unless good cause for a delay is shown, “[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

50. The Petitioner, respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court's order, showing cause, if any, why a writ of habeas corpus should not be granted.

PRAYER FOR RELIEF

WHEREFORE, CATOTA TOAPANTA prays that this Court grant the following relief;

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from moving Petitioner outside of the jurisdiction of the Western District of Texas;
- (3) Issue an Order requiring Respondents to show cause as to why Petitioner should not be released immediately, or in the alternative afforded a bond hearing;
- (4) Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days; and
- (5) Grant any other and further relief that this Court may deem just and proper.

Date: 1/22/2026



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