

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION

<b>Maricela Aguirre Torres,</b>	X	
<i>Petitioner,</i>	X	
	X	
v.	X	Case No.:
	X	
<b>Pamela Jo Bondi,</b> U.S. Attorney General,	X	
U.S. Department of Justice; <b>Kristi Noem,</b>	X	
Secretary, U.S. Department of Homeland	X	
Security; <b>Garrett Ripa,</b> Field Office Director,	X	
U.S. Immigration and Customs Enforcement,	X	
Miami, Florida,	X	
<i>Respondents.</i>	X	
_____	/	

PETITION FOR A WRIT OF HABEAS CORPUS  
REQUEST FOR EXPEDITED HEARING  
REQUEST FOR ORAL ARGUMENT

This is an action for habeas corpus relief under 28 U.S.C. § 2241 and the Suspension Clause of the United States Constitution. Petitioner seeks an Order requiring either his release from the custody of U.S. Immigration and Customs Enforcement (“ICE”) or, alternatively, ordering that he receive a custody redetermination hearing before an Immigration Judge in accordance with 8 U.S.C. §1226 and 8 C.F.R. §1003.19.


### **Subject Matter Jurisdiction**

1. That this Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §2241 *et seq.*, and Article I, §9, Clause 2 of the United States Constitution (“Suspension Clause”). See INS v. St Cyr, 533 U.S. 289 (2001); Demore v. Kim, 155 L.Ed. 2d 724, 123 S.Ct. 1708 (2003); Zadvydas v. Davis, 533 U.S. 678 (2001).
2. Petitioner is in custody for purposes of habeas corpus relief. He is currently detained in the custody of ICE at the Broward Transitional Center (“BTC”) located in Pompano Beach, Florida. As will be explained in more detail, *infra*, Petitioner is currently detained under color of the authority of the United States of America.

### **Venue**

3. That venue lies in the Ft. Lauderdale Division of the U.S. District Court for the Southern District of Florida because this is the judicial district in which Petitioner is currently detained by Respondents.

### **Parties**

4. That Petitioner, **Maricela Aguirre Torres** (A ) is a native and citizen of Mexico.
5. That Respondent, **Pamela Jo Bondi**, is the Attorney General of the United States. She is the cabinet level Secretary responsible for the Executive Office for Immigration Review (“EOIR”), a component agency within the

United States Department of Justice (“USDOJ”). Defendant Bondi is being sued in an official capacity.

6. That Respondent, **Kristi Noem**, is the Secretary of Homeland Security and she is being sued in an official capacity. In her official capacity, Respondent Noem is in charge of enforcing the immigration laws of the United States. It is Respondent Noem’s refusal to release Petitioner from custody that is the subject of this petition.
7. That Respondent, **Garrett Ripa**, is the Field Office Director of ICE’s Miami Field Office and is being sued in an official capacity. Respondent Ripa exercises authority over immigration enforcement matters within the Miami Field Office’s jurisdiction. It is Respondent Ripa’s decision to not effectuate Petitioner’s release that is the subject of this petition.

#### **Statement of Claim**

8. That Petitioner is a native and citizen of Mexico who last arrived in the United States without inspection in or about 1995.
9. That Petitioner concedes that she is an “alien” as defined at 8 U.S.C. §1101(a)(3).
10. That on or about January 20, 2026, the Department of Homeland Security (“Department”) issued a Form I-862, Notice to Appear (“Form I-862” or “NTA”), against Petitioner.

11. That the aforementioned Form I-862 initiated administrative removal proceedings before the U.S. Immigration Court and charges that Petitioner is inadmissible to the United States in violation of 8 U.S.C. §1182(a)(6)(A)(i) as “an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.”
12. That Petitioner is currently scheduled to appear before the Miami Immigration Court for an initial master calendar hearing that is currently scheduled to occur on February 4, 2026.
13. That on or about January 16, 2026, Petitioner was apprehended by ICE’s Office of Enforcement and Removal Operations (“ERO”).
14. That upon apprehending an alien, ERO is charged with making an initial custody determination as provided at 8 U.S.C. §1236 and 8 C.F.R. §236 *et seq.*
15. That as is common practice, ERO generally enters a “NO BOND” determination upon its initial apprehension of an alien who arrived in the United States without inspection and/or at a place other than designated.
16. That upon information and belief, Petitioner submits that ERO entered a “NO BOND” initial custody determination with reference to her.

17. That the Code of Federal Regulations provides a process through which an alien can seek a custody redetermination hearing before an Immigration Judge (“IJ”). *See generally* 8 C.F.R. §1003.19.
18. That on or about September 5, 2025, the Board of Immigration Appeals (“Board”) issued a precedent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).
19. That the question presented in Matter of Yajure Hurtado pertains to whether certain aliens who arrived in the United States without inspection can request a custody redetermination hearing in accordance with 8 U.S.C. §1226 and its implementing regulation set forth at 8 C.F.R. §1003.19.
20. That the current version of §1226 became part of the Immigration and Nationality Act (“INA” or “Act”) as a result of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546 (Sept. 30, 1996) (“IIRIRA”). Most of the changes made to the INA through enactment of the IIRIRA became effective on April 1, 1997.
21. That at all times beginning on or after April 1, 1997 and through publication of Matter of Yajure Hurtado, Petitioner submits that she, and other similarly situated aliens, routinely requested and routinely received custody redetermination hearings in accordance with §1226 and 8 C.F.R. §1003.19.

22. That prior to IIRIRA's April 1, 1997 effective date, the legacy Immigration and Naturalization Service ("INS") published guidance relating to the questions presented herein. 62 Fed. Reg. 10312 (Mar. 6, 1997). This guidance includes the following passage:

"[a]s for non-criminal aliens, the rule reflects the new \$1,500 minimum bond amount specified by IIRIRA. Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination...."

Several commenters stated that Sec. 236 of the proposed rule as written is a reversal of long established procedure that provides that a noncriminal alien is presumptively eligible for release. The Service has been strongly criticized for its failure to remove aliens who are not detained. A recent report by the Department of Justice Inspector General shows that when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States. The mandate of Congress, as evidenced by budget enhancements and other legislation, is increased detention to ensure removal. Accordingly, because the Service believes that the regulation as written is consistent with the intent of Congress, the interim rule has not modified the proposed rule in this regard." *Id.* at 10323.

23. That on or about July 8, 2025, ICE issued new policy guidance entitled

*Interim Guidance Regarding Detention Authority for Applicants for Admission.*

This guidance instructs those in the field that

"the only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. §1226](a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. §1227], with the exception of those subject to mandatory detention under [8 U.S.C. §1226](c)."

24. That Petitioner is being held indefinitely without access to an

individualized bond hearing, which violates the Due Process Clause of the

Fifth Amendment of the U.S. Constitution. Petitioner's indefinite

detention is based solely on the Board's decision in Matter of Yajure Hurtado.

25. That Petitioner submits that Matter of Yajure Hurtado was wrongly decided.
26. That upon information and belief, and in light of the Board's publication of Matter of Yajure Hurtado, Petitioner submits that no IJ anywhere within the United States will consider Petitioner's request seeking a custody redetermination hearing in accordance with the language at 8 C.F.R. §1003.19. Rather, an IJ is required to follow all binding Board precedent unless otherwise overruled. *See* 8 C.F.R. §1003.10(d); Matter of Anselmo, 20 I&N Dec. 25 (BIA 1989) (Immigration Judge must follow binding Circuit precedent within that same Circuit where any Circuit Court precedent conflicts with any Board precedent decision).
27. That the Board's decision in Matter of Yajure Hurtado improperly stripped IJ's of the authority to set bond for individuals who entered the United States without inspection. In so doing, Petitioner submits that Matter of Yajure Hurtado miscategorizes individuals who entered without inspection and who have been present in the United States for an extended period of time thereafter as "applicants for admission" who are ineligible to be released on bond.
28. That the Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of

“life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” Zadvydas v. Davis, 533 U.S. 678, at 693 (2001).

29. That in Jennings v. Rodriguez, 138 S. Ct. 830, 842 (2018), Justice Alito explained that “§1225 applies primarily to aliens seeking entry into the United States.” By contrast, “§1226 applies to aliens already present in the United States.” Id. at 846. “Section 1226(a) creates a default rule for those aliens by permitting-but not requiring-the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond[.]” Id. at 846.

30. That Petitioner posits that her ongoing detention, and her eligibility for consideration of release on bond is governed by §1226, not by §1225. At present, the undersigned is aware of dozens of individualized cases in which a district court has ruled that the Board misapplied §1225(b)(2)(A) to those who are not presently “seeking admission,” but who have instead been physically present in the United States for an extended time.

31. That in Duvallon Boffill v. Field Office Director, Miami Field Office, et al., Case No. 25-cv-25179 (S.D. Fla. Nov. 20, 2025), Judge Becerra, sitting in the Ft. Lauderdale Division of the U.S. District Court for the Southern

District of Florida, considered the case of a Cuban national who, like the Petitioner herein, had entered the United States without inspection.

Turning to the question of whether this alien had been apprehended in accordance with §1225 or §1226, the Court concluded that

“[f]rom the outset ... both [U.S. Customs and Border Protection] and [the] [Department of Homeland Security] proceeded under section 1226. Specifically, CBP’s Order of Release on Recognizance stated that Petitioner was being released on his own recognizance ‘[i]n accordance with section 236 of the Immigration and Nationality Act,’ codified at section 1226. Additionally, the [Form I-862, Notice to Appear] that DHS issued to Petitioner did not classify him as an ‘arriving alien.’ Instead, the NTA charged him as ‘present in the United States without admission or parole.’ This classification places him squarely within section 1226. *See e.g., Pizarro Reyes*, 2025 WL 2609425, at \*8 (emphasizing ICE’s selection of ‘present’ rather than ‘arriving’ on the NTA as evidence that §1226 applied); *see also Hyppolite v. Noem*, No. 25-4304, 2025 WL 2829511, \*8 (E.D.N.Y. Oct. 6, 2025) (respondent’s initial classification of petitioner ‘certainly is relevant to the Court’s assessment of the credibility and good faith of ‘Respondents’ new position as to the basis for [Hyppolite’s] detention, which was adopted post hoc and raised for the first time in this litigation.’) (citation omitted); *Perez v. Berg*, No. 25-cv-494, 2025 WL 2531566, at \*2 (D. Neb. July 24, 2025) (‘The Court notes that the government itself charged Petitioner as an alien present in the United States who has not been admitted or paroled rather than an arriving alien.’) (quotations omitted).

In addition, ‘[w]hereas [section] 1225 governs removal proceedings for ‘arriving aliens,’ [section] 1226(a) serves as a catchall.’ *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at \*5 (E.D. Mich. Sept. 9, 2025). As the Supreme Court stated in *Jennings*, section 1226 ‘creates a default rule’ that ‘applies to aliens already present in the United States.’ *Jennings*, 583 U.S. at 303. The inclusion of a ‘catchall’ provision in section 1226, particularly following the more specific provision in section 1225, is ‘likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories.’ *Pizarro Reyes*, 2025 WL 2609425, at \*5; *see also Barrera*, 2025 WL 2690565, at \*4 (citation omitted). The circumstances surrounding Petitioner’s detention align with section 1226(a), not section 1225(b)(2). Indeed, other Courts in this Circuit and District have uniformly rejected Respondents’ expansive interpretation of section 1225. *See, e.g., Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-cv-24292, ECF No. [41], (S.D.

Fla. Oct. 10, 2025) (respondent's interpretation of the INA 'directly contravenes the statute' and 'disregards decades of settled precedent'); *see also* Pizarro Reyes, 2025 WL 2609425, at \*7 ('Finally, the BIA's decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under §1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation. '); Puga, No. 25-24535, 2025 WL 2938369, at \*3-6; Merino v. Ripa, No. 25-23845, 2025 WL 2941609, at \*3 (S.D. Fla. Oct. 15, 2025); Lopez v. Hardin, No. 25-cv-830, 2025 WL 2732717, at \*2 (M.D. Fla. Sept. 25, 2025); Alvarez v. Morris, 25-cv-24806, ECF No. [6], (S.D. Fla. Oct. 27, 2024) (collecting cases).

Petitioner's detention is governed by section 1226(a) and, therefore, he is entitled to an individualized bond hearing before an [Immigration Judge]. As such, Petitioner's mandatory detention under section 1225(b) without conducting a dangerousness and risk of flight determination rests on an incorrect statutory interpretation and contravenes the INA. Accordingly, Count I of the Petition is meritorious, and Petitioner is entitled to relief thereon." Id. at \*14-16.

32. That Petitioner submits that she has been denied the opportunity to receive meaningful custody review before an IJ as a result of the Board's publication of Matter of Yajure Hurtado and further submits that this denial violates well-established Due Process protections previously made available to Petitioner and to other similarly situated aliens.
33. That Petitioner's continued detention is not justified by an individualized assessment of flight risk or whether she poses a danger to the community. In so stating, Petitioner concedes that she must establish sufficient ties to the community such that she is not deemed a flight risk and would likewise be required to establish that her presence outside an immigration detention facility would not create any danger to the community at large.

34. That Petitioner submits that detention by the immigration authorities cannot be used as a punishment and should only be used when, following prescribed procedures, an alien is provided an individualized determination as to whether or not she poses either a risk of flight or may otherwise be deemed a danger to the community. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

### **Causes of Action**

35. **First Claim.** Petitioner's ongoing detention violates Petitioner's substantive and procedural due process rights under the Fifth Amendment of the United States Constitution. U.S. CONST. amend. V.

36. **Second Claim.** Petitioner's ongoing detention violates the Fourth Amendment of the United States Constitution because there are no reasonable, objective grounds for Petitioner's ongoing and indefinite detention. U.S. CONST. amend. IV.

### **Exhaustion**

37. That Petitioner challenges the constitutionality of her ongoing, indefinite and unlawful detention. She does not challenge the Department of Homeland Security's authority to conduct removal proceedings against her or any other action taken by the federal government.

38. That the Immigration and Nationality Act (“INA” or Act”) provides that

“[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. §1252(g).

39. That while Petitioner notes that the language at §1252(g) prohibits an alien from bringing an action challenging an agency decision to “commence proceedings,” Petitioner submits that her continued detention without any possibility of release violates her Constitutional rights as otherwise detailed in this Petition.

40. That Petitioner has exhausted her administrative remedies. The administrative process allows for no remedy for the injuries inflicted by Respondents’ actions as described herein. Rather, any IJ who receives a request for a custody redetermination hearing must deny any such request as a result the Board’s publication of Matter of Yajure Hurtado and its designation as a precedent decision. *See* 8 C.F.R. §1003.1(d).<sup>1</sup> Petitioner submits that no administrative remedies exist that would allow

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<sup>1</sup> “The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it. The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.”

consideration of any of the issues of concern described in this Petition before any administrative agency.

41. That to the extent that any administrative process may exist, exhaustion of administrative remedies, which is a prudential requirement, is not required here because any administrative process would be futile, and because Petitioner raises serious Constitutional questions herein.

### **Prayer For Relief**

Petitioner respectfully prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Consider this Petition and the associated requests for relief on an expedited basis;
3. Declare that Petitioner is currently detained in the custody of Respondents in violation of the Constitution and laws of the United States and that Petitioner is being detained indefinitely without any means of seeking any custody redetermination before the Office of the Chief Immigration Judge or before any other administrative agency;
4. Grant temporary and permanent injunctive relief requiring Petitioner to be released from ICE's custody. Alternatively, Petitioner would request that this Court grant temporary and permanent injunctive relief requiring an Immigration Judge to complete a custody redetermination hearing within a time certain following issuance of any such order;

5. Award Petitioner his costs and reasonable attorneys' fees in this action as provided by 28 U.S.C. §2412 or other statute; and
6. Grant such further relief as the Court deems just and proper.

Dated: January 22, 2026

Respectfully submitted,

/s/ David Stoller /s/  
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### Documents in Support of Complaint

**Maricela Aguirre Torres v.  
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- Exhibit 1: Online Detainee Locator printout relating to Petitioner;
- Exhibit 2: *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312 (Cover Page) & 10323 (Supplemental Information) (Mar. 6, 1997).
- Exhibit 3: *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025).