

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

KEILY NOHEMI VELASQUEZ MORALES,

Petitioner,

v.

Joel GARCIA , in his official capacity as Field Office Director of the El Paso Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; WARDEN, El Paso Service Processing Center; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Case No. 3:26-cv-00233

**VERIFIED PETITION
FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. This case challenges the unlawful arrest and mandatory immigration detention of 20-year-old Keily Nohemi Velasquez Morales ("Keily"), who has a pending immigration benefits application and only one minor criminal charge for a traffic related offense.

2. After entering the United States, Keily was briefly detained in a humanitarian shelter for children run by the Office of Refugee Resettlement, as required by law for youth who enter the United States unaccompanied, and the government placed her into removal proceedings.

The government then released her to the care of her brother in Minnesota, after finding that she was not dangerous or a flight risk.

3. On July 18, 2025, US Citizenship and Immigration Services (“USCIS”) received Keily’s I-360 application for Special Immigrant Juvenile Status (“SIJS”). On July 22, 2025, this application was erroneously rejected. On August 11, 2025, USCIS again received the same application with a request for supervisory review of the alleged incomplete portions cited as the reason for rejection. To date, no receipt notice has been provided for this application.

4. Despite Keily’s prior release from immigration custody and her pending application for SIJS, Respondents arrested Keily in the very early hours of January 10, 2026. Since then, she has been locked in immigration detention centers in Minnesota and Texas, deprived of her liberty, separated from her family, and deprived meaningful access to her attorney. Keily was first at El Paso Camp East Montana and then was quickly moved again to the EL Paso Service Processing Center. Keily’s attorney has scheduled a total of 4 virtual appointments through the Enforcement and Removal Operations (“ERO”) e-filing website as directed for the detention facilities Keily has been held at. Keily was only allowed to call 40 minutes late for the first appointment, after counsel was no longer available to take the call. The following appointment was cancelled by the facility because Keily was transferred. Since she has been held at El Paso Service Processing Center, two scheduled calls have been missed. When Keily was able to reach her attorney from the detention facility, the call repeatedly dropped when counsel attempted to add an interpreter to the call.

5. Keily’s detention is unlawful for three reasons.

6. First, due process requires that the government show, in a pre-deprivation hearing, materially changed circumstances before re-detaining Keily. When the government released Keily from its custody at a humanitarian shelter approximately 2.5 years ago, it determined that she was

neither a flight risk nor a danger to the community. Keily has neither serious criminal charges pending, nor serious criminal convictions, and was entitled to a pre-deprivation hearing prior to being re-detained.

7. Second, the government has no legitimate interest in detaining Keily when she is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, her detention also violates her substantive due process rights, equally requiring her immediate release.

8. Third, the government's likely claim that Keily is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is untenable in light of the fact that she entered the United States without inspection, was previously detained and released from detention as an unaccompanied child—under an entirely separate statutory scheme—and has since lived peacefully in the United States for nearly 3 years and has a pending application for SIJS. Courts throughout the United States have overwhelmingly rejected Respondents' expansive interpretation of 8 U.S.C. § 1225(b)(2)(A). *See, e.g., Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025) (collecting cases); *Maldonado Bautista v. Santacruz*, No. 25-cv-0187, 2025 WL 3288403 (C.D. Cal. Dec. 18, 2025) (certifying nationwide class of certain noncitizens who entered without inspection and extending declaratory relief of bond eligibility to the class); *JOSE MANUEL GALLARDO BRITO, Petitioner v. ROSE THOMPSON, WARDEN KARNES COUNTY IMMIGRATION PROCESSING CENTER; KRISTI NOEM, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, ATTORNEY GENERAL OF THE UNITED STATES; TODD M. LYONS, ACTING DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; AND MIGUEL VERGARA, SAN ANTONIO FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; Respondents*, No. SA-26-

CA-00079-XR, 2026 WL 195761 (W.D. Tex. Jan. 22, 2026) (holding that a respondent who entered the country without inspection in 2022 and was released under 8 U.S.C. § 1226 was not subject to mandatory detention and ordering his release). This renders Keily's current detention unlawful as in violation of the Immigration and Nationality Act ("INA") and her due process rights.

9. For these reasons, Keily respectfully asks this Court to hold her arrest and detention unlawful, order restoration of the status quo prior to her detention including her return to Minnesota and release from detention without restraints on her liberty, return of all possessions she had at the time of arrest including identification, and enjoin Respondents from re-detaining her without meaningful pre-detention process.

10. Keily also respectfully asks that this Court enjoin Respondents from transferring her outside of this District for the duration of this proceeding, unless or until she is returned to Minnesota and released from custody.

PARTIES

11. Petitioner Keily is a 20-year-old Guatemalan national who entered the United States as an unaccompanied child and has been residing here since she was 17. Prior to her arrest and detention, Keily was living with her brother and sister-in-law in Minneapolis, Minnesota. Keily has applied for SIJS and also has a claim for asylum though her application has not been filed yet.

12. Respondent Joel Garcia is sued in his official capacity as Field Office Director, El Paso Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement ("ICE"), which oversees ICE's operations in the part of Texas in which Keily resides. Respondent De Anda Ybarra is a legal custodian of Keily.

13. Respondent Warden is sued in his/her official capacity as the officer or agent in charge of the EL Paso Service Processing Center. Respondent Warden or another acting in the

capacity of person in charge of the EL Paso Service Processing Center, is a legal custodian of Keily.

14. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Keily.

15. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Noem is Keily's ultimate legal custodian.

16. Respondent Pamela Bondi is sued in her official capacity as Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct removal proceedings and bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Keily's removal and bond proceedings, and as such, she is a legal custodian of Keily.

JURISDICTION AND VENUE

17. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 ("The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require.").

18. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); and 28 U.S.C. § 2241 (habeas corpus).

19. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.

20. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391(c) because Respondents are employees, officers, and agencies of the United States, and because a substantial

part of the events giving rise to these claims occurred in this District. Venue is also proper under 28 U.S.C. § 2241(d) because Keily is detained at a facility within this District.

21. Administrative exhaustion is unnecessary because Keily is not appealing a final order of removal, and because it would be futile: it is Respondents' position that noncitizens in Keily's situation are subject to mandatory detention without access to a bond hearing, so she has no meaningful administrative remedies to exhaust. Furthermore, this court may choose to decide this issue regardless of exhaustion because it is fit for resolution and further delay will cause great hardship to Keily. *See Eden Isaias Arenas Santoyo, Petitioner, v. Grant Dickey, et al., Respondents.*, No. CV H-25-5555, 2025 WL 3724557, at *2 (S.D. Tex. Dec. 23, 2025).

LEGAL FRAMEWORK

RELEVANT FACTS AND PROCEDURAL HISTORY

22. Keily is a Guatemalan youth who fled her home country in 2023 when she was 17 years old after being [REDACTED].

23. DHS determined that Keily was an unaccompanied child under 6 U.S.C. § 279(g)(2). It then transferred her to ORR custody, as mandated by the TVPRA. The ORR subsequently determined that Keily should be released to the care of her brother under a sponsor care agreement, finding that she did not pose a flight risk or a danger to the community.

24. DHS issued Keily a Notice to Appear ("NTA"), the charging document that initiates removal proceedings, which charged her as removable under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) alleging that she is both present without being admitted or paroled and entered at a time and place other than as designated by the attorney general, and simultaneously and contradictorily she applied for admission at a port of entry without an authorized visa or travel document.

Keily has diligently pursued immigration relief

25. In October of 2023, approximately 2 months after she entered the United States, and far in advance of her first master calendar hearing that was scheduled for January of 2025, Keily joined the Mid-Minnesota Legal Aid (“legal aid”) waitlist for representation in pursuit of SIJS. In May of 2024, she was scheduled for an official intake and signed a retainer with a legal aid attorney to represent her. Keily’s legal aid attorney referred her for additional pro bono representation to obtain the necessary state court predicate order for her to apply for SIJS. Ultimately, another legal aid attorney was able to represent her in obtaining an at-risk juvenile guardianship order, and her guardianship order was signed by the Honorable Judge Julie Allyn on June 6, 2025.

26. Keily submitted her I-360 application for SIJS in July 2025, and after its erroneous rejection, promptly re-submitted it in August 2025.

Keily is arrested and held in detention

27. Prior to being detained, Keily lived with her brother and sister-in-law in Minneapolis and attended Wellstone High School.

28. Counsel received SMS messages from Keily that she was being detained by Immigration and Customs Enforcement and asking for help at 2:21 AM on Saturday, January 10, 2026. Keily was then quickly moved to two different detention facilities in Texas.

29. Since she has been detained, Keily has reported illness and poor detention conditions to her sister-in-law. She has had very limited ability to speak to her attorney.

FIRST CLAIM

**Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution
Substantive Due Process**

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

31. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And “[f]reedom 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.” *Zadvydas*, 533 U.S. at 690.

32. Because “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

33. Immigration detention is civil detention and must “bear a reasonable relation to the purpose for which the individual was committed” so that it remains “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (citation modified); see also *Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective); *Misirbekov v. Venegas*, 796 F.Supp.3d 436, 439 (S.D. Tex. 2025) (noting that detained immigrant must be released when “there is no significant likelihood” of removal).

34. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. See *Zadvydas*, 533 U.S. at 690-91; *Maldonado v. Macias*, 150 F.Supp.3d 788, 806 (W.D. Tex., 2015).

35. To satisfy substantive due process under the Fifth Amendment, a noncitizen's detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690; *Maldonado*, 150 F. Supp. 3d at 806.

36. Neither purpose is served by Keily's detention. Respondents have not made any claim that Keily presents a flight risk or a danger to the community, nor could they. When Keily was previously released from ORR custody in 2023, the government came to precisely the opposite conclusion.

37. Since then, Keily's ties to the US have only increased. Keily's parents abandoned her in Guatemala when she was only about 5 years old, forcing her to [REDACTED] Keily is afraid to return to Guatemala and [REDACTED] She has reunited with her brother and sister-in-law in the United States and built her life here. She has been attending Wellstone High School in Minneapolis, MN and is learning English as well as working towards a high school diploma. Since she has family and is pursuing her education here and is further afraid to return to [REDACTED] in Guatemala, she is not a flight risk.

38. Keily has no serious criminal convictions anywhere in the world and has only committed one minor traffic related offense. She is therefore not a danger to the community.

39. Because the government is not detaining Keily to serve legitimate interests in protecting against danger or flight risk, her detention violates substantive due process under the Fifth Amendment, and this Court should order her immediate return to Minnesota and release from custody.

SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the US. Constitution Procedural Due Process

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

41. Even “[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *Salerno*, 481 U.S. at 746.

42. Courts use the three-factor *Mathews v. Eldridge* test to determine what process is due to noncitizens challenging detention. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors assess: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

43. The *Mathews* factors weigh heavily in Keily’s favor. As to the first factor, Keily has a strong liberty interest in light of her prior release from custody and her pending application for SIJS. First, because she was previously released from custody as an unaccompanied child and not even subject to government monitoring, Keily possessed a weighty interest in her continued liberty. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, “when considering due process challenges to [discretionary noncitizen detention] other circuits . . . have applied the Mathews test”); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021) (applying Mathews test to § 1226(a) challenge); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (same). Additionally, Keily has applied for SIJS. If she is granted SIJS, she should be allowed to remain in the United States in order to remain eligible and apply for lawful permanent residency when her priority date becomes current, as required by 8 C.F.R. § 245.1(a).

44. As to the second factor, the risk of erroneous deprivation of her freedom as well as the value of procedural safeguards is high. Keily is a traumatized youth who was abandoned by her parents and fled her abusive aunt and home country before she was a legal adult. The greatest risk of her continued detention is further traumatizing her. The value of procedural safeguards is clear here where congress specifically enacted legislation to protect youth who have been abused, abandoned, or neglected through the SIJS process. *See* 8 U.S.C. § 1101(a)(27)(J). By doing so, congress recognized the vulnerability and importance of protecting the interests of these youth.

45. Finally, as to the third factor, Keily's ongoing detention imposes high fiscal and administrative burdens on Respondents. Excessive government resources have been expended not only to house, cloth, and feed her, where her family was responsible for providing for her previously. As of now, there is no indication of when exactly her detention might end and the resources might cease to be wasted. The DHS has taken the position that similarly situated individuals are subject to mandatory detention through the conclusion of their removal proceedings. Releasing Keily and requiring the government to provide a pre-deprivation hearing before re-detaining her stands to save the government money and effort wasted on erroneous detention. And unlawful detention and violation of noncitizens' constitutional rights disserve the public interest.

46. Respondents violated procedural due process by re-detaining Keily without adequate procedural protections before or after deprivation of her liberty. Therefore, this Court should order Keily's return to Minnesota and release without any restraints on her liberty and prohibit any re-detention absent pre-deprivation process.

THIRD CLAIM

**Violation of the Fourth Amendment to the U.S. Constitution,
8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d)
Unlawful Arrest**

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

48. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the person).

49. As a general matter, the Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). “Probable cause means a ‘fair probability’”; based on facts related to the individual. *Reitz v. Woods*, 85 F.4th 780, 790 (5th Cir. 2023); *see also City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 189 (5th Cir. 2018) (noting that immigration seizures “may occur where probable cause was lacking” and if so, such seizures “would violate the Fourth Amendment”).

50. The probable cause determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See Jones v. Lowndes Cnty., Miss.*, 678 F.3d 344, 348 (5th Cir. 2012). It must, however, occur “promptly after arrest,” unless there is a bona fide emergency or other extraordinary circumstance. *See id.* (citing *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991)).

51. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person “is likely to escape before a warrant can be obtained,” *i.e.*, is a flight risk *Id.*; *see also City*

of El Cenizo, 890 F.3d at 189 (noting that detaining individuals could result in Fourth Amendment violations). Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

52. It is unclear if a judicial warrant was issued for Keily's arrest, but unlikely given that there is no basis to conclude she is either a flight risk or a danger to the community. "Courts have ... made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases). At the moment of her seizure, Keily (a) had SIJS pending with USCIS, (b) was living at a stable home address, (c) was enrolled in and attending high school, and (d) had been in the United States for over 2 years and built strong ties to her community.

53. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Keily. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. She received no such judicial determination, yet her detention has continued well beyond the 48 hour benchmark referenced in *McLaughlin* and well beyond even the longer 72-hour limit permitted by the Fifth Circuit, *see Jones*, 678 F.3d at 348, rendering it presumptively unconstitutional.

54. Regulations also provide that a noncitizen arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d). During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8),

1236.1(c)(8). Similarly, upon information and belief, Keily has received no such custody determination.

55. Keily's re-detention after a prior release, without any new showing of probable cause, was also unconstitutional. When the government releases a person from detention, the purpose of their detention has been accomplished. *See Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) ("It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable."). As a result, any probable cause justifying the prior arrest, if any, is extinguished.

56. Thus, under the Fourth Amendment, the government cannot re-arrest someone without changed circumstances that amount to new probable cause. *See Carlson v. Landon*, 342 U.S. 524, 546-47 (1952) (holding that re-arrest for immigration detention required a new warrant after previous release from immigration detention on bail).

57. Respondents' presumably warrantless re-arrest of Keily, and their refusal to provide a prompt (or any) probable cause determination, violated the Fourth Amendment, the INA, and implementing regulations. Thus, this Court should order her immediate return to Minnesota and release from custody.

FOURTH CLAIM

Violation of the Immigration and Nationality Act and Procedural Due Process

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

59. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. First, 8 U.S.C. § 1226 "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under Section 1226(a) are generally entitled to a bond

hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8 U.S.C. § 1226(c).

60. Second, the INA provides for brief mandatory detention of noncitizens with final orders of removal. *See* 8 U.S.C. § 1231.

61. Third, the INA also provides for mandatory detention of two groups of noncitizens encountered “at the Nation’s borders and ports of entry.” *Jennings*, 583 U.S. at 288. The first group consists, generally, of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1). Notably, unaccompanied children are not subject to expedited removal. 8 U.S.C. § 1232(a)(5).

62. The second group subject to mandatory detention consists of anyone alleged to be an “applicant for admission” who is “seeking admission” and whom an “examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Based on their position in the proceedings of other similarly situated individuals, Respondents may claim that Keily is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But this statute does not apply to Keily, who was previously released from custody as an unaccompanied child, has resided in this country for years, and has a pending SIJS application.

63. An unaccompanied child who entered the United States and was released from government custody to a guardian cannot not be detained under § 1225(b)(2)(A) even after reaching adulthood. An unaccompanied child’s initial detention is governed by the TVPRA, which requires unaccompanied children—even those who turn 18 and age out of ORR custody—to be

placed in the “least restrictive setting available.” 8 U.S.C. § 1232(c)(2)(B). This is entirely inconsistent with mandatory detention under 8 U.S.C. § 1225(b)(2)(A). So is the fact of a released unaccompanied child spending years building a life in the United States before being re-detained in the interior. *See, e.g., Portillo Martinez v. Hyde*, No. 25-11909, 2025 WL 3152847 at *8 (D. Mass. Nov. 12, 2025).

64. Third and more broadly, courts across the United States have overwhelmingly concluded that noncitizens like Keily who entered the United States without inspection and are detained by ICE for removal proceedings while they are residing in the United States are detained under 8 U.S.C. § 1226, not § 1225(b)(2)(A)—and thus entitled to a bond hearing. *See, e.g., Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025) (collecting cases); *Trejo v. Warden of ERO El Paso East Montana*, 2025 WL 2992187, at *8 (W.D. Tex. 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *11 (W.D. Tex. 2025).

65. Accordingly, Keily’s current detention under 8 U.S.C. § 1225(b)(2)(A)—without access to a bond hearing as required by § 1226(a)—violates both the INA and Keily’s procedural due process rights. As this renders her detention unlawful from its inception, she should be released.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Enjoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings, except as to Minnesota under this prayer for relief;
- c. Declare that Petitioner’s arrest and detention violates the Due Process Clause of the Fifth Amendment; the Fourth Amendment; and the INA and implementing regulations.

- d. Order that Respondents return Kelly to the state of Minnesota;
- e. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody without restraints on her liberty beyond those that existed prior to her unlawful re-detention;
- f. Return all of Petitioner's possessions that were collected from her on detention including any identification;
- g. Notify Counsel at least 2 hours prior to Petitioner's release from detention including the time and location of release;
- h. If the court declines her plea for immediate return to Minnesota and release, in the alternative, order Petitioner returned to Minnesota and granted a bond hearing within 7 days of a decision in this case or released if no bond hearing can be scheduled in that time;
- i. Order that Respondents cannot re-detain Petitioner without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;
- j. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- k. Grant such further relief as this Court deems just and proper.

Date: January 29, 2026

/s/E. Michelle Drake
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Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because Petitioner's current detention makes Petitioner unable to submit one on Petitioner's own behalf. Upon information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: January 29, 2026

/s/E. Michelle Drake
E. Michelle Drake, Bar No. 0387366