

JUDGE LEON SCHYDLOWER
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED

JAN 29 2026

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

MIRIAN MELIDA AZAS POAQUIZA,

Petitioner,

v.

JOEL D. GARCIA, in his official capacity as
El Paso, Texas Field Office Director of U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as
Secretary of the United States Department of
Homeland Security, and PAMELA BONDI,
Attorney General of the United States,

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

Expedited Hearing Requested

EP 26CV0228

INTRODUCTION

1. As a member of Kichwa¹ indigenous community of Ecuador, Petitioner, Mirian Melida Azas Poaquiza, was denied employment and access to the same educational opportunities and medical facilities as non-indigenous members of her community. She also participated in peaceful protests at which her photo may have been taken and published by a newspaper, and her access to clean water was shut down. She fled Ecuador to seek protection in the United States.
2. When Petitioner arrived at the southern border of the United States with her

¹ Also known as Quichua.

husband and minor child on August 7, 2021, she was immediately apprehended and detained by immigration authorities.

3. On August 11, 2021, the Department of Homeland Security released Petitioner on her own recognizance (Exhibit "A"; Department of Homeland Security Notice of Custody Determination) with specific conditions of release with which Petitioner has fully complied, to wit:

- a. Reporting for any hearing or interview as directed by Immigration and Customs Enforcement (ICE) or the Executive Office for Immigration Review (EOIR);
- b. Surrendering for removal from the United States if so ordered;
- c. Reporting in person to the St. Paul, Minneapolis, ICE field office;
- d. Not changing her place of residence without first securing written permission from the officer listed on her release order;
- e. Not violating any local, State, or Federal Laws or ordinances;
- f. Assisting ICE in obtaining any necessary travel documents;
- g. Not associating with known gang members, criminal associates, or being associated with any such activity;
- h. Not committing any crimes while on the Order of Release on Recognizance;
- i. Reporting to any parole or probation officer within five business days and proving ICE with written verification of such;
- j. Providing ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document; and
- k. Providing ICE with written responses from the Embassy or Consulate

regarding her request. (Exhibit "A".)

4. On August 8, 2021, Respondents commenced removal proceedings against Petitioner in immigration court. The Immigration Court subsequently closed the proceedings on November 1, 2021 due to Respondents' failure to prosecute. Respondents commenced removal proceedings a second time on January 26, 2022. (Exhibit "B", Department of Homeland Security Notice to Appear.) Petitioner applied for asylum, withholding of removal, and protections under the Convention Against Torture before the immigration court on July 30, 2024, entitling Petitioner to present her claim with the due process rights under 8 U.S.C. § 1229a. (Exhibit "C", Form I-589.)
5. Released on her own recognizance from immigration custody over four years ago by Respondents, Petitioner has complied with every request, demand and requirement imposed by Respondents, in addition to complying with all the court and legal timelines for her asylum case.
6. Despite full compliance with her immigration court proceedings and the release conditions imposed upon her by ICE over four years ago, upon information and belief, on January 9, 2026, Petitioner was arrested and detained by Respondents without reason.
7. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' attempts to detain and transfer Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this District.
8. Pending the adjudication of her Petition, Petitioner seeks an order restraining the

Respondents from transferring her to a location where she cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration Enforcement's ("ICE") Enforcement and Removal Operations El Paso Office in the State of Texas.

JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
10. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

12. Venue is proper because Petitioner is in Respondents' custody in El Paso, Texas.² (Exhibit "D"). Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' custody. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to

² Upon information and belief at the time of this writing, Petitioner is being held at the "ERO El Paso Camp East Montana" in El Paso, Texas. See Exhibit "D."

show cause (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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.” *Ibid*.

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to 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).

15. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

16. Petitioner Mirian Melida Azas Poaquiza resides in Minneapolis, Minnesota and, on information and belief, is currently detained at the “El Paso Camp East Montana” ICE detention facility in El Paso, Texas. (Exhibit “D”).

17. Respondent Joel D. Garcia is the Field Office Director of the El Paso Field Office, Immigration and Customs Enforcement, Respondent Garcia is a legal custodian of Petitioner and has authority to release Petitioner.

18. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner’s arrest and detention. Respondent is

a legal custodian of Petitioner.

19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.
20. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.
21. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.
22. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

23. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
24. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).
25. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).
26. Removal proceedings described in section 240 of the INA are used to determine

whether individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. § 1229a.

27. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).
28. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol Relating to the Status of Refugees, “to which the United States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).
29. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.
30. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear.

8 U.S.C. § 1101(a)(42)(A).

31. Although a *grant* of asylum may be discretionary, the *right to apply* for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).
32. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
33. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
34. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.
35. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual’s release when the facts and circumstances warrant it. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are

limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

36. Custody is “separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.” 8 C.F.R. 1003.19(d); the Board of Immigration Appeals recently confirmed this is *Matter of E-Y-F-G-*, 29 I&N Dec. 103 (BIA 2025). Because Petitioner seeks to challenge her custody as a violation of the Constitution and the laws of the United States, jurisdiction is proper in this Court.
37. Federal district courts have jurisdiction pursuant to 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. *Denmore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Nielsen v. Preap*, 139 S. Ct. 954 (2019).
38. Despite limitations on judicial review at 8 U.S.C. § 1252, “§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). While this case involves pre-removal detention, the logic remains the same: detention is independent of removal and can be reviewed in a habeas action.

FACTUAL BACKGROUND

39. Petitioner is a citizen and national of Ecuador.
40. As a member of Kichwa³ indigenous community of Ecuador, Petitioner was denied employment and access to the same educational opportunities and medical facilities as non-indigenous members of her community. She participated in peaceful protests at which her photo may have been taken and published by a

³ Also known as Quichua.

newspaper and her water was shut down. She fled to seek protection in the United States.

41. On or about August 7, 2021, Petitioner came to or near the port of entry at or near Eagle Pass, Texas to seek asylum. Respondents arrested and detained Petitioner. On information and belief, based on the individualized facts of Petitioner's case, Respondent Department of Homeland Security released Petitioner from its custody on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a). (Exhibit "A".)
42. On or about August 8, 2021, Respondents initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a. The Immigration Court closed said proceedings on November 1, 2021 due to Respondents' failure to prosecute. Respondents initiated removal proceedings a second time on January 26, 2022
43. Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. § 1182(a)(6)(A)(i) and commanded that Petitioner appear for a hearing in immigration court.
44. Petitioner applied for asylum before the Fort Snelling Immigration Court in Minnesota on or about July 30, 2024.
45. Petitioner has complied with all legal obligations including her hearings and deadlines scheduled for Petitioner by the Court.
46. Upon information and belief, Petitioner was arrested by ICE agents when she was on her way to work, pursuant to a valid employment authorization card, on January 9, 2026 in the early morning in Minneapolis, Minnesota.
47. On January 20, 2025, President Donald Trump issued several executive actions

relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” Executive Order instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

48. Upon information and belief, Respondents are detaining and seeking to transfer Petitioner regardless of the individual facts and circumstances of his case.
49. Upon information and belief, Respondents are using the immigration detention system, including extra-territorial transfer and detention, as a means to punish individuals for asserting rights under the Refugee Act.
50. Upon information and belief, Petitioner has no criminal history.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Abuse of Discretion

Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

51. Petitioner restates and realleges all paragraphs as if fully set forth here.
52. Under the Administrative Procedure Act (“APA”), a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
53. An action is an abuse of discretion if the agency “entirely failed to consider an

important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

54. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
55. By categorically revoking Petitioner’s release and seeking to transfer her away from the district without consideration of her individualized facts and circumstances, Respondents have violated the APA.
56. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to her facts or circumstances since the agency made its initial custody determinations that support the revocation of her release from custody.
57. Respondents have already considered Petitioner’s facts and circumstances and determined that she was not a flight risk or danger to the community. (Exhibit “A”.) There have been no changes to the facts that justify this revocation of her release on her own recognizance. The fact that Petitioner has already been granted release by Respondents under the same facts and circumstances, and she has not violated any of the conditions of her release, shows that Respondents do not consider her, on an individualized basis, to be a danger to the community or a

flight risk.

COUNT TWO

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not
in Accordance with Law and in Excess of Statutory Authority
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

58. Petitioner restates and realleges all paragraphs as if fully set forth herein.
59. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).
60. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke a bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen under the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies that such revocations of release from custody may only be carried out in the “discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).”
61. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void *ab initio*.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

62. Upon information and belief, Respondents have revoked or are revoking Petitioner's prior custody determination as a result of a categorical policy prepared by and implemented by unidentified government officials in Washington, not through the individual exercise of discretion required by law or by the individuals enumerated by regulation to do so.
63. Because Petitioner's revocation of release from custody has been made or will be categorically directed by government officials not authorized by law to make this determination, Respondents' detention of Petitioner is not in accordance with law and is in excess of statutory authority.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

64. Petitioner restates and realleges all paragraphs as if fully set forth herein.
65. 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, supra*, at 693; accord *Flores*, 507 U.S. at 306.
66. Due process requires that government action be rational and non-arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
67. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. See

Zadvydas, supra, at 698.

68. Here, Respondents have chosen to revoke Petitioner's release in an arbitrary manner and not based on a rational and individualized determination of whether she is a safety or flight risk, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' revocation of Petitioner's release violates her right to procedural due process.

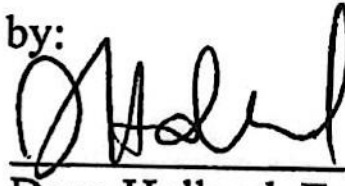
PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Declare that Petitioner's revocation of her prior custody determination was made in violation of statute and regulation;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval and during the pendency of this Petition;
- (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted on January 23, 2026 by:



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

I represent Petitioner, Mirian Melida Azas Poaquiza, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23rd day of January 2026.



Dana Holland, #NY 6075147
#NJ 442572023