

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

YENNY ALVARENGA ALBERTO

Petitioner,

V.

**KRISTI NOEM, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE
U.S. DEPARTMENT OF HOMELAND
SECURITY,**

Case No. 5:26-cv-544

**PAMELA BONDI, IN HER OFFICIAL
CAPACITY AS U.S. ATTORNEY
GENERAL,**

**TODD LYONS, IN HIS OFFICIAL
CAPACITY AS ACTING DIRECTOR
OF IMMIGRATION AND CUSTOMS
ENFORCEMENT,**

**MIGUEL VERGARA, IN HIS
OFFICIAL CAPACITY AS DIRECTOR
OF THE ICE DALLAS FIELD OFFICE,
and**

**WARDEN OF THE DILLEY
IMMIGRATION PROCESSING
CENTER, IN HIS OFFICIAL
CAPACITY.**

Respondents.

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**PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65, Petitioner moves this Court for a Temporary Restraining Order and Preliminary Injunction enjoining Respondents from violating her rights under Fifth Amendment, the APA, and immigration laws by determining that she is subject to mandatory detention and ordering her immediate release. This request is supported by the concurrently filed Memorandum of Points and Authorities in Support of Request for Temporary Restraining Order. In support of this motion, Petitioner states the following:

I. RELEVANT FACTUAL BACKGROUND

1. Petitioner is in the physical custody of Respondents at the Dilley Immigration Processing Center, Dilley, Texas. She now faces unlawful detention because Respondents have concluded Petitioner is subject to mandatory detention
2. Petitioner is a 20-year-old native and citizen of Honduras. Petitioner entered the United States on or about October 6, 2022 and has resided in the United States since then.
3. The Petitioner has no criminal convictions that would render her ineligible for relief.
4. On or about October 13, 2025, the Petitioner was arrested by U.S. Immigration and Customs Enforcement (“ICE”) when officers came to her residence and apprehended her. She was subsequently transferred to the Dilley Immigration Processing Center, and she has remained in ICE custody since that time.
5. DHS has charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered the United States without inspection.
6. After placing Petitioner in removal proceedings, DHS determined that she is an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

7. As a result of Respondents' unlawful actions, the Petitioner cannot request a bond hearing because the Immigration Judge lacks jurisdiction to review her custody status. The Petitioner is therefore subject to ongoing detention in violation of her constitutional rights. She is suffering irreparable harm as a result of being detained without any opportunity to seek release before a neutral decisionmaker, including the deprivation of liberty without due process and the severe emotional distress caused by her continued detention. Accordingly, the Petitioner brings this motion for a temporary restraining order and preliminary injunction to prevent her continued detention without access to a bond hearing.
8. On November 25, 2025, the court in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, Case No. 5:25-cv-01873 (C.D. Cal.), granted Plaintiffs' motion for class certification, creating a nationwide class of bond-eligible noncitizens who entered the United States without inspection, were later detained, and are now being subjected to mandatory detention statutes. The court held that class members are entitled to bond hearings under 8 U.S.C. § 1226(a), rather than being treated as mandatory detainees under 8 U.S.C. § 1225(b)(2)(A).
9. The Petitioner falls within this certified class, as she entered without inspection, was released into the United States, and was later re-detained and subjected to mandatory detention without access to a bond hearing. *See Exhibit A.*

II. PETITIONER SATISFIES THE STANDARD FOR A TEMPORARY RESTRAINING ORDER

10. The Petitioner is entitled to a preliminary injunction preventing her continued detention. Absent injunctive relief, she will suffer irreparable harm to her constitutional rights and to her health. She is also likely to succeed on the merits of her claim that the

government may not detain her without providing a bond hearing before a neutral decisionmaker, as required by law. Moreover, the balance of equities and the public interest weigh in favor of relief, as no legitimate public interest is served by the indefinite, mandatory detention of an individual who entered the United States four years ago, has a pending Form I-130 family-based petition filed by her U.S. citizen husband, has a pending asylum application with the immigration agency, and has no disqualifying criminal history. Accordingly, this Court should grant the Petitioner's motion and enjoin the government from further detaining her.

11. To obtain a temporary restraining order, the Petitioner must demonstrate: (1) a substantial likelihood of success on the merits; (2) irreparable harm absent immediate relief; (3) that the balance of hardships tips in the Petitioner's favor; and (4) that the injunction serves the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
12. The Petitioner satisfies all four requirements, as set forth in detail in the accompanying Memorandum of Points and Authorities.

A. LIKELIHOOD OF SUCCESS ON THE MERITS

13. Petitioner has a substantial likelihood of success on the habeas petition on multiple independent grounds.
14. First, Petitioner's detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A). The BIA's interpretation in *Matter of Yajure Hurtado* conflicts with the statutory text and with nearly 100 federal district court decisions that have rejected it.
15. Second, Petitioner's prolonged detention without an individualized hearing violates procedural due process under the Fifth Amendment. *Mathews v. Eldridge*, 424 U. S. 319

(1976), requires balancing Petitioner's fundamental liberty interest against the government's interest, and that balance tips decisively in favor of a bond hearing.

16. Third, because the Petitioner has no disqualifying criminal convictions, he possesses a constitutionally protected liberty interest that may not be infringed absent due process of law.

B. IRREPERABLE HARM

17. Petitioner suffers irreparable harm from continued unlawful detention for over three months. The deprivation of liberty itself constitutes irreparable injury that cannot be remedied by monetary damages.

C. BALANCE OF HARDSHIP AND PUBLIC INTEREST

18. The balance of hardships tips sharply in Petitioner's favor. Petitioner's fundamental liberty interest and the concrete harms from detention far outweigh any government interest in continued detention.
19. The government has presented no evidence that Petitioner poses a flight risk or danger to the community.
20. The public interest favors protecting constitutional rights and preventing unlawful detention.

III. CONCLUSION AND RELIEF REQUESTED

21. For the foregoing reasons and those set forth in the accompanying Memorandum of Points and Authorities, Petitioner respectfully requests that this Court issue a temporary restraining order requiring Respondents to release Petitioner from immigration detention immediately, subject to reasonable conditions including:

- a. Appearing for all scheduled immigration court hearings;
- b. Maintaining current address information; and

c. Any other condition this Court deems appropriate.

Dated this 29th of January 2026,

Respectfully submitted,

/s/ Felix L. Galvez

Felix L. Galvez

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2026, I electronically filed the foregoing on the Court's CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Felix L. Galvez

Felix L. Galvez

Attorney for Petitioner