UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Ixchell Indira Leon-Silvera, E.T.S. (minor child), and E.T.S. (minor child), Petitioners, v. Pamela Bondi, Attorney General, Kristi Noem, Secretary, U.S. Department of Homeland Security, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement, and David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement. Respondents.	Case No. 26-cv-847 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS** Expedited Handling Requested

INTRODUCTION

1. Petitioners, Ms. Ixchell Indira Leon-Silvera ("Ms. Leon-Silvera") and her two minor children E.T.S. and E.T.S., by and through the undersigned attorney, 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 them from ICE detention, or in the alternative to enjoin Petitioners' transfer to a facility outside of Minnesota and to provide a bond hearing 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 Petitioners seek 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"). *Demore 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 Petitioners are detained within the District of Minnesota.

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. Petitioners are citizens of Venezuela and a resident of Minneapolis Minnesota, who are upon information and belief currently being held at the Bishop

Henry Whipple Federal Building ("Whipple") in Saint Paul, Minnesota Petitioners are under the direct control of the respondents and have 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 Ms. Leon-Silvera and her minor children.

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 District of Minnesota, supervises the Fort Snelling ICE Field Office, and is legally responsible for pursuing Petitioner's detention and removal. As such, Respondent Noem is a legal custodian of Ms. Leon-Silvera and her minor children.

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 Petitioners' detention.

11. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Ms. Leon-Silvera and her minor children. The

address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

12. Petitioners are residents of Minneapolis, Minnesota and citizens of Venezuela and have lived in the United States since on or around November 2024.

13. Ms. Leon-Silvera has a pending asylum application, for which her children are listed as derivatives, and none of them have final orders of removal.

14. Ms. Leon-Silvera and her two children, ages 11 and 8, live with her partner in Minneapolis. Ms. Leon-Silvera and her partner have been together for four years. Ms. Leon-Silvera's children attend elementary school locally and are in the second and fourth grade. Ms. Leon-Silvera's children are well-loved by their teachers. Ms. Leon-Silvera and her family attend church twice a week and have wonderful relationships with the other parishioners and the priest.

15. Ms. Leon-Silvera also has kidney stones and develops them often. She recently passed several, but currently has a urinary tract infection because of her ongoing kidney issues for which she needs antibiotics. She will eventually require surgery to fix the issue.

16. Respondent ICE arrested Ms. Leon-Silvera on January 29, 2026, at an ICE check in where Ms. Leon-Silvera was reporting, as requested, to immigration authorities. ICE officers detained her, then asked her where her two children were. She informed ICE that her children were at school.

17. ICE called the childrens' school and told school officials that the school could either send the children to be detained with their mother, or ICE would go to the school to detain the children there. To protect the other students, the headmaster drove E.T.S. and E.T.S. to ICE where they were promptly detained by ICE.

18. This arrest is part of an operation in Hennepin and Ramsey counties called "Operation Metro Surge." This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians, pepper spraying and arresting citizen observers, hitting passersby with vehicles, and generally attempting to take as many immigrants as possible into custody regardless of the constitutionality of their actions. *See*, e.g., Compl., *Tincher et. al. v. Noem*, No. 0:25-cv-04669. (D. Minn. 12/17/2025).

19. Since the operation began on December 1, 2025, the number of immigration officials in the twin city metro area has increased astronomically, and with them these new agents have brought a similarly massive increase in unconstitutional, unlawful, and downright violent behavior towards citizens and non-citizens alike. The people of Minnesota–of all races, nationalities, and citizenship status–are united in their shock and fear at the events of the past eight weeks, and are begging for the attacks on their community to stop.

20. Given the massive volume of perceived non-citizens being taken off the streets, Respondents are running out of physical space to continue detaining people.

Detainees are being held in cramped quarters at the federal building, before being quickly sent to remote locations across Minnesota or to facilities as far away as Dilley Texas.

21. In the case of Ms. Leon-Silvera and her children, they have been brought to the Whipple building where they are being detained.

22. Detaining Ms. Leon-Silvera and her children is an expensive and pointless endeavor. Ms. Leon-Silvera and her children respectfully seek 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.

23. Pending the adjudication of this Petition, Ms. Leon-Silvera and her children further seek an order restraining the Respondents from transferring Petitioners to a location outside of the State of Minnesota, so that the jurisdiction of this Court is not impeded, and so that Petitioners remains accessible to legal counsel and loved ones.

STANDARD OF LAW

24. 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), which should be granted if the

petitioner meets their burden of proof–a preponderance of evidence. *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025).

25. Detained immigrants petitioning under 28 U.S.C. § 2241 face no statutory exhaustion requirements. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). Nor is a judicially imposed prudential exhaustion requirement appropriate where, as here: time is of the essence, facts are largely undisputed, and the parties' disagreement is based on a legal conclusion. *Id*. at 967-68.

26. Other courts in the Eighth Circuit have similarly declined to require prudential exhaustion when evaluating a detained immigrant's habeas corpus petition under similar circumstances–to address a question of statutory interpretation that does not require developing a factual record, and where the agency is demonstrably unlikely to reverse its course. *Giron Reyes v. Lyons*, 2025 WL 2712427 at *3 (N.D. Iowa Sept. 23, 2025).

27. "[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).

28. 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. *Matter of 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 metaphorically "seeking admission," simply because they may have pending claims for asylum or other forms of status.

29. 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 whose detention is discretionary and governed by 8 U.S.C. § 1226(a). *Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v. Bondi*, Civ. No. 25-4584 (JWB/DJF), Doc. No. 10 (D. Minn. Dec. 18, 2025); *Xuseen A. v. Bondi*, Civ. No. 25-4514 (JWB/DJF), Doc. No. 16 (D. Minn. Dec. 19, 2025); *Vedat C. v. Bondi*, Civ. No. 25-4642 (JWB/DJF), Doc. No. 9 (D. Minn. Dec. 19, 2025).

30. Here, Petitioners were apprehended within the United States, not at a border while seeking entry.

31. Respondents wrongly assert 8 U.S.C. 1225(b)(2) as a basis for detaining Ms. Leon-Silvera and her children without a hearing, when instead any detention could only be pursuant to 8 U.S.C. 1226(a), which would also require a warrant and which here the Respondents are not purporting to invoke.

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment Due Process

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

32. Petitioners reallege and incorporate by reference the allegations contained above.

33. Ms. Leon-Silvera and her minor children E.T.S. and E.T.S. have due process rights as residents of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

34. 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.

35. Here, all three factors favor the petitioners.

36. First, the petitioners have 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."). Ms. Leon-Silvera and her children are wrongfully confined, a direct attack on Petitioners' liberty interests.

37. Second, Ms. Leon-Silvera and her children will continue to be deprived of this interest if the current procedure (detaining Ms. Leon-Silvera, E.T.S., and E.T.S. without a legal basis) is followed. There is no rational explanation for Petitioners. Respondents' purported basis for detaining Petitioners under 8 U.S.C. 1225(b)(2) has been rejected time and time again in this court. *Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (January 6, 2026); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142–48, 1150–52 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 968–970 (D. Minn. 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *7–8 (D. Minn. Oct. 20, 2025); *R.E. v. Bondi*, No. 0:25-cv-3946-NEB, 2025 WL 3146312 (D. Minn. Nov. 4, 2025); *Herrera Avila v. Bondi*, No. 0:25-cv-3741 (JRT), 2025 WL 2976539 (D. Minn. Oct. 21, 2025). Children should not be in civil detention.

38. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Petitioners poses no safety threats to the community. E.T.S. and E.T.S. are elementary-aged children who are 11 and 8 years old respectively. Releasing Petitioners, or at a minimum holding a bond hearing, would in fact *save* the government the resources and expense of continued imprisonment.

39. The placement of Ms. Leon-Silvera and her children in detention pending the resolution of ongoing immigration proceedings violates their constitutional rights to due process guaranteed in the Fifth Amendment.

COUNT TWO

Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)

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

40. Petitioners reallege and incorporate by reference each and every allegation contained above.

41. Respondents violate the Immigration and Nationality Act by attempting to apply mandatory detention through 8 U.S.C. § 1225(b)(2), to Petitioners. Petitioners were nowhere near the border and were not "seeking admission".

COUNT THREE
Violation of the Administrative Procedure Act, 5 U.S.C. § 706
Detaining Petitioner Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225(b)(2) violates the Administrative Procedure Act

42. Ms. Leon-Silvera and her children re-allege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

43. 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).

44. 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).

45. 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.

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

47. 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.

48. The application of § 1225(b)(2) to Ms. Leon-Silvera and her children is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

REMEDY

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

50. 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 Petitioners' detention was based on any facts that might indicate that Petitioners should be in custody for some reason.

51. Since Section 1225 does not apply to noncitizens who are in Petitioners' 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 Petitioners simply does not apply so as to authorize Petitioners' detention. *See Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v. Bondi*, Civ. No. 25-4584 (JWB/DJF), Doc. No. 10 (D. Minn. Dec. 18, 2025); *Xuseen A. v. Bondi*, Civ. No. 25-4514 (JWB/DJF), Doc. No. 16 (D. Minn. Dec. 19, 2025); *Vedat C. v. Bondi*, Civ. No. 25-4642 (JWB/DJF), Doc. No. 9 (D. Minn. Dec. 19, 2025).

52. 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").

53. Respondents will no doubt argue, as they have in similar cases before this Court, that if the Court rules that Petitioners should have been detained pursuant to § 1226, instead of § 1225, then the remedy is a bond hearing as opposed to outright release. *See*, e.g., *Ahmed A.* Civ. No. 25-4776, Doc. No. 9. at 9-10. However, this Court rejected this argument, saying that:

> [A] bond hearing presupposes lawful detention authority under § 1226. Where that authority has not been invoked or established, ordering a bond hearing would treat the absence of statutory authority as a mere procedural irregularity rather than a substantive defect … Where the record shows

> Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings.

Id. at Doc. No. 10 at 6.

54. Nor here would § 1226(a) have supported a lawful detention in the first instance. Detention under § 1226(a) would require a warrant issued by the Attorney General. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn. 2025). To put this plainly: "absent a warrant a noncitizen may not be arrested and detained under section 1226(a)." *See also Ahmed M. v. Bondi et al.*, 2026 WL 25627, *3 (D. Minn. Jan. 5, 2026) (quoting *Chogllo Chafla v. Scott*, --- F. Supp. 3d ---, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025)). Upon information and belief, Respondents had no such warrant.

55. Here, where detention is unlawfully based on 8 U.S.C. 1225(b)(2), which does not apply to Petitioners, release is an appropriate remedy.

REQUEST FOR ORDER TO SHOW CAUSE

56. 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.

57. Petitioners respectfully request 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, Ms. Leon-Silvera, E.T.S., and E.T.S. pray that this Court grant the following relief;

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Petitioners out of the District of Minnesota pending the duration of these proceedings, or transport Petitioners back to Minnesota if they are moved out of state;

(3) Enjoin Respondents from separating Ms. Leon-Silvera from her two children during the pendency of these proceedings;

(4) Order Respondents to show cause as to why Petitioners should not be released immediately, without conditions, or in the alternative afforded a bond hearing;

(5) Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioners unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

(6) If the Court sees fit to order Petitioners' release, include conditions to ensure Petitioners' safety, including that release be:

(a) Inside the State of Minnesota;

(b) At a safe time and place communicated in advance to counsel; and

(c) With all of Petitioners' personal effects in Respondents' possession, such as driver's license, immigration papers, cell phone, and keys;

(7) Enjoin Respondents from implementing any condition of release, including ICE's "Alternatives to Detention" measures, which include ankle monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile Application;

(8) Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law; and

(9) Grant any other and further relief that this Court may deem just and proper.

Date: Jan. 30, 2026

/s/ Kira A. Kelley

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Attorney for Petitioner

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. My investigator and I have discussed the factual assertions in this petition with Petitioner's family and friends, who are also acting on Petitioner's behalf and who I understand to have personal knowledge of the facts alleged herein. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Date: Jan. 30, 2026

/s/ Kira A. Kelley

Kira A. Kelley, Esq.