

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RITA DE CASSIA COELHO ALBERNAZ,
Petitioner,

v.

LUIS SOTO,
in his official capacity as Director/Warden of
Delaney Hall Detention Facility;

JOHN TSOUKARIS,
in his official capacity as Field Office Director,
New Jersey Field Office, U.S. Immigration &
Customs Enforcement;

PAMELA BONDI,
in her official capacity as Attorney General, U.S.
Department of Justice;

KRISTI NOEM,
in her official capacity as Acting Secretary, U.S.
Department of Homeland Security; and

TODD M. LYONS,
in his official capacity as Acting Director, U.S.
Immigration & Customs Enforcement;
Respondents.

Civil Action No.:

**MOTION FOR TEMPORARY
RESTRAINING ORDER/INJUNCTIVE
RELIEF
&
PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

MOTION FOR TEMPORARY RESTRAINING ORDER/INJUNCTIVE RELIEF

Petitioner, Rita de Cassia Coelho Albernaz (“Ms. Albernaz”), respectfully moves before this Honorable Court for a Temporary Restraining Order and Injunctive Relief, to enjoin the Respondents from continuing her unlawful detention during the pendency of her habeas corpus petition filed under 28 U.S.C. § 2241 and upon any grant in release, through the instant request for a restraining order and/or habeas corpus petition, the issuance of an injunction to prevent further rearrest.

On January 29, 2026, during an U.S. Immigration and Customs Enforcement (“ICE”)

check-in, Ms. Albernaz was detained and taken into custody. The corresponding habeas petition challenges her unlawful detention with her pending well-founded, T-Nonimmigrant Visa ("T-Visa"), and unjustified lack in bond hearing.

To obtain a temporary restraining order and injunction, a movant must demonstrate that she is likely to succeed on the merits, that she is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in her favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020).

First, Ms. Albernaz is likely to succeed on the merits being that she has raised substantial constitutional and statutory claims in her habeas petition that demonstrate her continued detention, with her prima facie meritorious, T-Visa petition and lack in bond hearing, violates the Fifth Amendment Due Process Clause.

Second, absent the preliminary relief requested, Ms. Albernaz and her United States citizen daughter will suffer profound and irreparable harm. This harm is not limited to the grave deprivation of liberty inherent in unlawful civil detention. **Ms. Albernaz suffers from severe hypertension, glaucoma, and anemia – her hypertension requires strict, daily medication and monitoring to prevent acute cardiovascular events, including hypertensive crisis, stroke, myocardial infarction, and death.** Any interruption, delay, or inconsistency in treatment places her at immediate and life-threatening risk. Detention, particularly following a sudden arrest without notice, predictably disrupts medication continuity and medical oversight, rendering her continued confinement medically dangerous and constitutionally intolerable. Further, the undersigned has represented numerous clients detained at Delaney Hall who were denied medically necessary medication, placing them at serious and foreseeable risk of harm.

The harm extends directly and independently to Ms. Albernaz's United States citizen daughter, who suffers from a significant autoimmune disease and has a documented history of suicidal ideation and prior suicide attempts. Ms. Albernaz is her child's primary caregiver and the central stabilizing force protecting her from self-harm. Ms. Albernaz's sudden detention has deprived her daughter of essential medical, emotional, and supervisory care, placing the child at immediate risk of psychological destabilization and physical harm. The separation of a medically vulnerable U.S. citizen minor from her sole caregiver under these circumstances constitutes irreparable harm as a matter of law and equity.

Conditions at Delaney Hall have long been known to the Department of Homeland Security, yet they persist unabated. DHS inspections have repeatedly documented contaminated and untimely food service, mold exposure, leaking ceilings over sleeping areas, unsanitary showers, broken bedding, and severe restrictions on recreation.¹ In June 2025, these conditions became so extreme that four detainees—hungry, dehydrated, and forced to sleep on the floor—escaped the facility.² For an individual living with severe hypertension requiring daily medication, confinement under these conditions is medically dangerous and potentially fatal. Hypertension

¹ OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF HOMELAND SECURITY, *Issues Requiring Action at the Essex County Correctional Facility, Newark, New Jersey*, OIG-19-20 (Feb. 13, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-20-Feb19.pdf>. (In which, prior inspection report, DHS found a host of food safety and living conditions violations endured by detainees. Concerning the food served to inmates, DHS found: widespread mishandling of food ranging from service of moldy bread, "slimy, foul-smelling lunch meat," "raw chicken leaking blood all over refrigeration units," and service of meat "that smelt like fecal matter. Concerning environmental conditions, DHS found: leaking ceilings dripping directly onto detainee beds, showers laced with mold and peeling paint, dilapidated beds requiring detainees to utilize bedsheets to tie the seams of the mattress together, and lack in access to recreation space outside of their living area.

² *Inside the Tumult That Led 4 Men to Escape From a Migrant Facility*, NYTIMES ARTICLE (June 2025), <https://www.nytimes.com/2025/06/14/nyregion/newark-ice-detainees-escape.html> (The article provides four detainees "escape" the infrastructure as a result of the conditions they endured, ranging from sleeping on the floor, limited to drinking foul-tasting water for hydration, and going hours on end without food just to be served slices of bread as a meal. The four detainees were able to "escape" the facility by punching through the exterior wall of the jail.

demands strict medication adherence, adequate nutrition, hydration, temperature regulation, and stress control to prevent acute cardiovascular events. Exposure to mold-contaminated air, chronic dehydration, missed or delayed meals, nutritionally inadequate food, extreme temperature fluctuations, sleep disruption, and constant physical and psychological stress predictably destabilize blood pressure control. When antihypertensive medication is interrupted or inconsistently administered—as frequently occurs in detention settings—blood pressure can escalate rapidly, resulting in hypertensive crisis, stroke, myocardial infarction, organ failure, or death. What may constitute degrading detention for others becomes a daily threat to life and health for an individual with uncontrolled or poorly managed hypertension. Continued confinement at Delaney Hall under these conditions places medically vulnerable detainees at a substantial and imminent risk of serious injury or death, rendering detention not only medically unsafe but constitutionally intolerable and profoundly inhumane.

An additional harm is the potential transfer to a detention facility located in a remote jurisdiction, thereby severely impairing his ability to communicate with and receive effective assistance from the undersigned counsel. Moreover, and it is of particular concern, that numerous undocumented individuals recently detained within the State of New Jersey have been promptly transferred to out-of-state facilities, often without prior notice to counsel or family members. Disturbingly, the ICE Online Detainee Locator System has frequently failed to update or accurately reflect such individuals' locations, effectively obscuring their whereabouts. This pattern of transfers, coupled with ICE's deficient notification practices, underscores the grave and imminent threat that Ms. Albernaz access to counsel and the Court will be unconstitutionally curtailed absent immediate judicial intervention.

Third, the harm endured by Ms. Albernaz full-heartedly outweighs any purported burden

on the government by continuing his unlawful detention; any asserted hardship to the government is minimal, speculative, and self-inflicted. If anything, and by improperly detaining Ms. Albernaz, the government is imposing unnecessary fiscal and administrative costs upon itself and the judiciary. Continuing to detain Ms. Albernaz serves no legitimate governmental interest and instead constitutes an inefficient expenditure of public resources and judicial time.

Fourth, the public interest is served by ensuring compliance with the Constitution, preserving judicial review under 28 U.S.C. § 2241, and preventing further unlawful re-arrest.

For the foregoing reasons, Petitioner respectfully requests that this Court: 1. Issue a Temporary Restraining Order enjoining Respondents from continuing Petitioner's detainment until resolution of the habeas petition; 2. Enter a preliminary and permanent injunction restraining Respondents from re-arresting Petitioner; and 3. Grant any further relief the Court deems just and proper.

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

Petitioner, Rita de Cassia Coelho Albernaz, respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Rita de Cassia Coelho Albernaz ("Ms. Albernaz") is a citizen of Brazil who re-entered the United States in February 2022 without inspection, together with her United States citizen daughter. Ms. Albernaz is the mother of three daughters, including a U.S. citizen child who suffers from an autoimmune disease.
2. On September 7, 2005, an Immigration Judge ordered Ms. Albernaz removed. That order arose under circumstances in which she was unable to secure counsel or meaningfully

- participate in proceedings. Ms. Albernaz later departed the United States and returned to Brazil. She re-entered the United States in 2022 seeking safety, family unity, and stability.
3. In May 2025, Ms. Albernaz, along with her current partner, filed an application for T nonimmigrant status based on severe victimization and cooperation with law enforcement. That application remains pending.
 4. On the morning of January 29, 2026, Ms. Albernaz appeared for a scheduled ICE check-in in Newark, New Jersey. Her notice explicitly stated that the appearance was for monitoring purposes only and that no documents were required. Despite these representations, ICE arrested her without warning. She was taken into custody at the ICE facility and later transferred to Delaney Hall.
 5. Pursuant to the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), ICE is presently detaining Ms. Albernaz under 8 U.S.C. § 1225(b)(2)(A). This detention continues notwithstanding the Final Judgment in *Maldonado Bautista v. Santacruz, Jr., et al.*, No. 5:25-cv-01873 (Dec. 18, 2025), which certified a nationwide class of noncitizens entitled to bond hearings under 8 U.S.C. § 1226(a). On January 13, 2026, the Executive Office for Immigration Review ("EOIR") Chief Immigration Judge issued nationwide guidance instructing Immigration Judges to adhere to *Yajure-Hurtado* rather than *Maldonado Bautista*.
 6. As a result, Immigration Judges are routinely denying bond to individuals who would otherwise qualify for release, even where habeas corpus relief has been granted. This practice perpetuates prolonged detention despite judicial intervention and deprives detained individuals of any meaningful opportunity to secure release.
 7. Ms. Albernaz's continued detention, without notice, without a bond hearing, and despite her

serious medical condition, violates the Due Process Clause of the Fifth Amendment. She seeks immediate release or, in the alternative, a prompt and meaningful bond hearing.

PARTIES

1. Ms. Albernaz has been detained by Respondents since January 29, 2026, at Delaney Hall Detention Facility (“Delaney”).
2. Respondent Luis Soto is named in his official capacity as the Director/Warden of Delaney. Mr. Soto is responsible for the operation of Delaney, where Ms. Albernaz is currently detained.
3. Respondent John Tsoukaris is named in his official capacity as the Director of the New Jersey Field Office for ICE. Mr. Tsoukaris is responsible for arrests, processing, detention, production, transfer, and release of individuals in removal proceedings. He is a legal custodian of Ms. Albernaz.
4. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General (“AG”). AG Bondi is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees the Executive Office for Immigration Review (“EOIR”). She is a legal custodian of Ms. Albernaz.
5. Respondent Kristi Noem is named in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security (“DHS”). Ms. Noem is responsible for the administration of immigration laws under 8 U.S.C. § 1103(a) and oversees ICE. She is a legal custodian of Ms. Albernaz.
6. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. Mr. Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations. He is a legal custodian of Ms. Albernaz.

JURISDICTION

7. This Court has proper jurisdiction over Ms. Albernaz's Petition for Writ of Habeas Corpus. As per 28 U.S.C. § 2241, this Court has the discretion to evaluate and grant the instant writ of habeas corpus. Under 28 U.S.C. § 1331, this Court has original jurisdiction over the federal issue arising in this matter. Article I, § 9, cl. 2 of the United States Constitution, the Suspension Clause, protects the privilege of habeas corpus. The All-Writs Act, 28 U.S.C. § 1651, grants this Court with remedial authority to issue this necessary writ. The Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, specifically allows this Court to grant injunctive and declaratory relief if it sees fit.
8. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS; as well as claims by noncitizens seeking to protect their due process rights. *See, Jennings v. Rodriguez*, 138 S. Ct. 830, 840-41 (2018).
9. Ms. Albernaz's current detention as enforced by Respondents constitutes a "severe restraint [on her] individual liberty," such that she is "in custody in violation of the Constitution or laws ... of the United States." *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

VENUE

10. Venue is proper in the District of New Jersey. Pursuant to 28 U.S.C. § 2241(d), a writ of habeas corpus may be filed in the district where the Petitioner is held in custody. Under 28 U.S.C. § 1391 (b) (2), a proper venue is where a substantial part of the events and omissions gave rise to the claim.
11. Ms. Albernaz is currently in ICE custody at Delaney, where a substantial part of the events giving rise to her habeas claim occurred. Due to the custody location and occurrence in events,

it is proper to file in the District of New Jersey.

EXHAUSTION

12. No statutory exhaustion requirements exist as to Ms. Albernaz's unlawful detention claims. *Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000).
13. Although exhaustion is not statutorily required when challenging detention under 28 U.S.C. §2241, many courts still require proof of exhaustion largely to the appropriate agency's benefit. *Id.*
14. There are several exceptions that courts consider when evaluating exhaustion requirements. An immigrant detainee advancing a due process claim is likely to be exempt because "the Board of Immigration Appeals ("BIA") does not have jurisdiction to adjudicate constitutional issues." *Khan v. United States AG*, 448 F.3d 226, 228 (3d Cir. 2006).
15. Ms. Albernaz is not required to prove exhaustion because she is advancing due process claims in the instant habeas petition.

STATEMENT OF FACTS

16. Petitioner Rita de Cassia Coelho-Albernaz was born on  in Brazil. She is a citizen of Brazil and the mother of three daughters. Two of her daughters, ages thirty and twenty-six, reside in Brazil. Her youngest daughter, C  is a United States citizen. *Exhibit A: Declaration of Alexandra Minogue, Esq. in Support of Ms. Albernaz's Writ of Habeas Corpus ("Exhibit A")*, ¶¶2-4.
17. Ms. Albernaz first entered the United States in 2005 without inspection. On September 7, 2005, an Immigration Judge ordered Ms. Albernaz removed from the United States. Although she received notice of her hearing, she was unable to meaningfully participate in the

- proceedings. At the time, she lacked financial resources, was betrayed by her *then-spouse*, and was unable to secure legal representation or change venue from Texas to New Jersey. *Id.*
18. In or around 2010, Ms. Albernaz and her spouse departed the United States and returned to Brazil. After several years, and in light of family and humanitarian considerations, Ms. Albernaz re-entered the United States in February 2022 without inspection, together with her United States citizen daughter. *Id.*
19. Ms. Albernaz's United States citizen daughter, C [REDACTED] was born in 2008 and suffers from a serious autoimmune condition. C [REDACTED] also has a documented history of severe mental health vulnerability, including suicidal ideation and prior suicide attempts. Ms. Albernaz is her daughter's primary caregiver and the central stabilizing presence responsible for her medical supervision, emotional support, and safety. *Id.* ¶7.
20. Ms. Albernaz, herself, suffers from chronic and severe hypertension along with anemia and glaucoma, requiring strict – her hypertension daily medication to prevent acute cardiovascular events, including hypertensive crisis, stroke, myocardial infarction, and organ damage. Prior to her arrest, she managed her condition through consistent medical care and medication adherence. Since her sudden detention, her access to prescribed medication and appropriate medical monitoring has been uncertain. *Id.* ¶6.
21. Ms. Albernaz has no criminal history and has consistently complied with all immigration reporting and monitoring requirements. Her arrest occurred not as a result of flight, danger, or noncompliance, but solely because she appeared as directed for a scheduled ICE check-in. *Id.*

Ms. Albernaz's Proceedings

22. In May 2025, Ms. Albernaz, with her current partner, filed an application for T nonimmigrant status based on her victimization and cooperation with law enforcement. The application was prepared and filed by an attorney, based in Orlando, Florida, and remains pending. *Exhibit B: T-Visa Receipt ("Exhibit B")*.
23. On January 29, 2026, Ms. Albernaz appeared for a scheduled ICE check-in in Newark, New Jersey. The check-in notice expressly stated that her appearance was required for monitoring purposes only and that no documents were required.
24. Despite the representations in the check-in notice, Ms. Albernaz was arrested by ICE on January 29, 2026. She was detained at the ICE facility - officers alleged that the detention was based on her prior removal order.

LEGAL FRAMEWORK

I. MS. ALBERNAZ IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS THAT HIS DETENTION IS UNLAWFUL & VIOLATES HIS DUE PROCESS RIGHTS.

25. The Due Process Clause of the Fifth Amendment applies to all persons within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Individuals navigating the immigration system in pursuit of lawful status are therefore entitled to notice, a meaningful opportunity to be heard, and protection against governmental restraints that deprive them of liberty or property interests. *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). With respect to detention in particular, the Supreme Court has made clear that civil confinement “for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

A. Ms. Albernaz's Pending Immigration Relief Is Meritorious, and She Therefore May Not Be Classified Under 8 U.S.C. § 1231(a)(1) for Purposes of Detention.

26. The government bears the burden of demonstrating that a noncitizen is properly detained under 8 U.S.C. § 1231(a). Detention under § 1231 is permissible only where a final order of removal is administratively final and executable, and where no pending administrative or judicial relief renders removal non-imminent.
27. Where a noncitizen has pending, bona fide immigration relief that directly bears on removability or eligibility for lawful status, detention under § 1231 is improper. In such circumstances, detention is governed, if at all, by the discretionary detention framework of 8 U.S.C. § 1226(a), which requires an individualized custody determination and access to a bond hearing.
28. Ms. Albernaz is not subject to mandatory post-removal-order detention because her removal is not reasonably foreseeable and her case is not administratively final in any meaningful sense. In May 2025, she filed a T nonimmigrant status application, which remains pending. A properly filed T-visa application constitutes humanitarian relief expressly authorized by Congress and, by statute and regulation, may stay removal while adjudication is ongoing.
29. T nonimmigrant status exists to protect victims of severe human trafficking and related exploitation who have cooperated with law enforcement. See INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T). Where such relief is pending, removal is neither automatic nor imminent, and continued detention under § 1231(a) bears no reasonable relation to the statute's limited purpose of effectuating prompt removal.
30. Although an Immigration Judge entered a removal order against Ms. Albernaz on September 7, 2005, that order cannot lawfully serve as the basis for mandatory detention today. Ms. Albernaz departed the United States in or around 2010, re-entered in 2022, and has since

pursued humanitarian relief authorized by Congress. The existence of a decades-old removal order does not override the government's obligation to assess current legal posture, pending relief, and constitutional constraints on detention.

31. Moreover, the circumstances surrounding the 2005 removal order underscore why detention under § 1231 is inappropriate. Although Ms. Albernaz received notice of her hearing, she was unable to meaningfully participate due to lack of counsel, financial hardship, and the inability to secure a venue change. These facts materially undermine any claim that the order justifies summary detention without process more than twenty years later.
32. As evidenced by the foregoing, Ms. Albernaz's pending humanitarian relief is bona fide and legally significant. Because her removal is not imminent and her detention does not serve the narrow purposes of § 1231(a), she may not be classified under that provision. Her continued detention without an individualized custody determination is unlawful, and she is entitled to immediate release or, at minimum, a prompt bond hearing under 8 U.S.C. § 1226(a).

B. The BIA's Interpretation of INA 235(b)(2)(A), in the *Matter of Yajure-Hurtado*, and IJ's nationwide disregard of *Maldonado Bautista v. Santacruz, Jr.*, Violates Ms. Albernaz's 5th Amendment Due Process Rights.

33. In *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals adopted an unprecedented interpretation of INA § 235(b)(2), asserting that noncitizens alleged to have entered without inspection are subject to mandatory detention regardless of apprehension circumstances, location, length of residence, or the existence of a prior final order of removal. This interpretation supplants the longstanding statutory framework of discretionary detention under INA § 236(a) and eliminates the individualized custody determinations required by the Due Process Clause.

34. Applied to Ms. Albernaz, *Yajure-Hurtado* is particularly untenable. Ms. Albernaz is not an arriving noncitizen, was not apprehended at the border, and has resided in the United States for years. Her detention followed a scheduled ICE check-in and rests solely on a decades-old removal order entered in 2005. The existence of a prior final order does not convert a long-present noncitizen into an “applicant for admission,” nor does it extinguish constitutional limits on civil detention.
35. *Yajure-Hurtado* directly conflicts with controlling Supreme Court precedent governing civil detention and procedural due process, including *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Boumediene v. Bush*, 553 U.S. 723 (2008); *Mathews v. Eldridge*, 424 U.S. 319 (1976); and *United States v. Salerno*, 481 U.S. 739 (1987). These cases establish that civil detention must bear a reasonable relation to a legitimate regulatory purpose and must be accompanied by meaningful procedural safeguards—protections that do not disappear simply because the government invokes a prior removal order.
36. Federal district courts nationwide, including within the District of New Jersey, have rejected *Yajure-Hurtado*, holding that detention of long-present noncitizens—even where a final order of removal exists—is governed by INA § 236(a), not § 235(b)(2), and granting habeas relief based on the due process violations inherent in mandatory, unreviewable detention. See, e.g., *De Fatima Lomeu v. Soto*, No. 2:25-cv-16589 (D.N.J. Oct. 23, 2025); *Zumba v. Bondi*, 2025 U.S. Dist. LEXIS 167666 (D.N.J. Aug. 28, 2025); *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 153952 (S.D.N.Y. Aug. 8, 2025); *Samb v. Joyce*, 2025 U.S. Dist. LEXIS 161109 (S.D.N.Y. Aug. 19, 2025); *Sampaio v. Hyde*, 2025 U.S. Dist. LEXIS 175513 (D. Mass. Sept. 9, 2025); *Leal-Hernandez v. Noem*, 2025 U.S. Dist. LEXIS 165015 (D. Md. Aug. 24, 2025); *Kostak v.*

Trump, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025); *Zaragoza Mosqueda v. Noem*, 2025 U.S. Dist. LEXIS 174828 (C.D. Cal. Sept. 8, 2025).

37. Most recently, *Maldonado Bautista v. Santacruz, Jr.*, No. 5:25-cv-01873 (C.D. Cal. Dec. 18, 2025), certified a nationwide class of noncitizens entitled to bond hearings under 8 U.S.C. § 1226(a) and expressly rejected the premise that noncitizens long present in the United States may be treated as “applicants for admission” subject to mandatory detention under § 235(b)(2). Immigration Judges, including in New Jersey, nonetheless continue to apply *Yajure-Hurtado* in contravention of this authority.

38. As a result, Ms. Albernaz remains detained under INA § 235(b)(2) without an individualized bond hearing, notwithstanding the existence of a prior removal order, in violation of the Due Process Clause and binding Supreme Court precedent. Because her detention is discretionary under INA § 236(a), this Court should order her immediate release or, at minimum, a prompt and meaningful bond hearing consistent with constitutional requirements and prevailing federal law.

C. Ms. Albernaz’s unlawful detention, without a bond hearing while her Meritorious T-Visa Application, violates the Fifth Amendment.

39. Where an individual establishes a liberty or property interest, a court must determine whether constitutionally sufficient procedures were provided by balancing: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that additional procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

40. Noncitizens facing detention and removal possess a substantial liberty interest in remaining in the United States—“the right to stay and live and work in this land of freedom.” *Bridges v. Wixon*, 326 U.S. 135, 154 (1945).
41. Ms. Albernaz is entitled to the full protections of the Fifth Amendment Due Process Clause. She has a significant liberty interest in remaining in the United States, where her seventeen-year-old United States citizen daughter, who suffers from a serious autoimmune disease and a history of suicidal ideation, depends on her as her primary caregiver. Ms. Albernaz’s entire family life, caregiving responsibilities, and medical stability are rooted here. The government has identified no legitimate basis for continued detention: Ms. Albernaz has no criminal history, is not a flight risk, and poses no danger to the community.
42. Second, Respondents have procedurally deprived, and continue to risk further deprivation of, Ms. Albernaz’s due process rights. In assessing the second *Mathews* factor, “the only interest to be considered . . . is that of the detained individual—not the government.” *Black v. Director Thomas Decker*, 103 F.4th 133, 152 (2d Cir. 2024). Notwithstanding this mandate, ICE arrested Ms. Albernaz during a scheduled check-in explicitly designated for monitoring purposes only, while her T nonimmigrant status application remained pending, and confined her without affording any opportunity to seek bond. Had she been provided a bond hearing, Ms. Albernaz would readily demonstrate that she is neither a flight risk nor a danger. Her sudden arrest and detention triggered a cascading series of due process violations that persist so long as she remains confined.
43. Third, the government’s asserted immigration enforcement interests can be fully satisfied through Ms. Albernaz’s release or, at minimum, through a prompt bond hearing. Additional procedural safeguards would impose no cognizable burden on the government. To the

contrary, continued detention imposes unnecessary fiscal costs and wastes judicial resources. ICE could have, and should have, continued any monitoring through less restrictive and constitutionally sound means

44. All three *Mathews* factors weigh decisively in Ms. Albernaz's favor. Respondents' failure to provide even minimal procedural protections violates the Fifth Amendment and warrants her immediate release or, in the alternative, an immediate bond hearing.

D. Ms. Albernaz's detention violates her right to substantive due process because she is neither a flight risk nor a danger to the community.

45. Immigration detention is civil in nature and must "bear a reasonable relation to the purpose for which the individual [is] detained" such that it remains "nonpunitive in purpose and effect." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The only legitimate regulatory purposes of civil immigration detention are to ensure appearance at future proceedings and to protect the community from danger. *Id.* at 690–91; *Diop v. ICE*, 656 F.3d 221, 233–34 (3d Cir. 2011).

46. Ms. Albernaz is not a flight risk. She has complied with all ICE reporting requirements and appeared as directed for her scheduled check-in. The United States is her home, where her U.S. citizen child relies on her daily care and supervision. Her medical condition and her daughter's medical and psychological vulnerabilities further anchor her presence and ensure compliance with all future proceedings.

47. Ms. Albernaz is not a danger to the community. She has no criminal history whatsoever and poses no threat to public safety.

48. No legitimate governmental interest justifies Ms. Albernaz's continued detention. Rather, she was detained solely because she was readily identifiable and easily located during a routine

ICE check-in. Detention based on convenience rather than necessity is not a constitutionally permissible basis for civil confinement.

49. Because Ms. Albernaz's detention has been imposed without the procedural safeguards required by the Due Process Clause of the Fifth Amendment, and because it bears no reasonable relation to any legitimate governmental purpose, her continued detention without a bond hearing is unlawful. She must therefore be released immediately. In the alternative, this Court should order a prompt and meaningful bond hearing in the first instance.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (SUBSTANTIVE DUE PROCESS)

1. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
2. Ms. Albernaz is not a flight risk nor is he a danger to the community. Respondents' detention of Ms. Albernaz is therefore unjustified and unlawful. Accordingly, Ms. Albernaz is being detained in violation of her Constitutional right to Due Process under the Fifth Amendment.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (PROCEDURAL DUE PROCESS)

3. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
4. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law."

5. Ms. Albernaz is entitled to the protections of the 5th Amendment Due Process Clause. First, Ms. Albernaz has a significant liberty interest in remaining the United States. Second, in light of the Constitution, the INA and its applicable regulations, Respondents have procedurally deprived and continue to risk deprivation of Ms. Albernaz's due process rights.
6. Third, any additional or substitute procedural requirement would not burden the government whatsoever - if anything, the government is burdening itself by fiscally detaining Ms. Albernaz and wasting judicial resources.
7. Accordingly, Ms. Albernaz is being detained without sufficient process in violation of her Constitutional right to Due Process under the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over the instant matter;
2. Issue a Writ of Habeas Corpus ordering the immediate release of Petitioner from Respondents custody;
3. In the alternative, grant a Writ of Habeas Corpus ordering an immediate bond hearing in the first instance to ensure Petitioner's detention bears a reasonable relation to the government's interests; and
4. Enter a preliminary and permanent injunction restraining Respondents from re-arresting Petitioner;
5. Order any such other relief as this Court deems just and proper.

Dated: January 30, 2026

Respectfully Submitted,



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Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Motion for Temporary Restraining Order and Injunctive Relief and Petition for Writ of Habeas Corpus with all attachments using the PACER system.

Dated: January 30, 2026

Respectfully Submitted,



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