UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-

IRMA MEJIA-RODRIGUEZ,

Petitioner-Plaintiff,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GUADIAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

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

U.S. DEPARTMENT OF HOMELAND SECURITY,

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity; and

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Respondents-Defendants.

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

Petitioner Irma Mejia-Rodriguez ("Petitioner"), by and through her undersigned counsel,[1] hereby respectfully files this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner is subject to discretionary detention 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. §§ 1226(c), 1225(b)(2), or 1231. Petitioner is eligible for consideration for bond. Respondents are failing and refusing to concede detention is discretionary and to exercise discretion. As a result, Petitioner is being unlawfully detained.

INTRODUCTION

1. Petitioner is a noncitizen. In December 2004, she entered the United States without inspection. She has continuously been present in the United States for twenty-one years.

2. On December 12, 2025, the Department of Homeland Security ("DHS") issued an arrest warrant charging Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

3. Petitioner was apprehended by immigration authorities on December 12, 2025, and has since been detained by DHS at an U.S. Immigration and Customs Enforcement ("ICE") facility in Colorado, or as of today's date, for a total of 54 days.

4. Petitioner is under the direct control of Respondents and their agents.

5. This Court — and many other courts — have held that noncitizens who entered without inspection, like Petitioner, are eligible for consideration for discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under either § 1226(c) or § 1225(b)(2). *See e.g., Merchan-Pacheo v. Noem et al.*, Civil Action No. 1:25-cv-03860-SBP (D. Colo. January 12, 2026).

---

[1] Undersigned counsel is a pro bono attorney with PODER, a community-based project in Northern Colorado providing legal representation to respondents in deportation proceedings.

6. Petitioner is a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, Case No. 5:25-cv-1873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) (on appeal 2025 WL 3713987) (all Bond Eligible Class Members are detained under § 1226(a) and *not* § 1225(b)(2), and thus, *are eligible* for consideration for bond).

7. Petitioner's detention is unlawful because she has not been granted a bond hearing under 8 U.S.C. § 1226(a). More than a decade ago, Petitioner was in removal proceedings (also under 8 U.S.C. § 1182(a)(6)(A)(i)) that were subsequently dismissed without prejudice at the government's request, but on May 8, 2012, an immigration judge had exercised his discretion under 8 U.S.C. § 1226(a) *and granted her bond in the amount of $7,500.00.*

8. A decade later, DHS and ICE are – unlawfully – treating anyone who entered the United States without inspection *as an applicant for admission*, or as not eligible for bond. DHS's response to Respondent's efforts to obtain a Notice of Custody Determination was as follows:

> Good morning,
>
> I was forwarded this email to review. When your client was taken into custody she was not issued an I-286. New DHS policy treats anybody who entered the U.S. without inspection as an applicant for admission and I-286's are not being issued. If you have any questions please let me know.
>
> Adnna A. Gebrehiwet
> Deportation Officer | Detained Docket Unit
> ICE Enforcement and Removal Operations
> Denver Field Office, Aurora DVS
> Cell: (720) 498-1835

In other words, DHS and ICE will not make a custody determination under 8 U.S.C. § 1226(a) for Petitioner. DHS and ICE's detention of Petitioner (and others similarly situated) on this basis violates the plain language of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*., and its implementing regulations.

9. DHS and ICE have misclassified Petitioner under § 1225(b)(2) rather than § 1226. As courts have explained, the former statute applies to applicants "seeking admission" and the

latter statute applies to "aliens already in the country," like Petitioner. *See*, *Merchan-Pacheo,* supra (Magistrate Judge Prose granted Petitioner's Writ of Habeas Corpus holding: (a) 8 U.S.C. § 1226, not § 1225, applies to noncitizens already present in the United States; (b) *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (2025) does not have precedential value; and (c) federal regulations entitle noncitizens detained under § 1226(a) to a bond hearing at the outset of detention). *See also, Marina v. Bondi et al.*, 2026 WL 131689 (D. Minn. January 19, 2026) ("Marina has shown she is subject to discretionary detention and entitled to a bond hearing.") The effect of the misclassification is mandatory detention, not discretionary detention.

10. Petitioner requested a custody redetermination by an immigration judge and included as evidence the above communication from DHS and ICE.

11. At a hearing held February 2, 2026, the Immigration Judge in the Executive Office for Immigration Review ("EOIR") denied Petitioner bond on the basis that she lacked jurisdiction. The Immigration Judge articulated orally that, because DHS had not yet completed a Notice of Custody Determination (Form I-286) as to Respondent, there was no initial custody determination by DHS that she could redetermine. A copy of the Immigration Judge's Order is attached as Exhibit 1.[2]

12. Respondents have unlawfully engineered circumstances whereby Petitioner is denied the opportunity to be released on bond. Respondents must consider individualized findings as to Petitioner consistent with 8 U.S.C. § 1226(a) and due process. Their failure and refusal to do so is contrary to law.

---

[2] The Immigration Judge's conclusion is similar to the conclusion of a different immigration judge in a different case relating to a different detainee at the Aurora Detention Facility, but his order contains his written explanation for his conclusion he lacked jurisdiction. A redacted copy of that Immigration Judge's Order reaching the same conclusion is attached as Exhibit 2.

13. Absent an order of relief from this Court, Petitioner will remain stuck in detention, wholly deprived of her legal rights and her liberty.

14. Petitioner respectfully seeks an order requiring her immediate release from custody on a $7,500.00 bond, which is consistent with a prior immigration judge's discretionary decision made back in May of 2012, a copy of which is attached as Exhibit 3, or a lesser amount because of her demonstrated history of bond compliance. Nothing has changed since May of 2012. Petitioner has not subsequently been charged with or convicted of any crimes; she is not a danger to the community; and she is not a flight risk.

15. In the alternative, Petitioner requests that this Court order the immigration court to conduct a prompt and meaningful bond hearing pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. §§ 1236.1(d) and 1003.19 within seven days, at which Respondents must bear the burden of justifying continued Petitioner's detention by clear and convincing evidence.

16. Petitioner further seeks a declaration that DHS's continued detention of her is unlawful.

17. The Court should expeditiously grant this petition.

JURISDICTION AND VENUE

18. Petitioner is in the physical custody of the federal government at DHS's Denver Contract Detention Facility, also known as the ICE detention facility at 3130 N. Oakland St. in Aurora, Colorado ("the Aurora Detention Facility"). Petitioner challenges the legality of her detention.

19. This action arises under the Constitution of the United States and the INA and its implementing regulations.

20. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).

21. This Court may grant relief pursuant to the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Administrative Procedures Act, 5 U.S.C. §§ 500-596, 701-706, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., the All Writs Act, 28 U.S.C. § 1651, Federal Rule of Civil Procedure 65, and the Court's inherent equitable powers.

22. Venue is proper in the District of Colorado because Petitioner is detained within this District at the Aurora Detention Facility. *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484, 493- 500 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 442–43 (2004).

23. Respondents are officers, employees, or agencies of the United States, and the events or omissions giving rise to Petitioner's claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

24. Petitioner's challenge to her detention is fundamentally legal in nature, so no hearing is required. *See* 28 U.S.C. § 2243.

25. The Court should grant the petition for writ of habeas corpus forthwith, as the legal issues have already been resolved in this District in *Merchan-Pacheo. See also, Maldonado Bautista.*

26. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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).

27. If the Court issues an order to show cause, Petitioner asks that the Court require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243 (emphasis added).

PARTIES

28. Petitioner is a native and citizen of Mexico who has been assigned Alien Registration Number [redacted] She has been detained at the Aurora Detention Facility since her arrest on December 12, 2025. She is in the custody, and under the direct control, of Respondents and their agents.

29. Respondent Juan Balatasar is the Warden of the Aurora Detention Facility. As such, Respondent Juan Balatasar is one of Petitioner's immediate custodians and is responsible for Petitioner's detention. He is named in his official capacity.

30. Respondent Robert Guardian is the Director of the Denver Field Office for ICE. As such, Respondent Robert Guardian is also one of Petitioner's immediate custodians and is responsible for Petitioner's detention. He is named in his official capacity.

31. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees DHS and ICE, which are responsible for Petitioner's detention. Respondent Noem has ultimate custodial authority over Petitioner. She is named in her official capacity.

32. Respondent Todd M. Lyons is the most Senior Official Performing the Duties of the Director of ICE and is responsible for ICE detention operations nationwide. He is named in his official capacity.

33. Respondent Pam Bondi is the Attorney General of the United States, or the chief law enforcement officer of the federal government. She is responsible for the Department of

Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is named in her official capacity.

34. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including custody determinations and the detention and removal of noncitizens.

35. Respondent Executive Office for Immigration Review ("EOIR") is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

EXHAUSTION AND FUTILITY

36. Immigration Judges for detainees in the Aurora Detention Facility have indicated they lack jurisdiction to consider bond under INA § 236(a) in circumstances like Petitioner's based on their adherence to Board of Immigration Appeals (BIA) precedents, including *Matter of Q. Li* and *Matter of Yajure Hurtado*, which they consider binding despite the decisions' conflict with statutory and regulatory text.

37. Courts routinely excuse exhaustion when resort to administrative remedies would be futile, cause irreparable injury, or when the petitioner raises substantial constitutional questions.

38. Habeas relief is especially appropriate where, like here, an agency concludes that precedent forecloses the requested relief, and it would decline jurisdiction over bond under § 1226(a) in these circumstances notwithstanding contrary statutory and regulatory language and numerous, recent federal district court decisions.

LEGAL FRAMEWORK

39. Federal law, and specifically 8 U.S.C. § 1226(a), authorizes the discretionary detention of noncitizens in § 1229a removal proceedings before an immigration judge. When DHS

or ICE arrests a person pursuant to § 1226(a), they "may" be detained or immediately released and given a notice to appear in immigration court. If they elect to initially detain someone under § 1226(a), then those individuals are then generally entitled to a "custody redetermination hearing" (also known as a bond hearing) before an immigration judge near the outset of their detention, unless they have been arrested for, charged with, or convicted of certain disqualifying crimes (that are enumerated at § 1226(c) and not relevant here). *See* 8 U.S.C. § 1226(a) & 8 C.F.R. §§ 1003.19(a), 1236.1(d). This is the "default" detention authority, *see Jennings v. Rodriguez*, 582 U.S. 281 (2018), and for decades has been applied to people apprehended in the interior of the United States, rather than at or near the border or a port of entry.

40. Noncitizens present in the United States, like Petitioner, have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

FACTUAL ALLEGATIONS

41. Respondent is a 57-year-old national of Mexico. She entered the United States without inspection in December 2004 and has been continuously present in the United States ever since.

42. Back in January of 2012, Petitioner was arrested as part of an ICE raid on the Little America hotel Wyoming. Petitioner and others were charged with the crime of misuse of a social security number in violation of 42 U.S.C. § 408(a)(8). On April 19, 2012, pursuant to a plea agreement, she was sentenced for a violation of 42 U.S.C. § 408(a)(7)(B), which is false representation of social security number to obtain employment. Her sentence was credit for time

served plus up to 10 days with no supervised release. After release from criminal custody, she was detained for removal proceedings under the INA.

43. In removal proceedings under 8 U.S.C. § 1182(a)(6)(A)(i) that began in April of 2012, Respondent was initially detained at the Aurora Detention Facility.

44. On May 8, 2012, an immigration judge, in the exercise of his discretion under 8 U.S.C. § 1226(a), granted her bond in the amount of $7,500.00 ("Prior Bond Order"). At that time, the immigration judge considered the thorough briefing and argument regarding her eligibility for bond, including whether Petitioner had been convicted of a crime involving moral turpitude based on her conviction under 42 U.S.C. § 408(a)(7)(B). He rejected the government's arguments, determined Petitioner was eligible for bond, Petitioner has no disqualifying criminal history, exercised his discretion, and granted her request for bond. The Prior Bond Order decision is law of the case. His order means that he had determined Petitioner had *not* been convicted of a disqualifying crime under 8 U.S.C. § 1226(c)(1) and was *not* subject to mandatory detention.

45. Petitioner posted bond in May of 2012.

46. After May of 2012, Petitioner continued to live in the United States and appeared for removal proceedings. The removal proceedings were administratively closed in 2014. The removal proceedings were recalendared in 2020. Respondent submitted her Application for Cancellation of Removal and Adjustment of Status EOIR 42B. A few months later, DHS moved to dismiss the removal proceedings, which was granted.

47. Petitioner was out of custody between May 2012 and December 12, 2025. During those thirteen and a half years, Petitioner was not charged with or convicted of any crime.

48. On December 12, 2025, DHS issued Form I-200, or a warrant for Petitioner's arrest. Petitioner was taken into custody and has been in custody since that day.

LAW OF THE CASE AND ISSUE PRECLUSION

49. The Prior Bond Order is the law of the case and has preclusive effect.

50. Respondents are barred from making arguments that contradict the Prior Bond Order and the applicable law.

51. "The law of the case 'doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Bay v. Anadarko E&P Onshore LLC*, 73 F.4th 1207, 1216 (10th Cir. 2023). The issue cannot be relitigated in subsequent proceedings in the same case. It applies to issues previously decided, either explicitly or by necessary implication. *Id.*

52. Here, there is no legal basis for change from the Prior Bond Order. The law applicable to Petitioner as a noncitizen who entered without inspection has not changed. She remains entitled to a discretionary detention under 8 U.S.C. § 1226(a).

53. Further, there is no factual basis for change from the Prior Bond Order. Petitioner was found to be, and Petitioner continues to be, neither a danger to the community nor a flight risk.

54. In addition, the doctrine of collateral estoppel or issue preclusion applies to an administrative agency's determination of certain issues of law or fact involving the same alien in removal proceedings. *Oyeniran v. Holder*, 672 F.3d 800, 806 (9th Cir. 2012). The doctrine "applies to a question, issue, or fact when four conditions are met: (1) the issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits." 672 F.2d 806.

55. Here, Petitioner is once again in removal proceedings, and Respondents are not entitled to a do-over. They (or their predecessors in office) already lost. All four conditions of

collateral estoppel are met on the underlying legal issue. The immigration judge who issued the Prior Bond Order determined that Petitioner, as a noncitizen who entered without inspection and who Petitioner had no disqualifying criminal history, is subject to discretionary detention under 8 U.S.C. § 1226(a). The issue was litigated and decided in the prior custody proceeding in 2012. Respondents or their predecessors in office had a full and fair opportunity to litigate the issue and lost. The issue of discretionary detention, versus mandatory detention, was necessary to decide the merits of the Prior Bond Order. Petitioner has not subsequently been charged with or convicted of a crime. Petitioner is *not* a mandatory detainee now.

56. In addition, all four conditions of collateral estoppel are met as to the underlying factual issues. The immigration judge who issued the Prior Bond Order made individualized findings that Petitioner was neither a danger to the community nor flight risk. Respondents or their predecessors in office had a full and fair opportunity to litigate the issue, and they lost. The issue was necessary to decide the merits of the Prior Bond Order. After her release from custody, Petitioner further proved herself not be a flight risk by attending all necessary immigration court hearings. All conditions of the previous bond were satisfied, and the bond was returned.

CLAIMS FOR RELIEF

Count I: Unlawful Detention Contrary to the U.S. Constitution and federal law (8 U.S.C. § 1226(a); 8 C.F.R. §§ 1236.1(d), 1003.19; 8 C.F.R. § 245.2)

57. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

58. Petitioner's continued civil detention without a prompt, meaningful custody redetermination violates due process.

59. Petitioner's detention is unlawful because it exceeds statutory authority under 8 U.S.C. § 1226(a) and constitutes arbitrary and capricious agency action in violation of the INA and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706.

60. Under 8 U.S.C. § 1226(a), DHS and ICE may arrest and detain a noncitizen pending a decision on removability, but Congress expressly conditioned this authority on the exercise of discretion and the availability of release on bond or conditional parole.

61. Section 1226(a) detention is discretionary and requires Respondents to consider bond or conditional parole when detention is not mandatory.

62. Petitioner's detention — when she is neither a danger to the community nor a flight risk — is therefore not only contrary to the structure of § 1226(a) but arbitrary and capricious under the APA. The agency's conduct is arbitrary because it violates well-established APA standards requiring agencies to articulate a rational connection between the facts found and the decision made.

63. As a member of the Bond Eligible Class in *Maldonado Bautista*, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

64. Petitioner is within the Bond Eligible Class certified in Maldonado Bautista and Respondents are bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

65. In addition, as to Petitioner, the Prior Bond Order is the law of the case and has preclusive effect.

66. By denying Petitioner a bond hearing under § 1226(a) and asserting that she is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

67. Petitioner seeks an order for her immediate release on a $7,500.00 bond or a lesser amount given her demonstrated history of bond compliance.

68. Alternatively, Petitioner seeks an order that she be released unless she receives a bond hearing before a neutral arbiter where, to justify her continued detention, the government bears the burden to establish by clear and convincing evidence that she is a danger to the community or a flight risk, and, if the government cannot meet its burden, Petitioner must be ordered released on bond.

Count II: Declaratory Relief (28 U.S.C. §§ 2201–2202)

69. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

70. An actual and justiciable controversy exists regarding DHS's detention authority under 28 U.S.C. §§ 2201–2202.

71. Petitioner seeks a declaration that Petitioner's continued detention is unlawful.

72. Petitioner seeks a declaration that Respondents may not enroll Petitioner in any "alternatives to detention" or similar program. *See, e.g., Cortes v. Guardian et al.*, Civil Action No. 1:26-cv-00294-CNS (D. Colo. February 2, 2026).

73. Petitioner seeks a declaration that she not be transferred from the Aurora Detention Facility to a different detention facility under the control of Respondents.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

a. Assume jurisdiction over this matter;
b. Issue a writ of habeas corpus requiring that Respondents release Petitioner within one day on a $7,500.00 bond or a lesser amount;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to provide a bond hearing under 8 U.S.C. § 1226(a) within seven days at which:

   1) the Government must prove by clear and convincing evidence that Petitioner is a danger to the community or a flight risk;

   2) the Immigration Judge must consider Petitioner's ability to pay and alternatives to detention; and

   3) if the Government fails to meet its burden, Petitioner must be released forthwith on the least restrictive conditions of supervision;

and, upon a failure to do so, Respondents must release Petitioner within one day;

d. Declare that DHS's detention of Petitioner is unlawful;

e. Declare that Respondents may not enroll Petitioner in any "alternatives to detention" or similar program;

f. Declare that Petitioner not be transferred from the Aurora Detention Facility to a different detention facility under the control of Respondents;

g. Enjoin Respondents from re-arresting or detaining Petitioner absent new, individualized, lawful findings consistent with § 1226(a) and due process;

h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

i. Grant such other and further relief as this Court deems just and proper.

Date: February 3, 2026

Respectfully submitted,

/s/ Tracy A. Oldemeyer
Tracy A. Oldemeyer (Bar No. 28246)
PODER
308 Cherry Street
Fort Collins, Colorado 80521
Telephone: (970) 430-5882
Facsimile: (970) 232-9455
toldemeyer@irelandstapleton.com
Attorney for Petitioner

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

I represent Petitioner Irma Mejia-Rodriguez, and I submit this verification on her behalf with her knowledge and consent. 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.

February 3, 2026.

/s/ Tracy A. Oldemeyer
Tracy A. Oldemeyer (Bar No. 28246)
PODER
308 Cherry Street
Fort Collins, Colorado 80521
Telephone: (970) 430-5882
Facsimile: (970) 232-9455
toldemeyer@irelandstapleton.com
Attorney for Petitioner