

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

Elva DOMINGO AGUILAR

Petitioner,

V.

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

**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
SAN ANTONIO FIELD OFFICE, AND**

**JOSE RODRIGUEZ JR, IN HIS OFFICIAL
CAPACITY AS WARDEN OF THE DILLEY
IMMIGRATION PROCESSING CENTER**

Respondents,

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Case No. 5:26-cv-683

**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, and ordering her immediate release. In support of this motion, Petitioner states the following:

I. RELEVANT FACTUAL BACKGROUND

1. Petitioner is a 39-year-old native and citizen of Guatemala. On or about October 17, 2007, she entered the United States without inspection and has resided continuously in Immokalee, Florida since then.
2. On or about November 12, 2025, Petitioner was traveling to work when Immigration and Customs Enforcement (“ICE”) agents stopped her employer’s bus and conducted an enforcement inspection in Florida. Petitioner was subsequently apprehended by ICE, taken into custody, and transferred to the Dilley Immigration processing center in Dilley, Texas.
3. Thereafter, Petitioner was served with a Notice to Appear, placing her in standard removal proceedings pursuant to 8 U.S.C. § 1229(a). ICE charged Petitioner, inter alia, as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered the United States without inspection (i.e., without being admitted or paroled).
4. Petitioner has never been arrested by any law enforcement agency nor previously detained by immigration authorities. She has no criminal convictions that would render her ineligible for immigration relief.
5. Petitioner is the mother of three (3) U.S. Citizen children; twins who are 17 years-old and a 16 year-old daughter who would suffer extreme and unusual hardship if she were removed from the United States.
6. On December 30, 2025, an Immigration Judge denied the Petitioner’s request for bond stating that the that Petitioner is subject to mandatory detention under 8 U. S.C. § 1225(b)(2)(A) based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) as the judgement under *Lazaro Maldonado Bautista, et al. v. Ernesto Santacruz Jr., et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025).

7. Petitioner has an Individual Hearing scheduled on February 13, 2026 where she could face a possible removal order if relief is denied and be subject to further unlawful detention during the appeal process.
8. Petitioner is now subject to ongoing detention in violation of her Constitutional rights.
9. Petitioner suffers irreparable harm by being detained without the opportunity to request release before a neutral arbiter, due to the deprivation of liberty without due process and the emotional harm the petitioner currently suffers while detained. Petitioner therefore brings this motion for a preliminary injunction and temporary restraining order preventing further detention and requesting immediate release.
10. The Petitioner remains in detention. Absent relief from this Court, she faces prolonged immigration detention while litigating her claims for Cancellation of Removal for Nonpermanent Residents in removal proceedings.
11. 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 the Plaintiffs' motion for class certification, creating a nationwide bond eligible class of noncitizens who entered without inspection, were later detained, and are now subject to mandatory detention statutes. The Court found that all 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). *See Exhibit A.*

**II. PETITIONER SATISFIES THE STANDARD FOR A TEMPORARY
RESTRAINING ORDER**

12. Petitioner is entitled to a preliminary injunction preventing continued detention. If Petitioner's motion is not granted, she is certain to suffer irreparable harm both to her

constitutional rights and to her health. She is also substantially likely to succeed on the merits of her claim: that the government may not detain her without a bond hearing before a neutral arbiter, as required by law. Further, no public interest is served by the government's indefinite, mandatory detention of an individual who entered the United States three years ago, has a timely filed asylum application pending with the immigration agency, and no disqualifying criminal history. Accordingly, this Court should grant the Petitioner's motion and enjoin the government from further detaining her.

13. To obtain a temporary restraining order, 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 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).

A. LIKELIHOOD OF SUCCESS ON THE MERITS

14. Petitioner has a substantial likelihood of success on the habeas petition on multiple independent grounds.
15. First, 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. Second, because the Petitioner has no disqualifying criminal convictions, she 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 3rd of February 2026,

Respectfully submitted,

/s/ Karina Roque

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 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/ Karina Roque
Karina Roque
Attorney for Petitioner