

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

YISEL MENDOZA TABARES

Petitioner

v.

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; **PAMELA BONDI**, Attorney General of the United States; **MARY DE ANDA-YBARRA**, Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and **DORA CASTRO**, Warden of the Otero County Processing Center, in their official capacities

Respondents.

Case No. 2:26-cv-00283

**PETITION FOR WRIT OF
HABEAS CORPUS**

I. INTRODUCTION

1. Petitioner Yisel Mendoza Tabares respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 because she is being unlawfully detained by the Department of Homeland Security (“DHS”) without any opportunity for an individualized bond hearing.

2. DHS asserts that Petitioner is subject to mandatory detention under INA § 1225(b) by labeling her an “arriving alien.” However, Petitioner was paroled into the United States on September 1, 2024, has resided continuously in the country for over a year, and is currently in formal removal proceedings under INA § 240. Furthermore, she has a pending application for lawful permanent residence under the Cuban Adjustment Act (“CAA”), filed on September 8, 2025.

3. Despite her full compliance with all immigration requirements, Petitioner was abruptly detained on December 5, 2025, by ICE officers waiting outside her scheduled immigration court hearing. She is currently held at the Otero County Processing Center.

4. **Petitioner’s arrest represents a deceptive “bait and switch” enforcement tactic. Having entered the United States through the government-sanctioned CBP One program and received humanitarian parole, Petitioner relied on the government’s invitation to remain in the interior and comply with legal proceedings. Respondents have now bypassed this established framework, transforming a tool designed for lawful processing into a ruse for detention immediately following her court appearance—undermining the very due process and court compliance they claim to enforce**

5. DHS’s continued reliance on § 1225(b) is an unlawful misclassification that transforms a threshold border-screening statute into a tool for prolonged interior detention without bond. Because Petitioner is being detained under the wrong statutory authority and denied any meaningful custody hearing, this Court should grant habeas relief and order a prompt individualized bond hearing under INA § 1226(a), with the Government bearing the burden of proof.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is “in custody” within the meaning of the habeas statute and challenges the legality of that custody. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

7. This Court also has jurisdiction under 28 U.S.C. §§ 1331 and 2243. Petitioner’s claims arise under the Constitution and laws of the United States, including the Immigration and Nationality Act and the Fifth Amendment’s Due Process Clause.

8. Venue is proper in this District because Petitioner is detained within the District of New Mexico, and Petitioner's immediate custodian is located within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

III. PARTIES

9. Petitioner **Yisel Mendoza Tabares** is a 38-year-old citizen of Cuba. She entered the United States on September 1, 2024, and was paroled into the country. Since entering, she has lived in Odessa and Cedar Park, Texas. On December 5, 2025, immediately following her immigration hearing, ICE took her into custody. After taking custody of Petitioner in El Paso, ICE moved Ms. Mendoza Tabares to the Otero County Processing Center in Chaparral, New Mexico, where she remains detained.

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

11. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, including EOIR and the immigration court system. She is sued in her official capacity.

12. Respondent Mary De Anda-Ybarra is named in her official capacity as the Field Office Director for the ICE El Paso Field Office. As Field Office Director, Respondent De Anda-Ybarra oversees ICE's enforcement and removal operations in West Texas and New Mexico. As such, she is a legal custodian of Ms. Chic Ortiz.

13. Respondent Dora Castro is named in her official capacity as Warden of the Otero County Processing Center, where Ms. Mendoza Tabares is currently being detained.

IV. STATEMENT OF FACTS

14. Petitioner Yisel Mendoza Tabares is a citizen and national of Cuba. (Exhibit 1, 2).


15. Yisel is a physical therapist who was awaiting being granted residency in the United States so she could obtain her academic degree in this country and continue her professional career.

16. Yisel is also a devoted aunt to her niece whom she lives with and helps her sister maintain their household. Yisel is a primary source of emotional support to her sister and her niece.

17. On September 1, 2024, Petitioner entered the United States at the Calexico Port of Entry in California. (Exhibit 1, 2).

18. Upon entry, Petitioner was inspected and granted humanitarian parole into the United States. (Exhibit 1). Her Form I-94 reflects a parole classification of "DT" with an "Admit Until" date of August 31, 2026. (Exhibit 1).

19. On the same day, September 1, 2024, the Department of Homeland Security ("DHS") issued a Notice to Appear (NTA), placing Petitioner into formal removal proceedings under INA § 240. (Exhibit 2). The NTA charged Petitioner as an "arriving alien". (Exhibit 2).

20. Following her entry, Petitioner resided at  (Exhibit 2, 4).

21. Petitioner was granted employment authorization (Category C11) valid from October 21, 2024, to August 31, 2026. (Exhibit 4).

22. After residing in the United States for more than one year as a paroled Cuban national, Petitioner applied for lawful permanent residence under the Cuban Adjustment Act ("CAA"). (Exhibit 3). U.S. Citizenship and Immigration Services ("USCIS") received her Form I-485 on September 8, 2025, and the application remains pending. (Exhibit 3).

23. On December 5, 2025, Petitioner appeared for a scheduled hearing before Immigration Judge Judith Bonilla at the El Paso Immigration Court. (Exhibit 5).
24. During this hearing, DHS orally moved to dismiss the proceedings under 8 C.F.R. § 1239.2(c), stating it wished to place Petitioner in expedited removal proceedings. (Exhibit 5).
25. Judge Bonilla denied the DHS motion, finding that Petitioner has established *prima facie* eligibility for relief under the Cuban Adjustment Act and that DHS's desire for expedited removal did not justify dismissing active § 240 proceedings. (Exhibit 5).
26. Immediately following the hearing on December 5, 2025, ICE officers waiting outside the courtroom arrested Petitioner. (Exhibit 5).
27. Petitioner is currently detained at the **Otero County Processing Center** in Chaparral, New Mexico. (Exhibit 6).
28. DHS is currently treating Petitioner as an "arriving alien" subject to **mandatory detention** under **INA § 1225(b)** and has refused to provide an individualized bond hearing under **INA § 1226(a)**.

V. LEGAL FRAMEWORK

A. **CAA Establishes a mandatory statutory pathway to permanent residency that prohibits arbitrary and prolonged detention.**

The Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (“CAA”) is a specialized congressional mandate designed to provide Cuban nationals with a clear, protected route to Lawful Permanent Resident (“LPR”) status. Under the law, any native or citizen of Cuba who has been inspected and paroled into the United States and has maintained physical presence for at least one year is eligible to adjust their status.

Courts have recognized that because Congress specifically intended for individuals like Petitioner to have the opportunity to pursue this status, the government cannot use mandatory

detention to "summarily strip" them of these vested statutory benefits. As the Cuban Adjustment Act remains fully in effect as of 2026, it creates a "statutory pathway to lawful status" that DHS is legally required to respect when making custody determinations

29. The CAA was enacted explicitly "[t]o adjust the status of Cuban refugees to that of [LPR's] of the United States." *Id.*

30. **The CAA remains fully in force and in effect as of 2026, as Congress has never repealed, suspended, or limited the statute.** Petitioner is held in mandatory detention following the government's recent interpretation of 8 U.S.C. §§ 1225, 1226 of the INA. The argument that Respondent's authority to detain Petitioner under § 1225(b) pending the resolution of her removal proceedings echo nearly identical arguments rejected by courts across the country.¹

31. CAA eligibility creates a statutory pathway to lawful status that DHS must respect when exercising detention and custody authority. DHS may not detain individuals in a manner that undermines or nullifies this congressionally created scheme.

B. The CAA Supports Habeas Relief

32. Petitioner satisfies all statutory predicates for relief under the CAA and therefore may not be subject to mandatory or prolonged detention.

¹ *Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Arauz v. Baltazar*, No. 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Nava Hernandez v. Baltazar, et al.*, No. 1:25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Hernandez Vazquez v. Baltazar, et al.*, No. 1:25-cv-3049-GPG, ECF No. 22 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar, et al.*, No. 1:25-cv-3120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltazar, et al.*, No. 1:25-cv-2955-GPG, ECF No. 21 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltazar, et al.*, No. 1:25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Carrillo Fernandez*, 2025 WL 3485800; *Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, 2025 WL 3470902 (D. Nev. Dec. 3, 2025); *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY, --- F. Supp. 3d ---, 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *Ramos v. Rokosky*, No. 25cv15892 (EP), 2025 WL 3063588 (D.N.J. Nov. 3, 2025); *Godinez-Lopez v. Ladwig*, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025); *Jimenez v. FCI Berlin, arden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 795 F.Supp.3d 475 (S.D.N.Y. Aug. 13, 2025).

1) Mandatory Detention Under INA § 1225(b) Does Not Apply

33. Once a Cuban national has been (1) inspected, (2) released into the United States (including via parole, DT Parole, I-94, or Form I-220A); and (3) has been physically present long term (*i.e.*, for one year) they are no longer considered to be an “arriving alien” subject to expedited removal or mandatory detention under INA § 1225(b).

34. DHS cannot revive § 1225(b) years after release by re-arresting Petitioner and relabeling them as an “applicant for admission.”

2) Custody Authority Defaults to INA § 1226(a).

35. Because § 1225(b) is inapplicable, DHS’s authority must arise under 8 U.S.C. § 1226(a). § 1226(a) requires individualized custody determinations, permits release on bond or parole, and does not authorize blanket, automatic, or prolonged detention.

36. Detention without an individualized assessment of flight risk or danger violates both the INA and the Fifth Amendment’s Due Process Clause.

3) Re-Detention Without Changed Circumstances Violates Due Process

37. Upon entry, after Petitioner’s brief inspection with Border Patrol, Petitioner was released and paroled into the United States and has since complied fully with all conditions of release, including entering the United States via a lawful humanitarian parole process on September 1, 2024, maintaining continuous residence for over one year, and attending all scheduled immigration hearings until she was unexpectedly detained by ICE on December 5, 2025.

38. In this case, there is no allegation of criminal conduct, no evidence of flight risk, and no violation of any release condition. Thus, re-detention under these circumstances – without new facts or changed circumstances – is arbitrary and unconstitutional. Due process forbids detention based solely on a change in enforcement posture or policy preference.

4) The Cuban Adjustment Act Creates a Protected Reliance Interest

39. Congress affirmatively invited Cuban nationals to pursue lawful permanent residence through the CAA.

40. Once CAA eligibility exists, DHS may not frustrate that statutory invitation by (1) detaining individuals indefinitely; (2) foreclosing access to the adjustment process; or (3) using detention as a coercive tool while relief remains available.

41. CAA eligibility strengthens both substantive due process protections and the conclusion that continued detention serves no legitimate governmental purpose.

C. Administrative delays and policy "pauses" cannot circumvent the constitutional requirement for individualized custody determinations

42. The recent systemic "pause" or slowdown in the adjudication of the CAA applications represents an administrative policy choice, not a statutory mandate from Congress. While the current executive administration has increased scrutiny and slowed processing times for these applications, such internal policy review does not—and cannot—expand ICE's detention authority under the Immigration and Nationality Act. At various times, USCIS has slowed adjudications, held cases, or increased scrutiny of CAA applications, sometimes citing internal policy review or enforcement priorities. This has been described informally as a "pause."

D. The CAA has not been repealed, suspended, or revoked, and any slowdown is administrative in nature, not statutory.

43. USCIS adjudication practices do not expand ICE's detention authority. **Delay does not convert discretionary custody into mandatory detention.**

44. To the extent the government suggests that adjudication of CAA applications has been slowed, paused, or placed under heightened review, that assertion provides no lawful basis for

continued detention. Administrative delay does not suspend a congressionally enacted statute, nor does it authorize DHS to detain an otherwise eligible individual indefinitely.

45. The government may not justify prolonged or renewed detention by pointing to uncertainty or delay of its own making. Where congress has created a statutory pathway to lawful permanent residence, and DHS retains discretion to parole, continued detention serves no legitimate governmental purpose and violates the Due Process Clause of the Fifth Amendment.

46. Any reference to a “CAA pause” underscores the unconstitutionality of detention, rather than justifying it.

47. Custody authority and adjudication speed are legally distinct. Government delay makes detention *less* lawful, not more.

VIII. CLAIMS FOR RELIEF

A. COUNT ONE: *Violation of the Immigration and Nationality Act*

48. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

49. Respondents have exceeded their statutory authority by detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A), as the mandatory detention requirement of that provision does not apply to noncitizens who have been residing in the interior of the United States for a significant period.

50. Because Petitioner has resided in the United States since September 1, 2024, and was paroled into the interior, her detention is properly governed by 8 U.S.C. § 1226(a), which provides for an individualized custody determination.

51. The design and structure of the Cuban Adjustment Act, as special legislation enacted to benefit Cuban nationals, supports the conclusion that Petitioner must have an opportunity to pursue

her pending Form I-485 application without being subjected to mandatory detention that summarily strips her of these intended benefits.

B. COUNT TWO: *Violation of Fifth Amendment Right to Due Process: Failure to Provide a Meaningful Bond Hearing*

52. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs.

53. The Fifth Amendment protects the fundamental right to be free from physical imprisonment. Yet, because the government has her held under “mandatory detention” she is not afforded this right because she is not eligible for a bond hearing.

54. To protect Petitioner’s due process rights, the government must bear the burden of proof at a § 1226(a) bond hearing.

55. Respondents’ refusal to provide Petitioner with an individualized assessment of flight risk or danger, particularly after she established *prima facie* eligibility for the CAA, violates the Due Process Clause.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Declare that Petitioner’s detention under INA § 1225(b) is unlawful;
3. Immediately release Petitioner or, in the alternative;
4. Order Respondents to provide Petitioner with an individualized bond hearing under INA § 1226(a) within two calendar days;
5. Require that at such hearing:
 - The Government bears the burden of proof;

- The burden is clear and convincing evidence;
 - The Immigration Judge considers alternatives to detention;
6. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

s/Melissa M. Henry

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Counsel for Petitioner

Dated: 1/20/2026

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

I represent Petitioner, **YISEL MENDOZA TABARES**, and submit this verification on her behalf.

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.

Dated this 25th day of January, 2025.

s/Melissa M. Henry
Melissa M. Henry

