

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

Susana Raquel ORTUNO MORILLO ()



Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Director, Office of the Principal Legal Advisor,
El Paso (Chaparral), Chaparral Field Office of
Immigration and Customs Enforcement, and,

Warden, Otero County Processing Center,
Chaparral, New Mexico,

Respondents.

Case No. _____

**VERIFIED PETITION
FOR WRIT OF
HABEAS CORPUS**

Expedited Handling Requested

INTRODUCTION

1. Petitioner, Ms. ORTUNO MORILLO, (“Ms. ORTUNO MORILLO”), by and through the undersigned attorney, Rick Barrera, 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 Ms. ORTUNO MORILLO from ICE detention, or in the alternative to enjoin their transfer to a facility outside of the District of New Mexico and to provide Petitioner with a bond hearing to permit release 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 Ms. ORTUNO MORILLO seeks 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”). *Denmore 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 Ms. ORTUNO MORILLO is detained within the District of New Mexico.

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. Petitioner is a citizen of Venezuela and a resident of Saint Cloud, Stearns County, Minnesota, who is currently being held at the who is currently being held at the Otero County Processing Center, in Chaparral, New Mexico. Petitioner is under the direct control of the respondents and has 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. ORTUNO MORILLO.

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 New Mexico, supervises the ICE field offices, and is legally responsible for pursuing Ms. ORTUNO MORILLO's detention and removal. As such, Respondent Noem is a legal custodian of Ms. ORTUNO MORILLO.

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 Petitioner's detention.

11. Respondent Director of the Chaparral Office of the Principal Legal Advisor, El Paso (Chaparral) Field Office for ICE, is being sued in their official capacity as the Director for the Chaparral Office of the Principal Legal Advisor, El Paso (Chaparral) Field Office for ICE, within DHS. In that capacity, Field Office Director has supervisory authority over the ICE agents responsible for detaining Ms. ORTUNO MORILLO. The address for the ICE Field Office is Trial Attorney Unit, 26 McGregor Range Road, Chaparral, NM 88081.

12. Respondent Warden is being sued in their official capacity as the Warden, responsible for the Otero County Processing Center, located at 26 McGregor Range Road, Chaparral, NM, 88081. Because Petitioner is detained in the Otero County Processing Center in Chaparral, New Mexico, the Warden has immediate day-to-day control over Petitioner.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

13. Petitioner is a resident of the city of Saint Cloud, in Stearns County, Minnesota. She is a citizen of Venezuela. She has lived in the United States since May 29, 2024.

14. Ms. ORTUNO MORILLO has a pending asylum application. She does not have a final order of removal.

15. Ms. ORTUNO MORILLO is a caring, passionate and dedicated member of the community. She is an active member of her religious/faith community in Saint Cloud. Ms. ORTUNO MORILLO supports the local Christian church, specifically lending her caring and compassionate skillset to help with the Church's families

and children's needs. In her free time, Ms. ORTUNO MORILLO loves spending quality time with her friends, whom she has forged strong and lasting bonds with. These relationships are steadfast, as she is a loyal and loving friend of many. She is a compassionate and kind daughter, friend of many, church attendee, neighbor and community member.

16. Respondent ICE arrested Ms. ORTUNO MORILLO on or around 1/2/2026. ICE arrested Ms. ORTUNO MORILLO as she was leaving her home. She was on her way to her car, when ICE arrested her. Agents took her out of her car, and demanded to see identifying documents. These were in her purse, which ICE took possession of. ICE Agents did not provide a judicial warrant during this arrest.

17. Petitioner was initially detained in Saint Paul, was then held at ERO El Paso Camp East Montana detention facility in El Paso, Texas, and has since been transferred to the Otero County Processing Center in Chaparral, New Mexico.

18. Detaining Ms. ORTUNO MORILLO is an expensive and pointless endeavor. Ms. ORTUNO MORILLO respectfully seeks 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.

19. Pending the adjudication of this Petition, Ms. ORTUNO MORILLO further seeks an order restraining the Respondents from transferring Petitioner to a location outside of the District of New Mexico, so that the jurisdiction of this

Court is not impeded, and so that Petitioner remains accessible to legal counsel and loved ones.

STANDARD OF LAW

20. 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).

21. The Court must grant a petition for writ of habeas corpus or issue an order to show cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

22. The court has jurisdiction to hear habeas petitions filed by noncitizens who have been detained without any final removal order. See *Danierov v. Noem*, 2026 U.S. Dist. LEXIS 2924 *3-4; 2026 LX 58322; 2026 WL 45288 (D.C.N.M. January 7, 2026).

23. “[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).

24. 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. *In re: 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 extended periods of time are somehow still “seeking admission,” simply because they may unresolved claims of status that have not been presented or resolved.

25. 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 who have already entered and resided within the United States. In that instance, detention is discretionary and governed by 8 U.S.C. § 1226(a). This result is consistent with that reached by well over 300 courts:

In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect.

Danierov, supra.

26. Here, Petitioner was apprehended within the United States after having long established a residence, not at a border while seeking entry. Respondents wrongly assert 8 U.S.C. § 1225(b)(2) as a basis for detaining Ms. ORTUNO

MORILLO without a hearing, when instead the default rule is that detention of noncitizens residing within the U.S. must be pursuant to 8 U.S.C. § 1226(a).

Danierov, supra. Respondents are not purporting to invoke § 1226(a) as the basis for Petitioner's detention. The rule that Respondents invoke, 8 U.S.C. § 1225(b)(2), does not support Petitioner's ongoing detention.

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment Due Process

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

27. Petitioner realleges and incorporates by reference the allegations contained above.

28. Ms. ORTUNO MORILLO has due process rights as a resident of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

29. Federal courts use the three-part test in *Mathews 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.

30. Here, all three factors favor the petitioner.

31. First, Ms. ORTUNO MORILLO has 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. ORTUNO MORILLO is wrongfully confined, a direct attack on Petitioner’s liberty interests.

32. Second, Ms. ORTUNO MORILLO will continue to be deprived of this interest if the current procedure (detaining Ms. ORTUNO MORILLO without a legal basis) is followed. There is no rational explanation for detaining Ms. ORTUNO MORILLO. Respondents’ purported basis for detaining Petitioner under 8 U.S.C. 1225(b)(2) has been soundly rejected by this court and many, many others. *Danierov*, supra.

33. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Ms. ORTUNO MORILLO poses no safety threats to the community. Releasing Ms. ORTUNO MORILLO, or at a minimum holding a bond hearing, would in fact *save* the government the resources and expense of continued imprisonment.

34. The placement of Ms. ORTUNO MORILLO in detention pending the resolution of ongoing immigration proceedings violates Ms. ORTUNO

MORILLO s constitutional rights to due process guaranteed in the Fifth Amendment.

COUNT TWO

Immigration and Nationality Act, 8 U.S.C. § 1226

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

35. Petitioner realleges and incorporates by reference each and every allegation contained above.

36. Respondents violate the Immigration and Nationality Act by attempting to apply mandatory detention through 8 U.S.C. § 1225(b)(2), to Petitioner.

COUNT THREE

Violation of the Administrative Procedure Act

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

37. Ms. ORTUNO MORILLO re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

38. 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).

39. 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).

40. 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.

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

42. 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.

43. The application of § 1225(b)(2) to Ms. ORTUNO MORILLO is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

REMEDY

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

45. 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 Petitioner’s detention was based on any facts that might indicate that Petitioner should be in custody for some reason.

46. 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”).

47. Here, where detention is unlawfully based on 8 U.S.C. § 1225, which does not apply to Petitioner, release is an appropriate remedy.

REQUEST FOR ORDER TO SHOW CAUSE

48. 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.

49. Petitioner, respectfully requests 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. ORTUNO MORILLO prays that this Court grant the following relief;

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from moving Petitioner outside of the jurisdiction of the District of New Mexico;

- (3) Issue an Order requiring Respondents to show cause as to why Petitioner should not be released immediately, or in the alternative afforded a bond hearing;
- (4) Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days; and
- (5) Grant any other and further relief that this Court may deem just and proper.

Date: 02/05/2026

/s/ Richard "Rick" Barrera Jr.

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Attorney on Behalf of Petitioner

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

Pursuant to 28 U.S.C. § 2242

I am a legal worker who drafted this Petition on behalf of the Petitioner. I submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, which knowledge comes from conversations with my client's loved ones, via interpreter, when preparing this filing as well as review of Respondent's publicly available websites.

Date: February 4, 2026

A handwritten signature in black ink, appearing to read 'Avery Zora Reyes Beattie', written over a horizontal line.

Avery Zora Reyes Beattie