
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

PETITION FOR WRIT OF HABEAS CORPUS

(PURSUANT TO 28 U.S.C. § 2241)

BENAVIDES REYES, DAIRY

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing Duties of the Director of U.S. Immigration and Customs Enforcement; JOEL D GARCIA, in his official capacity as Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations

Respondents

Case No.: 3:26-CV-00382

I. BACKGROUND

1. Petitioner, Dairy Benavides Reyes, is a forty one year old citizen of Cuba who entered the United States on December 20, 2024 with prior authorization through CBP1. She was issued an I-94 parole with validity until December 20, 2025. Ms. Reyes was complying by all reporting requirements. She presented herself on June 5, 2025 for an immigration hearing in El Paso, Texas. She was expecting at that time to be able to pursue her claim for asylum which she

had filed with the court in March of 2025. Instead, the immigration judge ordered her case dismissed and she was detained by ICE after leaving the courtroom. Ms. Reyes was unjustifiably taken into federal immigration custody absent reasonable suspicion or probable cause and contrary to incontrovertible evidence that she was abiding by all requirements of immigration laws. Ms. Reyes was then placed in expedited removal proceedings pursuant to 8 U.S.C. §1225(b)(1). The government's actions were arbitrary, unlawful, and dangerous depriving her of liberty and due process. Ms. Reyes is also now eligible to adjust her status pursuant to the Cuban Adjustment Act.

2. On June 16, 2025, an appeal of the June 5, 2025 dismissal was filed with the Board of Immigration Appeals. On June 24, 2025, a custody determination hearing was requested wherein the immigration court denied bond because there was no charging document on file.

3. After about a month of detention, Ms. Reyes was given a credible fear interview which she passed. She was then issued a Notice to Appear (NTA), charging her under § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act as an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, re-entry permit, border crossing card, or other valid entry document.

4. Another custody hearing was requested and denied on August 6, 2025.

5. On August 6, 2025 Counsel emailed Enforcement and Removal Operations requesting Ms. Reyes' case be reviewed for release particularly in light of a stay issued by the District of Colombia in *Coalition for Humane Immigrant Rights v. Noem*, 1:25-cv-00872-JMC. Respondent was informed that the Department would not be abiding by the stay.

6. Prior to her detention, Ms. Reyes was complying with all the requirements of her release. She had no criminal or immigration history. She has now been detained for over eight months at the El Paso detention center. Every day Ms. Reyes is detained subjects her to further

irreparable harm. Immediate relief is necessary to ensure that she is no longer subject to continued violations of her substantive and procedural due process rights. Ms. Reyes asks that this Court find her continued detention is unlawful and unconstitutional and order that she be released from custody or that she be provided a review of her custody status within fourteen days.

II. JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570.

8. This Court has jurisdiction under 28 U.S.C. § 2241; art. I § 9, el. 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. § 1331, as Ms. Reyes is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same).

9. Ms. Reyes has exhausted any and all administrative remedies to the extent required by law. Any further administrative exhaustion is unnecessary because it would be futile; Ms. Reyes is charged as an arriving alien in her Notice to Appear, therefore, the immigration judge lacks jurisdiction to redetermine her custody pursuant to 8 C.F.R. §1003.19(h)(2)(i)(B). This was confirmed by a custody hearing. Ms. Reyes has no other way of challenging her continued detention other than by writ of habeas Corpus.

10. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Ms. Reyes is detained within the Western District of Texas and her immediate physical custodian is located within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); see also *United States v. Gabor*, 905 F. 2d 76, 77-78 (5th Cir. 1990). No petition for a writ of habeas corpus has previously been filed in any court regarding Ms. Reyes.

III. REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) 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.* (emphasis added).

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to 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).

IV. PARTIES

13. Ms. Diary Benavides Reyes is a citizen of Cuba. Ms. Reyes is in the physical custody of the Respondents and U.S. Immigration and Customs Enforcement (“ICE”). She is detained at the El Paso Immigration Service Processing Center and is under the direct control of Respondents and their agents.

14. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”). In this capacity, she is responsible for overseeing ICE’s day-to-day operations, leading approximately 20,000 ICE employees, including

Respondents Lyons and Garcia. Secretary Noem is the ultimate legal custodian of Ms. Reyes.

15. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct removal proceedings and bond hearings as her designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Mr. Reye's removal proceedings, and as such, she is a legal custodian of Ms. Reyes.

16. Respondent Todd Lyons is named in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement and as such is a legal custodian of Ms. Reyes.

17. Respondent Joel D. Garcia is named in his official capacity as the Field Office Director for the ICE El Paso Field Office. As Field Office Director, Respondent Garcia oversees ICE's enforcement and removal operations in West Texas and New Mexico. As such, he is a legal custodian of Ms. Reyes.

V. LEGAL FRAMEWORK

18. Full removal proceedings in immigration court provide noncitizens with an opportunity to be heard before an Immigration Judge. Under 8 U.S.C. § 1229a, noncitizens in full removal proceedings have procedural protections, including "the privilege of being represented . . . by counsel of the [noncitizen's] own choosing who is authorized to practice in such proceedings," 8 U.S.C. § 1229a(b)(4)(A), and "a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government," *id.* § 1229a(b)(4)(B). Although noncitizens in full removal proceedings "may be arrested and detained," detention is generally not mandatory, and anyone

who is detained may request a bond hearing before the immigration judge. 8 U.S.C. § 1226(a)(1)-(2).

19. Under 8 U.S.C. § 1182(d)(5), DHS has discretion to parole noncitizens into the United States “on a case-by-case basis for urgent humanitarian reasons.” Parole is available only if DHS determines that a noncitizen is not a security or flight risk. 8 C.F.R. § 212.5(b). In 2020, DHS launched a smartphone app called CBP One to provide travelers with access to certain immigration related functions prior to their arrival in the United States. Under the prior administration, CBP One became the primary mechanism for people seeking to enter the United States to seek asylum. Noncitizens used the app to request and to receive an appointment to enter the United States and be considered for protection. When a person entered the United States using CBP One, they could—in DHS’s discretion—be released into the United States on parole under 8 U.S.C. § 1182(d)(5) with a document instructing them to appear in full removal proceedings.

20. For many years, DHS and ICE avoided making civil immigration arrests at courthouses, including immigration courts, because they recognized that such actions could discourage noncitizens from attending required court hearings and interfere with court operations and constitutional protections. A memorandum to ICE and U.S. Customs and Border Protection (“CBP”) from the Acting Directors of ICE and CBP dated April 27, 2021 (“2021 Memo”) permitted ICE agents to conduct “civil immigration enforcement action . . . in or near a courthouse” only on the basis of “a national security threat,” “an imminent risk of death, violence, or physical harm to any person,” the “hot pursuit of an individual who poses a threat to public safety, or the “imminent risk of destruction of evidence material to a criminal case.” *Civil*

Immigration Enforcement Actions in or near Courthouses (Apr. 27, 2021).¹ Furthermore, “[i]n the absence of a hot pursuit,” ICE was permitted to make civil arrests against “an individual who poses a threat to public safety” only if “(1) it is necessary to take the action in or near the courthouse because a safe alternative location for such action does not exist or would be too difficult to achieve the enforcement action at such a location, and (2) the action has been approved in advance by a Field Office Director, Special Agent in Charge, Chief Patrol Agent, or Port Director.” *Id.* at 2. The 2021 Memo specifically covered “immigration courts.” *Id.* One of the core principles underlying the 2021 Memo was that “[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals’ access to courthouses, and as a result, impair the fair administration of justice.” *Id.* at 1.

21. On January 20, 2025, ICE rescinded the 2021 Memo and issued a replacement memorandum to all ICE employees (“the January 2025 Memo”). *See Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses* (Jan. 20, 2025).² This dramatically expanded civil immigration arrests by ICE agents at courthouses. The memorandum did not address the “chill to individuals’ access to courthouses” or the impairment of the “fair administration of justice.” The January 2025 Memo was revised and made final on May 27, 2025, through a Memorandum issued by the Acting Director of ICE (“the Courthouse Arrest Memo”). *Civil Immigration Enforcement Actions In or Near Courthouses* (May 27, 2025).³ The Courthouse Arrest Memo is substantively the same as the January 2025 Memo except that it removes a line limiting civil immigration arrests in courthouses “where such action is not precluded by laws imposed by the jurisdiction in which the enforcement action will take.” Thus in

¹ <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf>.

² https://www.ice.gov/doclib/foia/policy/11072.3_CivilImmEnfActionsCourthouses_01.21.2025.pdf.

³ <https://www.ice.gov/doclib/foia/policy/11072.4.pdf>.

its final form, the Courthouse Arrest Memo purports to allow ICE to conduct civil immigration arrests at courthouses even if such arrests would violate local or state law.

22. In the weeks following the Courthouse Arrest Memo, the government aggressively began implementing it through an enforcement initiative at immigration courts throughout the country. Initially, the initiative had three components. First, DHS moves to dismiss removal proceedings with no advance notice when the individual appears for their first hearing. Second, ICE agents, in coordination with Department of Homeland Security attorneys, would immediately arrest and detain individuals upon leaving their hearing. Lastly, the government would place the individual in expedited removal proceedings thus depriving the individual of the procedural benefits of full immigration proceedings and allowing removal if the individual did not request (or requested but did not pass) a credible fear interview. This process eventually evolved into detaining anyone they chose, including those whose proceedings had not been dismissed.

23. On June 18, 2025, a federal district court concluded that ICE's policy of courthouse detentions is unlawful, ruling as follows, "ICE's newfound strategy to attempt to dismiss ongoing immigration court proceedings in support of an argument that they can thereby arrest and detain individuals already paroled before the court is unlawful. ICE cannot manipulate the removal proceedings in its favor by substituting expedited proceedings for immigration proceedings already in progress before the immigration court. It is an abuse of process. . . . Once immigration court proceedings are underway, decisions regarding continued release are to be made by the Immigration Judge with the protections of judicial due process." *Valdez v. Joyce*, No. 25-cv-4627, Dkt. 15, at 7 (S.D.N.Y. June 18, 2025).

VI. CAUSES OF ACTION

a. FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Substantive Due Process); Administrative Procedure Act 5 U.S.C. §§ 702, 705

24. Ms. Reyes re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Petition-Complaint.

25. DHS determined when it paroled Ms. Reyes into the United States, that she was not a flight risk nor a danger to the community. Respondents' detention of her is therefore unjustified. Accordingly, she is being detained in violation of her constitutional right to Due Process under the Fifth Amendment and should be released immediately.

b. SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); Administrative Procedure Act 5 U.S.C. §§ 702, 706

26. Ms. Reyes re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Petition-Complaint.

27. The Due Process clause of the Fifth Amendment protects all "person(s)" from deprivation of liberty "without due process of law". U.S. Const. Amend. V.

28. The government made the reasoned decision to parole Ms. Reyes into the United States to pursue asylum thereby necessarily concluding that she was not a security or flight risk. The Due Process Clause entitles Ms. Reyes to a meaningful process assessing whether her continued detention is justified. The arrest and detention of a minor without an opportunity to contest that detention in front of a neutral arbitrator after she has been living in the U.S. for several months violates the Due Process Clause of the Fifth Amendment of the Constitution.

29. Given the importance of the liberty interest at stake, the absence of any meaningful existing process, and Respondents' minimal interest in detaining law-abiding individuals, a pre-deprivation hearing at which Respondents bear the burden of proof of showing that Ms. Reyes is a security or flight risk is required. Ms. Reyes should be immediately released pending any such hearing. In the alternative, this Court should hold a judicial bond hearing to determine whether she should be released.

c. THIRD CLAIM

Violation of the Immigration and Nationality Act 8 U.S.C. §1225(b)(1); 8 U.S.C. § 1252(e)(2), Administrative Procedure Act 5 U.S.C. § 706(2)

30. Ms. Reyes re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Petition-Complaint.

31. 8 U.S.C. § 1225(b)(1) covers the “[i]nspection of [noncitizens] arriving in the United States and certain other [noncitizens] who have not been admitted or paroled.” 8 U.S.C. § 1225(b)(1). Section 1225(b)(1)(A)(iii)(II) further clarifies that “[a noncitizen] described in this clause is [a noncitizen] who . . . has not been admitted or paroled into the United States.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

32. Ms. Reyes was paroled into the United States on December 25, 2024 . The government’s application of 8 U.S.C. § 1225(b)(1) to her, six months after she was paroled, exceeds the government’s statutory authority in violation of the INA and the Administrative Procedure Act (“APA”).

34. Under full removal proceedings under §1229(a), Ms. Reyes would be entitled to a bond hearing. The Court should order Ms. Reyes immediate release or order the government to grant a bond.

d. FOURTH CLAIM
Violation of the Fourth Amendment to the United States Constitution
(unlawful arrest); Administrative Procedure Act 5 U.S.C. §§ 702, 706

35. Ms. Reyes re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Petition-Complaint.

36. Ms. Reyes was detained by federal immigration officials as removable when she entered the United States. The government exercised its discretion under the INA to release, or parole, her while she litigated that charge in immigration court. At the time of her arrest, she had been living at liberty pursuant to a parole determination by federal immigration authorities.

37. The government lacked reliable information of changed or exigent circumstances that would justify Ms. Reyes' arrest after federal immigration authorities had already decided she could pursue her claims for immigration relief at liberty. Ms. Reyes' re-arrest based solely on the fact that she is subject to removal proceedings is unreasonable and violates the Fourth Amendment. The court should therefore order her release.

e. COUNT Seven – Violation of the Immigration and Nationality Act and the
Administrative Procedure Act 5 U.S.C. §§ 702, 706

38. Ms. Reyes re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Petition-Complaint.

39. The government's policy of targeting people who appear for their immigration hearings for arrest in immigration courthouses is arbitrary and capricious. The policy is an unreasoned departure from recent and longstanding agency policy and practice. The government has provided no reasoned explanation for this reversal.

40. The policy also fails to consider multiple important aspects of the problem. Arresting people who appear for their court proceedings will disincentivize people from attending those proceedings, even where they have meritorious claims for relief, and impede the fair administration of justice. The policy also fails to consider the fact that people who appear for their immigration proceedings are not flight risks and therefore do not need to be detained while their proceedings are pending.

41. The courthouse arrest policy, and Ms. Reyes' arrest immediately after exiting an immigration court proceeding in which she was a party, constitutes agency actions that are arbitrary and capricious and therefore violate the APA, 5 U.S.C. § 706(2) and the common law privilege against civil arrests while coming to, attending, and returning from court. This common law protection is incorporated into the INA.

42. The courthouse arrest policy, and Ms. Reyes' arrest under that policy, are in excess of statutory authority and contrary to law, and therefore violate the APA, 5 U.S.C. § 706(a), because the INA does not authorize civil arrests in and around courthouses. The court should therefore order Ms. Reyes' immediate release.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody or, in the alternative, hold a prompt bond hearing to determine whether Petitioner should remain in custody;
- C. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
- D. Issue a temporary restraining order and permanent injunctions preventing Respondents from transporting Petitioner outside the United States or outside the judicial District;
- E. Issue an Order to Show Cause returnable in three days ordering that the petition be served and the Respondents respond to the petition;
- F. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- G. Grant any other and further relief that this court deems just and proper.

February 10, 2026

Respectfully submitted,

/s/ Cynthia R Lopez

Cynthia Raquel Lopez, Esquire
2829 Montana Ave Suite 215
El Paso, Texas 79903
Cynthia@CynthiaRLopez.com
(915) 996-9070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on February 10, 2026, I electronically filed the foregoing pleading with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record that have consented to such service.

/s/ Cynthia R Lopez

Cynthia Raquel Lopez, Esquire
2829 Montana Ave Suite 215
El Paso, Texas 79903
Cynthia@CynthiaRLopez.com
(915) 996-9070
Attorney for Petitioner