

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
Case No. 1-26-CV-20892**

Cindy Yeradin SILVA HERNANDEZ, individually,  
Petitioner,

v.

MIAMI FIELD OFFICE DIRECTOR, U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT,  
Garrett J. RIPA, in his official capacity;  
ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT,  
Todd M. LYONS, in his official capacity;  
SECRETARY OF THE UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,  
Kristi NOEM, in her official capacity; and  
ATTORNEY GENERAL OF THE UNITED STATES,  
Pamela J. BONDI, in her official capacity.

Respondents,

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**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW THE PETITIONER, Cindy Yeradin SILVA HERNANDEZ (“Petitioner” or “SILVA HERNANDEZ”), individually, by and through her undersigned counsel and pursuant to 28 U.S.C. §2241 (2026) and the Administrative Procedure Act, 5 U.S.C. § 701, et seq. (2026), and brings this petition for a writ of habeas corpus to remedy her continued unlawful detention by Respondents and requests immediate release or an order mandating and individualized bond hearing before an immigration judge. In support thereof, Petitioner states as follows:

### **PRELIMINARY STATEMENT**

1. Petitioner is a 33-year-old Venezuelan national who, in August 2023, entered the United States near Eagle Pass, Texas with her three minor children.

2. Following her entry, Petitioner and her children were briefly detained by immigration officials.

3. After immigration officials determined that Petitioner was neither a danger nor a flight risk, Petitioner and her children were released on I-220A Orders of Recognizance to the care of a family sponsor in Kissimmee, Osceola County Florida, where Petitioner and her children have continuously resided ever since.

4. A Notice to Appear (NTA) was issued on 8 August 2023 and filed with the EOIR, initiating removal proceedings against Petitioner under Section 240 of the Immigration and Nationality Act. This NTA classifies Petitioner as an “alien present in the United States who has not been admitted or paroled.” A true and correct copy of the NTA is attached hereto at Exhibit A.

5. In July 2024, Petitioner timely-filed a Form I-589 application for asylum and withholding of removal under the Convention Against Torture with the immigration court, and this application remains pending.

6. Petitioner obtained employment authorization following her asylum application filing, and she has been lawfully and gainfully employed until her current detention.

7. In mid-January 2026, Petitioner was re-detained by the U.S. Department of Homeland Security (DHS) during a traffic stop, despite no material change in Petitioner’s circumstances and despite no evidence that she is a danger or a flight risk.

8. Petitioner faces unlawful detention because DHS seeks to re-classify her as an “alien who is an applicant for admission” pursuant to 8 U.S.C. 1225(b)(2)(A) and refuses to release her.

9. Respondents’ failure to release Petitioner absent materially changed circumstances violates the Administrative Procedure Act, the INA, and the Fifth Amendment Due Process Clause, and this Court should order Respondents to release her immediately.

10. Alternatively, this Court should order Respondents to provide a bond hearing under 8 U.S.C. § 1226(a) within 7 days.

### **JURISDICTION**

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

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

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

14. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and substantial part of the events or omissions giving rise to Petitioner’s claims occurred in this District. 28 U.S.C. § 1391(e).

15. Venue is also proper in this District, as Petitioner is currently detained in this District in Respondents' custody.

### **REQUIREMENTS OF 28 U.S.C. § 2243**

16. Pursuant to 28 U.S.C. § 2243, this 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.

17. 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).

18. 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." *See Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

### **PARTIES**

19. Petitioner Cindy Yeradin Silva-Hernandez is a native and citizen of Venezuela. Before she was re-detained by Respondents, Petitioner was residing in Osceola County, Florida with her children. Petitioner is currently detained in the direct custody and control of Respondents and their agents at the Broward County Detention Center in Pompano Beach, Florida, in this District.

20. Respondent Garrett J. Ripa (“RIPA”) is the Director of the Miami Field Office of ICE’s Enforcement and Removal Operations division. RIPA is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is sued in his official capacity.

21. Respondent Todd M. Lyons (“LYONS”) is sued in his official capacity as the Acting Director of ICE. In this capacity, LYONS is responsible for the implementation and enforcement of the “INA,” and oversees ICE. LYONS is Petitioner’s legal custodian. He is sued in his official capacity.

22. Respondent Kristi Noem (“NOEM”) is the Secretary of the U.S. Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. NOEM has ultimate custodial authority over Petitioner and is sued in her official capacity.

23. Respondent Pamela J. Bondi (“BONDI”) is the Attorney General of the United States. 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. BONDI is sued in her official capacity.

### **STATEMENT OF FACTS**

24. Petitioner is a 33 year-old native and citizen of Venezuela and a single mother of three minor children. Petitioner and her children entered the United States on 6 August 2023 near Eagle Pass, TX.

25. After determining that she was neither a danger nor a flight risk, Respondents released Petitioner and her children to a family sponsor in Kissimmee, Florida.

26. A Notice to Appear (“NTA”) in removal proceedings was prepared by DHS prior to Petitioner’s release. The NTA is dated 7 December 2022, and it classifies Petitioner as an “alien present in the United States who has not been admitted or paroled.” A true and correct copy of the NTA is attached hereto at Exhibit A.

27. Petitioner, who fled political persecution in Venezuela, timely filed a Form I-589 application for asylum and withholding of removal under the Convention Against Torture with the immigration court on 24 July 2024.

28. Since her release to her family sponsor, Petitioner has gained lawful employment authorization, and she has been working and supporting herself and her children.

29. Petitioner has no criminal history anywhere in the world, nor does she have a history of violence. Petitioner has always attended all immigration court hearings and appointments as required by law.

30. In early January 2026, Petitioner was taken into immigration custody following a traffic stop near her home in Kissimmee, Florida. She was not explained the reason for her detention.

31. Petitioner was thereafter transferred to immigration custody at the Broward Transitional Center in Pompano Beach, Florida, which is located within this District, and where she remains detained to this day.

32. Respondents have indicated that they seek to reclassify Petitioner as an alien seeking admission under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and detain her under 8 U.S.C. 1225(b)(2).

## EXHAUSTION OF REMEDIES

33. Petitioner has not requested a bond hearing before an immigration judge because no genuine opportunity for adequate remedy exists, and an administrative appeal would be futile, given the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and the EOIR's 16 January 2026 nationwide guidance instructing immigration judges to deny bond hearings for all persons under *Yajure Hurtado*. Because immigration judges are bound by BIA precedent, any request for a bond proceeding would only prolong Petitioner's detention and serve no purpose.

## CLAIMS FOR RELIEF

### COUNT ONE

#### **Violation of the Administrative Procedure Act (5 U.S.C. § 706, et seq.)**

34. The allegations in the above paragraphs are realleged and incorporated herein.

35. The Administrative Procedure Act, 5 U.S.C. § 706, et seq. (APA), provides that any person suffering a legal wrong because of agency action, or who adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

36. Petitioner has been adversely affected by Respondents' refusal to allow her a bond hearing to seek release from detention, which constitutes a violation of the APA.

37. For these reasons, Petitioner's detention violates the APA.

**COUNT TWO**

**Violation of the Immigration & Nationality Act (INA)  
Independent Statutory Entitlement to Bond Under 8 U.S.C. § 1226(a)**

38. The allegations in the above paragraphs are realleged and incorporated herein.

39. Petitioner's detention is independently unlawful because it is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2).

40. Section 1225 applies primarily to noncitizens "arriving" at the border or seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

41. Section 1226(a), by contrast, is the "default rule" governing noncitizens already present in the United States.

42. Petitioner entered the United States in August 2023 and has resided continuously in the United States since that time. She was previously released from custody, issued work authorization, and was categorized as an "alien present in the United States who has not been admitted or paroled" on the NTA prepared by Respondents. *See supra* at § 26.

43. Under Supreme Court precedent and persuasive district authority, Respondents may not retroactively classify her as an applicant for admission.

44. Because Petitioner is properly detained under § 1226(a), Respondents' categorical denial of a bond due to lack of jurisdiction violates the INA.

45. For these reasons, Petitioner's detention violates the INA.

**COUNT THREE**

**Violation of the Fifth Amendment Due Process Clause**

46. The allegations in the above paragraphs are realleged and incorporated herein.

47. Respondents' categorical detention of Petitioner without an individualized bond determination violates the Due Process Clause of the Fifth Amendment.

48. Once a noncitizen enters the United States, "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

49. Petitioner's years-long physical presence, prior release from custody, and favorable discretionary determinations give rise to a protected liberty interest that cannot be extinguished by agency fiat. *See Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958).

50. Petitioner has no criminal history or history of violence, and Respondents have made no individualized finding that Petitioner is a danger to the community or a flight risk.

51. Respondent's categorical detention policy violates due process and cannot withstand constitutional scrutiny.

52. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment of the United States Constitution.

### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
- (3) Declare that Petitioner's detention violates the APA, the INA, and the Fifth Amendment's Due Process Clause;

- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately schedule a bond hearing before an immigration judge and, at such hearing, afford Petitioner the opportunity to seek release under 8 U.S.C. 1226(a);
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

*/s/ Kristin D. Figueroa-Contreras*

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

I represent Petitioner, Cindy Yeradin SILVA HERNANDEZ and submit this verification on Petitioner's 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 1<sup>st</sup> day of February, 2026.

*/s/ Kristin D. Figueroa-Contreras*

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