

JUDGE LEON SCHYDLOWER

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

FILED
FEB 12 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY cm DEPUTY CLERK

MONTANO-HERNANDEZ, ARIANA,

Petitioner,

v.

**Mary de Anda-Ybarra Acting/Director of
El Paso Field Office, U.S. Immigration and
Customs Enforcement; Warden, El Paso
Processing Service Center; Kristi Noem
Secretary of the U.S. Department of Homeland
Security; and Pamela Bondi, Attorney General
of the United States, in their official capacities,**

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

EP 26CV0435

INTRODUCTION

1. Petitioner Ariana Montano Hernandez brings this petition for a writ of habeas corpus to seek enforcement of rights under U.S. Law and This Honorable's Court's recent opinions in *Aguinaga Trujillo v. Noem*, No. 5:25-cv-01266 (W.D. Tex. Oct. 28, 2025), *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP (W.D. Tex. Oct. 21, 2025), *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC (W.D. Tex. Sept. 22, 2025).
2. *Petitioner*

- a. is in the physical custody of Respondents at the El Paso Processing Service Center.
 - b. entered the United States without inspection on June 16, 2024, (See Exhibit A, NTA p.21) was apprehended upon arrival but then released shortly thereafter. Counsel has been unable to locate documents to the exact date of release.
 - c. Petitioner was then placed in removal proceedings and charged under INA Section 212(a)(6)(A)(i), as an “alien present in the United States without being admitted or paroled, or who arrived in the United States at any time and place other than as designated by the Attorney General.”
 - d. was subsequently detained going to the hospital for pregnancy related issues on January 9, 2026, (See Exhibit B, Detention Documents, p. 24),
 - e. and is now detained under 8 U.S.C. § 1225(b),
 - f. has no arrests or criminal history.
3. Petitioner had a bond hearing on 2/5/2026. (See Exhibit C, Bond Order p. 25). The LJ found no jurisdiction. Bond hearing history or exhaustion is futile and not required as this is a purely legal issue *Under the INA* exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.” *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Case 5:25-cv-00773-JKP-ESC 11 Tex. 2007); see 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies.”).
4. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the U.S. Federal Court Case Law and the laws of the United States of America.

5. The Court should expeditiously grant this petition.

JURISDICTION

6. Petitioner is in the physical custody of Respondents. Petitioner is detained at the El Paso Processing Service Center in El Paso, TX.
7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

9. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.
10. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2241 & 2243

11. A court, justice or judge entertaining an application for 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.

12. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). “[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 US 507, 525 (2004). “A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or federal law.” *Buenrostro-Mendez v Bondi*, 2025 WL 2886346, *1 (SD Tex), citing 8 USC §2241 (internal citations omitted).

PARTIES

13. Petitioner Ariana Montano Hernandez is a citizen of Bolivia who has been in immigration detention since January 9, 2026. After Petitioner was arrested in going to her the hospital relating to her pregnancy, ICE did not set bond, and Petitioner requested review of his custody by an IJ. On 2/5/2026, Petitioner was denied bond by an IJ at the El Paso SPC Immigration Court because Petitioner was deemed detained under 8 U.S.C. § 1225 as an “applicant for admission.” Petitioner has resided in the United States since June 16, 2024.

14. Respondent Mary de Anda-Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Mary de Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.
15. Respondent Kristi Noem is the Secretary of the 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. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
16. Respondent Pamela 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. She is sued in her official capacity.
17. Respondent WARDEN whose name is unknown as Warden of the El Paso Service Processing Center, where Petitioner is detained. He/she has immediate physical custody of Petitioner. He/she is sued in his/her official capacity.

CLAIM FOR RELIEF

Violation of the INA:

Request for Relief Pursuant to *Aguinaga Trujillo v. Noem*, *Hernandez-Fernandez v. Lyons*, and *Lopez-Arevelo v. Ripa*.

18. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

19. In *Aguinaga Trujillo v. Noem*, No. 5:25-cv-01266 (W.D. Tex. Oct. 28, 2025) this Court stated ordered release and stated that any later re-detention must proceed under § 1226 with an IJ bond hearing (Gov't burden). "His primary argument is that his detention violates the plain language of the INA because § 1225(b)(2)(A) does not apply to individuals who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a) that (1) expressly applies to individuals who are charged as inadmissible for having entered the United States without inspection and (2) allows for release on conditional parole or bond." "the Court concludes § 1225(b)(2) applies to noncitizens "seeking admission," and § 1226 applies to noncitizens such as Petitioner who are "already in the country."
20. In *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP (W.D. Tex. Oct. 21, 2025), ordered bond hearing within 14 days and required the Government to justify detention by clear and convincing evidence (or release). This case had the same fact pattern as our clients: EWI and detained at border. Subsequently released and then detained at a later date.
21. In *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC (W.D. Tex. Sept. 22, 2025) *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC (W.D. Tex. Sept. 22, 2025) — widely cited in later El Paso decisions as ordering bond-hearing-or-release relief for detention without an IJ bond hearing under the new § 1225(b) theory. Same facts as Petitioner in this case.
22. In fact, this Court has regularly been interpreting the plain meaning of these U.S. statutes when granting Habeas Corpus release for individuals and rejecting the *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) argument from the Government. See *Santiago v.*

Noem, No. 3:25-cv-00361-KC, Doc. 25 (W.D. Tex. Oct. 1, 2025), *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB (W.D. Tex. Oct. 16, 2025), *Rodriguez Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB (W.D. Tex. Nov. 18, 2025) and many more.

23. In our case, the Petitioner did not arrive through a border checkpoint but was nonetheless admitted with the issuance of release on own recognizance documents. Counsel has been unable to obtain a copy of these documents. A plain reading of 8 U.S.C. § 1225 and § 1226 clearly show this manner of release is only available through 8 U.S.C. § 1226, evidencing that Petitioner is eligible for bond.
24. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by any Federal Court Order and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.
25. Respondents violate the INA in applying the mandatory detention statute at § 1225(b) to class members. Because Respondents are detaining Petitioner in violation of this Court's Orders issued in *Aguinaga Trujillo v. Noem*, *Hernandez-Fernandez v. Lyons*, and *Lopez-Arevelo v. Ripa*, the Court should accordingly order that the Court should order Petitioner's release unless Respondents provide a bond hearing finding jurisdiction under 8 U.S.C. § 1226(a) within seven days.
26. The Court should expeditiously grant this petition as the Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).
27. By denying Petitioner a bond hearing under § 1226(a) and asserting that Petitioner is subject to mandatory detention under § 1225(b), Respondents violate Petitioner's statutory rights under the INA and the Court's recent judgments.

Due Process

28. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding their detention. As the Supreme Court has explained, “[f]reedom 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. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
29. The Government’s blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying Petitioner any opportunity to demonstrate eligibility for release; and the Government’s interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).
30. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. See 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. See *id.* § 1226(c).
31. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). See *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA’s detention authorities). 29. Since the Supreme Court’s *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed “grave doubt” that “any statute that allows for arbitrary

prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so."

32. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).
33. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.
34. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249- 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing,

in Eighth Amendment context, that “the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards”).

35. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a “good faith” challenge to removal—that is, the challenge is “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the length of the detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; accord *Sopo*, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when the parties could “have reasonably predicted that Chavez-Alvarez’s appeal would take a substantial amount of time, making his already lengthy detention considerably longer”); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.
36. Due process also requires certain minimal procedures at bond hearings. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen’s ability to pay a bond when determining the appropriate conditions of release.
37. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the

Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof at least by clear and convincing evidence. See *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pretrial detention where the detainee was afforded a “full-blown adversary hearing,” requiring “clear and convincing evidence” before a “neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee); see also *Padilla v. Immigration & Customs Enf’t*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been detained for more than 18 months).

38. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
39. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; see also *Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted))
40. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency.

See *Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because “numerous factors combine to magnify the risk of erroneous factfinding” including that “parents subject to termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he State’s attorney usually will be expert on the issues contested”). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. See *infra*.

41. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen’s immigration records and other information that it can use to make its case for continued detention.
42. In light of these considerations, “[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process.” *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).
43. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. Her interest in liberty and family unity is paramount; the Government’s blanket detention policy under Yajure Hurtado creates an extreme risk of erroneous deprivation by denying her any opportunity to demonstrate eligibility for release; and the Government’s interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).
44. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. Detention is not reasonably related to this

purpose if there are alternative conditions of release that could mitigate risk of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. See *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

45. Due process likewise requires consideration of a noncitizen's ability to pay a bond.

“Detention of an indigent ‘for inability to post money bail’ is impermissible if the individual's ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires “consideration of financial circumstances and alternative conditions of release” to prevent against detention based on poverty. *Id.*

46. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.

47. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: “the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); accord

Chavez-Alvarez, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting).

48. These conditions and obstacles only further underscore the serious due process concerns that prolonged immigration detention poses for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding continued detention.
49. Here, the Respondents can neither show that the continued detention of petitioner following her detention is reasonably related to the original purpose and the Mathews tests are satisfied. Similarly, no procedural safeguards are offered to those who remain in custody pending adjudication of their Court proceedings.

CLAIMS FOR RELIEF

COUNT TWO

Violation of 8 U.S.C. § 1226

50. The allegations in the above paragraphs are realleged and incorporated herein.
51. The mandatory detention provision at 8 U.S.C. § 1225(b) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.
52. This Honorable Court has ruled on this issue at least three times in *Aguinaga Trujillo v. Noem*, *Hernandez-Fernandez v. Lyons*, and *Lopez-Arevelo v. Ripa*.

53. Nonetheless, the Immigration Court IJs have a policy and practice of applying § 1225(b) to Petitioner.

54. The application of § 1225(b) to Petitioner is arbitrary, capricious, and not in accordance with law.

55. For these reasons, Petitioner's detention violates 8 U.S.C. § 1226.

COUNT THREE

Violation of Fifth Amendment Right to Due Process

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

57. Unconstitutional Detention in Violation of the Fifth Amendment

58. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). 55. Civil immigration detention is only permissible where it bears a "reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

59. Neither community protection nor flight risk applies to the Petitioner, and therefore, the detention no longer bears a reasonable relation to the purpose for which it was committed. See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690.

60. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT FOUR

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

62. Respondent was given release on own recognizance documents when originally released from ICE custody.
63. These documents, also known as conditional parole (as opposed to humanitarian parole) are only permitted under 8 U.S.C. § 1226(a)(2)(B).¹
64. This argument is straight from the U.S. Supreme Court in *Jennings v. Rodriguez*. "*With a few exceptions not relevant here, the Attorney General may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under [INA § 235(b)(1) and (b)(2)] INA § 212(d)(5)(A). That express exception to detention implies that there are no other circumstances under which aliens detained under § 235(b) may be released.*"² (emphasis added). For reference, INA § 235(b) is the current 8 U.S.C. § 1225.
65. This shows that even ICE treated Petitioner as subject to non-mandatory § 1226 detention.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

¹ (a) Arrest, detention, and release On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General— (1) may continue to detain the arrested alien; and (2) may release the alien on— (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole

² *Jennings*, 138 S. Ct. at 834 citing *Matter of M-S-* Decided by Attorney General. 27 I&N Dec. 509 (A.G. 2019)

- c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing finding jurisdiction under 8 U.S.C. § 1226(a) within seven days or order Petitioner's immediate release;
- d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court deems just and proper.

DATED February 9, 2026.

Respectfully submitted,

/s/ John Dutton



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Attorney for Petitioner
Attorney in Charge
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PROPOSED ORDER

Upon consideration of Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, the Court finds that Petitioner has raised substantial questions regarding the legality of continued detention without an individualized custody determination.

Accordingly, it is ORDERED that:

1. Respondents shall SHOW CAUSE, in writing, within ____ days of the entry of this Order, why the Petition should not be granted.
2. In the alternative, Respondents are ORDERED to provide Petitioner with an individualized bond hearing before an Immigration Judge who must find jurisdiction under 8 U.S.C. § 1226 within ____ days of the entry of this Order.
3. At the bond hearing, the Immigration Judge shall conduct an individualized custody determination, considering whether Petitioner presents a danger to the community or a risk of flight, and shall have the authority to set a reasonable bond or order release on appropriate conditions, consistent with due process.
4. Respondents shall file a notice with the Court confirming compliance with this Order and the outcome of the bond hearing within ____ days after the hearing.
5. Petitioner may file a reply within ____ days after Respondents' response or notice of compliance.
6. Pending further order of the Court, the Court retains jurisdiction over this matter.

7. The Court may resolve this matter without a hearing or may set the matter for hearing if it determines that additional proceedings are necessary.

IT IS SO ORDERED.

SIGNED this ____ day of _____, 2026.

UNITED STATES DISTRICT JUDGE

VERIFICATION BY PERSON ACTING ON PETITIONER'S BEHALF

PURSUANT TO 28 U.S.C. § 2242

I, John Dutton, declare under penalty of perjury that I am counsel for Petitioner and am acting on Petitioner's behalf pursuant to 28 U.S.C. § 2242. I have reviewed the foregoing Petition for Writ of Habeas Corpus and state that the facts contained therein are true and correct to the best of my knowledge, information, and belief.

February 9, 2026

Respectfully submitted,

/S/ John Dutton

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. *+ US mag*

/s/ John Dutton, Attorney for Petitioner



Executed on February 9, 2026

U.S. Attorney General , 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001

U.S. District Clerk's Office
525 Magoffin Avenue, Suite 105
El Paso, Texas 79901

Office of the Executive Secretary
MS 0525 Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

Uploaded on: 06/22/2024 at 07:05:47 PM (Central Daylight Time) Base City: BLM

EXHIBIT A**DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR**

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED]

FINS #: [REDACTED]

File No: [REDACTED]

DOB: [REDACTED]

Event No: [REDACTED]

In the Matter of:

Respondent: ARIANA MONTANO-HERNANDEZ

currently residing at:

(Number, street, city, state and ZIP code)

(Area code and phone number)

- ☐ You are an arriving alien.
- ☒ You are an alien present in the United States who has not been admitted or paroled.
- ☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of BOLIVIA and a citizen of BOLIVIA ;
3. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;
4. to wit, on or about June 16, 2024, you illegally entered the United States at or near EL PASO, TX and were not inspected by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

1 FEDERAL DRIVE, SUITE 1850 FORT SNELLING MN 55111

(Complete Address of Immigration Court, including Room Number, if any)

on June 30, 2025 at 08:30 AM to show why you should not be removed from the United States based on the

(Date) (Time)

charge(s) set forth above.

NASSER ORTIZ
Date: 2024-06-22 16:52:00 -06:00
0354701480 CBP Acting/Patrol Agent in Charge

(Signature and Title of Issuing Officer)

Date: June 22, 2024

El Paso, Texas

(City and State)

Uploaded on: 06/22/2024 at 07:05:47 PM (Central Daylight Time) Base City: BLM

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Upon information and belief, the language that the alien understands is SPANISH

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on June 22, 2024, in the following manner and in compliance with section 239(a)(1) of the Act

- ☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail
☐ Attached is a credible fear worksheet.
☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act

(Signature of Respondent if Personally Served)

ZACHARY SALL
 Date: 2024.06.22 18:04:49 -06:00
 0583159277.CBP

Border Patrol Agent

(Signature and Title of officer)

Uploaded on: 06/22/2024 at 07:05:47 PM (Central Daylight Time) Base City: BLM
Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/oppil/dol-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

DOJ
 EOIR
 BLM

Uploaded on: 01/13/2026 at 03:11:21 PM (Central Standard Time) Base City: BLM
 DEPARTMENT OF HOMELAND SECURITY
 U.S. Immigration and Customs Enforcement

EXHIBIT BEvent No: **NOTICE TO EOIR: ALIEN ADDRESS**

Date: January 13, 2026

To: Enter Name of BIA or Immigration Court I-830 EL PASO, TEXAS
 Enter BIA or Immigration Court Three Letter Code@usdoj.gov ELP

From: Enter Name of ICE Office ERO - El Paso, TX SPC Sub-Office
 Enter Street Address of ICE Office U.S. IMMIGRATION & CUSTOMS ENFORCEMENT DRO - El Paso, TX
SPC Sub-Office 8915 MONTANA AVENUE

Enter City, State and Zip Code of ICE Office EL PASO, TX 79925

Respondent: Enter Respondent's Name MONTANO-HERNANDEZ, ARIANA
 Alien File No: Enter Respondent's Alien Number 

This is to notify you that this respondent is:

- ☐ Currently incarcerated by federal, state or local authorities. A charging document has been served on the respondent and an Immigration Detainer-Notice of Action by the ICE (Form I-247) has been filed with the institution shown below. He/she is incarcerated at:

Enter Name of Institution where Respondent is being detained _____

Enter Street Address of Institution where Respondent is being detained _____

Enter City, State and Zip code of Institution where Respondent is being detained _____

Enter Respondent's Inmate Number _____

His/her anticipated release date is Enter Respondent's Anticipated Release Date. _____

- ☒ Detained by ICE on Enter Date Respondent was Detained by ICE at January 9, 2026

Enter Name of ICE Detention Facility where Respondent is being detained EL PASO SPC

Enter Street Address of ICE Detention Facility where Respondent is being detained
8915 MONTANA AVE

Enter City, State and Zip Code of ICE Detention Facility where Respondent is being detained
EL PASO TX 79925

- ☐ Detained by ICE and transferred on Enter Date Respondent was transferred to: _____

Enter Name of ICE Detention Facility where Respondent has been transferred _____

Enter Street Address of ICE Detention Facility where Respondent has been transferred
 transferred _____

Enter City, State and Zip Code of ICE Detention Facility where Respondent has been transferred _____

- ☐ Released from ICE custody on the following condition(s):
- ☐ Order of Supervision or Own Recognizance (Form I-220A)
 - ☐ Bond in the amount of Enter Dollar Amount of Respondent's Bond
 - ☐ Removed, Deported, or Excluded
 - ☐ Other _____

Upon release from ICE custody, the respondent reported his/her address and telephone number would be:

Enter Respondent's Street Address _____

Enter Respondent's City, State and Zip Code _____

Enter Respondent's Telephone Number (including area code) _____

- ☐ I hereby certify that the respondent was provided an EOIR-33 Form and notified that they must inform the Immigration Court of any further change of address.

ICE Official: Enter Your First, Last Name and Title Deportation Officer CHRISTIAN ARROYO

EOIR - 1 of 1



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
EL PASO SPC IMMIGRATION COURT

EXHIBIT C

Respondent Name:

MONTANO-HERNANDEZ, ARIANA

To:

Dutton, John Alexander
11111 Katy Freeway ste 910
Houston, TX 77079

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

02/05/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☒ Denied, because
No jurisdiction.

☐ Granted. It is ordered that Respondent be:
☐ released from custody on his own recognizance.
☐ released from custody under bond of \$
☐ other:

☐ Other:

M. P.

Immigration Judge: PLETTERS, MICHAEL 02/05/2026

Appeal: Department of Homeland Security: ☒ waived ☐ reserved
Respondent: ☐ waived ☒ reserved

Appeal Due: 03/09/2026

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : MONTANO-HERNANDEZ, ARIANA | A-Number : 

Riders:

Date: 02/05/2026 By: Martinez, Sandy, Court Staff