

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
BALTIMORE DIVISION**

Daniela Michelle ZELAYA-HERNANDEZ,

*Petitioner,*

v.

Vernon LIGGINS, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Baltimore Field Office*; KRISTI NOEM, *in her official capacity as Secretary of Homeland Security*; and PAM BONDI, *in her official capacity as Attorney General of the United States,*

*Respondents.*

**PETITION FOR A WRIT OF  
HABEAS CORPUS**

Case No.

**INTRODUCTION**

1. Petitioner Daniela Michelle Zelaya-Hernandez<sup>1</sup> petitions this Court for a writ of habeas corpus ordering her immediate release from immigration custody. Ms. Zelaya-Hernandez, who serves as a loving caretaker for two families, has a pending asylum application, and was previously released by the Respondents on the basis that she did not pose a danger or flight risk. ICE re-detained her without explanation during a routine check-in. On information and belief, ICE arrested Ms. Zelaya-Hernandez without an administrative warrant and without probable cause that she was an escape risk, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii).

2. Ms. Zelaya-Hernandez is currently held in a locked in a crowded cell at the Baltimore ICE office, which is the subject of an ongoing lawsuit in this Court. *See, e.g., D.N.N. v.*

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<sup>1</sup> Petitioner's A-number is 203-814-288.

*Bacon*, 1:25-cv-1613, Dkt. No. 127-1 (D. Md. Dec. 23, 2025) (preliminary injunction motion describing overcrowding, filthy conditions, and grossly inadequate medical care at Baltimore ICE office). Absent intervention from this Court, ICE will send Ms. Zelaya-Hernandez to a detention center far away from her community in Maryland.

3. Ms. Zelaya-Hernandez asks this Court to order her immediate release. In the alternative, Ms. Zelaya-Hernandez requests a bond hearing conducted by this Court.

### **JURISDICTION & VENUE**

4. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); and 28 U.S.C. § 1331 (federal question jurisdiction).

5. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Ms. Zelaya-Hernandez is detained in Baltimore, Maryland.

### **PARTIES**

6. Petitioner Daniela Michelle Zelaya-Hernandez is a 26-year-old citizen of El Salvador who is detained at the Baltimore holding cells. She has a pending asylum application and ICE previously released her on an Order of Recognizance.

7. Respondent Vernon Liggins is the Field Office Director for the Baltimore Field Office of Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations. Petitioner is currently detained at the Baltimore Field Office and Respondent Liggins is Petitioner’s immediate custodian.

8. Respondent Kristi Noem is the Secretary of Homeland Security. As the head of the Department of Homeland Security (DHS), she supervises ICE, an agency within DHS that is responsible for the administration and enforcement of immigration laws. She has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Mr. Zuniga. Respondent Noem is sued in her official capacity.

9. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General and head of the Department of Justice (DOJ), she oversees the Executive Office for Immigration Review (EOIR), including the IJs and BIA, which conduct and review bond determinations. Respondent Bondi is sued in her official capacity.

#### **FACTS**

10. Ms. Zelaya-Hernandez, a citizen of El Salvador, entered the U.S. on or around June 1, 2019 through the US-Mexico border. DHS detained her and then released her on an Order of Recognizance (OREC), pursuant to 8 U.S.C. § 1226, on June 24, 2019. Ex. A, Order of Release on Recognizance. As part of her release terms, the OREC required her to report regularly at ICE's Baltimore Office.

11. Upon information and belief, DHS prepared a Notice of Appear (NTA) in 2020. However, DHS never filed the NTA with the immigration court.

12. Ms. Zelaya-Hernandez applied for asylum affirmatively with U.S. Citizenship and Immigration Services (USCIS) on June 8, 2020. Ex. B, USCIS Receipt Notice. Her asylum application remains pending and she has not yet received an asylum interview.

13. Prior to her most recent detention, Ms. Zelaya-Hernandez resided in Glen Burnie, Maryland. She had work authorization and served as a nanny and loving caretaker for children from two families. She has no criminal record.

14. On February 17, 2026, Ms. Zelaya-Hernandez was detained at her routine check-in with ICE in Baltimore. The ICE officer refused to provide a factual or legal explanation for her detention. Upon information and belief, the ICE officer provided Ms. Zelaya-Hernandez with no warrant authorizing her arrest. ICE further confiscated her passport, work permit, and driver's license. ICE has not alleged any OREC violations and upon information and belief, Ms. Zelaya-Hernandez has complied with all her OREC terms.

15. Ms. Zelaya-Hernandez is currently detained at the Baltimore Holding Room, a short-term detention facility that is the subject of a pending lawsuit alleging inhumane conditions. She has diabetes and is concerned about the impact of detention on her health. In detention, despite her pending asylum application, ICE officers pressured her to sign a document agreeing to her deportation, which she refused to sign.

16. On February 17, 2026, ICE issued Ms. Zelaya-Hernandez a new Notice to Appear (NTA), alleging that she is a noncitizen "present in the United States who has not been admitted or paroled" under 8 U.S.C. § 1182(a)(6)(A)(i), Immigration and Nationality Act (INA) § 212(a)(6)(A)(i), and placing her into removal proceedings at Hyattsville Immigration Court. Ex. C, 2026 NTA. According to the NTA, Ms. Zelaya-Hernandez's next immigration court hearing is on April 30, 2026, though as of this filing, the Executive Office for Immigration Review's (EOIR) automated case information website does not show current removal proceedings for her.<sup>2</sup>

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<sup>2</sup> See EOIR, Automated Case Information, <https://acis.eoir.justice.gov/en/>, search for A-Number "203-814-288" and Nationality "El Salvador."

**LEGAL FRAMEWORK**

17. The INA prescribes three primary detention authorities applicable to most noncitizens in removal proceedings.

18. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. See 8 U.S.C. § 1229a. Individuals detained under § 1226(a) are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens arrested, charged with, or convicted of certain crimes are subject to mandatory detention under § 1226(c). Discretionary detention under § 1226(a) has been described as the “default” detention authority in standard removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under § 1226(a), “[e]xcept as provided in subsection (c),” the Attorney General “may release” a noncitizen on “bond” or “conditional parole.” *Id.* (internal citation omitted).

19. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), as well as certain other recent arrivals seeking admission under § 1225(b)(2).

20. Third, the INA authorizes detention of noncitizens who have been ordered removed, including individuals in reinstatement or withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

21. This case concerns the detention provisions set forth at 8 U.S.C. §§ 1226(a) and 1225(b).

22. On July 8, 2025, ICE, in coordination with the Department of Justice, announced a new policy that departed from this long-standing statutory interpretation. That policy—“Interim Guidance Regarding Detention Authority for Applicants for Admission”—asserts that all individuals who entered the United States without inspection are subject to detention under §

1225(b)(2)(A) without eligibility for bond, regardless of how long they have resided in the United States. DHS acknowledged that this policy represents a marked deviation from prior practice.

23. On September 5, 2025, the Board of Immigration Appeals adopted this position in *Matter of Yajure Hurtado*, holding that noncitizens who entered without admission or parole are subject to detention under § 1225(b)(2)(A) and ineligible for bond hearings.

24. Since Respondents adopted these policies, the overwhelming majority of federal district courts have rejected ICE's interpretation of the INA and declined to follow *Matter of Yajure Hurtado*. Every jurist in this Court to have addressed the issue has rejected *Matter of Yajure Hurtado* and held that non-citizens who entered the United States without inspection and who were subsequently arrested in the interior of the United States are entitled to a bond hearing under language § 1226(a). *See, e.g., Villaneva Funes v. Noem*, No. 25-cv-3860-TDC, 2026 WL 92860, at \*4 (D. Md. Jan. 13, 2026); *Afghan v. Noem*, CV-SAG-25-04105, 2025 WL 3713732 (D. Md. Dec. 23, 2025); *Hernandez-Lugo v. Bondi*, Civ. No. GLR-25-3434, 2025 WL 3280772 (D. Md. Nov. 25, 2025) *Maldonado de Leon v. Baker*, Civ. No. 25-3084-TDC, 2025 WL 2968042 (D. Md. Oct. 21, 2025).

25. Section 1225(b) applies only to people arriving to and seeking admission at the U.S. border. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, § 1225(b)(2)(A) does not apply to individuals like Ms. Zelaya-Hernandez, who had already entered and was residing in the United States at the time of her arrest.

### **CLAIMS FOR RELIEF**

#### **COUNT I Violation of Substantive Due Process**

26. The preceding paragraphs are incorporated by reference.

27. The Due Process Clause's guarantee to substantive due process prohibits the government from infringing upon certain "fundamental" liberty interests, "unless the infringement is narrowly tailored to support a compelling government interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). It applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

28. The Government's interest in detaining a noncitizen during removal proceedings is limited to ensuring appearance and protecting the community. *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Indefinite detention without an individualized determination is punitive and arbitrary, violating substantive due process. *Zadvydas*, 533 U.S. at 690. Here, Petitioners' detention is not based on any individualized finding of flight risk or dangerousness. It is based solely on an erroneous legal classification (as an "applicant for admission") and on pretextual flight risk findings that ignore long-standing community ties. This blanket detention is not "narrowly tailored to support a compelling government interest," *Flores*, 507 U.S. at 302, and is therefore substantively unreasonable and unconstitutional.

29. To that end, immediate release, with all personal property, would be an appropriate remedy for Respondents' constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before Ms. Zelaya-Hernandez's arrest, which cannot be remedied by a post-deprivation hearing. *See Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014, 2026 WL 91470, at \*13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released to the community and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Qasemi v. Francis*, No. 1:25-CV-10029, 2025 WL 3654098 at \*14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy

for the due process violations in petitioner's sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 1:25-CV-06896, 2026 WL 35569, at \*7 (E.D.N.Y. Jan. 6, 2026) (ordering release, finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at \*5 (D. Idaho Jan. 2, 2026) (given that Government's repeated use of unlawful detention policies across the country caused petitioners to "sit in jail waiting for a judicial decision," ordering immediate release instead of causing additional delay with a bond hearing).

**COUNT II**  
**Violation of Procedural Due Process**

30. The preceding paragraphs are incorporated by reference.

31. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "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*, 533 U.S. at 690.

32. Respondents' policy, as implemented through *Matter of Yajure Hurtado* and the January 13, 2026, EOIR guidance categorically denies Petitioners a bond hearing. Respondents' outright refusal to provide any process whatsoever to determine the necessity of Petitioners' detention is a per se violation of procedural due process. *See, e.g., Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232 (3d Cir. 2011) ("At its core, procedural due process guarantees an opportunity to be heard at a meaningful time and in a meaningful manner.").

33. Under the framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), redetaining Ms. Zelaya-Hernandez absent any change in circumstances and categorically

denying her bond based on *Matter of Yajure Hurtado* violates her procedural due process rights for several reasons, including but not limited to:

- a. Ms. Zelaya-Hernandez has a substantial liberty interest in freedom from physical restraint, as she is currently detained after living in the United States for over six years.
- b. The risk of erroneous deprivation of liberty is exceptionally high here. Respondent previously released Ms. Zelaya-Hernandez on an OREC based on their determination that she was not a danger or flight risk. They have not alleged any change in circumstances that would change this prior determination and Ms. Zelaya-Hernandez has dutifully complied with the terms of her OREC. Respondents' new interpretation of the INA's detention provisions categorically deprives Ms. Zelaya-Hernandez of any opportunity to demonstrate—through an individualized hearing, as contemplated by the INA—that she is neither a flight risk nor a danger to the community.
- c. The burden on the Government is minimal, as until DHS's very abrupt reinterpretation of the INA in *Matter of Yajure Hurtado*, IJs regularly conducted bond hearings for people like Ms. Zelaya-Hernandez, and IJs weighed individualized risks appropriately as required by the INA. The Government's burden to do what it has always done does not justify any additional weight given to this factor.

34. Though the INA entitles Ms. Zelaya-Hernandez to a bond hearing under 8 U.S.C. § 1226(a), a bond hearing conducted by the immigration court would not provide her sufficient process to safeguard her significant liberty interest. As Jorge Artieda—a former ICE attorney and

legal counsel to ICE National Headquarters—explained in a January 28, 2026 sworn declaration, IJs have recently demonstrated a predisposition to deny bond based on erroneous, unsupported legal standards. Ex. D, Sworn Declaration of Jorge Artieda. Mr. Artieda personally observed numerous IJ-conducted bond hearings over the past three weeks in which IJs denied bond for spurious reasons, such as finding individuals to be a “flight risk” for not having sought affirmative immigration relief before being detained, irrespective of their long-term residence, deep family ties, and clean records. *Id.* at 2–5. As Mr. Artieda explained, what he “ha[s] witnessed over the past three weeks appears to be a systematic effort to nullify the constitutional protections that federal courts have recognized and enforced through habeas corpus,” evidencing “a deliberate campaign to render meaningless the bond hearings that this Court and others have ordered.” *Id.* at 6.

35. Indeed, EOIR has reassigned several IJs who were granting bond or other relief. Mr. Artieda notes that “the abrupt reassignment of [IJs] who were granting bond and questioning government positions, the immediate and uniform shift to systematic denial of bond, and the reliance on a narrow set of rationales across multiple [IJs] and cases—suggests what appears to be a coordinated effort by the Executive Office for Immigration Review (EOIR) and the Department of Justice to undermine federal habeas relief.” *Id.*

36. “[D]ue process requires a ‘neutral and detached judge in the first instance.’” *See Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Tr. For Southern California*, 508 U.S. 602, 617 (1993) (quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 61–62 (1972)). Several other courts have found that, given the concerted efforts of IJs to deny bond following the grant of habeas relief, the only proper remedy is release. *See, e.g., Roshniashvili v. Allen*, No. 2:26-cv-93, 2026 WL 446657, at \*8 (S.D. W. Va. Feb. 17, 2026) (finding due process violation and ordering release for noncitizen ICE detained after custody “redetermination” where

ICE failed to explain basis for redetermination and conceded he was not a flight risk or danger); *Briceno Solano v. Mason*, No. 2:26-cv-45, 2026 WL 311624, at \*20 (S.D. W. Va. Feb. 4, 2026) (concluding, in similar case, that “a bond hearing would be futile” and crediting Mr. Artieda’s declaration, because “there is little chance the Government would actually hold a bond hearing, and there is no chance any hearing that occurred would comport with due process”). This Court should order Ms. Zelaya-Hernandez’s immediate release.

37. In the alternative, due process entitles Ms. Zelaya-Hernandez to a bond hearing before a neutral decisionmaker. Ms. Zelaya-Hernandez requests that this Court conduct her bond hearing.

**COUNT III**  
**Violation of the INA and the Administrative Procedure Act (APA)**  
**8 U.S.C. § 1226(a); 5 U.S.C. § 706(2)(A)-(C)**

38. The preceding paragraphs are incorporated by reference.

39. 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 present without having been admitted or paroled. By its very terms, it applies only to those noncitizens who are apprehended while they are applying for admission near the border or at a port of entry. As relevant here, it does not apply to those who are alleged to have 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 are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

40. Since Ms. Zelaya-Hernandez is not an applicant for admission “seeking admission” or “an arriving alien” subject to § 1225(b) and has no disqualifying criminal arrests or convictions subject to § 1226(c), she is entitled to a bond hearing pursuant to § 1226(a). This is underscored

by the OREC Respondents issued Ms. Zelaya-Hernandez in 2020, which states that her detention was under § 1226. *See* Ex A, OREC.

41. The application of § 1225(b)(2) to Ms. Zelaya-Hernandez unlawfully mandates her continued detention and violates the INA by depriving her of the rights she should be afforded under § 1226(a). To the extent that DHS asserts that *Matter of Yajure-Hurtado* nevertheless requires her mandatory detention, the BIA's interpretation in that case is ultra vires and in conflict with the careful balance of factors clearly established in the INA with regard to bond eligibility, and not subject to deference. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Such an agency action also violates the APA, as it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. 5 U.S.C. § 706(2)(A)–(C).

**COUNT IV**  
**Violation of 8 U.S.C. § 1357 and Accompanying Regulations**

42. The preceding paragraphs are incorporated by reference.

43. Respondents arrested Ms. Zelaya-Hernandez without a warrant and without evaluating or possessing probable cause to believe that she is an escape risk, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii). Respondents' omission is especially problematic here given that they previously released Ms. Zelaya-Hernandez in 2020 based on their finding that she is not a flight risk and she has dutifully attended her regular ICE check-ins for years.

**COUNT V**  
**Access to Records**

44. The preceding paragraphs are incorporated by reference.

45. Ms. Zelaya-Hernandez also requests that the Court order Respondents to produce all records relating to decisions on her arrest and detention held by Respondents, including, but not limited to, DHS Form I-286, Notice of Custody Determination, and all other records bearing upon the “true cause of the [petitioner’s] detention,” 28 U.S.C. § 2243, as part of their response to the petition. *See* 28 U.S.C. § 2247 (“On application for a writ of habeas corpus documentary evidence, transcripts of proceedings upon arraignment . . . shall be admissible in evidence.”); *Harris v. Nelson*, 394 U.S. 286, 292 (1969) (“[T]he power of inquiry on federal habeas is plenary.”) (punctuation and citation omitted).

46. Review of these records would be directly relevant and probative to the Court’s inquiry into Ms. Zelaya-Hernandez’s statutory and constitutional claims, and production of these records would be a minimal burden on Respondents. At a minimum, Respondents are far better positioned to provide this evidence. *See Harris*, 394 U.S. at 291 (“[T]his Court has emphasized, taking into account the office of the writ and the fact that the petitioner, being in custody, is usually handicapped in developing the evidence needed to support in necessary detail the facts alleged in his petition . . .”).

47. The existence (or nonexistence) of records regarding Respondents’ custody determination, legal justifications, and factual basis for Ms. Zelaya-Hernandez’s arrest and detention are all directly relevant to their claims in this petition for habeas corpus. *See Harris*, 394 U.S. at 300 (“[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.”).

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Order that Respondents show cause within three days as to why the petition should not be granted;
- c. Order that Respondents not transfer Petitioner outside of the jurisdiction of this District during the pendency of this petition
- d. Declare that Petitioner's detention is unlawful, and that she is not "seeking admission" or "an arriving alien" subject to 8 U.S.C. § 1225(b);
- e. Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- f. Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights and/or 8 U.S.C. § 1357;
- g. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner;
- d. Order that Respondents produce all records regarding Petitioner's arrest and detention;
- e. Grant any other further relief this Court deems just and proper.

Dated: February 18, 2026

Respectfully submitted,

/s/ Susanna Booth

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*Pro Bono Counsel for Petitioner*

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT  
TO 28 U.S.C. § 2242**

I represent Petitioner and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 18, 2026

Respectfully submitted,

/s/ Susanna Booth

Susanna Booth

*Pro Bono Counsel for Petitioner*

**CERTIFICATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 11**

I, undersigned counsel, hereby certify that Petitioner is presently detained in Maryland, that emergency relief is necessary, and that the Court has subject-matter jurisdiction over the Petition.

Dated: February 18, 2026

Respectfully submitted,

/s/ Susanna Booth  
Susanna Booth  
*Pro Bono Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

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

Dated: February 18, 2026

Respectfully submitted,

/s/ Susanna Booth  
Susanna Booth  
*Pro Bono Counsel for Petitioner*