


**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Nadia GONZALEZ)	CASE NO. 1:26 _____
RIVERA)	
Petitioner,)	PETITION FOR WRIT OF HABEAS
)	CORPUS UNDER <u>28 U.S.C. § 2241</u>
)	AND COMPLAINT FOR
vs.)	INJUNCTIVE AND DECLARATORY
)	RELIEF
CRAIG OWENS, Cobb)	
County Sheriff, KRISTI)	
NOEM, Secretary)	
Department of Homeland)	
Security;)	
TODD LYONS, Director,)	
Immigration Customs)	
Enforcement; PAMELA)	
BONDI, Attorney General;)	
NICK ANNAN, Director,)	
Atlanta ICE Field Office)	

Respondents.

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Petitioner, Nadia Elena Gonzalez Rivera,  challenges her unlawful imminent detention by U.S. Immigration and Customs Enforcement (“ICE”). Petitioner is neither a flight risk nor a danger to the community.

2. Petitioner is a citizen and national of Mexico, who has been continuously detained at the Cobb County Adult Detention Center since February 8, 2026, and she is now subject to an ICE Immigration Detainer pursuant to an agreement between Cobb County and ICE Under INA §287(g). Exhibit A. The Cobb County Adult Detention Center is within the jurisdiction of this Court. The Cobb County Adult Detention Center is found at 1825 Bill Hutson Way, Marietta, GA 30008.
3. Petitioner challenges the legality of her imminent transfer into Respondents' custody and the categorical denial of any meaningful bond hearing due to the illegal decision in *Matter of Yajure Hurtado* which blocks all individuals who entered without inspection from obtaining a bond hearing 29 I & N 216 (BIA 2025).
4. Although the Department of Homeland Security has characterized all similarly situated persons as an applicant for admission, her imminent detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment and exceeds the authority granted by the Immigration and Nationality Act.
5. Any attempt to classify Petitioner as an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b), and to justify her continued confinement without bond on that basis, is legally erroneous. Petitioner's custody is governed by 8 U.S.C. § 1226(a), which expressly contemplates discretionary detention and

individualized determinations regarding release on bond.

6. This case falls squarely within the parameters of *H.F.S.R. v. Francis*, No. 1:26-cv-238-AT, (N.D. Ga. Jan. 20, 2026) in which the Northern District of Georgia held that noncitizens found in the United States without inspection are entitled to discretionary bond hearings under Section 1226(a) and should not be classified as arriving aliens.
7. For the foregoing reasons, issuance of the writ of habeas corpus is warranted. Petitioner seeks a declaratory judgment from this Court affirming that her detention should be under 8 U.S.C. § 1226(a). The Petitioner requests an order for her immediate release without restrictions or conditions due to her unlawful constructive or imminent detention. Alternatively, the Petitioner seeks an order for a discretionary bond hearing under § 1226(a) before an Article III judge, where the government must prove by clear and convincing evidence that she is a danger to the community or a flight risk. Additionally, the Petitioner requests that Respondents be prohibited from re-detaining her or put any restraints on her liberty unless they can meet the same evidentiary standard.

II. JURISDICTION

8. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction.

Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.

9. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 et seq., and the APA, 5 U.S.C. § 551 et seq. Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
10. The Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.
11. This Court possesses federal question jurisdiction under the APA to "hold

unlawful and set aside agency action” deemed “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through “any applicable form of legal action,” which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

12. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.

13. The U.S. Supreme Court has recognized district courts’ jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, (2003) (although that case involved detention under §1226(c) of certain criminal aliens), there are limitations to this power of the executive branch. Limitations like the

Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

14. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush*, 553 U.S. 723 (2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

15. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate

the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner’s rights.

16. Petitioner’s claims challenge only her civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)’s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not “questions of law or fact arising from” removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner’s release under § 1226(a) or barring application of § 1225 as to Petitioner—and does not “enjoin or restrain the operation” of any statute within § 1252(f)(1)’s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

17. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts’ authority to “enjoin or restrain the operation” of the INA’s detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief “with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.” 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596

U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner —e.g., directing Petitioner’s release under § 1226(a) or precluding DHS from enforcing the “arriving alien” definition of § 1225 toward Petitioner. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)’s carve-out.

18. Section 1252(g) is likewise inapplicable. It is a “narrow” jurisdictional bar that applies only to three discrete decisions or actions: “to commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS’s use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention-related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

19. To prevent ouster of this Court’s habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court’s District or otherwise changing Petitioner’s immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid

of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. See *Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

III. VENUE

20. Venue is proper in the United States District Court for the Northern District of Georgia because Petitioner is currently detained at Cobb County Adult Detention Center in the Northern District, under the imminent or constructive custody of the Department of Homeland Security (“DHS”) because they have placed a detainer on her and will have forty-eight hours to pick her up from Cobb County Jail once she posts bond or resolves her traffic charges. The Cobb County Adult Detention Center is found at 1825 Bill Hutson Way, Marietta, GA 30008. Respondents are the Petitioner’s imminent or constructive custodians and Respondents exercise authority over Petitioner’s imminent custody in this jurisdiction, as supported by *Hensly v. Mun. Ct, San Jose Milpitas Jud. Dist.*, 411 U.S. 345 (1973). Habeas petitions generally are filed in the district court with jurisdiction over the filer’s place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner’s non-habeas claims seeking prospective declaratory and injunctive

relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner resides within this District, and there is no real property involved in this action.

21. Administrative remedies are also inadequate under these circumstances. Petitioner challenges the legality of her continued civil detention under the Constitution and the Immigration and Nationality Act, claims that fall squarely within the province of the federal courts.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Although 28 U.S.C. § 2241 does not impose a statutory exhaustion requirement, courts may consider whether a petitioner has pursued available administrative remedies.

23. Any prudential exhaustion requirement is satisfied or, in the alternative, should be excused here. Petitioner and her counsel are aware that no Immigration Judge in Atlanta, Georgia has found jurisdiction to hold a bond hearing under 8 USC §1226 without a writ of habeas being granted for that individual since the Board

of Immigration Appeals issued its decision in *Matter of Yajure Hurtado*, 29 I & N 216 (BIA 2025).

24. Therefore awaiting Petitioner's transfer to respondents' custody and be taken to a detention center far from her family and possibly in another state only to have the immigration court find her not eligible for a meaningful bond hearing would be futile. The Board of Immigration Appeals lacks authority to grant habeas relief or to adjudicate the constitutional claims raised in this Petition. Because the Immigration Courts have expressly disclaimed jurisdiction to consider bond, no administrative remedy is available to address the legality of Petitioner's detention.

V. PARTIES

25. Petitioner, Nadia Elena Gonzalez Rivera, is a citizen and national of Mexico who has been continuously detained at the Cobb County Adult Detention Center since February 8, 2026; she is subject to an ICE Immigration Detainer.

26. Respondent Craig Owens is the Cobb County Sheriff and has immediate physical custody over the petitioner. (Cobb County Adult Detention Center does not have a warden; it is managed by a division commander under the sheriff's office.)

27. Respondent, Todd Lyons, is the acting Director of the United States Immigration and Customs Enforcement and is responsible for national detention policies and practices. He is being sued in his official capacity.

28. Respondent, Nick Annan, is the Atlanta Field Office Director of the Immigration and Customs Enforcement and exercises legal authority over Petitioner's detention. Respondent Annan is responsible for the oversight of ICE operations at the Detention Centers around Georgia. Respondent Annan is being sued in his official capacity. He is the head of the ICE office that has placed an ICE Immigration Detainer on the Petitioner. He is also the constructive *legal* custodian of Petitioner.

29. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

30. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

VI. STATEMENT OF FACTS

31. Petitioner last entered the United States without inspection on or about March of 2007 through San Ysidro, California. She has never left since that time. She has no criminal record save the current charges for speeding and driving without a license in Cobb County, Georgia and one prior charge in Cobb County for driving without a license in approximately 2013. Petitioner is eligible for cancellation of removal for non permanent resident because she has been in the US for over ten years and has US citizen children that would suffer hardship if she must leave the US.

32. Petitioner is married and has three US citizen children, ages 16, 15 and 13. In 2017, she applied for deferred action with ICE because her two daughters, E, age 13, and H, age 15, suffer from a medical condition called Craniosynostosis. It requires long term treatment and surgeries for persistent skull defects. Currently, E is being evaluated for an additional surgery. Her son S, age 16, and her daughter H also both have an individualized education plan (“IEP”) at school and require assistance with speech.

33. Petitioner was arrested for Speeding and Driving Without a License and has been detained at the Cobb County Adult Detention Center since February 8, 2026. She is currently being held for her criminal arrest on a bond of \$1,170. *See*

Exhibit A. She is now subject to an ICE Immigration Detainer. *See* Exhibit A, p 2. It is her intention to post bond in Cobb County once she is protected from indefinite detention while in ICE custody. She has a hearing in Cobb County on these charges on Tuesday, February 24, 2026 at while time the charges will likely be resolved, and she will transfer to ICE custody.

VII. ARGUMENT

JURISDICTIONAL BAR TO BOND HEARING

34. Petitioner entered the United States without inspection. She will be treated as an “arriving alien”; the Immigration Judges concluded that INA § 1225(b) deprived the court of authority to review ICE’s custody determination. Relying on agency interpretations of the immigration detention statutes, the Immigration Judges declined to consider whether Petitioner’s continued detention was justified by any flight risk or danger she might pose. No individualized assessment of Petitioner’s suitability for release will be conducted.

35. This categorical jurisdictional bar foreclosed any meaningful review of Petitioner’s detention at an early stage of her confinement. Petitioner will be denied the basic procedural safeguard of a bond hearing. The ordinary process by which a detainee could seek reconsideration of custody status was entirely unavailable to Petitioner, setting the stage for her prolonged confinement without

the benefit of the case-by-case evaluation that Congress ordinarily provides in INA § 1226(a) custody redeterminations.

MALDONADO BAUTISTA CLASS ACTION

36. Petitioner is a member of the nationwide class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 3288403 (C.D. Cal. December 18, 2025). There has been a class action decision in *Maldonado Bautista v. Santacruz et. al.*, No. 5:25-cv-01873 (C.D. Cal.) on December 18, 2025. However, not one Immigration Judge in Georgia has found jurisdiction to grant bond to date, stating they are bound by *Yajure Hurtado*, and have not been given guidance to hold a bond hearing in a case like Petitioner's.¹

CLAIM FOR RELIEF

COUNT ONE

Declaratory Judgement

Summary of Claim of Petitioner's First Claim for Relief: Petitioner seeks a declaratory judgment that Petitioner is not an "applicant for admission" or "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b), and that Petitioner's detention is governed solely by 8 U.S.C. § 1226(a), which provides for discretionary bond hearings. This claim is grounded in the statutory text, longstanding agency practice, and recent federal court decisions rejecting the government's contrary interpretation.

37. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

38. Petitioner requests a declaration from this Court that Petitioner is not an applicant for

¹ The Georgia-Alabama American Immigration Lawyers' Association chapter and various nonprofits are communicating about this issue, but so far there have been no reports of success with bond jurisdiction in immigration court for an individual situated like the Petitioner absent a habeas grant order.

admission “seeking admission” or “an arriving alien” subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2). Petitioner further requests a declaration that Petitioner’s current detention by Respondents, if justified at all, is governed solely by 8 U.S.C. § 1226(a).

COUNT TWO

**Statutory Violation of the Immigration and Nationality Act:
No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention
Under Improper Statutory Classification (INA §§ 1225 vs. 1226)**

Summary of Claim of Petitioner’s Second Claim for Relief: Petitioner challenges the no-bond detention as a violation of the INA, specifically 8 U.S.C. § 1226(a), which entitles Petitioner to a bond hearing before an immigration judge. The government’s application of § 1225(b) to Petitioner is contrary to the statute and decades of agency and judicial practice.

39. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
40. Since Petitioner is not an applicant for admission “seeking admission” or an “arriving alien” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioner is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).
41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens whose parole long expired and who were granted Temporary Protected Status.
42. Respondents’ actions, as detailed herein, infringe upon the Petitioner’s statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents’ application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioner’s constitutional rights, which will be further addressed below.
43. Petitioner’s continued detention under § 1225(b)(2) is therefore unauthorized by statute,

contrary to longstanding agency practice, and in violation of the INA and APA.

44. Petitioner had a bond hearing before an immigration judge, the judge denied bond, infringing upon Petitioner's constitutional rights to a full and fair hearing (the immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration.

COUNT THREE
Violation of the Fifth Amendment Due Process Clause

45. The allegations in the above paragraph are realleged and incorporated herein.

46. The Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of liberty without due process of law. These protections extend to all persons within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

47. Whether the procedures accompanying a noncitizen's civil detention satisfy due process is evaluated under the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), which considers: (1) the private interest affected by official action; (2) the risk of an erroneous deprivation of that interest through the procedures used; and (3) the government's interest, including the function involved and the fiscal or administrative burdens that additional procedural requirements would entail.

48. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test to Petitioner's case:

- a. Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail, unable to work and unable to be with her husband and three children who need their mother and two of which suffer from a serious medical condition. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.
- b. The risk of erroneous deprivation of liberty is significant due to the absence of an independent adjudicator, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). This risk is exacerbated by the coordinated actions of both DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner's situation, thereby unilaterally depriving them of their

liberty. ICE is acting as both the prosecutor as well as the adjudicator. ICE can effectuate long detention periods for Petitioner and others in her situation just because they now interpret Petitioner as being subject to mandatory detention as an “arriving alien” and immigration judges at EOIR are prevented from considering bonds under the same circumstances.

- c. Lastly, the interest of the government in being able to invoke the challenged ICE memorandum and novel interpretation and EOIR’s *Matter of Yajure Hurtado* is minimal. This is primarily because the interpretation is not supported by the plain reading of the INA, which clearly delineates the circumstances under which noncitizens are subject to mandatory detention. The interpretation also conflicts with existing DHS and EOIR regulations that have historically distinguished between arriving aliens and those apprehended in the interior, providing the latter with the opportunity for bond hearings under 8 U.S.C. § 1226(a). When the government ignores law (and agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the

government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the law and their regulations reduces fiscal and administrative burdens on the government. Furthermore, the government's interest is further diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural safeguards intended to prevent erroneous deprivation of liberty.

- d. In conclusion, all three *Mathews* factors favor Petitioner's position. The novel DHS and EOIR interpretations violate Petitioner's procedural due process rights under the Fifth Amendment. Collateral harms from detention—including separation from Petitioner's family and friends and Petitioner's ability to maintain employment—further underscore the weight of the private interest and the risk of erroneous deprivation. These are collateral consequences of continued confinement that amplify the ongoing liberty deprivation, are not compensable by money damages, and therefore weigh heavily in the *Mathews* balance and the equitable analysis, without expanding the scope of relief requested.

COUNT FOUR

**Detention Not Authorized by the Immigration and Nationality Act
and Agency Action Not in Accordance with Law
(5 U.S.C § 706(2)(A) and 8 U.S.C. § 1226)**

49.The allegations in the above paragraph are realleged and incorporated herein.

50.The Immigration and Nationality Act authorizes only discretionary civil immigration detention, with individualized custody determinations under 8 U.S.C. § 1226(a).

51.Congress did not mandate unconditional, prolonged detention for immigrants like Petitioner who were arrested inside the United States and have substantial ties to the community. The categorical denial of bond in Petitioner’s case, based solely on an agency’s interpretation that classifies her as an arriving alien and thereby strips Immigration Judges of jurisdiction, exceeds the detention authority that Congress has granted.

52.It effectively places Petitioner in the category of mandatory detention without statutory basis, in contravention of the framework set forth by Congress in the Immigration Nationality Act (“INA”).

53.Under the Administrative Procedure Act, a reviewing court must set aside agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency acts unlawfully when it fails to consider relevant

factors, departs from the evidence before it, or applies a categorical rule that exceeds its statutory authority.

54. Respondent's agents and the immigration authorities will treat Petitioner as ineligible for bond by applying a blanket policy that disregards the text of 8 U.S.C. § 1226(a). Petitioner faces detention without any individualized determination that she poses a flight risk or a danger to the community. There have been no administrative findings to justify her constructive or imminent incarceration. By continuing to detain Petitioner without a bond hearing or individualized reasoning, Respondent is acting more than the statutory authority provided by the INA and in a manner not in accordance with law.

55. Because Respondent's constructive or imminent detention has been implemented in a way that conflicts with the governing statute and fails to observe the procedure required by law, her constructive or imminent detention is unlawful. The Court should grant habeas relief and order that Petitioner be afforded the process Congress provided, or her immediate release.

COUNT FIVE

Violation of the Declaratory Judgment in *Maldonado Bautista*

and Continued Unlawful Detention

56. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

57. As a class member, Petitioner is entitled to the benefit of the declaratory judgment that

Petitioner's detention is governed by 8 U.S.C. § 1226(a) (discretionary detention with bond eligibility), not 8 U.S.C. § 1225(b) (mandatory detention).

58. The *Maldonado Bautista* declaratory judgment, which held that class members are detained under 8 U.S.C. § 1226(a), has the full force and effect of a final judgment until it is stayed or reversed. Despite this, the government has instructed immigration judges not to apply the decision to class members, and immigration judges all over the country are continuing to deny bond to class members.

59. As declared in *Maldonado Bautista*, Petitioner's detention was unlawful ab initio. As numerous courts have held, a subsequent administrative bond hearing is "wholly inadequate to remedy that unlawful detention" and cannot cure the initial constitutional violation of depriving Petitioner of his liberty without due process of law. Therefore, the precise reasoning of *Armando De Macedo Mendes v. Hyde*, C.A. No. 25-cv-627-JJM-AEM, 2025 WL 3274606 (D.R.I. Dec. 5, 2025) should apply to Petitioner, where the government has initiated an unlawful detention and, as in that case, has "put forth no evidence to suggest that [the petitioner] poses a flight risk or is a danger to the community," the only just and appropriate remedy is immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm:

- (1) Assume jurisdiction over this matter under 28 U.S.C. §§ 2241 and 1331

and the Suspension Clause;

- (2) Issue an Order to Show Cause, ordering Respondents to justify why this writ should not be granted to Petitioner and the basis of Petitioner's detention in fact and law, **within the 3 days authorized by the statute**;
- (3) Enjoin Petitioner's transfer outside this District and removal from the United States, and prohibit any change of Petitioner's immediate custodian, without prior leave of Court while this action is pending, pursuant to 28 U.S.C. §§ 1651(a) and 2241;
- (4) Declare that Petitioner is not an "applicant for admission "1225(b), seeking admission" or an "arriving alien" and that Petitioner's detention is unlawful;
- (5) Declare that Respondents' actions, as set forth herein, and Petitioner's continued detention violate the Due Process Clause of the Fifth Amendment, the INA and its implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine;
- (6) Grant Petitioner a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from custody, or, in the alternative, order Respondents to conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 3 days, before an Article III judge, where the *government* bears the burden to prove, by clear and convincing

- evidence, that Petitioner is a flight risk or a danger to the community;
- (7) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225 or pursuant to 8 U.S.C. § 1226(a) absent changed circumstances such as new criminal conduct;
 - (8) Award Petitioner reasonable attorney's fees and costs;
 - (9) Waive or set a nominal security under Fed. R. Civ. P. 65(c); and
 - (10) Grant such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully submitted,

This 19th Day of February, 2026.

A handwritten signature in black ink, appearing to read "Rachel Effron Sharma". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Rachel Effron Sharma
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 19th day of February 2026.



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