9:26-CV-337 ECC

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

FADI NAYELI MORALES MENDEZ, *Petitioner,* v. **FIELD OFFICE DIRECTOR,** U.S. Immigration and Customs Enforcement, Albany Field Office; **DAVID FAVRO,** in his official capacity as Sheriff/Warden, Clinton County Jail Correctional Facility; **KRISTI NOEM,** in her official capacity as Secretary of Homeland Security; **TODD LYONS,** in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; **PAMELA BONDI,** in her official capacity as Attorney General of the United States, *Respondents.*	Civil Action No. _____ Immigration No. A# [redacted] **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND INCORPORATED MEMORANDUM OF LAW**

TABLE OF CONTENTS

PRELIMINARY STATEMENT

THE PARTIES

CUSTODY

JURISDICTION & VENUE

I. SUBJECT MATTER JURISDICTION

II. PERSONAL JURISDICTION

III. VENUE

LEGAL FRAMEWORK: THE 1225/1226 DETENTION QUESTION

LEGAL FRAMEWORK: DEFERRED ACTION AND PROSECUTORIAL DISCRETION

FACTS

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE INA

COUNT 2: VIOLATION OF DUE PROCESS

COUNT 3: VIOLATION OF THE APA

PRAYER FOR RELIEF

PRELIMINARY STATEMENT

1. Ms. Fadi Nayeli Morales Mendez ('Ms. Morales') is a 23-year-old Guatemalan citizen who entered the United States without inspection near El Paso, Texas on or about August 13, 2024, [redacted] After entering, she was placed in non-detained removal proceedings and [redacted] She has no criminal record. Recently, at a check-in appointment, ICE took her into custody and transferred her to the Clinton County Jail Correctional Facility in Plattsburgh, New York, where she remains detained without access to a bond hearing.

2. DHS and EOIR have taken the position that Ms. Morales is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and therefore categorically ineligible for release on bond. This legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. Most recently, on September 5, 2025, in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals held that all persons who entered the United States without admission or parole are subject to mandatory detention under § 1225(b)(2)(A). This legal interpretation is incorrect and has been rejected by dozens of federal courts.

3. This systemic misclassification of people arrested inside the United States is in clear violation of the law. These people are generally subject to the detention provisions of 8 U.S.C. § 1226, which allows for release on bond and conditions during the pendency of immigration proceedings. It has been this way for decades. DHS and DOJ are now misclassifying these people as subject to 8 U.S.C. § 1225, which does not allow for release on bond. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country.

4. Moreover, on November 14, 2025, the United States District Court for the Central District of California (Hon. Sunshine S. Sykes) granted class certification and partial summary judgment in Lazaro Maldonado Bautista v. Santacruz, No. 5:25-cv-01873 (C.D. Cal.), establishing a nationwide "Bond Eligible Class" and entering declaratory relief that Bond Eligible Class members are detained under 8 U.S.C. § 1226(a)—not § 1225(b)(2)(A)—and therefore must be considered for release on bond. Petitioner satisfies each element of that class definition.

5. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order providing her with an individualized bond hearing before an immigration judge within seven days, at which the government bears the burden of proving by clear and convincing evidence that she is a danger to the community or a flight risk that

cannot be mitigated by reasonable conditions of release, and at which the immigration judge must consider her ability to pay and the full range of alternative conditions of release. In the alternative, Petitioner requests immediate release under appropriate conditions of supervision.

THE PARTIES

6. Petitioner Fadi Nayeli Morales Mendez is a native and citizen of Guatemala, born [redacted] She is currently detained at the Clinton County Jail Correctional Facility in Plattsburgh, New York, which is located in the Northern District of New York. Her Alien Number is A#[redacted]

7. Respondent David Favro is the Sheriff of Clinton County and the Warden of the Clinton County Jail Correctional Facility, which is where Petitioner is being held in ICE custody. He is the immediate custodian of the Petitioner.

8. Respondent Field Office Director for the Albany, NY Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, is the local ICE official who has authority over the Petitioner. See Vasquez v. Reno, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001).

9. Petitioner's custody within this judicial district and the governmental actions related to her potential removal are likewise controlled by Respondents Noem, Lyons, and Bondi.

CUSTODY

10. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE") at a contracted facility, the Clinton County Jail Correctional Facility in Plattsburgh, New York. The Petitioner is under the direct care, custody and control of Respondents and their agents.

JURISDICTION & VENUE

I. SUBJECT MATTER JURISDICTION

11. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

12. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I, § 9, cl. 2 of the Constitution of the United States (the Suspension Clause), and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States.

This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651, and the Court's equitable habeas authority.

II. PERSONAL JURISDICTION

13. This Court has personal jurisdiction over Petitioner's immediate custodian, Respondent Favro, who is physically within this district.

III. VENUE

14. 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 Northern District of New York, the judicial district in which Petitioner is being detained. Petitioner is being detained at the Clinton County Jail Correctional Facility and her detention falls under the jurisdiction of the ICE Albany Field Office, pursuant to 28 U.S.C. § 1391.

LEGAL FRAMEWORK WITH RESPECT TO THE § 1225 / § 1226 DETENTION QUESTION

15. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

16. 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 in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. See 8 U.S.C. § 1226(c).

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

18. Third, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. See 8 U.S.C. § 1231(a)–(b).

19. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). These provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546. Section 1226 was most recently amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

20. Following the enactment of IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;

Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

21. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

22. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, affecting those who have resided in the United States for months, years, and even decades.

23. On September 5, 2025, the BIA adopted this same position in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission ineligible for IJ bond hearings.

24. Dozens of federal courts have rejected Respondents' new interpretation of the INA's detention authorities. See, e.g., Alvarez Ortiz v. Freden, No. 25-CV-960-LJV (W.D.N.Y. November 4, 2025); Da Cunha v. Freden, 25-CV-06532-MAV, ECF No. 25 (W.D.N.Y. Oct. 20, 2025); Quituizaca Quituisaca v. Bondi, 25-cv-6527 (W.D.N.Y. Nov. 12, 2025); Najeem v. Freden, 25-cv-6584 (W.D.N.Y. Nov. 12, 2025); Mendoza v. Bondi, 25-cv-954 (W.D.N.Y. Nov. 12, 2025); Martinez v. Bondi, 25-cv-6508 (W.D.N.Y. Nov. 12, 2025); Rodriguez Vazquez v. Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Maldonado v. Olson, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); Samb v. Joyce, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); Jose J.O.E. v. Bondi, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); see also Lazaro Maldonado Bautista v. Santacruz, No. 5:25-cv-01873 (C.D. Cal. Nov. 14, 2025) (nationwide class action declaratory judgment).

25. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the Rodriguez Vazquez court and others have explained, the plain text

of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

26. Subsection 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

27. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E). As the Rodriguez Vazquez court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." Rodriguez Vazquez, 779 F. Supp. 3d at 1257 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

28. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

29. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." Jennings v. Rodriguez, 583 U.S. 281, 287 (2018).

30. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who had already entered and was residing in the United States at the time she was apprehended. Respondents' classification of Petitioner as a § 1225(b)(2)(A) detainee is therefore contrary to law.

31. The nationwide declaratory judgment in Lazaro Maldonado Bautista v. Santacruz confirms this result. There, the Central District of California certified a "Bond Eligible Class" defined as: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." The court declared that Bond Eligible Class members are detained under § 1226(a), not § 1225(b)(2)(A), and must be considered for release on bond.

FACTS

A. Petitioner's Background and Persecution in Guatemala

32. Ms. Fadi Nayeli Morales Mendez ("Ms. Morales") is a 23-year-old native and citizen of Guatemala, born [redacted]

[redacted]

B. Entry into the United States and Immigration Proceedings

38. On or about August 13, 2024, Ms. Morales entered the United States without inspection near El Paso, Texas, [redacted]

39. [redacted]

40. Petitioner was initially in non-detained removal proceedings and complied with all of her obligations, including appearing at a check-in appointment with ICE.

41. Petitioner has no criminal record in the United States or in Guatemala. She has never been charged with or convicted of any offense that would bring her within the mandatory criminal detention provisions of 8 U.S.C. § 1226(c).

C. Detention and Denial of Bond Hearing

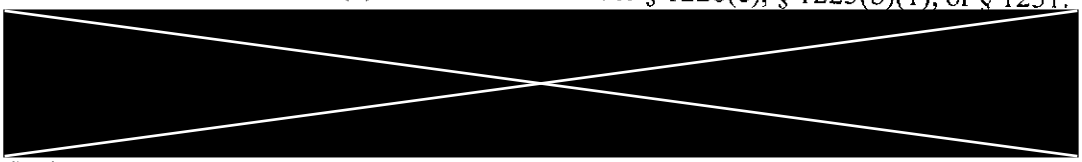
42. At her ICE check-in appointment, ICE took Petitioner into civil immigration custody and transferred her to the Clinton County Jail Correctional Facility in Plattsburgh, New York, where she remains detained.

43. On the basis of her characterization as an individual "present in the United States who has not been admitted or paroled," DHS and EOIR have treated Petitioner as an "applicant for admission" deemed subject to mandatory detention under INA § 235(b)(2)(A) and have refused to provide her with a bond hearing, asserting that the immigration court lacks bond jurisdiction.

44. Petitioner has never been charged as subject to expedited removal under § 1225(b)(1), has not been detained for mandatory criminal detention under § 1226(c), and does not have a final order of removal placing her under 8 U.S.C. § 1231.

45. Petitioner was not apprehended at the border at the moment of arrival; rather, she entered without inspection and was later encountered and detained while present in the interior of the United States.

46. Petitioner satisfies each element of the Maldonado Bond Eligible Class: she (1) entered the United States without inspection; (2) was not apprehended at the border at the moment of arrival; and (3) is not detained under § 1226(c), § 1225(b)(1), or § 1231.

47. 

48. Petitioner has community support in upstate New York, including members of the Columbia County Sanctuary Movement, who stand ready to house and support her if she is released from detention.

49. Upon information and belief, ICE has issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

50. Without relief from this Court, Petitioner faces the prospect of months or even years in immigration custody as she awaits adjudication of her asylum claim, even though Respondents lack statutory authority to detain her without a bond hearing.

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE INA

51. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to grounds of inadmissibility but who were not apprehended at the border at the moment of arrival. As relevant here, it does not apply to those who previously entered the country and were 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.

53. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention without bond and violates the INA.

54. The nationwide declaratory judgment in Lazaro Maldonado Bautista v. Santacruz confirms that Petitioner, as a member of the Bond Eligible Class, is detained under § 1226(a) and must be considered for release on bond. Respondents' continued treatment of Petitioner as a § 1225(b)(2)(A) detainee ineligible for bond is contrary to that declaratory judgment and violates the INA.

COUNT 2: VIOLATION OF DUE PROCESS

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

56. 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 v. Davis, 533 U.S. 678, 690 (2001). The Fifth Amendment Due Process Clause applies to all "persons" in the United States, including noncitizens in immigration detention.

57. Petitioner has a fundamental interest in liberty and freedom from official restraint.

58. The government's arbitrary detention of Petitioner—an asylum seeker with a credible fear of persecution and no criminal record—without an individualized bond hearing violates her right to due process.

59. Federal courts have recognized that prolonged immigration detention without an individualized bond hearing at which the government bears the burden of proving continued detention by clear and convincing evidence raises serious constitutional problems and violates due process. See, e.g., Abdi v. Duke, No. 6:17-CV-06296, 2017 WL 3887518 (W.D.N.Y. 2017) (ordering bond hearings for asylum seekers detained six months or longer, with the burden on the government); Nevarez Jurado v. Freden, 25-CV-943-LJV, at 16 (W.D.N.Y. Dec. 19, 2025) (finding that detention without bond hearing "implicate[s] fundamental due process concerns").

60. Petitioner's detention is purely civil, not punitive; yet Respondents have confined her in jail-like conditions without providing her a meaningful opportunity to challenge the necessity of that detention.

61. There is no legitimate governmental interest in detaining Petitioner without a bond hearing where she is not a danger to the community, is not a flight risk that cannot be mitigated by conditions, has no criminal record, is a credible asylum seeker, and has community support in the United States.

62. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger violates the right to due process.

COUNT 3: VIOLATION OF THE APA

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

64. Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (E).

65. Respondents' unilateral decision to arrest and detain Petitioner as a § 1225(b)(2)(A) "applicant for admission" without providing a bond hearing was not in accordance with the Constitution, the INA, and its implementing regulations. To the extent Respondents' continued classification reflects agency policy applying Matter of Yajure Hurtado to Bond Eligible Class members, that policy is arbitrary, capricious, and contrary to law, and it should be set aside under 5 U.S.C. § 706(2)(A) and "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C).

66. Respondents' failure to conform their practices to the Maldonado declaratory judgment, and their persistence in denying bond hearings to class members, is an unlawful departure from the governing legal framework that should be set aside.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

67. To the extent exhaustion of administrative remedies is deemed applicable, it would be futile here because Petitioner's claim is that the agency lacks jurisdiction or refuses to exercise bond authority based on a misinterpretation of the detention statute and class-wide policies. This presents a pure legal question properly addressed in habeas. See, e.g., Gomes v. Hyde, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) (exhaustion not required where challenge is purely legal).

68. Petitioner has effectively exhausted available remedies by seeking relief in immigration proceedings and being informed that bond jurisdiction is unavailable due to her supposed status as an "applicant for admission."

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Enjoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings;

(3) Declare that Petitioner is a member of the Maldonado Bautista Bond Eligible Class and is detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A);

(4) Declare that Respondents' refusal to provide Petitioner with an individualized bond hearing violates the INA and the Fifth Amendment Due Process Clause;

(5) Issue a writ of habeas corpus directing Respondents to provide Petitioner with an individualized bond hearing before an immigration judge within seven (7) days of the Court's order, at which: (a) the immigration judge shall treat Petitioner as detained under § 1226(a) and statutorily eligible for bond; (b) the government shall bear the burden of proving by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk that cannot be mitigated by reasonable conditions of release; and (c) the immigration judge shall consider Petitioner's ability to pay any bond and the full range of alternative conditions of release, including but not limited to release on recognizance, community sponsorship, and reporting requirements;

(6) Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

(7) In the alternative, if Respondents fail to provide such a hearing within the specified period, order Petitioner's immediate release from custody under appropriate conditions;

(8) Order that Respondents cannot re-detain Petitioner without a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;

(9) Declare ICE's July 8, 2025 Interim Guidance and the BIA's Matter of Yajure Hurtado decision unlawful as applied to Petitioner and members of the Bond Eligible Class;

(10) Award Petitioner's attorneys' 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

(11) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioner's rights under U.S. and international law.

Dated: March 3, 2026

Respectfully submitted,

/s/ James P. Milstein

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