

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

JESSICA FROMETA NIEVES

Petitioner,

v.

FRED FIGUEROA, in his official capacity as
Warden of Eloy Detention Center; JOHN CANTÚ,
in his official capacity as Phoenix Field Office
Director, Immigration and Customs Enforcement,
Enforcement and Removal Operations; TODD M.
LYONS, in his official capacity as Acting Director
of Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security;
and PAMELA JO BONDI, in her official capacity
as U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW.

Respondents.

Case No. _____

Agency File: 

**PETITION FOR WRIT OF HABEAS CORPUS AND
REQUEST FOR ORDER TO SHOW CAUSE**

INTRODUCTION

1. Petitioner JESSICA FROMETA NIEVES is in the physical custody of Respondents at the ELOY FED CTR FACILITY (CORE CIVIC) (“Eloy Detention Center”) located at 1705 East Hanna Rd; Eloy, AZ 85131. She now faces unlawful detention because the Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation Petitioner is considered mandatory detention and therefore was denied a bond hearing and/or release from immigration custody on March 4th, 2026, consistent with a new DHS policy issued on July 8th, 2025, instructing all Immigration and Customs Enforcement (“ICE”) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5th, 2025, the Board of Immigration Appeals (“BIA” or “the Board”) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Pursuant to *Matter of Yajure Hurtado*, the immigration judge did not consider Petitioner’s bond request. Despite the fact that on February 18th, 2026, in *Maldonado Bautista v. Noem*, No. 25-1873 (C.D. Cal), the U.S. District Court for the Central District of California issued a decision explicitly vacating the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), finding that the nationwide class members, including noncitizens like the Petitioner, are subject to detention pursuant to INA § 236 and not INA § 235, the Immigration Judges in this jurisdiction continue to deny bond hearings stating

that they do not have to follow the decision in Maldonado Bautista and that they still have no jurisdiction to hear bond hearings. *See Exhibit A*.

6. Furthermore, the Immigration Judge also stated in his order that Petitioner is subject to mandatory detention pursuant to the Laken Riley Act (“LRA”) because Petitioner has a misdemeanor arrest for Petit Theft in Naples, Florida which is currently pending. *Id*.

7. Petitioners’ detention on these bases violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

8. Furthermore, the immigration judge erred in saying that Petitioner is subject to mandatory detention pursuant to the Laken Riley Act. The Laken Riley Act amendments to § 1226 do not authorize mandatory detention for individuals like Petitioner, who have been arrested but not convicted of enumerated offenses.

9. Respondents’ new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

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

12. 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

13. 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 judicial district in which Petitioner currently is detained.

14. Venue is proper in this district pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because Petitioner is detained at Eloy Detention Center located at 1705 East Hanna Rd; Eloy, AZ 85131, within the District of Arizona and Petitioner's immediate physical custodian is in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return "**within three days** unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most

important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

PARTIES

17. Petitioner, Jessica Frometa Nieves, is a citizen of Cuba who has been in immigration detention since approximately December 26th, 2025. She is currently detained at Eloy Detention Center located at 1705 East Hanna Rd; Eloy, AZ 85131.

18. Respondent, Fred Figueroa, in his official capacity as Warden of Eloy Detention Center in Eloy, Arizona, where the Petitioner is held. In this capacity, he has jurisdiction over the detention facility in which Petitioner is held, is authorized to release Petitioner, and is the immediate and legal custodian of Petitioner. *Brittingham v. United States*, 982 F.2d 378,379 (9th Cir. 1992). Respondent Figueroa’s address is 1705 East Hanna Rd; Eloy, AZ 85131-9612.

19. Respondent, John Cantú, is named in his official capacity as Phoenix Field Office Director of the Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”). In this capacity, he has jurisdiction over the detention facility in which Petitioner is held, is authorized to release Petitioner, and is a legal custodian of Petitioner. *Id.* Respondent Cantú’s address 2035 N. Central Avenue; Phoenix, AZ 85004 -1553.

20. Respondent, Todd M. Lyons, is named in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and is legally responsible for pursuing any effort to remove Petitioner and confine her pending removal. As such, he is a legal custodian of Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th ST SW, Mail Stop 5900;

Washington, DC 20536-5900.

21. Respondent, Kristi Noem, is named in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); is legally responsible for pursuing any effort to confine and remove the Petitioner; and as such is a legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Avenue SE; Washington, DC 20528-0485.

22. Respondent, Pamela Jo Bondi, is named in her official capacity as Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g); and as such is a legal custodian of Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue NW; Washington, DC 20530-0001.

23. Respondent Executive Office for Immigration Review ("EOIR") is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. The address for Respondent is 5107 Leesburg Pike, Falls Church, VA 22041.

LEGAL FRAMEWORK

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

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *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),

while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

26. 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).

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

28. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

29. The detention provisions at § 1226(a) and § 1225(b)(2) 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, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

30. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they 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).

31. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *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)).

32. On July 8th, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

33. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

34. On September 5th, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

35. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

36. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

37. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 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); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.

Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

38. 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.

39. Section 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].”

40. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). 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)); *see also Gomes*, 2025 WL 1869299, at *7.

41. 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.

42. 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" to the United States. 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).

43. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

44. Pursuant to *Matter of Yajure Hurtado*, the immigration judge did not consider Petitioner's bond request. Despite the fact that on February 18th, 2026, in *Maldonado Bautista v. Noem*, No. 25-1873 (C.D. Cal), the U.S. District Court for the Central District of California issued a decision explicitly vacating the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), finding that the nationwide class members, including noncitizens like the Petitioner, are subject to detention pursuant to INA § 236 and not INA § 235, the Immigration Judges in this jurisdiction continue to deny bond hearings stating that they do not have to follow the decision in *Maldonado Bautista* and that they still have no jurisdiction to hear bond hearings. *See Exhibit A*.

45. Furthermore, the immigration judge erred in saying that Petitioner is subject to mandatory detention pursuant to the Laken Riley Act. The Laken Riley Act amendments to § 1226 do not authorize mandatory detention for individuals like Petitioner, who have been arrested but not convicted of enumerated offenses.

46. Prolonged detention without bond or individualized review violates the Fifth Amendment and the Suspension Clause. Ninth Circuit precedent requires bond hearings once detention becomes unreasonably prolonged, with the Government bearing the clear-and-convincing burden. See *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013); *Aleman Gonzalez v. Barr*, 142 S. Ct. 2057 (2022) (as-applied).

FACTS

47. Petitioner has resided in the United States since approximately May 25th, 2024.

48. On or about December 21st, 2025, Petitioner was arrested for Petit Theft in Collier County, FL. Petitioner is now detained at the Eloy Detention Center after being transferred several times to different detention centers including Broward Transitional Center (“BTC”) in Pompano Beach, Florida, Louisiana and Texas.

49. Finally, DHS placed Petitioner in removal proceedings before the Eloy Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

50. Petitioner has one (1) United States citizen child age one (1). Petitioner’s contacts with law enforcement consist of minor misdemeanor offenses demonstrating that she is neither a flight risk nor a danger to the community.

51. Following the Petitioner’s arrest, she was taken to Collier County Jail, then transferred to the BTC in Pompano Beach, Florida, Louisiana and Texas until she was ultimately transferred to Eloy Detention Center. Subsequently, ICE issued a custody determination to continue Petitioner’s detention without an opportunity to post bond or be released on other conditions.

52. As a result, Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years, in immigration custody, separated from her family (especially her one-year-old son) and her community.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

53. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

54. 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 subject to the grounds of inadmissibility. As relevant here, it does not apply to those who 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.

55. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

COUNT II

Violation of the Bond Regulations

56. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

57. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present

without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

58. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

59. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III **Violation of Fifth Amendment Right to Due Process**

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

61. The Due Process Clause of the Fifth Amendment to the United States Constitution forbids the Government from depriving a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Supreme Court holds that a "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks and citation omitted) and "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). Immigrants in detention retain these core rights of due process. See *See id* at 693 ("once an alien enters the country, the legal circumstance changes, for the Due

Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.).

62. This fundamental due process protection extends to "every person within the nation's borders," regardless of immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014). "Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection." *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

63. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). With respect to immigration confinement, the Supreme Court has recognized two special justifications: (1) preventing flight and (2) preventing danger to the community. *See id.* at 690.

64. Petitioner has a fundamental interest in liberty and being free from official restraint.

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

COUNT IV

Detention Under the Laken Riley Act Is Unlawful and it Violates the INA and the Fifth Amendment

66. Petitioner re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

67. Petitioner is concerned that even if this court grants her this Habeas petition and orders Respondent to hold a new bond hearing, Respondents will continue to rely, in whole or in part, on amendments to 8 U.S.C. § 1226 enacted through the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), to justify denying Petitioner's bond request and/or a bond amount and continue her detention without a meaningful and appropriate bond hearing.

68. The Laken Riley Act amended § 1226 to expand categories of mandatory detention for certain noncitizens who have been arrested for, charged with, or convicted of specified criminal offenses.

69. Even as amended, § 1226 does not authorize mandatory detention of Petitioner.

70. Petitioner has not been convicted of any **enumerated offense** triggering mandatory detention under § 1226(c), as amended.

71. To the extent Respondents rely solely on an arrest or pending charge for petit theft in Florida, such reliance exceeds the statutory text, which must be strictly construed in favor of liberty.

72. Respondent is charged only under INA § 212(a)(6)(A)(i) as an entry without inspection. There is no criminal ground of inadmissibility or deportability charged in the NTA. DHS relies on the Laken Riley Act based solely on a pending arrest in Florida for petit theft under Fla. Stat. § 812.014(3)(a). There is no conviction, no admission of elements, and no finding that Respondent is inadmissible by reason of a theft offense.

73. Mandatory detention under INA § 236(c), even as amended by the Laken Riley Act applies only when the respondent is inadmissible or deportable by reason of a qualifying offense. That predicate has not been established here. An unproven arrest, without a charge or sustained criminal ground, does not satisfy the statutory requirement specially when her charge under Florida statute is not a Crime Involving Moral Turpitude (“CIMT”) and in fact is a petit offense exception for immigration law. Accordingly, detention falls under § 236(a), and this Court retains jurisdiction to set bond.

74. Mandatory detention statutes are narrowly interpreted because they operate as exceptions to the general rule that detention pending removal proceedings is governed by § 1226(a), which provides for individualized custody determinations.

75. The Supreme Court has repeatedly emphasized that immigration detention is constitutionally permissible only in limited, carefully circumscribed circumstances. See *Demore v. Kim*; *Zadvydas v. Davis*; *Jennings v. Rodriguez*.

76. In *Demore*, the Court upheld mandatory detention only in the context of brief detention for noncitizens with qualifying criminal convictions.

77. The Court did not authorize prolonged detention without a bond hearing based solely on allegations or arrests.

78. If the Laken Riley Act were construed to require mandatory detention based solely on a pending charge — without conviction and without individualized review — such a construction would raise serious constitutional concerns under the Fifth Amendment.

79. Civil detention based solely on unproven allegations transforms a regulatory scheme into a punitive one, in violation of substantive due process principles.

80. The Due Process Clause requires, at minimum, an individualized determination of flight risk or danger when liberty is restrained for a prolonged period.

81. Petitioner has been detained since approximately December 26, 2025, without any opportunity for a bond redetermination hearing.

82. The categorical denial of a custody hearing under an expanded mandatory detention theory — whether under § 1225(b)(2) or § 1226 as amended — violates procedural due process because it deprives Petitioner of a meaningful opportunity to be heard at a meaningful time.

83. Moreover, to the extent Respondents try to contend that the Laken Riley Act strips this Court of habeas jurisdiction to review the legality of detention, such an interpretation would violate the Suspension Clause of Article I, § 9 of the Constitution.

84. The Supreme Court has made clear that habeas corpus remains available to challenge unlawful executive detention absent a clear and constitutionally adequate substitute. See *INS v. St. Cyr*.

85. Nothing in the Laken Riley Act clearly repeals jurisdiction under 28 U.S.C. § 2241 to review unlawful detention.

86. Accordingly, Respondents continued detention of Petitioner under an expanded mandatory detention theory pursuant to the Laken Riley Act, will be unlawful as applied and violates both the INA and the Fifth Amendment.

COUNT V

Excessive Bail and Categorical Denial of Bail Eligibility Violates the Eighth and Fifth Amendments

87. Petitioner re-alleges and incorporates by reference the paragraphs above.

88. The Eighth Amendment provides that “[e]xcessive bail shall not be required.” U.S. Const. amend. VIII.

89. While immigration detention is civil in nature, the Supreme Court has recognized that constitutional limitations apply when liberty is restrained. See *Zadvydas v. Davis*.

90. The categorical denial of any opportunity to seek release on bond — regardless of individual circumstances — operates as the functional equivalent of excessive bail.

91. Bail is excessive when it is set higher than an amount reasonably calculated to ensure the government's legitimate interests, including appearance at proceedings and community safety.

92. A regime that categorically eliminates bail eligibility for an entire class of individuals — without individualized assessment — is constitutionally excessive because it does not calibrate detention to risk.

93. Under Ninth Circuit jurisprudence, civil detention must be reasonably related to its regulatory purpose and may not be punitive in effect.

94. By denying Petitioner any opportunity to seek release on bond under § 1226(a), Respondents have imposed a categorical and excessive restraint on liberty without individualized justification.

95. To the extent Respondents rely on § 1225(b)(2) and/or the Laken Riley Act to justify a blanket denial of bond eligibility, such application violates constitutional limitations on excessive bail and is arbitrary under the Fifth Amendment.

96. Accordingly, the continued categorical denial of bail eligibility violates the Eighth Amendment as applied and independently violates due process.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the District of Arizona while this habeas petition is pending and while Petitioner remains in Respondents' custody;

- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner, especially because of the Laken Riley Act implications at a bond hearing if provided or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- (5) Declare that even as amended by the Laken Riley Act, § 1226 does not authorize Petitioner's mandatory detention;
- (6) Declare that Petitioner's detention is unlawful; and
- (7) Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

/s/ Virlenys H. Palma
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Counsel for Petitioner

Dated: March 10th, 2026.

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

I represent Petitioner, JESSICA FROMETA NIEVES, 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.

/s/ Virlenys H. Palma
Virlenys H. Palma, Esq.

Dated: March 10th, 2026.