

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

LINA ROCIO GARCIA AFANADOR,

Petitioner,

v.

ROBERT CERNA, in his official capacity as
FIELD OFFICE DIRECTOR OF
ENFORCEMENT AND REMOVAL
OPERATIONS, DALLAS FIELD OFFICE,
IMMIGRATION AND CUSTOMS
ENFORCEMENT;

KRISTI NOEM, in her official capacity as
SECRETARY, U.S. DEPARTMENT OF
HOMELAND SECURITY;

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;

PAMELA BONDI, in her official capacity as
U.S. ATTORNEY GENERAL;

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW;

WARDEN OF BLUEBONNET
DETENTION FACILITY,

Respondents.

Case No. 1:26-cv-00119

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Lina Rocio Garcia Afanador (A-Number XXXXXXXXXX) is the wife of a United States citizen and a Colombian national, who escaped persecution and sexual violence in her home country and seeks asylum in the United States.

2. Petitioner entered the United States without inspection on October 2, 2023, at or near Brownsville, Texas. She turned herself in to the Department of Homeland Security (DHS) and was released on her own recognizance on October 7, 2023. *See Ex. 1*, Notice to Appear.
3. Petitioner lives in Oklahoma City, Oklahoma, with her wife, Whitney Shannon, who is a United States citizen. *See Ex. 2*, Shannon Decl. ¶¶ 2, 10.
4. From the moment she entered the United States, Petitioner has complied with all instructions she has received from the government. She timely filed for asylum, kept DHS apprised of her current address, applied for and was granted permission to work, and regularly reported to check-ins with Immigration and Customs Enforcement (ICE). *See Ex. 3*, I-589 Asylum Application; *Ex. 4*, Letter from Dallas EOIR (confirming receipt of I-589); *Ex. 5*, Letter from Petitioner to Dallas EOIR; *Ex. 14*, Employment Authorization; *Ex. 15*, Change of Address.
5. When she showed up to her regular check-in on February 10, 2026 in Oklahoma City, Petitioner was taken into custody and transported to Bluebonnet Detention Facility in Anson, Texas. She was told that she was being detained because her court date was scheduled far in the future and DHS wanted to process cases faster. *See Ex. 2*, Shannon Decl. ¶ 11.
6. Petitioner informed one of the agents that she was married to a U.S. citizen and had a pending I-130 petition and asylum application. The agent expressed confusion and stated that, based on her circumstances, he did not think she was supposed to be detained. *See id.* ¶ 12.
7. Petitioner has been detained in immigration custody for over a month now because DHS and the Executive Office of Immigration Review (EOIR) have concluded, without basis, that Petitioner is subject to mandatory detention. She has not been afforded a hearing before a neutral adjudicator to consider whether she is either a flight risk or a danger to the community.

8. Petitioner has a wife who relies upon her, and together they are building a family and trying to have a baby. In January 2025, after the traumatic death of their premature infant daughter, Petitioner cared for her wife while her wife was hospitalized for nearly a month. *See id.* ¶ 7.
9. Through in vitro fertilization, Petitioner has become pregnant twice—in October 2025 and in November 2025—but both pregnancies resulted in miscarriage. *See Ex. 6*, Petitioner’s Positive Pregnancy Test Result; *Ex. 7*, Patient Instructions.
10. Up until she was unexpectedly detained by ICE, Petitioner was actively trying to get pregnant so that she and her wife could build their family together. *See Ex. 8*, IVF Next Steps.
11. Petitioner is a caring wife who has no history of criminality and represents no articulable threat to the national security of the United States. Her detention, as part of a desire by DHS to speed up processing, is arbitrary and without foundation in law.
12. The vague directive to “speed up” removal of noncitizens with no criminal history and intimate familial ties to the United States is an arbitrary process which, in its undefined, overbroad parameters, raises the specter of prolonged or indefinite detention.
13. On February 6, 2026, the Fifth Circuit issued its opinion in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). In a split decision with a strong dissent, the Fifth Circuit held that all noncitizens who are present in the United States without lawful admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) during removal proceedings, rather than discretionary detention under § 1226(a).¹
14. The *Buenrostro-Mendez* decision overruled decades of district court decisions and instead adopted the novel statutory interpretation put forth by DHS in a July 8, 2025 policy and agreed

¹ The *Buenrostro-Mendez* Petitioner-Appellees are likely to seek rehearing en banc, *see* Unopposed Mot. Extend Time to File for Rehearing, ECF No. 221, or petition for a writ of certiorari to the Supreme Court. The deadline to file a petition for rehearing is March 23, 2026, and the legal landscape could change quickly if the Fifth Circuit grants the petition for rehearing.

with by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025).

15. In light of the *Buenrostro-Mendez* decision, requesting a bond hearing would be futile, would only prolong Petitioner's detention, and would irreparably harm Petitioner emotionally, psychologically, physically, and financially. Therefore, to the extent exhaustion is required,² Petitioner has prudentially exhausted her remedies within the agency and her only recourse is bringing her prayer of relief to the district court.

16. Accordingly, Petitioner seeks a writ of habeas corpus requiring Petitioner's immediate release from detention, and to enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings, and likewise to enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered at a custody hearing before a neutral arbiter at which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community.

JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction under the habeas corpus statutes, 28 U.S.C. §§ 2241–56; the Suspension Clause of the Constitution, art. I, § 9; and 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–1537.

² See *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950096, at *6 (S.D. Tex. Oct. 3, 2025) (“There is no statutory requirement to exhaust remedies for alien detention claims; rather, under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.” (citation modified)); *Hernandez-Gabriel v. Tate*, No. CV H-25-5687, 2026 WL 161192, at *3 (S.D. Tex. Jan. 20, 2026) (“Under these circumstances, requiring [the petitioner] to exhaust his administrative remedies before pursuing habeas relief would satisfy neither purpose of prudential exhaustion.”); *Suarez-Lugo v. Bondi*, No. 5:26-CV-00029, 2026 WL 332317, at *8 (S.D. Tex. Feb. 6, 2026) (“[P]rudential exhaustion is not necessary where, as here, ‘the interests of the individual weigh heavily against requiring administrative exhaustion.’” (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146, (1992))).

18. This Court may grant the requested relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, and the habeas corpus statutes, 28 U.S.C. §§ 2241–56.

19. Venue properly lies within the Northern District of Texas under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies and officers of the United States, Petitioner is currently detained in this district, and because a substantial part of the events or omissions giving rise to this action occurred in the district. *See Mayfield v. Klevenhagen*, 941 F.2d 346, 348 (5th Cir. 1991); *McNeal v. Gib Lewis Prison Unit*, No. CV H-23-2950, 2023 WL 5254709, at *1 (S.D. Tex. Aug. 14, 2023).

PARTIES

20. Petitioner Lina Rocio Garcia Afanador is a citizen of Colombia who has been detained since February 10, 2026. *See Ex. 9*, Petitioner’s Colombia Passport. Petitioner has resided in the U.S. since October 7, 2023. *See Ex. 1*, Notice to Appear.

21. Respondent Robert Cerna is the Director of the Dallas Field Office of ICE’s Enforcement and Removal Operations division. As such, Mr. Cerna is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

23. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

24. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

25. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings.

26. Respondent Warden of Bluebonnet Detention Facility is responsible for Bluebonnet Detention Facility in Anson, Texas, where Petitioner is detained. The Warden has immediate physical custody of Petitioner and is sued in his official capacity.

FACTS

27. Petitioner fled her home country of Colombia on February 11, 2023, after she was physically, emotionally, and sexually abused due to her sexual orientation. She traveled for nearly ten months through seven countries and arrived in the United States on October 2, 2023. *See Ex. 3, I-589 Asylum Application.*

28. Petitioner surrendered herself to immigration agents immediately after entering the United States and was briefly detained. After determining she was not a flight risk or danger to the community, the agents released Petitioner on October 7, 2023, on her own recognizance with a Notice to Appear for removal proceedings. *See Ex. 1, Notice to Appear.*

29. Petitioner applied for asylum on August 7, 2024. Her I-589 Application for Asylum and for Withholding of Removal is currently pending before the EOIR. *See Ex. 3, I-589 Asylum Application; Ex. 4, Letter from Dallas EOIR; Ex. 5, Letter from Petitioner to Dallas EOIR.*

30. Petitioner and her wife met and started dating in March 2024, and became engaged later that same year. They wanted to start a family so Petitioner's wife became pregnant via in vitro fertilization (IVF). *See Ex. 2, Shannon Decl. ¶¶ 3–6.*

31. In January 2025, Petitioner's wife's water broke unexpectedly and she was hospitalized for almost a month. On February 26, 2025, she gave birth to their daughter who passed away shortly after birth. *See id.* ¶ 7.

32. During her wife's month-long hospitalization and the traumatic death of their daughter, Petitioner cared for her wife physically and emotionally, and took care of their household. *See id.*

33. Petitioner and her wife were married in Wichita, Kansas on June 28, 2025. They filed an I-130 Petition for Alien Relative on August 11, 2025, which is currently pending before United States Citizenship and Immigration Services (USCIS). Petitioner's wife has requested to expedite processing of the I-130 Petition. *See id.* ¶¶ 8–9; **Ex. 10**, Marriage Certificate; **Ex. 11**, I-130 Receipt; **Ex. 12**, I-130 Expedite Request.

34. Petitioner currently lives in Oklahoma City, Oklahoma with her wife, Whitney Shannon, who is an American citizen. *See Ex. 2*, Shannon Decl. ¶ 10; **Ex. 13**, Apartment Lease.

Up until she was unexpectedly detained by ICE, Petitioner was actively trying to get pregnant so that she and her wife could start their family together. Through IVF, Petitioner has become pregnant twice—in October 2025 and in November 2025—but both pregnancies ended in miscarriage. Petitioner plans to carry their child and will continue to fulfill her responsibilities as homemaker and caretaker. *See Ex. 6*, Petitioner's Positive Pregnancy Test Result; **Ex. 7**, Patient Instructions; **Ex. 8**, IVF Next Steps.

35. Petitioner was compliant with her regularly scheduled check-ins for over two years. She checked in at the Oklahoma City ICE Field Office on August 29, 2024, August 25, 2025, November 19, 2025, and February 10, 2026. When she moved from Tulsa, Oklahoma, to Oklahoma City, Oklahoma in July 2025, Petitioner submitted a change of address to inform USCIS and DHS of her new address. *See Ex. 15*, Change of Address.

36. When Petitioner went to her regular check-in on February 10, 2026, she was taken into ICE custody. She was informed that the decision was made to detain her because her court date was scheduled far in the future and DHS wanted to speed up the timeline and process cases faster. Petitioner informed the agent that she was married to a U.S. citizen, and had a pending I-130 petition and pending asylum application. The agent expressed confusion and stated that, given Petitioner's personal circumstances, he did not think that she was supposed to be detained. Petitioner was not given any additional documents or information. *See Ex. 2*, Shannon Decl. ¶ 12.

37. Petitioner was initially placed in removal proceedings before the Las Vegas Immigration Court pursuant to 8 U.S.C. § 1229a. Following her detention at the Bluebonnet Detention Facility, her case is now before the El Paso, Texas Immigration Court.

38. Petitioner has been detained for over a month. Without relief from this Court, she faces the prospect of months, or even years, in immigration custody, separated from her wife and community.

39. Petitioner and the other detainees at Bluebonnet Detention Facility have been treated like criminals and are housed in deplorable conditions. There are 73 women crammed together sleeping in one room, including three women who are pregnant. The beds are very thin and uncomfortable, making sleep nearly impossible. The facility is kept extremely cold which is especially uncomfortable for Petitioner because she suffers from hypothyroidism and has a particular sensitivity to cold.

40. Petitioner is neither a flight risk nor a danger to the community. She has a stable address in Oklahoma City where she has resided for approximately seven months with her wife who is a U.S. citizen. Before that, she resided with her wife in Tulsa, Oklahoma, for over a year. *See Ex. 2*, Shannon Decl. ¶ 10; *Ex. 13*, Apartment Lease.

41. Since being detained, Petitioner has suffered greatly from the condition of the detention and from being separated from her wife. Her mental health has deteriorated, and she has been struggling with anxiety and depression. She is understandably confused because as far as she was concerned, she was abiding by the law and did not violate the terms of her release. An ICE agent at her February 10, 2026 check-in was similarly confused as to why Petitioner was being detained.

42. Respondents have provided no process for, or evidence of, an individualized finding that Petitioner is a flight risk or danger to society to justify her continued detention.

CLAIMS OF RELIEF

COUNT I

Violation of the Fifth Amendment to the U.S. Constitution

Procedural Due Process

43. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

44. Respondents have deprived Petitioner of her liberty without any legitimate purpose in violation of her due process rights under the Fifth Amendment.

45. The government may not deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. V.

46. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

47. The Due Process Clause applies to all persons—including noncitizens—within the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693;

Trump v. J. G. G., 604 U.S. 670, 673 (2025) (“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”) (citation modified)).

48. Moreover, “once released from immigration custody, noncitizens acquire ‘a protectable liberty interest in remaining out of custody on bond.’” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (quoting *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)).

49. The government’s decision to release an individual from custody creates an “implicit promise” that the individual’s liberty “will be revoked only if he fails to live up to the . . . conditions [of release].” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). “To revoke that promise arbitrarily—without process and with no allegation of changed circumstances or violation by Petitioner—is fundamentally unfair.” *Betancourth v. Tate*, No. 4:26-cv-01169, 2026 WL 638482, at *3 (S.D. Tex. Mar. 6, 2026).

50. A noncitizen released from custody pending removal proceedings—like Petitioner, who was released at the government’s discretion into the United States and remained at liberty for over two years—has a specific and protected liberty interest in remaining out of custody. *See, e.g., Betancourth*, 2026 WL 638482, at *3; *Alvarez-Rico v. Noem*, No. 4:26-CV-00729, 2026 WL 522322, at *5–6 (S.D. Tex. Feb. 25, 2026); *Trejo v. Warden of ERO El Paso E. Mont.*, 807 F. Supp. 3d 697, 708 (W.D. Tex. 2025) (“Many courts, including this one, have found that ICE’s decision to release a noncitizen confers a significant liberty interest that cannot be revoked without an individualized determination by a neutral adjudicator.”).

51. Like any civil detention, immigration detention violates the Due Process Clause if it is not reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *see also Demore v. Kim*, 538 U.S. 510, 527 (2003) (recognizing that

immigration detention must “bear[] a reasonable relation to the purpose for which the individual was committed”) (quoting *Zadvydas*, 533 U.S. at 690)).

52. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: (1) to mitigate the risk of flight and (2) prevent danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 515.

53. Petitioner presents neither a flight risk nor any danger. The government cannot contend that Petitioner presents a flight risk given that she has always complied with monitoring requirements and appeared for all ICE appointments. Petitioner also does not present any danger. She has no criminal history and has complied with all immigration-related requirements. *Cf. Pinchi v. Noem*, No. 25-cv-05632-RMI (RFL), 2025 WL 1853763, at *2 (N.D. Cal. July 4, 2025) (“[T]he government’s interest in re-detaining Petitioner-Plaintiff without a hearing is ‘low,’ particularly in light of the fact that Petitioner-Plaintiff has consistently appeared for her immigration hearings for more than two years and she does not have a criminal record.”).

54. Respondents’ decision to re-detain Petitioner, without having to demonstrate that she failed to abide by the conditions of her release, is not reasonably related to a statutory purpose. *See Zadvydas*, 533 U.S. at 690.

55. Petitioner came to the United States seeking protection from persecution, and she has a vested interest in continuing meaningful participation in her removal case in the United States to obtain the relief she seeks.

56. At a bare minimum, the Due Process Clause protects against unlawful or arbitrary restraint or detention. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.”).

57. Where, as here, an individual has lived in complete compliance with all applicable laws and was previously determined to present neither a flight risk nor danger, suddenly arresting and imprisoning them is paradigmatically arbitrary, and a violation of the most basic protections of the Due Process Clause.

58. Petitioner's detention, without *any* individualized review, is also unreasonable under the *Mathews v. Eldridge* due process test which balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

59. Here, each factor weighs in Petitioner's favor, requiring this Court to promptly hold a hearing to evaluate whether the government can justify Petitioner's ongoing detention.

60. First, Petitioner indisputably has a strong liberty interest in being free from detention—the core private interest at stake here. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (recognizing that freedom from physical detention is “the most elemental of liberty interests”); *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment . . . lies at the heart of the liberty [the Due Process Clause] protects.”). Petitioner's liberty interest is, “without question, a weighty one.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). “She stands to lose the right to stay and live and work in this land of freedom, [and] she may lose the right to rejoin her immediate family, a right that ranks high among the interests of the individual.” *Id.* (citations omitted).

61. Petitioner's detention has separated her from her wife, an American citizen, for 35 days with no end date in sight. “That disruption of established family ties further compounds Petitioner's deprivation of liberty.” *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL

3280555, at *9 (D. Mass. Nov. 25, 2025).³ “[N]oncitizens acquire a protectable liberty interest when they spend years establishing a life in the interior of the United States, regardless of their citizenship status.” *Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025).

62. Second, Petitioner is at great risk of erroneous deprivation of this liberty without an individualized evidentiary hearing. No neutral evaluation has been conducted regarding whether the government can justify Petitioner’s detention. Without an individualized determination, it cannot be said that detention is warranted, and the risk of erroneous deprivation can be easily ameliorated through a bond hearing. *See Lopez Miranda*, 2025 WL 3901908, at *3.

63. In the wake of *Buenrostro-Mendez*, some district courts in the Fifth Circuit have found that mandatory detention under 8 U.S.C. § 1225(b)(2) “runs a higher risk of becoming unreasonable in relation to its immigration purpose, and must be analyzed accordingly.” *Salvador Rodriguez v. Frink*, No. 4:26-CV-00798, 2026 WL 709487, at *7 (S.D. Tex. Mar. 13, 2026). Petitioner has no criminal history and there is no evidence that she is a flight risk. She is married to an American citizen and has a stable address and work authorization. Consequently, “Petitioner’s mandatory detention without an individualized assessment of flight risk or danger is unreasonable because it presents an unconstitutionally high risk of erroneous deprivation to Petitioner.” *Id.*; *see also Alvarez-Rico*, 2026 WL 522322, at *6 (“Absent some sort of pre-detention hearing to determine whether his circumstances have changed such that he now presents a danger or a flight risk when

³ Consider this guidance from Judge Murphy of the District Court for the District of Massachusetts:
We could all stand to pause for a moment and consider what it would mean, personally, to be separated from our families. Now, discount that loss by however much you think Petitioner’s immigration status makes it actually not that big of a deal. The Court submits that there is no humane way to perform that calculus without concluding that Petitioner has a tremendous interest at stake here.
Tenemasa-Lema, 2025 WL 3280555, at *9.

the government previously determined that he presented neither, the risk of erroneous deprivation of [the petitioner]’s liberty interest is obvious.”).

64. Respondents have a generalized interest in ensuring noncitizens appear for their removal hearings and are not a danger to the communities where they live, but that interest could be easily vindicated at a bond hearing. *Salvador Rodriguez*, 2026 WL 709487, at *9 (“[T]he value of additional procedures in the form of an individualized bond hearing is obvious. At a bond hearing, an [immigration judge] can assess whether there is, in fact, reason to believe that [the petitioner] does present a significant risk of flight.”).

65. Third, the government’s interest is very low in continuing to detain Petitioner without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at stake here is not the government’s ability to continue to detain Petitioner, but rather the government’s ability to continue to detain her, potentially indefinitely, for months on end, without any individualized review. *See Trejo*, 807 F. Supp. 3d at 708; *Alvarez-Rico*, 2026 WL 522322, at *6 (quoting *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 497 (S.D.N.Y. 2025) (“Indeed, given the nature of the constitutional violation [petitioner] sustained here—i.e., Respondents’ failure to conduct any kind of individualized assessment before [re-]detaining him—any post-deprivation review by an immigration judge would be inadequate.”).

66. To the extent Respondents assert that a bond hearing is unreasonable due to fiscal or administrative burdens, those concerns should be given little weight given the fact that “the government had conducted such hearings until a change in the agency’s interpretation of the law.” *Chavero v. Bondi*, No. EP-25-CV-00638-DB, 2025 WL 3679768, at *4 (W.D. Tex. Dec. 18, 2025). The cost of providing an individualized inquiry is minimal, as the government has repeatedly conceded. *See, e.g., Lopez-Arevelo*, 801 F. Supp. 3d at 687 (finding that the “costs [of

individualized inquiries] cannot be terribly burdensome, given Respondents' concession that the Government conducted them for decades until its reinterpretation of the law earlier this year"); *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1048 (E.D. Cal. 2025) ("In immigration court, custody hearings are routine and impose a 'minimal' cost."); *cf. Betancourth*, 2026 WL 638482, at *5 ("[G]iven the high costs of detention, the Government would reduce its overall fiscal and administrative burden by ensuring that only those people who pose a danger or flight risk are re-detained after being released on recognizance; the Government's interests would therefore be furthered by a pre-detention hearing.").

67. Because all three *Mathews* factors support Petitioner's position, the Court should find that detaining her without any individualized assessment of her flight risk and dangerousness is a violation of her constitutional right to procedural due process under the Fifth Amendment. *See Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 697 (W.D. Tex. 2025); *Juarez-Aguilar v. Noem*, No. SA-26-CA-00987-XR, 2026 WL 693057, at *13–14 (W.D. Tex. Mar. 10, 2026); *Gonzalez Herrera v. Warden, Karnes Cnty. Immigr. Processing Ctr.*, No. SA-26-CA-00862-XR, 2026 WL 693056, at *13–14 (W.D. Tex. Mar. 9, 2026).

68. Respondents have not offered any indication of when Petitioner might be released. Petitioner believes and thereupon alleges that Respondents will continue to detain her and appeal the matter until and unless they have exhausted all appeals or a final order of removal is entered.

COUNT II

Violation of the Fourth Amendment to the United States Constitution

Unlawful Arrest

69. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

70. The Fourth Amendment protects the right of persons present in the United States to be free from unreasonable seizures by government officials.

71. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause. “It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable. [T]he primary purpose of an arrest is to ensure the arrestee appears to answer charges. . . . Once the arrestee appears before the court, the purpose of the initial seizure has been accomplished. . . . Further seizure requires a court order or new cause; the original probable cause determination is no justification.” *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (citation modified); *see also United States v. Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *20 n.14 (W.D. Wis. Sept. 12, 1988) (“Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.”).

72. In the immigration context, the Fourth Amendment protects a noncitizen, who was released from initial custody by immigration officials, from being re-detained “solely on the ground that he is subject to removal proceedings” without some new, intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom., Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Release from initial detention “can be granted only based on individualized findings that the noncitizen represents neither a flight risk nor a danger to the community.” *Perdomo-Casana v. Lyons*, No. 1:26-CV-345-RP, 2026 WL 607267, at *3 (W.D. Tex. Mar. 4, 2026). Therefore, by releasing Petitioner into the interior of the country in October 2023, a government official must have found that she poses neither a security risk nor a flight risk. *Id.*

73. Courts have long recognized that permitting such rearrests with no new finding of probable cause could result in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971).

74. ICE agents detained Petitioner in 2023, after she entered the United States, charged her with a violation of civil immigration law and released her from custody. Petitioner adhered to all immigration law requirements, filed an asylum application, and obtained a government-issued work authorization that is valid through 2030. Petitioner had not engaged in any conduct in the intervening time that made her a flight risk or danger to the community. No material change in circumstances justified Petitioner’s re-arrest. In essence, once Petitioner was released by federal agents, she developed a liberty interest that could not be impinged without sufficient process.

75. Petitioner’s arbitrary re-detention by Respondents in February 2026, after she had complied with applicable immigration law and DHS requirements and absent any material change in circumstances is thus an unreasonable seizure in violation of the Fourth Amendment.

COUNT III

Violation of the INA

76. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

77. To the extent that Respondents argue Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), due process prevents the unilateral reclassification of her detention authority years after she was released at the border. For decades, when immigration authorities arrested and released people on their own recognizance at the border, those people were subject to discretionary detention under 8 USC § 1226(a).

78. The Fifth Circuit has adopted the novel interpretation that individuals such as Petitioner, with no criminal history and significant ties to the community, are subject to mandatory detention. *Buenrostro-Mendez*, 166 F.4th at 502. The Fifth Circuit is the first appellate court to so decide, and the Petitioner-Appellees are likely to seek rehearing en banc. If the Fifth Circuit grants the petition for rehearing, the legal landscape could change significantly.

79. Even if this Court finds that Petitioner's statutory claim is foreclosed by *Buenrostro-Mendez*, her constitutional claim stands independently. *See Juarez-Aguilar*, 2026 WL 693057, at *4 ("Multiple district courts within the Fifth Circuit have held that *Buenrostro-Mendez* has no bearing on whether habeas petitioners are being detained in violation of their constitutional right to procedural due process.").

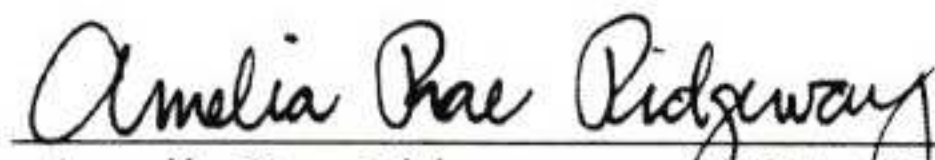
PRAYER OF RELIEF

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

- (1) Exercise jurisdiction over this matter;
- (2) Issue a writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody pending her removal proceedings;
- (3) Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner to her country of origin or a third country pending these proceedings;
- (4) Enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
- (5) Award Petitioner her costs and reasonable attorneys' fees in this action pursuant to the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- (6) Grant such further relief as this Court deems just and proper.

Dated: March 17, 2026

Respectfully submitted,



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