

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

GABRIELA PONCE MEJIA,	§	
§		
Petitioner,	§	
	§	
vs.	§	
	§	
MARKWAYNE MULLIN, Secretary,	§	
U.S. Department of Homeland Security;	§	
MIGUEL VERGARA, Field Office Director of	§	Civil Action No. 5:26-cv-482
Enforcement and Removal Operations,	§	
Harlingen and San Antonio Field Offices,	§	
Immigration and Customs Enforcement;	§	
TODD LYONS, Acting Director, Immigration	§	
and Customs Enforcement; PAMELA	§	
BONDI, U.S. Attorney General, in their official	§	
capacities, ORLANDO PEREZ, Warden,	§	
Laredo Processing Center,	§	
Respondents.	§	

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges Respondents’ unlawful re-detention of Petitioner Gabriela Ponce Mejia without adequate pre-deprivation procedures and in violation of her constitutional rights to liberty and due process. Additionally, Petitioner’s Deferred Action status makes this detention unlawful because United States Citizenship and Immigration Services (“USCIS”) issued her a Bona Fide Determination and Deferred Action following her petition for a U-Visa. The case also challenges Respondents’ misapplication of the statutory authority governing the detention of non-citizens, including those classified as applicants for admission.

2. Petitioner has been in the physical custody of Respondents at Laredo Processing Center since August 22, 2025, and her detention continues despite her eligibility for release under 8 U.S.C. § 1226(a), her deferred action status, and longstanding legal and administrative precedent.
3. Petitioner is currently detained even though an Immigration Judge issued an order “terminating” and essentially disposing of Petitioner’s immigration court case on January 27, 2026.
4. The Department of Homeland Security (“DHS”) had until February 26, 2026 to file an appeal.
5. DHS did not file its appeal until March 2, 2026.
6. Petitioner’s case was terminated by the Immigration Judge pursuant to 8 C.F.R. 1003.18(d)(1)(ii)(C).
7. Petitioner’s August 22, 2025 detention occurred at an I-35 border patrol checkpoint when she was traveling to San Antonio using her valid U-Visa based Employment Authorization Document (“EAD”) and driver’s license.
8. Petitioner’s immigration court case had been administratively closed since September 2022 and she had crossed the border patrol checkpoint on many occasions using her EAD card and Texas identification.
9. Petitioner was initially issued a Notice to Appear (NTA) on August 26, 2013 and released by DHS on August 27, 2013.
10. Petitioner had been regularly checking in with DHS since 2013. Petitioner has never been arrested or had any criminal history, except for arrests by immigration officials. She has never been charged with or convicted of a crime in the United States (US) or Mexico.

11. Petitioner has deferred action based on a bona fide determination by USCIS while she pursues her U-Visa and has filed an application with the immigration court for Cancellation of Removal for non-lawful permanent residents.
12. Petitioner's continued detention is not justified under the law or the facts of her case. She has significant equities, including a long residence in the United States, a pending U visa with an estimated availability in Fiscal Year 2027, a grant of U-based deferred action, which led to the termination of her removal proceedings. Petitioner was apprehended in 2025 while in possession of a valid employment authorization document and identification, demonstrating compliance with immigration processes rather than flight risk or danger to the community. Given these circumstances, her continued detention without adequate justification violates due process and is unnecessary to ensure her appearance at future proceedings.
13. Courts has recently held in multiple cases; due process demands a hearing *prior* to the government's decision to terminate a person's liberty. Courts 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. *Zapata Garza v. Noem*, No. 5:26-cv-00180, Dkt. 11, (S.D. Tex. Laredo Feb. 24, 2026) (Saldana, J.)(citing to *Bonilla-Chicas v. Warden*, 5:26-cv-00131, Dkt. 11, (S.D. Tex Feb. 20, 2026) (Saldana, J.), *Cruz-Reyes v. Bondi*, No. 5:26-cv-00060, (S.D. Tex Laredo Division Feb. 3, 2026), *Trejo v. Warden of ERO El Paso East Montana*, --- F. Supp. 3d ---, 2025 WL 2992187, at *7 (W.D. Tex. October 24, 2025), citing *Lopez-Arevelo*, --- F. Supp. 3d at --- -- ---, 2025 WL 2691828 at *10-11; *Pinchi v. Noem*, --- F. Supp. 3d ---, ---, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025). *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316,

1321–24 (W.D. Wash. 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, 2025 WL 2637663, at *2–4 (W.D. Wash. Sept. 12, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); Report & Recommendation, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt. 13; *Y.M.M. v. Wamsley*, No. 2:25-CV-02075-TMC, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025); *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *4 (W.D. Wash. Nov. 26, 2025); Order, *Francois v. Wamsley*, No. 2:25-cv-02122-RSM-GJL (W.D. Wash. Dec. 5, 2025), Dkt. 22 at 8. Many other courts have recently held the same.

14. Further, courts have held that removal while deferred action remains in effect is unlawful. *Maldonado v. Noem*, 2025 WL 1593133, No. 4:25-cv-2541 (S.D. Tex. Houston June 5, 2025) (Ellison, J.), see also *Contreras Flores v. Noem*, No. 1:26-cv-00463, Dkt. 10, (W.D. LA Feb. 19, 2026).
15. Deferred action status arguably renders her presumptively ineligible for removal under 8 U.S.C. § 1184(p)(6). See *Maldonado* at *2.
16. By failing to provide such a hearing, Respondents have violated Petitioner’s constitutional rights to due process. Accordingly, Petitioner respectfully requests that this Court grant her petition for a writ of habeas corpus and order her immediate release.

JURISDICTION

17. Petitioner is in the physical custody of Respondents at the Laredo Processing Center in Laredo, Texas.

18. District courts have jurisdiction to consider habeas petitions from non-citizens who challenge the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Garza-Garcia v. Moore*, 539 F.Supp.2d 899, 903-04 (S.D. Tex. 2007) (courts retain jurisdiction over questions of law regarding statutory authority and regulatory framework).
19. This Court has jurisdiction under 28 U.S.C. §§ 2241 (habeas corpus statute) 1331 (federal question), 1651 (All Writs Act), and the U.S. Const. I, § 9, Cl. 2 (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. §§ 2241, 2201 (Declaratory Judgment Act), and 1651.

VENUE

20. Venue lies in the U.S. District Court for the Southern District of Texas because Ms. Ponce Mejia is detained by ICE at the Laredo Processing Center in Laredo, Texas. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 498 (1973).
21. Venue is also proper in this Court under 28 U.S.C. § 1391 because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

22. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petition is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*; *see also Harris v. Nelson*, 394 U.S. 286, 298-99 (1969).

23. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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). A habeas petition “is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.” *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954); *see also, McClellan v. Young*, 421 F.2d 690, 691 (6th Cir. 1970); *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

24. Petitioner is a citizen of Mexico who has resided in the United States since 1999. At the time of filing this habeas petition, Ms. Ponce Mejia is detained in Respondents’ custody at the Laredo Processing Center in Laredo, Texas.
25. Respondent Markwayne Mullin is the Secretary of DHS. Hhe is responsible for the implementation and enforcement of the Immigration and Nationality Act (“INA”) and oversees U.S. Immigration and Customs Enforcement (“ICE”), which is responsible for Petitioner’s detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.
26. Respondent Miguel Vergara is the Director of the Harlingen and San Antonio Field Offices of ICE’s Enforcement and Removal Operations division. As such, Respondent Vergara is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is sued in his official capacity.

27. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for implementation and enforcement of the INA and oversees ICE's Enforcement and Removal Operations division, which is responsible for Petitioner's detention. He is sued in his official capacity.
28. 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.
29. Respondent Orlando Perez is the Warden of Laredo Processing Center where Petitioner is detained. He is responsible for overseeing, directing and controlling the daily operations of the facility. He is the immediate physical custodian of all individuals detained at Laredo Processing Center, including ICE detainees. He is sued in his official capacity.
30. Respondent U.S. Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

FACTS

31. Petitioner was born on [REDACTED] in Tamaulipas, Mexico, and has resided in the United States since December 1999. See Exh. 1, *Declaration of Gabriela Ponce Mejia*.
32. Prior to her detention, Petitioner was employed as a custodian with the [REDACTED] [REDACTED] and, during the summer, also worked as a cashier at a fast-food restaurant. *Id.*

33. Petitioner has significant health concerns, including a tumor and a kidney infection that developed during her detention. *Id.*

34. Petitioner has no criminal history. She has never been charged with or convicted of a crime in the US or Mexico. See Exh. 2, *WCSO Background check*.

35. Petitioner was victim of domestic violence for nearly 2 decades. 

 See Exh. 1, *Declaration of Gabriela Ponce Mejia*.

36. Ms. Ponce has raised her 5 U.S. citizen children in Texas: 32, 30, 29, 16 and 17 years old; two of whom are minors (16 and 17 years old). *Id.*

37. The two minors receive the following support services: the 17-year-old receives mental health services through CAPS at Border Region and in-home Palomita support for 18 hours per week. The 16-year-old receives SSI benefits and in-home Palomita support for 11 hours per week. *Id.*

Relief and pending applications

38. An immigration judge terminated Petitioner's case on January 27, 2026 exercising his discretion pursuant to 8 C.F.R. 1003.18(d)(1)(ii)(C). Exh. 3, *IJ Order Terminating Case*.

39. The Department of Homeland Security ("DHS") had until February 26, 2026 to file an appeal. *Id.*

40. DHS filed an untimely appeal on March 2, 2026. Exh. 4, *DHS Notice of Appeal to the BIA*.

41. Petitioner filed an application for cancellation of removal in December of 2025.

42. Petitioner filed a U visa on September 28, 2017 On November 23, 2022, USCIS issued a Bona Fide Determination, granting her employment authorization and deferred action. See Exh. 5, *Bona Fide Determination Letter*.

43. The estimated U visa availability is Fiscal Year 2027 (October 2026–September 2027).

44. Petitioner has a valid U-based EAD work permit, valid from November 19, 2022, to November 18, 2026. See Exh. 6, *EAD card*.

45. On August 20, 2019, Petitioner's Form I-130 petition, filed on August 14, 2018 was approved. Exh. 7, *I-130 approval*.

Immigration history and proceedings

46. Petitioner has been living in the United States since approximately 1999.

47. Her manner of entry and date of last entry are points of contention that continue to be litigated. See generally Exh. 8, *I-213*.

48. On August 26, 2013, Petitioner was apprehended while attempting to cross the I-35 checkpoint, she was released on recognizance under INA §236 the following day/See Exh. 9, *Order of Release on Recognizance*.

49. After this, she complied with periodic check-ins with ICE in San Antonio for several years.

50. Proceedings were administratively closed in September 2022 based on a pending U petition and re-calendared in 2025 following Petitioner's most recent apprehension on August 22, 2025, while attempting to cross a checkpoint with her valid U-based Employment Authorization Document and driver's license. Removal proceedings were recalendared, and client has remained detained since.

EOIR Procedural History

51. A Notice to Appear (NTA) was issued on August 26, 2013, charging her under 212(a)(6)(A)(i) for being present without admission Exh. 10, *Notice to Appear 08/26/2013*.

52. Removal proceedings were subsequently initiated and later administratively closed on September 19, 2022.
53. On August 22, 2025, Petitioner was apprehended while presenting herself to border patrol agents at the I-35 checkpoint north of Laredo, despite presenting a valid U-visa bona fide determination (“BFD”) (c)(14) employment authorization document and a driver’s license. Her removal proceedings were subsequently recalendared, and she has remained in detention since that date.
54. On August 28, 2025, following the Petitioner’s apprehension on August 22, 2025, DHS filed a motion to recalendar proceedings, which was initially denied. The proceedings were eventually recalendared.

EXHAUSTION OF REMEDIES

55. Petitioner is not required to exhaust remedies before pursuing habeas relief for unlawful detention. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (exhaustion not required where administrative remedies are unavailable, wholly inappropriate to the relief sought, or where exhaustion would be patently futile).
56. Typically, a “person seeking habeas relief must first exhaust available administrative remedies.” *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). The exhaustion requirement in this context is likely prudential, not jurisdictional. *See* 8 U.S.C. § 1252(d)(1) (requiring exhaustion only for a “final order of removal”). It would be “an exercise in futility” for Petitioner to request a bond hearing or file an appeal to the BIA. *Garner v. U.S. Dep’t of Lab.*, 221 F.3d 822, 825 (5th Cir. 2000). The BIA issued *Yajure Hurtado* on September 5, 2025. Given the recency, there is little prospect that the BIA would reconsider *Yajure Hurtado* here. *See id.*

57. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. As noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission.

ARGUMENT AND AUTHORITIES

58. This petition challenges the constitutionality of Petitioner's continued detention without any individualized custody determination before a neutral decisionmaker. Although Congress has authorized detention under the Immigration and Nationality Act, the exercise of that authority remains subject to the limitations imposed by the Fifth Amendment.

59. The Due Process Clause provides that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. Freedom from physical restraint lies at the core of the liberty protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The Supreme Court has consistently recognized that civil immigration detention is subject to constitutional constraints. See *Demore v. Kim*, 538 U.S. 510, 523 (2003).

60. Petitioner has a heightened liberty interest and makes a substantive due process claim because she has lived in the United States off and on since 1999, but certain since 2009, built a home, raised a family, and works at LISD. She is entitled to a meaningful process and subjecting her to mandatory detention without review is a violation of the due process rights afforded to her by the 5th Amendment's Due Process clause. See, e.g., *Clemente Ceballos v. Garite*, No. 26-cv-00312, 2026 WL 446509, at *2 n.2 (W.D. Tex. Feb. 10, 2026) (Briones, J.) (holding Buenrostro does not change the procedural due process

analysis and collecting cases); *Cumbe Lema v. De Anda-Ybarra*, No. 26-cv-249, ECF No. 7 (W.D. Tex. Feb. 9, 2026) (Cardone, J.) (similar), *Aldana Barreira v. Bondi*, No. 1:26-cv-00436-DAE (W.D. Tex. Mar. 12, 2026)(Ezra, J.)(violation of due process).

61. Petitioner's detention serves no lawful purpose because she is neither a flight risk or a danger to the community and thus provides for a substantive due process claim. Petitioner has strong ties to the community for the reasons mentioned above and has no criminal history. See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (the only lawful purposes of immigration detention are to prevent flight risk and danger to the community); see also *Jacobo Ramirez v. Noem*, --- F.Supp.3d ----, 2025 WL 3270137, at *8–9 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection likely to prevail on substantive due process claim).
62. Petitioner has been granted deferred action and courts have held that removal while deferred action remains in effect is unlawful. *Maldonado v. Noem*, 2025 WL 1593133, No. 4:25-cv-2541 (S.D. Tex. Houston June 5, 2025) (Ellison, J.), see also *Contreras Flores v. Noem*, No. 1:26-cv-00463, Dkt. 10, (W.D. LA Feb. 19, 2026).
63. Deferred action status arguably renders her presumptively ineligible for removal under 8 U.S.C. § 1184(p)(6). See *Maldonado* at *2.
64. The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi* addressed only the statutory interpretation of detention provisions under the Immigration and Nationality Act. It did not examine whether continued detention without access to an individualized custody determination violates the Due Process Clause. Even assuming Respondents' statutory

interpretation were correct, Petitioner's continued detention without a bond hearing independently violates the Fifth Amendment. *See Aldana Barreira v. Bondi*, supra.

65. Respondents may rely on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), but that decision does not foreclose Petitioner's due process claim. *Thuraissigiam* involved an individual apprehended immediately at the border who had never effected entry and who challenged the admission process itself. Petitioner does not challenge the removal process or assert a right to remain in the United States. She seeks only an opportunity to be released so that she can pursue cancellation of removal before an immigration court, her U-Visa case with USCIS, and in the alternative apply for release through an individualized custody determination.
66. Unlike the petitioner in *Thuraissigiam*, Petitioner has resided in the United States for over 20 years. The Due Process Clause applies to all "persons" within the United States, including noncitizens whose presence may be unlawful. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The longstanding distinction between recent entrants and individuals who have lived within the country for years is constitutionally significant.
67. Federal district courts in Texas have consistently concluded that detention without access to a bond hearing under § 1225(b) violates procedural due process. *Zapata Garza v. Noem*, No. 5:26-cv-00180, Dkt. 11, (S.D. Tex. Laredo Feb. 24, 2026) (Saldana, J.)(citing to *Bonilla-Chicas v. Warden*, 5:26-cv-00131, Dkt. 11, (S.D. Tex Feb. 20, 2026) (Saldana, J.), *Cruz-Reyes v. Bondi*, No. 5:26-cv-00060, (S.D. Tex Laredo Division Feb. 3, 2026), *See, e.g., Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Martinez v. Noem*, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Ortega-Aguirre v. Noem*, 2025 WL 3684697

(S.D. Tex. Oct. 10, 2025); *Cordova v. Noem*, 2026 WL 218938 (N.D. Tex. Jan. 28, 2026); *Camacho-Gutierrez v. Thompson*, 2026 WL 195758 (W.D. Tex. Jan. 16, 2026); *George v. Noem*, 2025 WL 3852946 (N.D. Tex. Dec. 19, 2025); *Hassen v. Noem*, 2026 WL 446506 (W.D. Tex. Feb. 9, 2026); *Clemente Ceballos v. Garite*, 2026 WL 446509 (W.D. Tex. Feb. 10, 2026); *Marceau v. Noem*, 2026 WL 368953 (W.D. Tex. Feb. 9, 2026). These decisions confirm that constitutional review of detention remains available notwithstanding Buenrostro-Mendez.

68. Petitioner is detained in violation of her due process rights because she is being detained without any procedural safeguards.
69. Petitioner is also a member of the class certified in *Maldonado-Bautista v. Santa Cruz*, 5:25-cv-01873-SSS-BFM, 2025 WL 3678485, (C.D. Cal. Dec. 18, 2025), because she entered without inspection many years ago and has lived in the United States, made a family, worked, and otherwise been a productive member of this community.
70. To determine whether detention procedures satisfy due process, courts apply the three-factor balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That test evaluates: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used and the probable value of additional safeguards; and (3) the Government's interest, including the administrative burden that additional procedural requirements would entail.

I. The Private Interest at Stake Is Substantial

71. Petitioner's interest in freedom from physical detention is fundamental. She has resided in the United States for many years and has no criminal history. She has five United States Citizen children.

72. Detention separates Petitioner from her family and her employment. It also substantially interferes with her ability to prepare her defense and pursue relief in immigration court. The private liberty interest at stake weighs heavily in favor of meaningful procedural safeguards.
73. Federal courts within this District have recognized that long residence, family caretaking responsibilities, steady employment, and community ties substantially strengthen the protected liberty interest and increase the risk of erroneous deprivation where detention occurs without individualized review. See *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025). Petitioner presents those same characteristics here.

II. The Risk of Erroneous Deprivation Is Significant

74. Petitioner has not received any individualized custody determination before a neutral adjudicator. No Immigration Judge has assessed whether she poses a danger to the community or a risk of flight. The removal proceedings pending against her determine removability and eligibility for relief. They do not evaluate whether continued detention is necessary especially after an immigration judge has already determined to terminate her case so that she can proceed with her U-Visa case.
75. In the absence of any individualized review, there is an automatic continued deprivation of liberty without procedural safeguards. This creates a substantial risk that an individual who is not dangerous and who presents a low risk of flight will remain detained for a prolonged period while removal proceedings are pending.
76. An individualized bond hearing before a neutral decisionmaker would significantly reduce the risk of erroneous deprivation. At such a hearing, the Government could present

evidence supporting continued detention, and Petitioner could present evidence demonstrating that conditions of release would adequately ensure her appearance and protect the community, provided that the bond hearing is not constitutionally deficient.

III. The Government's Interests Do Not Outweigh the Need for Procedural Safeguards

77. The Government has an interest in ensuring that individuals appear for removal proceedings and do not pose a danger to the community. However, those interests can be fully protected through a bond hearing at which the Government bears the burden of proving that continued detention is necessary.
78. Providing an individualized custody determination imposes minimal administrative burden. Immigration courts routinely conduct bond hearings. Requiring such a hearing does not undermine Congress's detention authority. It ensures that detention complies with constitutional requirements.

IV. Balancing the Mathews Factors

79. All three *Mathews* factors weigh decisively in Petitioner's favor. Petitioner's substantial liberty interest, the significant risk of erroneous deprivation created by the absence of any custody review, and the minimal burden of providing a bond hearing compel the conclusion that due process requires an individualized custody determination before a neutral adjudicator.
80. Because Petitioner has been detained without any opportunity to challenge the necessity of her confinement before a neutral decisionmaker, his continued detention violates the Due Process Clause of the Fifth Amendment.

Statutory Argument

81. Petitioner respectfully preserves the argument that his detention is governed by 8 U.S.C. § 1226(a), which authorizes release on bond pending removal proceedings, rather than 8 U.S.C. § 1225(b). Petitioner recognizes that the Fifth Circuit recently addressed statutory detention provisions in *Buenrostro-Mendez v. Bondi*. To the extent that binding precedent forecloses statutory relief in this Court, Petitioner raises this argument solely to preserve it for further review. Regardless of the statutory framework applied, however, the Constitution independently requires meaningful procedural safeguards consistent with the Fifth Amendment.

Due Process Principles

82. Due process requires that if DHS seeks to re-arrest persons like Petitioner, a person released and permitted to pursue relief outside of removal proceedings or given upcoming court dates, and have otherwise complied with the terms of their release—the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified because the person is a flight risk or danger to the community.

83. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This court and others have recently recognized these liberty interests. *Zapata Garza v. Noem*, No. 5:26-cv-00180, Dkt. 11, (S.D. Tex. Laredo Feb. 24, 2026) (Saldana, J.)(citing to *Bonilla-Chicas v. Warden*, 5:26-cv-00131, Dkt. 11, (S.D. Tex Feb. 20, 2026) (Saldana, J.), *Cruz-Reyes v. Bondi*, No. 5:26-cv-00060, (S.D. Tex Laredo Division Feb. 3, 2026), See also *E.A. T.-B.*, 795 F. Supp. 3d

at 1321 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner had “an exceptionally strong interest in freedom from physical confinement”).

84. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).
85. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on others.” *Id.*
86. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires “adequate procedural protections” that test whether the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified).
87. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual’s release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law is the opportunity to be heard at a meaningful time in a meaningful manner.” (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring “preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed a violation of parole conditions” and that

such determination be made “by someone not directly involved in the case[.]” (citation modified)).

88. Several courts, have recognized that these principles apply with respect to the re-detention of the many noncitizens that DHS has arbitrarily begun taking back into custody, often after such persons have been released for months and years.
89. For example, in *Cruz-Reyes*, the Court, citing *Gonzalez v. Joyce*, 2025 WL2961626 (S.D. NY Oct. 19, 2025), noted that “[t]he suggestion that Government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the 5th Amendment.” *Cruz-Reyes v. Bondi*, No. 5:26-cv-00060, (S.D. Texas Laredo Division Feb. 3, 2026). *Also citing Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *31, (E.D.N.Y. Nov. 28, 2025)(“[A] post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures had already been carried out.”); *J.U. v. Maldonado*, 2025 WL 2772765, at *3, (E.D.N.Y. Sept. 29, 2025)(“[T]here was no ‘initial’ decision as ICE’s detention of Petitioner did not comport with the implementing regulations and §1226(a); thus, a bond hearing for a post-deprivation review is wholly inadequate to remedy that unlawful detention.”)
90. Additionally, in *E.A. T.-B.*, the Court applied the *Mathews v. Eldridge*, 424 U.S. 319 (1976), framework to hold that even in a case where the government asserted that mandatory detention initially applied, a person’s re-detention could not occur absent a hearing. The Court did the same in *Ramirez Tesara*, *Kumar*, and *Ledesma Gonzalez*. *See*

Ramirez Tesara, 2025 WL 2637663, at *2–3; *Kumar*, 2025 WL 2677089, at *2–3; *Ledesma Gonzalez*, 2025 WL 2841574, at *7–8.

91. In applying the three *Mathews* factors, the *E.A. T.-B.* court held that the petitioner had “undoubtedly [been] deprive[d] of an established interest in his liberty,” which, as noted, “is the most elemental of liberty interests[.]” 795 F. Supp. 3d at 1321 (citation modified). The Court further explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a hearing was high because a hearing serves to ensure that the purposes of detention—the prevention of danger and flight risk—are properly served. *Id.* at 1322–23. Finally, the Court explained that:

[T]he Government’s interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue. *Id.* at 1324. As a result, this Court ordered the petitioner’s immediate release. *Id.*

92. A court applied a similar analysis in *Ramirez Tesara*. There, the Court reasoned that the petitioner had a “weighty” interest in his liberty and was entitled to the “full protections of the due process clause.” 2025 WL 2637663, at *3. When examining the value of additional safeguards, the Court also noted that despite the government’s allegations of ISAP violations, “the fact ‘that the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.’” *Id.* at *4 (quoting *E.A. T.-B.*, 795 F. Supp. 3d at 1322). Finally, the Court reasoned that any government interest in re-detention without a hearing was “minimal.” *Id.* Accordingly, there too, the Court ordered the petitioner’s immediate release. *Id.* at *5.

93. The *Kumar* and *Ledesma Gonzalez* courts reached the same decision, again holding that all three factors weighed in favor of affording the petitioner a bond hearing. 2025 WL 2677089, at *3–4; 2025 WL 2841574, at *7–9; *see also* Report & Recommendation, *Lopez Reyes*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt. 13 (same).
94. The Court’s decisions in *E.A. T.-B.*, *Ramirez Tesara*, *Kumar*, and *Ledesma Gonzalez* are consistent with many other district court decisions addressing similar situations. *See, e.g.*, *Valdez v. Joyce*, --- F. Supp. 3d ---, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v. Noem*, 792 F.Supp.3d 1025 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).
95. Petitioners due process violations exist because she has deferred action, an immigration judge has terminated her case, and DHS was late in filing their appeal.
96. For the reasons set forth above, Petitioner’s continued detention is unlawful. Her re-detention without an individualized hearing violates her fundamental liberty interests under the Fifth Amendment. Consistent with controlling precedent and long-standing administrative practice, she is entitled to either immediate release or a bond hearing before a neutral decisionmaker to determine whether her detention is justified. Accordingly, this Court should grant the habeas petition and order her immediate release or, at a minimum, provide her a bond hearing under § 1226(a).

CLAIMS FOR RELIEF

Count 1– Violation of Due Process

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

98. 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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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

99. Due process does not permit the government to re-detain Petitioner and strip her of her liberty without written notice and a pre-deprivation hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey*, 408 U.S. at 487–88. Such written notice and a hearing must occur *prior* to any re-detention.

100. Due process does not permit the Government to re-detain a person who has deferred action pursuant to a U-Visa bona fide determination.

101. Respondents revoked Petitioner’s release and deprived her of liberty without providing written notice and a meaningful opportunity to be heard by a neutral decisionmaker prior to her re-detention.

102. Accordingly, Petitioners’ re-detention violates the Due Process Clause of the Fifth Amendment.

Count II – Violation of the INA

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

104. 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 Petitioner who previously entered the country and has

been residing in the United States for years 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)(2)(A), § 1226(c), or § 1231.

105. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention is *ultra vires* and violates the INA.

RELIEF REQUESTED

Petitioner requests that this Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Order Respondents to timely respond to this petition in accordance with 28 U.S.C. § 2243;
- C. Issue a writ of habeas corpus requiring release from custody or, alternatively, requiring that the IJ conduct a bond hearing.
- D. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioners from custody immediately and permanently enjoining their re-detention during the pendency of their removal proceeding absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that each Petitioner is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks;
- E. Order that upon Petitioners' release, Respondents must return to Petitioners any personal property, including any personal identification document or employment authorization document;
- F. Declare that the re-detention of Petitioner while removal proceedings are ongoing without first providing an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;

- G. Award Petitioner attorney's 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
- H. Grant any other and further relief that this Court deems just and proper.

Dated: March 24, 2026. [REDACTED]

Respectfully submitted

/s/ Carlos M. Garcia

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ATTORNEY FOR PETITIONER

VERIFICATION

Pursuant to 28 U.S.C. §1746 I declare under penalty of perjury under the laws of the United States that the statements included in the "Facts" section of this Petition for Writ of Habeas Corpus and the foregoing declaration are true and correct.

/s/ Carlos M. Garcia

Carlos Moctezuma Garcia

Attorney for Gabriela Ponce Mejia

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2026, I electronically filed the foregoing Petition for Writ of Habeas Corpus with the Clerk of Court using the CM/ECF system, I further certify that a copy of this Petition will be served upon all parties listed pursuant to Federal Rule of Civil Procedure 4(i).

Respectfully submitted,

/s/ Carlos M. Garcia

Carlos M. Garcia