

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

<b>JOSEFINA SANTANA HERNANDEZ,</b>	)	
	)	Case No. 4:26-cv-503
Petitioner,	)	
	)	<b>PETITION FOR WRIT OF</b>
v.	)	<b>HABEAS CORPUS</b>
	)	
<b>JASON STREEVAL,</b> Warden, Stewart	)	
Detention Center; <b>KRISTEN SULLIVAN,</b>	)	
Acting Field Office Director, Atlanta	)	
Field Office, U.S. Immigration and	)	
Customs Enforcement,	)	
	)	
Respondents.	)	

**INTRODUCTION**

1. Petitioner Josefina Santana Hernandez, a fifty-two year old citizen of Mexico, is being unlawfully detained at the Stewart Detention Center in Lumpkin, Georgia. Petitioner entered the United States by appointment with her minor son in 2021. She was paroled into the United States by the Department of Homeland Security (DHS) to allow her to seek asylum based on the violence that drove her family unit from their home in Mexico. Since that time, she has been lawfully pursuing her asylum application and fully complying with all release requirements—attending all scheduled check-ins, appointments, and hearings.

2. Nonetheless, after four years of parole and without any change in circumstance, on or about October 22, 2025, DHS took Petitioner into immigration custody

when she appeared for a scheduled check-in with Immigration and Customs Enforcement (ICE). She was quickly transferred out of state, and is now being held in dirty and overcrowded facility far away from her family and friends. Since entering immigration custody, ICE agents have encouraged her to abandon her asylum claim as a means of ending her detention. Meanwhile, the Board of Immigration Appeals (BIA) has failed to even set a briefing schedule for her case, despite her appeal pending since April 2025.

3. Petitioner's detention fails to comply with the Due Process Clause of the Fifth Amendment. Petitioner was not afforded sufficient procedural due process under the well-known procedural due process test set forth in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). Petitioner's detention also violates her substantive due process rights under the Fifth Amendment as she has developed substantial ties to the United States during her four years of release, she poses no flight or security risk, and has now been detained for months while the BIA has failed to take any action on her appeal. In this posture, her detention is punitive, potentially indefinite, and fails to serve any legitimate government interest.

4. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus and order her released pending a final decision in her case. Alternatively, the Court may order that Petitioner be released unless Petitioner is afforded a bond hearing within 14 days to test whether her continued detention serves a legitimate government purpose, specifically to ensure her presence for future appointments and hearing or to protect the public.

### **JURISDICTION**

5. This action arises under the Constitution of the United States, the

Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, the Administrative Procedures Act (APA), 5 U.S.C. §§ 551–559, 701–706, and 8 U.S.C. 2241.

6. 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, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Administrative Procedures Act (APA), 5 U.S.C. §§ 551–559, 701–706, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

7. Venue is proper because Petitioner is detained at Stewart Detention Center in Lumpkin, Georgia, which is within the jurisdiction of this District. *See* 28 U.S.C. §§ 1391(e)(1)(B), 2241(a).

### **REQUIREMENTS OF 28 U.S.C. § 2243**

8. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) 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.*

### **PARTIES**


9. Petitioner Josefina Santana Hernandez, a citizen of Mexico, is being unlawfully detained at Stewart Detention Center in Lumpkin, Georgia.

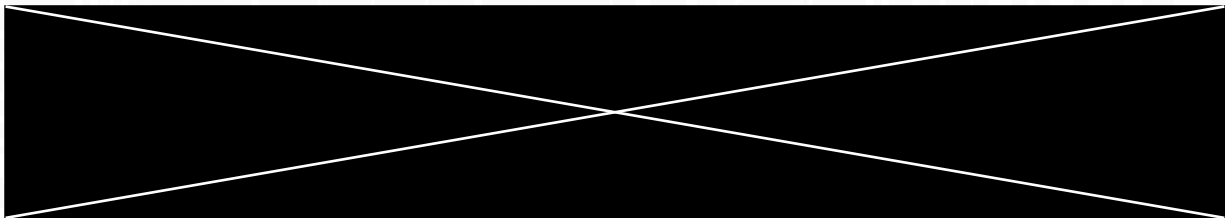
10. Respondent Warden of the Stewart Detention Center has immediate physical

custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. They are a legal custodian of Petitioner.

11. Respondent Acting Field Office Director for the Atlanta Field Office, the office that oversees ICE operations in Georgia, North Carolina, and South Carolina, is sued in their official capacity. They are a legal custodian of Petitioner and has authority to release Petitioner.

**STATEMENT OF FACTS**

12. Petitioner is a fifty-two yearold citizen of Mexico. She fled her home with her minor son and minor niece after 



13. While hiding in northern Mexico, Petitioner's family was identified by a humanitarian organization, Kids In Need of Defense (KIND), as being eligible for humanitarian processing. KIND communicated with DHS officials about Petitioner and her family and secured an appointment for them to present at the port-of-entry for processing on October 22, 2021.

14. When Petitioner and her family presented at the port-of-entry at their appointed time, they were quickly processed and released on humanitarian parole. They were told that they would be placed in removal proceedings once settled in United States and they would be able to apply for asylum through the administrative process.

15. Petitioner and her family resettled in North Carolina with her daughter, a lawful permanent resident. Petitioner has remained in North Carolina with her daughter since her entry to the U.S.

16. Petitioner has provided invaluable support to her daughter since taking up residence in North Carolina by providing childcare every single day. Petitioner's daughter works multiple jobs to support her family, which means that Petitioner is heavily involved in the daily life of her grandchildren. Petitioner would braid the girls hair in the mornings for school, help the kids get dressed, and make sure the kids were able to get to school and extracurriculars for her daughter.

17. After Petitioner and her family were resettled in North Carolina, on March 17, 2022, DHS initiated removal proceedings in Charlotte, North Carolina. On October 21, 2022, Petitioner filed an application for asylum. The immigration judge set a hearing on the petition for March 17, 2025, and denied the petition on the same day. Petitioner timely appealed the decision, but the Board has not taken steps to advance the appeal by ordering transcripts or setting a briefing schedule for the appeal. Petitioner's appeal has been pending since April 4, 2025, with no action at all by the Board. Exhibit 1.

18. Petitioner and her son were detained by DHS on or about October 22, 2025, when they appeared for their scheduled ICE check-in. They were separated and transferred to facilities outside of North Carolina.

19. Petitioner requires daily medication and her physical health as well as mental health is at risk. Petitioner takes daily blood pressure medicine, as well as migraine medicine. Petitioner was hospitalized after being detained in Stewart before she was given

her blood pressure medicine. Petitioner still does not receive her migraine medicine, despite being kept in a room with at least 50 other women without any noise dampening.

### **LEGAL BACKGROUND**

20. Petitioner's detention and release is governed by 8 U.S.C. 1225(b)(2)(A), which permits DHS to detain "an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted."

21. For applicants for admission who seek admission at the port of entry consistent with section 1225(b)(2)(A), DHS may elect to parole the individuals into the United States for removal proceedings. *See* 8 U.S.C. 1182(d)(5)(A). The INA does not entitle individuals detained under section 1225(b)(2)(A) to a bond hearing. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 843-46 (2018).

22. Section 1225(b)(2)(A) applies during the administrative removal process, which includes removal proceedings before the immigration judge and any appeal to the BIA. *See* 8 U.S.C. 1231(a)(1)(B) (outlining when pre-order detention ends and shift to detention during the removal period). A section 1225(b)(2)(A) detainee cannot be removed because he is not subject to a final order of removal. *See id.* (defining start of the removal period).

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of Fifth Amendment Right to Procedural Due Process**

23. The allegations in the above paragraphs are realleged and incorporated herein.

24. DHS's decision to detain Petitioner was without justification or consideration of her individualized circumstances and therefore violates Petitioner's right to procedural due process.

25. The Fifth Amendment guarantees that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "[I]t is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993).

26. The Due Process Clause generally "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). It requires procedural protections before Petitioner can be deprived of a liberty interest. *See Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). To determine which procedures are constitutionally sufficient to satisfy the Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews*, 424 U.S. at 335. Courts must consider: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of

additional or substitute procedural safeguards”; and (3) “the Government’s interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.*

27. Petitioner has a liberty interest in her release. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690.

28. Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. *Young v. Harper*, 520 U.S. 143, 147-49 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). To determine whether a specific conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted).

29. As in *Morrissey*, the circumstances surrounding Petitioner’s conditional release created a liberty interest in her continued release through entry of a final order of removal. Petitioner brought her minor son and minor niece to the United States to seek protection from the violence that drove the family from their home. Petitioner appeared with her minor son and minor niece for a scheduled appointment at the port-of-entry to seek protection from the violence that drove the family from their home. She was

processed and DHS permitted her to enter the United States, without restraint so that she could follow the lawful process for securing permission to reside in the United States permanently. For four years, Petitioner lived with her family in North Carolina and established a life there. Despite many attempts to secure permission to reside in the United States, Petitioner was denied. Her detention undoubtedly “inflicts a grievous loss on the parolee.” *See Morrissey*, 408 U.S. 471 at 482. Petitioner has an interest in remaining with her family, pursuing her asylum application free from custody, to work, and continue supporting her family. *See id.* (“Subject to the conditions of his parole, he can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.”).

30. Courts across the nation have applied these principles to find parolees like Petitioner to have a liberty interest in their release. *See, e.g., Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at \*4 (M.D. Fla. Dec. 3, 2025) (parolee’s interest in freedom from detention “lies at the heart of the liberty” the Due Process Clause protects); *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at \*4 (N.D. Cal. July 17, 2025) (recognizing that “the liberty interest that arises upon release [from immigration detention] is *inherent* in the Due Process Clause”); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at \*3 (N.D. Cal. June 26, 2025) (collecting cases finding that noncitizens who have been released have a strong liberty interest); *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at \*3 (N.D. Cal. July 25, 2025) (“Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty.”);

*Matute v. Wofford*, No. 25-cv-1206-KES-SKO (HC), 2025 WL 2817795, at \*5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty interest in his release); *Tesara v. Wamsley*, 2025 WL 3288295 at \* 4 (W.D. Wash. Nov. 25, 2025) (citing, *Salgado v. Mattos*, No. 2:25-cv-01872-RJB-EJY, 2025 WL 3205356, at \*20 (D. Nev. Nov. 17, 2025)); *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385 (S.D. Cal. Nov. 25, 2025). That interest is apparent where, as here, the parolee presented at the port of entry with an appointment, built a life in the United States while a parolee, attended all appointments, has no criminal history, and is still in process of seeking to lawful status in the United States. *See, e.g., Osuna Benitez v. Hermosillo*, No. 2:25-CV-02535-BAT, 2025 WL 3763932, at \*3 (W.D. Wash. Dec. 30, 2025).

31. The risk of an erroneous deprivation of such interest absent additional procedural protections is high as Petitioner was detained without notice, reason, or opportunity to be heard. DHS initially (in 2021), and repeatedly over the last four years, determined that Petitioner should be paroled for her removal proceedings because she posed no danger to the community and was not a flight risk. Petitioner is a law abiding member of her community. She has no criminal record, and complied with her release terms and appeared at all immigration proceedings as required. “Where as here, ‘the petitioner has not received any bond or custody hearing,’ ‘the risk of an erroneous deprivation of liberty is high’ because neither the government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for h[er] detention.” *Pinchi*, 2025 WL 2084921, at \*5; *see also Perez*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at \*4-6.

32. Finally, the Government's interest in detaining Petitioner without notice, reason, or a hearing is "low." *See Pinchi*, 2025 WL 2084921, at \*5. Petitioner has been regularly attending hearings, appointments, and check-ins over the last four years. As a result, the Government has had ample opportunity to accumulate information about Petitioner to evaluate Petitioner's suitability for release. Moreover, the government has a well-established system for affording custody determinations and bond hearings. It would take minimal resources for the Government to reinstate her parole or to release Petitioner absent presenting some evidence that she is a flight risk or a danger.

33. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment. She should be ordered released from custody pending completion of her removal proceedings. Alternatively, she should be afforded additional process to ensure that her continued detention is in support of a valid governmental interest.

**COUNT TWO**  
**Violation of Fifth Amendment Right to Substantive Due Process**

34. The allegations in the above paragraphs are realleged and incorporated herein.

35. Petitioner lawfully presented herself at the port-of-entry by appointment and was paroled into the United States to allow her to apply for asylum. She is now detained in an indefinite limbo, with her appeal dormant for more than eleven months, all while Petitioner is detained and denied the opportunity to support her son, family, friends, and community. Which significantly harms her daughter who has been working multiple jobs to support the family.

36. In *Zadvydas*, the Supreme Court considered the constitutional limits of another immigration detention statute, 8 U.S.C. 1231(a)(6), the provision that applies to immigration detainees who have a final order of removal and who are being detained beyond the initial ninety-day removal period provided for in 8 U.S.C. 1231(a)(2). The Court held that, regardless of purpose, “[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem.” *Zadvydas*, 533 U.S. 678, 690 (2001).

37. In *Demore v. Kim*, 538 U.S. 510 (2003), the Court built on these principles to find the criminal immigration detention provision, 8 U.S.C. 1226(c) to be facially constitutional. Justice Kennedy joined the majority opinion in *Demore*, but wrote separately to identify the ground for bringing an as applied challenge to the constitutionality of the provision in an individual case. Justice Kennedy reasoned that a detainee “could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified. Were there to be an unreasonable delay by the [Government] in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.” *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

38. “As instructed by *Zadvydas* and *Demore*, [the Eleventh Circuit] begin[s] with the core principle that ‘the reasonableness of any given detention . . . is a function of whether it is necessary to fulfill the purpose of the statute.’” *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1217 (11th Cir. 2016), *vacated*, 890 F.3d 952 (11th Cir. 2018). The Government has described the purpose of detention under section 1225(b) as being “to

ensure that the border actually keeps people out and to ensure physical custody over the alien to effectuate that exclusion.” *Jennings v. Rodriguez*, 15-1204, Petitioners’ Merits Brief at 21-22, *available at* <https://www.scotusblog.com/wp-content/uploads/2016/09/15-1204-petitioner-merits-brief.pdf>.

39. Petitioner’s detention does not support either justification for detention under section 1225(b)(2)(A) and is therefore unconstitutional as applied to her. Petitioner was already permitted through the border and to live without restraint within the United States for four years. There is no indication that Petitioner now (or ever) presents any flight risk. She has attended all proceedings, appointments, check-ins, and the Government has not suggested any changed circumstances to suggest her detention is now warranted. Further, her detention is not in support of any legitimate interest in securing Petitioner’s removal from the United States. Petitioner is not subject to a removal order. Indeed, Petitioner’s proceedings have been effectively stalled for more than eleven months, demonstrating that the Government is not prioritizing her for removal, and is instead sealing off any opportunity for Petitioner to prevail on her asylum claim. Rather than giving Petitioner the opportunity to complete the asylum process while on humanitarian parole, DHS’s actions suggest that the detention may be for the purpose of deterring Petitioner from fully exercising her right to appeal. Under these circumstances, Petitioner’s detention lacks a lawful basis and is not supportive of the statutory aims for detention under section 1225(b)(2)(A).

40. For these reasons, Petitioner's detention violates her substantive due process right. She should be released from custody for completion of the administrative removal and asylum process, or, alternatively, she should be afforded a bond hearing.

### **COUNT THREE**

#### **Violation of Fifth Amendment Right to Substantive Due Process – Punitive Conditions and Inadequate Medical Care**

41. The allegations in the above paragraphs are realleged and incorporated herein.

42. Civil immigration detainees, who are held pursuant to civil rather than criminal authority, may not be subjected to punitive conditions or denied adequate medical care consistent with due process. *See Bell v. Wolfish*, 441 U.S. 520, 535–37 (1979); *see also Youngberg v. Romeo*, 457 U.S. 307 (1982) (recognizing substantive due process rights of civil detainees to reasonably safe conditions and adequate care).

43. Respondents have failed to provide Petitioner with adequate medical care for serious and ongoing health conditions, placing her at substantial risk of serious harm. Petitioner requires daily blood pressure medication and migraine medication. While Respondents have provided blood pressure medication, they have repeatedly denied Petitioner's request for her migraine medication, providing only ibuprofen as an inadequate substitute. This denial persists despite Petitioner's repeated requests.

44. The inadequacy of Petitioner's medical care has been directly exacerbated by the dangerous and overcrowded conditions at Stewart Detention Center. Petitioner is housed in a large room with seventy-two other women. A group of detainees in the unit has subjected Petitioner and others to ongoing harassment, threats, and sleep deprivation.

Although Petitioner filed a complaint regarding these hostile conditions, the hostilities escalated to the point that Petitioner's blood pressure spiked and she lost consciousness, requiring an overnight hospitalization on February 14, 2026. As a direct result of these conditions, Petitioner was placed on daily blood pressure medication that she did not require prior to her detention.

45. Respondents have further subjected Petitioner to conditions of confinement that are punitive in nature. Petitioner is confined to an overcrowded room and is denied adequate access to restroom facilities during the night because guards will not permit women to leave the unit. She is afforded only one hour of outdoor time per day. The food provided to Petitioner is unfit for human consumption. Overcrowding, denial of basic bathroom access, near total confinement and inadequate nutrition are not reasonably related to any legitimate governmental interest in ensuring Petitioner's appearance at future proceedings.

46. Respondents' inadequate medical care and punitive conditions of confinement render Petitioner's continued detention unconstitutional as applied to her. A civil detainee who loses consciousness due to facility-caused stress, is denied medically necessary prescriptions, is confined in an overcrowded room with hostile detainees, and is denied basic freedoms is being treated not as a civil administrative detainee but as a criminal. The Constitution does not permit such treatment.

47. For these reasons, Petitioner's continued detention under present conditions violates the Due Process Clause of the Fifth Amendment. She should be ordered released from custody, or, at a minimum, Respondents should be required to provide her with all

necessary medications, transfer her to a safe and appropriately supervised housing unit, and ensure constitutionally adequate conditions of confinement pending resolution of her appeal.

**PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to reinstate Petitioner's parole, released, or alternatively, schedule a bond hearing before an immigration judge to ensure any continued detention is based on a neutral adjudicator's determination that Petitioner poses a flight risk or danger to the community;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Dated: March 30, 2026

Respectfully submitted,

/s/ Sarah Wilson

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

I represent Petitioner, Josefina Santana Hernandez, and submit this verification on his 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.

Dated this 30<sup>th</sup> day of March, 2026.

*/s/ Sarah Wilson*  
SARAH WILSON  
Supervising Attorney