UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

BRAYAN ALEXIS GRAMAJO-ZABALETA

Petitioner

V. Case No. **1:26-cv-22617**

Agency File [redacted]

TODD BLANCHE, Acting U. S. Attorney General;

MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security;

FIELD OFFICE DIRECTOR, Miami Field Office, U.S. Immigration and Customs Enforcement,;

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The petitioner, Brayan Gramajo-Zabaleta, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Petitioner, Brayan Alexis, is a transgender woman currently detained by Immigration and Customs Enforcement in South Florida.
2. Brayan Alexis has been held since approximately February 2026 without any constitutionally adequate custody determination.

3. Although Petitioner is in standard removal proceedings under 8 U.S.C. § 1229a, Respondents have treated the Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and the Immigration Judge refused to exercise bond jurisdiction on that basis.
4. As a result, Petitioner has received no meaningful opportunity to challenge civil detention.
5. Petitioner's continued detention is unlawful for three independent reasons.
6. First, the statutory basis for detention is incorrect: § 1226(a), not § 1225(b), governs custody.
7. Second, even if the Government's statutory position were accepted, detention without any individualized hearing violates due process.
8. Third, Petitioner's status as a transgender woman, combined with an acute medical condition, renders continued detention punitive and unconstitutional.
9. Detention under these conditions is not merely unauthorized—it is dangerous.
10. Prolonged detention under § 1226 (a) or §236(a) without an individualized custody determination violates the Immigration and Nationality Act, its implementing regulations, and the Due Process Clause of the Fifth Amendment.
11. Petitioner seeks immediate release or, at a minimum, a constitutionally adequate bond hearing before a neutral adjudicator.
12. Petitioner's detention based on § 1225(b)(2) violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply

to individuals like Petitioner, who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. Indeed, § 1226(a) expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without admission or parole.

13. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring release unless the Respondents provide a new bond hearing under § 1226(a) within fourteen days.

JURISDICTION

14. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 et seq., Title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U. S. C. §§ 555(b), 701, et seq.

15. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

16. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), 28 U. S. C. § 2241 (habeas corpus), and 5 U. S. C. §§ 701 et seq. (Administrative Procedure Act).

VENUE

17. Venue is proper in this district under 28 U. S. C. §§ 1391(e)(1) & 2241 because: (1) "a substantial part of the events or omissions giving rise to the claim occurred" in this district; and (2) this is the district where the "the custodian can be reached by service of process." *Rasul v. Bush,* 542 U. S. 466, 478–79 (2004).

18. Additionally, the Petitioner is being held in the custody of the respondents in this district.

PARTIES

19. Petitioner, **Brayan Alexis Gramajo-Zabaleta** is a citizen of Guatemala. Petitioner was present in the United States as a result of entering the United States sometime in 2016, via the border, and was recently arrested and placed in detention by the respondents. Petitioner is being held in ICE custody at the Krome North Service Processing Center (ICE) located in Miami, Florida, under the jurisdiction of the respondents.

20. Respondent, **Todd Blanche,** is the Acting Attorney General of the United States. He 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. He is sued in his official capacity

21. Respondent, **Markwayne Mullin**, is sued in his official capacity as the Secretary of the Department of Homeland Security (DHS). Because ICE is a subagency for the DHS, Secretary Mullin is a legal custodian of the Petitioner, and is responsible for the prolonged detention of the Petitioner.

22. Defendant, **Field Office Director,** Miami Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner

EXHAUSTION OF REMEDIES

23. No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden,* 785 F. 3d 467, 474 (CA11 2015)," and because "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz v. United States,* 248 F. 3d 1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).

24. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's habeas claims seek to remedy.

25. Further, "[b]ecause the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame v. U. S. Att'y Gen.,* 796 Fed. Appx. 993, 1006 (CA11 2020); accord *Haitian Refugee Ctr., Inc. v. Nelson,* 872 F. 2d 1555, 1561 (CA11 1989), aff'd sub nom. *McNary v. Haitian Refugee Ctr.,* Inc., 498 U. S. 479 (1991) (exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS).

26. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush,* 553 U. S. 723, 783 (2008).

27. And with respect to the petitioner's APA claim, an agency's failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).

REQUIREMENTS OF 28 U.S.C. § 2243

28. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner 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.*

29. 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) (emphasis added). "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 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers,* 917 F.2d 1283, 1284 (10th Cir. 1990).

FACTUAL ALLEGATIONS

30. Petitioner, Brayan Alexis, is a native and citizen of Guatemala.

31. The Petitioner entered the United States in or about December 2016 without inspection by walking across the border near Frontera Macalí.

32. Since that time, Petitioner has resided in the United States, developed community ties, and previously obtained work authorization.

33. Petitioner has no criminal history whatsoever.

34. In or about late February 2026, Petitioner was first approached by officers while walking near the Petitioners residence.

35. The officers did not identify themselves, and Petitioner, fearing for safety, ran.

36. Shortly thereafter, officers returned and arrested the Petitioner at home.

37. The circumstances of the arrest indicate targeted enforcement at place of residence rather than any lawful stop based on articulable suspicion.

38. Following arrest, Petitioner was transferred through multiple facilities across several states, including New Jersey, Louisiana, and Florida, before being placed in ICE custody in South Florida.

39. These repeated transfers have prolonged detention and disrupted Petitioner's ability to access counsel and prepare an immigration case.

40. An Immigration Judge's refusal to exercise jurisdiction is not a custody determination and cannot satisfy due process.

41. Petitioner is currently detained at or under the authority of ICE facilities in South Florida, including Krome/Broward Transitional Center.

42. Petitioner suffers from hypertension, a chronic medical condition requiring monitoring and care.

43. Critically, Petitioner is a transgender woman.

44. Detention places the Petitioner at heightened risk of harassment, abuse, and unsafe conditions within immigration detention facilities.

45. On March 23, 2026, an Immigration Judge denied bond solely on the ground that § 1225(b)(2) applied and that the court lacked jurisdiction to conduct a bond hearing.

46. As a result, Petitioner has never received a constitutionally adequate custody determination.

LEGAL FRAMEWORK

8 U.S.C. § 1225 & §1226

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

48. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

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

these "regular" proceedings, however there are exceptions, such as the removal of someone who has re-entered illegally after a prior removal or whether the alien has been convicted of an aggravated felony. Although not limited to these two exceptions, these two exceptions are relevant to this complaint and are explained in detail below.

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

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

52. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

53. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

54. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings

received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

55. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

56. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

57. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

58. Courts within this Circuit and this District have rejected Respondents' new interpretation of the INA's detention authorities.

59. Notably, long before ICE or the BIA changed its position nationwide, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without admission or parole and who have since resided here. The Honorable Court in Washington held that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

60. Since the *Rodriguez Vazquez* preliminary injunction decision, court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy and EOIR's new interpretation. Courts within this District have repeatedly rejected the Government's expansive interpretation of 8 U.S.C. § 1225(b)(2) and have granted habeas relief where noncitizens—long present in the United States and placed in § 1229a proceedings—were subjected to mandatory detention without an individualized custody determination.

61. In particular, judges in the Southern District of Florida have recognized that detention without a bond hearing, where the noncitizen is not an arriving applicant for admission, raises serious statutory and constitutional concerns and warrants habeas relief. See, e.g., *Garcia-Cruz v. U.S. Attorney General*, No. 0:26-cv-60146 (S.D.Fla. Apr. 8, 2026); *Herrera-Escobar v. U.S. Attorney General,* No. 0:25-cv-62212 (S.D. Fla. January 8, 2026); *Merino v. Ripa,* No. 25-23845, 2025 WL 2941609 (S.D. Fla. Oct.15, 2025).

62. Other Courts within the Eleventh Circuit, including within this District and in the Middle District of Florida, have rejected the Government's expansive interpretation of 8 U.S.C. § 1225(b)(2) and have granted habeas relief where noncitizens were subjected to mandatory detention without an individualized custody determination. See, e.g., *Ruiz-Sanchez v. Mullin,* No. 2:26-cv-00881(M.D. Fla. Apr. 8, 2026); *Diaz-Lopez v, Bondi,* No. 2:26-cv-00220 (M.D. Fla. Feb. 18, 2026); *Berrios-Lopez v. Noem,* No. 2:26-cv-00280 (M.D. Fla. Feb. 24, 2026).

63. These decisions reflect the well-established principle that detention authority must align with the statutory framework and constitutional due process, and that § 1225(b)(2) cannot be applied to individuals like Petitioner who have long resided in the United States and are not apprehended at or near the border.

64. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioners.

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

66. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. See

8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez,* 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.,* 559 U.S. 393, 400 (2010)).

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

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

69. Respondents may rely on *Buenrostro-Mendez v. Bondi,* but that decision is not binding on this Court and does not resolve the constitutional question presented here. Even if § 1225(b)(2) were deemed applicable as a statutory matter, prolonged detention without an individualized custody determination violates due process. See *Zadvydas v. Davis,* 533 U.S. 678 (2001).

Accordingly, this Court may grant relief on constitutional grounds independent of any statutory interpretation dispute.

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

CONDITIONS OF CONFINEMENT AND TRANSGENDER VULNERABILITY

71. Petitioner is a transgender woman detained in immigration custody, a status that significantly heightens the constitutional concerns surrounding continued detention.

72. Transgender individuals in detention face a well-documented and substantially elevated risk of harassment, discrimination, and physical harm.

73. Facilities routinely fail to provide appropriate housing, protection, or gender-affirming care. As a result, detention for transgender women is not merely restrictive—it is inherently dangerous.

74. Petitioner has already experienced discomfort and unequal treatment in custody. Continued detention exposes the Petitioner to ongoing risk of harm.

75. In addition, Petitioner suffers from hypertension, further increasing her vulnerability in detention.

76. Civil immigration detention must remain reasonably related to its purpose and must not become punitive. *See Bell v. Wolfish,* 441 U.S. 520 (1979). Where detention conditions expose an individual to a substantial and foreseeable risk of harm, continued detention exceeds constitutional limits.

77. Here, the Government is detaining a medically vulnerable transgender woman under conditions that are inherently unsafe. That detention is excessive, unreasonable, and punitive in violation of the Fifth Amendment.

CLAIMS FOR RELIEF

COUNT I:
Unlawful Detention in Violation of Due Process

78. The allegations in paragraphs 1-77 are realleged and incorporated herein.

79. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

80. The Petitioner has a fundamental interest in liberty and being free from official restraint. Under *Mathews v. Eldridge,* 424 U.S. 319 (1976), the private liberty interest is at its apex, the risk of erroneous deprivation is substantial where no custody hearing has been provided, and the Government's interest does not justify categorical detention without individualized review.

81. The risk of erroneous deprivation is particularly acute here, where Petitioner has received no custody hearing whatsoever due to the Immigration Judge's refusal to exercise jurisdiction. That refusal is not a hearing and cannot satisfy due process.

82. Moreover, the Government's interests do not justify categorical detention of a noncitizen with no criminal history, strong community ties, and significant

medical and identity-based vulnerabilities. Under these circumstances, continued detention without individualized review is excessive and unconstitutional.

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

84. Therefore, the Petitioner is entitled to a writ of habeas corpus granting him a bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk.

COUNT II:
Violation of the Administrative Procedures Act

85. The allegations in paragraphs 1-77 are realleged and incorporated herein.

86. The purpose of the Administrative Procedures Act ("APA") is to prevent abuse of discretion by federal agencies by granting federal judiciary authority to review the actions of such agencies.

87. The APA also empowers Federal Courts to review federal agencies to "compel agency action unlawfully withheld or *unreasonably* delayed". 5 U.S.C. § 706(1) (emphasis added).

88. The Court may also hold unlawful and set aside agency action that, inter alia, is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law". 5 U.S.C. § 706(2)(A); or "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief or

the equivalent or denial thereof, or *failure to act.*" 5 U.S.C. §551(13)(emphasis added).

89. The agency's categorical refusal to provide bond hearings under § 1226(a), based on a new interpretation of § 1225(b)(2), constitutes final agency action that is arbitrary, capricious, and contrary to law.

90. The APA, therefore, grants this Court authority to review that agency action (i.e. refusal to provide a bond hearing or custody determination) to determine whether such agency action constitutes an "abuse of discretion" or has been "unreasonably delayed" in violation of the APA.

COUNT III:
Violation of the Immigration and Nationality Act

91. The allegations in paragraphs 1-77 are realleged and incorporated herein.

92. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

93. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention and violates the INA.

PRAYER FOR RELIEF

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

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;

(c) Issue a writ of habeas corpus clarifying that the statutory basis for petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to petitioner;

(d) Order the respondents to refrain from transferring the Petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;

(e) Alternatively, grant the Petitioner a writ of habeas corpus ordering immediate release based on unconstitutional conditions of confinement and heightened vulnerability;

(f) Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(g) Grant any other and further relief that the Court deems just and proper.

Dated April 15, 2026

/s/Bonnie Smerdon

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VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Brayan Alexis Gramajo-Zabaleta, based on discussions with the Petitioner and the Petitioner's immigration attorney. On the basis of these discussions and reviewing the record, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 15, 2026

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