

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

KEILYN DESIRE PENA FLORES
Plaintiff/Petitioner,

Case No.:

v.

MARKWAYNE MULLIN as Secretary for
The Department of Homeland
Security (DHS);

TODD M. LYONS as Acting Director, Miami
Field Office, Enforcement and
Removal Operations (ERO),
Department of Homeland Security;

TODD BLANCHE as
United States Attorney General;

US ATTORNEY'S OFFICE,
Middle District of Florida; and,

WARDEN, of the Flagler County Jail;

Respondents/Defendants.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff/Petitioner KEILYN DESIRE PENA FLORES, by and
through undersigned counsel, respectfully, and hereby brings this Petition for a Writ of Habeas
Corpus.

IN SUPPORT OF THIS PETITION, Plaintiff/Petitioner alleges the following:

INTRODUCTION

1. The Plaintiff/Petitioner respectfully petitions this Court for a writ of habeas corpus to remedy his unlawful detention by the U.S. Department of Homeland Security.
2. The Plaintiff/Petitioner is a citizen and national of Venezuela who crossed the United States border without inspection on or around August 15, 2022. The Plaintiff/Petitioner was allowed to enter the United States on August 18, 2022, and was issued an ICE Form I-220A, releasing her on her own recognizance into the United States. *See Exhibit No. 1* (Order of Release on Recognizance)
3. The Plaintiff/Petitioner was issued a Notice to Appear and has her next Master Calendar Hearing with the Immigration Court scheduled on May 8, 2026. *See Exhibit No 2* (Notice to Appear and Next Hearing)
4. The Plaintiff/Petitioner filed for asylum on August 8, 2023, with the Executive Office for Immigration Review ("EOIR"). This application for asylum remains in process. *See Exhibit No. 3* (Copy of Stamped I-589, First Page).
5. The Plaintiff/Petitioner was the passenger of a vehicle at the time of her detainment when the individual she was with was stopped in Orlando, Florida, on April 19, 2026, by an unknown law enforcement official.
6. Despite not being subject to mandatory detention, the Plaintiff/Petitioner was taken to Flagler County Jail, where she is currently detained.
7. No criminal charges were filed, no probable cause affidavit exists, and no judicial warrant was issued.

8. Despite not being subject to mandatory detention, the Plaintiff/Petitioner is being detained without bond at the Flagler County Jail in Bunnell, Florida, under a recent policy that categorically denies bond hearings to certain noncitizens who are applicants for admission. The policy was recently declared unlawful by a federal district court in a nationwide class action judgment. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).
9. The Plaintiff/Petitioner is a member of the eligible class certified in *Maldonado Bautista*. As such, the Respondents/Defendants must afford her a bond hearing pursuant to 8 U.S.C. § 1226(a).
10. Relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Executive Officer for Immigration Review (“EOIR”) has been denying motions for bond to immigrants who entered the U.S. without inspection.
11. The Plaintiff/Petitioner challenges her detention as a violation of the INA, 8 U.S.C. §§ 1101 *et seq.*, and regulations, thereunder, Administrative Procedure Act (“APA”), and the Due Process Clause of the Fifth Amendment.
12. The Petitioner/Plaintiff/Petitioner respectfully requests *inter alia* that this Honorable Court grant her a Writ of Habeas Corpus and order the Defendants/Respondents to release her from custody, and order other relief as described herein.

JURISDICTION

13. This action arises under the United States Constitution and the INA. This Honorable Court has jurisdiction over this complaint pursuant to: 28 U.S.C. § 1651 (the All Writs Act); 28 U.S.C. § 2241 (power to grant Writ of Habeas Corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States Defendant); 28 U.S.C. § 1361

(jurisdiction to compel an officer to perform a duty owed to Plaintiff/Petitioner, the Mandamus Act); 5 U.S.C. § 555(b), 5 U.S.C. § 702 (APA waiver of sovereign immunity), 5 U.S.C. § 704 (no other adequate remedy) and 5 U.S.C. § 706 (compel agency action unlawfully withheld or unreasonably delayed), APA. The Plaintiff/Petitioner's custody is in violation of the Constitution and laws of the United States.

VENUE

14. Venue is proper in this Middle District of Florida under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(e)(1) (United States defendant resides in this district), 28 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. § 1391(e)(4) (Plaintiff/Petitioner resides in this district and no real property is at issue).
15. The Plaintiff/Petitioner is in the Defendants/Respondents' physical custody within this district at the Flagler County Jail in Bunnell, Florida.

PARTIES

16. Plaintiff/Petitioner KEILYN DESIRE PENA ROJAS is a citizen and national of Venezuela in the Defendants/Respondents' physical custody. The Defendants/Respondents have assigned him File No. A .
17. The Plaintiff/Petitioner brings a suit against **MARKWAYNE MULLIN** in his official capacity as Secretary for the Department of Homeland Security (DHS). In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.
18. The Plaintiff/Petitioner brings a suit against **TODD M. LYONS** in his official capacity as Acting Director, Miami Field Office, Enforcement and Removal Operations (ERO),

Department of Homeland Security. In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.

19. The Plaintiff/Petitioner brings a suit against **TODD BLANCHE** in his official capacity as United States Attorney General. In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.

20. The Plaintiff/Petitioner brings a suit against **UNITED STATES ATTORNEY'S OFFICE** in the Middle District of Florida as a defendant in this action solely in its official capacity as the legal representative of the United States government.

21. The Plaintiff/Petitioner brings a suit against **WARDEN** in his official capacity as Warden of Flagler County Jail in Bunnell, Florida. In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.

CUSTODY

22. The Plaintiff/Petitioner is in the Defendants/Respondents' physical custody within this district at the Florida Baker Correctional Institute in Sanderson, Florida, an immigration detention center under the direct control of the Defendants/Respondents and their agents.

LEGAL BACKGROUND

A. The Exhaustion of Administrative Remedies would be futile

23. The Plaintiff/Petitioner is excused from exhausting administrative remedies because exhaustion would be futile and would cause irreparable harm.

24. The Board of Immigration Appeals ("BIA") has issued a binding precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who entered without inspection are "applicants for admission" subject to mandatory detention under § 1225(b)(2).

25. An Immigration Judge is bound by *Yajure Hurtado* and would be compelled to deny jurisdiction over a bond request. Such continued detention without a hearing constitutes irreparable harm, involving the deprivation of fundamental liberty interests.

B. District Courts throughout the US have rejected Defendants/Respondents' policy

26. The government's sweeping reinterpretation – treating long-present noncitizens who entered without inspection (EWI) as mandatory detainees – has been widely condemned as unlawful under the INA and contrary to due process. Since the policy's introduction, “over 220 judges in hundreds of cases across the country have declared the government's new detention policy to be contrary to immigration law and the Constitution”.¹ The “vast majority of district court judges” to consider this issue have “rejected the government's position,” instead holding that individuals who were not apprehended at the time of entry are detained under 8 U.S.C. § 1226(a) (the general arrest-and-detention authority for those already in the country) and thus are eligible for a bond hearing.² In other words, numerous courts have ruled that DHS's attempt to collapse all EWI cases into the “applicant for admission” category of §1225 is inconsistent with the statutory text and framework.
27. Asylum is not an admission to the United States, and an applicant for asylum, while physically present in the United States to apply for asylum, is not an applicant for or

¹ Cf. American Civil Liberties Union, *Federal Court Affirms Nationwide Class Has Right to Bond Hearings*, December 22, 2025. Available at: <https://www.aclu.org/press-releases/federal-court-affirms-nationwide-class-has-right-to-bond-hearings>.

² See American Civil Liberties Union and the Northwest Immigrant Rights Project, *Seeking Bond Hearings for Maldonado Bautista Class Members—Those Who Entered Without Inspection and Are Subject to Yajure-Hurtado*, December 3, 2025. Available at: https://www.nwirp.org/uploads/2025/Maldonado%20Bautista%20Practice%20Advisory_12%203%202025.pdf

admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147, 150 (BIA 2013). An asylum applicant who is granted asylum from within the United States after entering on parole was never admitted as a refugee. *Id.* Even after a grant of asylum confers a lawful status upon the applicant, it does not entail an “admission.” *Id.* The two distinct concepts of “admission to asylum status” and “admission into the United States.” *Id.* at 151. A grant of asylum does not require a threshold inspection for admissibility, the sine qua non of an “admission,” either at a port of entry or through adjustment of status. *Id.* at 151 n.3.

**C. The Plaintiff/Petitioner is a member of the *Maldonado Bautista* Class
and is entitled to a bond hearing**

28. On December 18, 2025, the U.S. District Court for the Central District of California entered a Final Judgment in *Maldonado Bautista v. Santacruz*.

29. The court certified a nationwide “Bond Eligible Class” defined as:

Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

The U.S. District Court for the Central District of California vacated the July 8, 2025, DHS policy “Interim Guidance Regarding Detention Authority for Applicants for Admission” as unlawful.

30. The U.S. District Court for the Central District of California declared that members of the Bond Eligible Class are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2). The Court further declared that class members are entitled to custody redetermination hearings before an Immigration Judge.

31. The Plaintiff/Petitioner meets every criterion of the Bond Eligible Class: she entered without inspection (EWI), has resided in the United States for more than two years, and

is not subject to mandatory detention under § 1225(b)(2) as an arriving alien subject to expedited removal. Under its plain language, the expedited removal statute does not apply. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (applying expedited removal only to an individual who “is arriving in the United States” who “unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution or “has not been admitted or paroled into the United States”). Plaintiff/Petitioner has applied for asylum and is exempted under § 1225(b)(1)(A)(i).

32. Despite the clear findings and declaratory relief issued on behalf of the class in *Maldonado Bautista*, the DHS and the EOIR have not voluntarily complied nationwide.

D. Due Process, Statutory, and Regulatory Rights

33. “Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause.” *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
34. Immigration detention must “bear a reasonable relation to the purpose for which the individual was committed.” *See Demore v. Kim*, 538 U.S. 510, 527 (2003).
35. Moreover, under the Fifth Amendment of the United States Constitution, DHS and the EOIR may not deprive a noncitizen of notice and an opportunity to be heard. *See Mathews v. Elridge*, 424 U.S. 319 (1976).

E. The APA

36. Federal Agencies must comply with the APA when crafting and enforcing decisions, regulations, and legislative rules. 5 U.S.C. § 553.
37. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.

38. Under the APA, this Honorable Court has the authority to compel agency action that has been unreasonably delayed. 5 U.S.C. § 706(1).
39. An agency must “conclude a matter presented to it [...] within a reasonable time”. 5 U.S.C. § 555(b).
40. “A person suffering legal wrong because of agency action [...] is entitled to judicial review thereof.” 5 U.S.C. § 702.

STATEMENT OF THE FACTS

41. The Plaintiff/Petitioner is a citizen and national of Venezuela who, entered the United States without inspection on or about August 15, 2022, and was allowed to enter into the United States on an Order of Release on Recognizance.
42. The Plaintiff/Petitioner filed a Form I-589, Application for Asylum for Withholding of Removal, with the United States Citizenship and Immigration Services (“USCIS”). The Plaintiff/Petitioner applied for Employment Authorization based on her asylum application, which remains current. *Id.*
43. The Plaintiff/Petitioner was placed into ICE custody after a traffic stop in Orange County, Florida.
44. It is the Plaintiff/Petitioner’s understanding that the Orlando Immigration Court, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as well as *Matter of E-L-H-*, 23 I&N Dec. 814 (BIA 2005), is not affording bond hearings to similarly situated persons to review ICE’s custody decision or set a bond.

CAUSES OF ACTION

COUNT I

DEFENDANTS/RESPONDENTS HAVE VIOLATED THE INA, AND THE REGULATIONS

45. Petitioner incorporates paragraphs 1 through 43.
46. The plain text of 8 U.S.C. § 1225(b)(2) applies to aliens "seeking admission." The Supreme Court has recognized that § 1225 applies to those at the border, while § 1226 applies to those already present in the United States. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).
47. Plaintiff/Petitioner, having resided in the U.S. for more than 3 years, is not "seeking admission" in any temporal sense.
48. As established by the binding judgment in *Maldonado Bautista*, Petitioner's detention is governed by 8 U.S.C. § 1226(a). Under this statute, detention is discretionary, and Petitioner is entitled to a bond hearing.
49. Defendants/Respondents' detention of Petitioner under § 1225(b)(2) is *ultra vires* to the INA and unlawful.

COUNT II

DEFENDANTS/RESPONDENTS HAVE VIOLATED THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

50. Petitioner incorporates paragraphs 1 through 48.
51. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Freedom from physical restraint is a fundamental liberty interest.
52. Due process requires that civil detention be accompanied by adequate procedural safeguards, including an individualized hearing before a neutral decisionmaker to determine if detention is necessary to prevent flight or danger. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

53. By classifying Plaintiff/Petitioner for mandatory detention without a hearing, Defendants/Respondents have deprived her of her liberty without due process.
54. The government cannot justify this deprivation. There is no compelling interest in detaining a long-term resident with no serious criminal history without even considering his release, particularly when less restrictive alternatives exist.

COUNT III

DEFENDANTS/RESPONDENTS HAVE VIOLATED THE APA

55. Petitioner incorporates paragraphs 1 through 53.
56. The APA prohibits agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).
57. Defendants/Respondents' continued application and reliance on policy that was vacated by the U.S. District Court for the Central District of California in *Maldonado Bautista* is unlawful.
58. Defendants/Respondents' continued application and reliance on *Matter of Yajure Hurtado* (which is based on the policy vacated by the U.S. District Court for the Central District of California in *Maldonado Bautista*) is arbitrary and capricious because it contradicts the plain language of the INA and federal court precedent in this District. *See Hernandez Lopez v. Hardin*, 2:25-cv-00830, (M.D. Fla.).

RELIEF REQUESTED

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

- A. Exercise jurisdiction over this action;
- B. Declare that Petitioner is a member of the *Maldonado Bautista* Bond Eligible Class;

- C. Declare that the Petitioner is detained under 8 U.S.C. § 1226(a) and is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2);
- D. Issue a Writ of Habeas Corpus requiring the Defendants/Respondents to immediately schedule an individualized bond hearing for Petitioner before an Immigration Judge within seven (7) days, and at said hearing, require the government to bear the burden of proving by clear and convincing evidence that Petitioner presents a flight risk or danger to the community that no condition of release can mitigate;
- E. Grant temporary and permanent injunctive relief requiring the Defendants/Respondents to release the Plaintiff/Petitioner from custody;
- F. Enjoin the Defendants/Respondents from moving or transferring the Plaintiff/Petitioner outside of the jurisdiction of this Court;
- G. Order the Plaintiff/Petitioner's immediate release if the Respondents/Defendant fail to provide a constitutionally adequate bond hearing within the time prescribed by the Court;
- H. Declare that the continued detention of the Plaintiff/Petitioner without access to bond hearing violates Due Process Clause of the Fifth Amendment, the INA, the APA, and regulations;
- I. Award the Plaintiff/Petitioner reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412;
- J. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 1st day of May 2026.

/s/ Phillip Arroyo
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Counsel for Plaintiff/Petitioner

VERIFICATION

Pursuant to 28 U.S.C. § 2242 and 28 U.S.C. § 1746, the undersigned counsel certify under penalty of perjury that we represent the Petitioner in his removal proceedings and make this verification on his behalf; that we have discussed the facts and allegations within this Petition with the Petitioner; and that based upon these discussions and a review of the underlying records, the facts set forth in the foregoing Petition are true and accurate to the best of our knowledge, information, and belief, and the attachments thereto are true and correct copies of the originals.

/s/ Phillip Arroyo
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Counsel for Plaintiff/Petitioner

APPENDIX: LIST OF EXHIBITS

- 1. Exhibit 1: Order of Release on Recognizance**
- 2. Exhibit 2: Notice to Appear and Next Immigration Court Hearing**
- 3. Exhibit 3: Stamped I-589, Application for Asylum and for Withholding of Removal**