

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
CASE NO. 3:26-cv-1157**

JAQUELINE ALMIDON ALLENDE,

Petitioner,

v.

DANIEL ENGERT, in his official capacity as Division Chief, Court and Detention Services Division, Sheriff Perry Hall Inmate Detention Facility;

KELIE WALKER, in her official capacity as Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office;

Respondents.

**TIME-SENSITIVE VERIFIED PETITION FOR WRIT OF HABEAS
CORPUS AND MOTION FOR ORDER TO SHOW CAUSE**

The Petitioner, Jaqueline Almidon Allende (“Petitioner”), submits this petition for writ of habeas corpus and related relief and alleges as follows:

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner, who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at the Sheriff Perry Hall Inmate Detention Facility, also known as the Flagler County

Inmate Facility. See **Exhibit A** (Immigration and Customs Enforcement Online Detainee Locator).

2. Petitioner is a native and citizen of Peru who entered the United States without inspection in 2022. ICE detained Petitioner on April 24, 2026, and she remains detained without access to an individualized custody determination.

3. Petitioner submits this petition to challenge the legality of her detention under 8 U.S.C. §§ 1225(b) and 1226(a) and the Fifth Amendment to the United States Constitution.

EXIGENCY

4. Petitioner requests time-sensitive relief under Middle District of Florida Local Rule 3.01(f). The exigency is Petitioner's ongoing civil immigration detention after ICE detained her on April 24, 2026, despite no removal case pending when ICE detained her, no final order of removal, no § 1226(c) criminal predicate, and no access to an individualized custody determination. Each day of detention is a continuing deprivation of liberty, and transfer outside this District could impair effective habeas relief. Petitioner therefore requests an order to show cause requiring Respondents to respond within three days and a ruling on the motion for order to show cause within seven days.

PARTIES

5. Petitioner is a native and citizen of Peru. Petitioner is currently detained at the Sheriff Perry Hall Inmate Detention Facility, also known as the Flagler County Inmate Facility, in Bunnell, Florida. *See Exhibit A.*

6. Respondent Daniel Engert is sued in his official capacity as Division Chief of the Court and Detention Services Division for the Sheriff Perry Hall Inmate Detention Facility. In that capacity, Respondent is Petitioner's immediate custodian and can produce Petitioner before this Court. Therefore, Respondent is Petitioner's immediate custodian for purposes of habeas relief and is a proper respondent in this case. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004); *Maratuech Arenas v. Noem*, No. 2:26-cv-00617-SPC-DNF, slip op. at 1–2 (M.D. Fla. Mar. 18, 2026).

7. Respondent Kelie Walker is sued in her official capacity as the Field Office Director of ICE Miami Field Office. In this capacity, Respondent has jurisdiction over the detention facility where Petitioner is held, is authorized to release Petitioner, has the power to produce Petitioner, and is a legal custodian of Petitioner. *See Munaf v. Geren*, 553 U.S. 674, 686 (2008).

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody in violation of the Constitution or laws of the United States. Federal courts exercise habeas jurisdiction to review the legality of immigration detention, including challenges to the statutory basis for detention and the adequacy of

procedural safeguards. *See Jennings v. Rodriguez*, 583 U.S. 281, 294, 306 (2018).

9. This Court has jurisdiction under the Suspension Clause of the Constitution because this action is a habeas corpus petition, and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., and the Fifth Amendment to the United States Constitution.

10. Venue is proper in the Middle District of Florida because Petitioner is detained within this District and Respondents are federal and local officials acting in their official capacities in connection with Petitioner’s detention. *See* 28 U.S.C. § 1391(b)(2), (e)(1).

11. The Jacksonville Division is the proper division because Petitioner is detained in Flagler County, Florida, which is within the Jacksonville Division of the Middle District of Florida. *See* M.D. Fla. Local R. 1.04(a), (b).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

12. Petitioner is a native and citizen of Peru.

13. Petitioner entered the United States without inspection in 2022 with her husband, whereupon Petitioner expressed fear of return to Peru.

14. The Department of Homeland Security (“DHS”) thereafter released Petitioner under a Form I-220A order of release on recognizance. Petitioner is not presently detained pending a credible-fear determination or review of such a

determination. It is unknown whether DHS issued a Notice to Appear (“NTA”) at the time of her release or at any time before redetaining her. It is known that DHS did not immediately file an NTA with the Immigration Court. *See Exhibit B* (Executive Office for Immigration Review Automated Case Information System).

15. Petitioner was provided an electronic reporting device. She complied with the reporting requirements as directed until the device stopped working. Since then, Petitioner has resided continuously inside the United States with her husband and their twenty-month-old U.S. citizen child, both of whom rely on her for support. She has established strong community ties.

16. Petitioner has no criminal history that would subject her to mandatory detention under 8 U.S.C. § 1226(c).

17. On or about April 24, 2026, Petitioner was arrested by ICE and taken to the Flagler County Inmate Facility without notice or opportunity to contest her detention. *See Exhibit A.*

18. On April 29, 2026, five days after she was arrested, DHS filed her NTA with the Immigration Court and commenced proceedings against her. *See Exhibit B.*

19. Petitioner does not have a final order of removal. *See id.*

20. Petitioner remains detained without access to an individualized custody determination under 8 U.S.C. § 1226(a).

EXHAUSTION

21. Administrative exhaustion may be excused as futile for a noncitizen detainee seeking bond because the issue has already been predetermined as a result of the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), as this Court has repeatedly recognized. See *Castaneda v. Noem*, No. 2:26-cv-00861-SPC-DNF, slip op. at 3 (M.D. Fla. Apr. 7, 2026); *Vasquez Carcamo v. Noem*, No. 2:25-cv-00922-SPC-NPM, slip op. at 6–7 (M.D. Fla. Nov. 7, 2025); *Hinojosa Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, slip op. at 6–7 (M.D. Fla. Oct. 31, 2025).

22. Here, because Petitioner challenges the legal availability of detention and bond process itself, any requirement that Petitioner first seek administrative relief should be excused as futile.

GROUND FOR RELIEF

GROUND ONE

Unlawful Detention in Excess of Statutory Authority

23. Petitioner incorporates paragraphs 12 through 20.

24. Respondents' continued detention of Petitioner without access to an individualized custody determination is unlawful because it exceeds federal statutory detention authority.

25. 8 U.S.C. § 1226(a) governs the arrest, detention, and release of

noncitizens pending a decision on whether they are to be removed. Section 1226(a) permits discretionary detention but also permits release on bond or conditional parole.

26. Respondents may not deny Petitioner all access to custody review by treating her as subject to mandatory detention under 8 U.S.C. § 1225(b)(2). DHS previously processed and released Petitioner, and then redetained her on April 24, 2026 without notice or an opportunity to contest her detention after permitting her to live freely in the United States since 2022. Petitioner is not subject to mandatory detention under § 1225(b)(2).

27. Neither is Petitioner subject to mandatory detention under § 1226(c), § 1225(b)(1), or § 1231.

28. If Respondents have any present statutory authority to detain Petitioner while DHS pursues removal, that authority arises, at most, under 8 U.S.C. § 1226(a).

29. Recent Middle District authority holds that, under materially similar rearrest scenarios, detention is governed by § 1226(a), not mandatory detention under § 1225(b), and the petitioner is entitled to an individualized bond hearing. *See, e.g., Marte-Cortorreal v. Noem*, No. 2:26-cv-00712-SPC-NPM, slip op. at 2-4 (M.D. Fla. Mar. 24, 2026); *Orellana Padila v. Warden, Glades Cnty. Det. Ctr.*, No. 2:25-cv-01195-SPC-NPM, slip op. at 2-4 (M.D. Fla. Jan. 6, 2026).

30. As a noncitizen detained under § 1226(a), Petitioner is entitled to an

individualized bond hearing. *See Jennings*, 583 U.S. at 306; 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

31. To the extent the Court orders a bond hearing under § 1226(a), that hearing should require the Government to bear the burden of justifying continued detention by clear and convincing evidence of dangerousness or flight risk. *See U.S. Castro v. Assistant Field Office Director, Krome North Service Processing Center*, No. 26-cv-20422-BLOOM, slip op. at 11–12 (S.D. Fla. Mar. 18, 2026). If Respondents do not provide that hearing within the time ordered by the Court, the Court should order Petitioner’s immediate release under appropriate conditions. *See Nardella Mago v. Rogers*, No. 2:26-cv-278-SPC-NPM, slip op. at 6 (M.D. Fla. Feb. 25, 2026) (ordering Respondents to release petitioner if they fail to provide an individualized bond hearing).

32. Respondents must certify the true cause of Petitioner’s detention. *See* 28 U.S.C. § 2243. Respondents should therefore be required to produce any Form I-200 warrant, custody determination, Notice to Appear served before Petitioner’s detention, proof of service, and other custody or charging documents necessary to establish the asserted statutory basis for Petitioner’s arrest and detention.

GROUND TWO
Violation of Procedural Due Process Under the Fifth Amendment

33. Petitioner incorporates paragraphs 12 through 20.

34. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

35. Procedural due process requires the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Under *Mathews*, courts determine what process is due by balancing the private interest, risk of erroneous deprivation, value of additional safeguards, and the Government's interest. 424 U.S. at 335.

36. Petitioner has been detained without a meaningful opportunity to contest whether her detention is authorized, necessary, or justified by flight risk or danger.

37. Petitioner's liberty interest is substantial. She has lived in the United States since 2022, complied with DHS reporting requirements as directed, and has no criminal history that would subject her to mandatory detention. She has a twenty-month-old U.S.-citizen child and a family who relies on her for support.

38. The risk of erroneous deprivation is substantial here, where DHS has unlawfully detained Petitioner without providing access to an individualized custody determination.

39. The Government's interest does not justify continuing to detain Petitioner without any meaningful custody process. Appearance at future proceedings and community safety can be addressed through bond or conditions of

supervision. *See Marte-Cortorreal*, slip op. at 2–4; *Orellana Padila*, slip op. at 2–4.

40. For these reasons, if the Court concludes that Respondents have statutory authority to detain Petitioner, continued detention without any meaningful opportunity to contest whether detention is justified violates procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause directing Respondents to show cause within three (3) days why the writ should not be granted;
- c. Enjoin Respondents from transferring Petitioner outside this District while this habeas petition is pending absent notice to Petitioner and leave of Court;
- d. Declare that Petitioner's continued detention without access to an individualized custody determination is unlawful;
- e. Declare that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) on the present record and, if Respondents have any present statutory authority to detain Petitioner while pursuing removal, that authority arises under 8 U.S.C. § 1226(a);
- f. Order Respondents to file all documents necessary for resolution of the Petition, including any Form I-200 warrant, Notice to Appear, custody

- determination, proof of service, charging document filed with the Immigration Court, and records reflecting the date and time of Petitioner's arrest, detention, and commencement of removal proceedings;
- g. Order Petitioner's immediate release, or in the alternative, order Respondents promptly to provide Petitioner with an individualized custody determination under 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;
 - h. To the extent the Court orders a custody determination, require the Government to bear the burden of justifying continued detention by clear and convincing evidence of danger or flight risk;
 - i. If Respondents do not provide such a custody determination within the time ordered by the Court, order Petitioner's immediate release under appropriate conditions;
 - j. Enjoin Respondents from re-arresting or re-detaining Petitioner absent lawful authority;
 - k. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: May 5, 2026

/s/ Samantha Topper Berns

Samantha Topper Berns, Esq.

Florida Bar No.: 1039971

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Counsel for the Petitioner

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

Pursuant to 28 U.S.C. §§ 1746 and 2242, I declare under penalty of perjury that I am submitting this verification on behalf of Petitioner because I am Petitioner's habeas counsel; that I have discussed with Petitioner the events described in this Petition; and that, based on those discussions and the records available to me, the factual statements in this Petition are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Dated: May 5, 2026
/s/ Samantha Topper Berns
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LOCAL RULE 3.01(g) CERTIFICATE

Because this filing initiates the action and Respondents have not yet appeared, Petitioner has not been able to confer with Respondents before filing. Petitioner will

diligently attempt to confer with Respondents after filing and will supplement this certificate if required by Local Rule 3.01(g)(3).

Respectfully submitted,

Dated: May 5, 2026

/s/ Samantha Topper Berns

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I filed the foregoing with the Clerk of Court using CM/ECF. Petitioner understands that, upon issuance of an order to show cause, the Court ordinarily directs service of the petition and order as appropriate. Petitioner will comply with any service instructions in the Court's order and will file proof of service if directed.

Respectfully submitted,

Dated: May 5, 2026

/s/ Samantha Topper Berns

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