

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Melissa Jeaneth Heredia Escalante,

Petitioner,

v.

TODD M. LYONS, ACTING DIRECTOR OF
U.S. ICE, Miguel VERGARA, Harlingen Field
Office Director, Immigration and Customs
Enforcement; Markwayne MULLIN, Secretary,
U.S. Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Todd BLANCHE, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; El Valle Detention
Facility in Raymondville, TX; Warden of El
Valle Detention Facility in Raymondville, TX,

Respondents.

Case No. 1:26-cv-682

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner Melissa Jeaneth Heredia Escalante (A# [REDACTED]) is in the physical
3 custody of ICE at the El Valle Detention Facility. She now faces unlawful detention because the
4 Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR)
5 have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, inter alia, having entered the United States without
7 admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner's removal proceedings, DHS denied
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
13 ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board)
15 issued a precedent decision, binding on all immigration judges, holding that an immigration judge
16 has no authority to consider bond requests for any person who entered the United States without
17 admission. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined
18 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
19 ineligible to be released on bond.

20 5. Petitioner's detention on this basis violates the plain language of the Immigration
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
22 previously entered and are now residing in the United States. Instead, such individuals are subject
23 to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute
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1 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the
2 United States without inspection.

3 6. Respondents' new legal interpretation is plainly contrary to the statutory framework
4 and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

5 7. Petitioner is a twenty-two-year-old native and citizen of El Salvador who entered
6 the United States on or about February, 2026. She has no criminal history of any kind, has never
7 been charged with or convicted of any offense, and poses no danger to the community. Petitioner
8 fled El Salvador in fear for her safety and seeks protection from removal.

9 8. Petitioner fears persecution and torture if returned to El Salvador and intends to
10 pursue protection under the immigration laws of the United States, including asylum, withholding
11 of removal, and protection under the Convention Against Torture. In addition, **Petitioner was the**
12 **victim of a serious crime after she entered the United States.** The smugglers who guided her
13 across the border held her against her will in a warehouse in McAllen, Texas, for 18 days and
14 demanded additional payment as a condition of her release. Petitioner reported this crime to law
15 enforcement. Her cooperation as the victim of a qualifying criminal offense may render her eligible
16 for a U nonimmigrant visa. Petitioner's continued detention prevents her from meaningfully
17 preparing and pursuing these forms of relief, and the humanitarian considerations in her case weigh
18 strongly in favor of her release.

19 9. Petitioner has not been free for a single day since she first entered the United States.
20 The smugglers who guided her across the border immediately held her against her will in a
21 warehouse in McAllen, Texas, confining her there for an extended period and demanding ransom
22 payments as a condition of her release. While Petitioner was held captive, the smugglers refused
23 to allow her any contact with her family and would not disclose her whereabouts or condition.
24

1 communicating only to demand money. Petitioner's partner had no way to reach her or confirm
2 that she was safe. As Petitioner's partner was attempting to pay the sum demanded, the smugglers
3 moved Petitioner from the warehouse. During that transfer, the vehicle was stopped at an
4 immigration checkpoint, where Petitioner and the others being transported were taken into custody.
5 Petitioner thus passed directly from captivity at the hands of her abductors into the physical
6 custody of immigration authorities, and has remained confined ever since.

7 10. Petitioner is not a person who entered the United States and was at liberty in the
8 community before her detention; she is a recent victim of kidnapping and extortion who was taken
9 from her captors into prolonged civil immigration detention without ever having been free. Her
10 continued confinement compounds the harm she has already suffered and prevents her from
11 cooperating with law enforcement, pursuing a U nonimmigrant visa as the victim of a qualifying
12 crime, and preparing her claims for protection.

13 11. Petitioner was taken into immigration custody in February 2026 after being
14 apprehended at an immigration checkpoint, and she has remained detained at the El Valle
15 Detention Facility since that time. She has never been charged with or convicted of any criminal
16 offense.

17 12. Petitioner does not pose a danger to the community or a flight risk. She has no
18 significant criminal history and has demonstrated respect for the law. Given her strong ties and
19 ongoing responsibilities in the United States, she has every incentive to comply with all court
20 requirements and appear for future proceedings.

21 13. Petitioner is prima facie eligible for relief in the form of asylum, withholding of removal,
22 and protection under the Convention Against Torture. Petitioner has complied with all procedural
23 requirements and is actively pursuing her claims for protection. Federal courts have recognized
24

1 that noncitizens pursuing bona fide claims for relief—particularly those involving fear of
2 persecution or torture—possess a substantial liberty interest in freedom from civil detention. In
3 *Escobar-Arauz v. Noem*, No. EP-25-CV-00619-DB (W.D. Tex. Dec. 10, 2025), the court held that
4 a noncitizen with significant ties and equities possessed “a strong liberty interest in his freedom
5 from detention.” *Id.* at 2.8. Similarly, in *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL
6 2965859 (W.D. Tex. Oct. 21, 2025); *Sanchez Alvarez v. Noem*, No. 25-CV-1090, 2025 WL
7 2942648 (W.D. Mich. Oct. 17, 2025); and *Choglo Chafra v. Scott*, Nos. 25-CV-437, 438, 439,
8 2025 WL 2688541 (D. Me. Sept. 22, 2025), courts recognized that individuals with viable claims
9 for relief and substantial equities in the United States possess a cognizable liberty interest
10 warranting meaningful procedural protections before continued detention. This interest is
11 particularly compelling where, as here, Petitioner faces a credible risk of persecution or torture if
12 removed and requires a meaningful opportunity to prepare and present his claims.

13 14. Moreover, recent federal litigation has reinforced protections for noncitizens
14 pursuing victim-based humanitarian relief such as U visas, T visas, and VAWA self-petitions. In
15 *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS (C.D. Cal.
16 May 20, 2026), the court preliminarily certified nationwide classes and partially enjoined ICE
17 policies that subject individuals with pending victim-based petitions to routine arrest, detention,
18 and removal. The court recognized the substantial interests of noncitizens pursuing these
19 congressionally created protections and restored the prior victim-centered enforcement framework.
20 A copy of the order is attached as Exhibit B.

21 15. Additionally, Petitioner is a putative member of the Bautista Class Action.
22 Respondent entered without inspection on or about February, 2026. Therefore, Petitioner satisfies
23 the first prong of the Bautista Class. (See Exhibit A, Bautista Order, February 18, 2026.) Petitioner
24

1 was not apprehended upon arrival; therefore, Respondent satisfies the second prong of the Bautista
2 Class. Id. Finally, Respondent has not committed any crimes subject to 8 U.S.C. § 1226(c), §
3 1225(b)(1), or § 1231, and thus satisfies the third prong of the Bautista Class. Id. Petitioner is
4 therefore eligible for a bond redetermination hearing before this Court. Id

5 16. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released
6 unless Respondents provide a bond hearing under § 1226(a) within seven days.

7 JURISDICTION

8 17. Petitioner is in the physical custody of Defendants. Petitioner is detained at the El
9 Valle Detention Facility in Raymondville, TX.

10 18. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C.
11 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
12 Suspension Clause).

13 19. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
14 Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

15 VENUE

16 20. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
17 500 (1973), venue lies in the United States District Court for the SOUTHERN DISTRICT OF
18 TEXAS, the judicial district in which Petitioner currently is detained.

19 21. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
20 Respondents are employees, officers, and agencies of the United States, and because a substantial
21 part of the events or omissions giving rise to the claims occurred in the SOUTHERN DISTRICT
22 OF TEXAS.

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 petitioner is not entitled to relief, 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

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) (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 (9th Cir. 2000) (citation omitted).

PARTIES

24. Petitioner Melissa Jeaneth Heredia Escalante is a native and citizen of El Salvador who has been in immigration detention since February 26, 2026. After apprehending Petitioner at an immigration checkpoint, ICE did not set bond and Petitioner is unable to obtain review of her custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

25. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner’s detention.

26. Respondent MIGUEL VERGARA, is the Director of the Harlingen Field Office of ICE’s Enforcement and Removal Operations division. As such, MIGUEL VERGARA, is

1 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is
2 sued in his official capacity.

3 27. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
4 Security. He is responsible for the implementation and enforcement of the Immigration and
5 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr.
6 Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

7 28. Respondent Department of Homeland Security (DHS) is the federal agency
8 responsible for implementing and enforcing the INA, including the detention and removal of
9 noncitizens.

10 29. Respondent Todd Blanche is the Attorney General of the United States. He is
11 responsible for the Department of Justice, of which the Executive Office for Immigration Review
12 and the immigration court system it operates is a component agency. He is sued in his official
13 capacity.

14 30. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
15 responsible for implementing and enforcing the INA in removal proceedings, including for custody
16 redeterminations in bond hearings.

17 31. The unnamed Respondent, The Warden of the EL VALLE DETENTION
18 FACILITY, where Petitioner is detained. They have immediate physical custody of Petitioner. He
19 is sued in his official capacity.

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21 **LEGAL FRAMEWORK**

22 32. Courts have long recognized the significance of the habeas statute in protecting
23 individuals from unlawful detention. The "Great Writ" has been referred to by
24

1 United States Courts as “perhaps the most important writ known to the constitutional law of
2 England, affording as it does a swift and imperative remedy in all cases of illegal restraint or
3 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). A petitioner may seek a
4 writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C.
5 § 2241(c)(3). The writ should be granted if petitioner can show that their detention is unlawful
6 by a preponderance of evidence. *Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, 2025 WL 3471417,
7 at *2 (W.D. Tex. Nov. 26, 2025) (citing *Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976)).

8 33. The Court must grant a petition for writ of habeas corpus or issue an order to show
9 cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
10 If an order to show cause is issued, the Court must require respondents to file a return “within three
11 days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

12 34. Detained immigrants petitioning under 28 U.S.C. § 2241 face no statutory
13 exhaustion requirements. *Scott v. Stephens*, No. 1:21-CV-620, 2023 WL 5945600, at *3 (E.D.
14 Tex. Aug. 23, 2023), report and recommendation adopted, No. 1:21-CV-620, 2023 WL
15 5943127 (E.D. Tex. Sept. 11, 2023).

16 35. Nor is a judicially imposed prudential exhaustion requirement appropriate where,
17 as here: time is of the essence, facts are largely undisputed, and the parties’ disagreement is based
18 on a legal conclusion. *Fernandez v. Dickey*, No. CV 4:25-6088, 2026 WL 74184, at *1 (S.D. Tex.
19 Jan. 9, 2026).

20 36. In *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021), the court
21 held that exhaustion is not required where an appeal timeline would exacerbate petitioner’s
22 alleged injury of prolonged detention. See also *Lopez-Arevelo v Ripa*, 801 F. Supp. 3d 688, 680
23 (W.D. Tex. 2025).

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

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

8 39. Second, the INA provides for mandatory detention of noncitizens subject to
9 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
10 referred to under § 1225(b)(2).

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

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

14 42. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
15 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-
16 –208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a)
17 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat.
18 3 (2025).

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

1 44. Thus, in the decades that followed, most people who entered without inspection
2 and were placed in standard removal proceedings received bond hearings, unless their criminal
3 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with
4 many more decades of prior practice, in which noncitizens who were not deemed “arriving” were
5 entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
6 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the
7 detention authority previously found at § 1252(a)).

8 45. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
9 rejected well-established understanding of the statutory framework and reversed decades of
10 practice.

11 46. The new policy, entitled “Interim Guidance Regarding Detention Authority for
12 Applicants for Admission,”¹ claims that all persons who entered the United States without
13 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
14 policy applies regardless of when a person is apprehended, and affects those who have resided in
15 the United States for months, years, and even decades.

16 47. On September 5, 2025, the BIA adopted this same position in a published decision,
17 *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States
18 without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for
19 IJ bond hearings.

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23 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.
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48. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

49. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found 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).

50. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,

2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

51. 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 Petitioner.

52. Section 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].”

53. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *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*

1 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299,
2 at *7.

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

6 55. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
7 recently entered the United States. The statute's entire framework is premised on inspections at
8 the border of people who are "seeking admission" to the United States. 8 U.S.C.
9 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
10 applies "at the Nation's borders and ports of entry, where the Government must determine whether
11 a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281,
12 287 (2018).

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

16 FACTS

17 57. Petitioner entered the United States on or about February, 2026, at or near Hidalgo,
18 Texas. She has been in immigration custody since shortly after her entry and has no fixed residence
19 in the United States.

20 58. In February 2026, Petitioner was taken into immigration custody and is now
21 detained at the El Valle Detention Facility.

22 59. DHS has placed Petitioner in removal proceedings under 8 U.S.C. § 1229a. ICE
23 has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen
24

1 present in the United States without being admitted or paroled, and under § 1182(a)(7)(A)(i)(I), as
2 an immigrant not in possession of a valid entry document.

3 60. Petitioner is a twenty-two-year-old native and citizen of El Salvador. She has no
4 criminal history of any kind, has never been charged with or convicted of any offense, and poses
5 no danger to the community. Petitioner fled El Salvador in fear for her safety and seeks protection
6 from removal.

7 61. After she entered the United States, Petitioner was the victim of a serious crime:
8 the smugglers who guided her across the border held her against her will in a warehouse in
9 McAllen, Texas, for 18 days and demanded additional payment as a condition of her release.
10 Petitioner reported this crime to law enforcement, which may render her eligible for a U
11 nonimmigrant visa as the victim of a qualifying criminal offense. Her continued detention
12 prevents her from meaningfully preparing and pursuing her claims for protection and other
13 relief. Petitioner has no prior immigration history and has never previously been placed in removal
14 proceedings, ordered removed, or barred from the United States. Nothing in her history justifies
15 subjecting her to mandatory detention without a bond hearing.

16 62. Petitioner was taken into immigration custody in February 26, 2026 after being
17 apprehended at an immigration checkpoint. She has never been charged with or convicted of any
18 criminal offense and has no disqualifying criminal conduct of any kind.

19 63. Petitioner has not been free for a single day since she first entered the United States.
20 The smugglers who guided her across the border immediately held her against her will in a
21 warehouse in McAllen, Texas, confining her there for an extended period and demanding ransom
22 payments as a condition of her release. While Petitioner was held captive, the smugglers refused
23 to allow her any contact with her family and would not disclose her whereabouts or condition,
24

1 communicating only to demand money. Petitioner's partner had no way to reach her or confirm
2 that she was safe. As Petitioner's partner was attempting to pay the sum demanded, the smugglers
3 moved Petitioner from the warehouse. During that transfer, the vehicle was stopped at an
4 immigration checkpoint, where Petitioner and the others being transported were taken into custody.
5 Petitioner thus passed directly from captivity at the hands of her abductors into the physical
6 custody of immigration authorities, and has remained confined ever since.

7 64. Petitioner is not a person who entered the United States and was at liberty in the
8 community before her detention; she is a recent victim of kidnapping and extortion who was taken
9 from her captors into prolonged civil immigration detention without ever having been free. Her
10 continued confinement compounds the harm she has already suffered and prevents her from
11 cooperating with law enforcement, pursuing a U nonimmigrant visa as the victim of a qualifying
12 crime, and preparing her claims for protection.

13 65. Petitioner does not pose a danger to the community or a flight risk. She has no
14 significant criminal history and has demonstrated respect for the law. Given her strong ties and
15 ongoing responsibilities in the United States, she has every incentive to comply with all court
16 requirements and appear for future proceedings.

17 66. Petitioner is prima facie eligible for relief in the form of asylum, withholding of
18 removal, and protection under the Convention Against Torture. Petitioner has complied with all
19 procedural requirements and is actively pursuing her claims for protection. Federal courts have
20 recognized that noncitizens pursuing bona fide claims for relief—particularly those involving fear
21 of persecution or torture—possess a substantial liberty interest in freedom from civil detention. In
22 *Escobar-Arauz v. Noem*, No. EP-25-CV-00619-DB (W.D. Tex. Dec. 10, 2025), the court held that
23 a noncitizen with significant ties and equities possessed “a strong liberty interest in his freedom
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1 from detention.” *Id.* at 2.8. Similarly, in *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL
2 2965859 (W.D. Tex. Oct. 21, 2025); *Sanchez Alvarez v. Noem*, No. 25-CV-1090, 2025 WL
3 2942648 (W.D. Mich. Oct. 17, 2025); and *Choglo Chafra v. Scott*, Nos. 25-CV-437, 438, 439,
4 2025 WL 2688541 (D. Me. Sept. 22, 2025), courts recognized that individuals with viable claims
5 for relief and substantial equities in the United States possess a cognizable liberty interest
6 warranting meaningful procedural protections before continued detention. This interest is
7 particularly compelling where, as here, Petitioner faces a credible risk of persecution or torture if
8 removed and requires a meaningful opportunity to prepare and present his claims.

9 67. Moreover, recent federal litigation has reinforced protections for noncitizens
10 pursuing victim-based humanitarian relief such as U visas, T visas, and VAWA self-petitions. In
11 *Immigration Center for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS (C.D. Cal.
12 May 20, 2026), the court preliminarily certified nationwide classes and partially enjoined ICE
13 policies that subject individuals with pending victim-based petitions to routine arrest, detention,
14 and removal. The court recognized the substantial interests of noncitizens pursuing these
15 congressionally created protections and restored the prior victim-centered enforcement framework.
16 A copy of the order is attached as Exhibit B.

17 68. As a result, Petitioner remains in detention. Without relief from this court, she faces
18 the prospect of months, or even years, in immigration custody, separated from their family and
19 community.

20 CLAIMS FOR RELIEF

21 COUNT I 22 Violation of the INA

23 69. Petitioner incorporates by reference the allegations of fact set forth in the preceding
24 paragraphs.

70. 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.

71. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II
Violation of the Bond Regulations

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

73. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

74. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

75. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Due Process

76. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

77. 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).

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

“As to the private interest affected, the Supreme Court has observed that freedom from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). And so, other courts considering challenge of §1003.19(i)(2) as applied in similar circumstances have considered whether the detainee is held in conditions that are indistinguishable from criminal incarceration. *Martinez*, 2025 WL 2598379 at *2, citing *Gunyadin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025). This is because the private interest when asserted in such context is without question significant.”

-*Arcos v. Noem*, Civil Action 4:25-cv-04599 (S.D. Tex. Oct 08, 2025)

Petitioner has a cognizable protectable liberty interest in her freedom from detention. *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (holding noncitizens in mandatory detention without a bond hearing constitutes a due process violation); *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases); accord *M.S.L.*, 2025 WL 2430267, at *8 (“Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released

1 from immigration detention] have a liberty interest in remaining out of
2 custody on bond.”) (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969
3 (N.D. Cal. 2019)); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099,
4 at *12 (D. Ariz. Aug. 11, 2025) (same).

5 79. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil
6 detention violates a detainee’s due process rights. 424 U.S. 319 (1976). The elements of
7 this test are: (1) the private interest that the official action affects; (2) the risk that the
8 procedures used will result in an erroneous deprivation of the private interest, and the
9 probable value, if any, of additional or substitute procedural safeguards; and (3) the
10 Government’s interest in following the existing procedures, both in achieving their
11 objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

12 80. Here, all three factors favor the petitioner.

13 81. First, Petitioner has a significant private interest at stake. A person’s interest in freedom
14 from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*,
15 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also *Zadvydas*, 533 U.S.
16 at 690, 121 S.Ct. 2491 (“Freedom from imprisonment—from government custody,
17 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
18 Process] Clause protects.”). Petitioner currently experiences the gambit of deprivations
19 that come with physical detention.

20
21 82. Second, Petitioner will continue to be deprived of this interest if the current procedure
22 (detaining Petitioner without a hearing) is followed. Petitioner has a strong likelihood of
23 meeting the criteria for being released on bond. 8 CFR §§236.1(c)(8), 1236.1(c)(8)
24 (2020); *In re Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999). Even if Petitioner is

1 not subsequently released, Petitioner still has a legal and constitutional interest in the
2 hearing itself, in being heard.

3 83. Lastly, the Government has no legitimate interest in refusing to follow its own
4 rules. Petitioner poses no safety threats to the community. Releasing Petitioner, or holding
5 a hearing to release Petitioner on bond, would in fact save the government the resources
6 and expense of continuing to imprison Petitioner.

7 84. The government's detention of Petitioner without a bond redetermination hearing to
8 determine whether she is a flight risk or danger to others violates her right to due process.
9

10 **COUNT IV**

11 **Petitioner is a Putative Member of The Bautista Class Action**

12 85. Petitioner is a putative member of the Bautista Class Action. Respondent entered without
13 inspection on or about February 2026. Therefore, Respondent satisfies the first prong of
14 the Bautista Class. (See Exhibit A, Bautista Order, February 18, 2026.) Respondent was
15 not apprehended upon arrival. Therefore, Respondent satisfies the second prong of the
16 Bautista Class. *Id.* Finally, Respondent has not committed any crimes subject to 8 U.S.C.
17 § 1226(c), § 1225(b)(1), or § 1231, and thus satisfies the third prong of the Bautista Class.
18 *Id.* Respondent is therefore eligible for a bond redetermination hearing before this Court.
19 *Id.*

20 **PRAYER FOR RELIEF**

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

- 22 a. Assume jurisdiction over this matter;
- 23 b. Declare that Petitioner's arrest and detention violates the Due Process Clause of the
24 Fifth Amendment, the INA, and implementing regulations;

- c. Issue an Emergency Temporary Restraining Order that Petitioner shall not be transferred outside the SOUTHERN DISTRICT OF TEXAS while this habeas petition is pending;
- d. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 USC § 2243;
- e. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide a bond hearing under 8 U.S.C. § 1226(a) within five days, at which hearing Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;
- f. Declare that Petitioner's detention is unlawful;
- 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 this June 19, 2026

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

I am submitting this verification on behalf of Petitioner because her current detention makes her unable to submit one on her own behalf. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant, the undersigned certifies and states that the true and correct copies of this Petition for Writ of Habeas Corpus will be served upon all counsels of record via the online CM/ECF system, on or before 06/19/26.

/s/ George D. Durham
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