UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JULIANA MILENA OJEDA MONTOYA, Petitioner, v. KEVIN JOYCE, Sheriff, Cumberland County Sheriff's Office, Cumberland County, DAVID WESLING, Acting Field Office Director, Boston Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary, U.S. Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, U.S. Department of Justice, Respondents.	Case Number:

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
(Expedited Consideration Requested)

1. Petitioner Juliana Milena Ojeda Montoya is a noncitizen from Ecuador.

2. Ms. Ojeda Montoya lives in Fitchburg, Massachusetts, in Worcester County, Massachusetts.

3. Ms. Ojeda Montoya fled Ecuador based on a fear of persecution and torture.

4. Ms. Ojeda Montoya entered the United States without inspection at or near Lukeville, Arizona on about February 22, 2023. Exhibit 1 (Notice to Appear, Feb. 23, 2023).

5. The U.S. Department of Homeland Security ("DHS") detained Ms. Ojeda Montoya under 8 U.S.C. § 1226 within a day after she entered the U.S. *Id.*; Exhibit 2 (Notice of Custody

Determination, Feb. 23, 2023) (stating that Ms. Ojeda Montoya was detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act," codified at 8 U.S.C. § 1226).

6. DHS performed a custody determination under 8 U.S.C. § 1226 and determined she should remain detained. Ex. 2.

7. Ms. Ojeda Montoya requested a custody re-determination before an Immigration Judge. *Id.*

8. DHS initiated removal proceedings against Ms. Ojeda Montoya in, issuing her a Notice to Appear. Ex. 1.

9. DHS alleged on the Notice to Appear that Ms. Ojeda Montoya was "an alien present in the United States who has not been admitted or paroled. Ex. 1 at 1. DHS did not allege that she was "an arriving alien." *Id.*

10. On about March 6, 2025, following a custody re-determination under 8 U.S.C. § 1226, DHS released Ms. Ojeda Montoya on an immigration bond of $1500. Exhibit 3 (Immigration Bond, March 6, 2023). That is the lowest bond amount authorized by the statute. 8 U.S.C. § 1226(a)(2)(A).

11. Ms. Ojeda Montoya traveled to Fitchburg, Massachusetts, where she now lives with her husband, Carlos Sebastian Zapata, and their one-and-a-half year-old daughter, [redacted]

12. Ms. Ojeda Montoya remains in removal proceedings. She is pursuing an asylum claim as a defense to removal.

13. Ms. Ojeda Montoya is scheduled for a non-detained individual hearing at the Chelmsford Immigration Court before Immigration Judge Huy Le on February 6, 2029. Exhibit 4 (Executive

Office of Immigration Review ("EOIR") Automated Case Information query results, Nov. 7, 2025).

14. On July 30, 2024, U.S. Citizenship and Immigration Services ("USCIS") issued Ms. Ojeda Montoya an Employment Authorization Document, valid until July 29, 2029. Exhibit 5 (Employment Authorization Document, July 30, 2024).

15. Ms. Ojeda Montoya helps provide for her and her husband's daughter by working at a [redacted] in Fitchburg, Massachusetts.

16. Following an August 1, 2025 incident, a criminal complaint issued against Ms. Ojeda Montoya in state District Court in Leominster, Massachusetts on August 4, 2025. The complaint alleged violations off two Massachusetts statutes: Mass. Gen. Laws Ann. ch. 265, §§ 15A and 15B.

17. Ms. Ojeda Montoya was arraigned on August 4, 2025. Based on her lack of any prior criminal record, Leominster District Court Judge Mark Noonan ordered Ms. Ojeda Montoya released on personal recognizance. A pre-trial hearing was set for October 21, 2025.

18. Ms. Ojeda Montoya appeared as scheduled for her in-person hearing on October 21, 2025. A further hearing in her criminal case was set for December 2, 2025.

19. On the morning of November 6, 2025, Ms. Ojeda Montoya's husband was driving her to work with their daughter in the car.

20. U.S. Immigration and Customs Enforcement ("ICE") agents pulled the car over and forcibly separated Ms. Ojeda Montoya from her daughter. Exhibit 6 (Giulia McDonnell et al., *Boston Globe*, "'I wasn't letting go of my wife': Video shows ICE agents in Fitchburg struggling with man having apparent seizure, holding toddler in car" (Nov. 7, 2025)).

21. Video showing ICE agents pushing and hitting Ms. Ojeda Montoya's husband and pressing against his neck as he held their daughter has attracted national attention. *Id.* Ms. Ojeda Montoya's husband went into convulsions and lost consciousness. *Id.*

22. ICE transferred Ms. Ojeda Montoya to the Cumberland County Jail, where she remains detained. Exhibit 7 (ICE Online Detainee Locator System query results, Nov. 7, 2025, 11:26 p.m.).

23. Ms. Ojeda Montoya cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Ms. Ojeda Montoya does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

24. Ms. Ojeda Montoya cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Ms. Ojeda Montoya is not presently "seeking admission" to the United States. *See, e.g., Choglla Chafla*, No. 25-cv-437-SDN, 2025 WL 2688541, at *2–9 (D. Me. Sept. 22, 2025); *Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025).

25. Ms. Ojeda Montoya was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Ms. Ojeda Montoya could not "be returned" under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Ms. Ojeda Montoya is not subject to mandatory detention under § 1225 for this reason as well.

26. Instead, as a person arrested inside the United States and held in civil immigration detention, Ms. Ojeda Montoya is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See, e.g., Choglla Chafla*, 2025 WL 2688541, at *2–9 (collecting cases); *Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).

27. Ms. Ojeda Montoya is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention.

See Demore v. Kim, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

28. Accordingly, Ms. Ojeda Montoya is subject to detention, if at all, under 8 U.S.C. § 1226(a).

29. As a person detained under 8 U.S.C. § 1226(a), Ms. Ojeda Montoya must, upon her request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

30. Ms. Ojeda Montoya requests she be provided bond hearing on the "earliest possible date" after she submits a custody re-determination request to the Immigration Court. *See* Immigration Court Practice Manual § 9.3(d).

31. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully refuse to provide a bond hearing at all to Ms. Ojeda Montoya and others in her situation.[1]

32. The responsible administrative agency has therefore pre-determined that Ms. Ojeda Montoya will be denied a bond hearing.[2]

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[1] The BIA's reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024).

[2] Based on the facts attested in this verified Petition, Ms. Ojeda-Montoya is a member of a class certified by federal District Court Judge Patti B. Saris of the District of Massachusetts of individuals detained in areas over which an Immigration Court in Massachusetts is the administrative control court subjected to the same DHS and DOJ policies at issue here. *Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, No. 25-cv-12664-PBS, 2025 WL 3033769, at *14 (D. Mass. Oct. 30, 2025). The Court there has not yet granted any class-wide relief. It has set a briefing schedule on the Parties' cross-motions for summary judgment that will conclude December 12, 2025 and set a hearing on those motions for December 17, 2025. *Id.* at Dkt. 88. At a November 3, 2025 status conference, Judge Saris stated that class members may continue to file individual habeas petitions and District Court judges may continue to grant individual relief in those petitions during the pendency of the class proceedings. *Id.* at Dkt. 83, 86. Judge Saris further stated that such petitions should not, for now, be deemed "related" to *Guerrero Orellana*, and that she will reject "related" designation if individual petitioners attempt to assert it. *Id.* at Dkt. 83, 86.

33. Ms. Ojeda Montoya is being irreparably harmed by her ongoing unlawful detention without any pathway to a bond hearing. *See, e.g., Chiliquinga Yumbillo v. Stamper*, No. 25-cv-479-SDN, 2025 WL 2783642, at *3–4 (D. Me. Sept. 30, 2025) (no exhaustion requirement because "many months of potentially unlawful detention" constitutes "irreparable harm"); *Aguiriano*, 2025 WL 2403827, at *6-8 (no exhaustion required because "[o]bviously, the loss of liberty is a . . . severe form of irreparable injury" (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because "[a] loss of liberty may be an irreparable harm"); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986), for proposition that "'[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest'").

34. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Ms. Ojeda Montoya, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding "exhaustion is excused by the BIA's lack of authority to adjudicate constitutional questions and its prior interpretation" of the relevant statute).

35. There is no statutory requirement for Ms. Ojeda Montoya to exhaust administrative remedies. *See, e.g., Chiliquinga Yumbillo*, 2025 WL 2783642, at *3; *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025).

36. Accordingly, there is no requirement for Ms. Ojeda Montoya to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

37. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

38. Venue is proper because Petitioner is detained in the District of Maine.

39. The U.S. Department of Homeland Security ("DHS") is an executive department of the government of the United States. U.S. Customs and Immigration Enforcement ("ICE") is a component within DHS.

40. The U.S. Department of Justice ("DOJ") is an executive department of the government of the United States. The Executive Office of Immigration Review ("EOIR") is a component within DOJ. Immigration Courts and the Board of Immigration Appeals fall within EOIR.

41. ICE contracts to have the Cumberland County Sheriff's Office detain individuals in its custody at the Cumberland County Jail.

42. Respondent Kevin Joyce is the Cumberland County Sheriff, and, as such, the head of the Cumberland County Sheriff's Office. He is being sued in his official capacity. He is Ms. Ojeda Montoya's immediate and legal custodian.

43. Respondent David Wesling is the Field Office Director for the Boston Field Office of ICE Enforcement and Removal Operations ("ICE ERO"). He is being sued in his official capacity. He is also Ms. Ojeda Montoya's immediate and legal custodian.

44. Respondent Todd Lyons is the Acting Director of ICE. He is being sued in his official capacity. He is also Ms. Ojeda Montoya's legal custodian.

45. Respondent Kristi Noem is the Secretary of DHS. She is being sued in her official capacity. She is also Ms. Ojeda Montoya's legal custodian.

46. Respondent Pamela J. Bondi is the Attorney General of the United States, and, as such, the head of DOJ. She is being sued in her official capacity. She oversees the Immigration Courts and the Board of Immigration Appeals. She is also Ms. Ojeda Montoya's legal custodian.

47. All respondents are named in their official capacities. One or more of the respondents is Ms. Ojeda Montoya's immediate custodian.

CLAIMS FOR RELIEF

COUNT ONE
Violation of 8 U.S.C. 1226(a) and Associated Regulations

48. Ms. Ojeda Montoya may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

49. Under § 1226(a) and its associated regulations, Ms. Ojeda Montoya is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

50. Ms. Ojeda Montoya has not been, and will not be, provided with a bond hearing as required by law.

51. Ms. Ojeda Montoya continuing detention is therefore unlawful.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

52. Because Ms. Ojeda Montoya is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Ms. Ojeda Montoya receive a bond hearing with strong procedural protections upon her request for a custody re-determination. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.

53. Ms. Ojeda Montoya has not been, and will not be, provided with a bond hearing as required by law.

54. Ms. Ojeda Montoya's continuing detention is therefore unlawful.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

55. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

56. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. CONST. amend. V.

57. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still "on the threshold").

58. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

59. The Supreme Court has thus "repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong

procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana,* 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks,* 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

60. Ms. Ojeda Montoya was arrested inside the United States and is being held without any pathway to any individualized detention hearing.

61. Ms. Ojeda Montoya's continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT FOUR
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)

62. Because Ms. Ojeda Montoya has no pathway to a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

63. Ms. Ojeda Montoya's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

Wherefore, Ms. Ojeda Montoya respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Ms. Ojeda Montoya shall not be transferred outside the District of Maine;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted;

(4) Order the Ms. Ojeda Montoya's immediate release from detention during the pendency of these habeas proceedings on conditions the Court deems just and proper, under the Court's inherent Article III authority.

(5) Declare that Ms. Ojeda Montoya's detention is unlawful.

(6) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Ms. Ojeda Montoya from detention, or, if at the time of the habeas hearing the Court has already ordered Ms. Ojeda Montoya released under its inherent Article III authority, not to re-detain Ms. Ojeda Montoya, or, in the alternative, to provide Ms. Ojeda Montoya an individualized bond hearing before an Immigration Judge as soon as possible after she submits a custody re-determination request, and, if bond is granted, immediately accept payment of the bond and release Ms. Ojeda Montoya from detention.

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted this 7th day of November, 2025.

Juliana Milena Ojeda Montoya,

By and through her Counsel,

/s/ Max I. Brooks
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Juliana Milena Ojeda Montoya, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of my knowledge.

Respectfully submitted this 7th day of November, 2025.

/s/ Max I. Brooks
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