UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LUZ DARY HINESTROZA ARANGO,
(A [redacted]),
Petitioner, v.
KENNETH GENALO, NYC Director Enforcement & Removal Operations Immigration and Customs Enforcement (ICE); TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General, U.S. Department of Justice,
Respondents.

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Civil Action No. _____

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C.§ 2241; APPLICATION FOR TEMPORARY RESTRAINING ORDER; ORDER TO SHOW CAUSE; AND REQUEST FOR NO-TRANSFER ORDER

INTRODUCTION

1. This petition arises from the U.S. government's new policy-which contradicts both the plain language of the Immigration and Nationality Act (INA) and decades of agency practice- of erroneously interpreting the INA to mandated detention without the possibility of bond for noncitizens who entered the United States without inspection, even if they have been residing here for years.

2. This policy has led to the unlawful detention of countless noncitizens nationwide. Dozens of habeas corpus petitions for their release have been filed in jurisdictions across the country, including many in the Southern District of New York. Virtually every merits decision in those cases has found for the petitioners, either granting them a bond hearing or ordering their immediate release.

3. Petitioner Luz Dary Hinestroza Arango has been unlawfully detained without the possibility of bond in furtherance of this policy. Petitioner came to the United States on 05/20/1999 and has lived here ever since.

4. Petitioner was scheduled for her asylum interview on December 3, 2025, at 9:00 AM at the USCIS Asylum Office in Bethpage, NY. Approximately three weeks before this date,

the Asylum Office was notified by mail that, since the filing of her I-589 asylum application, Petitioner had obtained an approved I-130, Petition for Alien Relative, and has a pending form I-485, Application for Adjustment of Status.

5. Petitioner through counsel, requested that the asylum application be withdrawn on the basis that she entered with inspection, has an approved family-based petition, and has adjustment applications currently pending with USCIS and therefore fully eligible for adjustment of status to that of Legal Permanent Resident.

6. Petitioner appeared presented the withdrawal letter along with proof of the approved I-130 and the pending I-485 appeal but after waiting approximately four hours, she was taken into ICE custody directly from the Asylum Office to detention within this district.

7. Respondents, in whose actual and constructive custody Petitioner is in, have refused to release Petitioner despite that having a pending application for Adjustment of Status.

8. It is unclear whether Petitioner has been placed in Removal Proceedings.

9. Petitioner is currently in the physical custody of Respondents in this District which falls under the purview of the New York City Office of Immigration and Customs Enforcement (ICE), which has responsibility for immigration detention centers in New York.

10. Petitioner does not currently appear anywhere in the ICE system nor on the ICE inmate locator website.

11. Nor have we been able to get confirmation from ICE as to her whereabouts since our experience has been that designated telephone numbers are now regularly ignored by ICE officers who do not pick up or return phone calls nor answer emails from the public and even from lawyers.

12. Thus, the only way we were able to get a physical confirmation was from Respondent herself who was able to text a picture physical GPS location from her own iPhone watch application while in custody.

13. As picture of the location on her iPhone watch at Federal Plaza in Central Islip is attached as an exhibit hereto.

14. Under 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond, Petitioner is entitled to a bond determination. That statute expressly applies to people who, like Petitioner, are residing in the United States but are charged as inadmissible for having initially entered the United States without inspection. In accordance with 8 U.S.C. § 1226(a), the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) have for decades provided bond determinations and bond hearings to people like Petitioner who have been living in the United States but allegedly entered without inspection.

15. However, pursuant to a new governmental policy announced on July 8, 2025, 2 Petitioner is now being unlawfully detained without bond. The new policy instructs all ICE employees to no longer apply 8 U.S.C. § 1226(a) to people charged with being inadmissible under § 1182(a)(6)(A)(i)—i.e., those who initially entered the United States without inspection. Instead, under the new policy, ICE employees are to subject people like Petitioner to mandatory detention without bond under § 1225(b)(2)(A)—a provision that has historically been applied only to recent arrivals at the U.S. border—no matter how long they have resided in the United States.

16. Detaining Petitioner without bond is plainly contrary to the statutory framework of the INA and contrary to both agency regulations and decades of consistent agency practice applying § 1226(a) to people like Petitioner. It also violates Petitioner's right to due process by depriving him of his liberty without any consideration of whether such a deprivation is warranted.

17. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from custody unless Petitioner is provided with a bond hearing under § 1226(a) within seven days.

18. Petitioner is not challenging any discretionary denial of bond; he is challenging the legal determination that he is not eligible for bond under § 1226(a) in the first place.

JURISDICTION

19. Petitioner Luz Dary Hinestroza Arango is in the physical custody of Respondents. Petitioner is detained within the Eastern District of New York.

20. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus);28 U.S.C. § 1331 (federal question); and Article I, section 9, clause 2 of the Unite States Constitution (the Suspension Clause).

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

VENUE

22. Venue is proper in the Eastern District of New York under 28 U.S.C. §2241 and 28 U.S.C. § 1391. Petitioner is detained in an immigration detention facility at the direction of, and is in the immediate custody of, Respondent ; Kenneth Genalo. See Roman v. Ashcroft, 340 F.3d 314, 320-21 (6th Cir. 2003).

23. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims and relevant facts occurred in the Eastern District.

REQUIREMENTS OF 28 U.S.C. § 2243

24. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id.

25. 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

26. Petitioner Luz Dary Hinestroza Arango is a citizen of Colombia who has resided in the United States since 1999. She has been in immigration detention since December 3, 2025 and is currently detained at within the Eastern District of New York. After taking custody of Petitioner, ICE did not set bond or consider his release on parole or other form of release permitted by law.

27. Respondent Kenneth Genalo is the Director of the New York Field Office of ICE's Enforcement and Removal Operations division. As such, Director Kenneth Genalo is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

28. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

30. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates are component agencies. She is sued in her official capacity.

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

ESSENTIAL FACTS

32. DHS has arrested and detained Petitioner since 12/03/2025 and refused to release her on parole or other condition permitted by law and regulations.

33. Following the detention, ICE either did not conduct a custody determination or chose to continue detaining Petitioner without providing an opportunity to post bond or be released under other conditions.

34. Petitioner is clearly neither a flight risk nor a danger to the community, as demonstrated by the fact that she was in the process of adjusting her status to that of legal permanent resident.

35. Petitioner is being represented by an immigration attorney and has strong claims for Adjustment of Status.

36. Without relief from this court, Petitioner faces the prospect of months—or even years—in immigration custody, separated from family and community.

LEGAL FRAMEWORK

37. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.

38. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens who are in removal proceedings. See 8 U.S.C. § 1229a. See also Jennings v. Rodriguez, 583U.S. 281, 289 (2018) (explaining that § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings").Under § 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained but are generally entitled to seek release on bond. 3 The bond may be set by ICE itself as part of an initial custody determination, see 8 C.F.R. § 1236.1(c)(8), and/or the individual may seek a bond hearing in immigration court at the outset of their detention, see 8C.F.R. §§ 1003.19(a), 1236.1(d). Section 1226(a) is the statute that, for decades, has been applied to people like Petitioner who have been living in the United States and are charged with inadmissibility under § 1182(a)(6)(A)(i).

39. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. §1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). See Jennings, 583 U.S. at 287, 289 (explaining that § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States."). Section 1225(b)(2) is the statute that Respondents have suddenly decided is applicable to people like Petitioner.

40. Third, the INA also provides for detention of noncitizens who have already been ordered removed, see 8 U.S.C. § 1231. Section 1231 is not relevant here.

41. This case challenges Respondents' erroneous decision that Petitioner is subject to mandatory detention without bond under §1225(b)(2), rather than being bond-eligible under § 1226(a).

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

43. Following the 1996 enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

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

45. However, on July 8, 2025, ICE, "in coordination with" the Department of Justice, suddenly announced a new governmental policy that rejected the well-established understanding of the statutory framework and reversed decades of agency practice.

46. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection are subject to mandatory detention without bond under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even for decades or since infancy.

47. In decision after decision, federal courts—both nationwide and here in the Eastern District of New York —have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not §1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. See, e.g., Gomes v. Hyde, No. 25-CV-

11571, 2025 WL 1869299 (D. Mass. July 7, 2025); Martinez v. Hyde, --- F. Supp. 3d ---, 2025 WL 2.

48. This list is undoubtedly incomplete. As the media has reported, the government's new no-bond policy has "led to dozens of recent rulings from judges who say the administration has violated the law and due process rights …. The pile up of decisions is growing daily." Kyle Cheney and Myah Ward, Trump's New Detention Policy Targets Millions Of Immigrants. Judges Keep Saying It's Illegal, Politico (Sept. 20, 2025, at 4:00 PM ET), https://www.politico.com/ news/2025/09/20/ice-detention-immigration-policy-00573850.

49. In recent months, courts have repeatedly rejected Respondents' interpretation of the INA and granted writs of habeas corpus to detained noncitizens to whom Respondents denied a bond hearing. On August 29, 2025, Judge Brandy McMillion granted a writ of habeas corpus to an identically situated petitioner, concluding that "There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . . years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border." Lopez-Campos, --- F.Supp.3d. ---, 2025 WL 2496379, at *.

50. On September 5, 2025, the BIA issued a precedential decision that rejected the overwhelming consensus of the federal courts. See Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). That decision held that all noncitizens who entered the United States without admission or parole are ineligible for bond hearings before an IJ.

51. The Yajure Hurtado decision—like the government policy it seeks to uphold—defies the INA.—the BIA's reasoning is unpersuasive and "at odds with every District Court that has been confronted with the same question of statutory interpretation

52. As court after court has explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

53. 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]."

54. 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).

55. When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." Rodriguez, 779 F. Supp. 3d at 1256-57 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

56. Section 1226 therefore leaves no doubt that it applies to people who face charges of being

inadmissible to the United States, including those who are present without admission or parole.

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

58. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people who have already entered and were long residing in the United States at the time they were apprehended by immigration authorities and detained. Because § 1226(a), not § 1225(b), is the applicable statute, Petitioner's detention without eligibility for bond is unlawful.

59. Petitioner seeks relief from this Court because any months-long appeal to the BIA of an IJ's decision denying bond would be futile. A request for a bond hearing is likewise futile. First, the agency's position is clear: both IJs and future panels of the BIA must follow the Yajure Hurtado decision. Further, the new governmental policy was issued "in coordination with DOJ," which oversee the immigration courts, including the BIA—up to and including the ability of the Attorney General to modify or overrule decisions of the BIA, see 8 C.F.R. §1003.1(h). It is therefore unsurprising that the BIA has (erroneously) held that persons like Petitioner are subject to mandatory detention under § 1225(b)(2)(A), rather than being bond-eligible under § 1226(a). Moreover, in the numerous identical habeas corpus petitions that have been filed nationwide, EOIR and the Attorney General are often respondents and have consistently affirmed via briefing and oral argument that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A).

60. Second, by the time the BIA could even issue an appeal—a process that typically takes at least six months, Rodriguez, 779 F. Supp. 3d at 1245, and in many cases roughly a year, id. -the harm of Petitioner's unlawful detention will be impossible to remediate. Nor will the downstream effects of continued detention be remediable: Petitioner's family and community will be left without a caretaker and contributor for months.

61. Third, neither IJs nor the BIA have the authority to decide constitutional claims. See Sterkaj v. Gonzales, 439 F.3d 273, 279 (6th Cir. 2006). Here, Petitioner claims not only that Respondents are unlawfully detaining him without bond hearings under an inapplicable statute, but also that such detention violates Petitioner's constitutional right to due process since the government seeks to deprive him of his liberty.

62. A bond motion is futile in these circumstances.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

64. Respondents are unlawfully detaining Petitioner without bond pursuant to the mandatory detention provision at 8 U.S.C. § 1225(b)(2).

65. Section 1225(b)(2) does not apply to Petitioner, who previously entered the country and has long been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents.

66. Instead, Petitioner should be subject to the detention provisions of §1226(a) and is therefore entitled to a custody determination by ICE, and if custody is continued, to a custody redetermination (i.e., a bond hearing) by an immigration judge.

67. Respondents' application of 8 U.S.C. § 1225(b)(2) to Petitioner results in Petitioner's unlawful detention without the opportunity for a bond hearing and violates the INA.

COUNT II

Violation of Due Process

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

69. 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).

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

71. The government's detention of Petitioner without an opportunity for a custody determination or bond hearing to decide whether he is a flight risk or danger violates Petitioner's right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner from custody pursuant to 8 U.S.C. § 1226(a) within 7 days;

c. Enjoin Respondents from transferring Petitioner from the jurisdiction of this District pending these proceedings;

d. Declare that 8 U.S.C. § 1226(a)—and not 8 U.S.C. § 1225(b)(2)(A)—is the appropriate statutory provision that governs Petitioner's detention and eligibility for bond because Petitioner is not a recent arrival "seeking admission" to the United States and instead was already residing in the United States when apprehended.

e. Award Petitioner 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

f. Grant any other and further relief that this Court deems just and proper.

Dated: December 4, 2025

Respectfully submitted,

/s/ S. Michael Musa-Obregon
S. Michael Musa-Obregon, Esq.

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Exhibit list

1. Copy of Petitioner's passport
2. Proof of detention and location
3. Copy of I-130 Approval
4. Copy of the I-485 Receipt Notice/Appeal
5. Proof of legal entry