

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Mariu Alejandra Urdaneta-Rivero,

Petitioner,

V.

Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary of the Department of Homeland Security; Todd Lyons, Acting Director of Immigration and Customs Enforcement; Marcos Charles, Acting Associate Director of Enforcement and Removal Operations; and Randall Tate, Warden of the Montgomery Processing Center,

Respondents.

[illegible]

Case Number: 25-6263

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE UNITED STATES DISTRICT COURT:

This is a petition for a writ of habeas corpus, filed on behalf of Mariu Alejandra Urdaneta-Rivero (“Petitioner”), by and through her undersigned counsel, seeking to remedy Petitioner’s continued, unconstitutional, and unlawful detention by Respondents. Through the filing of this writ, Petitioner seeks an order from this Court declaring that her continued detention is unconstitutional and unlawful, and ordering her immediate release from Respondents’ custody, or alternatively,

ordering Respondents to provide her with a bond hearing in front of an immigration judge (“IJ”).

I. CUSTODY

1. Petitioner is in the physical custody of Respondents and their agents, as she is presently detained at the Montgomery Processing Center (“MPC”), located at “806 Hilbig Rd., Conroe, Texas 77301.” *See* Exhibit 1—Proof of Current Detention.
2. The MPC contracts with the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), and the ICE Office of Enforcement and Removal Operations (“ERO”) to detain and house aliens, such as Petitioner.

II. JURISDICTION

3. This action arises under the Constitution of the United States, and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et. seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. No. 104-08, Stat. 1570 (1996).
4. This Court has jurisdiction over this action under 28 U.S.C. § 2241(c)(1) and (3), art. I, § 9, cl. 2 of the United States Constitution (the “Suspension Clause”), and 28 U.S.C. § 1331, as Petitioner is presently in custody “under or by color of the

authority of the United States,” and such custody is in violation of “the Constitution or laws or treaties of the United States.”

5. This Court may grant the relief that Petitioner is requesting, pursuant to 28 U.S.C. § 2241, and 28 U.S.C. § 1651 (the “All Writs Act”).

III. VENUE

6. Pursuant to 28 U.S.C. § 1391(b)(1)-(2), venue is proper in this district, because it is where Petitioner resides and is currently being unlawfully detained. *See* Exhibit 1, *supra*.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. Petitioner is unable to seek a bond redetermination before an IJ to secure her release from custody, because of a September 5, 2025, decision issued by the Board of Immigration Appeals (“BIA”), which held that all noncitizens who entered the United States without inspection were subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025) (holding that an IJ has no authority to consider bond requests for an individual who enters (or has entered) the United States without inspection and admission).
8. Given the BIA’s decision in *Yajure-Hurtado*, Petitioner has no avenues to secure her release from her unconstitutional and unlawful detention through the IJ. In fact, she does not even have the ability to request the opportunity to state her case

with an IJ (at a bond hearing) of why she warrants a release from custody. Therefore, the only remedy Petitioner has available to her now is through the filing of this writ.

V. PARTIES

9. Petitioner, Mariu Alejandra Urdaneta-Rivero, is presently detained unlawfully and unconstitutionally by Respondents, at the MPC, in Conroe, Texas. *See* Exhibit 1, *supra*.
10. Respondent, Pamela Bondi, is the Attorney General of the United States. She and her agents' unlawful and unconstitutional actions have led directly to Petitioner's mandatory detention without any possibility of release on bond. She and her agents, have actual and physical custody of Petitioner. *Id.* She is sued in her official capacity.
11. Respondent, Kristi Noem, is the Secretary of the DHS. She, and her agents, have actual and physical custody of Petitioner. *Id.* She is sued in her official capacity.
12. Respondent, Todd Lyons, is the Acting Director of ICE. He, and his agents, have actual and physical custody of Petitioner. *Id.* He is sued in his official capacity.
13. Respondent, Marcos Charles, is the Acting Executive Associate Director of ICE ERO. He, and his agents, have actual and physical custody of Petitioner. *Id.* He is sued in his official capacity.

14. Respondent, Randy Tate, is the Warden of the MPC in Conroe, Texas, where Petitioner is currently being unconstitutionally and unlawfully detained. He, and his agents, have actual and physical custody of Petitioner. *Id.* He is sued in his official capacity.

VI. STATEMENT OF FACTS

15. Petitioner is a native and citizen of Venezuela. *See* Exhibit 2—First Notice to Appear (“NTA”). She entered the United States, without being inspected and admitted or paroled, on or about December 5, 2021. *Id.*

16. After Petitioner entered the United States, she was detained, served with an NTA (on December 6, 2021), and released on an Order of Release on Recognizance (“ORR”), on or about December 8, 2021. *Id.*; *see also* Exhibit 3—ORR. Petitioner was then placed in a removal proceeding once the DHS filed the first NTA with the immigration court.

17. On or about January 4, 2024, Petitioner’s removal proceeding, which stemmed from her initial unlawful entry and subsequent apprehension at the U.S. border, was dismissed by an IJ. *See* Exhibit 4—IJ Order of Dismissal. The DHS did not appeal the decision, and as such, the dismissal order became final and Petitioner’s removal proceeding concluded. *See* 8 C.F.R. § 1003.39.

18. On or about December 9, 2025, Petitioner was once again apprehended by ICE, but this time, it was within the interior of the United States. She was then issued

a new NTA and placed in a new removal proceeding with the IJ. *See* Exhibit 5—Second NTA. Her next removal hearing with the IJ is scheduled for January 26, 2026, at 1:30 P.M. *See* Exhibit 6—Notice of Hearing Printout. Unfortunately, as previously stated, Petitioner cannot request a release on bond with the IJ, because of the BIA’s decision in *Yajure Hurtado*.

19. Since Petitioner cannot request a release on bond with the IJ, and because Petitioner cannot file an action with any administrative body to remedy her unconstitutional and unlawful detention, this writ is the only option that Petitioner has left.

VII. CLAIMS FOR RELIEF

COUNT 1 – CONSTITUTIONAL VIOLATION

20. Petitioner incorporates, by reference, the factual allegations contained in paragraphs 1 through 19, above.

21. Petitioner contends that her continued detention violates her substantive and procedural due process rights under the Fifth Amendment of the U.S. Constitution.

22. The Fifth Amendment forbids the federal Government from depriving any “person...of...liberty...without due process of law.” U.S. Const. Amend. V; *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (stating that the “[f]reedom from imprisonment—from government custody, detention, or other forms of

physical restraint—lies at the heart of the liberty that the [due process] Clause protects”).

23. In this case, Petitioner submits that her continued detention, without the ability to seek a release from custody on bond from an IJ, has deprived her of her fundamental due process rights under the Fifth Amendment. Therefore, this Court should order her immediate release from custody at this time, or at the very least, order that Petitioner be given a bond hearing with an IJ.

COUNT 2 – STATUTORY VIOLATION

24. Petitioner incorporates, by reference, the factual allegations contained in paragraphs 1 through 23, above.
25. In addition to the constitutional violation, Petitioner’s continued detention likewise violates the INA.
26. Under 8 U.S.C. § 1226(a), an alien may be released on bond by an IJ if the alien was arrested and detained by the DHS pursuant to an immigration arrest warrant. *See also* 8 C.F.R. § 236.1(d)(1).
27. In this case, Petitioner was taken into Respondents’ custody pursuant to a warrant of arrest, several years after she entered the United States. *See* Exhibit 5, *supra*. She therefore squarely falls under § 1226(a) and is eligible to be released on bond. Yet, due to the recent (and entirely erroneous) BIA decision stating that all noncitizens who entered the United States without being inspected and

admitted are not entitled to release from custody until their removal proceedings have concluded, Petitioner is unable to secure her release on bond or conditional parole at this time. *Yajure Hurtado*, 29 I. & N. Dec. at 228.

28. Respondents contend that Petitioner falls under 8 U.S.C. § 1225(b)(2)(A)—the mandatory detention provision at issue here. That provision states, in relevant part, that if an alien is both an “applicant for admission” and is “seeking admission,” ICE may continue to indefinitely detain the alien until the completion of his or her removal proceeding. But Petitioner cannot fall under that provision, for two reasons.

29. First, under § 1225(b)(2)(A), an alien can only be detained *until* his or her removal proceeding has concluded. In this case, Petitioner’s (first) removal proceeding, initiated shortly after her unlawful entry into the United States and subsequent apprehension near the border, concluded when her case was dismissed by an IJ, on or about January 4, 2024. *See* Exhibit 4, *supra*. Immediately after that, she no longer was subject to the mandatory detention provision under § 1225(b)(2)(A); she must therefore fall under § 1226(a) and be eligible for bond in this new removal proceeding.

30. Second, while Petitioner is an “applicant for admission” (under 8 U.S.C. § 1225(a)(1)), for being present in the United States without being admitted, it cannot be said that she was “seeking admission” into the United States at the time

of her apprehension and detention in December of 2025. *See* Exhibits 1 and 5, *supra*.

31. By the time that Petitioner was detained by ICE, on or about December 9, 2025, she was an alien *already present* in the United States for a period of approximately four years and almost two years *after* her case was dismissed by an IJ; she was not apprehended near a border or paroled at the border at the time of her arrest, apprehension, and detention. *See* Exhibits 1, 3, and 5, *supra*; *see also Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (stating that § 1225(b) “applies to aliens seeking entry into the United States...” while § 1226(a) “applies to aliens already present in the United States”); *Matter of Q. Li*, 29 I. & N Dec. 66, 70 (BIA 2025) (noting that § 1226(a) “applies to aliens already present in the United States”). Accordingly, and contrary to the Respondents’ assertions, Petitioner was not (and is not) an alien “seeking admission,” and therefore, she cannot be subject to the mandatory detention provisions of § 1225(b)(2), under a plain reading of the statute.

32. Because Petitioner does not fall under § 1225(b)(2)(A), and no other grounds of mandatory detention apply in this case, she must fall under § 1226(a). She should therefore be eligible for release on bond with an IJ, and by refusing to even afford Petitioner the opportunity to request a release from custody (on bond) via a hearing, Respondents are in clear violation of the INA. As such, this Court should

order Petitioner's release at this time, or order Respondents to give Petitioner a bond hearing immediately.

COUNT 3 – JUDICIAL ESTOPPEL

33. Petitioner incorporates, by reference, the factual allegations contained in paragraphs 1 through 32, above.
34. Petitioner submits that Respondents are judicially estopped from asserting that Petitioner is subject to mandatory detention under § 1225(b)(2)(A).
35. As stated in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage.
36. In this case, judicial estoppel applies, because, in prior litigation, including in *Jennings*, the government successfully argued that individuals who entered without inspection and were not apprehended near the border or within fourteen days, like Petitioner was in December of 2025, were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). Tr. of Oral Arg. at 7-8, *Jennings*, *supra*.; *see also* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Courts accepted that position. *Jennings*, 583 U.S. at 303. Now, Respondents reverse course and

assert the opposite interpretation to deny bond hearings to aliens like Petitioner. As such, Petitioner seeks an order from this Court estopping Respondents from applying the mandatory detention provisions against her to deny her a bond hearing with an IJ.

COUNT 4 – ATTORNEY’S FEES

37. If Petitioner prevails in this action, Petitioner requests attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412.

VIII. PRAYER FOR RELIEF

38. WHEREFORE, premises considered, Petitioner respectfully requests that this Court:

- a. accept jurisdiction and venue as proper;
- b. hold that Respondents’ current detention of Petitioner is unlawful and unconstitutional;
- c. hold that Respondents are judicially estopped from applying the mandatory detention provision, under § 1252(b)(2)(A), to Petitioner;
- d. order Respondents to immediately release Petitioner from their custody, or alternatively, order Respondents to immediately provide Petitioner with a bond hearing in front of an IJ;
- e. grant reasonable attorney’s fees, expenses, and costs of court pursuant to the EAJA; and
- f. grant Petitioner any other relief as the Court may deem proper.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Diller V. Paz', is written over a horizontal line.

Diller V. Paz, Esq.

Counsel for Petitioner

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LIST OF EXHIBITS

Exhibit 1—Proof of Current Detention

Exhibit 2—First NTA

Exhibit 3—ORR

Exhibit 4—IJ Order of Dismissal

Exhibit 5—Second NTA

Exhibit 6—Notice of Hearing