

**UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Norma Veronica Ases-Pacha,

Petitioner,

v.

Warden of the ERO El Paso East Montana; JOEL GARCIA, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, *in their official capacities,*

Respondents.

Civil Action No.:

**VERIFIED PETITION FOR A WRIT
OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 OR ORDER TO
SHOW CAUSE WITHIN THREE
DAYS**

**REQUEST FOR EMERGENCY
TEMPORARY RESTRAINING
ORDER**

Expedited Handling Requested

**VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner, Norma Veronica Ases-Pacha, by and through counsel, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement (“ICE”) to release Petitioner from ICE detention or in the alternative to provide Petitioner with a bond hearing.

2. Petitioner, Norma Veronica Ases-Pacha, brings this petition for a writ of habeas corpus to seek enforcement of her rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at the ERO El Paso East Montana detention center. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.
3. On November 20, 2025, the District Court of the Central District of California granted partial summary judgment on behalf of individual plaintiffs and, on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). After being presented with evidence that the Government was counseling noncompliance with the court's orders, the District Judge in *Maldonado-Bautista* issued a clarifying order on December 18, 2025, to make clear that all class members are entitled to benefit from the declaratory judgment and therefore entitled to a bond hearing. No. 5:25-cv-01873-SSS-BFM 2025 WL 3713982 at * 7(C.D. Cal. Dec. 18, 2025).

4. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.
5. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) refuse to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.
6. Petitioner is a member of the Bond Eligible Class, as she:
 - a. does not have lawful status in the United States and is currently detained at the ERO East Montana detention center;
 - b. entered the United States without inspection over three years ago and was not apprehended upon arrival, *cf. id.*; and
 - c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.
7. After initially arresting Petitioner within the U.S. after her arrival on May 7, 2019, DHS placed her in removal proceedings and released her under her own recognizance. At that time, DHS charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection and cited 8 U.S.C. § 1226(a) as the basis for her detention. On January 7, 2026, Petitioner was re-detained by DHS outside of her place of business. They did not cite a statutory basis for her detention at that time.
8. The Court should expeditiously grant this petition.
9. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue

to defy the judgment in that case and subject Petitioner to unlawful detention despite her clear entitlement to consideration for release on bond as a Bond Eligible Class member.

10. Immigration judges have informed class members in bond hearings that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
11. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, and the detention provisions of the INA generally, the Court should order that Respondent DHS must release Petitioner within one day.
12. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within five days.

CUSTODY

13. Petitioner is in the physical custody of Respondents. Petitioner is detained at ERO El Paso East Montana, an immigration detention facility, in El Paso, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

14. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. 1331; 28 U.S.C. 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.
15. Federal question jurisdiction exists because Petitioner seeks to challenge Petitioner's custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*

16. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (“DHS”). *Denmore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).
17. 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, 28 U.S.C. § 1651.

VENUE

18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.
19. 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 occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court should grant the petition for writ of habeas corpus “forthwith,” as the legal issues have already been resolved for class members in *Maldonado Bautista*.
21. 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

22. Petitioner, Norma Veronica Ases-Pacha, is currently detained by Respondents at ERO El Paso East Montana, an immigration detention facility. She has been in ICE custody since January 7, 2026, when she was arrested in Minneapolis, Minnesota.
23. The unnamed Respondent is the Warden of the Camp East Montana facility, where Petitioner is currently detained. They are the legal custodian of Petitioner and are named in their official capacity.
24. Respondent Joel Garcia is the Field Office Director responsible for the El Paso Field Office of Immigration and Customs Enforcement (ICE) with administrative jurisdiction over Petitioner’s immigration case. He is a legal custodian of Petitioner and is named in his official capacity.
25. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
26. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.
27. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

RELEVANT FACTS & PROCEDURAL HISTORY

28. Petitioner is a resident of Minneapolis, Minnesota, and a citizen of Ecuador. Mrs. Ases-Pacha has lived in the United States since May of 2019. Exh. 1.

29. Mrs. Ases-Pacha filed a petition for asylum on June 7, 2021. Exh. 2.
30. The Department of Homeland Security approved employment authorization for Mrs. Ases-Pacha. Her employment authorization is valid from January 15, 2025, through January 14, 2030, and category C08. Exh. 3. Mrs. Ases-Pacha also has a social security number. Mrs. Ases-Pacha works full time as a cook at Jardín Spanish Immersion Academy, a childcare center caring for children ages six weeks up until kindergarten. Exh. 4. Mrs. Ases-Pacha is First AID and CPR Certified.
31. Mrs. Ases-Pacha lives with her family in Minneapolis, Minnesota. She has a husband and two children – a thirteen-year-old daughter and a three-year-old daughter who was born in the United States. She has a large and beloved extended family in Minnesota.
32. Mrs. Ases-Pacha has many friends and is an active participant in her community. For example, Mrs. Ases-Pacha is a devoted member of her parish at the Church of Saint Stephen-Holy Rosary in Minneapolis, Minnesota. She has been a member of the community for at least four years and regularly attends mass on Sundays. She participates in a Bible study every Friday, where she gathers with others to discuss how to incorporate the Christian values in her daily life. She is also part of a small group within the church that meets every week to share joys and difficulties of daily life, and to pray for one another. She enrolled her oldest daughter in confirmation classes and had her younger daughter baptized to further strengthen an already deep relationship with the Church. Exh. 5.
33. She is also an active member of the Risen Christ Catholic School community. She maintains regular communication with the school and attends conferences and meetings. Exh. 6.

34. Mrs. Ases-Pacha is a beloved member of the Jardín daycare community. Parents and students are drawn to Mrs. Ases-Pacha's warmth and kindness. Children and families know and love Mrs. Ases-Pacha, as she is one of the first people they see as they enter the school. Mrs. Ases-Pacha greets students every morning by name as they pass her in the kitchen on the way to their classrooms.
35. Mrs. Ases-Pacha pays taxes to the U.S. and Minnesotan governments and, aside from three minor parking violations, has a spotless criminal record. Exh. 7.
36. On Wednesday, January 7, 2026, Mrs. Ases-Pacha arrived at work at approximately 8:00 in the morning and parked on the street in front of the school. Mrs. Ases-Pacha's niece, also a Jardín employee, called Mrs. Ases-Pacha and asked for help to park her car. Mrs. Ases-Pacha got into her niece's driver's side door. Many families, including children, were present at the front of the school during morning drop-off.
37. Several unmarked SUVs with flashing lights suddenly approached and boxed in Mrs. Ases-Pacha's car. The SUVs came in from both directions, and several men exited these vehicles. The men wore masks and "POLICE" vests over their jackets. One man wore jeans and another wore khakis. These men were armed. These men are believed to be agents of Respondent ICE.
38. The men asked Mrs. Ases-Pacha, who does not speak English, for identification. The officers then asked Mrs. Ases-Pacha to open the door and get out, which she did. The men did not ask Mrs. Ases-Pacha about where she lived or worked. The officers put her hands behind her back and handcuffed her. They then put her in the back of one of their vehicles and drove away. A number of bystanders, including Jardín colleagues, Jardín

parents, and Jardín students, witnessed the entire encounter with ICE. The ICE agents did not ask for any of the bystanders' identification.

39. Mrs. Ases-Pacha complied and was taken into custody to the Fort Snelling immigration building on 1 Federal Drive, St. Paul, Minnesota.
40. This arrest is part of an operation in Hennepin County and Ramsey County called "Operation Metro Surge." This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians, pepper spraying and arresting citizen observers, hitting passersby with vehicles, and generally attempting to take as many immigrants as possible into custody, regardless of the constitutionality of their actions. *See, e.g., Compl., Tincher et. al. v. Noem*, No. 0:25-cv-04669. (D. Minn. 12/17/2025).
41. Around 1:00 am on January 9, 2026, Mrs. Ases-Pacha called her husband and informed him that she had been transferred to a detention center in El Paso, Texas. She was flown there by plane.
42. The undersigned used ICE's online detainee locator system to attempt to track whether Petitioner had been transferred. At the time of this filing, ICE's online system did not have any record of Petitioner. *See* <https://locator.ice.gov/odls/#/results>.
43. Mrs. Ases-Pacha poses no risk to society and has strong connections to her community in Hennepin County, including with her family, friends, and coworkers.

44. Mrs. Ases-Pacha respectfully seeks the opportunity to return to her home in Minneapolis, Minnesota, and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.
45. Pending the adjudication of her Petition, Mrs. Ases-Pacha further seeks an order restraining the Respondents from transferring her to another detention facility, so that her case may remain within the jurisdiction of this Court.

LEGAL FRAMEWORK

46. Petitioner's detention is not governed by 8 U.S.C. § 1225(b)(2)(A). The Court in *Maldonado Bautista* has already ruled that the detention of noncitizens such as Petitioner, who are within the Bond Eligible Class, is not governed by 8 U.S.C. § 1225(b)(2)(A) but instead is governed by 8 U.S.C. § 1226(a). *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).
47. In the alternative, this court can independently hold, as many others already have across the country, that the detention of the Petitioner in this case is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A).
48. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. Of these, the two forms of detention relevant to this case are described at 8 U.S.C. §§ 1226(a) and 1225(b)(2).
49. 8 U.S.C. § 1226 "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of [Section 240] removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

50. On the other hand, 8 U.S.C. 1225(b)(2) provides that a person alleged to be an “applicant for admission” who is “seeking admission” and whom an “examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted” is subject to mandatory detention – that is, detention without the right to a bond hearing. *See* 8 U.S.C. § 1225(b)(2)(A).
51. 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, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
52. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered 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. 10312, 10323 (Mar. 6, 1997).
53. Thus, in the decades that followed, most people who entered without admission or parole were arrested under 8 U.S.C. § 1226(a), placed in standard removal proceedings, and received bond hearings, 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 Immigration Judge 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)).

54. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.
55. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without admission or parole shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention 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 decades.
56. On September 5, 2025, the Board of Immigration Appeals (BIA) adopted this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are “seeking admission” and are ineligible for IJ bond hearings.
57. Even before the decision in *Maldonado Bautista*, court after court had rejected ICE’s new policy and EOIR’s new interpretation. *See, e.g., Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Vazquez v. Bostock*, 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, (W.D. Wash. Sept. 30, 2025); *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, 2025 U.S. Dist. LEXIS 175767 (E.D. Mich. Sept. 9, 2025) (citing District Court cases around the country rejecting this interpretation).
58. Courts have resoundingly rejected DHS’s and EOIR’s new interpretation because it defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

59. Subsection 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].”
60. Just this year, Congress amended 8 USC §1226(c)(1) to add subparagraph (E) in the Laken Riley Act. The amendment provided that certain noncitizens who entered without inspection and who are charged with or convicted of certain crimes are ineligible for bond under § 1226(a)’s default bond provision. Subparagraph (E)’s reference to such people makes clear that, by default, noncitizens who entered without inspection but did not have the criminal history described by the Laken Riley Act are entitled to 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 Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Further, “when Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995). 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.
61. 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). Indeed, the Supreme Court has explained 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.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

62. The mandatory detention provision in 8 USC 1225(b)(2)(A) reads: “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).
63. Section 1225(b), according to its text, applies to “applicants for admission” who are “seeking admission.” This text, including the use of the present tense in “seeking admission”, indicates that section 1225(b) is applicable only to noncitizens who are actively seeking admission into the United States. *Baquedano Lagos v. Vergara*, No. 5:25-cv-01411, 8 (W.D. Tex. Nov 18, 2025) (“When ICE detained her in 2025, Baquedano Lagos was not seeking entry, much less “lawful entry . . . after inspection and authorization.”); *Hervert v. Bondi*, No. 1:25-cv-01763 (W.D. Tex. Nov 14, 2025) (“However, 8 U.S.C. § 1225(b)(2) references not just an “applicant for admission,” but an “applicant for admission” who is “seeking admission.””); *Galdamez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025)) (finding that detained is wrongfully detained under INA § 235(b)(2) because he is not “seeking admission” despite classification as “applicant for admission.”)
64. Accordingly, the mandatory detention provision of § 1225(b)(2) cannot apply to people like Petitioner. At the time of her most recent detention on January 7, 2026, she had already entered the United States and had been residing in the country for over three

years as she awaited the outcome of her asylum case. She was not actively seeking admission.

65. Even looking back to her initial apprehension near the U.S. border in May 2019, DHS opted not to classify Petitioner as someone subject to the mandatory detention provisions of §1225(b)(2). Rather, as her Notice to Appear (NTA), Notice of Custody Determination, and Form I-213 (Record of Deportable/Inadmissible Alien) all indicate, Petitioner was apprehended after entering the United States, charged as an alien present without being admitted or paroled, detained and then released pursuant to DHS' authority under §1226(a).
66. Under these circumstances, it would be absurd to consider Petitioner to be "seeking admission" at the time of his most recent apprehension. *See Torres*, 2025 WL 2855379, at *3-5; *R.D.T.M.*, 2025 WL 2686866, at *4; accord *Contreras Maldonado v. Cabezas*, No. 25–13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025) (finding the "invocation of 1225(b) as applied to Petitioner," a former UC who had resided in the United States for years, to be "inconsistent with the statutory framework distinguishing between entry-based and interior detention authority").
67. In any event, this Court owes no deference to *Matter of Yajure Hurtado* under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). *Cf. Rodriguez Vasquez*, 2025 WL 2782499, at *1, n.3 (rejecting and noting many other cases rejecting the BIA's statutory interpretation in *Matter of Yajure Hurtado*). Thus, even if this court finds that Petitioner is not a Bond Denial Class Member of *Maldonado Baustista*, it may still independently hold, as many others already have across the country, that the detention of the Petitioner in this case is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A).

68. Accordingly, no matter whether this Court finds that Petitioner is a Bond Eligible Class Member of *Maldonado Bautista*, his ongoing detention without access to bond is contrary to the clear meaning of the detention provisions of the INA.
69. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The “Great Writ” has been referred to by United States Courts as “perhaps the most important writ known to the constitutional law of England, 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). A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C. § 2241(c)(3).
70. The Court must grant a petition for writ of habeas corpus or issue an order to show cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
71. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
72. Only under certain circumstances are immigrants subject to ongoing detention without a bond hearing. *See, e.g.*, 8 U.S.C. § 1226(c) (individuals with certain criminal convictions may be detained without a bond hearing for the pendency of removal proceedings) and 8 U.S.C. § 1225(b)(2) (authorizing mandatory detention of immigrants seeking admission

from outside the United States, who are “not clearly and beyond a doubt entitled to be admitted.”).

73. In order to bring a detained individual under the purview of 8 U.S.C. § 1226(c), an individual’s criminal conviction must be one enumerated in the INA under 8 U.S.C. §§ 1182(a)(2), 1182(a)(3)(B), 8 U.S.C. §§ 1227(a)(2)(A)(i-iii), and 8 U.S.C. §§ 1227(a)(2)(B-D).
74. These specified offenses include crimes of moral turpitude, violations of laws regulating controlled substances, terroristic activities, firearm offenses, espionage, treason, and other serious crimes. *Id.* Crimes of moral turpitude do not apply in situations where the maximum sentence for the crime was less than one year, and the person was sentenced to less than six months of imprisonment. 8 U.S.C. § 1182(a)(2)(A)(ii)(III).
75. Petitioner has never been convicted of a crime that would bring Petitioner under the purview of 8 U.S.C. § 1226(c).
76. Otherwise, the “default rule” is that 8 U.S.C. § 1226(a) and its implementing regulations apply to immigrants “already present in the United States” and subject to pending removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).
77. Here, Petitioner fits the ‘default rule’: Petitioner has been in the United States for more than two years and does not have criminal convictions that fall under the purview of 8 U.S.C. § 1226(c). Thus, Petitioner is entitled to release.
78. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas v. Davis*, 533 U.S. 678, 687, 690 (2001) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

79. A noncitizen seeking only to challenge the legality of their detention, not the substance of their removal proceedings in immigration court, may properly ask a federal court to find jurisdiction over such a request pursuant to 28 U.S.C. § 2241.
80. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention").
81. Here, where detention is unlawfully based on 8 U.S.C. 1225, which does not apply to Petitioner, release is an appropriate remedy.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Declare that Petitioner is a Bond Class Member under *Maldonado Bautista*;
- c. Declare that Petitioner's arrest and detention violates the Due Process Clause of the Fifth Amendment, the INA, and implementing regulations;
- d. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner, under the same conditions as existed prior to her detention;
- e. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner immediately unless they 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. Issue an Order prohibiting Respondents from seeking a stay of any order granting bond by the Immigration Judge, including by filing a form EOIR-43 (Notice of

Service Intent to Appeal Custody Redetermination) or a motion for emergency stay;

- g. Issue an Emergency Temporary Restraining Order prohibiting Respondents from removing Petitioner from the United States or transporting Petitioner out of this jurisdiction during the pendency of this petition;
- h. Issue an Order to Show Cause ordering Respondents to explain 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;
- i. Issue an Order prohibiting Respondents from re-detaining Petitioner without a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;
- j. Grant any other and further relief that this Court deems just and proper.

Dated: January 16, 2026

Respectfully submitted,

/s/ Kristin Etter

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Attorneys for Petitioner

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I, Mary Nikolai, have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 16, 2026

/s/ Mary Nikolai
Mary Nikolai

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, with Exhibits will be served upon all counsels of record via the online CM/ECF system, on or before January 16, 2026.

/s/ Kristin Etter
Kristin Etter
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