UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLAUDIA VIVIANA RODRIGUEZ-SARMIENTO,
Petitioner,
v.

WARDEN, Karnes County Immigration Processing Center,
SAN ANTONIO FIELD OFFICE DIRECTOR,
U.S. Immigration & Customs Enforcement (ICE ERO)
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and **PAMELA J. BONDI,**
Attorney General of the United States
In their official capacities,
Respondents.

Case No. 5:26-cv-237

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND ORDER TO SHOW CAUSE

INTRODUCTION

1. Petitioner CLAUDIA VIVIANA RODRIGUEZ-SARMIENTO (A# [redacted], the Colombia-born spouse of a US Citizen, Active-Duty US Army soldier, PFC Jairo Alejandro Arias Henriquez, with an approved Form I-130, is detained at Karnes County Immigration Processing Center in the San Antonio Division. Department of Homeland Security (DHS) has (i) denied military Parole-in-Place (PIP) three times, and (ii) moved to pretermit her protection applications under the Honduras Asylum Cooperative Agreement (ACA); the Immigration Judge has since granted DHS's motion and denied bond/custody redetermination, citing lack of jurisdiction. Petitioner seeks an Emergency TRO and a Writ of Habeas Corpus ordering immediate release with no bond (or, at minimum, an individualized custody determination with no bond or minimal bond based on the undisputed facts in evidence), and an order preserving this Court's jurisdiction, as well as enjoining removal or transfer while USCIS adjudicates bond (if applicable), PIP and related relief. Continued custody under these circumstances violates the Immigration

and Nationality Act, the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act and the ACA.

JURISDICTION & VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(habeas), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), authority to issue declaratory and injunctive relief under 28 U.S.C. § 1651 (All Writs Act). *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), and the Administrative Procedure Act (APA). A district court may review a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or federal law. 28 U.S.C. § 2241. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Accordingly, a district court's habeas jurisdiction includes challenges to the lawfulness of immigration-related detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Baez v. Bureau of Immigr. & Customs Enf't*, 150 F. App'x 311, 312 (5th Cir. 2005) (unpublished); *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (unpublished).

3. Venue is proper in this District because Petitioner is in custody within the Western District of Texas, San Antonio Division at the Karnes County Immigration Processing Center in Karnes City, Texas. The immediate custodian (the Warden of Karnes County Immigration Processing Center) resides in this District. Habeas venue lies in the district of confinement at the time of filing. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Pack v. Yusuff*, 218 F.3d 448 (5th Cir. 2000).

REQUIREMENTS OF 28 U.S.C. § 2243

6. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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.* (emphasis added).

7. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to 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). This passage about habeas accurately describes the fundamental nature of habeas, and the speed and imperative character of relief under § 2243.

PARTIES

8. Petitioner: Claudia Viviana Rodriguez-Sarmiento, (A# [redacted]), a Colombian married to a US Citizen on active duty in the US Army (PFC Jairo Henriquez), no criminal history, an approved I-130, steady employment and a residence in Copperas Cove, Texas.

9. Respondents: (1) Warden, Karnes County Immigration Processing Center, the immediate custodian with day-to-day control of Petitioner; (2) San Antonio Field Office Director, ICE ERO (3) Kristi Noem, DHS Secretary; (4) Pamela J. Bondi, U.S. Attorney General. All in official capacities.

CUSTODY AND EXHAUSTION

10. Petitioner is in custody for § 2241 purposes. She has pursued administrative remedies to the extent available: she sought custody redetermination (denied on Nov. 6, 2025), opposed DHS's ACA pretermission motion (denied), and has repeatedly requested military PIP (denied, with reconsideration requests). See Exs. 6, 7, 8, 9, 10, 11, 12.

11. Exhaustion is not a § 2241statutory requirement for Petitioner. However, even under the strictest interpretation required in a Texas Federal District (Northern), Petitioner shows "proper" exhaustion of "prudential" remedies—in fact, *impossibility*. Petitioner does not use this Petition as a substitute for appeal within the immigration procedural context, i.e., the Board of Immigration Appeals (BIA).

> [W]ithout "proper" exhaustion, *citing Woodford v. Ngo*, 548 U.S. 81, 90 (2006), and "[i]t is settled that habeas corpus is not to be used as a substitute for appeal." *Stewart v. Dunn*, 363 F.2d 591, 597 (5th Cir. 1966); *accord. Bousley v. United States*, 523 U.S. 614, 621 (1998).[1] Romero has asked the immigration judge to revisit the terms of her supervised release (Petition, Ex. 5 at 42–50, ECF No. 1) and it is clear she can appeal any denial of that request within the agency. This case appears to simply be an appeal of the immigration judge's custody determination, which is an improper use of habeas corpus. *Stewart*, 363 F.2d at 597.

12. Exhaustion of "prudential remedies:

> It is clearly established that a "person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). "But any exhaustion requirement is prudential," when, as the parties here agree, no statutory requirement exists. *Cabanas*, 2025 WL 3171331, at *3. Where "Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). The Court should require exhaustion, when appropriate, "because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency." *Id.* at 145. "Exceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such

[1] ICE does not raise exhaustion in its opposition to the petition.

> remedies would itself be a patently futile course of action." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). But these exceptions apply only in "extraordinary circumstances" and upon "demonstrating the futility of administrative review." *P. B. v. Bergami, et al,* Case No. 3:25-CV-02978-O.

13. Petitioner argues that administrative exhaustion is already and will continue to be futile without the Court's intervention citing the Board of Immigration Appeals' ("BIA") recent decision in *Matter of Hurtado*, 29 I&N Decision 216 (BIA 2025).

14. Futility is the impossibility of getting to "Yes," no matter what remedies are available, how many times one asks, what procedure and law are cited, and how much time is allotted, specifically when it involves both the DHS and US Attorney General conspiring to pretend that a US Statute no longer exists or has application: in this case 8 U.S.C. §1226(a). Petitioner argues that asking the DHS for any positive outcome at all is futile at present, and that this circumstance is "extraordinary" in and of itself.

15. On July 8, 2025, ICE announced a new policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." DHS, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://perma.cc/2V6H-FHVD. The policy states that 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226(a), is the applicable immigration detention authority for all noncitizens who are applicants for admission. *Id.* Subsequently, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision in line with this interim guidance, holding that immigration judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission because they are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

16. Per the INA, it is the Attorney General who has the authority to grant bond and set the

terms, whether with monetary bond or ISAP, by its authority under 8 U.S.C. §1226(a) delegated to Immigration Judges. The Attorney General is, as a matter of law, in charge of bond, administratively speaking, and Immigration Judges are their delegated proxies.

17. *Hurtado* and the BIA/IJ standard form Denial of Bond, both quoted below, illustrate this administrative futility. This can only be defeated by habeas petition, as shown in *G.P. v Joshua Johnson, et al* (included Bondi and Noem as respondents), Case No. SA-25-cv-01476-OLG. In that case, habeas was granted and Petitioner, without a single arrest and married to a US Citizen and an I-130 filed, received a bond hearing that had previously been denied under *Hurtado* for lack of jurisdiction, and bond was approved using 8 U.S.C. 1226(a), because the Immigration Court was forced to use it, for $10,000.

18. The conclusions that the BIA adds to *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), *Hurtado* and other cases is emphasized in **bold** by counsel for Petitioner. The Attorney General has shown conclusively that obtaining consideration or reduction of any form of detention, or custody, currently, between the DHS and the AG, is as a matter of policy, and execution of the policy, impossible. It is illegal and is the very definition of futility at the administrative level. The standard form Denial of Bond:

> Denied, because
> Respondent entered the United States without being admitted or paroled after inspection by an immigration officer. Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), **Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.** *YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025). Under section 235, Congress created three different categories of applicants for admission. The first two categories are covered by section 235(b)(1)(A) of the INA, 8 U.S.C. § 1225(b)(1)(A). They include: (1) arriving aliens inadmissible under section 212(a)(6)(C) or 212(a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7), and (2) aliens not admitted or paroled into the United States who are inadmissible under section 212(a)(6)(C) or 212(a)(7), 8

> U.S.C. § 1182(a)(6)(C), (a)(7), and "who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility." INA § 235(b)(1)(A)(i), (iii)(II), 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II); see also 8 C.F.R. § 235.3(b)(1) (2025).
>
> The INA explicitly requires that aliens who fall into either of these two categories are subject to mandatory detention for the duration of their immigration proceedings. See INA § 235(b)(1)(B)(ii), (iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); see also 8 C.F.R. § 235.3(b)(2)(iii). **Thus, an Immigration Judge lacks authority to hear a bond request filed by an applicant for admission in either of these two categories.** See *Matter of M-S-*, 27 I&N Dec. 509, 515–19 (A.G. 2019). The third category of applicants for admission subject to the inspection, detention, and removal procedures set forth in section 235 of the INA,8 U.S.C. § 1225, are those aliens who are seeking admission and who an immigration officer has determined are "not clearly and beyond a doubt entitled to be admitted." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). This category is a "catchall provision that applies to all applicants for admission not covered by [section 235(b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Like with the first two categories of applicants for admission, the INA explicitly requires that this third "catchall" category of applicants for admission be mandatorily detained for the duration of their Cite as 29 I&N Dec. 216 (BIA 2025) Interim Decision #4125 Page 219 immigration proceedings. See INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); see also *Jennings*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 235(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings); 8 C.F.R. § 235.3(b)(1)(ii).

INCORPORATION BY REFERENCE

19. Petitioner attaches Exhibits as listed immediately below, and Petitioner incorporates by reference all facts, declarations, and documentary evidence contained therein as if set forth fully herein:

Exhibit 1 – Form I-213 (Encounter & Narrative, Aug. 11–12, 2022).

Exhibit 2 – U.S. Army Orders (PCS; Dependent Travel Authorized).

Exhibit 3 – I-130 Approval Notice (Receipt [redacted]; Dec. 3, 2025).

Exhibit 4 – EOIR-28 Entry of Appearance (Sept. 18, 2025; ECAS service).

Exhibit 5 – Bond Application Proof of Service (ECAS to OPLA; Oct. 31, 2025).

Exhibit 6 – ICE Denial of I-131 Military PIP (Oct. 27, 2025).

Exhibit 7 – DHS Motion to Pretermit & Certificate of Service (filed/served Oct. 27, 2025).

Exhibit 8 – Respondent's Opposition to Motion to Pretermit (Nov. 6, 2025).

Exhibit 9 – IJ Order Granting DHS Motion to Pretermit (Nov. 6, 2025).

Exhibit 10 – IJ Bond/Custody Redetermination Order – Denial (Nov. 6, 2025).

Exhibit 11 – 2nd PIP Reconsideration Request with USCIS Military PIP Guidance (Oct. 28, 2025).

Exhibit 12 – 3rd PIP Request (time-sensitive; final hearing/deployment).

STATEMENT OF FACTS AND PROCEDURAL POSTURE

20. Initial Encounter and Processing (Aug. 11–12, 2022). California Border Patrol (CBP) encountered Petitioner near Otay Mesa Point of Entry (POE); she was transported to the Brown Field Station and processed. *See* Ex. 1 – I-213.

21. Marriage to U.S. Soldier & Military Status (2025). The U.S. Army issued orders reflecting Permanent Change of Station (PCS) to Fort Cavazos with dependent travel authorized for spouse Claudia Rodriguez-Sarmiento (Order No. [redacted]; effective April 30, 2025). *See* Ex. 2 – Army Orders.

22. I-130 Spousal Petition Approved (Dec. 3, 2025). USCIS approved the I-130 filed by U.S. citizen Jairo Alejandro Arias Henriquez for his spouse, Petitioner (Receipt [redacted]; Notice Date Dec. 3, 2025; address in Copperas Cove, TX). *See* Ex. 3 – I-130 Approval Notice.

23. Re-Detention, Entry of Appearance; Active Litigation (Sept.–Oct. 2025). Immigration counsel (unaffiliated with counsel for Petitioner in this case) filed EOIR-28 on Sept. 18, 2025 (served via ECAS). *See* Ex. 4 – EOIR-28. On Oct. 31, 2025, counsel filed a Bond Application with Proof of Service via ECAS on OPLA. *See* Ex. 5 – Bond Packet/Proof of Service.

24. ICE Denial of PIP (Oct. 27, 2025). ICE San Antonio Field Office issued a letter denying a favorable exercise of discretion on the I-131 PIP request (signed digitally Oct. 27, 2025, 14:38:24). *See* Ex. 6 – ICE PIP Denial.

25. DHS Motion to Pretermit (Oct. 27, 2025). The same day, DHS filed a Motion to Pretermit relying on the Honduras ACA and requested expedited scheduling and, absent other relief, removal to Honduras; DHS served counsel via ECAS. *See* Ex. 7 – DHS Motion to Pretermit & COS.

26. Respondent's Opposition (Nov. 6, 2025). Petitioner timely opposed, asserting lack of notice, collateral estoppel, and due process prejudice. *See* Ex. 8 – Opposition to Motion to Pretermit.

27. IJ Orders (Nov. 6, 2025). The IJ granted DHS's Motion to Pretermit pursuant to Matter of C-I-G-M- & L-V-S-G- (BIA 2025) and the Honduras ACA, in which it stated written notice was provided on Oct. 27, 2025, and Petitioner had a reasonable opportunity to respond. Let the Court note that the Motion to Pretermit also "reasons" that Petitioner (Respondent in that proceeding) had not expressed fear of a "return to Honduras." First, English is not her first language, and second—she's not from there and has never been! *See* Ex. 9 – IJ Order Pretermitting Protection Claims. Any reasonable person would be petrified to be sent to nation-state that brags about how it jails immigrants indefinitely, in

which she has no family or connections, and is being effectively rendered to in the same manner as gang members. That same date, the IJ denied custody redetermination/bond. *See* Ex. 10 – IJ Bond Order (Denial).

28. Second and Third PIP/Reconsideration Requests (Oct. 28–Nov. 2025). Counsel submitted an Urgent Request for Reconsideration of the PIP denial on Oct. 28, 2025, citing immediate DHS pretermission filing, medical deterioration, and military-family hardship; a third PIP request followed, noting a Nov. 21, 2025, final hearing and the soldier-spouse's possible deployment. *See* Ex. 11 – 2nd PIP Reconsideration Request. Ex. 12 – 3rd PIP Request and it was denied. No specific individual substantive reason was cited for any of the three PIP denials.
29. Approved I-130 as Adjustment Platform. The I-130 approval notice confirms intent to adjust status and that Petitioner "should submit a copy of this notice, along with a Form I-485." *See* Ex. 3 – I-130 Approval Notice.
30. On November 6, 2025, the Immigration Judge denied bond redetermination for lack of authority under the § 235/ACA posture, and the court granted DHS's Motion to Pretermit under the Honduras ACA framework—events that occurred after ICE summarily denied discretionary parole on Oct. 27, 2025.
31. Petitioner is subject to an Order of Removal, which can occur at any time, which means that time is of the essence.

CLAIMS FOR RELIEF

COUNT I HABEAS (UNLAWFUL CIVIL DETENTION UNDER THE IMMIGRATION AND NATIONALITY ACT 8 U.S.C. § 1226(A), THE ADMINISTRATIVE PROCEDURE ACT, THE ACA & DUE PROCESS)

32. Continued detention without a legally adequate, individualized consideration of alternatives violates 8 U.S.C. § 1226(a) and the Fifth Amendment. DHS/ERO continues to detain Petitioner without a constitutionally sufficient, individualized assessment of flight risk/danger considering undisputed equities (approved I-130; fixed residence with U.S. soldier-spouse; verified work history; no disqualifying criminal history; home and car ownership; full compliance). Based on the facts in evidence, already introduced and/or accepted by the DHS as true the court should order immediate release or Petitioner, or that the DHS or an individualized determination with reasoned findings on its own administrative record as reflected in this proceeding. *See* Exs. 2–6, 8–12.

COUNT II ARBITRARY AND CAPRICIOUS DENIAL/REFUSAL TO CONSIDER MILITARY PIP AND RELATED HUMANITARIAN RELIEF.

33. ICE denied PIP on Oct. 27, 2025, via a form denial ("not deemed appropriate"), then pursued pretermission the same day, despite DHS/USCIS guidance making military family status a strong positive factor and permitting PIP and/or deferred action to preserve family unity and military readiness. The Court should preserve the status quo (TRO) while USCIS adjudicates PIP on the merits; at minimum, it should enjoin removal/transfer that would frustrate adjudication. ICE denied request for PIP twice more on the same non-individualized form. *See* Exs. 6, 7, 11, 12.

COUNT III DUE PROCESS VIOLATION IN LATE-BREAKING ACA LITIGATION TACTICS AND RESULTING PREJUDICE.

34. DHS introduced ACA pretermission on Oct. 27, 2025, days before merits, causing substantial prejudice; the IJ relied on *C-I-G-M-* to grant pretermission and deny relief. The equities support federal equitable intervention to prevent removal while collateral relief (PIP/adjustment pathway) is viable. *See* Exs. 7–10.

COUNT IV HABEAS/ALL WRITS (ANTI-TRANSFER TO PRESERVE JURISDICTION AND ACCESS TO COUNSEL) DECLARATORY/INJUNCTIVE RELIEF

35. Declaratory judgment that Petitioner's detention is unlawful and injunctive relief ordering release or a constitutionally adequate hearing and prohibiting transfer pending final adjudication. An order is necessary to maintain the status quo and protect this Court's jurisdiction over the person of the custodian and Petitioner, and to prevent irreparable harm through counsel deprivation and forum manipulation.

ARGUMENT

A. UNLAWFUL RE-DETENTION & DUE PROCESS

36. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

37. DHS unlawfully re-detained Petitioner after prior release, whether legally recognized as "on recognizance" under INA § 236, 8 U.S.C 1226(a), or another INA section, without alleging a violation of prior release conditions or providing due process.

35. In habeas proceedings, the Government bears the burden of justifying detention. *Zadvydas v. Davis* at 688. Immigration detention must be expressly authorized by statute and exercised within constitutional limits. *Demore v. Kim* at 517.

36. Where the Government cannot articulate the legal and factual basis for revoking a prior release on recognizance and continuing detention—particularly after years of compliance and community stability—detention becomes arbitrary and unlawful. Habeas corpus exists to test the legality of custody itself and to order release when detention exceeds statutory or constitutional limits. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

37. Re-detention after prolonged liberty without an individualized custody determination or bond hearing renders detention punitive rather than regulatory and violates the Due Process Clause. *Zadvydas v. Davis* at 690.

38. Here, DHS released Petitioner on her own recognizance pursuant to INA § 236 and the applicable provisions of Title 8 C.F.R., subject to written conditions. Petitioner complied with those conditions for nearly three years. Nevertheless, ICE re-detained Petitioner at a routine check-in September 2025, and has detained her continuously since, without alleging any violation of release by CPB, without providing notice of revocation, and without affording a legally sufficient individualized custody determination or bond hearing. *See* Exhibit 4. Detention under INA § 236(a), 8 U.S.C. § 1226(a), is discretionary rather than mandatory, and it requires an individualized assessment of flight risk and danger and consideration of release on conditions less restrictive than detention.

39. The public interest favors preventing unlawful detention and wrongful removal. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Continued detention serves no legitimate regulatory purpose and violates due process. *Zadvydas v. Davis* at 690.

B. <u>DETENTION IS ULTRA VIRES UNDER INA § 235(b)</u>

61. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

62. In the alternative, if Respondents contend that Petitioner is detained under INA § 235(b), 8 U.S.C. § 1225(b), that contention is inconsistent with DHS's own contemporaneous custody paperwork. DHS issued an Order of Release on Recognizance expressly stating that Petitioner was arrested, placed in removal proceedings, and released "in accordance with § 236 of the [INA]" and Title 8 C.F.R. *See* Exhibit 1 at 4. Having processed Petitioner into § 240 removal proceedings and released him under § 236, Respondents cannot plausibly recharacterize him as a § 235(b) detainee to deny bond and due process.

63. Section 235(b) permits arrival release only through parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5). *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958). The absence of any parole finding on the NTA, together with DHS's express § 236 recognizance release, confirms that § 235(b) is not the operative detention statute here. *See* Exhibit 1 at 1, 4.

64. Accordingly, any attempt to detain Petitioner under § 235(b) at this late stage is ultra vires. At minimum, Respondents must proceed under the discretionary detention framework that their own Order of Release on Recognizance invoked—INA § 236(a)—and provide an individualized custody determination consistent with due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Odusote v. Barr*, 980 F.3d 363 (5th Cir. 2020).

65. Petitioner pleads that, under these circumstances, detention is ultra vires and void.

C. UNLIMITED, PROLONGED DETENTION NOT PERMITTED UNDER EITHER SECTION

66. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

67. The Board of Immigration Review (BIA) has recently claimed that the Attorney General, via its authority delegated to the BIA and Immigration Courts, no longer has jurisdiction to grant bond that is explicitly stated as within its power in 8 U.S.C. §1226(a). *See Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025).

68. Therefore, Respondents may argue that Petitioner is not eligible for a bond hearing, or that an Immigration Judge does not have jurisdiction to grant bond. This is in direct opposition to 8 U.S.C. § 1226(a). They may argue that Petitioner is subject to mandatory detention and that aliens detained pursuant to either Section 235 or 236 are not entitled to bond, citing *Hurtado* and *Jennings v. Rodriguez* 583 U.S. 281, 287 (2018).

69. Petitioner does not argue against the statute's authorization to detain aliens according to specific statutes, but Petitioner does point out that Justice Alito, in writing for a 6 to 3 majority in *Jennings*, did not write that aliens are never entitled to bond. In fact, the Court conducted a painstaking review deconstructing the INA and many of its machinations. In doing so, The Supreme Court explicitly endorsed bond (Op. at 4) but simply said that a new bond hearing "every six months" is excessive. *Jennings* at 287. In doing so the Court never reached the idea that bond should be denied in immigration cases "across the Board."[2] In fact, the Court specifically acknowledged remedies, via bond or parole.

> [T]here is a specific provision authorizing release from §1225(b) detention whereas no similar release provision applies to §1231(a)(6). With a few exceptions not relevant here, the Attorney General may "for urgent humanitarian reasons or significant public benefit" temporarily parole aliens detained under §§1225(b)(1) and (b)(2). 8 U.S.C. §1182(d)(5)(A). *Id.*

70. To state this even more plainly, *Jennings* not only stated release/bond remedies exist for the sections Respondents have stated through Denial of Bond to have no jurisdiction, thus

[2] Quotations are counsel's around an old saw. Now he knows what that expression means.

no remedy, it also called out sections that specifically prohibit bond, never naming §§1225(b)(1) and (b)(2) among them. This is consistent with §1226(a), which grants the Attorney General the right to detain and release detainees on bond or parole.

71. Immigration judges are appointed by the Attorney General to preside over DHS/ICE enforcement proceedings. "The primary mission of the Executive Office for Immigration Review (EOIR)," wherein immigration judges sit, "is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings." *See* https://www.justice.gov/eoir/about-office. Authority over enforcement was transferred to the Department of Homeland Security in its formation law in 2002—the period following the attacks on 9/11/01. *See* Homeland Security Act of 2002, Public Law 17-296, §§402, 403, 441.

72. Even if this Court concludes that Petitioner was subject to mandatory detention, the *Jennings* court only ratified 6-months continued detention, and Petitioner has remained continuously detained beyond that threshold.

73. In *Jennings*, the Court made clear it did not want judges straying from the statutes unless required, adhering to "the canon of constitutional avoidance," which "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one [plausible] construction." *Clark* v. *Martinez*, 543 U.S. 371, 385, as quoted in *Jennings* Op at 12.

74. Petitioner argues that lack of jurisdiction would be a ruling for (i) an Article III court (ii) with jurisdiction (iii) to apply, and (iv) for the DOJ/DHS/ICE to follow. It would not be a

"policy change" as announced by the DOJ/BIA to make new law without its passing by Congress, much less being vetoed or signed into law by the President.

75. Petitioner specifically notes the specific statutory language that requires proceedings under § 1229(a), and under 8 CFR §1003.10(b), for appointed immigration judges to exercise their "independent judgement."

> INA § 101(b)(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.
>
> 8 CFR §1003.10
> (a) Appointment. The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.
> (b) Powers and duties. In conducting hearings under section 240 of the Act and such other proceedings the Attorney General may assign to them, immigration judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, and subject to the applicable governing standards, immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.

76. Petitioner further argues that if Justice Alito had intended to exclude bond in all cases in *Jennings*, thereby taking jurisdiction over INA matters away from immigration judges, the rightfully anointed administrative arm under the DOJ, he would have written it on behalf

of the Supreme Court majority. Living in or out of detention is a fundamental element of immigration law. Why relieve the DOJ of their function, i.e. their authority?

77. The Supreme Court in *Jennings* did not rule that immigration judges can no longer decide bond cases. Nor did the Court rule that IJs, as the IJ did in the instant case, could (i) set them, (ii) hear them, but (iii) in doing so state that they do not have jurisdiction, thereby (iv) denying bond motions on such basis. In the preceding sentence (i)-(iv) would need to be accomplished without a specific statutory exclusion or Article III court-ordered prohibition.

D. DHS AND THE AG ARE NO LONGER GRANTED *CHEVRON* DEFERENCE TO INTERPRET VAGUE STATUTES

78. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

79. Until recently, the Supreme Court, and in so following, the Fifth Circuit, had a long history of granting substantial deference to administrative agencies of the Executive Branch. *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984). In sum, *Chevron* required courts to defer to an administrative agency's reasonable interpretation of an ambiguous statute for which that agency is responsible.

80. The Fifth Circuit followed. *Martinez v. Mukasey,* 519 F. 3d 532, 541–42 (5th Cir. 2008). While calling into question the clarity of the INA, *Martinez* states:

> ...[W]e first accord substantial deference, if warranted, to the BIA's interpretation of the INA. *Omari v. Gonzales*, 419 F.3d 303, 306 (5th Cir.2005) (quoting *Smalley v. Ashcroft*, 354 F.3d 332, 335-36 (5th Cir.2003)). Having afforded any necessary deference, we then "review de novo whether the particular statute that the prior conviction is under falls within the relevant INA definition." Id. (citations omitted). [Their parenthetical].

81. *Martinez*, *Omari* and *Smalley* are all progeny of *Chevron*. *Smalley* announces itself as

giving "*Chevron* deference" in the context of the BIA's interpretation of a crime involving moral turpitude (CIMT). *Smalley* at 335-36. The other cases follow suit in their respective subject matters citing *Chevron*.

82. The cases cited immediately above proclaim deference to the BIA or administrative agencies in general. The Fifth Circuit has looked at the issues related to statutory interpretation directly in INA cases and others. Yet through no fault of its own, the Fifth Circuit's recognition of *Chevron* deference is out of date.

83. That concept of deference is no longer good law due to *Loper Bright Enterprises v. Raimondo* 603 U.S. 369 (2024), in which the Supreme Court overruled *Chevron* deference with a 6-3 vote. In reaching its conclusion, the Court found that when federal agency rulemaking goes beyond administering laws as passed by Congress, the agency instead engages in legislating. The majority opinion noted that under the Separation of Powers doctrine, the framers of the Constitution envisioned that courts would have the final interpretation of law — not the Executive Branch. The Court held that the judiciary has the sole prerogative to interpret the law, and that Congress's Administrative Procedure Act of 1946 (APA) indicates agencies are not entitled to deference when interpreting statutes. The Court's decision (authored by Chief Justice Roberts) emphasizes the text of the APA, which is designed to impose a "check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in the legislation creating their offices." *Op.* at 13. For instance, The BIA's invention of a lack of jurisdiction that is directly contradicted by statute is an example of what Justice Roberts termed "zeal."

84. While eliminating *Chevron* doctrine deference, the Supreme Court's decision did not instruct lower courts to completely ignore agency expertise, particularly when the

agency interpretation has been long-standing and "consistent over time." *Op.* at 8, 16-17. In the instant case, this could be interpreted to require return, generally, to the methodology in which DHS/ICE and the immigration courts operated for decades prior to Respondents' leadership of Executive Branch agencies that includes and inventive interpretations of law beyond statutory authority, or to the extent an agency tries to "cure" vagueness by introducing new orthodoxy. The Eastern District has already cited *Loper* in *Texas v Becerra,* 6:24-cv- 211-JDK (ED Tex, 2024).

E. RECENT RULINGS IN THE WESTERN DISTRICT PROVIDE PERSUASIVE AUTHORITY

85. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

86. Now that the concept of judicial deference to administrative agencies has been scaled back in *Loper*, the Supreme Court has re-established the Federal Courts' supremacy over interpretation of statutes.

87. To this end, recent Petitions for Habeas Corpus for adjudication by the U.S. District Court for the Southern District of Texas are noted herein as persuasive authority. Recent filings in SDTX, e.g., *Alkis v. ICE* and *JAV v. Trump*, highlight the District's role in adjudicating habeas petitions involving detained noncitizens. Other petitions filed in SDTX are *Hassan Ahmed v. Noem* and *Nery Ortiz Ortiz v. Bondi*. Finally, Petitioner includes *Cruz Gutierrez v. Thompson et al.,* No. 4:25-cv-4695 (S.D. Tex. Nov. 14, 2025), in which the petitioner, a Mexican national detained in ICE custody at the Joe Corley Processing Center in Conroe, Texas, filed a § 2241 habeas petition seeking release on bond. The Court denied the Government's motion for summary judgment and granted habeas relief.

F. THE COURT HAS AUTHORITY REQUIRE NO BOND

88. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

89. The Court may exercise its discretion to waive the requirement to post a bond under Rule 65(c). Before an injunction may issue, a movant for preliminary relief must "give security" to redress the costs of a wrongful injunction. Fed. R. Civ. P. 65(c). But the movant need only post "an amount that the [district] court considers proper." *Id.* That last provision vests vast discretion in the trial court; indeed, a district court "may elect to require no security at all." *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 303 (5th Cir. 1978) (per curiam) (citations omitted); *see also Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (reaffirming *Corrigan Dispatch*).

G. EQUITIES IN FAVOR OF PETITIONER: EVIDENTIARY PROFER ON DANGER TO NATIONAL SECURITY AND FLIGHT RISK (*R-A-V-P-* factors),

90. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

91. Petitioner submits the following concise proffer, mapped factor-by-factor to the BIA's framework in *Matter of R-A-V-P-*, with pinpoint record cites. Petitioner does not plea herein that if the Court orders a legally sufficient bond determination on the part of an IJ to ensue, that the Court can order the result of such hearing. However, on this paper record, without factual disputes between the parties, Petitioner pleas that the Court issue findings of fact on the following nine equities:

i. Fixed address / stable residence. Petitioner can reside with her U.S.-citizen soldier-spouse at [redacted] the address USCIS used when approving the I-130 petition. The Application for Bond includes mortgage paperwork on the residence signed by Petitioner and her husband US Army PFC Henriquez.

ii. Length of residence / community presence. CBP records show Petitioner was first encountered on August 11, 2022, demonstrating multi-year U.S. presence; she has since built ties consistent with residence with her spouse stationed in Texas.

iii. Family ties in the United States. USCIS approved the immediate-relative I-130 filed by her U.S.-citizen spouse, PFC Jairo Alejandro Arias Henriquez, on December 3, 2025 (Receipt No. [redacted]. The notice lists the Copperas Cove residence.

iv. Employment / financial ties. Petitioner has verified employment with Ajinomoto Foods North America (Verification ID 11-0625639; verification date Sept. 18, 2025), evidencing lawful, stable economic ties. The family also maintains a loan on a Tesla American-made automobile that is included in the Application for Bond.

v. Record of appearances / compliance with proceedings. Counsel entered her appearance (EOIR-28) on Sept. 18, 2025, and has actively litigated, including filing the bond application and serving OPLA via ECAS on Oct. 31, 2025—demonstrating ongoing compliance.

vi. Immigration history (including manner of entry). The I-213 reports Petitioner was apprehended by Border Patrol approximately 12 miles east of Otay Mesa POE and 3.5 miles north of the border on Aug. 11, 2022, with no fraud or misrepresentation alleged; she was processed and placed into proceedings.

vii. Criminal history (or lack thereof). DHS's own filings assert no disqualifying criminal history when invoking the ACA bar—confirming the absence of adverse criminal factors in the agency's record. She has never been arrested.

viii. Past attempts to flee / obstruct justice. There is no allegation of absconding, non-appearance, or obstruction. To the contrary, DHS served its Motion to Pretermit through ECAS, and Respondent timely opposed on November 6, 2025—again reflecting timely engagement with the court process.

ix. Likelihood of relief / strength of underlying case. USCIS approved the immediate-relative I-130 (spousal) petition, positioning Petitioner to seek status upon being "paroled" for INA § 245(a) purposes—precisely the role of Military Parole-in-Place (PIP) in preserving family unity and military readiness. Additionally, the record contains the Army orders identifying Petitioner as a dependent authorized to travel with her soldier-spouse (PCS/Accession), a strong positive equity under DHS's military-family policies that it has inexplicably ignored in denying PIP three times.

H. WHY PIP (MILITARY SPOUSE) IS A DECISIVE PRO-RELEASE EQUITY

92. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

93. DHS (USCIS) may grant Parol-in-Place on a case-by-case for urgent humanitarian reasons or significant public benefit. USCIS's policy memorandum PM-602-0114 recognizes discretionary options—including PIP—for designated spouses/parents/children of service members and veterans and states that such family relationships weigh strongly in favor of a favorable exercise of discretion, while noting the guidance creates no enforceable rights.

94. USCIS confirms that where a qualifying Form I-130 has been filed or approved, the noncitizen spouse may request PIP with the USCIS office having jurisdiction over residence; an approved petition is not required for an initial grant, but here the petition is approved, further strengthening equities and the practical availability of relief upon a PIP grant.

I. IRREPARABLE HARM AND PUBLIC INTEREST

95. If removed or transferred, Petitioner will: (1) lose access to her soldier-spouse and military medical support; (2) forego viable PIP/adjustment relief; (3) endure medical deterioration documented in counsel's filings; and (4) moot this habeas action. The public interest favors family unity for servicemembers and ensuring lawful adjudication processes. *See* Exs. 2, 3, 11, 12.

CONCLUSION

96. Petitioner's detention is unlawful because, it is not in accordance with the INA the All Writs Act, the APA, the Due Process Clause of the Fifth Amendment, U.S. Supreme Court and Fifth Circuit precedent, as well as applicable precedent in this District. Continued detention under these circumstances without individualized consideration of less restrictive alternatives is outside the foregoing laws, Further, the government can adequately mitigate any of its interests without harm using less restrictive means. Petitioner seeks a writ releasing him forthwith, or alternatively, an order requiring an immediate individualized custody hearing with appropriate burden/standard and consideration of ability to pay and alternatives to detention.

97. On this evidentiary record—fixed residence, long-standing U.S. ties, an approved I-130 to a U.S.-citizen soldier-spouse, verified employment, no criminal history, no

absconding, and a live, USCIS-adjudicable pathway via Military PIP—the Court should find no flight risk, order release on recognizance or minimal conditions, or alternatively order an individualized custody redetermination with explicit findings keyed to the above factors, pending prompt USCIS adjudication of PIP and related benefits.

PRAYER FOR RELIEF

Based on the foregoing, Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Issue findings of fact consistent with those proferred by Petitioner herein, specifically that she poses no danger to society or national security, and that she objectively meets all nine criteria that show she is not a flight risk;
3. Order Petitioner's immediate release with no bond under statutory or as-applied Due Process or,
4. In the alternative, order a prompt, individualized bond hearing with eitrher no biond, or requiring minimal bond (no more than $1,500);
5. Enjoin Respondents from transferring or removing Petitioner absent further order of the Court;
6. Issue an Order to Show Cause under 28 U.S.C. § 2243;
7. Overturn *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) on the basis of *Loper Bright Enterprises v. Raimondo* 603 U.S. 369 (2024) as it seeks to deny the Attorney General's bond jurisdiction via the BIA and Immigration Courts;
8. Grant all other relief the Court deems just and proper.

Dated: January 19, 2026
Respectfully submitted,
s/ Sean P. Cordobés
Attorney for Petitioner
Admissions: Texas Bar No. 00792106 | New York Bar No. 4069282
US District Court for the Northern District of Texas
US District Court for the Southern District of Texas Fed. No. 3879286
US District Court for the Eastern District of Texas
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