

JUDGE KATHLEEN CARDONE

FILED

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

JAN 20 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY CM
DEPUTY CLERK

Dayana Estefania Cajamarca Alomoto,

Petitioner,

Case No. _____

v.

EP 26 CV 0099

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

U.S. Department of Homeland Security

Todd M. Lyons, Acting Director of Immigration and Customs
Enforcement,

U.S. Immigrant and Customs Enforcement,

Marisa Flores, Director, El Paso Field Office Immigration and
Customs Enforcement, and

Curtis Taylor, Major General, U.S. Army at Camp Bliss

Respondents.

**VERIFIED
PETITION
FOR WRIT OF
HABEAS CORPUS**

Expedited Handling
Requested

INTRODUCTION

1. Petitioner, Ms. Dayana Estefania Cajamarca Alomoto, ("Ms. Cajamarca Alomoto" or "Petitioner"), by and through Next Friend Luis Ivan Chiluisa Marsillo, Petitioner's husband, 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 Ms. Cajamarca Alomoto from ICE detention and/or provide her with a bond hearing pending the completion of her immigration proceedings.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, c. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).
3. Federal question jurisdiction exists because Ms. Cajamarca Alomoto seeks to challenge her custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*
4. 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); and *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019).
5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because Ms. Cajamarca Alomoto is detained within the Western District of Texas.
6. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this District.

PARTIES

7. Petitioner is a citizen of Ecuador and a resident of Richfield, Hennepin County, Minnesota, who is currently being held at the ERO El Paso Camp East Montana detention facility in El Paso, Texas. Petitioner is under the direct control of the respondents and has no scheduled release date.

8. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Diallo.
9. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Western District of Texas, supervises ICE field offices, and is legally responsible for pursuing Ms. Cajamarca Alomoto's detention and removal. As such, Respondent Noem is a legal custodian of Ms. Cajamarca Alomoto.
10. Respondent U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, DC, and the parent agency of U.S. Immigration and Customs Enforcement.
11. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.
12. Respondent U.S. Immigration and Customs Enforcement ("ICE") is a component agency of DHS.
13. Respondent Marisa Flores is being sued in her official capacity as the Field Office Director for the El Paso Field Office for ICE within DHS. In that capacity, Field Office Director Marisa Flores has supervisory authority over the ICE agents responsible for

detaining Diallo. The address for the El Paso Field Office is 1541 Montana Ave, Suite E, El Paso, Texas, 79936.

14. Respondent Major General Curtis Taylor is being sued in his official capacity as the Commanding General responsible for the ERO El Paso Camp East Montana Detention Center within the U.S. Army Fort Bliss. Because Petitioner is detained in the ERO El Paso Camp East Montana Detention Center, Major General Taylor has immediate day-to-day control over Petitioner.

NEXT FRIEND

13. Next Friend Luis Ivan Chiluisa Marsillo brings this habeas corpus action as next friend of Petitioner, who is currently detained by U.S. Immigration and Customs Enforcement.
14. A next friend does not become a party to the habeas action but instead prosecutes the case on behalf of the detained individual, who remains the real party in interest. *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990).
15. Next-friend standing is appropriate to remedy a situation where the detainee cannot prosecute the action on their own, due to lack of access to the courts or a similar disability. *Id.* at 163–64.
16. For a court to have jurisdiction over a habeas petition filed by a next friend, the application for habeas corpus must “set forth an adequate reason or explanation of the necessity of the ‘next friend’ device.” *Weber v. Garza*, 570 F.2d 511, 514 (5th Cir. 1978).
17. First, the next friend must explain and be able to support with proof “why the real party in interest cannot appear on his own behalf to prosecute the action.” *Soto v. Sowell*, No. CV H-25-1362, 2025 WL 2822000, at *3 (S.D. Tex. Oct. 3, 2025) (quoting *Whitmore*, 110 S. Ct. at 1727). Second, that the next friend “is ‘truly dedicated to the best interest of

the person on whose behalf he seeks to litigate” *Id.* Lastly, the next friend must have “some significant relationship with the real party in interest.” *Id.*

18. Here, the detainee is unable to prepare, sign, or file this petition because she is being held in ICE custody at ERO El Paso Camp East Montana without reliable access to legal materials or translation services, and facing pending removal. Petitioner speaks Spanish, and speaks little to no English. These conditions make meaningful access to the courts impossible absent next-friend intervention, especially given that Ms. Cajamarca Alomoto could be deported at a moment’s—or without any—notice.
19. Petitioner is Ms. Cajamarca Alomoto’s husband and the father of their two daughters who are five-years old and eight-years old. Petitioner Next Friend is acting solely in the Petitioner’s best interests, not to assert his own rights or interests in any way. Mr. Chiluisa Marsillo therefore satisfies the requirements for next-friend standing under *Whitmore* and *Soto*, and this Court has jurisdiction to consider the Petition.
20. In the alternative, if this Court would like more proof to establish the facts supporting Next Friend status, Mr. Chiluisa Marsillo respectfully requests the opportunity to submit additional affidavits attesting to the facts above.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

21. Ms. Cajamarca Alomoto is a resident of Richfield, Minnesota, and a citizen of Ecuador. She has lived in the United States continuously since July 2023, when she entered without inspection.
22. The Department of Homeland Security approved employment authorization for Ms. Cajamarca Alomoto in 2025 and Ms. Cajamarca Alomoto works as a cleaning custodian.
23. Ms. Cajamarca Alomoto pays taxes to the U.S. and Minnesotan governments.

24. Ms. Cajamarca Alomoto is a mother two elementary school daughters, who are five and eight years old, respectively. Ms. Cajamarca Alomoto lives with her daughters.
25. Ms. Cajamarca Alomoto is an active member of her community in Minnesota. She devotes significant time to volunteering at her daughters' school, chaperoning students as they take the school bus to and from school and assisting those kids in getting on and off the bus and getting back to their houses. Ms. Cajamarca Alomoto spends her free time soaking up as much time as she can with her beloved family.
26. On January 8, 2026, at approximately 9:30 a.m., Ms. Cajamarca Alomoto went to a check-in appointment with ICE at ICE's Saint Paul Field Office at Fort Snelling, which she does on a periodic basis.
27. Ms. Cajamarca Alomoto was detained by federal officers at that ICE check-in appointment. She complied with the arrest. She spent at least one night at the Fort Snelling Immigration Office in St. Paul, Minnesota, before being flown to her current location in El Paso, Texas.
28. Ms. Cajamarca Alomoto was able to briefly speak to her family when she was held at Fort Snelling on Friday, January 9, 2026. Her husband was able to look up Ms. Cajamarca Alomoto online and discovered that she was sent to the ERO in El Paso Camp East Montana in Texas, which is the Fort Bliss Military Base in El Paso, Texas.¹
29. Ms. Cajamarca Alomoto was again able to contact her husband briefly on Saturday, January 10, 2026, but was only able to stay on the line long enough to let her husband know that she was okay and in Texas.

¹ U.S. Immigration and Customs Enforcement, Online Detainee Locator System, available at <https://locator.ice.gov/odls/#/search> (last visited Jan. 10, 2026).

30. Neither Ms. Cajamarca Alomoto or her husband knows the status of any deportation proceedings to which Ms. Cajamarca Alomoto may be subject since being detained.
31. Ms. Cajamarca Alomoto poses no risk to society and has strong connections to her community in Hennepin County, including her family, friends, and neighborhood community.
32. Detaining Ms. Cajamarca Alomoto is an expensive and pointless endeavor. Ms. Cajamarca Alomoto respectfully seeks the opportunity to return to her home in Richfield, Minnesota, and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.
33. Pending the adjudication of her Petition, Ms. Cajamarca Alomoto further seeks an order restraining the Respondents from transferring her to a location outside of the jurisdiction of this Court during the pendency of this Petition, so that she may remain within the jurisdiction of this Court and accessible to her legal counsel and family support networks during the pendency of this Petition.

STANDARD OF LAW

29. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The “Great Writ” has been referred to by US 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. § 22441(c)(3).

30. 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.*
31. Courts have jurisdiction to hear habeas petitions filed by noncitizens who have no final removal order, whose challenges to their arrest and detention are “independent of any future removal order.” *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025). Nor is a petitioner required to first exhaust administrative remedies where, as here, petitioner is not appealing a final order of removal. *Id.* at 6.
32. “[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).
33. Only under certain circumstances are noncitizens 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) (authorizing mandatory detention of immigrants seeking admission from outside the United States).
34. 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), or 8 U.S.C. §§ 1227(a)(2)(B-D).

35. 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)(II). Ms. Cajamarca Alomoto has a number of traffic violations on her record. First, Ms. Cajamarca Alomoto was convicted of parking on the street following a snow emergency, in violation of Richfield City Code §1305.13(1). This is not a crime of moral turpitude. Second, Ms. Cajamarca Alomoto was convicted on two occasions of driving after revocation, in violation of Minn. Stat. § 171.24.2(a). This is not a crime of moral turpitude. Third, Ms. Cajamarca Alomoto was convicted of failing to yield to an emergency vehicle, in violation of Minn. Stat. § 169.20.5(a). This is not a crime of moral turpitude. Fourth, Ms. Cajamarca Alomoto was convicted of failing to stop at a stop sign, in violation of Minn. Stat. § 169.20.3(b). This is not a crime of moral turpitude. Fifth, Ms. Cajamarca Alomoto was convicted of driving without a valid license, in violation of Minn. Stat. § 171.02.1(a). This is not a crime of moral turpitude. Sixth, Ms. Cajamarca Alomoto was convicted of driving while uninsured, in violation of Minn. Stat. § 169.797.3. This is not a crime of moral turpitude. These violations all fall under the enumerated exception of 8 U.S.C. § 1182(a)(2)(A)(ii)(II).
36. Unless the detained individual commits one of the proscribed crimes, the “default rule” is that 8 U.S.C. § 1226(a) and its implementing regulations apply to noncitizens “already present in the United States” and subject to pending removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (distinguishing between mandatory detention for

noncitizens “seeking to enter the country” under 1225(b), and noncitizens who, per 1226, are “already in the country” and thus who are entitled to bond hearings pursuant to pending the outcome of their removal proceedings, subject to criminal record exceptions). Under this default rule, detention is not mandatory, and immigrants are constitutionally entitled to a bond hearing. *See Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026).

37. Despite this clear, longstanding distinction between noncitizens seeking entry from outside the country, to whom 1225(b) applies, and noncitizens who have been living in the United States for more than two years subject to the default 1226(a), Respondents have decided to openly create a new interpretation of these rules contrary to how courts and ICE themselves have interpreted immigration law since 1996. *Lopez Areveldo*, 2025 WL 2691828 at 7. Now, Respondents are saying that 1226(a) does not apply to anyone.
38. This departure involves a drastic expansion of the interpretation of mandatory detention so as to apply to individuals who have been living in the country for years, not just those seeking admission at the border.
39. The Bureau of Immigration Appeals’ (“BIA”) position change (described in *In re: Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) flies in the face of existing Supreme Court precedent, which makes it clear that the government’s authority to detain certain noncitizens who are already in the country, and the subsequent requirement that those detainees be afforded a bond hearing, comes from 8 USC § 1226, *not* § 1225. *Jennings*, 583 U.S. at 281-82.
40. Not only that, but a majority of courts across the country have, since the BIA has attempted to usurp Congress through a new and novel interpretation of several decades of

precedent, rejected this expansion. These courts have proclaimed resoundingly and repeatedly that this new, expansive interpretation of mandatory detention under the INA is either incorrect and/or without a reasoned basis. *See Lopez-Campos v. Raycraft*, — F. Supp. 3d —, — n.5, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); *see, e.g., Jimenez v. FCI Berlin, Warden*, — F. Supp. 3d —, — & n.9, 2025 WL 2639390, at *10 & n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *Lopez Santos*, 2025 WL 2642278, at *5; *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *1 (W.D. Tex. Sept. 22, 2025).

39. Here, Petitioner Cajamarca Alomoto fits the ‘default rule’ as someone without a criminal record who has been in the United States for more than two years, (in fact, more than twenty), and is thus entitled to a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment Due Process

Petitioner is being deprived of an adequate and meaningful process to challenge his ongoing confinement.

40. Petitioner realleges and incorporates by reference the allegations contained above.
41. Ms. Cajamarca Alomoto has due process rights as a resident of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
42. Federal courts use the three-part test in *Mathews v. Eldridge* to determine whether civil detention violates a detainee’s due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the

probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

43. Here, all three factors favor the Petitioner.

44. First, Ms. Cajamarca Alomoto has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491 ("Freedom 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."). Ms. Cajamarca Alomoto currently experiences the gambit of deprivations that come with physical detention, including separation from her family and her community, and future inhibitions to participate fully in her pending immigration proceedings.

45. Second, Ms. Cajamarca Alomoto will continue to be deprived of this interest if the current procedure (detaining Ms. Cajamarca Alomoto without a hearing) is followed. With her lack of disqualifying criminal record, Ms. Cajamarca Alomoto has a strong likelihood of meeting the criteria for being released on bond. 8 CFR §§236.1(c)(8), 1236.1(c)(8) (2020); *In re Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999). Even if she is not subsequently released, she still has a legal and constitutional interest in the hearing itself, in being heard.

46. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Ms. Cajamarca Alomoto poses no safety threats to the community. Releasing Ms. Cajamarca

Alomoto, or holding a hearing to release her on bond, would in fact *save* the government the resources and expense of continuing to imprison her.

47. The placement of Ms. Cajamarca Alomoto in detention pending the resolution of her asylum proceedings violates her constitutional rights to due process guaranteed in the Fifth Amendment.

COUNT TWO

Immigration and Nationality Act, 8 U.S.C. § 1226

Petitioner's Ongoing Detention, without the Opportunity for a Bond Hearing, Violates his Statutory Right to a Hearing as Guaranteed by 8 U.S.C. § 1226

48. Petitioner realleges and incorporates by reference each and every allegation contained above.
49. When a decision in an asylum application is pending on appeal and an immigrant is being detained pursuant to 8 U.S.C. § 1226(a), that immigrant is entitled to a bond hearing pursuant to 8 CFR §§236.1(c). Respondents violate the Immigration and Nationality Act by attempting to apply the mandatory detention statute 8 U.S.C. § 1225(b)(2), to Petitioner.
50. Ms. Cajamarca Alomoto is detained, notwithstanding her pending asylum application, without being afforded an opportunity to advocate for her release back into her community as the law requires.

REQUEST FOR ORDER TO SHOW CAUSE

51. Within three days, unless good cause for a delay is shown, “[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

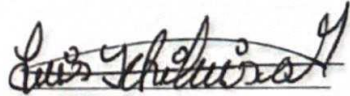
52. Next Friend, on behalf of Petitioner, respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court's order, showing cause, if any, why a writ of habeas corpus should not be granted.

PRAYER FOR RELIEF

WHEREFORE, Ms. Cajamarca Alomoto prays that this Court grant the following relief;

1. Assume jurisdiction over this matter;
2. Issue an Order that Petitioner not be deported outside of the United States while this matter is pending;
3. Issue an Order requiring Respondents to show cause as to why Petitioner should not be released immediately, or in the alternative afforded a bond hearing;
4. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days; and
5. Grant any other and further relief that this Court may deem just and proper.

Date: 01/10/2026



Luis Ivan Chiluisa Marsillo

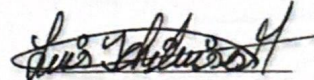

Luisivanchiluisa77@gmail.com


*Next Friend to Petitioner
Not An Attorney*

**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 Petitioner's husband and acting on Petitioner's behalf as a Next Friend. I have personal knowledge of the factual assertions in this petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Date: 01/10/2026



Luis Ivan Chiluisa Marsillo

UNITED STATES DISTRICT COURT
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Dayana Estefania Cajamarca Alomoto,

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Pamela Bondi, Attorney General,

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Respondents.

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CERTIFICATE OF SERVICE

I hereby certify that on 01/10/2026, I caused a copy of the
Verified Writ of Habeas Corpus and Civil Cover Sheet to be served by first class
mail, postage paid, to the following:

Curtis Taylor, Major General 6420 Digital Road El Paso TX
U.S. Attorney's Office; 700 E. San Antonio, Suite 200; El Paso, Texas 79901 79936

Date: 01/10/2026

Signature: [Handwritten Signature]

Printed Name: Luis Chelisa Narillo