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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LAURA NELLY MURILLO-ARADILLAS,

Detainee with Alien Case File Number 

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY (DHS);
KRISTI NOEM, DHS SECRETARY (in her official capacity);
EL PASO FIELD OFFICE DIRECTOR, ICE ENFORCEMENT AND REMOVAL
OPERATIONS (ICE ERO) (in his official capacity);
WARDEN (or equivalent office or officer), **CAMP EAST MONTANA DETENTION**
FACILITY (in their official capacity);

Respondents.

Civil Action Case No. 3:26-cv-0150

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Non-mandatory civil immigration detention; INA § 236(a); Constitutional Due Process

Introduction

1. Petitioner **LAURA NELLY MURILLO-ARADILLAS** (“Petitioner” or “Mr. Murillo-Aradillas”) is a non-mandatory civil detainee held by ICE at *CAMP EAST MONTANA DETENTION FACILITY*, 6920 Digital Road El Paso, TX 79936 at the behest of and under the physical and purportedly legal custody of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations Division (“ICE ERO”), a constituent agency of the U.S. Department of Homeland Security and its chief executive, Respondent DHS SECRETARY KRISTI NOEM.
2. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) placed her under arrest and into removal proceedings under the **Immigration and Nationality Act** (“INA”) § 240 and charged her under INA § 212(a)(6)(A)(i) with entry without inspection, or “EWI”. The government has presented **no evidence of any criminal history**, and she has a fixed address, broad and wide-spread community support in and around Chicago, Illinois, and is of good moral character to which many can attest.
3. The Immigration Judge denied bond for lack of jurisdiction by reclassifying a long-residing noncitizen as an “arriving alien” and therefore subject to mandatory detention, while failing to consider, weigh, or otherwise assess any evidence of her public danger or flight risk findings or other custody determination factors — erroneously treating custody as outside of INA § 236(a).
4. Under **28 U.S.C. § 2241**, the writ of habeas corpus is the proper vehicle to challenge unlawful civil immigration detention; e.g. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (“*Soberanes*”) (detention challenges proceed via habeas) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (“*Zadvydas*”); *Hamama v. Adducci*, 285 F. Supp. 3d 997, 2018 U.S. Dist. LEXIS 421, 2018 WL 263037 (E.D. Mich.)

applying *Zadvydas* at 1013-1014 (“prolonged detention without adequate procedural protections would raise serious constitutional concerns...[e]ven where detention is permissible [under *Zadvydas*], due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint...[absent which] prolonged detention of an alien without an individualized determination of her dangerousness or flight risk would be constitutionally doubtful”) (internal quotations and citations omitted); also *Magna Carta*, cl. 39, cl. 40 (1215) cited in *Boumediene v. Bush*, 553 U.S. 723, 128 S. Ct. 2229 (2008) at 740; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 at 141-145 (Thomas, J, concurrence) discussing the *Magna Carta* in the context of 28 U.S.C. § 2241 in civil immigration detention *habeas* petitions, finding a mandatory detention provision constitutional when based on evidence, suspicion, or determination of dangerousness, as “Congress may give the executive power to detain without bail or trial based on suspicion of a crime or dangerousness,” but even those rare examples of its suspensions historically were limited to circumstances of active rebellion, and periods of less than 12 months).

5. Recent district decisions within the 5th Circuit and other District Courts confirm that long-residing EWIs in § 240 proceedings are detained, if at all, under INA § 236(a), and are entitled to individualized custody determinations—not categorical detention, thus denying a meaningful opportunity to seek bond violates the Petitioner's due process rights; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751 at 11 (W.D. Tex. Oct. 21, 2025); *Tovar v. Noem*, No. 5:25-CV-1509-JKP, 2025 LX 539411 (W.D. Tex. Nov. 25, 2025); *Coulibaly v. Thompson*, No. 5:25-CV-1539-JKP, 2025 LX 560840 (W.D. Tex. Nov. 25, 2025); *Perez v. Noem*, No. 3:25-cv-2920-K-BN, 2025 LX 509530 (N.D. Tex. Nov. 14,

2025); *Ochoa v. Noem*, 2025 U.S. Dist. LEXIS 220632 (D.N.M. Jan. 22, 2026) (finding that a noncitizen who has resided in the United States for 19 years before being apprehended is not an “applicant for admission” subject to mandatory detention under § 1225(b)(2)(A) but instead subject to §1226(a) and entitled to a bond hearing).

6. In this case at bar, the factual patterns and claims are closely similar to those cited cases from these District Court decisions and applicable Appellate Court jurisprudence. As in *Hernandez-Fernandez v. Lyons* (W.D. Tex, 2025) *supra* and all other cited persuasive cases, Petitioner “*is not challenging: an order for removal, the process by which [her] removability will be determined, [n]or the exercise of discretion by the Respondents to detain [her]. [Petitioner Murillo Aradillas] has brought this habeas action to challenge the constitutionality of the statutory framework by which Respondents contend [her] detention without an individualized bond hearing is mandatory.*”
7. Petitioner seeks (a) a declaration that her detention is governed by INA § 236(a) and is unlawful absent a valid, individualized, fact-finding determination regarding the fact and circumstances of Respondents’ custody of Petitioner; and (b) **immediate release** or, in the alternative, a **prompt bond hearing** at which the Government bears the **clear-and-convincing** burden of proof to justify continuing detention or the absence of why less-restrictive Alternatives To Detention (“ATDs”) could not be more narrowly tailored to achieve the government’s regulatory objectives without depriving noncitizens of their liberty and freedoms. Such considerations are particularly necessary when persons pose little to no risk to the public safety, when Respondent federal government agents and agencies have not been required to present any evidence of Petitioner’s risk of flight or to the public safety, and when no government agents or agencies have been required to provide evidence-based legal justification for

Petitioner's continued detention before any administrative law court or any U.S. federal court.

8. Given the fundamental rights and liberties at stake, such violations of noncitizens' right to be heard should be remedied by requiring the government to demonstrate whether the law requires or permits persons to be jailed pending the final outcome of their removal proceedings. The government can deploy measures for achieving noncitizens' compliance without arbitrarily depriving them of their liberty and freedom in the meantime, especially if that comes at the expense of depriving particularly vulnerable U.S. citizen children of their mothers' care and protection.

JURISDICTION & VENUE

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in custody within this District and challenges the legality of that custody; *Soberanes*, 388 F.3d at 1310 (habeas proper to challenge detention); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); 138 S.Ct. 830, 841; 200 L.Ed.2d 122 (2018); *Demore v. Kim*, 538 U.S. 510; *Oyelude v. Chertoff*, 125 F. App'x 543 (5th Cir. 2005) at 546 (applying *Demore v. Kim* at 516-17: "Section 1226(e) may strip us of jurisdiction to review judgments designated as discretionary under the pertinent language of the statute, but it does not deprive us of all authority to review statutory and constitutional challenges. We retain jurisdiction to review [Petitioner's] detention insofar as that detention presents constitutional issues, such as those raised in a *habeas* petition;") *Kambo v. Poppell*, 2007 U.S. Dist. LEXIS 77857, Case No. SA-07-CV-800-XR (W.D. Tex. Oct. 18, 2007) (*habeas* jurisdiction for Petitioners detained without a charging document, applying *Demore*); *Diallo v. Pitts*, 2020 U.S. Dist. LEXIS 25508, 2020 WL 714274 (S.D. Texas, 2020) (same); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D.

Tex. 2015) (“[E]ven after the passage of the *REAL ID Act*, district courts retain the power to hear statutory and constitutional challenges to civil immigration detention under § 2241 when those claims do not challenge a final order of removal, but instead challenge the detention itself.”)

10. The venue lies in this Division because Petitioner is detained at the behest of and under the legal custody of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE ERO”), and her **immediate custodian** is located within the jurisdiction of this Honorable Court.
11. This petition does **not** seek review of a final order of removal; it challenges only detention, which is cognizable in habeas and not barred by 8 U.S.C. § 1252(b)(9) or (g); see *Jennings, supra*, 138 S.Ct. 830 at 841; *Demore, supra*; *Baez v. Bureau of Immigration & Customs Enforcement*, 150 Fed. Appx. 311 (5th Cir. 2005) [“*Baez*”]; *Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995) (*per curiam*); *Herrera v. Tate*, 2025 U.S. Dist. LEXIS 189999 (S.D. Tex. September 25th, 2025) at 11-12 (citing same); *Amm v. Thompson*, 2025 U.S. Dist. LEXIS 232341 at 6 (W.D. Tex. Nov. 26, 2025).
12. Removal proceedings under 8 U.S.C. § 1226 provide jurisdiction to immigration courts to hold a hearing to objectively determine Petitioner’s eligibility for release, whether on their own recognizance or subject to a bond security, based on risk of flight or danger to public safety, as well as hearings to review conditions of detention.
13. 8 U.S.C. § 1226 governs detentions both before and during removal proceedings which proceedings clearly grant jurisdiction to immigration courts to exercise discretion to determine and set bond; see e.g. *Kim v. Obama*, 2012 U.S. Dist. LEXIS 190165 (W.D. Tex., 12th Jul. 2011) at 2 (“The Court is authorized to adjudicate Kim’s § 2241 challenge to the constitutionality of his pre-removal detention”) and related note 3 (applying *Baez*: “The *Real ID Act* divests district courts of jurisdiction to hear

petitions under 2241 that attack final orders of removal...The *Real ID Act* ‘does not, however, preclude *habeas* review of challenges to detention that are independent of challenges to removal orders,’ such as is the case here” [internal citation omitted]).

PARTIES

14. PETITIONER **LAURA NELLY MURILLO-ARADILLAS** is a Mexican national and single mother of two teenage U.S. citizen daughters. She arrived in the United States on or around August 6th, 2002. Ms. Murillo-Aradillas is currently detained on the grounds of Ft. Bliss in the “Camp East Montana” civil detention facility subject to the control and direction of Respondents El Paso Field Office of the Enforcement and Removal Operations Division of U.S. Immigration and Customs Enforcement (“ICE ERO”), a constituent agency of the U.S. Department of Homeland Security (DHS), which facility is located at 6920 Digital Road, El Paso, Texas, 79936, within the jurisdiction of this U.S. District Court. Petitioner has been detained for 120 days by Respondents at the time of the filing of the present Petition.

15. Petitioner Mr. Murillo-Aradillas has meaningful and significant family and community ties in and around Chicago, Illinois, where she has long resided while caring for her two U.S. citizen daughters, supporting them and feeding her community by selling tamales, before being detained without notice, warrant, or probable cause during Respondents DHS’s and SECRETARY NOEM’s purported “enforcement operations” in Chicago designated at that time as part of “Operation Midway Blitz.”

16. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”), its agents, and its sub-agencies are the erstwhile legal custodians of Petitioner, purportedly operating under color of law while physically holding Petitioner in administrative

detention and presenting significant barriers to her effective communication and consultation with her legal counsel, her family, and the outside world.

17. Respondent DHS SECRETARY KRISTI NOEM (“DHS SECRETARY NOEM”) is the chief executive of Respondent DHS, which exercises administrative and legal authority over DHS’s sub-agencies, including U.S. Immigration and Customs Enforcement and its Enforcement and Removal Operations Division (“ICE ERO”). Respondent Secretary Noem is sued in her official capacity.
18. Respondent ICE ERO EL PASO FIELD OFFICE DIRECTOR is sued in their official capacity. The deportation agents and supervisory detention and deportation officers of the El Paso Field Office of ICE ERO operate under the authority, supervision, instruction, procedures, processes, and policy and operational direction of Respondents DHS and DHS SECRETARY NOEM who are collectively responsible for Petitioner’s safety and well-being while exercising legal custody over Petitioner under law and in accordance with the duly-enacted Laws and Treaties of the United States and the U.S. Constitution, including in particular the *Immigration and Nationality Act* [8 U.S.C. §§ 1101 *et seq.*] (“INA”).
19. Respondent WARDEN (or the equivalent office or officer) of the CAMP EAST MONTANA DETENTION FACILITY holds Petitioner in physical custody, and is responsible for the physical conditions of their custody, and their physical access to counsel, and is sued in their official capacity.
20. Respondents collectively have responsibility for, and administrative control over, the facts and circumstances of the physical custody under which they hold Petitioner, which remains without legal justification, under the aegis of Respondents DHS, DHS SECRETARY NOEM, and EL PASO ICE ERO FIELD OFFICE DIRECTOR and the agents under the authority of that office, all of whom are collectively responsible for

administering Petitioner's case, and for the treatment and care of noncitizens in circumstances of detention substantially equivalent to Petitioner's.

RELEVANT FACTS

21. Petitioner has been present in the U.S. for over two decades (since August 2002) and has two U.S. citizen children, aged 16 and 19, respectively, at the time of her arrest. Both Petitioner's children are enrolled in school, but Petitioner's youngest daughter has [REDACTED]

[REDACTED] rendering her particularly vulnerable in her mother's absence and particularly in-need of her mother's presence and care, which cannot be replaced by anyone else in the world. Both daughters are struggling mightily in their mothers absence, including having eviction proceedings taken against them, and her oldest daughter considering abandoning her pursuit of higher education to support her developmentally disabled younger sister financially.

22. On September 25th, 2025, while attempting to feed people in the vicinity of a Home Depot store parking lot in Chicago, Illinois, Petitioner was swarmed by, then arrested and detained by, Customs and Border Patrol agents of Defendant DHS in conjunction with "Operation Midway Blitz." After being held several days incommunicado, Petitioner was moved over 1,500 miles away to her present detention location.

23. Petitioner has since been detained by Respondent DHS and its constituent agency, the Respondent El Paso Field Office of ICE ERO, in an erstwhile camp hastily built on the grounds of Ft. Bliss, for 120 days, where it is not possible to reach her (or anyone) directly by phone at the numbers provided by Respondents DHS and ICE ERO EL PASO FIELD OFFICE for that purpose.

24. On September 29th, 2025, Counsel to Petitioner filed DHS Form G-28 (Attorney Appearance form) on the basis of incomplete information (Petitioner's "Subject ID" number rather than the administrative case file number, which was not forthcoming from agents of Respondents DHS and SECRETARY NOEM). A subsequent corrected Appearances was filed electronically on October 7th, 2025 with Respondent ICE ERO and on October 30th, 2025 with the EOIR and immigration courts.
25. Despite this, Petitioner was only able to be located and the details of her immigration proceedings provided to her counsel following the active intervention of multiple Members of Congress acting on her daughters' behalf to obtain basic information as to her whereabouts and as to the nature and status of the immigration proceedings initiated against her in the Executive Office of Immigration Review and its administrative immigration law courts, despite Petitioner's Counsel having immediately filed an appearance on her behalf days after her having been disappeared off the street by masked agents of federal government Respondent DHS (presumably).
26. Respondents DHS and the ICE ERO El Paso Field Office have presented no evidence of criminality or dangerousness to the public safety, nor of any risk of flight, before those courts or to Counsel to Petitioner, despite requesting consideration for the same. Attempts to require Respondents to do so through a Motion for Bond before the immigration court having administrative control over her case were denied by the immigration court's finding it lacked jurisdiction to require or consider such evidence.
27. Petitioner is a beloved, high-profile, and familiar member of her community, as a result of her providing her community with high-quality, affordable, culturally-appropriate food options (tamales and related foot cart items) over the many years she has been here. She poses no danger to anyone, while her prolonged absence is harming both her community and her U.S. citizen daughters. She has

contributed to her community, paid taxes, and raised her two teenage U.S. citizen daughters through hard work and the sweat of her brow, cooking and selling tamales in the community in which she lives, as well as neighboring communities in Chicago. Her family and her neighbors miss her and want her home.

28. Petitioner has presented *prima facie* claim for relief from removability in the form of Cancellation of Removal on the basis of her length of time in the United States and has consideration for that relief pending before the El Paso Immigration Court. In light of the facts of her case, she presents strong evidence for relief and a likelihood of prevailing on the merits of her application, thereby rendering still-more tenuous the need to maintain her detention in order to advance a presumed removal that may not yet take place, or may be subject to appeal, while Petitioner and her family suffer real and immediate harm as a result of her detention without a reasonably-foreseeable end-date to her detention and immigration proceedings.

29. Because § 236(a) applies, detention is **discretionary** and must rest on individualized findings of **danger** and **flight risk**, evaluated using the factors laid out in *Matter of Guerra* (the “**Guerra factors**”): fixed address, length of residence, family/community ties, employment, prior appearances, criminal history, immigration violations, attempts to flee, manner of entry) and finding of fact appertaining thereto; see *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). Petitioner therefore moved for a bond hearing under § 236(a), submitting multiple letters of support, sponsorship; proof of address, continued residence, and taxes paid; and other evidence sufficient to meet Petitioner’s burden if the *Guerra* factors were properly applied by the immigration court. Yet the Immigration Judge denied the Motion for Custody Redetermination for alleged lack of jurisdiction, forcing Petitioner to humbly and reluctantly turn to this

Honorable Court for relief on her right to be heard as to why she must be set free and released from detention forthwith.

EXHAUSTION / RIPENESS

30. Petitioner sought custody redetermination in Immigration Court and submitted a full evidentiary proffer. Further administrative relief is futile (IJ disclaimed jurisdiction and reclassification of Petitioner) and inadequate to prevent ongoing constitutional injury from prolonged detention; see *Santos v. Warden*, 965 F.3d 203 (3d Cir. 2020) (as detention prolongs, due process requires a hearing). Furthermore, the IJ determination that Petitioner is subject to mandatory detention was grounded on the agency's determination on this and that it lacked the authority to hear her custody redetermination motion pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025). Thus, agency review becomes futile at this point and time, and further exacerbates the extant due process rights violations and the total disregard for her constitutionally-protected liberty interest, as well as that of her family.

31. Furthermore, “under the INA, an exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.” See *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies”); *Hernandez-Fernandez v. Lyons*, 2025 U.S. Dist. LEXIS 206751, *13; see also *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021) (finding that “[i]n light of Petitioner's already prolonged detention, and because the appeal timeline exacerbates that alleged injury, the Court finds that administrative exhaustion is unnecessary to consider in this matter. Moreover, Petitioner's multiple filings raise constitutional questions that ‘neither [an] Immigration Judge nor th[e]

Board may rule on’ [citing *Matter of Rodriguez-Carrillo*, 22 I. & N. Dec. 1031(BIA 1999) at 1035]. Accordingly, exhaustion would be ‘futile’ because it could not answer the chief question raised: whether constitutional due process vests Petitioner with the right to immediate release or a bond hearing in federal court.”)

CLAIMS FOR RELIEF

COUNT I - AGENCY ACTION WITHOUT BASIS IN LAW

Unlawful Detention Under the INA: Petitioner Is Detained, if at All, Under INA § 236(a); Agency Misclassification and the IJ’s “No Jurisdiction” Ruling Are Contrary to Law

32. Where DHS places a noncitizen into § 240 proceedings, as an EWI with long-term presence, custody is governed by INA § 236(a) [8 U.S.C. § 1226(a)], not § 235(b). The U.S. Court of Appeals for this Circuit, as well as U.S. District Courts within and without this Circuit have so held, granting § 2241 relief or recognizing § 236(a) as the operative custody provision; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751, at *11 (W.D. Tex. Oct. 21, 2025); *Tovar v. Noem*, No. 5:25-CV-1509-JKP, 2025 LX 539411 (W.D. Tex. Nov. 25, 2025); *Coulibaly v. Thompson*, No. 5:25-CV-1539-JKP, 2025 LX 560840 (W.D. Tex. Nov. 25, 2025); *Perez v. Noem*, No. 3:25-cv-2920-K-BN, 2025 LX 509530 (N.D. Tex. Nov. 14, 2025) (all granting habeas release from detention under § 2241 recognizing the statutory provision applicable to their detention was § 1226).
33. The IJ’s denial of its jurisdiction to grant Petitioner a bond hearing is without basis in law and without any predicate fact-finding in support of its summary dismissal of Petitioner’s statutory and constitutional due process rights to be heard and to present evidence of her negligible risk of flight or to the public safety. This deprivation of Petitioner’s due process rights is particularly egregious given Petitioner was taken into custody while complying with ICE requirements, without Respondents’ providing

notice to [her] of any changed determination in her custody status, nor the basis for the change in that determination by those agencies of the United States Government (“USG”) who control the fact of, conditions of, and decision-making authority over, Petitioner’s physical and legal custody, those being the Respondents U.S. DHS and the Department of Justice and their respective agencies (CBP, ICE ERO, and the EOIR, respectively). These agencies include those immigration courts having jurisdiction over requests for bond hearings within the EOIR of the U.S. DOJ from civil detainees in immigration proceedings, including Petitioner (specifically here being the Detained Division of the San Antonio Immigration Court).

34. The abdication by the EOIR exercising its authority by and through Respondent ATTORNEY GENERAL, in these circumstances, is an unconstitutional deprivation of civil detainees’ right to be heard and present evidence of their eligibility for band notwithstanding arbitrary redeterminations by Respondents DHS, SECRETARY NOEM, and the ICE ERO Field Office depriving Petitioner of her liberty and contradicting the statutory framework set forth by Congress, and directly-applicable case law. Any Immigration Court finding it lacks the statutory jurisdiction for persons detained under INA Sec. 236(a), when that jurisdiction is clearly conferred by statute, is **arbitrary and contrary to the law**, its purported deference to the erroneous reasoning of the (now increasingly notorious) *Matter of Yajure Hurtado* BIA decision; 29 I&N Dec. 216 (BIA 2025) (“*Yajure Hurtado*”).

35. Post-*Loper Bright* (*Loper Bright*, 603 U.S. 369, 413 (2024)), courts owe **no deference** to agencies’ statutory interpretation in the event of ambiguity; instead, they must exercise **independent judgment** to identify the statute’s **best reading**. Under that approach, INA § 236(a) governs here, as does the jurisprudence of the federal courts. Therefore, this Court bears no duty to defer to *Yajure Hurtado* or *Matter of Li*,

29 I&N Dec. 66 (BIA 2025) and the EOIR's purported application of these decisions to Petitioner's case and cases similar to Petitioner's, is *ultra vires* the authority of the EOIR and the Attorney General, as it is violative of the due process rights of Petitioner; is *ultra vires* the INA, and any is *ultra vires* any presumed statutory authority by Congress to deny Petitioner her liberty without a meaningful opportunity to be heard, which is inconsistent with the U.S. Constitution and other applicable obligations imposed on these federal agencies by the Laws and Treaties of the United States, which are supreme to any regulatory authority asserted by the Attorney General, pursuant to the Supremacy Clause of the U.S. Constitution and other applicable Laws of the United States implementing obligations under the Treaties of the United States, including specifically the Refugee Convention and Protocol, the Convention Against Torture and other forms of Cruel and Unusual Treatment or Punishment, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights pertaining to persons seeking asylum in flight from possible violence, persecution, torture, and death.

36. Because § 236(a) applies, detention is **discretionary** and must rest on individualized findings of **danger** and **flight risk**, evaluated using the factors laid out in *Matter of Guerra* (the "**Guerra** factors"): fixed address, length of residence, family/community ties, employment, prior appearances, criminal history, immigration violations, attempts to flee, manner of entry) and finding of fact appertaining thereto; see *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). Petitioner's record overwhelmingly satisfies these factors.

37. Despite this, the Immigration Court abdicated its role as a finder of fact by declaring itself without jurisdiction to consider the evidence presented and decide on the matter, thereby affirming Respondents' *de facto* determination of Petitioner's ineligibility for

release without presenting Petitioner the opportunity to have contrary evidence heard demonstrating Petitioner's marginal risk of flight or to the public safety pursuant to the aforementioned *Guerra* factors, and therefore denied any opportunity to pursue or obtain her lawful eligibility for release. This determination was arbitrary, unlawful, and must be reversed, consistent with 8 U.S.C. §§ 2241 *et seq.* and other applicable sources of law and the respective appropriate remedies for their repeated violation by this government.

COUNT II - GOVERNMENT ACTION IN VIOLATION OF DUE PROCESS

Fifth Amendment Procedural Due Process: Prolonged Civil Detention Without a Meaningful, Burden-Proper Opportunity to be Heard at a Custody Determination Hearing

38. The Fifth Amendment Due Process Clause of the U.S. Constitution protects against unlawful or arbitrary detention; *Zadydas*, 533 U.S. at 690; see also *Santos*, 965 F.3d at 213–19 (detention becoming unreasonably prolonged requires a bond hearing at which the Government bears the clear-and-convincing burden for the court to assess their purported ongoing authority to retain custody of Petitioner).
39. Petitioner has been detained for months despite no evidence of criminal history or danger to the public safety, no evidence of her risk of flight presented by the government and abundant evidence to the contrary presented by Petitioner, including strong family and community ties. This evidence still has not been heard or weighed, nor the law applied to it. The agency's refusal to provide a meaningful bond hearing with the proper burden on the Government violates Due Process right not to be arbitrarily deprived of liberty or property without due process of law; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751 at 11 (W.D. Tex. Oct. 21, 2025) (granting habeas under § 2241 to correct unlawful detention); *Coulibaly v. Thompson*, No. 5:25-CV-1539-JKP, 2025 LX

560840 (W.D. Tex. Nov. 25, 2025) (recognizing INA §236(a) [8 U.S.C. §1226(a)] as the appropriate framework in evaluating the legality of continued detention).

40. The legality of the agency's position on similar past matters - that a long-residing non-citizen is "arriving" for the purpose of applying the INA - is highly dubious, as the abundant case law across these United States amply demonstrates. It defies applicable Supreme Court and Circuit Court jurisprudence in these matters, and would deprive all Immigration Courts and Immigration Judges of their jurisdiction to conduct a § 236(a) custody determination, despite the statute requiring such jurisdiction be taken and such determinations be made. Coupled with continued detention for an indefinite period, is constitutionally inadequate and inconsistent with the individualized factual determinations and the weighing of those facts the Fifth Amendment requires to balance Petitioner's liberty interests against the government's policy goal of ensuring noncitizens' compliance with immigration law and procedure.
41. The agency's continued deprivation of Petitioner's liberty without any opportunity to present evidence of her eligibility for release is therefore unconstitutional and must be remedied.

**COUNT III - GOVERNMENT ACTION IN VIOLATION OF THE SUSPENSION
CLAUSE OF THE U.S. CONSTITUTION**

Suspension Clause (Alternative Canon of Constitutional Avoidance and Backstop)

42. The **Suspension Clause** of the U.S. Constitution guarantees a **meaningful opportunity** to all persons to challenge unlawful detention and deprivation of their liberty and freedom. Any construction of the INA that would foreclose *habeas* review or meaningful bond process for prolonged civil detention raises serious constitutional concerns; see U.S. Const., Art. I, § 9, Cl. 2; *Boumediene v. Bush*, 553 U.S. 723, 739–71 (2008); *INS v. St. Cyr*, 533 U.S. 289, 300–14 (2001); *Kambo v. Poppell*, 2007 U.S.

Dist. LEXIS 77857 (W.D. Texas, Oct. 18, 2007) at 55-58 (which learned decision reviews the long arc of Supreme Court jurisprudence on Constitutional Due Process challenges to various regulatory and statutory detention schemes governing persons detained in various stages of their immigration enforcement and removal procedures).

43. Consistent with *Boumediene* and *St. Cyr* and other applicable jurisprudence previously cited, this Court should construe the INA to preserve § 2241 review and to require procedures adequate to test the legality of continued confinement, particularly where the only legal justification for denying relief or access to a bond hearing was “no jurisdiction” without any predicate or individualized fact-finding to determine a basis for the Immigration Court’s purported lack of subject-matter jurisdiction here.
44. By continuing to collectively detain Petitioner and deprive her of her liberty without an opportunity to be heard, Respondents’ actions are *ultra vires* the Suspension Clause, as is any interpretation of the applicable statute that would similarly deprive Petitioner of her liberty.
45. Such deprivations of liberty must be remedied at the risk of our society’s most fundamental constitutional principles of justice and due process. Justice may aspire to be blind, but it cannot be deaf and dumb in the face of jailed asylum-seekers deprived of any opportunity to present evidence of their benevolence and good moral character.

REQUESTED RELIEF

Petitioner respectfully asks this Court to:

- A. **Declare** that Petitioner’s detention is governed by INA § 236(a) [8 U.S.C. § 1226(a)] and that continued detention absent an individualized bond determination is unlawful;
- B. **Grant the writ and order immediate release** of Petitioner to the care and custody of her Sponsor and family members on the basis of the evidence presented, applying *Guerra*;

C. In the alternative, order a prompt bond hearing by a date certain at which:

1. The **Government bears the burden** to prove by **clear and convincing evidence** that detention remains necessary due to danger to the community or flight risk;
2. The IJ must consider **less-restrictive alternatives** and the **Petitioner's ability to pay** any bond; and
3. The IJ must make **individualized findings** addressing the *Guerra* factors.

C. **Enjoin transfer** outside this District pending the hearing and final disposition of this petition;

D. **Award fees and costs** where authorized; and

E. Grant such other relief as the Court deems just and proper.

Respectfully submitted, this 23rd day of January, 2026,

/s/ William Shipley

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List of Exhibits of Custody Redetermination Hearing Evidence

LAURA NELLY MURILLO-ARADILLAS v. DHS ET AL. CASE NO. 3:26-cv-0150 before the U.S. District Court for the Western District of Texas (El Paso Division)

Exhibit 1 - Bond Evidence Previously Submitted for consideration not considered, including:

Exhibit 1-1 - Letter of Sponsorship

Exhibit 1-2 - Character Letter - CTU Executive Director Ana Guajardo

Exhibit 1-3 - Character Letter - Ald. Peter Chico, Chicago City Council, 10th Ward

Exhibit 1-4 - Birth Certificate - Daughter 

Exhibit 1-5 - Birth Certificate - Daughter 

Exhibit 1-6 - Written Statement of Daughter 

Exhibit 1-7 - Notice to Appear dated October 15, 2025

Exhibit 1-8 - Chicago Public Schools Speech Language Assessment (IEP) for 

Exhibit 2 - Further Bond Evidence Previously Submitted for consideration not considered:

Exhibit 2-9 - Respondent's Proof of IRS tax filings for FY2019

Exhibit 2-10 - Respondent's Proof of IRS tax filings for FY2021

Exhibit 2-11 - Respondent's Proof of IRS tax filing for FY2022

Exhibit 2-12 - Respondent's Proof of IRS tax filing for FY2024

Exhibit 3 - Order of the El Paso Immigration Court denying bond motion for want of jurisdiction, December 18th, 2025

Exhibit 4 - DHS Attorney Appearance Form G-28 filed September 29th, 2025

Exhibit 5 - DHS Attorney Appearance Form G-28 filed electronically on October 7th, 2025

Exhibit 6 - EOIR Attorney Appearance Form E-28 filed October 30th, 2025