UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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| HERMELINDA SORIANO ALTAMIRANO,<br><br>Petitioner,<br><br>v.<br><br>**Todd LYONS**, in his capacity as Acting Director, Immigration and Customs Enforcement; **Kristi NOEM,** Secretary, U.S. Department of Homeland Security; **Pamela BONDI**, U.S. Attorney General; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**; **WARDEN**, of Dilley Immigration Processing Center, Dilley, Texas<br><br>In their official capacities,<br><br>Respondents. | Case No. 5:26-cv-607<br><br>**PETITION FOR WRIT OF HABEAS CORPUS** |

**PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Petitioner Hermelinda Soriano Altamirano is in the physical custody of Respondents at the Dilley Immigration Processing Center in Dilley, Texas. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. §§ 1182(a)(6)(A)(i).

3. Based on this allegation, Respondents have concluded that they do not have jurisdiction over Petitioner's bond hearing. On July 8, 2025, DHS, in collaboration with the Executive Office for Immigration Review (Immigration Courts) issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

4. On September 5, 2025, the Board of Immigration Appeals turned this new policy into precedent by issuing a decision that said it did "not have the authority" to hear any bond case for someone who had entered the United States without inspection.

5. Because of this new policy and the new BIA decision, Ms. Soriano Altamirano cannot request a bond hearing before the Immigration Court. The Immigration Judge has no jurisdiction to hear the case.

6. The Respondents have concluded that notwithstanding the fact that Petitioner has lived in the United States for decades, he is nevertheless an "applicant for

admission" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A).

7. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

8. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring her immediate release from custody or, in the alternative that he be provided a bond hearing under § 1226(a) within seven days in which DHS bears the burden of establishing the necessity of petitioner's continued detention and considers alternatives to detention that could mitigate flight risk.

## JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Dilley Immigration Processing Center in Dilley, Texas.

11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

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

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

**REQUIREMENTS OF 28 U.S.C. § 2243**

15. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

## PARTIES

17. Petitioner, Hermelinda Soriano Altamirano, is a citizen of Mexico who is detained at Dilley Immigration Processing Center in Dilley, Texas. Prior to being detained, Ms. Soriano Altamirano was living in South Florida. She last entered the United States in approximately 2004, and she had no contact with immigration upon entry. ICE detained her in November 2025, and they transferred her hundreds of miles away from her family to Dilley, Texas.

18. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. As such, Acting Director Todd Lyons is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

20. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

22. Respondent Warden is employed as the Jail Administrator of the Dilley Processing Center, in Dilley, Texas, where Petitioner is detained. He or she has immediate physical custody of Petitioner. He or she is sued in their official capacity.

**LEGAL FRAMEWORK**

23. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

25. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

26. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

27. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

29. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

30. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

31. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

32. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

33. On September 5, 2025, the BIA published a decision that adopts this same position and binds it on all Immigration Courts. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Matter of Yajure-Hurado,* the BIA explicitly held that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Id.* In complete contradiction of decades of judicial precedent, the Board stripped Immigration Judges of jurisdiction over bond for anyone who has entered the United States without inspection.

34. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

35. Since then, federal courts throughout the United States have agreed with the Western District of Washington and granted preliminary injunctive relief for petitioners who entered the United States without inspections years ago. *Lopez Santos v. Noem et al*, 3:25-cv-01193-TAD-KDM (W.D. La. Sept. 11, 2025); *Hernandez Marcelo v. Trump*, 3:25-cv-00094, (S.D. Iowa September 10, 2025); *Jose J.O.E. v. Bondi, et al*, 25-cv-3051 (D. Minn August 27, 2025); *Mayo Anicasio v Kramer et. al.*, 4:25-cv-3158,

(D. Neb. August 14, 2025). Attached, as an exhibit, is a list of the cases where Federal Courts have rejected Respondents' argument that "applicant for admission" should be expanded to include individuals like Petitioner.

36. A nationwide class action lawsuit was filed in the Central District of California, and the Court certified the class of individuals, who, like Ms. Soriano Altamirano, had entered the United States without inspection and been denied a bond hearing. *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.). On November 25, 2025, the Central District of California granted declaratory relief to the entire class and held that the government was subjecting the class to unlawful mandatory detention. However, respondents asserted that the judgment was not binding, and therefore, some Immigration Judges did not follow the order. On December 18, 2025, the Central District of California clarified their order to make it more clear that it was in fact binding on respondents, and for a brief period of time, Immigration Judges began to follow the Central District of California's order and granted bond to class members. However, on January 13, 2026, per an internal memo, the DOJ again instructed Immigration Judges to defy the Central District of California's order. Immigration Judges again began to follow their marching orders by contemptuously refusing to hold bond hearings.

37. DHS's and DOJ's interpretation defies the INA and the Central District of California's lawful and binding order. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

38. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

39. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

40. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

41. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

42. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

**PERSONAL FACTS**

43. Petitioner has resided in the United States since approximately 2004 when she entered the U.S. without inspection. She did not have any contact with immigration authorities upon entry into the United States. She was living and working in South Florida with her two U.S. citizen children prior to being detained.

44. DHS placed Petitioner in removal proceedings before the Pearsall Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

45. Respondents have declined to release Petitioner. Because of Respondents' policy, Petitioner cannot request a bond hearing before the Immigration Judge, since the BIA has stripped Immigration Courts of their jurisdiction. *Yajure-Hurtado*, 29 I&N Dec. 216. *See* Exhibit 1, Petitioner's Bond Denial.

46. As a result, Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years, in immigration custody.

47. Any request for bond from the Immigration Judge is futile because the Board has stripped it of jurisdiction. *Yajure-Hurtado*, 29 I&N Dec. 216. The Immigration Judge is not allowed to hear the case. *Id.* Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under §

1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

**REMEDIES**

**This Court Should Order the Return of All Property upon Release from Detention**

48. Counsel for Petitioner has seen a troubling pattern of ICE not returning non-citizens' personal property when they are released from detention, including driver's licenses, work permits, and social security cards. *See* Garcia Martinez *v. Lyons et al,* 3:26-cv-106-KC, Dkt. 6 (W.D.Tex. 01/29/2026); *Caal-Putul v. Lyons et al,* 1:25-cv-276, Dkt. 8 (S.D. Tex 12/04/2026). Other attorneys have reported that ICE has kept their clients' winter coats, cell phones, and commercial driver's licenses. Confiscation of such documents poses financial harm or an inability to work or drive to Petitioners.

49. Petitioner respectfully request that this Court order Respondents to return all of their personal property, including any IDs, cell phones, and personal effects that ICE may have confiscated upon Ms. Soriano Altamirano's detention.

**This Court Should Forbid ICE from Issuing an Auto-Stay to Stay any Bond Grant**

50. Petitioner moves for this Court to order her immediate release from custody.

51. In the alternative, the Respondents should provide Petitioner with a constitutionally adequate bond hearing. She also moves for this Court to enjoin Respondents from invoking the auto-stay provisions during any pending bond appeal, should the Immigration Judge issue a bond to her. The auto-stay provisions have been found by other courts to be *ultra vires* because they authorize DHS to arbitrarily deny her the right to her liberty.

52. 8 C.F.R. § 1003.19(i)(2) gives DHS unilateral authority to block an Immigration

Judge's custody order through the auto-stay provision. Under that "automatic stay" regulation, if DHS disagrees with an Immigration Judge's custody determination, DHS can file a boilerplate notice of intent to appeal that automatically stays the Immigration Judge's order. In other words, the prosecuting officials who failed to keep the non-citizen detained in the first place can unilaterally block the Immigration Judge's order and force continued detention.

53. While the regulations provide that DHS's automatic stay will lapse in 90 days absent a BIA decision on the appeal, there are multiple avenues for extension. 8 C.F.R. § 100.36(c)(4). For example, if the BIA does not issue a decision in the 90-day window, DHS can then seek an additional discretionary stay from the BIA. 8 C.F.R. § 1003.6(c)(5). The automatic stay remains in effect for another 30 days while the BIA decides whether to grant a discretionary stay. Id.

54. Even if the BIA rules in favor of the non-citizen on appeal and authorizes his release on bond, that release is automatically stayed for five more business days to give DHS a chance to refer the case to the Attorney General. 8 C.F.R. § 1003.6(d). Then, if DHS refers the case to the Attorney General, the automatic stay is extended for another 15 days. Id. The Attorney General may then stay release for the pendency of the case. *Id.* There is no prescribed time limit for final resolution of the custody determination, meaning an individual may remain in detention indefinitely. In sum, should DHS invoke the auto-stay provisions, Petitioner will have no way of knowing how long this automatic stay will last and has no opportunity to challenge the stay. In practice, the automatic stay regulation renders any Immigration Judge's custody decisions ineffectual: If DHS disagrees with a custody decision, it can keep Petitioner detained for a minimum of 90 days, without a truly discernable end point.

55. This auto-stay provision has been deemed *ultra vires* and a violation of the APA by

several courts. See, e.g., *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025)(finding the government's use of automatic stay provision to appeal IJ's bond decision ultra vires because it "renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity"); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sep. 3, 2025) (holding that the automatic stay provision is ultra vires because it "exceeds the statutory authority Congress gave to the Attorney General"); *Zavala v. Ridge*, 310 F. Supp. 2d. 1071, 1079 (N.D. Cal. 2004) (finding the automatic stay regulation ultra vires because it "effectively eliminates the discretionary nature of the immigration judge's determination and results in a mandatory detention . . . of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention"); *see also Anicasio v. Kramer*, No. 25-cv-3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).

56. The automatic stay regulation violates the Administrative Procedure Act (APA) and is ultra vires because it is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C), and Petitioner moves for this Court to enjoin Respondents from invoking it at or after any future bond hearing ordered by this Court.

## CLAIMS FOR RELIEF

### COUNT I

### Violation of the INA

57. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

58. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of

inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

59. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

## COUNT II

### Violation of Due Process

60. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

61. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

62. Petitioner has a fundamental interest in liberty and being free from official restraint.

63. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Declare that the actions of Respondents as set forth in Ms. Soriano Altamirano's Petition and Motion violate the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, the APA, and the INA;

c. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a Constitutionally adequate bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days;

d. Order Respondents to return all her property to her upon her release from detention;

e. Enjoin Respondents from denying Petitioner's bond under U.S.C. § 1225(b)(2);

f. Should the Immigration Judge grant a bond, enjoin Respondents from invoking the auto-stay provision found at 8 C.F.R. § 1003.19(i)(2) during the pendency of any bond appeal; and

g. Grant any other and further relief that this Court deems just and proper.

DATED this 31st of January 2026.

/s/ Jennifer Scarborough

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*Attorney for Petitioner*

**Verification Pursuant to 28 U.S.C. § 2242**

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned Counsel has discussed with Petitioner the events described in this Petition and, on the basis of those discussions, verify that the statements in the Petition are true and correct to the best of her knowledge and belief.

Date: 31 Jan. 2026 /s/ Jennifer Scarborough