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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALIUSKA ESPINOSA

Petitioner,

v.

PAMELA BONDI,
United States Attorney General;

KRISTI NOEM,
Secretary of the United States Department of
Homeland Security;

TODD M. LYONS,
Director of United States Immigration and
Customs Enforcement;

SYLVESTER ORTEGA,
Field Office Director for Detention and
Removal, U.S. Immigration and Customs
Enforcement;

WARDEN,
Warden, Karnes County Immigration
Processing Center

Respondents.

Civ. No.

DHS File Number:

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

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PRELIMINARY STATEMENT

This petition challenges the unlawful and prolonged detention of **Aliuska Espinosa Pena** ("Petitioner"), a **44-year-old citizen of Cuba**, asylum applicant, and wife of a lawful permanent resident of the United States. Petitioner has strong family ties in the United States and resides with her husband and son in Texas. She has a **pending Form I-130 family-based immigrant petition** and a **pending application for adjustment of status under the Cuban Adjustment Act, without parole**, in addition to her pending asylum application. Petitioner has no criminal history and has fully complied with all immigration requirements.

Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") during a routine check-in and has since been detained at the **Karnes Processing Center** in Karnes City, Texas. Although Petitioner is subject to civil immigration detention only, she remains confined without any meaningful opportunity to seek release.

Petitioner requested a bond hearing before the Immigration Court. However, the Immigration Judge denied bond **solely on jurisdictional grounds**, concluding that the court lacked authority to consider custody under **INA § 236(a)**. As a result, no individualized custody determination was made, and Petitioner was left without any forum to challenge her continued detention. ICE thus retains unilateral control over Petitioner's liberty, resulting in detention without judicial review.

Compounding this unlawful detention, the Department of Homeland Security ("DHS") has already attempted to pretermitt Petitioner's asylum application under the **Asylum Cooperative Agreement (ACA) with Ecuador**. Although that motion was denied on procedural grounds, DHS may refile

it at any time, creating a real and imminent risk that Petitioner will be deprived of access to asylum protection and subjected to removal without adequate process.

The consequences of Petitioner's continued detention are severe. She remains separated from her lawful permanent resident husband and her son, causing significant emotional and financial hardship to her family. Her detention serves no legitimate governmental purpose and is not reasonably related to ensuring her appearance at proceedings or protecting the community.

The Constitution and the Immigration and Nationality Act do not permit civil immigration detention without any meaningful mechanism for review. Petitioner therefore respectfully requests that this Court grant the instant petition for a writ of habeas corpus under **28 U.S.C. § 2241**, order her immediate release, or, in the alternative, require Respondents to provide a prompt and constitutionally adequate custody determination. Petitioner further requests such relief as is necessary to preserve this Court's jurisdiction and prevent irreparable harm.

I. INTRODUCTION

1. This Petition seeks the immediate release of **Aliuska Espinosa Pena** ("Petitioner"), a **44-year-old citizen of Cuba**, from unlawful civil immigration detention in violation of her constitutional and statutory rights.
2. Petitioner is a noncitizen currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the **Karnes Processing Center** in Karnes City, Texas. She is an asylum applicant with a pending case before the Immigration Court, a **pending Form I-130 family-based immigrant petition** filed by her lawful permanent resident husband, and a **pending application for adjustment of status under the Cuban Adjustment Act**,

without parole. Petitioner has strong family ties in the United States and resides with her husband and son in Texas.

3. On or about **January 07, 2026**, Petitioner appeared for a routine ICE check-in as required and was taken into custody. She has remained detained since that date. Although her detention is civil in nature, Petitioner has been deprived of any meaningful opportunity to obtain release.
4. Petitioner requested a custody redetermination (bond hearing) before the Immigration Court. The Immigration Judge **denied bond solely on jurisdictional grounds**, concluding that the Court lacked authority to consider custody and that Petitioner is subject to detention under **INA § 235(b)(2)(A)** as interpreted in **Matter of Yajure-Hurtado**. As a result, Petitioner has been denied any individualized bond determination and is left without any forum to meaningfully challenge her continued detention.
5. Petitioner has resided in the United States for a significant period and has established deep family and community ties. Her continued detention constitutes a substantial deprivation of liberty and places her family at risk, as her lawful permanent resident husband and son depend on her emotional support and presence in the household.
6. Petitioner has multiple forms of relief pending before the Immigration Court and U.S. Citizenship and Immigration Services, including an application for asylum, a pending family-based immigrant petition, and a pending application for adjustment of status under the Cuban Adjustment Act. These pending applications further demonstrate that Petitioner has viable avenues of relief and that continued detention without meaningful custody review is unreasonable and unconstitutional.

7. Petitioner's continued detention is unlawful and unconstitutional because it violates the Due Process Clause of the Fifth Amendment and exceeds the government's lawful detention authority where Petitioner is subjected to ongoing custody without any meaningful mechanism for individualized review.
8. Petitioner respectfully requests that this Court grant the instant petition for a writ of habeas corpus pursuant to **28 U.S.C. § 2241**. In the alternative, Petitioner requests that the Court issue an Order to Show Cause requiring Respondents to explain why this Petition should not be granted within three days, as provided by **28 U.S.C. § 2243**.

II. JURISDICTION AND VENUE

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), **8 U.S.C. § 1101 et seq.**
10. This Court has subject matter jurisdiction pursuant to **28 U.S.C. § 2241**, because Petitioner is in federal immigration custody and challenges the legality and constitutionality of her continued detention. This Court also has jurisdiction under **28 U.S.C. § 1331**, as this action presents questions of federal law, and under **Article I, § 9, cl. 2 of the United States Constitution** (the Suspension Clause).
11. This Court is authorized to grant relief under the federal habeas corpus statutes, **28 U.S.C. § 2241 et seq.**, the Declaratory Judgment Act, **28 U.S.C. § 2201 et seq.**, and the All Writs Act, **28 U.S.C. § 1651**.
12. Venue is proper in the **Southern District of Texas, San Antonio Division**, because Petitioner is currently detained at the **Karnes Immigration Processing Center** in Karnes City, Texas, which lies within the jurisdiction of this Court.

13. Venue is also proper pursuant to **28 U.S.C. § 1391(e)** because Respondents are officers, employees, or agencies of the United States acting in their official capacities within this District, a substantial part of the events and omissions giving rise to Petitioner's claims occurred within this District, and no real property is involved in this action.
14. Venue is further proper under **28 U.S.C. § 2243** because Petitioner's immediate custodians reside within this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION

15. Under **28 U.S.C. § 2243**, this Court must either grant the petition for a writ of habeas corpus or issue an order to show cause directing Respondents to explain why the writ should not be granted, unless Petitioner is not entitled to relief. If an order to show cause is issued, Respondents must file a return **"within three days unless for good cause additional time, not exceeding twenty days, is allowed."** 28 U.S.C. § 2243 (emphasis added).
16. Courts have long recognized the fundamental importance of the writ of habeas corpus in protecting individuals from unlawful detention. The Great Writ has been described as **"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).
17. The writ of habeas corpus is rendered ineffective if courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F.2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Given the liberty interests at stake and the nature of Petitioner's

continued civil detention without meaningful custody review, Petitioner respectfully requests that the Court consider this matter expeditiously as justice requires.

IV. PARTIES

18. Petitioner, **Aliuska Espinosa Pena**, is a **44-year-old citizen of Cuba**, a noncitizen and asylum applicant currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the **Karnes Processing Center** in Karnes City, Texas. She is in the custody and under the direct control of Respondents and their agents.
19. Respondent **Pamela Bondi** is sued in her official capacity as **Attorney General of the United States**. In this capacity, she is responsible for the administration of the Executive Office for Immigration Review (“EOIR”), including policies that bear on immigration judges’ authority and jurisdiction over custody determinations. Respondent Bondi is a legal custodian of Petitioner.
20. Respondent **Kristi Noem** is sued in her official capacity as **Secretary of the U.S. Department of Homeland Security (“DHS”)**. DHS is the department charged with administering and enforcing federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE, the component agency responsible for Petitioner’s detention, and is a legal custodian of Petitioner.
21. Respondent **Todd M. Lyons** is sued in his official capacity as **Acting Director of U.S. Immigration and Customs Enforcement (“ICE”)**. In this role, he oversees ICE operations nationwide, including immigration detention and removal, and is a legal custodian of Petitioner.

22. Respondent **Sylvester Ortega** is sued in his official capacity as **Field Office Director of the San Antonio Field Office of ICE**. He is responsible for ICE enforcement and detention operations within this District and is a legal custodian of Petitioner.
23. Respondent **Acting in Capacity as Warden** is sued in his official capacity as **Warden of the Karnes Processing Center** in Karnes City, Texas. He has immediate physical custody of Petitioner pursuant to the facility's contract with ICE to detain noncitizens and is therefore Petitioner's immediate custodian.
24. Each Respondent is sued in his or her official capacity as a custodian and/or policymaker responsible for Petitioner's continued detention.

V. STATEMENT OF FACTS

25. Petitioner, **Aliuska Espinosa Pena**, is a **44-year-old citizen of Cuba**, born on [REDACTED] [REDACTED]. She is married to **Yoel Estevez**, a lawful permanent resident of the United States, and resides with him and her son, [REDACTED] in Texas. Petitioner has strong family and community ties in the United States and fears returning to Cuba due to the persecution and repression she previously experienced there.
26. On or about **October 23, 2022**, Petitioner entered the United States near **Lukeville, Arizona**, after crossing from Mexico at a location not designated as a port of entry. She was encountered by U.S. Border Patrol agents as part of a family unit that included her minor son and was taken into custody.
27. Following her apprehension, Petitioner was processed at the **Tucson Soft-Sided Facility** in Tucson, Arizona. DHS records reflect that Petitioner has **no criminal**

history, no prior removals, and no aggravated felony convictions. She was charged as inadmissible under INA § 212(a)(6)(A)(i) and issued a Notice to Appear.

28. Petitioner was released from custody pursuant to INA § 236(a) under an **Order of Release on Recognizance (Form I-220A)** and was not granted parole under INA § 212(d)(5). Petitioner was placed in removal proceedings before the Immigration Court and later released from initial custody. Since her release, she has **fully complied** with all immigration requirements, including appearing at all scheduled court hearings and all required ICE check-ins.
29. Petitioner has a **pending application for asylum** based on the persecution she suffered in Cuba, she has not intent ti return. She also has a **pending Form I-130 family-based immigrant petition** filed by her lawful permanent resident husband and a **pending application for adjustment of status under the Cuban Adjustment Act**, despite the fact that DHS has never granted her parole under INA § 212(d)(5)..
30. On or about **January 7, 2026**, Petitioner appeared as required for a routine ICE check-in at the **San Antonio Field Office**. Despite her full compliance and pending applications for relief, ICE **unexpectedly took Petitioner into custody** and transferred her to the **Karnes Processing Center** in Karnes City, Texas, where she remains detained.
31. ICE has continued to detain Petitioner **without bond**, asserting that she is subject to **mandatory detention under INA § 235(b)(2)** based on her manner of entry, and classifying her as an applicant for admission rather than an individual detained under INA § 236(a).
32. Despite having previously released Petitioner from custody under INA § 236(a), DHS later reclassified her detention as arising under INA § 235(b) following her interior arrest at a

routine ICE check-in. This reclassification occurred without any change in Petitioner's circumstances and solely for the purpose of denying bond eligibility. DHS has thus alternated between detention frameworks under INA §§ 236 and 235 at its convenience, resulting in prolonged detention without individualized custody review.

33. Petitioner sought release on bond before the Immigration Court, supported by evidence of her long-standing residence in the United States, strong family ties, lack of criminal history, full compliance with immigration proceedings, and absence of dangerousness or flight risk.
34. The Immigration Judge **denied bond solely on jurisdictional grounds**, concluding that the Court lacked authority to conduct a custody redetermination under INA § 236(a) in light of **Matter of Yajure-Hurtado, 29 I&N Dec. 220 (BIA 2025)**. As a result, the Immigration Court made **no individualized custody determination** regarding Petitioner's dangerousness or risk of flight. The Immigration Judge did not dispute that Petitioner had previously been released under INA § 236(a), but nonetheless concluded that jurisdiction was lacking based solely on DHS's subsequent reclassification of her detention under INA § 235(b).
35. DHS has already attempted to terminate Petitioner's asylum proceedings by invoking an Asylum Cooperative Agreement ("ACA") with Ecuador, asserting that Petitioner could be removed to Ecuador despite her lack of lawful status, permanent residence, or meaningful protection there. That motion was rejected because DHS failed to properly establish the applicability of the agreement. Ecuador is not a viable or lawful option for Petitioner: she has no legal status, no family members, no residence, no employment, and no support network in Ecuador, and she has never resided in that country. Removal to Ecuador would result in immediate destitution, homelessness, and exposure to harm, and would effectively

deny Petitioner any realistic opportunity to seek protection or pursue her pending asylum, family-based, and Cuban Adjustment Act relief. Nevertheless, DHS retains the ability to refile such a motion at any time, creating an ongoing and immediate risk of wrongful removal while Petitioner remains detained.

36. ICE's position reflects agency guidance reinterpreting detention authority to treat noncitizens present without admission as subject to detention under **INA § 235(b)** and therefore ineligible for bond, even when arrested in the interior and previously released from custody.
37. For decades prior to this reinterpretation, DHS and EOIR treated individuals arrested in the interior and present without admission as detained under **INA § 236(a)**, subject to bond hearings before an Immigration Judge unless **INA §§ 235(b)(1), 236(c), or 241** applied.
38. As a result of the jurisdictional bond denial, Petitioner has **no meaningful or timely administrative avenue** to challenge her continued detention. Any appeal to the Board of Immigration Appeals would take months to resolve, during which time Petitioner would remain detained, rendering administrative review **inadequate and ineffective** under these circumstances.
39. Petitioner's detention is **purely civil in nature**. She has not been charged with, nor convicted of, any criminal offense, does not pose a danger to the community, and is not a flight risk.
40. Petitioner's continued detention has caused **severe hardship** to her family, including prolonged separation from her lawful permanent resident husband and her son, emotional distress, and disruption of family unity and stability.

41. Petitioner's ongoing detention also **impairs her ability to defend against removal**, including gathering evidence in support of her asylum claim, assisting counsel, and coordinating with witnesses and family members.
42. Petitioner remains detained **solely because DHS has classified her custody under INA § 235(b) rather than INA § 236(a)**, resulting in prolonged detention without bond or meaningful judicial review, contrary to statutory structure, longstanding practice, and constitutional due process principles.
43. Petitioner seeks habeas relief because her continued detention is **unlawful, arbitrary, and unconstitutional**, and because no adequate or effective remedy exists within the immigration court system to challenge the legality of her ongoing custody.

**VI. LEGAL FRAMEWORK: DUE PROCESS AND STATUTORY LIMITS ON
IMMIGRATION DETENTION**

44. Federal courts have authority under **28 U.S.C. § 2241** to review the legality of immigration detention and to order release where detention violates the Constitution or exceeds the statutory authority granted to the government. Immigration detention is **civil in nature** and may not be imposed in a punitive, arbitrary, or indefinite manner.
45. The **Fifth Amendment's Due Process Clause** applies to "all persons" within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Freedom from physical restraint lies at the core of the liberty protected by due process. *Id.* at 690. In the immigration context, detention is constitutionally justified only to ensure appearance at proceedings or to protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

46. Due process requires that immigration detention bear a **reasonable relationship to its purpose** and that individuals not be subjected to prolonged detention without adequate procedural safeguards, including a **meaningful opportunity to seek release**. When detention ceases to serve its limited civil purposes, continued custody becomes unlawful. *Zadvydas*, 533 U.S. at 690–91.
47. Congress established **two distinct detention regimes** in the Immigration and Nationality Act.
- Section 235(b) governs inspection and limited mandatory detention of **arriving noncitizens** or those apprehended shortly after entry. Section 236(a) governs **interior arrests**, authorizing detention pending removal proceedings **with discretionary release on bond**. *Jennings v. Rodriguez*, 583 U.S. 281, 297, 302–03 (2018) (describing § 235(b) as primarily applicable to those seeking entry and § 236(a) as applicable to individuals already present in the United States and arrested on warrant).
48. Congress reaffirmed this distinction through subsequent legislation. The **Laken Riley Act** preserved § 236(a)'s discretionary bond framework while adding a **narrow mandatory-detention category** under § 236(c)(1)(E) that applies only when inadmissibility is paired with specified criminal conduct. If § 235(b) already mandated detention for all inadmissible noncitizens present without admission, § 236(c)(1)(E) would be superfluous—an interpretation courts must avoid. *Corley v. United States*, 556 U.S. 303, 314 (2009); *Van Buren v. United States*, 593 U.S. 374, 393 (2021).
49. For nearly three decades, DHS and EOIR consistently treated noncitizens arrested **in the interior** and present without admission as detained under § 236(a) and therefore **eligible for bond hearings**, unless a specific mandatory-detention provision applied. *Inspection*

and Expedited Removal of Aliens, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). DHS historically limited the “applicant for admission” designation to encounters close in time and distance to the border. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 121, 130 n.2 (2020).

50. Arrest authority further confirms this statutory divide. Interior arrests generally require a warrant under **INA § 287(a)**, implemented through Form I-200, and fall within § 236(a). *Matter of Mariscal-Hernandez*, 28 I. & N. Dec. 666, 668–71 (B.I.A. 2022). Petitioner’s detention followed a **routine ICE check-in** in the interior of the United States, not an encounter at or near the border, placing her squarely within § 236(a). Indeed, DHS itself initially exercised discretionary detention authority under INA § 236 (a), as evidenced by Petitioner’s release on Form I-220A, before later reclassifying her custody under § 235(b) (2) solely to deny access to bond.
51. In **Matter of Yajure-Hurtado**, 29 I. & N. Dec. 220 (B.I.A. 2025), the Board adopted DHS’s position that noncitizens present without admission are “applicants for admission” subject to mandatory detention under § 235(b)(2) for the duration of proceedings, thereby eliminating immigration judges’ bond jurisdiction. However, *Jennings* construed only the statutory text and **expressly left open constitutional challenges**. 583 U.S. at 303.
52. Moreover, the Supreme Court has since **overruled Chevron deference**, requiring courts to independently interpret the INA rather than defer to agency interpretations. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024). Accordingly, *Yajure-Hurtado* is not controlling on this Court’s interpretation of the statute or its constitutional implications.
53. DHS’s categorical no-bond interpretation collapses §§ 235 and 236, nullifies § 236(c)(1)(E), and contradicts the INA’s structure and historical application. Statutes must

be read as a coherent whole, giving effect to every provision. *Gundy v. United States*, 588 U.S. 128, 141 (2019); *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023).

54. Even where the government asserts mandatory detention, due process requires **meaningful review** of whether such detention lawfully applies. Courts must preserve habeas review to prevent unlawful restraint. *INS v. St. Cyr*, 533 U.S. 289, 314 (2001); *Clark v. Martinez*, 543 U.S. 371, 380–82 (2005).
55. The government’s prior attempt to terminate Petitioner’s asylum proceedings under an Asylum Cooperative Agreement (“ACA”) with Ecuador further demonstrates the arbitrary and unconstitutional nature of her continued detention. DHS has sought to rely on a legally defective removal theory while simultaneously denying Petitioner access to bond or meaningful custody review. Ecuador is not a viable alternative country for Petitioner, as she has no legal status, no family, no residence, no employment, and no support network there, and has never resided in that country. Detention used to facilitate or threaten removal to a country with which Petitioner has no connection and no access to protection violates fundamental principles of due process and exceeds the permissible scope of civil immigration detention.
56. The **Mathews v. Eldridge** balancing test further confirms the constitutional violation here:
- (1) Petitioner’s profound liberty and family interests;
 - (2) the high risk of erroneous deprivation under DHS’s categorical no-bond approach; and
 - (3) the minimal governmental burden of providing the individualized bond hearing Congress long required. 424 U.S. 319, 333, 335 (1976).

57. Because Petitioner was arrested in the interior and detained following a routine ICE check-in, § 236(a) governs her custody. DHS's attempt to reclassify her detention under § 235(b)(2) violates the INA and the Due Process Clause. Petitioner is therefore entitled to immediate release or, at minimum, a prompt bond hearing before an Immigration Judge applying the correct legal standard.

¹ See, e.g., *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2, *6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2267803, at *4-7 (S.D.N.Y. Aug. 8, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *4-7 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *11-16 (W.D. Wash. Apr. 24, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *Valdez v. Joyce*, No. 25-cv-4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025); *Ercelik v. Hyde*, No. 1:25-cv-11007-AK, 2025 WL 1361543, at *15-16 (D. Mass. May 8, 2025); *Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *10-11 (D. Minn. May 21, 2025); *Cuevas-Guzman v. Andrews*, No. 1:25-cv-00759, 2025 WL 2617256, at *7 (E.D. Cal. Aug. 2025); *Alvarez-Martinez v. Noem*, No. 5:25-cv-00876, 2025 WL 2598379, at *4-5 (W.D. Tex. Aug. 2025); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-11641, 2025 WL 2609425, at *3 (E.D. Mich. Aug. 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099, at *5-7 (D. Ariz. Aug. 11, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *6-8 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411, at *4-6 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 1:25-cv-11631-BEM, 2025 WL 2403827, at *3-5 (D. Mass. Aug. 19, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, slip op. at 3-5 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *8-10 (W.D. La. Aug. 27, 2025).

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

58. Petitioner **Aliuska Espinosa Pena** realleges and incorporates by reference all allegations set forth above as though fully set forth herein.

59. The Due Process Clause of the Fifth Amendment requires that any deprivation of liberty by the government be justified by a sufficient and legitimate governmental purpose. There is no dispute that Respondents have deprived Petitioner of her liberty through prolonged civil immigration detention.
60. Petitioner's continued detention violates both **substantive due process** and **procedural due process** guaranteed by the Fifth Amendment to the United States Constitution.
61. The Fifth Amendment provides that "[n]o person shall...be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. As a noncitizen physically present in the United States for several years, Petitioner is entitled to the full protection of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
62. Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a **sufficiently strong special justification** to outweigh the significant restraint on liberty. *Id.* at 690.
63. Respondents have deprived Petitioner of her liberty by detaining her since **January 7, 2026**, without providing a constitutionally adequate custody determination or individualized assessment of her detention.
64. Petitioner's detention is unlawful because she has been **categorically denied a bond hearing**, not due to any individualized finding that she is a danger to the community or a flight risk, but solely based on Respondents' legal position that the Immigration Court lacks jurisdiction to consider her custody.
65. The Immigration Judge treated Petitioner's alleged ineligibility for bond as a foregone conclusion, declined to analyze the governing statutory framework under the Immigration

and Nationality Act, and did not meaningfully consider Petitioner's evidence or arguments, rendering the process constitutionally deficient.

66. Habeas corpus relief is proper where detention results from a fundamentally unfair or unlawful process. *Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).
67. Immigration detention is civil in nature and constitutionally permissible only to further the limited purposes of ensuring a noncitizen's appearance at removal proceedings or protecting the community. *Zadvydas*, 533 U.S. at 690.
68. Respondents have not demonstrated, and cannot demonstrate, that Petitioner poses a danger to the community or a risk of flight. Petitioner has no criminal history, has complied with all immigration requirements, has strong family and community ties in the United States, and has actively pursued lawful immigration relief.
69. Petitioner's detention is particularly unjustified given her **good-faith pursuit of multiple forms of lawful immigration relief**, including a pending application for asylum under 8 U.S.C. § 1158, a pending family-based immigrant petition (Form I-130) filed by her lawful permanent resident husband under 8 U.S.C. § 1154, and her efforts to adjust status under the **Cuban Adjustment Act of 1966**, Pub. L. No. 89-732, 80 Stat. 1161.
70. Respondents' reliance, actual or anticipated, on an Asylum Cooperative Agreement with Ecuador compounds the due process violation. Petitioner is detained without bond while facing the threat of removal to a country where she has no legal status, no family, no housing, and no means of survival. Due process does not permit civil detention to be used as leverage to effectuate removal under an improperly applied ACA, particularly where

such removal would effectively extinguish Petitioner's pending asylum, family-based, and Cuban Adjustment Act applications.

71. Continued detention interferes directly with Petitioner's ability to pursue these statutory forms of relief and bears no reasonable relationship to any legitimate governmental objective.

72. For all of these reasons, Respondents' continued detention of Petitioner violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (INA)

73. Petitioner realleges and incorporates by reference all allegations set forth above.

74. Petitioner was arrested in the interior of the United States following a routine ICE check-in and is therefore subject to detention authority governed by INA § 236(a), codified at 8 U.S.C. § 1226(a).

75. Despite this, Respondents have classified Petitioner as subject to **mandatory detention under INA § 235(b)(2)**, codified at 8 U.S.C. § 1225(b)(2), and have asserted that the Immigration Judge lacks jurisdiction to conduct a custody redetermination based on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025).

76. Section 235(b)(2) governs inspection and limited detention of applicants for admission and does not apply to noncitizens who have already entered the United States, resided here for a significant period, and are later arrested in the interior.

77. Noncitizens arrested in the interior are governed by **INA § 236(a)** and are eligible for release on bond unless they fall within a specific mandatory detention provision such as **INA § 235(b)(1)**, **INA § 236(c)**, or **INA § 241**, none of which applies to Petitioner.
78. Respondents have unlawfully adopted and applied a policy and practice of treating nearly all noncitizens present without admission as subject to mandatory detention under § 235(b)(2), regardless of time, place, or manner of arrest.
79. The misclassification of Petitioner's detention under § 235(b)(2) violates the text, structure, and longstanding interpretation of the INA.

THIRD CAUSE OF ACTION

FIFTH AMENDMENT – DENIAL OF OPPORTUNITY TO CONTEST MIS- INCLUSION IN MANDATORY DETENTION CATEGORY

80. Petitioner realleges and incorporates by reference all allegations set forth above.
81. Petitioner has a vested liberty interest in preventing erroneous detention and in pursuing her pending applications for asylum and adjustment of status outside of detention by demonstrating that she is neither a danger to the community nor a flight risk under **8 U.S.C. § 1226(a)**.
82. Respondents have denied Petitioner any meaningful opportunity to contest her misclassification as subject to mandatory detention.
83. This categorical denial of an opportunity to be heard violates **procedural due process** under the Fifth Amendment.

FOURTH CAUSE OF ACTION

ADMINISTRATIVE PROCEDURE ACT

84. Petitioner **Aliuska Espinosa Pena** re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.
85. Respondents' continued efforts to deny Petitioner access to a bond hearing and to maintain her detention without individualized review violate the **Immigration and Nationality Act ("INA")**, the **Administrative Procedure Act ("APA")**, and the **United States Constitution**.
86. As set forth in the Second and Third Causes of Action, federal statutes, regulations, and longstanding case law establish the procedures by which a respondent in removal proceedings, such as Petitioner, may seek a custody redetermination and release on bond before an Immigration Judge pursuant to **8 U.S.C. § 1226(a)**.
87. By denying Petitioner the opportunity to seek release from detention and to return to her family while pursuing her immigration proceedings in a non-detained setting—where she would be free to gather evidence, assist counsel, and meaningfully pursue her pending applications for relief—Respondents have deprived Petitioner of her right to lawfully pursue her civil immigration case. The Government's categorical "no-review" position constitutes a violation of **procedural and substantive due process** and lacks any valid statutory basis.
88. There is no meaningful timeframe or procedure by which Petitioner may request DHS itself to review or reconsider its custody determination. During any such delay, removal

proceedings continue to advance while Petitioner remains detained, rendering administrative remedies inadequate and ineffective to protect her liberty interests.

89. Respondents' actions improperly alter the substantive rules governing mandatory detention by expanding the scope of INA § 235(b) beyond its statutory limits and eliminating bond eligibility under INA § 236(a) without the notice-and-comment procedures required by law. Such actions violate the APA, the INA, and their implementing regulations.
90. Under the APA, this Court may "hold unlawful and set aside agency action" that is "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).
91. The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B)—which purport to bar custody redetermination for certain "arriving aliens"—as applied to Petitioner, violate **substantive and procedural due process** under the Fifth Amendment because Petitioner was arrested in the interior of the United States and is not properly subject to detention under INA § 235(b).
92. The application of these regulations to Petitioner is **ultra vires** because it exceeds the authority granted to DHS and ICE by Congress under 8 U.S.C. § 1226(a) and unlawfully strips Immigration Judges of jurisdiction to conduct custody redeterminations Congress expressly preserved.
93. For these reasons, this Honorable Court should hold that Petitioner is detained pursuant to INA § 236(a), not INA § 235(b), and should order her **immediate release from custody**, or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing under § 236(a) at which Petitioner has a **meaningful opportunity to demonstrate that she is neither a danger to the community nor a flight risk.**

94. Any contrary reliance on **Matter of Yajure-Hurtado, 29 I. & N. Dec. 220 (B.I.A. 2025)** would unlawfully misapply the INA, exceed statutory authority, and deprive Petitioner of her rights under the INA, the APA, and the **Due Process Clause of the Fifth Amendment**.

FIFTH CAUSE OF ACTION

STAY OF REMOVAL CLAIM

95. 64. Petitioner Aliuska Espinosa Pena re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.
96. 65. The denial of a bond hearing, combined with the imminent risk of removal, would cause Petitioner irreversible harm and injury. Petitioner has been misclassified by Respondents as subject to mandatory detention under INA § 235(b), depriving her of any opportunity to seek release on bond or to contest the legality of her detention while at liberty.
97. 66. The Court should grant a stay of Petitioner's removal to protect her statutory and constitutional rights under the Immigration and Nationality Act and the Administrative Procedure Act. In attempting to assert her rights, Respondents have effectively railroaded Petitioner by detaining her without bond, denying her meaningful judicial review, and threatening removal—including through prior and potential renewed reliance on an Asylum Cooperative Agreement with Ecuador—before she can fully litigate the legality of her detention, pursue her pending asylum claim, family-based relief, and Cuban Adjustment Act eligibility, or demonstrate that she is not subject to mandatory detention and merits release on bond.

SIXTH CAUSE OF ACTION

SUSPENSION CLAUSE

98. Petitioner Aliuska Espinosa Pena realleges and incorporates by reference all allegations set forth above as though fully set forth herein.
99. To the extent Respondents contend that 8 U.S.C. § 1252 strips this Court of jurisdiction to review Petitioner's detention, custody classification, or the legality of the statutory basis for that detention, such application would be unconstitutional as applied because it would violate the Suspension Clause of the United States Constitution, U.S. Const. art. I, § 9, cl. 2.
100. The Suspension Clause guarantees that the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion. Where Congress seeks to restrict habeas jurisdiction, courts must ensure that an adequate and effective substitute for habeas review exists. *Boumediene v. Bush*, 553 U.S. 723, 771 (2008).
101. Petitioner satisfies the three-factor test articulated in *Boumediene v. Bush*, 553 U.S. 723, 766 (2008), to invoke the protections of the Suspension Clause.
102. First, although Petitioner is not a United States citizen, she has been physically present in the United States for several years, is married to a lawful permanent resident, resides with her husband and son in Texas, and has significant family and community ties in this country. Petitioner is actively pursuing lawful immigration relief, including asylum, a family-based immigrant petition filed by her lawful permanent resident husband, and adjustment of status under the Cuban Adjustment Act. These facts establish a substantial connection and legal relationship with the United States.

103. Second, Petitioner was apprehended and remains detained within the territorial United States, following a routine ICE check-in in the interior of the country, not at or near the border.
104. Third, there are no serious practical obstacles to this Court resolving Petitioner's entitlement to the writ. This Court is fully capable of determining whether Petitioner's detention exceeds statutory authority under the Immigration and Nationality Act or violates the Constitution.
105. There is no adequate or effective alternative to habeas relief. The Immigration Court has declined jurisdiction to conduct a bond hearing based on Respondents' classification of Petitioner under INA § 235(b), and any appeal to the Board of Immigration Appeals would take months to resolve while Petitioner remains detained.
106. Absent habeas review by this Court, Petitioner would be deprived of any meaningful opportunity to challenge the legality of her detention, custody classification, and continued confinement, in violation of the Suspension Clause.

SEVENTH CAUSE OF ACTION

INJUNCTIVE RELIEF

107. Petitioner Aliuska Espinosa Pena re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.
108. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. See *Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-62 (11th Cir. 1989). To be entitled to injunctive relief, Petitioner must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury

if the injunction is not granted; (3) that the threatened injury outweighs any harm to the opposing party; and (4) that granting relief will not disserve the public interest. *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012).

109. Petitioner faces immediate and irreparable harm as a result of Respondents' continued unlawful detention. Such harm includes prolonged separation from her lawful permanent resident husband and her son, emotional and financial hardship to her family, and the ongoing deprivation of her fundamental liberty interest.
110. Continued detention also impairs Petitioner's ability to meaningfully pursue her pending immigration relief, including:
 111. her application for asylum under 8 U.S.C. § 1158;
 112. a pending Form I-130 family-based immigrant petition filed by her lawful permanent resident husband under 8 U.S.C. § 1154; and
 113. her good-faith efforts to adjust status under the Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161.
114. Detention severely limits Petitioner's ability to gather evidence, communicate effectively with counsel, and participate fully in her immigration proceedings.
115. Petitioner has demonstrated a substantial likelihood of success on the merits, as Respondents' detention of Petitioner under INA § 235(b) is contrary to the statutory scheme, exceeds their authority under the Immigration and Nationality Act, violates the Administrative Procedure Act, and infringes Petitioner's rights under the Due Process Clause of the Fifth Amendment.
116. The threat that DHS may again invoke an Asylum Cooperative Agreement with Ecuador establishes a concrete and imminent risk of removal. Removal under an

improperly applied ACA would cause irreparable harm by permanently foreclosing Petitioner's asylum claim and her pending family-based and Cuban Adjustment Act relief. Injunctive relief is therefore necessary to preserve this Court's jurisdiction and prevent irreversible harm.

117. The balance of equities strongly favors Petitioner. The harm to Petitioner and her family from continued detention far outweighs any minimal administrative burden on the government, particularly where Petitioner has no criminal history, poses no danger to the community, and is not a flight risk.

118. Granting injunctive relief serves the public interest by ensuring that immigration detention complies with constitutional requirements, statutory limits, and longstanding principles of due process.

119. Respondents' actions have caused Petitioner harm that warrants immediate relief.

120. Petitioner respectfully requests that this Court order her immediate release from custody, or, in the alternative, direct the Immigration Court to conduct a prompt custody redetermination hearing under INA § 236(a), applying the correct legal standard, at which the government bears the burden of justifying continued detention.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241;
- (2) Issue an Order to Show Cause directing Respondents to show cause, within three (3) days, why this Petition for Writ of Habeas Corpus should not be granted;

- (3) Declare that Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226(a), and the applicable implementing regulations, including 8 C.F.R. §§ 236.1(c)(8) and 1236.1(c)(8);
- (4) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody, or, in the alternative, to provide Petitioner with a prompt and constitutionally adequate bond hearing before an Immigration Judge at which the government bears the burden of justifying her continued detention;
- (5) Enjoin Respondents from removing Petitioner pursuant to any Asylum Cooperative Agreement, including any agreement with Ecuador, while this habeas petition is pending;
- (6) Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration of this Petition. Each day of Petitioner's unlawful detention inflicts irreparable harm, including prolonged separation from her lawful permanent resident husband and son, emotional and financial hardship to her family, and impairment of her ability to meaningfully pursue her pending asylum application, family-based immigrant petition, and adjustment of status under the Cuban Adjustment Act. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and to prevent further unlawful deprivation of liberty.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'M. Vela', is written over a horizontal line.

MIGUEL VELA

Vela Law Office

P.O. Box 12283

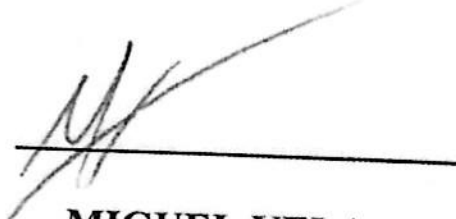
San Antonio, Texas 78212

Tel. (210)900-3065

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Aliuska Espinosa Pena, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 4th day of February, 2026.


MIGUEL VELA

Date: 02/04/2026

**Vela Law Office
P.O. Box 12283
San Antonio, Texas 78212
Tel. (210)900-3065**

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the Western District of Texas
Attn: Stephanie Rico | Civil Process Clerk
601 N.W. Loop 410, Suite 600
San Antonio, TX 78216

Warden, Karnes County Immigration Processing Center
Warden
409 FM 1144
Karnes City, TX 78118

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 4th day of February 2026

Respectfully submitted,



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