

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Yilena Chirino Terrero

Petitioner,

V.

ROSE THOMPSON, IN HER OFFICIAL
CAPACITY AS WARDEN, KARNES
COUNTY IMMIGRATION PROCESSING
CENTER

**PAMELA BONDI, IN HER OFFICIAL
CAPACITY AS UNITED STATES
ATTORNEY GENERAL;**

KRISTI NOEM, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;

TODD M. LYONS, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT;

MIGUEL EDUARDO VERGARA-LOPEZ,
IN HIS OFFICIAL CAPACITY AS FIELD
OFFICE DIRECTOR, U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT; AND,

SIRCE E. OWEN, IN HER OFFICIAL
CAPACITY AS ACTING DIRECTOR OF
THE EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

Respondents.

Civ. No. 5:26-cv-918

**PETITION FOR WRIT OF HABEAS
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

I. PRELIMINARY STATEMENT

1. Petitioner Yilena Chirino Terrero is in the physical custody of Respondents at the Karnes County Immigration Processing Center in Karnes City, Texas. She has been detained for approximately four and a half months without any meaningful opportunity to obtain an individualized custody determination by a neutral decisionmaker. Respondents justify this incarceration through a categorical mandatory detention position and by treating Petitioner as categorically ineligible for Immigration Judge custody review.

2. On or about October 31, 2023, Petitioner and her minor daughter, presented for inspection at the Calexico Port of Entry pursuant to CBP One appointments. After inspection, DHS affirmatively exercised its authority pursuant to 8 U.S.C. § 1182(d)(5) and granted Petitioner humanitarian parole. DHS did not detain her at the border. Petitioner complied with the terms of her release.

3. Petitioner's parole document was valid through October 29, 2025. Nonetheless, on or about September 27, 2025, ICE apprehended Petitioner at her place of employment and placed her into detention. Respondents re-imprisoned Petitioner *before* her parole expiration date, without written notice of any alleged violation, without a revocation determination served on Petitioner, and without a custody hearing.

4. "[I]t is well established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority" over which noncitizens may remain in the United States or be detained here. *Hernandez v. Sessions*, 872 F.3d 976, 990 n.17, (citing *Zadvydas*, 533 U.S. 678, 695 (2001)).

5. The Due Process Clause protects Petitioner, a person within the United States, from unlawful detention resulting from the denial of adequate procedural protections. *See, Zadvydas*, 533 U.S. at 693, cited in *Hernandez v. Wofford*, No. 25-CV-00986, 2025 WL 2420390, at *3

(E.D. Cal. Aug. 21, 2025). Even those whose liberty is significantly constrained, or over whom the government wields substantial discretion, retain a protected liberty interest. See, *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019), citing *Young v. Harper*, 520 U.S. 143, 150 (1997). The “essence” of procedural due process is that a person at risk of losing liberty receive notice and an opportunity to be heard in a meaningful manner and at a meaningful time. See, *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

6. As applied to Petitioner, the current regulatory framework violates the Petitioner's due process rights. Because she is classified as an *arriving alien*, she is barred from seeking AOS before the Immigration Judge, and exclusive jurisdiction over her AOS application rests with USCIS. At the same time, DHS continues to detain her, and no statutory deadline governs USCIS's adjudication of her application.

7. Federal courts have declined jurisdiction to compel agency action in her separate mandamus proceeding. As a result, Petitioner cannot present her adjustment claim in removal proceedings, cannot compel adjudication elsewhere, and remains detained while the agency with exclusive authority to resolve her eligibility has no enforceable adjudication deadline and may suspend adjudication pursuant to policy. As of the filing of this writ, Petitioner's AOS application has been pending for over 12 months.

8. Thus, as applied to Petitioner, the regulatory scheme authorizes prolonged civil detention without a meaningful procedural mechanism to obtain adjudication of the very application that would eliminate the basis for her custody. Continued confinement under these circumstances violates the Due Process Clause.

9. Because Petitioner is detained without constitutionally adequate procedures and without any meaningful administrative mechanism to secure individualized custody review or timely

adjudication of the application that would terminate the basis for detention, this Court should grant the writ and order her immediate release (or, at minimum, order constitutionally adequate individualized custody review forthwith).

II. PARTIES

10. Petitioner Yilena Chirino Terrero is a native and citizen of Cuba and is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Karnes County Immigration Processing Center in Karnes City, Texas. Petitioner is detained without a final order of removal and challenges the legality of her continued detention pursuant to 28 U.S.C. § 2241.

11. Respondent Rose Thompson is the Warden of the Karnes County Immigration Processing Center and is the immediate physical custodian of Yilena Chirino Terrero. Rose Thompson is sued in an official capacity.

12. Respondent Miguel Eduardo Vergara-Lopez is the Field Office Director of U.S. Immigration and Customs Enforcement for the San Antonio Field Office, which exercises supervisory authority over immigration detention operations affecting Yilena Chirino Terrero. Miguel Vergara is sued in an official capacity.

13. Respondent Todd M. Lyons is the Director of the U.S. Immigration and Customs Enforcement and is responsible for the nationwide administration and oversight of ICE detention policies and practices. Todd M. Lyons is sued in an official capacity.

14. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). DHS is the federal agency charged with enforcing the immigration laws and overseeing ICE and ERO. Respondent Noem is responsible for the policies, practices, and directives governing Petitioner’s detention and is sued in her official capacity. Respondent Pamela Bondi is the Attorney General of the United States and is responsible for the supervision

of federal immigration enforcement litigation and the defense of detention decisions challenged in habeas proceedings. Pamela Bondi is sued in an official capacity.

15. Respondent Sirce E. Owen is the Acting Director of the Executive Office for Immigration Review (“EOIR”), the agency within the Department of Justice that administers the immigration courts and the Board of Immigration Appeals. Immigration Judges are bound by precedential decisions of the Board of Immigration Appeals, including *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which Respondents rely upon to deny bond jurisdiction and which renders administrative relief unavailable to Petitioner. Respondent Owen is sued in her official capacity.

III. JURISDICTION

16. This action is brought pursuant to 28 U.S.C. § 2241, as Petitioner is in custody under color of federal authority and seeks relief from unlawful detention.

17. This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, as Petitioner’s claims arise under the Constitution, the INA, and the APA.

The Suspension Clause guarantees the availability of habeas review. U.S. Const. art. I, § 9, cl. 2.

18. 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.

IV. VENUE

19. Venue is proper in the United States District Court for the Western District of Texas pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(e) because Yilena Chirino Terrero is confined within this judicial district at the Karnes County Immigration Processing Center in Karnes City, Texas.

V. REQUIREMENTS OF 28 U.S.C. § 2243

20. 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, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

21. 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).

VI. STATEMENT OF FACTS

22. On October 31, 2023, Petitioner, a Cuban national, presented herself for inspection with Customs and Border Protection (“CBP”) at the Calexico Port of Entry (“POE”) in Calexico, California.

23. On that day, CBP issued Petitioner two documents: (1) a humanitarian parole document, Form I-94 (Exh. 1), pursuant to 8 U.S.C. § 1182(d)(5); and, (2) a Notice to Appear (“NTA”), Form I-862. Exh. 2. The Petitioner was not subjected to immigration detention at the time of her entry.

24. Petitioner was not placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1) and instead was issued a Notice to Appear and placed in full removal proceedings pursuant to 8 U.S.C. § 1229a.

25. The Respondents granted Petitioner humanitarian parole, Form I-94, pursuant to 8 U.S.C. § 1182(d)(5). The I-94 permitted the Petitioner to lawfully enter the United States as an

arriving alien under § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”) to await removal proceedings, which according to the NTA were scheduled for August 2, 2028.

26. The Petitioner has no criminal history, no convictions, has never been arrested for alleged criminal conduct, nor have the Defendants alleged that the Petitioner has violated the terms of her Humanitarian Parole or otherwise violated the immigration law of the United States.

27. On January 14, 2025, Petitioner filed Form I-485 with all required fees and supporting documents. USCIS issued a Notice of Action, Form I-797C, confirming receipt. Exh. 3.

28. On January 23, 2025, DHS issued the “Huffman Memorandum,” a policy directive ordering a nationwide review of parole grants just like the one CBP issued the Petitioner. Exh. 4.

29. On February 20, 2025, Petitioner appeared for and completed biometrics as instructed. Exh. 5

30. As of the filing of this action, the I-485 application has been pending for over twelve months. Exh. 6. The USCIS website states that in 80% of cases, USCIS takes 8.5 months to adjudicate I-485 applications. Exh. 7.

31. On or about September 27, 2025 the DHS Immigration and Customs Enforcement (“ICE”) apprehended Petitioner at her place of employment and transported her to an immigration detention facility. Exh. 8.

32. On October 1, 2025, DHS filed Form I-830 with EOIR, informing the Immigration Court of the Petitioner’s apprehension. The Immigration Court responded by advancing the Petitioner’s initial Master Calendar Hearing from August 2, 2028 to November 13, 2025. Exh. 9

33. At that hearing, Immigration Judge Crossan instructed Petitioner to file relief from removal, despite having no jurisdiction over an arriving-alien adjustment application.

34. On December 5, 2025, Petitioner filed her Application for Asylum and for Withholding of Removal, Form I-589. Exh. 10.

35. On February 3, 2026, Respondents filed a Motion to Pretermitt (Exh. 11) the Petitioner's I-589 application pursuant to the ACA agreement between the governments of the United States and Ecuador (Exh. 12).

36. On February 6, 2026, the Petitioner appeared for her Individual Merits Hearing ("IH") regarding her I-589 application. Exh. 13. The IJ continued the IH to allow the Petitioner to respond to the Department's untimely Motion to Pretermitt the I-589 Application.

37. As of the filing of this writ, the Immigration Court has yet to reschedule the IH hearing date. Exh. 14.

38. On February 9, 2026, the United States District Court for the Northern District of Texas dismissed the Petitioner's mandamus action regarding the delay in adjudication of the Petitioner's I-485 for want of subject matter jurisdiction. Exh. 15.

VII. ARGUMENT

39. Noncitizens are entitled to due process of law under the Fifth Amendment to the United States Constitution. *Demore v. Kim*, 538 U.S. 510, 523 (2003). While the Constitution applies to all persons within the United States, the breadth and scope of substantive and procedural due process afforded to noncitizens depends in part on the applicable statutory context in which the government acts.

40. The Supreme Court has long distinguished between the constitutional rights of noncitizens seeking initial admission and those who are already present in the United States. *See, Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Noncitizens physically present in the United States, even without lawful status, are "persons" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 693; *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596–98 (1953); *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903).

41. This distinction is embedded in the structure of the Immigration and Nationality Act (“INA”) as amended by the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996¹ and, more recently, by the Laken Riley Act of 2025.² The INA authorizes civil immigration detention through separate statutory provisions that apply to different categories of noncitizens. Where detention is authorized—or even required—by statute, it must also comport with the Due Process Clause. Courts evaluate the constitutionality of civil detention procedures under the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That analysis requires consideration of the private interests affected by the government’s action, the risk of erroneous deprivation of those interests under the procedures used and the probable value of additional safeguards, and the government’s interests, including fiscal and administrative burdens.

42. In the immigration context, courts recognize that detention implicates not only physical liberty, but also family integrity, employment, and the ability to meaningfully participate in removal proceedings, particularly for noncitizens who have established long-term residence in the United States. *See, Zadvydas v. Davis*, 533 U.S. 678, 690–93 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982)

43. The Petitioner is presently being subjected to the mandatory detention provisions of the INA as an arriving alien who was paroled into the United States. The Immigration and Nationality Act (INA) § 235(b), codified at 8 U.S.C. § 1225(b), governs the inspection and removal of arriving aliens. Subsection (b)(1)(B) generally requires that if an alien seeking admission *is determined not to be clearly and beyond a doubt entitled to be admitted*, the alien shall be detained pending a removal hearing. This statute does *not* provide for release on bond by

¹ Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009– 585. Section 1226(a).

² Pub. L. No. 119-1, 139 Stat. 3 (2025)

an immigration judge for arriving aliens. Because § 1225(b)(1)(B) applies to arriving aliens and requires their detention without providing immigration judge bond authority, arriving aliens (including those paroled at the border and treated as arriving aliens) *cannot* seek a bond hearing before an IJ.

44. However, the Western District of Texas rejected similar arguments raised by Respondents in connection to certain mandatory detention provisions of the INA. *See, Chauhan v. Noem*, No. EP-25-CV-00574-DB, at 7 n.5 (W.D. Tex. Oct. 16, 2025) (“The Court finds the fact that Petitioner is detained under Section 1225(b)(1) versus 1225(b)(2) inconsequential for purposes of its [due process] analysis. . . .”).

45. Moreover, the Western District of Texas has found that being paroled into the United States, rather than released on own recognizance, is “a distinction without a difference.” *Guerra-Miranda v. Bondi*, No. EP-26-CV-00028-KC (W.D. Tex. Jan. 21, 2026).

46. The Western District of Texas has held that noncitizens who have “established connections” in the United States by virtue of living here for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) (citing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020)). Because the Government released Petitioner and permitted her to live in the United States for close to two and a half years, they cannot revoke that liberty without an individualized determination of the need to do so.

47. Habeas corpus remains the fundamental instrument for safeguarding liberty against unlawful executive detention. Immigration detention, though civil in form, imposes a severe deprivation of physical liberty and must comport with the procedural protections required by the Due Process Clause.

48. As explained in further detail below, Respondents' continued detention of Petitioner (A) fails the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Respondents' binding policy and precedential decisions treating her detention as mandatory have (B) rendered administrative custody redetermination futile. Finally, Respondents' undue delay in adjudicating adjustment-of-status applications for arriving aliens has (C) created an effectively indefinite detention scheme that, as applied to Petitioner, violates her protected liberty interests.

49. This Court should therefore grant habeas relief and order her release pending adjudication of her adjustment application.

(A)

DUE PROCESS VIOLATIONS PURSUANT TO MATHEWS FACTORS

50. Respondents' actions implicate significant constitutional due process concerns. Noncitizens are entitled to due process of law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003). To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those factors are: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews*, 424 U.S. at 335. Each is taken in turn.

(i)

Substantial Liberty Interest

51. The private interest at stake is profound. "The interest in being free from physical detention is the most elemental of liberty interests." *Martinez*, 2025 WL 2598379, at *2 (quoting

Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004)). Petitioner is a long-term domiciliary of the United States who lived openly in the interior of the country for nearly for nearly two years before her collateral arrest. Courts have repeatedly recognized that long-term residence in the United States gives rise to a cognizable liberty interest in freedom from immigration detention. See, *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025).

52. Petitioner's interest is not limited to freedom from physical confinement. Petitioner's detention disrupts family life, employment, and her ability to meaningfully participate in her removal proceedings.

53. On October 31, 2023, Petitioner presented herself for inspection at the Calexico Port of Entry pursuant to a CBP One appointment. DHS inspected her and her minor daughter and affirmatively exercised its discretionary authority under 8 U.S.C. § 1182(d)(5) to grant humanitarian parole to both of them. Each was issued a Form I-94 and permitted to enter the United States lawfully pending a § 240 Removal Proceedings. Neither was detained at entry. Neither was placed into expedited removal. Instead, DHS made a discretionary determination that both mother and child were suitable for release into the interior of the United States while their proceedings were pending.

54. For nearly two years Petitioner lived openly in the community pursuant to government authorization. She complied with all reporting requirements. She committed no crimes. She violated no conditions of parole. She appeared for biometrics in connection with her pending Form I-485 under the Cuban Adjustment Act. Her master calendar hearing was originally scheduled for 2028, reflecting the Government's expectation that she would remain at liberty while her case proceeded.

55. On September 27, 2025, ICE apprehended Petitioner at her place of employment and placed her into detention. No violation of parole was alleged. No changed circumstance was identified. No individualized explanation was provided.

56. The private interest at stake is the deprivation of physical liberty. Specifically, it is the liberty of a previously paroled noncitizen who complied with all conditions of release and whose freedom was expressly authorized by DHS. It is also the interest of a mother who entered the United States with her daughter, was released alongside her daughter by discretionary decision of the Government, and then was separated from her child through re detention. The Government's original grant of parole to both mother and daughter created a significant reliance interest and a settled expectation of conditional freedom while removal proceedings and AOS were pending.

57. Courts have repeatedly recognized that noncitizens who have been released into the interior and developed community and family ties pursuant to government authorization possess a cognizable and weighty liberty interest in remaining free from detention. *See, Lopez Arevelo v. Ripa*, No. EP 25 CV 337 KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025); *Martinez*, 2025 WL 2598379, at *2. This case does not involve an individual continuously confined at the threshold of entry. It involves a lawfully paroled mother who was permitted to reside in the community for nearly two years before being detained without individualized justification.

58. Under these circumstances, the private interest is the concrete deprivation of physical liberty following the Government's prior determination that detention was unnecessary. The first *Mathews* factor weighs heavily and decisively in Petitioner's favor.

(ii)

High Risk of Erroneous Deprivation

59. The second *Mathews* factor strongly favors Petitioner. The procedures used here create a substantial risk of erroneous deprivation of liberty.

60. Petitioner has been detained for approximately four and a half months without any meaningful individualized custody determination. She has not received a hearing at which a neutral decision-maker evaluated whether she poses a flight risk or a danger to the community. Instead, detention has been treated as automatic based solely on her classification as an arriving alien and the Government's assertion that she is subject to mandatory detention under 8 U.S.C. § 1225(b).

61. Under current precedent, Immigration Judges decline to exercise bond jurisdiction over arriving aliens. The Board of Immigration Appeals has long held that Immigration Judges lack authority to redetermine custody for arriving aliens, including those who were granted parole. *See, Matter of Oseiwusu*, 22 I. and N. Dec. 19 (BIA 1998). That regulatory limitation is codified at 8 C.F.R. § 1236.1(c)(11), which expressly removes bond jurisdiction for arriving aliens.

62. More recently, in *Matter of Yajure Hurtado*, 29 I. and N. Dec. 216 (BIA 2025), the Board concluded that individuals who entered without admission are detained under 8 U.S.C. § 1225(b)(2)(A) and are therefore ineligible for release on bond. Immigration Judges are bound by that precedent. As a result, once DHS classifies a noncitizen under section 1225(b), the Immigration Court treats detention as mandatory and declines to conduct any individualized custody inquiry.

63. Because Petitioner is classified as an arriving alien who was paroled at entry, there is a high likelihood that the Immigration Court will erroneously find that it lacks bond jurisdiction.

Because the Board has interpreted section 1225(b) as mandating detention, no individualized review of flight risk or danger is likely to occur.

64. The consequence is a detention regime in which no neutral adjudicator evaluates whether confinement is necessary. Petitioner is not afforded an opportunity to challenge the legal basis for her detention in a meaningful way. She cannot present evidence regarding her compliance with parole conditions, her lack of criminal history, her pending adjustment application under the Cuban Adjustment Act, her family ties, or her community ties. None of those facts are considered because the forum that ordinarily evaluates such facts has been stripped of jurisdiction.

65. The risk of erroneous deprivation under this structure is substantial. Petitioner was previously released by DHS after discretionary review. Petitioner complied with all conditions. She committed no crimes. No changed circumstance has been identified. Yet Petitioner remains detained solely because of a categorical statutory interpretation that precludes individualized review.

66. When a system operates such that detention turns entirely on legal classification and no decisionmaker is permitted to consider whether detention is actually necessary in the particular case, the probability of error is unacceptably high. The second *Mathews* factor therefore weighs heavily in Petitioner's favor.

67. Absent habeas review, Petitioner faces a substantial likelihood of continued detention based on an erroneous statutory classification, with no meaningful opportunity to challenge that deprivation.

(iii)

The Government's Interests Do Not Justify Categorical Detention Without Process

68. The third *Mathews* factor considers the Government's interest, including the function involved and the fiscal and administrative burdens that additional procedural safeguards would entail.

69. Here, the Government's asserted interest is rooted in statute. Respondents maintain that Petitioner, as an arriving alien who has been paroled, is subject to detention under 8 U.S.C. § 1225 and therefore ineligible for bond. That interest is framed as one of uniform enforcement of Congress's detention scheme for applicants for admission.

70. But even accepting that the Government has a statutory interest in detaining certain arriving aliens, that interest does not eliminate the Constitution's requirement of procedural safeguards where physical liberty is at stake. The question under *Mathews* is not whether Congress authorized detention in some circumstances. It is whether the manner in which detention is being implemented here comports with due process.

71. Providing an individualized custody determination would not meaningfully undermine the Government's statutory interest. Immigration Judges already conduct bond hearings every day under 8 U.S.C. § 1226. The system exists. The procedures exist. The standards exist. The Government routinely presents evidence of flight risk and dangerousness in those hearings. No new infrastructure would be required. No new procedural framework would need to be created.

72. The only reason Petitioner has not received a custody determination is the categorical legal position that Immigration Judges lack jurisdiction over arriving aliens. The burden on the Government is therefore not practical. It is not administrative. It is not fiscal. It is legal and, under the current regime, futile. As long as Respondents maintain that section 1225 categorically forecloses bond jurisdiction, any attempt by Petitioner to seek bond before an Immigration Judge would be denied on jurisdictional grounds without any individualized review.

73. In other words, the Government's interest is not in avoiding administrative burden. It is in maintaining a categorical detention classification that prevents neutral review altogether. That interest, standing alone, cannot outweigh a person's fundamental liberty interest. The Constitution does not permit executive detention to rest solely on statutory labeling where no neutral adjudicator may assess whether confinement is actually necessary.

74. Requiring Respondents to provide a meaningful custody determination would not require them to reinvent the wheel. It would require them to use the wheel that already exists. The immigration system already contains a functioning mechanism for individualized bond review. Extending the constitutionally required process to Petitioner would impose minimal burden while substantially reducing the risk of erroneous deprivation.

75. When balanced against Petitioner's profound liberty interest and the substantial risk of error inherent in a detention regime that foregoes all review, the Government's asserted statutory interest does not justify continued detention without process.

76. Beyond its asserted interest in enforcing section 1225, the Government must also account for Congress's expressed policy judgment in enacting the Cuban Adjustment Act. The CAA reflects a deliberate legislative determination that Cuban nationals who are admitted or paroled into the United States and who maintain physical presence for one year should have access to a ready mechanism to adjust to lawful permanent residence. Congress did not treat Cuban parolees as ordinary applicants for admission. It created a humanitarian adjustment pathway specifically for those paroled into the country. That congressional policy forms part of the governmental interest that must be weighed under *Mathews*.

77. Petitioner falls squarely within that statutory framework. She was paroled into the United States, she maintained physical presence, and she timely filed her Form I-485 pursuant to the

CAA. Her eligibility is currently under agency review. At the same time, Respondents have detained her under a categorical arriving alien classification while USCIS delays adjudication of her pending application pursuant to internal policy memoranda that do not account for detained CAA applicants.

78. This posture creates a structural tension within the executive branch. One arm of the Government detains Petitioner as though she were subject to mandatory exclusion. Another arm of the Government processes her application under a statute designed to facilitate permanent residence for Cuban parolees. Congress has expressed an interest in permitting such individuals to pursue adjustment. The executive cannot ignore that interest when evaluating whether continued detention without individualized review is justified.

79. The Government's interest under the CAA is not in indefinite detention. It is in orderly adjudication of adjustment applications filed by eligible Cuban nationals. Detaining a compliant CAA applicant while simultaneously delaying adjudication of her application does not advance that congressional purpose. It risks undermining it.

80. When the *Mathews* factors are properly balanced, the Government's statutory interest in detaining arriving aliens must be weighed alongside Congress's distinct humanitarian interest in providing Cuban parolees with meaningful access to adjustment. That congressional judgment further diminishes the weight of the Government's asserted interest in maintaining categorical detention without process.

(B) ADMINISTRATIVE BOND HEARING FUTILE

81. Petitioner's continued detention rests entirely on the Government's recent assertion that 8 U.S.C. § 1225(b)(2)(A) mandates detention for all individuals who entered without inspection, regardless of when or where they were apprehended. On July 8, 2025, ICE—"in coordination with" DOJ—issued the Interim Guidance Regarding Detention Authority for Applicants for

Admission (the “Todd M. Lyons Memo”), declaring that every person who entered without admission or parole is subject to mandatory detention under § 1225(b)(2)(A), even if that person has resided in the United States for years. On September 5, 2025, the Board of Immigration Appeals adopted that same interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that such individuals are categorically ineligible for Immigration Judge bond hearings. Together, the Lyons Memo and *Matter of Yajure Hurtado* eliminate any possibility of administrative custody review for individuals placed into this detention category. In light of that binding agency position, exhaustion of administrative remedies is not merely impractical—it is legally futile. Immigration Judges lack jurisdiction to conduct bond hearings for individuals deemed subject to § 1225(b). The BIA has already resolved the statutory question in a published, precedential decision adopting the Government’s interpretation. ICE officers are bound by the Lyons Memo. There exists no administrative mechanism through which Petitioner can obtain release. Requesting a bond hearing would be rejected for lack of jurisdiction. Appealing that rejection would be foreclosed by *Matter of Yajure Hurtado*. Seeking discretionary parole from ICE would place Petitioner at the mercy of the same agency whose policy mandates detention in the first place. The administrative system offers no relief because the agency has categorically withdrawn it.

82. The futility here is structural, not speculative. The Executive Branch has made a definitive legal determination that individuals in Petitioner’s posture are subject to mandatory detention without bond eligibility. That determination is being uniformly applied. Administrative review cannot alter the controlling legal rule because the rule itself has been announced at the highest levels of the agency and ratified by the Board in a precedential opinion. Where the

agency has predetermined the outcome and foreclosed jurisdiction at every level of review, habeas corpus is not premature—it is the only available remedy.

83. The Fifth Circuit's recent approval of DHS's mandatory detention position underscores, rather than diminishes, the necessity of habeas review in this Court. If the agency's interpretation now governs all removal proceedings within this Circuit, then Immigration Judges are powerless to provide custody review and the BIA is bound by its own precedent. The detention decision is therefore insulated from any meaningful administrative reconsideration. Habeas exists precisely for circumstances in which executive detention is effectively unreviewable through ordinary channels. When the statutory interpretation underlying detention is settled within the agency and binding on its adjudicators, exhaustion serves no purpose other than delay.

84. Petitioner is presently confined under a regime that denies any individualized custody determination before a neutral decisionmaker. Because the agency has declared such review categorically unavailable, there is no procedural avenue to test the legality of detention except through this Court's habeas jurisdiction. The Constitution does not require a detainee to pursue remedies that do not exist. Nor does it require submission to a jurisdictionally barred bond request merely to create a paper denial that is preordained by binding precedent.

85. Accordingly, this Court should exercise its habeas authority to review the legality of Petitioner's detention without requiring exhaustion of unavailable administrative remedies. Where detention rests on a categorical legal rule that eliminates bond eligibility and forecloses administrative review, the appropriate remedy is immediate release from custody, as no further administrative process can cure the defect.

(C)
AS-APPLIED PROCEDURAL DUE PROCESS
CHALLENGE TO PROLONGED DETENTION.

86. The INA delegates exclusive authority to adjudicate AOS applications filed by arriving aliens to USCIS regardless of whether they are in removal proceedings or their custodial status. As applied to detained individuals like Petitioner, this delegation permits continued confinement while adjudication of the AOS is suspended or delayed pursuant to agency policy³, without access to a forum capable of both reviewing custody⁴ and adjudicating the AOS application⁵. Any unlawful agency delay necessarily prolongs Petitioner's confinement, and because no statutory deadline governs adjudication of her AOS application, detention may continue for as long as the agency declines to act.

87. An as-applied challenge does not contest the facial validity of the statute or regulations, but instead asks whether their operation in the particular circumstances of this case produces a constitutional violation. When DHS issues a Notice to Appear ("NTA") and files it with the Executive Office for Immigration Review ("EOIR"), removal proceedings formally commence before the Immigration Court with jurisdiction over the filing. In this framework, AOS ordinarily functions as a defensive form of relief in removal proceedings. A grant of AOS by the presiding IJ confers lawful permanent resident status. If the AOS applicant is detained, a grant of AOS leads to release from detention once the order becomes final.

88. However, the governing regulations carve out a significant exception for individuals classified as "arriving aliens." Such individuals, detained or otherwise, are prohibited from seeking AOS before the Immigration Judge. Instead, any Form I-485 must be filed with U.S. Citizenship and Immigration Services ("USCIS"), which retains exclusive jurisdiction to

³ See, U.S. Citizenship & Immigration Servs., Policy Memorandum PM-602-0192, *Hold and Review of All Pending Asylum Applications and All USCIS Benefit Applications Filed by Aliens from High-Risk Countries* (Dec. 2, 2025). Exh. 16.

⁴ See 8 C.F.R. § 1003.19(h)(2)(i)(B) (providing that an immigration judge "may not redetermine conditions of custody" for "[a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act").

⁵ See 8 C.F.R. §§ 1245.2(a)(1)(ii), 245.2(a)(1) (vesting exclusive jurisdiction over AOS applications filed by arriving aliens in USCIS, without distinguishing between detained and non-detained arriving aliens).

adjudicate an arriving alien's application for AOS. 8 C.F.R. §§ 1245.2(a)(1)(ii), 245.2(a)(1). The Immigration Court therefore lacks authority to consider adjustment as a form of defensive relief for arriving aliens in removal proceedings.

89. The Board has confirmed this jurisdictional limitation in *Matter of Yauri*, holding that Immigration Judges and the Board lack authority to adjudicate an arriving alien's application for AOS because exclusive jurisdiction lies with USCIS. Accordingly, AOS is unavailable as defensive relief in removal proceedings for arriving aliens.

90. Individuals designated as "arriving aliens" and placed in removal proceedings are precluded from pursuing AOS before the Immigration Court. Exclusive jurisdiction rests with USCIS.

91. As applied to Petitioner and similarly situated detained arriving aliens, this regulatory scheme divides authority among separate administrative bodies such that no single decisionmaker has the power to both review custody and adjudicate the relief that would terminate detention. DHS controls custody. USCIS controls adjudication of the adjustment application. The Immigration Court controls neither.

92. Because Petitioner is classified as an arriving alien, she cannot seek adjustment before the Immigration Judge.

93. Petitioner sought mandamus relief to compel USCIS to adjudicate her pending Form I-485; that action was dismissed for lack of subject-matter jurisdiction. *See, Terrero v. Montgomery*, Civil Action No. 3:25-CV-3538-X (N.D. Tex. Feb. 9, 2026). Exh. 15. The court held that because AOS under 8 U.S.C. § 1255 is committed to agency discretion, 8 U.S.C. § 1252(a)(2)(B) deprives federal courts of jurisdiction to review or compel such action. The case was dismissed without prejudice for lack of jurisdiction.

94. As a result, Petitioner cannot obtain adjudication through the Immigration Court or compel adjudication through federal court while she remains detained.

95. This regulatory scheme leaves Petitioner confined without a meaningful procedural mechanism to obtain adjudication of the very claim for relief that would terminate the basis for her detention.

96. Under the Due Process Clause, civil immigration detention must bear a reasonable relation to its purpose and must be accompanied by adequate procedural safeguards. Here, the risk of erroneous deprivation is substantial. Petitioner's liberty is constrained while the adjudication that could eliminate removability proceeds on an indefinite timeline. She cannot present her adjustment claim to the Immigration Judge. She cannot compel USCIS to act. Her detention therefore turns on agency inaction rather than an individualized determination of flight risk or danger.

97. The Government's interest in continued detention under these circumstances is minimal. Petitioner previously complied with supervision, DHS alleges no parole violation or changed circumstance, and Congress has expressed a humanitarian policy favoring adjustment eligibility for Cuban parolees.

98. As applied to Petitioner, continued detention without access to a meaningful adjudicatory mechanism violates procedural due process.

99. Accordingly, this Court should grant habeas relief ordering Petitioner's immediate release pending adjudication.

VIII. CLAIMS FOR RELIEF
COUNT I: Violation of Due Process

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

101. The Fifth Amendment's Due Process Clause applies to all "persons" within the United States, including noncitizens physically present here. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003).
102. Civil immigration detention constitutes a severe restraint on physical liberty and therefore must be accompanied by constitutionally adequate procedural safeguards.
103. Whether detention procedures satisfy due process is assessed under the balancing framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs: (1) the private interest affected; (2) the risk of erroneous deprivation under current procedures and the probable value of additional safeguards; and (3) the Government's interests and the burdens of additional process. *Id.* at 335.
104. Here, Petitioner's private interest is profound: she was affirmatively paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5), lived in the community for nearly two years, complied with all conditions, and has no alleged parole violation, criminal history, or changed circumstance justifying re-detention.
105. The risk of erroneous deprivation is substantial because Respondents treat detention as categorically mandatory and deny Petitioner any meaningful opportunity to obtain an individualized custody determination by a neutral decisionmaker—one that considers flight risk, danger, compliance, community ties, and other relevant factors.
106. Additional safeguards—at minimum, an individualized custody hearing at which the Government bears the burden to justify continued confinement—would materially reduce the risk of erroneous deprivation and impose minimal administrative burden, given that immigration custody hearings are routine in analogous contexts.

107. Under *Mathews*, Respondents' continued detention of Petitioner without meaningful individualized process violates the Fifth Amendment.

108. Petitioner is therefore entitled to habeas and equitable relief ordering her immediate release (or, at minimum, an individualized custody determination with constitutionally adequate procedures).

COUNT II:

Fifth Amendment As-Applied Procedural Due Process — Indefinite Detention Driven by Agency Delay in Adjudicating Adjustment of Status

109. Petitioner incorporates all preceding paragraphs.

110. As an "arriving alien," Petitioner is barred by regulation from seeking AOS before the Immigration Judge, and exclusive jurisdiction over her Form I-485 rests with USCIS. *See*, 8 C.F.R. §§ 1245.2(a)(1)(ii), 245.2(a)(1).

111. There is no statutory deadline governing USCIS adjudication of adjustment-of-status applications.

112. Petitioner's Cuban Adjustment Act-based I-485 has been pending for over twelve months.

113. Petitioner sought mandamus relief to compel adjudication; that action was dismissed for lack of jurisdiction. As applied to Petitioner, this framework creates a closed procedural loop: she cannot present her adjustment claim to the Immigration Court, cannot compel USCIS to adjudicate it, and remains detained while the agency with exclusive authority proceeds on an indefinite timeline.

114. The duration of her confinement is therefore tied directly to agency inaction rather than to any individualized finding of necessity.

115. Prolonged detention under this structure, without a meaningful mechanism to obtain adjudication of the application that would eliminate the basis for custody, violates procedural due process.

IX. CONCLUSION

116. For nearly two years, DHS exercised its discretion to parole Petitioner into the United States, allowed her to live openly in the community with her minor daughter, and implicitly determined that she was neither a danger nor a flight risk. Petitioner complied with every condition of release, maintained a spotless record, and pursued congressionally authorized relief—most notably, AOS under the Cuban Adjustment Act—by timely filing a Form I-485 that remains pending with USCIS.
117. Respondents nevertheless re-detained Petitioner through an interior arrest, without alleging any parole violation, identifying any changed circumstances, providing a reasoned explanation, or affording any meaningful opportunity to contest the deprivation of liberty before a neutral decisionmaker. Respondents now justify continued confinement by invoking a categorical “mandatory detention” theory that, as applied to Petitioner, eliminates bond jurisdiction, forecloses administrative custody review, and converts civil detention into a system of confinement driven by agency delay.
118. That regime cannot be reconciled with the Due Process Clause. Whether or not Respondents’ statutory classification ultimately prevails, the Constitution independently requires, at minimum, meaningful procedures before the Government may re-imprison a previously paroled, compliant noncitizen who has lived in the community pursuant to
119. DHS authorization. And where the regulatory framework bars Petitioner from seeking adjustment before the Immigration Judge, places exclusive jurisdiction in USCIS,

imposes no adjudication deadline, and leaves Petitioner unable to compel action elsewhere, continued detention becomes effectively indefinite and arbitrary as applied.

120. Because Petitioner is being detained without adequate procedural safeguards and without any viable administrative mechanism to obtain individualized custody review or timely adjudication of the relief that would terminate the basis for her detention, this Court should grant the writ and order Petitioner's immediate release (or, at minimum, order constitutionally adequate individualized custody review forthwith).

X. PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
4. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days;
5. Declare that Petitioner's detention is unlawful;
6. Grant the writ of habeas corpus ordering Respondents to release Petitioner again on her own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies her as subject to mandatory detention.

7. Award costs and, if permissible, attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, preserving Petitioner's position that EAJA may apply in habeas notwithstanding *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), and noting contrary authority, including *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985); *Daley v. Ceja*, No. 24-1191, — F.4th —, 2025 WL 3058588 (10th Cir. Nov. 3, 2025) (holding that habeas actions challenging immigration detention are unambiguously “civil actions” within EAJA’s “any civil action” language and affirming an EAJA award where the habeas petition materially altered the parties’ legal relationship by securing a bond hearing and release); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W.D. Pa. 2024); and *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (D. Colo. 2023).
8. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Jesus Dario Elizondo

Jesus Dario Elizondo, Esq.

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

I represent Petitioner, Yilena Chirino Terrero, 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 12th day of FEBRUARY, 2026.

RESPECTFULLY SUBMITTED,

/s/ Jesus Dario Elizondo

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