UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-

RAFAELA DEL CARMEN MERINO-MORAN

Petitioner-Plaintiff,

v.

JUAN BALTASAR, Warden, Aurora ICE Processing Center, Aurora, Colorado, in their official capacity,

GEORGE VALDEZ, Acting Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in their official capacity;

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, in their official capacity;

U.S. DEPARTMENT OF HOMELAND SECURITY,

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in their official capacity;

PAMELA BONDI, Attorney General of the United States, in their official capacity; and

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Respondents-Defendants.

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

Petitioner Rafaela Del Carmen Merino-Moran ("Petitioner"), by and through her undersigned counsel,[1] hereby respectfully files this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) and is eligible for consideration for bond. Respondents failed to properly exercise discretion by improperly shifting the burden of proof as to flight risk to the Petitioner and by abusing their discretion by issuing an arbitrary bond decision that is unreviewable due to a lack of detail as to the Immigration Judge's exercise of discretion. As a result, Petitioner is being unlawfully detained.

INTRODUCTION

1. Petitioner is a noncitizen. On or about June 22, 2019, she entered the United States near McAllen, Texas without inspection and has continuously been present in the United States since.

2. On November 15, 2025, the Petitioner was arrested by Immigration and Customs Enforcement ("ICE") agents that were looking for another person during a traffic stop; Petitioner was not the target. Based upon alleged voluntary statements she made regarding her immigration status after she was arrested, the Department of Homeland Security ("DHS") issued an arrest warrant charging Petitioner as removable from the United States.

3. Petitioner has been detained at the "Aurora ICE Processing Center" since her arrest more than four months ago.

4. Petitioner is under the direct control of Respondents and their agents.

5. Respondents have unlawfully engineered circumstances whereby Petitioner is denied the opportunity to be released on bond. While Respondents permitted Petitioner to seek

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[1] Undersigned counsel is a *pro bono* attorney with PODER, a community-based project in Northern Colorado providing legal representation to respondents in removal proceedings.

and litigate a custody redetermination hearing on March 6, 2026, Respondents did not, upon information and belief, consider individualized findings as to Petitioner consistent with 8 U.S.C. § 1226(a) and due process. The Respondents unlawfully required Petitioner to prove that she was not a flight risk. Respondents' failure to prove Petitioner's flight risk by clear and convincing evidence is contrary to law, as is an arbitrary exercise of discretion when denying bond.

6. Absent an order of relief from this Court, Petitioner will remain stuck in detention, wholly deprived of her liberty and unable to meaningfully participate in investigating and litigating her pending asylum application.

7. Petitioner respectfully seeks an order requiring her immediate release from custody. Petitioner has never been arrested, charged with, or convicted of any crimes and is thus not a danger to the community. Petitioner is not a flight risk because she has custody of her two teenage daughters that attend [redacted] public high school and are permanent U.S. residents; she has an application for asylum pending before the immigration court upon which she is likely to succeed; and, she has lived in [redacted] Colorado for 4 years and previously had stable employment and residence.

8. In the alternative, Petitioner requests that this Court conduct a prompt and meaningful bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days, at which Respondents must bear the burden of justifying continued Petitioner's detention by clear and convincing evidence and consider the Respondent's ability to pay bond given her continued detention of four months.

9. Petitioner further seeks a declaration that DHS's continued detention of her is unlawful.

10. The Court should expeditiously grant this petition.

JURISDICTION AND VENUE

11. Petitioner is in the physical custody of the federal government at the Department of Homeland Security's contract detention facility, named the "Aurora ICE Processing Center," located at 3130 N. Oakland Street, Aurora, Colorado ("the Aurora Detention Facility"). Petitioner challenges the legality of her detention.

12. This action arises under the Constitution of the United States and the INA and its implementing regulations.

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

14. This Court may grant relief pursuant to the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Administrative Procedures Act, 5 U.S.C. §§ 701-706, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., the All Writs Act, 28 U.S.C. § 1651, Federal Rule of Civil Procedure 65, and the Court's inherent equitable powers.

15. Venue is proper in the District of Colorado because Petitioner is detained within this District at the Aurora Detention Facility. *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484, 493-500 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

16. Respondents are officers, employees, or agencies of the United States, and the events or omissions giving rise to Petitioner's claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

17. Petitioner's challenge to her detention is fundamentally legal in nature, so no hearing is required. *See* 28 U.S.C. § 2243.

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. Habeas corpus is "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

19. If the Court issues an order to show cause, Petitioner asks that the Court require Respondents to 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).

PARTIES

20. Petitioner Rafaela Merino-Moran is a native and citizen of El Salvador assigned [redacted] She has been detained at the Aurora ICE detention facility for over four months since her arrest on November 15, 2025. She is in the custody, and under the direct control, of Respondents and their agents.

21. Respondent Juan Balatasar is the Warden of the "Aurora ICE Processing Center" detention facility. As such, Respondent Juan Balatasar is one of Petitioner's immediate custodians and is responsible for Petitioner's detention. He is named in his official capacity.

22. Respondent George Valdez, upon information and belief, is the Acting Director of the Denver Field Office for Immigration and Custom Enforcement (ICE). As such, Respondent George Valdez is also one of Petitioner's immediate custodians and is responsible for Petitioner's detention. He is named in his official capacity.

23. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security. He is responsible for the implementation and enforcement of the INA and oversees DHS and ICE, which are responsible for Petitioner's detention. Respondent Mullin has ultimate custodial authority over Petitioner. He is named in his official capacity.

24. Respondent Todd M. Lyons is the most Senior Official Performing the Duties of the Director of ICE and is responsible for ICE detention operations nationwide. He is named in his official capacity.

25. Respondent Pam Bondi is the Attorney General of the United States, or the chief law enforcement officer of the federal government. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is named in her official capacity.

26. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including custody determinations and the detention and removal of noncitizens.

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

EXHAUSTION AND FUTILITY

28. Over the course of the last year, Immigration Judges at the Aurora Detention Facility (and throughout the country), have issued decisions denying their jurisdiction to hear custody redetermination motions, accepted the Department's position that noncitizens in circumstances similar to Petitioner do not warrant a bond hearing at all, or, as was done in this case, deny Petitioner's motion for custody redetermination by unlawfully shifting the burden of proof from the government to the detained; issuing an unreviewable summary decision absent any showing of discretion; and, deny bond contrary to, and in spite of, stipulated evidence from the government as to a lack of danger to the public and flight risk.

29. An appeal to the Board of Immigration Appeals (BIA) would be futile considering the BIA's prior decisions concerning detention under § 1226(a) requiring the noncitizen to carry the burden that she is not a flight risk and not a danger to the community. *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024).

30. Courts routinely excuse exhaustion when resort to administrative remedies would be futile, cause irreparable injury, or when the petitioner raises substantial constitutional questions.

31. Habeas relief is especially appropriate where, like here, an agency concludes that precedent forecloses the requested relief notwithstanding contrary statutory and regulatory language and numerous, recent federal district court decisions.

LEGAL FRAMEWORK

32. Noncitizens present in the United States, like Petitioner, have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

33. On March 6, 2026, an Immigration Judge issued a one sentence order denying a change in Respondent's custody status after a bond hearing by finding: "Denied, because Failure to demonstrate not a flight risk." (See, Exhibit A, Order of the Immigration Judge dated 03/06/2026, attached hereto).

34. By this Custody Redetermination decision, the Immigration Judge impermissibly shifted the burden of proof to demonstrate a lack of flight risk to the Petitioner rather than requiring the Department to prove, by clear and convincing evidence, that Petitioner is a flight risk.

35. It is the government's burden of proof, by clear and convincing evidence, that the Petitioner is a danger to the public and/or is a fight risk and her continued detention is warranted

pending her immigration proceedings. *See*, *L.G. v. Choate*, 744 F.Supp.3d 1172, 1186 (D. Colo. July 19, 2024).

36. On this point, "the weight of authority in this District is clear: it is the Government's burden to "justify[ ] a noncitizen's continued detention at a bond hearing." *Abanil v. Baltazar,* No. 25-CV-4029-WJM-STV, 2026 WL 100587, at *8 (D. Colo. Jan. 14, 2026), [*citing*, *Arauz v. Baltazar*, 2025 WL 3041840, at *4 n.3 (D. Colo. Oct. 31, 2025); *see also Espinoza Ruiz v. Baltazar*, 2025 WL 3294762, at *2 (D. Colo. Nov. 26, 2025) (ordering that the Government would carry the burden for bond hearing under § 1226(a)); *Loa Caballero*, 2025 WL 2977650, at *9 ("During such [§ 1226(a) hearing, the Respondents bear the burden of justifying detention."); *Mendoza Gutierrez*, 2025 WL 2962908, at *14 ("the Government shall bear the burden of justifying [detention] by clear and convincing evidence of dangerousness of risk of flight"); *Garcia Cortes v. Noem*, 2025 WL 2652880, at *5 (D. Colo. Sept. 16, 2025)] (same)].

37. The Immigration Judge also abused their discretion by issuing a written decision that fails to document or explain the Immigration Judge's exercise of discretion. Due Process requires the exercise of discretion by Immigration Judges be meaningfully reviewable. That is impossible if the Immigration Judge's decisions are void of any detail of their exercise of discretion, and especially when the Government and Petitioner are largely agreeing on the underlying facts as to Petitioner's danger to the public and flight risk.

38. A review of the Department's evidence as to the Petitioner's threat of danger to the public and flight risk corroborated Petitioner's own evidence. The day before the bond hearing, on March 5th, the Department submitted an I-213, Record of Deportable/Inadmissible Alien. Petitioner's family ties, work history and residency are set forth in that document, and the

Petitioner stipulates as to those facts. (See, Exhibit B, I-213, Record of Deportable/Inadmissible Alien, attached hereto).

39. Prior to the hearing, Petitioner submitted letters from both of her daughters, their father, and their stepmother, all demonstrating that Petitioner is a loving, supportive and present mother and provides a stable home for her 16- and 14-year-old daughters.

40. At the hearing, Petitioner presented evidence of residing with her 16- and 14-year-old daughters, who are attending [redacted] public high school and are permanent U.S. residents, prior to respondent's November 18, 2025 detention. Petitioner has been a resident of the [redacted] Colorado area since December 2022 and has resided in the United States uninterrupted since June 22, 2019.

41. Additionally, Petitioner has previously submitted an application for asylum that she intends to fully litigate and is motivated to attend future hearings so that she can be granted relief in the form of asylum and continue to live with, and be present for, her daughters in the U.S.

42. Thus, the facts surrounding the Petitioner's uninterrupted presence in the United States since 2019, her family ties, work history, residency in Aurora, and lack of criminal record, are not disputed. Only the inferences of such facts are disputed. That is why the burden of proof, and a reviewable, non-arbitrary exercise of discretion, is critical.

43. Due process requires that the Respondent be provided a bond hearing at which the Government, not Petitioner, bears the burden of proving by clear and convincing evidence that the Petitioner is not a flight risk or a danger to the community. *Requejo Roman v. Castro*, No. 2:25-CV-01076-DHU-JHR, 2026 WL 125681, at *10 (D.N.M. Jan. 12, 2026), citing, *L.G. v. Choate*, 744 F.Supp.3d 1172, 1186 (D. Colo. July 19, 2024) ("In general, the Supreme Court has held that

the clear and convincing standard applies to civil detention where liberty is at stake." *citing, e.g., United States v. Salerno*, 481 U.S. 739, 751, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

FACTUAL BACKGROUND OF PETITIONER

44. Petitioner is a Salvadoran 40-year-old mother of 16- and 14-year-old daughters who has lived in the United States for approximately seven years, and in the [redacted]Metro area since 2022.

45. Petitioner has no criminal or arrest record, and, until her detention by ICE on or about November 18, 2025, worked, supported and had custody of her daughters and lived in rented apartment in Aurora.

46. Petitioner's daughters are permanent residents of the United States and attend a [redacted]public high school.

PROCEDURAL HISTORY OF IMMIGRATION REMOVAL CASE

47. Petitioner was arrested and detained by ICE on or about November 18, 2025, and has been detained in the Aurora ICE Processing Center since that time. Over the course of December 2025 and January 2026, in five, roughly 10 day/two-week increments, Petitioner's Master Calendar hearings were continued by the Immigration Court, upon information and belief, to permit her time to seek legal counsel and/or file appropriate responses in her removal proceeding. Petitioner remained in custody at the Aurora Detention Facility for three months pending these continuances and was reminded through flyers and announcements that she could self-deport at any time and receive a monetary stipend for doing so.

48. As a volunteer attorney with PODER, undersigned counsel is representing Petitioner *pro bono*. PODER is a Fort Collins-based, 501(c)3 nonprofit organization providing *pro bono* immigration legal services through volunteer lawyers.

49. Counsel learned of Petitioner's need for pro bono representation from PODER on or about February 7, 2026.

50. Counsel filed his E-28, Notice of Entry of Appearance as Attorney Before the Immigration Court, on February 11, 2026.

51. Counsel made his first appearance in this case at a Master Hearing conducted on February 13, 2026. At that time, Counsel advised the Immigration Court that he would assist Respondent file a I-589 Application for Asylum and for Withholding of Removal and requested 21 days to prepare. This additional time was requested because Counsel needed time to familiarize himself with the facts and law of this case, is publicly employed and generally must volunteer his legal representation utilizing vacation time, nights and weekends, must drive one hour and twenty minutes each way from Fort Collins to the Aurora ICE Processing Center to interview the detained Respondent, and, as Counsel does not speak Spanish, must utilize a translator which takes additional time to communicate and build rapport with the client and witnesses.

52. Counsel for DHS objected to the adjournment to permit Counsel time to file the asylum application.

53. The Immigration Court required Counsel to file the I-589 Asylum Application *four days* later, on the following Tuesday, February 17, 2026, following the three-day President's Day weekend.

54. Counsel complied with that accelerated deadline by working through the weekend and meeting with Respondent and interpreter multiple times in detention and by phone over the holiday weekend.

55. Counsel next appeared for a Master Calendar hearing on Thursday, February 19, 2026, to schedule an individual merits hearing on the asylum application. The Immigration Court

advised that all evidence, witness lists and supporting documents must be filed 10 days before the individual hearing and that the clerk's office would assign a date for that hearing. Counsel requested input on scheduling the individual hearing and was told to seek a continuance if there was a conflict with the yet-to-be-scheduled hearing.

56. Counsel received notice of the individual hearing via the EOIR Case Portal on February 23, 2026, scheduling the hearing for March 12th, thereby granting Counsel *7 additional days* to discover and locate evidence, interview and schedule witnesses, and timely file same with the Immigration Court. The scheduled individual hearing only provided *17 days* to prepare for trial.

57. On February 26, 2026, counsel filed a motion seeking a bond hearing to redetermine Petitioner's custody.

58. The bond hearing was scheduled to be conducted in person at the Aurora Detention Facility on March 4, 2026 at 1:00 P.M. At the designated time and place, undersigned counsel attempted to make an appearance in the secured courtroom, but was informed that the notice was incorrect: the hearing was to be held via Webex, that counsel could not sit with Petitioner during the hearing, and that counsel should access the Webex platform from his mobile phone from his parked car outside. Without any meaningful alternative options, counsel did so and was placed in a Webex waiting room for nearly three hours. Counsel repeatedly went to the court clerk's window for status and was simply told to wait. The case was rescheduled at 3:50 P.M. for March 6th via Webex.

59. On March 6, 2026, Petitioner received an approximately 45-minute evidentiary hearing via Webex on her motion for custody redetermination. Approximately 30 minutes after the

conclusion of the hearing, the Immigration Judge issued a one sentence order denying a change in Respondent's custody status by finding: "Denied, because Failure to demonstrate not a flight risk."

60. The day before the bond hearing, on March 5th, the Department submitted an I-213, Record of Deportable/Inadmissible Alien. Petitioner's family ties, work history and residency are set forth in that document, and the Petitioner stipulates as to those facts.

61. At the hearing, Petitioner presented evidence of residing with her 16- and 14-year-old daughters, who are attending [redacted] public high school and are permanent U.S. residents, prior to respondent's November 18, 2025 detention. Petitioner has been a resident of the [redacted] Colorado area since December 2022 and has resided in the United States uninterrupted since June 22, 2019.

62. Prior to the bond hearing, Counsel filed a motion for a continuance of the March 12th individual merits hearing on the asylum application on February 28, 2026. While Counsel had been diligently working on this case, he needed additional time to meet with Respondent and other Spanish-speaking witnesses to properly prepare for the Individual Hearing, including, seeking legal real estate documents from multiple land registries in El Salvador; locate, interview, document, and provide notice of necessary witnesses; sought assistance from a mental health organization to provide a mental health evaluation of the Respondent (she has been placed on a waiting list for that evaluation); sought assistance from a pro bono or reduced cost country condition expert; and, travel 1 hour and twenty minutes each way to visit with his detained client.

63. The motion to continue the individual merits hearing was granted on March 11th, the day before the March 12th hearing; no date has been further set by the Immigration Court.

CLAIMS FOR RELIEF

Count I: Unlawful Detention Contrary to the U.S. Constitution and federal law (8 U.S.C. § 1226(a); 8 C.F.R. §§ 1236.1(d), 1003.19; 8 C.F.R. § 245.2)

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

65. Petitioner's continued civil detention without a prompt, lawful, and meaningful custody redetermination violates due process.

66. Petitioner's detention is unlawful because it exceeds statutory authority under 8 U.S.C. § 1226(a) and constitutes arbitrary and capricious agency action in violation of the INA and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706.

67. Under 8 U.S.C. § 1226(a), DHS and ICE may arrest and detain a noncitizen pending a decision on removability, but Congress expressly conditioned this authority on the exercise of discretion and the availability of release on bond or conditional parole.

68. Section 1226(a) detention is discretionary and requires Respondents to consider bond or conditional parole when detention is not mandatory.

69. Petitioner's detention — when she is neither a danger to the community nor a flight risk — is therefore not only contrary to the structure of § 1226(a) but arbitrary and capricious under the APA. The agency's conduct is arbitrary because it violates well-established APA standards requiring agencies to articulate a rational connection between the facts found and the decision made.

70. Petitioner seeks an order for her immediate release given her ongoing four months of unlawful and unnecessary detention.

71. Alternatively, Petitioner seeks a bond hearing before this Court where, to justify her continued detention, the government bears the burden to establish by clear and convincing evidence that she is a danger to the community or a flight risk, and, if the government cannot meet its burden, Petitioner must be ordered released.

Count II: Declaratory Relief (28 U.S.C. §§ 2201–2202)

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

73. An actual and justiciable controversy exists regarding DHS's detention authority under 28 U.S.C. §§ 2201–2202.

74. Petitioner seeks a declaration that Petitioner's continued detention is unlawful.

75. Petitioner seeks a declaration that Respondents may not enroll Petitioner in any "alternatives to detention" or similar program.

76. Petitioner seeks a declaration that she not be transferred from the Aurora Detention Facility to a different detention facility under the control of Respondents.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

a. Assume jurisdiction over this matter;
b. Issue a writ of habeas corpus requiring that Respondents release Petitioner within one day;
c. Alternatively, issue a writ of habeas corpus and conduct a bond hearing under 8 U.S.C. § 1226(a) within seven days at which:
    1) the Government must prove by clear and convincing evidence that Petitioner is a danger to the community or a flight risk;
    2) consider Petitioner's ability to pay due considering her four months of detention; and,
    3) if the Government fails to meet its burden, Petitioner must be released forthwith on the least restrictive conditions of supervision;

and, upon a failure to do so, Respondents must release Petitioner within one day;

d. Declare that DHS's detention of Petitioner is unlawful;

e. Declare that Respondents may not enroll Petitioner in any "alternatives to detention" or similar program;

f. Declare that Petitioner not be transferred from the Aurora Detention Facility to a different detention facility under the control of Respondents;

g. Enjoin Respondents from re-arresting or detaining Petitioner absent new, individualized, lawful findings consistent with § 1226(a) and due process;

h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

i. Grant such other and further relief as this Court deems just and proper.

Dated, March 28, 2026

Respectfully submitted,

/s/ Adam B. Stephens
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Pro Bono Attorney for Petitioner

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

I represent Petitioner Rafaela Merino-Moran, and I submit this verification on her behalf with her knowledge and consent. 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 and that the attached Exhibit A and Exhibit B are accurate reproductions of documents provided to the Petitioner through counsel by the Respondents.

Dated, March 28, 2026.

/s/ Adam B. Stephens
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