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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Rafaela Gonzalez Frutos,

Petitioner

v.

MARKWAYNE MULLIN in his official capacity as Secretary of the Department of Homeland Security, et. al.

Respondents

Civil No.: 1:26-cv-2953

VERIFIED PETITION FOR HABEAS CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION[1]

1. Petitioner, Rafaela Gonzalez Frutos, by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is a native and citizen of Mexico who entered the United States without inspection in approximately 2008, when she was twenty-eight years old. She has continuously resided in the United States since that time. The Notice to Appear alleges that Petitioner is removable under 8 U.S.C. § 1182(a)(6)(A)(i) as an individual present in the United States without having been admitted or paroled. Petitioner is not alleged to be an arriving alien. Based upon information and belief, Petitioner is presently detained at the Aurora Contract Detention Facility in Aurora, Colorado.

2. On June 18, 2026, Petitioner and her husband, Noe Serrano Perez, a lawful permanent resident of the United States, were traveling by automobile through Rock Springs, Wyoming. Mr. Serrano Perez was driving the vehicle while Petitioner occupied the front passenger seat. Following a traffic stop, law enforcement officers questioned Petitioner, removed her from the vehicle, and placed her into custody. Petitioner has no disqualifying criminal history, no prior order of removal, and was subsequently transferred into the custody of U.S. Immigration and Customs Enforcement ("ICE"), where she remains detained pending removal proceedings.

3. This case is controlled by the published decision of the United States Court of Appeals for the Tenth Circuit in *Santillan Quiroz v. Mullin*, No. 26-6019 (10th Cir. June 30, 2026). There, the Tenth Circuit held that noncitizens who entered the United States without inspection but are later apprehended in the interior of the country are detained pursuant to 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2)(A), and are therefore eligible to seek bond redetermination before an Immigration Judge.

[1] Counsel has not had the opportunity to speak with the Petitioner and all of the information is based on information and belief and information given to counsel by Petitioner's family.

The court rejected the Government's recent interpretation that such individuals may categorically be treated as arriving aliens subject to mandatory detention under § 1225(b)(2)(A).

4. Despite the Tenth Circuit's controlling decision, Respondents continue to detain Petitioner under the same legal theory rejected in *Santillan Quiroz*. Petitioner was not apprehended while seeking admission at a port of entry. Rather, she was encountered within the interior of the United States after residing in this country for approximately eighteen years. Under binding Tenth Circuit precedent, her detention is governed by 8 U.S.C. § 1226(a), and she is entitled to seek an individualized bond determination before an Immigration Judge.

5. Although the Board of Immigration Appeals reached a contrary conclusion in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), that interpretation no longer controls within the Tenth Circuit. The Court of Appeals expressly rejected the Government's position that § 1225(b)(2)(A) applies to individuals apprehended in the interior after entering without inspection, concluding instead that Congress established separate detention schemes for arriving aliens and for individuals already present within the United States.

6. Because Respondents continue to detain Petitioner under an interpretation of the Immigration and Nationality Act that is contrary to binding Tenth Circuit authority, her continued detention without access to bond redetermination is unlawful. Petitioner therefore respectfully requests that this Court grant the Petition, declare that her detention is governed by 8 U.S.C. § 1226(a), and order Respondents to provide her with a prompt bond hearing before an Immigration Judge or such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction: 5 U.S.C. §§ 701 et seq., the Due Process Clause of the United States

Constitution and the INA. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq. and the All Writs Act, 28 U.S.C. § 1651.

9. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

10. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the United States or officers or employees thereof acting in their official capacity or under color of legal authority; Petitioner is in the custody of the Denver Contract Detention Facility in Denver, Colorado, which is in the jurisdiction of the Colorado District Court and there is no real property involved in this action.

11. There is no requirement for exhaustion of administrative remedies in the present case as neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INA require petitioners to exhaust administrative remedies before filing petitions for habeas corpus

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "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).

14. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

PETITIONER

15. Petitioner is a Mexican citizen, who is currently in the custody of the Department of Homeland Security in Denver, Colorado.

RESPONDENTS

16. Respondent Markwayne Mullin (Secretary Mullin) is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the Petitioner. Respondent Markwayne Mullin is sued in his official capacity as an agent of the United States Government.

17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent George Valdez is the Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees in the Federal District of Colorado. Based on information and belief, he is also the current warden of the Petitioner. Respondent George Valdez is sued in his official capacity as an agent of the United States Government.

19. Respondent Todd Blanche is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States. Todd Blanche is sued in his official capacity as an agent of the United States.

20. Respondent Juan Baltazar is the Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc., and as such has authority over the jail where the petitioner is presently detained. Juan Baltazar is sued in his official capacity as an agent of the United States.

21. Respondent the Executive Office for Immigration Review is the federal agency responsible for custody redeterminations relating to non-citizens charged with being removed from the United States.

22. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

LEGAL FRAMEWORK

23. Under 8 U.S.C. § 1226(a), the Department of Homeland Security may arrest and detain noncitizens who have been apprehended within the interior of the United States and placed in removal proceedings pending a decision on whether they are to be removed. Unlike the mandatory detention provisions of 8 U.S.C. § 1225(b), § 1226(a) expressly authorizes release on bond or conditional parole and permits an individualized bond redetermination before an Immigration Judge. In *Santillan Quiroz v. Mullin*, the United States Court of Appeals for the Tenth Circuit held that noncitizens who entered the United States without inspection but are later apprehended in the interior are detained pursuant to § 1226(a), not § 1225(b)(2)(A), and are therefore eligible to seek bond redetermination before an Immigration Judge. The court further held that the Government's recent interpretation treating such individuals as arriving aliens subject to mandatory detention under § 1225(b)(2)(A) is inconsistent with the Immigration and Nationality Act and its longstanding statutory and regulatory framework. Accordingly, under binding Tenth Circuit precedent, noncitizens such as Petitioner who are

apprehended within the interior of the United States are entitled to seek an individualized bond determination under § 1226(a).

PROCEDURAL AND FACTUAL BACKGROUND

24. Petitioner entered the United States in 2008 without inspection. Petitioner is a native and citizen of Mexico.

25. Based on information and belief, Petitioner was arrested by ICE on June 18, 2026 and has no disqualifying criminal history.

CAUSES OF ACTION

1. FIRST CAUSE OF ACTION: Violation of Fifth Amendment Right to Due Process

26. Petitioner incorporates and realleges the allegations above.

27. The Due Process Clause of the Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The protections of the Due Process Clause extend to all persons physically present within the United States, including noncitizens regardless of whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Civil immigration detention therefore must be accompanied by constitutionally adequate procedural safeguards before an individual's liberty may be restrained.

28. Respondents are depriving Petitioner of her liberty without due process by refusing to provide the individualized bond determination to which she is entitled under 8 U.S.C. § 1226(a) and binding Tenth Circuit precedent. In *Santillan Quiroz v. Mullin*, the Tenth Circuit held that noncitizens who entered the United States without inspection but are apprehended in the interior are detained pursuant to § 1226(a), rather than § 1225(b)(2)(A), and are therefore eligible to seek bond redetermination before an Immigration Judge. Nevertheless, Respondents continue to classify

Petitioner as ineligible for bond based upon the same legal interpretation rejected by the Tenth Circuit, thereby preventing any meaningful review of whether her continued detention is justified.

29. An individualized opportunity to be heard before a neutral decisionmaker is a fundamental component of procedural due process. *Mathews v. Eldridge*, 424 U.S. 319 (1976). By refusing to afford Petitioner access to the bond process required by § 1226(a) and recognized by the Tenth Circuit, Respondents have categorically denied her any meaningful opportunity to challenge the necessity of her continued civil detention. Petitioner has therefore been deprived of her liberty without the procedural protections guaranteed by the Fifth Amendment, and her continued detention is unconstitutional.

2. SECOND CAUSE OF ACTION:
Violation of the Immigration and Nationality Act

30. Petitioner incorporates and realleges the allegations above.

31. The Immigration and Nationality Act establishes separate statutory detention schemes for noncitizens seeking admission at the Nation's borders and for noncitizens who have already entered and are apprehended within the interior of the United States. Under 8 U.S.C. § 1225, certain arriving aliens are subject to mandatory detention pending admissibility proceedings. By contrast, 8 U.S.C. § 1226(a) governs the arrest and detention of noncitizens who are already present in the United States and authorizes their release on bond or conditional parole pending the resolution of removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

32. In *Santillan Quiroz v. Mullin*, the United States Court of Appeals for the Tenth Circuit held that noncitizens who entered the United States without inspection but are subsequently apprehended within the interior of the country are detained pursuant to 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2)(A). The court further rejected the Government's interpretation that such individuals may categorically be treated as arriving aliens subject to mandatory detention and held that they are eligible

to seek bond redetermination before an Immigration Judge. Accordingly, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), cannot control this case because it has been rejected by binding Tenth Circuit precedent.

33. Petitioner entered the United States without inspection approximately eighteen years before her arrest and was apprehended only after residing in the interior of the United States. She was not encountered while seeking admission at a port of entry, was not placed into expedited removal proceedings, and does not otherwise fall within any statutory provision requiring mandatory detention under 8 U.S.C. § 1225. Under the Immigration and Nationality Act, as authoritatively interpreted by the Tenth Circuit, Petitioner's detention is governed by 8 U.S.C. § 1226(a).

34. By continuing to detain Petitioner under a legal interpretation that has been rejected by the Tenth Circuit and by refusing to recognize her eligibility for bond redetermination, Respondents are acting contrary to the Immigration and Nationality Act and in excess of their statutory authority. Petitioner is therefore entitled to a declaration that her detention is governed by 8 U.S.C. § 1226(a) and to an order directing Respondents to provide her with a prompt individualized bond hearing before an Immigration Judge.

RESERVATION OF RIGHTS

Petitioner reserves the right to add additional allegations of agency error and related causes of action upon receiving the certified administrative record.

PRAYER FOR RELIEF

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

A. Assume jurisdiction over the matter;

B. B. Declare Petitioner's detention without a possibility of bond unlawful pursuant to the due process clause and the Immigration and Nationality Act;

C. Order the Department of Homeland Security to Release petitioner immediately, or, in the alternative, order the Executive Office for Immigration Review to hold a bond hearing immediately;

D. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act, 42 U.S.C. § 1988 and any other applicable law;

E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to remedy the harms to Petitioner;

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

DATED: June 30, 2026

Respectfully submitted,

/S/ Alec Bracken
Alec Bracken (USB 17178)
Contigo Law

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's Attorneys. I have discussed with Petitioner's primary counsel (Alec Bracken) the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: June 30, 2026

Respectfully submitted,

/S/ Alec Bracken
Alec Bracken (USB 17178)
Contigo Law

Certificate of Service

I, Alec Bracken, certify that a true and complete copy of this Petition was served on Respondents via email to the United States Attorney's Office for the District of Colorado at:

Katherine Ann Ross - katherine.ross@usdoj.gov

Dated: June 30, 2026

Respectfully submitted,

/S/ Alec Bracken
Alec Bracken(USB 17178)
Contigo Law