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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

GISLANE DOS SANTOS MATHEUS, Petitioner, v. **WARDEN, ELOY DETENTION CENTER; FIELD OFFICE DIRECTOR, PHOENIX FIELD OFFICE, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; DAVID J. VENTURELLA,** Acting Director, U.S. Immigration and Customs Enforcement; and **MARKWAYNE MULLIN,** Secretary, U.S. Department of Homeland Security, Respondents.	**Case No.** _____ **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** *(Prolonged Civil Immigration Detention; Fifth Amendment Due Process)* **EXPEDITED CONSIDERATION REQUESTED**

Petitioner **Gislane dos Santos Matheus** ("Petitioner"), through undersigned counsel, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner challenges only the legality and constitutionality of her continued civil immigration detention. She does not ask this Court to review the merits of any charge of removability, application for relief from removal, or final order of removal.

PRELIMINARY STATEMENT

1. Petitioner has been continuously detained by U.S. Immigration and Customs Enforcement ("ICE") since October 11, 2025 - 307 days as of August 14, 2026 - while her removal proceedings remain pending. Before that arrest, the Government itself had released her on an Order of Recognizance in May 2022, and she lived in the community while appearing in her immigration case.

2. ICE re-detained Petitioner after an August 26, 2025 arrest in Orlando, Florida, for alleged theft- and fraud-related offenses. Yet the criminal charges that triggered detention were subsequently dismissed in their entirety. Petitioner has not been convicted of those offenses. Continued detention resting on an unadjudicated arrest after the prosecuting authority dismissed the charges creates an acute risk of erroneous deprivation of liberty.

3. Petitioner is civilly confined, not serving a criminal sentence. Her detention is now far longer than the brief period the Supreme Court described when sustaining mandatory detention in Demore v. Kim, 538 U.S. 510 (2003), and it is expected to continue while removal proceedings and any administrative review run their course.

4. The Constitution does not permit the Government to convert categorical civil detention into potentially open-ended confinement without meaningful, neutral, and individualized review. At a minimum, due process requires a prompt hearing at which the Government must justify continued detention by clear and convincing evidence of present danger or flight risk, based on reliable individualized evidence and with a contemporaneous record adequate for review.

5. Petitioner therefore requests a writ ordering her prompt release under the conditions that governed her prior release. Alternatively, she requests a constitutionally adequate custody hearing within seven days before a neutral adjudicator, with the Government bearing the burden by clear and convincing evidence, followed by release if the Government fails to carry that burden or fails timely to provide the hearing.

CUSTODY, PARTIES, AND RESPONDENTS

6. Petitioner is a native and citizen of Brazil. She is presently confined at the Eloy Detention Center, 1705 East Hanna Road, Eloy, Arizona 85131, within the territorial jurisdiction of this Court.

7. The Warden of the Eloy Detention Center is Petitioner's immediate physical custodian and is sued in the Warden's official capacity. If Petitioner has been transferred, substitute the current facility warden and address before filing.

8. The Field Office Director of ICE Enforcement and Removal Operations for the Phoenix Field Office exercises legal and operational control over Petitioner's immigration custody and is sued in the Director's official capacity.

9. David J. Venturella is the Acting Director of ICE and is sued in his official capacity.

10. Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS") and is sued in his official capacity.

JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in custody in violation of the Constitution and laws of the United States. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Fifth Amendment and federal immigration law.

12. The Court may grant declaratory relief under 28 U.S.C. §§ 2201-2202 and injunctive relief under its habeas authority, 28 U.S.C. § 2243, the All Writs Act, 28 U.S.C. § 1651, and its inherent equitable powers.

13. The REAL ID Act does not strip jurisdiction because Petitioner does not challenge any removal order or seek judicial review of the merits of removal proceedings. Her custody claim is independent of the merits of removability. See *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018); *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011).

14. Section 1226(e) does not bar this action. Petitioner does not ask the Court to substitute its discretionary judgment for an Immigration Judge's bond decision. She raises constitutional and legal challenges to the framework and procedures authorizing continued detention. See *Jennings*, 583 U.S. at 295; *Demore*, 538 U.S. at 516-17; *Martinez v. Clark*, 124 F.4th 775, 779-85 (9th Cir. 2024).

15. Venue is proper under 28 U.S.C. § 1391(e) and the immediate-custodian rule because Petitioner is physically confined in Eloy, Arizona, and her immediate custodian is located in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 442-47 (2004).

EXHAUSTION

16. Section 2241 contains no statutory exhaustion requirement for this challenge to civil immigration detention. Any exhaustion requirement is prudential, not jurisdictional, and may be excused where administrative review would be futile, cannot provide timely and adequate relief, would cause irreparable injury, or the claim presents a constitutional issue outside the agency's authority to decide.

17. Petitioner has requested custody review and has been denied release. On March 19, 2026, the Eloy Immigration Court denied custody redetermination after assigning Petitioner the burden to prove that she was not dangerous.

18. Further exhaustion should be excused. Petitioner's claim is that continued detention has become constitutionally prolonged and that the procedures used are constitutionally inadequate. The agency cannot invalidate the detention statute, cannot definitively resolve the constitutional claim, and cannot restore the months of liberty already lost. Requiring further delay would compound the alleged constitutional injury. To the extent a custody appeal remains available, it does not automatically stay detention and is not an adequate substitute for prompt habeas review.

FACTUAL AND PROCEDURAL ALLEGATIONS

A. Entry, initiation of proceedings, and prior release

19. Petitioner entered the United States on or about May 25, 2022, without being admitted or paroled after inspection. Border Patrol took her into custody.

20. On or about May 28, 2022, ICE served Petitioner with a Notice to Appear alleging inadmissibility under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I), 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I).

21. ICE then exercised its authority to release Petitioner on an Order of Recognizance. Petitioner remained in the United States while her removal proceedings were pending. Her successful community release is powerful evidence that detention is not the least restrictive means necessary to ensure appearance or protect the public.

B. Arrest, transfer to ICE, and dismissal of criminal charges

22. On August 26, 2025, the Orlando Police Department arrested Petitioner for alleged grand theft of $20,000 or more but less than $100,000, fraud/swindling, contributing to the delinquency of a minor, and larceny.

23. ICE lodged an immigration detainer on August 27, 2025. Petitioner was transferred to ICE custody on October 11, 2025.

24. The criminal charges underlying the arrest and re-detention were dismissed in their entirety. Petitioner has no conviction arising from the August 2025 arrest.

25. On or about November 6, 2025, venue in the removal matter was changed to the Eloy Immigration Court. The proceedings have continued and an Appeal remain pending with the Board of Immigration Appeals.

C. Detention authority asserted by the Government

26. The Government has asserted that Petitioner is mandatorily detained under 8 U.S.C. § 1226(c)(1)(E), as amended by the Laken Riley Act, because she is charged as inadmissible under INA § 212(a)(6)(A) or (7) and was arrested for alleged theft or larceny.

27. Petitioner preserves her statutory argument that § 1226(c)(1)(E) should not be read to authorize continuing mandatory detention based solely on an arrest after all qualifying criminal charges have been declined or dismissed. At minimum, the dismissal of the charges sharply reduces the Government's regulatory justification and increases the risk that prolonged detention rests on untested allegations rather than reliable proof.

28. Regardless of whether § 1226(c) initially authorized detention, statutory authorization does not answer whether detention has become unconstitutional as applied through its length, uncertain duration, weak present justification, and inadequate review procedures. Jennings rejected a statutory six-month rule but expressly did not decide the constitutional issue. 583 U.S. at 312.

D. Custody proceeding and continued confinement

29. On March 19, 2026, the Eloy Immigration Court denied a change in custody status. The written order stated that Petitioner "failed to meet her burden of proving she is not a danger if released on bond" and that she was properly detained without bond. The order cited *Matter of Dobrotvorskii*, 29 I. & N. Dec. 211 (BIA 2025).

30. The March 19 order did not require DHS to prove by clear and convincing evidence that Petitioner presently poses a danger or flight risk. Nor did the terse order explain what reliable evidence demonstrated a current danger notwithstanding the complete dismissal of the criminal charges that triggered detention.

31. *Dobrotvorskii* addressed flight risk, sponsorship, and the consideration of probative evidence. It noted that dangerousness was not at issue because DHS had not challenged the Immigration Judge's conclusion that DHS failed to prove danger. 29 I. & N. Dec. at 212 n.3. It did not authorize burden-shifting to a detainee at a constitutionally required prolonged-detention hearing.

32. As of August 14, 2026, Petitioner has spent 307 days in continuous ICE custody. The detention has imposed severe personal, medical, familial, financial, and litigation burdens.

33. Removal is not reasonably imminent. Proceedings remain pending, and either party may seek administrative and judicial review. Petitioner has not engaged in dilatory tactics; she has pursued nonfrivolous defenses and relief through ordinary procedures Congress provided.

LEGAL FRAMEWORK

34. The writ extends to a person "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Habeas review remains available for challenges to the legality of civil immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

35. Freedom from physical restraint lies at the heart of the liberty protected by the Fifth Amendment. *Zadvydas*, 533 U.S. at 690. Because immigration detention is civil and regulatory, not punitive, its nature and duration must remain reasonably related to permissible purposes such as ensuring appearance and protecting the community. See id.; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

36. Demore sustained § 1226(c) detention for the brief period ordinarily needed to complete removal proceedings, relying on reported average durations measured in weeks and a five-month detention attributable in part to the detainee's request for continuance. 538 U.S. at 529-31. Justice Kennedy's controlling concurrence warned that individualized review could be constitutionally required if detention became unreasonable or unjustified. *Id.* at 532-33 (Kennedy, J., concurring).

37. *Jennings* held that §§ 1225(b), 1226(a), and 1226(c) do not contain an implicit six-month bond-hearing requirement as a matter of statutory construction. 583 U.S. at 297-312. The Court remanded rather than deciding the constitutional claims. *Id.* at 312.

38. The Ninth Circuit has recognized a substantial liberty interest in avoiding prolonged civil detention and has left room for as-applied constitutional challenges. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-08, 1213 (9th Cir. 2022). It also recognizes that constitutional and legal defects in a court-ordered immigration bond hearing are reviewable, and that the Government's clear-and-convincing

burden may govern a constitutionally required § 1226(c) hearing. *Martinez*, 124 F.4th at 779-86; *Singh*, 638 F.3d at 1203-08.

CLAIM ONE

FIFTH AMENDMENT

PROLONGED CIVIL DETENTION WITHOUT CONSTITUTIONALLY ADEQUATE PROCESS

39. Petitioner realleges paragraphs 1 through 38.

40. Petitioner's 307-day detention, with no reliable end date and no constitutionally adequate hearing at which the Government must justify continued confinement, violates the Fifth Amendment as applied.

41. Under the flexible framework of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the private interest, risk of erroneous deprivation, probable value of additional safeguards, and the Government's interests weigh decisively in favor of an individualized hearing.

42. First, Petitioner's private interest is freedom from physical confinement - the most elemental liberty interest. The interest grows weightier as detention lengthens, disrupts family and livelihood, impairs health, and interferes with the ability to prepare a removal defense.

43. Second, the risk of erroneous deprivation is intolerably high. Continued confinement rests substantially on an arrest whose charges were dismissed. The March 19 custody order allocated the burden to Petitioner to disprove danger, requiring her to prove a negative while the Government retained control over her liberty. A conclusory order supplies little assurance that present danger or flight risk was assessed using reliable evidence.

44. The requested safeguards have substantial value. Requiring DHS to present clear and convincing evidence focuses the inquiry on current, individualized facts and allocates the risk of error to the party seeking confinement. A neutral hearing, a contemporaneous record, and reasoned findings permit meaningful review and reduce the risk that detention continues by inertia.

45. Third, the Government has legitimate interests in ensuring appearance and protecting the community. Those interests do not justify detention without proof. Petitioner previously succeeded on release under an Order of Recognizance, the qualifying criminal charges were dismissed, and tailored conditions can address any concrete risk. The burden of a prompt hearing is modest compared with the cost and gravity of continued physical confinement.

46. Petitioner's pursuit of available immigration remedies is not dilatory conduct and cannot be treated as consent to confinement. The Government chose detention while adjudication proceeds and must provide procedures commensurate with the resulting loss of liberty.

47. Due process therefore requires release or, at minimum, a prompt hearing at which DHS bears the burden to prove by clear and convincing evidence that Petitioner presents a current danger or flight risk. See *Addington v. Texas*, 441 U.S. 418, 425-33 (1979); *Singh*, 638 F.3d at 1203-04; *Martinez*, 124 F.4th at 785-86.

CLAIM TWO

FIFTH AMENDMENT

FUNDAMENTALLY UNFAIR CUSTODY PROCEDURES

48. Petitioner realleges paragraphs 1 through 47.

49. The March 19, 2026 custody procedure was fundamentally unfair because it required Petitioner to prove that she was not dangerous despite prolonged confinement and the dismissal of the allegations that triggered detention.

50. The Constitution requires a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. A proceeding that begins with a presumption favoring continued confinement and assigns the detainee the burden to disprove danger does not meaningfully test whether the Government's present restraint of liberty remains justified.

51. The written custody order also failed to identify sufficient reliable facts connecting Petitioner to a present danger, failed to grapple with the dismissal of the charges, and failed to provide reasoning adequate for review. Due process requires at least a contemporaneous record and a reasoned decision using the constitutionally proper standard. See *Singh*, 638 F.3d at 1208.

52. These procedural defects are legal and constitutional claims; they do not ask this Court to reweigh evidence or set a discretionary bond amount. They fall within this Court's habeas jurisdiction. *Martinez*, 124 F.4th at 779-85.

CLAIM THREE

FIFTH AMENDMENT

CONTINUED DETENTION HAS BECOME EXCESSIVE IN RELATION TO ITS REGULATORY PURPOSE

53. Petitioner realleges paragraphs 1 through 52.

54. Civil detention may not become punishment. Its duration and conditions must remain reasonably related to legitimate regulatory purposes. *Zadvydas*, 533 U.S. at 690; *Jackson*, 406 U.S. at 738.

55. Petitioner has been confined for substantially longer than the brief detention addressed in Demore. She was previously released successfully, the criminal charges that occasioned re-detention were dismissed, and removal is not imminent. Without current individualized proof of danger or flight risk, continued categorical detention is excessive in relation to any permissible regulatory purpose and violates substantive due process.

56. At minimum, these circumstances require immediate individualized review rather than continued detention based solely on statutory category and the historical fact of an arrest.

REQUEST FOR EXPEDITED CONSIDERATION

57. Every day of unlawful detention inflicts irreparable loss of liberty that cannot later be repaired by money damages. The relevant facts are largely documentary, and the requested remedy is narrow.

Petitioner respectfully asks the Court to issue an order to show cause promptly, require a return within seven days, and resolve the petition on an expedited schedule under 28 U.S.C. § 2243.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- Assume jurisdiction over this action and issue the writ or an order to show cause;
- Declare that Petitioner's continued detention without constitutionally adequate individualized review violates the Fifth Amendment;
- Order Respondents to release Petitioner promptly under the conditions that governed her prior Order of Recognizance, or under other reasonable noncustodial conditions;
- Alternatively, order Respondents to provide, within seven days, a de novo individualized custody hearing before a neutral adjudicator at which: (a) DHS bears the burden to prove by clear and convincing evidence that Petitioner presents a current danger or flight risk; (b) the decision rests on reliable individualized evidence and addresses the dismissal of the criminal charges; (c) Petitioner may present evidence, cross-examine adverse witnesses where appropriate, and obtain a contemporaneous record; and (d) the adjudicator issues prompt written findings sufficient for review;
- Order Petitioner's immediate release if Respondents do not timely provide the hearing or do not carry their burden;
- Retain jurisdiction to enforce the judgment;
- Award reasonable attorneys' fees and costs to the extent authorized by law; and
- Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 14th day of August, 2026.

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CERTIFICATE OF SERVICE

I certify that on August 14, 2026, I served the foregoing Petition and all supporting papers as follows:

- United States Attorney for the District of Arizona, by the method required by Federal Rule of Civil Procedure 4(i);
- Attorney General of the United States, by registered or certified mail under Rule 4(i);
- U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement, by registered or certified mail under Rule 4(i); and
- The Warden of the facility where Petitioner is confined, by personal service or other authorized method.

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