

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

VILMA VIVIANA CARRILLO CARRILLO,

Petitioner,

v.

PHIL BICKHAM, Warden, Irwin County Detention Center, in his official capacity; SEAN GALLAGHER, Atlanta Field Office Director, Immigration and Customs Enforcement, in his official capacity; KRISTEN SULLIVAN, Assistant Atlanta Field Office Director, Immigration and Customs Enforcement, in her official capacity; KIRSTJEN NIELSEN, Secretary of Homeland Security, in her official capacity; and MATTHEW WHITAKER, Acting Attorney General of the United States, in his official capacity,

Respondents.

**EXPEDITED SCHEDULE
REQUESTED**

28 U.S.C. § 2241

Case No. _____

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Vilma Viviana Carrillo Carrillo hereby challenges the constitutionality of her detention by civil immigration authorities since May 10, 2018. Pursuant to 28 U.S.C. § 2243, Ms. Carrillo Carrillo respectfully requests this Court order Respondents to file a Return within three days and set a hearing within five days thereafter, absent good cause for additional time. She further requests this

Court issue a writ of habeas corpus ordering her immediate release based on her unconstitutional separation from her daughter that has jeopardized her parental rights. Her daughter, Yeisvi Bernardo Carrillo, is currently in foster care in Yuma, Arizona. She will turn twelve on December 21, 2018. An expedited timeline is reasonable in this case because Ms. Carrillo Carrillo has already been unlawfully separated from daughter *for over seven months*. Every day this case remains pending, Ms. Carrillo Carrillo continues to be unconstitutionally deprived of her liberty and right to family unity.

INTRODUCTION

Vilma Carrillo Carrillo was one of thousands of parents separated from their children at the border during the “zero tolerance” policy. Yet, she is one of the very few who remains separated for the simple reason that her daughter is a United States citizen. This seemingly innocuous fact excluded Ms. Carrillo Carrillo from reunification because she was not a class member of the *Ms. L* litigation. *See Ms. L v. Immigration and Custody Enforcement*, 302 F.Supp.3d 1149, 1155-56 (S.D.C.A 2018).¹ However, ICE did not make that determination until *after* it transported her

¹ The class certified by *Ms. L* were framed as follows:

All adult parents nationwide who (1) are or will be detained in immigration custody by the Department of Homeland Security, and (2) have a minor child who is or will be separated from them by DHS *and detained in ORR custody*, absent a demonstration in a hearing that the parent is unfit or presents a danger to the child.

Id. at 1155-56 (emphasis added).

to Port Isabel, Texas with other mothers, only to be cruelly denied reunification and ultimately returned to Irwin County Detention Center, where she remains detained today.

Upon return to Georgia, IJ Earle Wilson ordered Ms. Carrillo Carrillo removed without a full and fair hearing on her compelling asylum case. Only two days after her return from Texas, Ms. Carrillo Carrillo was forced to proceed *pro se* without access to documents supporting her asylum claim or an interpreter who spoke her indigenous dialect. *See generally* Attachments A (Declaration of Vilma Viviana Carrillo Carrillo); H (Transcript of Asylum Hearing); L (BIA Appeal Brief). So egregious were these due process violations, DHS did not oppose a remand for a renewed hearing on appeal. *See* Attachment L.

Ms. Carrillo Carrillo and her daughter have now been separated for 219 days. They remain 2,046 miles apart—the distance between Yuma, Arizona and Ocilla, Georgia. They are only able to talk on the phone when Ms. Carrillo Carrillo has sufficient funds to call from her work in the detention center kitchen. Attachment A, ¶ 8. This family separation is a direct result of Ms. Carrillo Carrillo's arbitrary and unreasonable detention caused by ICE's refusal to release her, despite the serious due process rights at stake. The state of Arizona has initiated dependency proceedings against Ms. Carrillo Carrillo, the sole basis of which is her present detention. *See* Attachment C at 4 (Arizona Dependency Case Documents, Ex Parte

Order citing “Incarceration of Parent” as cause of dependency). Habeas relief is necessary in this case to remedy the constitutional violation of Ms. Carrillo Carrillo’s right to family unity and to prevent further loss of her parental rights.

Ms. Carrillo Carrillo has no criminal record and has never been deported from the United States. Over a decade ago, she worked in the fields in Vidalia, Georgia. *See* Attachment L at 44 (Supplemental Statement to Asylum Application). While in this country, she had one daughter, Yeisvi, and departed voluntarily to Guatemala in 2007. She only returned to seek refuge because of the shocking violence she endured in Guatemala at the hands of Yeisvi’s father, and because of the legal protections this country offers to asylum seekers under domestic and international law. *See* Attachment A, ¶¶ 28-33.

Although excluded from the *Ms. L* class, Ms. Carrillo Carrillo’s circumstances and treatment by the Government no less “shock the conscience” and rise to the level of a substantive due process violation. *See also W.S.R. v. Sessions*, 318 F.Supp.3d 1116 (N.D. Ill. July 9, 2018) (granting preliminary injunction for reunification of separated family); *M.G.U. v. Nielson*, 325 F.Supp.3d 111 (D.D.C. July 18, 2018) (same); *Jacinto-Castanon v. ICE*, 319 F.Supp.3d 491 (D.D.C. July 26, 2018) (same). Ms. Carrillo Carrillo not only deserves to be reunited with Yeisvi after over seven traumatic months apart, but she is entitled to relief under the Constitution. This Court has the authority to order release due to the due process violations in alien

detention cases. *See* Attachments M; N (Sample Release Orders). The writ should issue.

PARTIES

1. Petitioner Vilma Viviana Carrillo Carrillo is currently detained in Irwin County Detention Center.
2. Respondent Phil Bickham is the Warden of Stewart County Detention Center, located in Ocilla, Irwin County, Georgia. Respondent Bickham is Petitioner's immediate custodian.
3. Respondent Sean Gallagher is the Field Office Director of the Atlanta Field Office of the United States Immigration and Customs Enforcement (ICE). In this capacity, Respondent Gallagher has legal custody over Petitioner and is authorized to order his release. Respondent Gallagher has denied Ms. Carrillo Carrillo's previous request for humanitarian parole.
4. Respondent Kristen Sullivan is the Assistant Field Office Director of the Atlanta Field Office of the United States Immigration and Customs Enforcement (ICE). In this capacity, Respondent Sullivan was involved in the decision to deny Ms. Carrillo Carrillo's request for humanitarian parole.
5. Respondent Kirstjen Nielsen is the Secretary of the United States Department of Homeland Security (DHS). In this capacity, Respondent Nielsen oversees ICE, the agency charged with detaining immigrants pending removal proceedings and

maintaining a system of immigration detention centers throughout the United States. Respondent Nielsen is Petitioner's ultimate legal custodian.

6. Respondent Matthew Whitaker is the Acting Attorney General of the United States and the head of the United States Department of Justice (DOJ), which encompasses the Executive Office for Immigration Review (EOIR) and the Board of Immigration Appeals (BIA). EOIR maintains a system of immigration courts and Immigration Judges (IJs) that are charged with, *inter alia*, hearing bond requests from immigrant detainees. Respondent Whitaker is a legal custodian of Petitioner.

JURISDICTION

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 2201 (declaratory relief); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); and U.S. Constitution, art. I, § 9, cl. 2 (Suspension Clause).

VENUE

8. Venue is proper in the Middle District of Georgia under 28 U.S.C. § 2241 because Petitioner is currently detained within the district at Irwin County Detention Center in Ocilla, Georgia.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Ms. Carrillo Carrillo has exhausted her administrative remedies for the purposes of federal habeas review. "It is no longer the law of this circuit that

exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding.” *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75, n.5 (11th Cir. 2015) (abrogating *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir.2001)). “The exhaustion requirement is still a requirement; it’s just not a jurisdictional one. What its non-jurisdictional nature means is that a court need not inquire into exhaustion on its own. A court has the discretion to accept or reject a concession from the respondent that administrative remedies have been exhausted.” *Id.*

10. Further, constitutional challenges have been found exempt from administrative exhaustion requirements. *See Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006) (internal alterations and quotations omitted) (“[D]ue process claims generally are exempt from the exhaustion requirement because the BIA does not have jurisdiction to adjudicate constitutional issues.”); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) (“[T]he BIA does not have jurisdiction to adjudicate constitutional issues” (quoting *Vargas v. U.S. Dep’t of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987))).

11. Thus, this Court has jurisdiction over Petitioner’s § 2241 action, both because she has sufficiently exhausted her administrative remedies and because her petition raised constitutional issues that cannot be addressed by the immigration courts. The IJ denied her bond request on July 5, 2018. Undersigned counsel filed a parole request for humanitarian release with the ICE Field Office in Atlanta on October 30,

2018, which was denied on November 5, 2018. Attachment I (Humanitarian Parole Request); Attachment J (Declaration of Shana Tabak).²

STATEMENT OF FACTS

12. Vilma Viviana Carrillo Carrillo is a citizen of Guatemala.

13. Ms. Carrillo Carrillo is an indigenous Mayan woman whose native language is Mam, an unwritten language with multiple dialects. She speaks limited Spanish and cannot read or write in any language.

14. Ms. Carrillo Carrillo fled to the United States with her 11-year-old daughter Yeisvi Bernardo Carrillo to escape severe domestic violence at the hands of Yeisvi's father.

15. ICE took custody of Ms. Carrillo Carrillo and Yeisvi on May 10, 2018 at the border near San Luis, Mexico.

16. Once ICE determined that Yeisvi was a United States citizen, officials contacted Arizona Department of Child Safety ("DPS") to take custody of her:

When they tried to take Yeisvi away from me, Yeisvi was holding on to my waist, crying and screaming as the authorities tried to pull her away. I told her "don't worry, my love" but she was crying and crying. They took her from me by force. I will never forget it was May 10, four o'clock in the afternoon, when they took her away from me. I was so upset that I fainted. When I woke up, my daughter was gone.

² In addition to the administrative remedies of bond and parole, Ms. Carrillo Carrillo, with the assistance of a literate fellow detainee, filed an ICE Request Form asking to be reunited with her daughter while at Port Isabel. Attachment F (ICE Request Form with English Translation). This request clearly shows Ms. Carrillo Carrillo's efforts to notify ICE of her family separation and to give ICE an opportunity to remedy them.

Attachment A ,¶ 6.

17. Ms. Carrillo Carrillo was subsequently transferred to United States Marshals custody and charged, prosecuted, and convicted of illegal entry under 8 U.S.C § 1325.

18. Ms. Carrillo Carrillo was issued a Notice to Appear on May 11, 2018. Attachment B.

19. Respondents have held Ms. Carrillo Carrillo in immigration detention for 219 days—over seven months—and she has not seen her daughter throughout this time.

20. Ms. Carrillo Carrillo is detained under 8 U.S.C. § 1226(a) because she was apprehended within the United States. *See* Attachment B. The statute authorizes the Attorney General to release a noncitizen on bond or conditional parole. *See* 8 C.F.R. §§ 1003.19(a) (authorizing IJ review of ICE custody determinations); 1236.1(d) (subject to limited exceptions, authorizing noncitizens to petition IJ for release before final removal order). Thus, Ms. Carrillo Carrillo is *not* subject to mandatory detention.

21. After numerous transfers, Mr. Carrillo Carrillo was moved to Irwin County Detention Center in Ocilla, Georgia. Yeisvi was placed in foster care in Yuma, Arizona.

22. Ms. Carrillo Carrillo never received a Credible Fear Interview (“CFI”).

23. Once at Irwin, Mr. Carrillo Carrillo was placed in removal proceedings in

Atlanta Immigration Court via video teleconference. Her initial master calendar hearings were conducted in Spanish, meaning Ms. Carrillo Carrillo had limited understanding of the proceedings. She asked repeatedly about her daughter and when she would be able to see her or be released. At a master calendar hearing, the judge gave her an asylum application and ordered her to return it completed at the following one. Ms. Carrillo Carrillo was only able to complete it with the help of a literate, English-speaking fellow detainee.

24. Ms. Carrillo Carrillo's family paid for an attorney to represent her on bond. The attorney filed a bond motion on June 27, 2018. Attachment D (Bond Motion). The motion included information about Ms. Carrillo Carrillo's separation from Yeisvi and her placement in foster care in Arizona. *Id.* at Immigration Judge Earle Wilson denied her bond July 5, 2018 with no explanation other than "flight risk." Attachment E.

25. IJ Wilson set Ms. Carrillo Carrillo's merits asylum hearing for August 6, 2018.

26. On July 16, 2018, Ms. Carrillo Carrillo was one of approximately 10 mothers transferred from Irwin to Port Isabel detention center as part of the government's efforts to comply with the federal court order in *Ms. L* by the July 26, 2018 deadline.

Attachment G (Government Press Release). As she explained:

I watched as, one by one, each of those other mothers was called by an officer, given civilian clothes, and released to be reunited with their children. Each day, I hoped my name would be on the list of people who were going to be reunited with their children. I was begging the

officials, asking when they would call my name. But they never called my name.

Attachment A, ¶ 10.³

27. She eventually learned that she was not going to be reunited with her daughter because she was a United States citizen. As counsel for ICE explained to the IJ during Ms. Carrillo Carrillo's regarding absence from her scheduled August 6 hearing, "Honor, I'm sorry. There's some more notes here in our system. *Apparently the family -- she was not a candidate for the reunification and she's being transferred back to Atlanta.*" Attachment H at 10 (Hearing Transcript) (emphasis added). Devastated, she was transferred back to Irwin County Detention Center on August 13, 2018.

28. During her time at Port Isabel, a pro bono legal organization assisted Ms. Carrillo Carrillo with preparing documents for her *pro se* asylum case. She placed these and other documents she had collected from Guatemala in a backpack when she was transported back to Irwin, which was taken as part of security protocol.

³ In a Request Form from Port Isabel, Ms. Carrillo Carrillo begged ICE for help with her nightmarish circumstances:

Please help me reunite with my daughter, she is in a shelter in Phoenix, Arizona for the last 3 months. My husband threw me out of the house and threatened me with death and hit me and took the keys to the house. I speak Mam from Guatemala. Please don't send me to another detention center. Thank you for helping me. Many women die in my country at the hands of their husbands because there are no police to help them.

Attachment F (ICE Request Form with English Translation).

Attachment A, ¶¶ 19-21. Unbeknownst to Ms. Carrillo Carrillo, her asylum hearing that she missed while at Port Isabel was rescheduled for August 16, 2018. Because her backpack had not yet been returned, she did not have key documents in support of her asylum claim. She explained this to IJ Wilson, he simply ignored her:

MS. CARILLO-CARILLO [sic]: I have document that to help as evidence for my case. Those documents are in my backpack, officials or police have my backpack. It's in my room, so that's they didn't allow me to bring those documents here but I have documents from this country to guide me right now, the statement that they can help me.

IJ WILSON: Does the Government have any questions?

Attachment H at 18.

29. The IJ further ignored clear indications that she did not understand the interpreter based on her repeated non-responsive testimony, despite twice admonishing her to “answer the question that I ask you.” *Id.* at 12; 13; Attachment A, ¶¶ 24-26.⁴ Instead of making any inquiry into the missing documents or the language difficulties, he closed the hearing and ordered Ms. Carrillo Carrillo removed from the bench. Attachment H at 19; 1-6 (Oral Order of Immigration Judge).

30. In late September 2018, undersigned counsel learned of Ms. Carrillo Carrillo's case and agreed to represent her *pro bono* on appeal. The appeal and motion to remand were filed on November 30, 2018. *See* Attachment L. Counsel for ICE do

⁴ Mam dialects vary dramatically from region to region. *See* Attachment L at 82 (Declaration of Nora England, PhD.)

not oppose remand. *Id.*

31. Given the family separation issue and dependency proceedings in Arizona—including a November 7, 2018 hearing—counsel also began contacting ICE about Ms. Carrillo’s detention and ultimately requested humanitarian parole or release to the Atlanta Field Office Director.

32. On November 5, 2018, Tahirih Atlanta Executive Director Shana Tabak received a phone call from Atlanta Assistant Field Office Director Kristen Sullivan stating that the parole request had been denied. Attachment J (Declaration of Shana Tabak). Ms. Sullivan did not provide any specific reasons for the denial, nor did undersigned counsel receive a written denial of the parole application. *Id.*

33. The next hearing in Ms. Carrillo Carrillo’s dependency case is January 31, 2018 in Yuma County Juvenile Court in Yuma, Arizona.

34. Given the denial of parole and bond, the constitutional violations resulting from Ms. Carrillo Carrillo’s detention and separation from her daughter, and the risk of her losing her parental rights, undersigned counsel filed the instant petition.

GROUND FOR RELIEF:

I. MS. CARRILLO CARRILLO’S CONTINUED DETENTION AND SEPARATION FROM HER DAUGHTER VIOLATES HER RIGHTS TO FAMILY UNITY UNDER THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

35. It is well-established that non-citizens on U.S. soil have constitutional rights, including due process. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Moreover,

“the relationship between a parent and child is constitutionally protected.” *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978). “The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by” the Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

36. In denying the Government’s motion to dismiss, the district court in *Ms. L* carefully analyzed whether these broad due process rights applied the specific circumstances implicated by the administration’s family separation policy.

In this case, both Ms. L. and Ms. C. allege they are seeking asylum in the United States, and that they were separated from their children upon arriving at our nation’s border without any determination they were unfit or presented a danger to their children. They allege they are victims of a wide-spread government practice to separate migrant families “for no legitimate reason and notwithstanding the threat of irreparable psychological damage that separation has been universally recognized to cause young children.” They allege this practice may soon become “formal national policy” for purposes of deterring others from coming to the United States.

Ms. L, 302 F.Supp. at 1164-65 (internal citations omitted). The court reasoned that under these circumstances, coupled with the plaintiffs’ status as asylum seekers entitled them to protection under U.S. and international law, the due process right to family integrity applied.

37. The *Ms. L* court further reasoned that government’s policy sufficiently shocked the conscience to rise to a due process violation. In that case, the plaintiff similarly described the horrific scenes of screaming and crying when the children

were taken, and the ongoing fear and despair that the parents experienced. The court concluded:

These allegations call sharply into question the separations of Plaintiffs from their minor children. This is especially so because Plaintiffs allegedly came to the United States seeking shelter from persecution in their home countries, and are seeking asylum here. For Plaintiffs, the government actors responsible for the “care and custody” of migrant children have, in fact, become their persecutors.

Id. at 1166. The court concluded that these actions were sufficiently so “brutal” and “offensive” that they rose to substantive due process violation. *See id.* (quoting *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957)).

38. All of the factors considered by the district court in concluding that separation of families at the U.S. border violated their substantive due process rights exist in Ms. Carrillo Carrillo’s case. She has equally been deprived of the care, custody, and control of her daughter. The *only* meaningful difference in this case is her daughter happened to be born in the United States. Like the plaintiff in *Ms. L*, Ms. Carrillo Carrillo has a meritorious asylum claim; although she was never given a CFI, DHS has already conceded a remand in the BIA because of the serious errors in presenting her compelling case. She came to this country seeking legal protections to which she is entitled, only to be brutally torn away from her 11-year-old daughter.⁵

⁵ “We are a country of laws, and of compassion. We have plainly stated our intent to treat refugees with an ordered process, and benevolence, by codifying principles of asylum. *See, e.g.,* The Refugee Act, PL 96–212, 94 Stat. 102 (1980). The Government’s treatment of Ms. L. and other similarly situated class members does not meet this standard, and it is unlikely to pass constitutional muster.” *Ms. L v. ICE*, 310 F.Supp.3d 1133, 1144 (S.D.C.A June 26, 2018).

39. Ms. Carrillo Carrillo and Yeisvi's suffering when they were physically torn away from each other by the government's policy was no less profound than that of the mothers in *Ms. L* whose children were also forcibly taken away crying and screaming. See Attachment A, ¶ 6. The negative psychological effects of this separation are only exacerbated by the length of time that they have been separated:

In addition to the traumatic impact of the singular experience of family separation/disruption, additional characteristics of asylum-seeking parents' /caregivers' forced separation/disruption from their children are expected to significantly exacerbate the symptoms of traumatic distress. First, as mentioned above, the traumatic separation/disruption is ongoing, the loss is ambiguous, and there is undetermined resolution. Without having any expectation or knowledge of children's well-being or plans for reunification, parents' /caregivers' distress will be continually heightened. Extended chronicity and duration of the trauma or related threat are known to increase the frequency and severity of trauma-related psychological symptoms.

Attachment K (Stanford Medicine Statement on Trauma of Family Separation).

40. While civil immigration detention may well be "presumed non-punitive,"⁶ ICE's continued refusal to release Ms. Carrillo Carrillo under these circumstances is intentionally cruel and sufficiently "shocks the conscience"⁷ to rise to a due process violation. The government's practice of separating families in this way has already been denounced and abandoned, yet ICE has knowingly refused to release Ms.

⁶ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

⁷ *Rochin v. California*, 42 U.S. 165, 172 (1952).

Carrillo Carrillo so that she may be reunited with Yeisvi. Ms. Carrillo Carrillo faces an even greater loss of rights if her parental rights are terminated through state dependency proceedings than those whose children were placed in ORR custody. Ms. Carrillo Carrillo is entitled to habeas relief for these egregious constitutional violations.

**II. PETITIONER’S PROLONGED DETENTION WITHOUT AN
INDIVIDUAL DETERMINATION VIOLATES THE DUE PROCESS
CLAUSE OF THE FIFTH AMENDMENT**

41. ICE’s refusal to release Ms. Carrillo Carrillo, or to provide a meaningful and individualized review of her parole request, coupled with the unique due process rights and parental interests at stake in this case, render her seven-month detention unreasonable and unconstitutional.

42. As the Supreme Court has held, “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. at 693. For this reason, even “removable and inadmissible aliens are entitled to be free from detention that is arbitrary and capricious.” *Id.* at 721 (Kennedy, J., dissenting).

43. “A statute permitting indefinite detention of an alien would raise a serious constitutional problem” under the Fifth Amendment’s Due Process Clause. *Id.* at 690. In *Zadvydas*, the Supreme Court rejected the government’s argument that its immigration powers permit it to indefinitely detain noncitizens after the conclusion

of removal proceedings. *Id.* at 695. Nonetheless, the government has repeated that same argument to justify prolonged, indefinite detention during removal proceedings.

44. While the Supreme Court recently held that there was no statutory entitlement to bond hearing based on length of detention, it declined to address the constitutionality of prolonged and indefinite immigration detention. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Indeed, every circuit to address the issue has found that prolonged immigration detention without an individualized inquiry presents serious due process concerns. *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1214 (11th Cir. 2016), *vacated*, 890 F.3d 952 (11th Cir. 2018); *Reid v. Donelan*, 819 F.3d 486, 499 (1st Cir. 2016), *cert. denied*, 138 S. Ct. 1547 (2018), and *opinion withdrawn on reconsideration*, 14-1270, 2018 WL 4000993 (1st Cir. May 11, 2018); *Lora v. Shanahan*, 804 F.3d 601, 614 (2d Cir. 2015), *cert. granted, judgment vacated*, 138 S. Ct. 1260 (2018); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *rev'd sub nom. Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011) (lengthy detention without hearing “a violation of the Due Process Clause”). Although the statutory holdings of these cases have been abrogated by *Jennings*, the constitutional reasoning underpinning their holdings remains persuasive.

45. Pursuant to the INA and implementing regulations, asylum seekers who do not pose a flight risk or a danger to the community may be paroled by ICE during the pendency of their immigration cases on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A), 8 C.F.R. § 212.5(b); see also 8 C.F.R. § 235.3(c). Under the INA and implementing regulations, parole denials must be based on an individualized determination that the asylum seeker constitutes a flight risk or a danger to the community.

46. Although ICE ERO ostensibly considered Ms. Carrillo Carrillo’s parole request, they did not provide individualized determinations of flight risk and danger. However, the telephonic communication provided no explanation for the basis for the denial, nor how that basis overrode the “urgent humanitarian reasons” clearly present in this case. Because Ms. Carrillo Carrillo was denied this individualized consideration, her prolonged detention is unreasonable and unconstitutional.

47. Finally, given the AFOD’s generalized statement that they were not releasing “anyone,” coupled with the administration’s clear intent to deter migrants and asylum seekers through its policies, there is evidence that Ms. Carrillo Carrillo’s prolonged detention is part of larger deterrence policy rather than an individualized determination. This further renders her detention unconstitutionally arbitrary.

CONCLUSION

Ms. Carrillo Carrillo and her daughter Yeisvi have suffered tremendously as a result of the family separation policy and ICE's refusal to release her so that they may be reunified. Instead, after seven months, they remain thousands of miles apart, with Ms. Carrillo Carrillo's parental rights in jeopardy. Under these circumstances, her detention is unreasonable and unconstitutional. Ms. Carrillo Carrillo respectfully requests that this Court issue the writ and order her immediate release.

PRAYER FOR RELIEF

Petitioner respectfully requests the following relief:

48. Grant the petition for a writ of habeas corpus;
49. Order Respondents to release Ms. Carrillo Carrillo with reasonably appropriate supervisory conditions; and,
50. Order any other relief this Court deems reasonable and necessary to ensure Ms. Carrillo Carrillo and Yeisvi are reunited and that justice is served.

This the 14th of December, 2018

Respectfully submitted,



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COUNSEL FOR PETITIONER

DECLARATION

I, VILMA VIVIANA CARRILLO CARRILLO, declare under penalty of perjury, that I am aware this petition is being filed on my behalf and that the information contained therein is true and correct to the best of my knowledge.

Vilma Carrillo Carrillo
VILMA CARRILLO CARRILLO

December 11, 2018
DATE

Lynne Pearson
ATTORNEY

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FOR THE MIDDLE DISTRICT OF GEORGIA
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Respondents.

**EXPEDITED SCHEDULE
REQUESTED**

28 U.S.C. § 2241

Case No. _____

CERTIFICATE OF SERVICE

This is to certify that on December 14, 2018, undersigned counsel served this Petition via U.S. Mail to the Respondents at the address below:

United States Attorney General's Office
Middle District of Georgia
Post Office Box 1702
Macon, Georgia 31202



Lynn M. Pearson