IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
Northern Division

Aerica Grey Quintana Flores,

***Petitioner*, v.**

PAMELA BONDI,

In her official capacity as Attorney General of the United States,

KRISTI NOEM,

In her official capacity as Secretary of Homeland Security,

TODD M. LYONS,

In his official capacity as Acting Director, Immigration and Customs Enforcement;

SEAN ERVIN,

In his official capacity as Acting Field Office Director in charge of ICE Atlanta Field Office,

TERRANCE DICKERSON,

In his official capacity as Warden of the Stewart Detention Center.

Case No: 1:25-cv-01950-DLB

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Aerica Grey Quintana Flores ("Ms. Quintana"), through undersigned counsel, amends her previously filed petition to this Court for a writ of *habeas corpus* to remedy her unlawful detention by Respondent-Defendants, as follows:

INTRODUCTION

1. This case presents a request for immediate relief on behalf of Petitioner Ms. Quintana.
2. Ms. Quintana is married to a U.S. Citizen.
3. Ms. Quintana has pending application for asylum before the Arlington Asylum Office.
4. On or about January 9, 2017, Ms. Quintana entered the United States at the San Ysidro Port of Entry. She was processed for expedited removal under 8 U.S.C. § 1225(b)(1), but was found to have credible fear of persecution if returned to Guatemala, vacating the Expedited Removal Order against her.
5. Ms. Quintana was issued a Notice to Appear ("NTA") and the Department of Homeland Security ("DHS") initiated Removal Proceedings against her. On May 9, 2017, she filed Form I-589, Application for Asylum and Withholding of Removal with the Executive Office of Immigration Review. And on or about July 25, 2017, she was released from DHS custody under a bond of $8000. Upon Ms. Quintana's release, she moved to Maryland.
6. On or about December 20, 2023, the Removal Proceedings against Ms. Quintana were dismissed as a matter of Prosecutorial Discretion.
7. On or about May 31, 2024, Ms. Quintana re-filed her form I-589, Application for Asylum and Withholding of Removal with USCIS and it has remained pending before the Arlington Asylum Office ever since.
8. On or about June 11, 2025, Ms. Quintana was arrested by Baltimore County Police and

charged with first degree assault, second degree assault, and malicious destruction of property valued under $1000.

9. On or about June 12, 2025, Immigration and Customs Enforcement ("ICE") detained Ms. Quintana and issued a Notice to Appear, charging her as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i). Ms. Quintana remains detained by Respondents-Defendants on the basis of that Notice to Appear.
10. On June 16, 2025, Ms. Quintana filed a petition for a writ of habeas corpus with this court.
11. On or about June 20, 2025, Ms. Quintana was transferred to the Stewart Detention Center located in Lumpkin, Georgia.
12. Ms. Quintana is currently detained in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution, and the Code of Federal Regulations.
13. While Respondent-Defendants assert that Ms. Quintana is detained under the statutory authority of 8 U.S.C. 1226(a), upon information and belief, Respondent-Defendants are likely to argue against any petition for custody review that she is ineligible for a custody review before the immigration court by operation of the Attorney General's interpretation of 8 U.S.C. § 1225(b)(1) in *Matter of M- S-*, 27 I. & N. Dec. 509 (A.G. 2019).
14. Detention without any meaningful mechanism to challenge one's detention unlawfully violates the Due Process Clause of the Fifth Amendment to the United States Constitution.
15. Ms. Quintana petitions for a writ of habeas corpus to remedy her unlawful detention, and prays this Court will 1) issue an order that Ms. Quintana must be provided due process in the form of a bond hearing at which the DHS will bear the burden of establishing that Ms.

Quintana's continued detention is lawful and necessary or 2) issue an order compelling Respondent-Defendants to release Ms. Quintana.

CUSTODY

16. Ms. Quintana has been in the custody of Respondent-Defendants since on or about June 12, 2025. She was detained in the Baltimore Holding Facility in Baltimore, Maryland as of June 16, 2025 when this petition was originally filed.

17. As of June 20, 2025, Ms. Quintana remains in the custody of Respondent-Defendants at the Stewart Detention Center located in Lumpkin, Georgia.

JURISDICTION & VENUE

18. This action arises under the Suspension Clause, the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., and the Federal Code of Regulations.

19. This Court has subject-matter jurisdiction under U.S. CONST. art. 1, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1346 (original jurisdiction), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201-02 (declaratory relief), as Ms. Quintana is presently held in custody under or by color of the authority of the United States. Her detention by Respondent-Defendants is a "severe restraint" on her individual liberty and absent any meaningful mechanism to challenge the lawfulness or merit of her detention, she is "in custody in violation of the . . . laws . . . of the United States." See *Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

20. Ms. Quintana challenges her custody as a violation of the Constitution, laws, and/or treaties of the United States.

21. In addition to the habeas protections in the Constitution and INA, federal district courts have subject matter jurisdiction under both 28 U.S.C. § 1331 (federal questions) to hear claims by individuals challenging the lawfulness of agency action.

22. In sum, this Court has jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by U.S. immigration officials. See, e.g., *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

23. Additionally, the Administrative Procedure Act, 5 U.S.C. § 702, waives sovereign immunity in suits against the government for injunctive relief.

24. Venue is proper because at the time of filing the original petition, Ms. Quintana was detained within the District of Maryland.

THE PARTIES

25. Petitioner Aerica Grey Quintana Flores is a noncitizen in the United States. She is a citizen and national of Guatemala. She is currently detained by ICE in Lumpkin, Georgia. She was arrested by ICE on or about June 12, 2025.

26. Respondent Pamela Bondi is the Attorney General of the United States, and in that capacity is responsible for the U.S. immigration court system and bond authority of all immigration judges. She is sued in her official capacity.

27. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security and all sub-cabinet agencies of DHS, including Immigration and Customs Enforcement. She is sued in her official capacity.

28. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement, responsible for ICE's detention and removal operations among all its other functions. He is sued in his official capacity.

29. Respondent Sean Ervin is the Field Office Director of the ICE Atlanta Field Office, and is responsible for ICE's operations in Georgia, North Carolina, and South Carolina. Upon information and belief, he is the immediate custodian of Ms. Quintana. He is sued in his official capacity.

30. Respondent Terrance Dickerson is the Warden of Stewart Detention Center and is directly responsible for Ms. Quintana's custody. He is sued in his official capacity.

RELEVANT FACTUAL ALLEGATIONS

31. Ms. Quintana is a native and citizen of Guatemala who entered the United States on or about January 9, 2017. She was processed for expedited removal under 8 U.S.C. § 1225(b)(1), However, on February 13, 2017, the U.S. Citizenship and Immigration Services ("USCIS") Asylum Office determined Ms. Quintana had a credible fear of persecution if returned to Guatemala, vacating the Expedited Removal Order against her. Exh. 1, CFI Results.

32. On the basis of the credible fear established, on February 13, 2017, the DHS placed Ms. Quintana into removal proceedings by operation of a Notice to Appear ("NTA") in which it alleged she was an "Arriving Alien" and charged her as inadmissible under U.S.C.§1182(a)(7)(A)(i). Exh. 2, Original NTA.

33. On or about on May 9, 2017, Ms. Quintana filed a Form I-589, Application for Asylum and Withholding of Removal with the Executive Office of Immigration Review.

34. On or about July 12, 2017, Immigration Judge Julie L. Nelson ordered that Ms. Quintana be released from DHS custody under a bond of $8000, and upon Ms. Quintana's release, she moved to Maryland. See bond order, ECF 4-4.

35. On or about December 20, 2023, the Removal Proceedings against Ms. Quintana were dismissed as a matter of Prosecutorial Discretion. See order dismissing removal proceedings, ECF 4-6.

36. On or about May 31, 2024, Ms. Quintana re-filed her form I-589, Application for Asylum and Withholding of Removal with USCIS and it has remained pending before the Arlington Asylum Office ever since. See receipt notice, ECF 4-2.

37. USCIS has not conducted any interview or issued any notices after the receipt regarding Ms. Quintana's pending asylum application.

38. On or about June 11, 2025, Ms. Quintana was arrested by Baltimore County Police and charged with first degree assault, second degree assault, and malicious destruction of property valued under $1000. A preliminary hearing for July 11, 2025 in Towson, Maryland has been set for these criminal proceedings. Ms. Quintana has no criminal convictions in the United States or in any other country.

39. On or about June 12, 2025, Ms. Quintana was released from custody on recognizance, but transferred to ICE custody pursuant to a detainer and held at the Baltimore Holding facility. ICE issued a Notice to Appear that same day, signed by Supervisory Detention and Deportation Officer ("SDDO") Bacchus, charging Ms. Quintana as an inadmissible alien under U.S.C.§1182(a)(7)(A)(i). Exh. 3, New NTA and I-200.

40. Respondent-Defendants assert that Ms. Quintana is detained under the statutory authority of 8 U.S.C. 1226(a) and would be eligible for custody review before the immigration court.

41. It has been the pattern and practice of the DHS to argue that persons similarly situated to Ms. Quintana are ineligible for a custody review before the immigration court by operation of the Attorney General's interpretation of 8 U.S.C. § 1225(b)(1) in in *Matter of M- S-*, 27 I&N Dec. 509 (A.G. 2019).

EXHAUSTION

42. The decision to detain Ms. Quintana is subject to challenge through a petition for a writ of habeas corpus, and Ms. Quintana need not exhaust additional administrative remedies which might be available to her before seeking this Court's review. *Darby v. Cisneros*, 509 U.S. 137 (1993) ("[W]here the APA applies, an appeal to 'superior agency authority' is a prerequisite to judicial review only when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review.").

43. Finally, because her detention is unconstitutional, administrative exhaustion is excused. See *Guitard v. U.S. Sec'y of the Navy,* 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

RELEVANT LEGAL AUTHORITY

44. 8 U.S.C. § 1225(b)(1)(B)(ii) states, in relevant part:

> If the [asylum] officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

45. 8 U.S.C. § 1226(a) states, in relevant part:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole[.]

46. 8 C.F.R. § 236.1 states, in relevant part:

> (b) Warrant of arrest —
>
> (1) In general. At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest.

47. 8 U.S.C. § 1158(d)(1) states, in relevant part :

> (d) Asylum procedure
>
> (1) Applications
>
> The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a).

48. 8 C.F.R. § 208.2 states, in relevant part:

> Jurisdiction.
>
> (a) Jurisdiction of U.S. Citizenship and Immigration Services (USCIS).

(1) Except as provided in paragraph (b) or (c) of this section, USCIS shall have initial jurisdiction over:

(i) An asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry.

(b) Jurisdiction of Immigration Court in general.

Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I-862, Notice to Appear, after the charging document has been filed with the Immigration Court.

49. 8 C.F.R. § 208.9(a) states, in relevant part:

Procedure for interview before an asylum officer.

(a) Claims adjudicated.

USCIS shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(a)(2) or (c)(3), when applicable, and is within the jurisdiction of USCIS pursuant to § 208.2(a). In all cases, such proceedings shall be conducted in accordance with section 208 of the Act.

50. 8 C.F.R. § 208.14(b) states, in relevant part:

Approval, denial, referral, or dismissal of application.

(b) Approval by an asylum officer. In any case within the jurisdiction of USCIS, unless otherwise prohibited in § 208.13(c), an asylum officer, subject to review within USCIS, may grant, in the exercise of his or her discretion, asylum to an

applicant who qualifies as a refugee under section 101(a)(42) of the Act, and whose identity has been checked pursuant to section 208(d)(5)(A)(i) of the Act.

(c) Denial, referral, or dismissal by an asylum officer. If the asylum officer, subject to review within USCIS, does not grant asylum to an applicant after an interview conducted in accordance with § 208.9, or if, as provided in § 208.10, the applicant is deemed to have waived the applicant's right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application as follows:

(1) Inadmissible or deportable aliens. Except for applicants described in paragraph (c)(4)(ii) of this section who have not already been subject to proceedings in accordance with § 235.3(b) of this chapter, in the case of an applicant who appears to be inadmissible or deportable under section 212(a) or 237(a) of the Act, the asylum officer shall refer the application to an immigration judge, together with the appropriate charging document, for adjudication in removal proceedings (or, where charging documents may not be issued, shall dismiss the application).

51. 8 C.F.R. § 208.19 states, in relevant part

Decisions. The decision of an asylum officer to grant or to deny asylum or to refer an asylum application, in accordance with § 208.14(b) or (c), shall be communicated in writing to the applicant. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision to grant or deny asylum, or to refer an asylum application unless, in the discretion of the asylum office director, service by mail is appropriate.

ARGUMENT

52. As a "person" within the meaning of the Fifth Amendment, Ms. Quintana is entitled to due process of law while in the United States, and certainly while in immigration custody. U.S. Const. amend. V; see *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.").

53. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. To that end, due process demands "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Id. (internal quotation marks omitted). The Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and prevent flight. See *Demore*, 538 U.S. at 528; see also *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk[.]" (internal citation omitted)).

54. Civil detention—including immigration—must be carefully limited to avoid due process concerns. See e.g., *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"); *Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"); see also *United*

States v. Salerno, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception").

55. Given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers bear the burden of proof. See e.g., *Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); see also *Foucha*, 504 U.S. at 81-82 (holding unconstitutional a state "statute that place[d] the burden on the detainee to prove that he is not dangerous"). The Court has held that it is improper to ask an "individual to share in equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant." *Addington*, 441 U.S. at 427.

56. In other civil confinement contexts, the government must meet a heightened standard of proof and establish by clear and convincing evidence that its interest in civil or preventive detention outweighs an "individual's strong interest in liberty." *Salerno*, 481 U.S. at 751.

57. In *Addington*, the Court concluded that the state's use of civil detention to protect society from an allegedly dangerous individual with mental illness could not outweigh the individual's right to liberty unless the state showed by at least clear and convincing evidence that detention was necessary. See *Addington*, 441 U.S. at 433 (holding that on remand the state must meet a "precise burden equal to or greater than the clear and convincing evidence standard . . . to meet due process guarantees"); see also *Argueta Anariba v. Shanahan*, 16-cv-1928 (KBF) 2017 WL 3172765, at Slip op. *4 (S.D.N.Y. July 26, 2017) (it "is particularly important that the Government be held to the 'clear and convincing' burden of proof in the immigration detention context because civil removal

proceedings, unlike criminal proceedings, 'are nonpunitive in purpose and effect.'") (quoting *Zadvydas*, 533 U.S. at 691)).

58. Where due process is demanded, corrective measures may be taken to ensure adequate process exists before deprivation of liberty interests. To that end, requiring a bond hearing to protect against unnecessary detention is appropriate under the balancing test used to weigh the constitutionality of administrative procedures, as articulated in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'").

59. *Mathews* requires review of three factors: (1) the private interest affected by government action; (2) the risk of "erroneous deprivation" of the private interest "through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) the government's interest and its "fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail." Id. at 335. 95. Each of the *Mathews* factors weighs heavily in favor of requiring a bond hearing in which the DHS carries the burden of justifying Ms. Quintana's continued detention.

60. First, the "importance and fundamental nature" of an individual's liberty interest is well-established. See *Salerno*, 481 U.S. at 750; compare *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment . . . lies at the heart of [] liberty") with *Hechavarria v. Sessions*, 15-CV- 1058LJV, 2018 WL 5776421 at *8 (W.D.N.Y. 2018) ("this Court finds little difference between Hechavarria's detention and other instances where the government seeks the civil detention of an individual to effectuate a regulatory purpose."). In Ms. Quintana's case, the fundamental nature of freedom weighs in her favor, as she is married to a U.S. Citizen, has

significant ties to the United States, has lived lawfully in the United States, and is pursuing legal status and protection under U.S. asylum law via the proper procedures.

61. Second, the risk that a noncitizen's freedom will be erroneously deprived is significant, as any internal process to demonstrate to ICE that release is warranted is not subject to review or challenge and indeed has no published procedural rules. All § 1225 detainees who seek release from custody must provide evidence to their individual ICE detention officer who reviews the evidence and makes a decision on custody. Whether that decision is subject to supervisor review is unknown, and possibly not universally enforced. And even if it were, ICE is not a neutral arbiter of whether a noncitizens' detention is necessary—indeed, one cannot be both judge and jailer and still be called neutral.

62. Respondent-Defendants assert that Ms. Quintana is subject to detention under 8 U.S.C. 1226(a), which would allow her the opportunity to seek a review of her custody before the immigration court. However, this assertion flies in the face of the actual established practice of the DHS.

63. Nationwide, the ICE Office of the Principal Legal Advisor has opposed bond eligibility for individuals similarly situated to Ms. Quintana through application of the Attorney General's interpretation of 8 U.S.C. § 1225(b)(1) in *Matter of M- S-*, 27 I. & N. Dec. 509 (A.G. 2019). The decision establishes the interpretation of 8 U.S.C. § 1225(b)(1), that absent a decision to grant parole by DHS, all noncitizens "transferred from expedited to full proceedings after establishing a credible fear are ineligible for bond." *Id.* at 519. This provision has been invoked and sustained by immigration judges even when "full proceedings" were dismissed and re-instituted as in Ms. Quintana's case.

64. There is every indication that the DHS will continue their practice and prevent Ms. Quintana from seeking a custody review before the immigration court, as she fits squarely within the category of those noncitizens denied bond eligibility by the *Matter of M-S-* decision. In addition, the sole charge of inadmissibility on Ms. Quintana's NTA - U.S.C.§1182(a)(7)(A)(i)- applies to arriving aliens, indicating DHS' intention to assert that Ms. Quintana is detained under 8 U.S.C. 1225(b), not 8 U.S.C. 1226. As further proof of this intention, the DHS previously classified Ms. Quintana as an arriving alien and argued that she was ineligible for bond. See Exh. 2, Original NTA.

65. Although Ms. Quintana is not currently classified as an "Arriving Alien" on her newly issued NTA, DHS officers may amend a Notice to Appear through the submission of form I-261, enabling Respondent-Defendants to rectify any typographical mistake that would afford Ms. Quintana an argument to contest the applicability of 8 U.S.C. § 1225(b)(1) and to seek a review of her custody.

66. There is a significant risk of erroneous, unwarranted detention of Ms. Quintana. Requiring detained noncitizens to obtain and submit evidence within a detention facility is extremely onerous. Barriers such as indigence, language and cultural separation, limited education, and mental health issues often associated with past persecution or abuse further complicate detainees' ability to successfully obtain such records and present them in support of release. The mere fact of detention – in what are often county jails or for-profit prisons located miles from individuals' community – presents a significant obstacle to accessing the outside world and makes communication with family and counsel difficult and at times, prohibitively expensive. See e.g. *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noting that immigrant detainees "have little ability to collect evidence").

67. Finally, the proposed procedures – namely requiring that the DHS bear the burden in proving Ms. Quintana's detention is necessary to serve a legitimate government interest – does not meaningfully prejudice the government's interest in detaining dangerous noncitizens during removal proceedings.

68. First, the DHS can easily obtain records from other federal agencies and local law enforcement.

69. Second, for the 28 months during which DHS bore the burden in bond hearings established pursuant to *Lora v. Shanahan*, the agency was not "thwarted from effectively enforcing U.S. immigration laws;" nor was "public safety [] put at risk." *Sajous v. Decker*, No. 18-CV-2447, 2018 WL 2357266, Slip op. at *13 (S.D.N.Y. May 23, 2018) (ordering bond hearing at which DHS bears the burden of proof by clear and convincing evidence or immediate release of petitioner detained for eight months); see also *Frantz C v. Shanahan*, No. 18-CV-2043, 2018 WL 3302998 (D.N.J. 2018) (habeas denied because bond was previously denied under Lora standard, so petitioner had already received a constitutionally adequate bond hearing). There is thus no evidence to suggest that placing the burden on DHS impacted the rate at which parolees returned to court, nor is there any evidence that the community was placed at any greater risk of harm. The Government cannot reasonably suggest that the proposed procedure for Ms. Quintana—which has been implemented for thousands of other immigration detainees—is too burdensome to implement in this case.

70. All three *Mathews* factors favor requiring the Government to bear the burden of proof during immigration custody hearings, as it does during every other civil detention context. See e.g. *Portillo v. Hott*, 322 F.Supp.3d 698, 709 (E.D.Va 2018) ("[I]n light of the ongoing infringement of the alien's liberty interest and the strong tradition that the burden of

justifying civil detention falls on the government, the balance between individual and government interests requires that the burden of justifying petitioner's continued detention falls upon the government... to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate[.]").

71. In the context of immigration detention, "An alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. However, in Ms. Quintana's case, there is no significant likelihood of removal in the reasonably foreseeable future, as the new removal proceedings were incorrectly initiated and are rife with errors that threaten to extend litigation over her removal for months, if not years.

72. Petitioner-Plaintiff argues that due to Respondent-Defendants unlawful actions described below, the immigration court does not properly have the authority to make a decision on Ms. Quintana's removal and there is no indication that it will have that authority within the reasonably foreseeable future.

73. Congress expressly authorized the promulgation of regulations regarding the procedures to be followed in the processing and adjudication of asylum applications. 8 U.S.C. 1158(d)(1). The relevant regulations provide that USCIS "shall have initial jurisdiction" over "an asylum application filed by an alien physically present in the United States" except where jurisdiction has already vested with the immigration court. 8 C.F.R. § 208.2(a). The regulations go on to clarify that

> "Immigration judges shall have **exclusive jurisdiction over asylum applications filed by an alien who has been served** a Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for a Hearing before an Immigration

Judge; or Form I-862, Notice to Appear, **after the charging document has been filed with the Immigration Court**." 8 C.F.R. § 208.2(b) (emphasis added.)

74. A common sense reading of the regulations indicates that jurisdiction over the adjudication of an asylum application filed by an alien within the United States remains with USCIS, unless at the time of filing the application, the alien *has been served* with the appropriate charging document and that charging document *has been filed* with the immigration court.

75. In Ms. Quintana's case, she filed her application for asylum with USCIS on or about May 31, 2024. She was served with the NTA that serves as the basis of her detention on June 12, 2025, and that NTA was filed with the Immigration Court that same day. USCIS clearly has jurisdiction to adjudicate her asylum application, as the application was received more than a year prior the issuance, service, and filing of the NTA.

76. The regulations also outline an orderly process by which USCIS is to adjudicate applications for asylum, which include the collection of biometrics data; review of evidence; and a non-adversarial interview. 8 C.F.R. § 208. The regulations grant authority to asylum officers to approve applications for asylum and grant the applicant legal status as an asylee. 8 C.F.R. § 208.14(b). The regulations also provide for the process by which the asylum officer may deny an application or refer the applicant for removal proceedings and issue a Notice to Appear. 8 C.F.R. § 208.14(c).

77. A common-sense reading of the regulations does not allow room for the Respondent-Defendants' actions, which frustrated the regulations that would provide an orderly resolution of Ms. Quintana's claim before USCIS and instead instituted removal proceedings of their own accord while her affirmative claim remained pending. The chaos that would ensue from allowing efforts to detain and remove applicants while they

complete the biometrics requirements, evidence submission, and interview involved in USCIS adjudication of asylum cases strains the imagination. That chaos is well reflected in the case at hand.

78. An understanding of the regulations that avoids this chaotic result is supported by canons of statutory (or in this case, regulatory) construction. The canon of absurdity provides that statutes "are to be given a sensible construction"—interpretations that would lead to absurd consequences "should be avoided whenever a reasonable application can be given consistent with the legislative purpose." *United States v. Rippetoe*, 178 F.2d 735, 737 (4th Cir. 1949). Absurdity exists "when literal application of the statutory language at issue results in an outcome that can truly be characterized as absurd, i.e., that is so gross as to shock the general moral or common sense." *In re Sunterra Corp.,* 361 F.3d 257, 265 (4th Cir. 2004) (citation omitted).

79. The existence of the USCIS Asylum Office would be rendered meaningless if the asylum regulations are interpreted to allow one agency component (ICE Enforcement and Removal Operations or "ERO") to willfully frustrate and obviate the operations and procedures of another agency component (the USCIS Asylum Office). This is an absurd result, given the care and precision dedicated to creating the regulations for the Asylum Office and the essential role it has heretofore played in the adjudication of asylum claims.

80. Instead, a sensible construction of the regulations would indicate an intention to orderly resolve asylum applications under USCIS jurisdiction and coordinate the actions amongst the various DHS components such that no component is rendered superfluous.

81. Not only would it be nonsensical to permit Respondent-Defendants to interfere with and fundamentally alter the function of the USCIS Asylum Office, but the Respondent-

Defendants' actions constitute direct violations of the regulations governing the jurisdiction and adjudication of asylum claims.

82. Ms. Quintana's removal proceedings were initiated upon filing of the Notice to Appear dated June 12, 2025. This NTA was issued by Supervisory Detention and Deportation Officer Bacchus; it classifies Ms. Aerica as an "alien present in the United States who has not been admitted or paroled, and it charges the basis of her removal as U.S.C.§1182(a)(7)(A)(i). Respondent-Defendants assert that Ms. Quintana has been detained under the statutory authority of 8 U.S.C. 1226(a). Therefore, in accordance with the corresponding Federal Code of Regulations, the NTA issued on June 12, 2025, is the trigger for Ms. Quintana's warrant for arrest and the justification for her current detention:

> "**At the time of issuance of the notice to appear**, or at any time **thereafter** and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest." 8 C.F.R. § 236.1 (emphasis added).

83. However, the issuance of the NTA was unlawful on its face. Because USCIS has jurisdiction over Ms. Quintana's asylum application, it therefore holds the authorization to grant Ms. Quintana legal status as an asylee. 8 C.F.R. § 208.14(b). In order to make a decision on Ms. Quintana's application, USCIS must follow the appropriate procedures of adjudication dictated by the regulations before placing her in removal proceedings. USCIS cannot hold concurrent jurisdiction with the immigration court over Ms. Quintana's asylum application. 8 C.F.R. § 208.2(b). This is reasonable, as a grant of asylee status by USCIS would render the removal proceedings against Ms. Quintana moot. The regulations are logical in that no mechanism exists to divest USCIS of jurisdiction over Ms. Quintana's

application absent a decision to approve, deny, or refer the application by an asylum officer. No such decision was made here.

84. Ms. Quintana understands and agrees that certain noncitizens are subject to mandatory detention due to criminal convictions or certain other circumstances. See generally 8 U.S.C. § 1226(c). Ms. Quintana does not argue that USCIS holding jurisdiction over an asylum application filed by such noncitizens protects them from detention. However, in order to comply with the regulations, the warrant and NTA issued in such cases must indicate that the reason for the detention is the mandatory detention provisions. To do otherwise is a regulatory violation as described above. Ms. Quintana's NTA commits this error.

85. Respondent-Defendants have attempted, by issuing an NTA of their own accord, to create impermissible concurrent jurisdiction between USCIS and the immigration court over Ms. Quintana's asylum application.

86. Ultimately, the Constitution cannot abide a process by which the Government can detain someone without providing any lawful justification. Therefore, to cure the due process violation that has occurred by detaining Ms. Quintana without any adequate procedural protections and in violation of the Federal Code of Regulations, the Court should order a hearing at which Respondents must bear the burden to justify any further detention. Ms. Quintana requests that this hearing be held before this Court.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF:
VIOLATION OF FIFTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS
(Against all Respondents)

87. Petitioner re-alleges and incorporates by reference the paragraphs above.

88. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const.. amend. V.

89. The Attorney General has determined that someone in Ms. Quintana's circumstances is not eligible for review of her custody status by an immigration judge. See *Matter of M-S-*, 27 I&N Dec. 509, 519 (A.G. 2019), as Ms. Quintana was "transferred from expedited to full proceedings after establishing a credible fear are ineligible for bond."

90. Despite assertions that Ms. Quintana is currently detained under 8 U.S.C. § 1226(a), the DHS is likely to argue before the immigration court that through operation of the Attorney General's decision in *Matter of M-S-*, Ms. Quintana should be held as if she were an applicant seeking admission to the United States in expedited removal proceedings. 8 U.S.C. § 1225 requires her mandatory detention, absent discretionary parole by ICE. Ms. Quintana will likely be found ineligible for any process to challenge her detention apart from a restricted, unreviewable, and largely informal request to ICE for mercy.

91. Continuing to hold Ms. Quintana in custody without holding the DHS to the burden of establishing Ms. Quintana's detention is lawful violates Ms. Quintana's right to due process, and this Court should order corrective action be taken.

92. Respondents have no constitutional authority to deprive Ms. Quintana of due process, and to the extent that any decision of the Attorney General, statute, or regulation conflicts with that right, the authority must be declared unconstitutional and corrective measures taken.

93. As a result of the constitutional violation against Ms. Quintana by Respondents, she has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.

94. Ms. Quintana has no other adequate remedy at law. A bond hearing before the immigration court is inadequate for the reasons above.

SECOND CLAIM FOR RELIEF:
VIOLATION OF THE FEDERAL CODE OF REGULATIONS 8 C.F.R. 208 et. seq

95. Petitioner re-alleges and incorporates by reference the paragraphs above.

96. Congress expressly authorized the promulgation of regulations regarding the procedures to be followed in the processing and adjudication of asylum applications. 8 U.S.C. § 1158(d)(1).

97. The relevant regulations provide that USCIS "shall have initial jurisdiction" over "an asylum application filed by an alien physically present in the United States" except where jurisdiction has already vested with the immigration court. 8 C.F.R. § 208.2(a)

98. Jurisdiction over Ms. Quintana's application for asylum properly rests with USCIS and should be governed by the procedures for such applications as set forth in the Federal Code of Regulations.

99. The canon of absurdity does not support a strained reading of the regulations that would permit Respondent-Defendants' unlawful actions which formed the basis of Ms. Quintana's detention,

100. Respondent-Defendants bypassed the regulatory procedures that would provide an orderly resolution of Ms. Quintana's claim before USCIS and instead instituted removal proceedings of their own accord while her affirmative claim remained pending.

101. As a result of the regulatory violation against Ms. Quintana by Respondent-Defendants, she has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.

102. Ms. Quintana has no other adequate remedy at law.

THIRD CLAIM FOR RELIEF:
VIOLATION OF THE FEDERAL CODE OF REGULATIONS 8 C.F.R. 208 et. seq

103. Petitioner re-alleges and incorporates by reference the paragraphs above.

104. The Respondent-Defendants violated the regulatory prohibition against concurrent jurisdiction over Ms. Quintana's application for asylum by issuing a Notice to Appear which does not rest of mandatory detention grounds before a decision was made on her application by an Asylum officer.

105. As a result of the regulatory violation against Ms. Quintana by Respondents, she has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.

106. Ms. Quintana has no other adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Ms. Quintana respectfully requests that this Court:

a. Declare that Respondents' detention of Ms. Quintana violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

b. Declare that Respondents' issuance of a Notice to Appear and subsequent detention of Ms. Quintana is a violation of the Code of Federal Regulations;

c. Issue a writ of habeas corpus ordering Respondents to immediately hold a hearing on Ms. Quintana's detention before a neutral arbiter at which the Department of Homeland Security shall bear the burden of proof to establish that her continued detention is lawful;

d. In the absence of a hearing to protect her rights in accordance with the above, order Ms. Quintana immediately released from immigration detention; and

e. Grant any other and further relief this Court deems just and proper.

Respectfully submitted,

/s/ Benjamin G. Messer
Dated: June 21, 2025

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Counsel for Petitioner

EXHIBITS

1. Ms. Quintana's CFI Results
2. Ms. Quintana's Original NTA
3. Ms. Quintana's New NTA and I-200 Warrant for Arrest of Alien

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
Northern Division

Aerica Grey Quintana Flores,

***Petitioner*, v.**

PAMELA BONDI,

In her official capacity as Attorney General of the United States,

KRISTI NOEM,

In her official capacity as Secretary of Homeland Security,

TODD M. LYONS,

In his official capacity as Acting Director, Immigration and Customs Enforcement;

SEAN ERVIN,

In his official capacity as Acting Field Office Director in charge of ICE Atlanta Field Office,

TERRANCE DICKERSON,

In his official capacity as Warden of the Stewart Detention Center.

Case No: 1:25-cv-01950-DLB

RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Petitioner, Aerica Grey Quintana Flores ("Ms. Quintana"), through undersigned counsel, hereby responds to the Respondents' Answer to Petitioner's Amended Petition and Respondents' Motion to Dismiss. As more fully set forth in Petitioner's accompanying memorandum of law in support of their Response, the Court should deny the Motion to Dismiss and grant the relief requested by the Petitioner for the following reasons:

1. This Court has jurisdiction to review questions of law and fact regarding the unlawful detention of the Ms. Quintana notwithstanding 8 U.S.C. § 1252(b)(9), which limits judicial review of questions of law and fact arising from removal proceedings to courts of appeal, as the mere existence of Removal Proceedings does not constitute "an action or decision taken to effectuate removal" under the appropriate interpretation of 8 U.S.C. § 1252(b)(9).
2. This Court has jurisdiction over the Petitioner's claims notwithstanding 8 U.S.C. § 1252(g), as the Petitioner does not seek review of the Attorney General's decision to commence removal proceedings but rather review of her unlawful detention.
3. This Court has jurisdiction to review the detention of Ms. Quintana because 8 U.S.C. § 1226(e) applies only to discretionary decisions and Respondents allege that the Petitioner is detained pursuant to the *mandatory* detention provision at 8 U.S.C. § 1226(c)(1)(E).
4. Petitioner's claims that her detention violates her 5th amendment right to due process is strengthened by the Respondents' admission that she has been unlawfully detained pursuant to mandatory detention provisions at 8 U.S.C. § 1226(c)(1)(E), which would deprive her of any mechanism in which to meaningfully challenge her detention.
5. Petitioner's claim that the immigration court does not have jurisdiction over her application for asylum is supported by a common sense reading of on 8 C.F.R. § 1003.14(b) and 8 C.F.R. § 208.2(b) that the immigration court's jurisdiction over applications for asylum applies to 1) applications that USCIS has referred to the immigration court, and 2) applications for asylum filed *after* removal proceedings have been commenced.

WHEREFORE, Respondents respectfully request that the Court deny the Respondents' Motion to Dismiss and grant the relief requested by the Petitioner in her Amended Petition.

Respectfully submitted,

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Counsel for Petitioner

Dated: June 27, 2025