

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

YULIETH GOMEZ MEJIA

PETITIONER

v.

NO. 4:25-CV-82-RGJ

KRISTI NOEM, in her Official Capacity as
Secretary, Department of Homeland Security;
TODD LYONS, in his Official Capacity as
Acting Director, U.S. Immigration and
Customs Enforcement;
PAM BONDI, in her Official Capacity as
Attorney General of the United States; and
JASON WOOSLEY, in his Official Capacity as
Grayson County Jailer

RESPONDENTS

PETITIONER'S POST-HEARING BRIEF IN SUPPORT OF HABEAS PETITION

The Petitioner, Yulieth Gomez Mejia, by and through counsel, hereby submits the current brief pursuant to the Court's Memorandum of Hearing and Order dated September 25, 2025, [Doc. 23].

STATEMENT OF FACTS

Petitioner, Yulieth Gomez Mejia, was born in, and is a citizen of Colombia. She is a native Spanish speaker with minimal ability to read, write, or speak English. On December 11, 2022, Ms. Gomez Mejia presented herself to U.S. Customs and Border Patrol at or near Calexico, California's Port of Entry. She entered the United States with her 13-year-old daughter, who is also a National of Colombia. The Border Patrol Agent arrested Ms. Gomez Mejia and her minor daughter and transported them to the Boulevard Patrol Station for further processing. DN 13-1 at PageID #152. On December 13, 2022, after being vetted and processed by Immigration

Officials, Ms. Mejia Gomez and her daughter were subsequently released from custody and paroled into the United States under INA 212(d)(5)(a). *Id.* at PageID #153. Upon release, Immigration Officials provided Ms. Gomez Mejia with an I-94¹, parole document, a G-56 letter², and an I-385. *Id.* She was never served a warrant or Notice to Appear at that time. *See id.*; *see also* DN 13-2 at PageID #155. Ms. Mejia Gomez followed the instructions listed in the G-56 letter and called the ICE Office. She was subsequently instructed to report to the Enforcement and Removal Operations Office (ERO) on February 11, 2023. *See* Exhibit A, Transcript of Show Cause Hearing on September 24, 2025, 13:1-7. Ms. Gomez Mejia reported to the Indianapolis ERO office on February 11, 2023 as directed. *Id.* at 13:12. An individual at the ERO directed Ms. Gomez Mejia to take a picture of herself at the door and send it to the email address they provided. *Id.* at 13:15-19. Ms. Gomez Mejia followed those instructions; she later received a response on that email instructing her to report again to that same office on July 28, 2025. *Id.* at 14:1.

On July 31, 2023, Ms. Gomez Mejia applied for asylum with USCIS. DN 10-3. She included her daughter as a derivative on that application. *Id.* USCIS issued her a receipt notice indicating the application was received and that she may remain in the U.S. until her asylum application is decided. *Id.* She later was issued a valid Social Security number and work permit. SCH Tr. 14:6-7. Ms. Gomez Mejia lawfully worked in the United States while she waited for her

¹ The Department of Homeland Security (DHS) issues Form I-94s to aliens who are admitted to the United States, adjusting status while in the U.S., or extending their stay. *See* “Form I-94, Arrival/Departure Record, Information for Completing USCIS Forms,” *U.S. Citizenship and Immigration Services*, <https://www.uscis.gov/forms/all-forms/form-i-94-arrivaldeparture-record-information-for-completing-uscis-forms> (last visited September 29, 2025). *See also* 8 C.F.R. 1.4.

² Form G-56 is an ICE Form known as a “Call-In Letter” which provides noncitizens with reporting instructions to ICE upon release from detention. *See* “ICE Check-In Appointment FAQs”, *U.S. Immigration and Customs Enforcement*, <https://www.ice.gov/check-in> (last visited September 29, 2025).

asylum interview to be scheduled with USCIS. She is the sole custodian of her minor daughter.

Id. at 10:20.

On July 28, 2025, Ms. Gomez Mejia again reported to the Indianapolis ERO as directed. *Id.* at 16:13. This time, an individual took her documents and went inside. *Id.* at 16:18. Twenty minutes later, an ICE Officer who spoke Spanish confronted Ms. Gomez Mejia and demanded to know where her “husband”³ was and if he also had a minor in this country. Ms. Gomez Mejia explained that her “husband” only dropped her off for this appointment and went to do other things because this appointment was only for Ms. Gomez Mejia not him. *Id.* at 17:8-10. The ICE Officer then told Ms. Gomez Mejia she was under arrest. *Id.* at 17:11. He handcuffed her. *Id.* at 17:12. Ms. Gomez Mejia started to cry and told the ICE Officer her daughter would be alone if they arrested her. *Id.* at 17:12-13. The Officer told her the state will now take care of her daughter until she is also under ICE arrest. *Id.* at 17:16-19.

ICE officials then transported Ms. Gomez Mejia in handcuffs to a cell. *Id.* at 17:20. She was questioned by an Immigration Officer who did not speak Spanish and given papers to sign that were all in English. *Id.* at 18:1-2. The first document he attempted to serve Ms. Gomez Mejia was a Notice and Order of Expedited Removal dated July 28, 2025. DN 6-2, PageID# 27. The document is all in English, and Ms. Gomez Mejia refused to sign. *Id.* The Order indicates that on July 28, 2025, “pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act) (8 U.S.C. 1225(b)(1), the Department of Homeland Security has determined that [Ms. Gomez Mejia is] inadmissible to the United States under section 212(a)(7)(A)(i)(I). *Id.* The Order is signed by a Deportation Officer and a Supervisor. *Id.* A second document titled “Notice to Alien Ordered Removed/Departure Verification” is also dated July 28, 2025, and is signed by a

³ It is undisputed that Ms. Gomez Mejia is not legally married. References to her “husband” are relating to her current fiancé who is not involved or related to her current immigration process.

deportation officer “serving warning” to Ms. Gomez Mejia. *Id.* at PageID #29. This Notice does not indicate Ms. Gomez Mejia refused to sign but her signature line is blank. *Id.* The Notice states the following:

You have been found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act) or deportable under the provisions of section 237 of the Act as a Visa Waiver Pilot Program visitor, in accordance with the provisions of section 212(a)(9) of the Act, you are prohibited from entering, attempting to enter, or being in the United States for a period of 5 years from the date of your departure from the United States as a consequence of your having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the Act.

Id.

A deportation officer⁴ also created a Record of Deportable/Inadmissible Alien, Form I-213. DN 6-2 PageID #30. This record indicates that on July 28, 2025, “the administrative arrest documented in this Record of Deportable/Inadmissible Alien, Form I-213, was effectuated pursuant to a Notice of Order of Expedited Removal, Form I-860, signed prior to the arrest.” *Id.* at PageID #31. It further states that on July 28, 2025, Ms. Gomez Mejia reported to the ERO Office, was taken into custody and placed into handcuffs. *Id.* at PageID #32. Under “Custody Determination” it states that Ms. Gomez Mejia was served with multiple immigration documents ordering her expedited removal. *Id.* On the last page of the record, the deportation officer wrote “Gomez-Mejia is detained without bond. Gomez-Mejia will remain in ICE Custody pending removal from the United States.” *Id.* at PageID #33.

Because Ms. Gomez Mejia does not speak or read English, she could not understand the documents being served upon her. The ICE officer who spoke Spanish to Ms. Gomez Mejia previously came back to her cell and told her she is going to be deported because she was

⁴ It is unclear if the same deportation officer drafted and signed all documents from July 28, 2025 as the name and signatures are redacted.

incorrectly processed when she entered the United States. SCH Tr. 18:3-6. He told her “You have no other option; you have to sign this. Your daughter is going to be left here. You will be removed.” *Id.* at 18:6-7.

The ICE Officer continued to pressure Ms. Gomez Mejia into having her “husband” come to the office to sign documentation taking responsibility for her daughter. *Id.* at 18:10-11. Instead, Ms. Gomez Mejia gave the ICE officer the name of her daughter’s biological father. *Id.* at 18:13. The ICE officer told her she must sign the paperwork regarding who will be responsible for her child or else the State of Indiana will take custody of her, and she would not get her daughter back. *Id.* at 19:1. She was allowed one phone call to her family before being transported to Grayson County Detention Facility where she is still held to this day. *See id.* at 19:4.

From July 28, 2025, until September 10, 2025, Ms. Gomez Mejia never saw or spoke to any official from ICE to explain her case or why she was detained. *Id.* at 20:5-7. About two weeks after her initial arrest, Ms. Gomez Mejia was taken to a library where an individual who identified themselves as the person conducting her credible fear interview. *Id.* at 20:9-11. She could not see this individual but only hear them through the video call. *Id.* at 20:12-13. Ms. Gomez Mejia told the presumed immigration officer that she would not participate without her attorney. *Id.* at 20:16. She was told she did not have an attorney. *Id.* at 20:17-18. Several days later, Ms. Gomez Mejia was taken a second time to do a credible fear interview. *Id.* at 20:25. This time, the interviewer told her she must do it without her attorney. *Id.* The interviewer asked her why she had a fear of returning to her country, the type of threats she received in Colombia, and any other problems occurring in Colombia. *Id.* at 35:1-6. Ms. Gomez Mejia was returned to her cell in Grayson County Detention Facility after the interview and has not been told the results of that interview as of the date of this filing. *Id.* at 21:2.

On September 9, 2025, Ms. Gomez Mejia appeared before an Immigration Judge. *Id.* at 21:18. The Immigration Judge dismissed her removal proceedings for failure to prosecute. DN 22-1 at PageID #199. Instead of being released, Ms. Gomez Mejia continued to be held at Grayson County Detention Facility. On September 10, 2025, Ms. Gomez Mejia had her first in person encounter with any ICE official since she was arrested on July 28, 2025. DN 22-2 at PageID #200. The ICE Officer served her a Notice to Appear with a court date of September 23, 2025. *Id.*

PROCEDURAL HISTORY

Ms. Gomez Mejia was arrested by ICE on July 28, 2025. On July 29, 2025, Counsel entered an appearance before the ERO. DN 15 at PageID #170. On July 31, 2025, Petitioner filed a Writ of Habeas Corpus before this Court asserting that Ms. Gomez Mejia is being unlawfully detained in violation of the Fifth Amendment's Due Process Clause. DN 1. On August 1, 2025, Counsel emailed ICE seeking information on her detainment. DN 15 at PageID # 174. On August 2, 2025, Chicago's ICE Outreach responded that the request was forwarded to the case officer. *Id.* On August 5, 2025, this Court issued an Order to Show Cause to the Respondents on why the writ of habeas corpus should not be granted. DN 4. On August 8, 2025, Respondents filed a response to the Order to Show Cause asserting that the Government provided Ms. Gomez Mejia with a notice and order of expedited removal, and that her detention is mandated under 8 U.S.C. §1225(b)(1)(B) pending a final determination of credible fear. DN 6 at PageID #19. On August 12, 2025, this Court held a Show Cause Hearing and subsequently ordered the Petitioner to file a post hearing brief. Petitioner filed a brief on August 19, 2025, arguing that Ms. Gomez Mejia is not subject to the expedited removal statute, and her continued detention is a violation of her due process rights. DN 10 at PageID #97-98. In that brief, Petitioner further requested the

Court set the matter for an evidentiary hearing and to compel the Department of Homeland Security to provide any and all documents relevant to the Petitioner's status in the United States. *Id.* at PageID #99.

On August 28, 2025, the Respondents filed an opposition brief in response to Petitioner's brief, arguing that now Ms. Gomez Mejia's detention was mandated because she was served a Notice to Appear on August 22, 2025, placing her in full removing proceedings as opposed to expedited removal. DN 13. On August 29, 2025, Petitioner filed an Emergency Motion to Stay Removal of the Respondent and Any Further Action By the Government arguing that the Government's sudden shift from expedited removal to regular removal proceedings was an abuse of power and all further action by DHS should be stayed pending the outcome of these proceedings. DN 14. Petitioner then filed a Motion for Clarification of the Government's Actions requesting the Court compel the Respondents to provide meaningful notice of the current basis for her detention. DN 15 at PageID #169. Finally, the Petitioner filed a motion requesting an evidentiary hearing. DN 16. The Respondents filed responses opposing all three motions. DN 17, 18, 19.

On September 10, 2025, Petitioner was served a Notice to Appear with a court date of September 23, 2025. DN 22-2 at PageID #200. Counsel for Petitioner filed a Request for a Bond Redetermination before the EOIR on September 12, 2025. DN 22-1 at PageID #199. Petitioner virtually appeared before an Immigration Judge on September 23, 2025, with counsel. The Immigration Judge denied the request to redetermine her custody status citing no jurisdiction. *See* Exhibit B. Ms. Gomez Mejia reserved her right to appeal this decision, which is due by October 23, 2025. *Id.* On September 24, 2025, this Court held an evidentiary hearing and subsequently directed Petitioner to file a post-hearing brief. DN 20. Petitioner has a contested

removability hearing scheduled with the Immigration Court on September 30, 2025. See Exhibit C.

LEGAL ISSUES

Petitioner Ms. Gomez Mejia maintains that she is being wrongfully detained in violation of the Due Process Clause of the Fifth Amendment of the United States Constitution. Furthermore, given that the Government has now provided two different reasons for her continued illegal detention, Petitioner also contends that the Government continues to unlawfully detain her in violation of the Immigration and Nationality Act. As such, the Petitioner is eligible for Habeas relief pursuant to 28 U.S.C. § 2241.

STATUTORY AND REGULATORY FRAMEWORK

Under 28 U.S.C. § 2241(c)(3), the Court may grant the writ of habeas corpus when a person is “in custody in violation of the Constitution or laws or treaties of the United States.” When Congress specifically mandates, administrative exhaustion is first required before a district court can decide the merits of a petition; [b]ut where Congress has not clearly required exhaustion, sound judicial discretion governs.” *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1991) (internal citations omitted). Moreover, the Sixth Circuit has previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzalez*, 439 F.3d 273, 279 (6th Cir, 2006). However, some courts have enforced prudential exhaustion—“a judge-made doctrine that enables courts to require administrative exhaustion even when the statute or regulations do not.” *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 747 (6th Cir. 2019). Prudential exhaustion may be required if:

- (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
- (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
- (3) administrative review is likely to

allow the agency to correct its own mistakes and to preclude the need for judicial review.”

United States v. California Care Corp., 709 F.2d 1241, 1248 (9th Cir. 1983).

Federal courts have declined to require exhaustion altogether in some circumstances. *See McCarthy*, 503 U.S. at 145. “In determining whether exhaustion is required, federal courts must balance the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion.” *Id.* at 146. In other words, even if a Court would ordinarily enforce the exhaustion doctrine, it can exercise discretion and waive such requirement. *See Lopez-Campos v. Raycraft*, 2025 U.S. Dist. LEXIS 169423 at *9 (E.D. Mich. Aug. 29, 2025); *see also Reyes v. Raycraft*, 2025 U.S. Dist. LEXIS 175767 at *7 (E.D. Mich. Sept. 9, 2025).

8 U.S.C. §§ 1225 and 1226 govern the detention of noncitizens pending removal proceedings. Section 1225 focuses on the expedited removal of inadmissible *arriving* aliens and mandatory detention provisions; whereas Section 1226 focuses on the apprehension and subsequent discretionary detention of aliens already in the country pending removal proceedings.

A. *8 U.S.C. § 1225*

Section 1225 provides that “an alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission.” All applicants for admission shall be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). Section 1225 governs detention for both expedited removal procedures and removal proceedings under Section 1229a (also known as “240 proceedings”).

i. Expedited Removal

The Department of Homeland Security (DHS) may subject a noncitizen to expedited removal if the noncitizen (1) *is arriving* in the United States; (2) has not been admitted or

paroled into the United States; **and** (3) has not established to the satisfaction of the immigration officer they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. 8 U.S.C. § 1225(b)(1)(A)(i) and 8 C.F.R. § 235.3(b)(ii). Under expedited removal, if an immigration officer determines at the initial screening that the alien is inadmissible under 8 U.S.C. § § 1182(a)(6)(C)⁵ or 1182(a)(7)⁶, the immigration officer shall order the alien removed without further hearing or review unless the alien indicates an intention to apply for asylum or a fear of persecution, in which case the immigration officer shall refer the alien to a credible fear interview by an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(A)(ii). Any noncitizen subject to expedited removal procedures under Section 1225 shall be detained pending a final determination of credible fear. 8 U.S.C. § 1225(b)(iii)(IV). Credible fear asylum interviews shall be conducted at a port of entry or other such place designated by the Attorney General. 8 U.S.C. § 1225(b)(1)(B)(i).

Historically, the expedited removal process applied to noncitizens “who are apprehended immediately proximate to the land border and [who] have negligible ties or equities in the [United States].” Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (August 11, 2004). The Supreme Court has held that 1225(b) applies to aliens “seeking entry into the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). The Court recently reemphasized that “while aliens who have established connections in this country have due process rights in deportation proceedings . . . as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.” *DHS v. Thuraissigiam*, 591 U.S.

⁵ 8 U.S.C. § 1182(a)(6)(C) provides that “an alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.”

⁶ 8 U.S.C. § 1182(a)(7)(I) provides that any immigrant at the time of application for admission is “not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document . . . is inadmissible.”

103, 107 (2020) (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). In *Thuraissigiam*, the Respondent challenged the limited judicial review process under expedited removal orders pursuant to Section 1225(b). *Id.* at 106. The Respondent in that case was apprehended 25 yards from the border and detained by DHS for expedited removal. *Id.* at 114. After a credible fear interview, the asylum officer found the Respondent lacked a credible fear of persecution. *Id.* An Immigration Judge affirmed this decision and returned the case to the Department for removal. *Id.* The Court rejected the Respondent's claim that the expedited removal process violates due process because it has been long-standing precedent that "an alien who is detained shortly after unlawful entry cannot be said to have effected an entry." *Id.* at 140 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001)). In short, non-citizens seeking admission into the country and are stopped at or near the border or a port of entry are subject to mandatory detention pursuant to Section 1225 unless paroled.

On January 21, 2025, however, the Government departed from this longstanding practice and expanded expedited removal to noncitizens apprehended anywhere in the United States and who have been continuously present in the United States for at least 14 days but for less than two years. *See* Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139-40 (Jan. 24, 2025). On August 1, 2025, a United States District Court for the District of Columbia stayed this application of expedited removal when applied to paroled individuals holding that DHS's agency actions exceeded its statutory authority and was arbitrary and capricious. *See Coal. for Humane Immigrant Rights, et al., v. Noem*, No. 25-cv-872, 2025 U.S. Dist. LEXIS 148615 (D.D.C. Aug. 1, 2025). Similarly, the D.C. District Court also stayed the 2025 Designation in *Make the Rd. New York v. Noem*, No. 25 Civ. 190 (JMC), 2025 U.S. LEXIS 169432 (D.D.C. Aug. 29, 2025), and in doing so highlighted the serious due process concerns for people now subjected to

expedited removal under this new designation. *See id.* at 30-34. The Court held that because this expansive use of expedited removal subjects individuals who have “long since crossed the ‘threshold’ and effected entry into the country,” adequate due process must be afforded. *Id.* at 33.

ii. Full Removal Proceedings (8 U.S.C. § 1229a)

Section 1225(b)(2)(A) is a mandatory detention provision that states “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). An applicant for admission includes noncitizens present in the United States who have not been admitted or paroled. 8 U.S.C. § 1225(a)(1). Although detention is mandated, 8 U.S.C. § 1182(d)(5)(A) provides for temporary admission of nonimmigrants through a process called parole. It states, in relevant part:

(5)(A) The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion may parole into the United States temporarily under such conditions as he may prescribe on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A).

When a noncitizen is inspected at a port of entry, their functional equivalent, or near the border, Section 1225(b)(2) also mandates detention until the noncitizen’s full removal proceedings have concluded. “Section 1225(b)(2) plainly contemplates present affirmative conduct by 1) a noncitizen who is “seeking admission” and 2) and an inspecting immigration

official who must determine whether that individual is entitled to admission to the United States.” *Zumba v. Bondi*, 2025 U.S. Dist. LEXIS 190052 at * 23 (N.J. D.C. Sept. 26, 2025). As such, the Supreme Court and federal district courts have consistently held that Section 1225’s detention authority is exercised at or near the port of entry.

B. 8 U.S.C. § 1226

When a noncitizen is arrested in the *interior* of the United States, 8 U.S.C. § 1226 governs the detention authority. The Supreme Court in *Jennings* has identified the clear distinction between the detention authority derived from § 1225(b)(1) or (b)(2) with § 1226. Section 1226 “authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” 583 U.S. at 289. Moreover, § 1226(a) authorizes the detention of a noncitizen “[o]n a warrant issued by the Attorney General” pending removal proceedings. 8 U.S.C. § 1226(a). The statute provides a discretionary framework in which the Attorney general “may continue to detain the arrested alien,” “may release on a bond of at least \$1,500” or “conditional parole.” 8 U.S.C. § 1226(a)(1), (2)(A)(B). The arresting officer makes an initial custody determination and may release the noncitizen if the noncitizen can demonstrate they are not a danger to the community or a flight risk. 8 C.F.R. § 1236.1(c)(8). After such determination is made by the arresting officer, the noncitizen may request a custody redetermination before an Immigration Judge. See 8 C.F.R. § 1236.1(d)(1). In short, an officer must have a warrant to arrest and detain a noncitizen already in the country pursuant to 8 U.S.C. § 1226.

An immigration officer, however, has limited powers in which they do not need a warrant. 8 U.S.C. § 1357(a) authorizes the following powers without a warrant:

- (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

- (2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation **and** is likely to escape before a warrant can be obtained for his arrest . . .
- (3) within a reasonable distance from any external boundary of the United States . . .
- (4) to make arrests for felonies . . .”

The Board of Immigration Appeals has explained that the “reason to believe” standard in 8 U.S.C. § 1357(a)(2) equates to probable cause. *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666 (BIA 2022). If, however, none of these conditions are present and no such probable cause exists, the immigration officer must seek a warrant to effectuate a lawful arrest in accordance with both the Constitution and the INA.

SUMMARY OF ARGUMENT

Ms. Gomez Mejia was unlawfully arrested and detained on July 28, 2025, and continues to be unlawfully detained in violation of the Due Process Clause of the Fifth Amendment and the INA. While the Government’s basis for this unlawful detention continues to shift, Petitioner asserts that her detention was unlawful under Section 1225 regardless of whether it was alleged to be pursuant to expedited removal or 240 proceedings. Without a warrant, the immigration officer who handcuffed Ms. Gomez Mejia and detained her at the ICE Office and subsequently transported her 200 miles away from her home and minor daughter abused his authority and violated her due process rights. Her detention was illegal under the Respondents’ initial claim that she was subject to expedited removal. Her detention was illegal from July 28, 2025, to September 9, 2025 where an Immigration Judge *dismissed* any removal proceedings against her

for failure to prosecute. Her detention is illegal under the Respondents' new claim that it is mandated under Section 1225(b)(2) regarding normal removal proceedings.

ARGUMENT

Ms. Gomez Mejia has sat in custody for over 63 days, separated from her only child and with limited access to counsel without any due process that she is entitled to under the Constitution. Before addressing the merits of this due process claim, it must be addressed that administrative exhaustion is not required before this Court can determine the merits of this petition. Here, no applicable statute or rule mandates administrative exhaustion. Moreover, Ms. Gomez Mejia's petition includes a due process challenge, and therefore, the Sixth Circuit has held that administrative exhaustion is not required. *See Sterkaj v. Gonzalez*, 439 F.3d 273, 279 (6th Cir, 2006). Furthermore, even if this Court would ordinarily enforce the exhaustion doctrine, waiver in this case is appropriate. Similar to *Lopez-Campos*, all three factors weigh against requiring exhaustion. 2025 U.S. Dist. LEXIS 169423 at *10. The issues raised are purely legal in nature and do not require agency expertise to generate a proper record, waiver would not bypass the administrative scheme because this petition involves a due process claim, and administrative review is not likely to allow the Respondents' to correct its own mistakes given that the Government has made clear its position that Section 1225(b)(2)(A) applies to Ms. Gomez Mejia. *See id.* Furthermore, if the Court refrained from deciding the issues set forth in this petition, Ms. Gomez Mejia would face significant hardship. *See, e.g. Reyes*, 2025 U.S. Dist. LEXIS 175767 at *7. Ms. Gomez Mejia was unlawfully arrested under the guise of expedited removal. For 44 days, she sat in custody with no information regarding why she was detained other than being told "you will be deported," with no legitimate access to legal counsel, with no paperwork regarding any removal proceedings, and with no progress in the alleged "process" the

Respondents claim has been afforded to her. Prior to her arrest, she was lawfully working in the United States, paying taxes, and providing for her minor daughter while awaiting her asylum interview with USCIS. The Government's unlawful actions have already destroyed her life and separated her from her family—any additional delay at this point would be unjust and unreasonable considering that BIA bond appeals can take six months or more to resolve. *See id.* at *7. As such, if this Court finds that it must consider administrative exhaustion, it should ultimately waive such requirement for the reasons stated.

I. The Government unlawfully arrested and detained Ms. Gomez Mejia without a warrant at the Indianapolis ICE Office on July 28, 2025.

Ms. Gomez Mejia is not and cannot be subject to expedited removal when she has been living in the United States, lawfully working and paying taxes, and pending asylum with USCIS for over 2.5 years. While the Respondents have now changed their basis for Ms. Gomez Mejia's detention, it is important to address this because this is the point where her unlawful detention began. Remarkably, the Respondents argue that Ms. Gomez Mejia is not entitled to due process because she is an "arriving alien." DN 6 at PageID #19. They initially claimed her detention was mandated pursuant to 8 U.S.C. §1225(b)(1)(B) which governs expedited removal. *Id.* Petitioner has addressed the Respondents' egregious misuse of the law under expedited removal in her first brief. DN 10. Ms. Gomez Mejia is entitled to due process. She is not "arriving" at a port of entry or at the border. She had been in the United States for over two years before ICE arrested her because of new policy directives attempting to illegally expand expedited removal. The Respondents no doubt will argue that it is now moot because Ms. Gomez Mejia has been placed in full removal proceedings. However, the Respondents' initial assertion she was legally detained

under expedited removal is highly relevant regardless of why they assert she is being detained now.

1. *The Government's blatant misuse of Section 1225(b) prevented Ms. Gomez Mejia from receiving the due process she is entitled to under the Constitution.*

The Due Process Clause applies to all 'persons' within the United States regardless of whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas*, 533 U.S. at 693. Ms. Gomez Mejia's detention pursuant to § 1225(b)(1) was unlawful from the outset. Not only was she not subject to expedited removal, but she also was never afforded the proper procedures under expedited removal before the Government shifted its actions. In fact, Ms. Gomez Mejia sat in custody for several weeks before someone attempted to provide her with a credible fear interview. If the Government asserts Ms. Gomez Mejia was lawfully detained under an order of expedited removal, it should follow that the Respondents can provide this Court and the Petitioner with proof that all protocols for the expedited removal process were followed. Instead, the evidence provided by the Respondents further exemplifies their misuse of the law and egregious misrepresentations made to this Court. In their response to the Order to Show Cause, Respondents provided a Declaration of Deportation Officer Christopher Wiet. DN 6-1. In it, he claims that Ms. Gomez Mejia was administratively detained at the Indianapolis ICE Office pursuant to 8 U.S.C. § 1225(b)(1). *Id.* at PageID #25. All of the documents provided by the Respondents in their response to the Order to Show Cause are dated July 28, 2025, meaning that any alleged determination of inadmissibility actually occurred over two years *after* Ms. Gomez Mejia entered the United States—it did not happen at the border. Furthermore, the I-213 attached as an exhibit in the Respondents response to the Order to Show Cause is also dated July 28, 2025. DN 6-2 at PageID #30. It alleges Ms. Gomez Mejia did not claim fear of persecution from

her home country. *Id.* at PageID #32. And yet, the Respondents simultaneously asserted in their response that “because Petitioner has a credible fear claim pending, her removal is temporarily stayed so the credible fear can be considered.” DN 6 at PageID #21. For the next several weeks, Ms. Gomez Mejia sat in custody waiting for her credible fear claim to be considered as the Respondents allege would happen despite not being subject to expedited removal.

As Ms. Gomez Mejia waited for any answers from ICE while in custody, the Respondents astonishingly filed a brief on August 28, 2025, now asserting that the basis for her detention was pursuant to 8 U.S.C. § 1225(b). Respondents presented to this Court that Ms. Gomez Mejia was served an NTA on August 22, 2025, which “moved her out of the expedited removal process and bypasses the credible fear interview with an asylum officer.” DN 13 at PageID #137. This, however, did not happen and was a blatant misrepresentation to this Court. First, Ms. Gomez Mejia *did* have a credible fear interview, albeit without counsel. She never received any notice of whether or not the asylum officer at that interview found that she had a credible fear. Second, Ms. Gomez Mejia was never served an NTA on August 22, 2025, despite the Respondents providing this Court with an NTA that is signed by a deportation officer⁷ in which it certifies that the NTA was personally served on August 22, 2025, but Petitioner refused to sign. DN 13-3 at PageID #157. The Respondents then asserted to this Court that Ms. Gomez Mejia was now in full removal proceedings and had a hearing before an Immigration Judge on September 9, 2025, where “the immigration judge is expected to schedule Petitioner’s asylum hearing. DN 17 at PageID #180-81. This also did not happen and was never going to happen because DHS never lodged a properly serviced NTA with the EOIR. It is clear this happened because the Immigration Judge dismissed Ms. Gomez Mejia’s case for failure to prosecute on

⁷ Notably, the deportation officer’s name who signed this Certificate of Service is redacted, preventing the Petitioner from investigating this alleged service.

September 9, 2025. DN 22-1. With that dismissal, Ms. Gomez Mejia should have then been released from custody. Instead, the Government continued to illegally detain her until they served her a new NTA on September 10, 2025. DN 22-1. The issuance of this NTA, however, does not cure her illegal detention that occurred on July 28, 2025, when she was unlawfully detained without a warrant under the guise of “expedited removal.” Nor does the issuance of the NTA mandate Ms. Gomez Mejia’s detention.

Ms. Gomez Mejia has been living in the United States for the past 2.5 years pending asylum. She is not an “arriving alien” for the purposes of mandatory detention under Section 1225(b). When Ms. Gomez Mejia presented herself at the border to a Border Patrol Officer on December 11, 2022, she was an arriving alien. At that time, the Government had the option to place her expedited removal proceedings or full removing proceedings. They declined to do either. Instead, Ms. Gomez Mejia was released from detention after being vetted and was paroled into the United States pursuant to 8 U.S.C. §1182(d)(5)(A). Interestingly, the Respondents provided this Court with a second I-213 Form relating to Ms. Gomez Mejia’s record of deportable/inadmissible alien, but this form is dated June 6, 2023. DN 13-1 at PageID #151. This I-213, which was created four months after her parole allegedly expired, explicitly states “disposition: paroled.” *Id.* This I-213, which Respondents expect this Court to rely on for accurate information, also indicates that on June 6, 2023, “alien has been advised of communication privileges.” *Id.* There is no other evidence in the record to support that any ICE officer engaged in any communications regarding Ms. Gomez Mejia’s rights on June 6, 2023. Furthermore, Ms. Gomez Mejia was provided an I-385 upon her release from detention in December 2022. This document clearly states she was not served any charging document to commence removal proceedings. Number 10 on the Form I-385 indicates that at the time she was

apprehended and initially detained in December 2022, she was not served an “OSC/WA”, which is an Order to Show Cause/Notice of Hearing. Therefore, the Government chose to not only parole her into the United States, but they did not place her in removal proceedings at that time.

On February 11, 2023, Ms. Gomez Mejia reported to the ICE Office as directed upon expiration of her parole. Again, the Government declined to commence removal proceedings. She was never served an NTA, was never provided a court date, and was not detained. Respondents heavily rely on the parole statute to argue that Ms. Gomez Mejia’s detention is mandatory once her parole expires. And yet, if that were the case, why would DHS not detain Ms. Gomez Mejia when her parole expired in February 2023, and she was present at the ICE office then? Why give her another check-in date *two years later* to then claim that because her parole expired in February 2023 her detention is now mandatory? This position lacks common sense and is a weak attempt at justifying DHS’s new detention policies when historically DHS has never mandated the sudden detention of a noncitizen who was once paroled into the United States, is pending asylum, and has no criminal history or change of circumstances that would warrant her detention.

Respondents absurdly contend that Ms. Gomez Mejia is still “seeking admission” into the United States, and never effected a lawful entry and therefore, she has no constitutional rights afforded to her. DN 13 at PageID # 149. This is a gross misreading of Section 1225’s mandatory detention statute and its historic application to noncitizens. Section 1225 involves the initial inspection by immigration officers of noncitizens who are “arriving” to the United States. These inspections occur at ports of entry or near the border. The initial inspection of Ms. Gomez Mejia was done on December 11, 2022. Instead of pursuing expedited or full removal proceedings, DHS paroled Ms. Gomez Mejia into the United States. When her parole expired, DHS failed to

then put her in either proceeding. Because she was not in removal proceedings, Ms. Gomez Mejia properly lodged an asylum application with USCIS who retains jurisdiction over asylum applications unless an individual is already in removal proceedings. Within those two years, the Government authorizes Ms. Mejia Gomez to work. She pays her taxes. She has ties to the community, her daughter is in school, and she has committed no crimes. At any point, she could have been served with an NTA to initiate removal proceedings. Instead, they waited over two years later to serve the NTA and inconceivably now argue that after having lived and lawfully worked in the United States for years, she is not afforded due process and should be treated as if she is still at the border.

Many federal district courts, including this Court, have disagreed with the Respondents' interpretation of Section 1225. The word "arriving" indicates that Section 1225 governs noncitizens arriving at a port of entry or the border, *presently* seeking admission. *Pizzaro Reyes*, 2025 U.S. Dist. LEXIS 175767 at *13. Furthermore, Footnote 2 of *Department of Homeland Security v. Thuraissigiam* notes that in 2004, DHS treated aliens as applicants for admission only if they were encountered within **14 days of entry without inspection and within 100 air miles of the border**. This demonstrates that the label "applicant for admission" has not always been applied to every non-citizen present without admission; it was historically limited by time and geography. DHS's current position that everyone present without admission must be treated under § 1225 contradicts that history and the principle that new laws should be interpreted in harmony with longstanding practices. As such, this Court should continue to not adopt the Respondents' senseless interpretation of § 1225.

2. Because Ms. Gomez Mejia is not subject to mandatory detention under Section 1225(b), her continued detention is unlawful, violates due process, and she should be immediately released.

Even if a person is deemed an “applicant for admission,” the arresting officer must still comply with 8 U.S.C. § 1357(a) warrant or probable-cause requirements. At the time of Ms. Gomez Mejia’s arrest, she was within the interior of the United States, not at the border being inspected. DHS’s issuance of administrative warrants is under Form I-200, which places non-citizens in § 240 removal proceedings under § 1226(a) not § 1225(b). ICE arrested Ms. Gomez Mejia inside the United States without a warrant. None of the conditions outlined in 8 U.S.C. § 1357(a) were present to allow for a warrantless arrest. First, it is clear the arresting immigration officer did not see Ms. Gomez Mejia entering illegally because it is undisputed she entered two years prior to this arrest. Second, the arresting immigration officer did not have probable cause to believe she was unlawfully present **and** likely to escape before a warrant could be obtained. She has no criminal history, has ties to the community, has a job, and has her minor daughter here in the United States. Furthermore, she has continuously availed herself to DHS—she has never tried to hide. She did not hide or try to escape when she presented herself at the border in 2022. She did not try to hide or escape when she presented herself to the ICE Office in February 2023. She knowingly submitted an asylum application to USCIS, which includes her address and family history and other personal information. DHS has access to this application. She did not try to hide or escape when she presented herself to the ICE Officer in July 2025. An arrest warrant should have been executed. DHS had no authority to detain her under the expedited removal and egregiously abused its discretion in doing so. Third, the arresting immigration officer had no reason to believe Ms. Gomez Mejia committed a felony. As such, none of the requirements under

8 U.S.C. § 1357(a) were present at the time of her arrest and therefore, Ms. Gomez Mejia's initial and continued detention is unlawful.

If an arrest should have been executed under a warrant, the individual is subject to 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225(b). Respondents may argue that because Ms. Gomez Mejia was initially apprehended at the border in 2022, she is still an "arriving alien" under 8 U.S.C. § 1225. Interestingly, DHS explicitly did not designate Ms. Gomez Mejia as an "arriving alien" in the NTA issued to her on September 10, 2025. Moreover, at the time of the issuance of the NTA, Ms. Gomez Mejia was not still "seeking admission." *See, e.g., Zumba*, 2025 U.S. Dist. LEXIS 190052 at * 23. Furthermore, prior to this Administration, DHS historically would serve a noncitizen present inside the United States with an NTA without taking them into custody under Section 1225. In fact, there are hundreds of thousands of Respondents in removal proceedings in immigration court with the exact same allegations that Ms. Gomez Mejia has in her NTA and none of them are in custody. The Immigration Court is so backlogged that many noncitizens pending asylum similar to Ms. Gomez Mejia do not have a final hearing until 2026 or 2027. Ms. Gomez Mejia properly filed her asylum application with USCIS in July 2023. USCIS also has a significant backlog of cases to process. Now, Ms. Gomez Mejia is being penalized, and her freedom has been taken because she had been appropriately waiting these past two years for her asylum interview.

Because Ms. Gomez Mejia should have only been arrested upon a warrant, Section 1226 applies to her current detention. *Matthews v. Eldridge*, 424 U.S. 319 (1976) applies a three-part balancing test to determine whether a civil detention violates a detainee's due process rights. Without arrest upon a warrant, the inquiry as to whether Ms. Gomez Mejia's due process rights were violated begins and ends with her initial arrest on July 28, 2025. However, even if this

Court disagrees with that position, Ms. Gomez Mejia's current detention still violates due process. The factors to assess are 1) the private interest of the detained; 2) the risk of erroneous deprivation of that interest; and 3) the government's interest. *Id.* at 335. Here, all three factors weigh in favor of immediately releasing Ms. Gomez Mejia or otherwise ordering a bond hearing be conducted. To be free from imprisonment is the most fundamental liberty interest and is exactly what the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Ms. Gomez Mejia is being held at Grayson County Detention Center, separated from her 13-year old daughter and her fiancé. Her daughter's father has never had sole custody of their child. Ms. Gomez Mejia has been her primary custodian her entire life. Her child needs her mother. Moreover, given the issues in getting Ms. Gomez Mejia before any immigration judge, there is no foreseeable end date to her current detention and proceedings. First, she has reserved appeal on her bond. That could take at least six months. Second, the immigration judge has not set her case for a final merits hearing on her asylum case. Practically speaking, it will be difficult to prepare her asylum claim while she is in custody for a variety of reasons. First, her asylum application was sent to USCIS not the EOIR. While USCIS is supposed to send those applications to the EOIR when a noncitizen is put in removal proceedings before their asylum interview happens, this does not always occur. As such, Counsel and Petitioner do not have access to her original asylum application. Locating that application can also take months. As such, it is clear the first *Matthews* factor weighs strongly in favor of Ms. Gomez Mejia. The second factor also weighs in favor of Ms. Gomez Mejia. The risk of erroneously depriving her of her freedom is high if she is never provided a proper bond determination assessing risk of flight and dangerousness. The third factor also weighs in favor of Ms. Gomez Mejia. She has no criminal history and has availed herself to DHS at every point in the process. The Government cannot show it has a significant interest in

her continued detention. As such, Ms. Gomez Mejia's continued detention is in violation of her Due Process rights under *Matthews*.

CONCLUSION

The United States Government illegally, arbitrarily, and capriciously arrested Ms. Gomez Mejia on July 28, 2025. Her continued detention is in violation of her due process rights under the Constitution. Without a warrant, the arresting officer had no authority to detain her. She was not subject to expedited removal, and her continued detention was not suddenly cured by the fact that an NTA was issued on September 10, 2025. She is not subject to mandatory detention under Section 1225 and the Respondents' misuse of the statute is an egregious abuse of discretion and flagrant disregard of longstanding historical practices regarding mandatory and discretionary immigrant detention in the United States. As such, this Court should GRANT the Petitioner's petition and order her immediate release from custody. In the alternative, Petitioner at minimum requests that this Court order a bond hearing be held pursuant to Section 1226 to determine risk of flight and dangerousness.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true and accurate copy of this pleading and all attached documents were served upon opposing counsel via electronic filing, CM/ECF on September 29, 2025.

Adriana L. Harris

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