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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 Franyelit Stefany Ponte-Guanare,
11
12 Petitioner,

13 vs.

Case No.: '25CV2081 TWR KSC

14 John Archambeault, San Diego Field
15 Office Director, Enforcement and
16 Removal Operations, United States
17 Immigration and Customs Enforcement
18 (ICE); Christopher J. LaRose, Senior
19 Warden, Otay Mesa Detention Center;
20 Kristi NOEM, Secretary, United States
21 Department of Homeland Security;
22 UNITED STATES DEPARTMENT OF
23 HOMELAND SECURITY; Pamela
24 BONDI, Attorney General of the United
25 States; EXECUTIVE OFFICE FOR
26 IMMIGRATION REVIEW (EOIR);
27 Sirce OWEN, Acting Director, EOIR;
28 OTAY MESA IMMIGRATION
COURT,

Respondents.

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
ADMINISTRATIVE PROCEDURE
ACT RELIEF**

INTRODUCTION

1. Petitioner Franyelit Stefany Ponte-Guanare is a noncitizen detained at the Otay Mesa Detention Center who faces prolonged, mandatory detention because of unlawful treatment of her parole and jurisdictional status, as well as the immigration court's refusal to exercise jurisdiction over her removal proceedings based on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

2. Petitioner entered the United States near El Paso, Texas on or about September 10, 2023. After entering the country, she was apprehended and was subsequently released on her own recognizance (OR) pending removal proceedings, pursuant to the issuance of a Notice to Appear (NTA).

3. Petitioner was not paroled under INA § 212(d)(5) and thus is not lawfully within the expedited removal framework applicable to parolees, contrary to any administrative designation or assertion made post-release.

4. Recently, the Board of Immigration Appeals issued *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which interprets the jurisdictional authority of the Immigration Courts to exclude cases of individuals who were not paroled but released OR a position that effectively strips petitioner of a meaningful opportunity to present her case before an Immigration Judge and potentially denies her rights under the Immigration and Nationality Act and the Constitution.

5. Petitioner Franyelit Stefany Ponte-Guanare accordingly seeks a writ of

1 habeas corpus under 28 U.S.C. § 2241; Declaratory relief confirming that she was
2 not paroled into the United States and thus falls under the jurisdiction of the
3 immigration court; Injunctive relief requiring Respondents to recognize her
4 procedural and statutory rights; and Any other appropriate relief under the
5 Administrative Procedure Act, as the reclassification or denial of jurisdiction
6 constitutes final agency action that is arbitrary, capricious, an abuse of discretion,
7 and contrary to law under 5 U.S.C. § 706(2).
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11 **JURISDICTION AND VENUE**

12 6. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C.
13 §§ 1101–1538, and its implementing regulations; the Administrative Procedure Act
14 (APA), 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.
15

16 7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
17 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United
18 States Constitution (Suspension Clause).
19

20 8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C.
21 § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All
22 Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court's
23 inherent equitable powers.
24

25 9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)
26 because Respondents are U.S. agencies and officers of the United States acting in
27
28

1 their official capacities or because they reside in this district. In addition, a
2 substantial part of the events or omissions giving rise to the claims occurred in this
3 District, Petitioner is detained in this District, and no real property is involved in
4 this action.
5

6 **REQUIREMENTS OF 28 U.S.C. § 2243**

7
8 10. The Court must grant the petition for writ of habeas corpus or issue an order
9 to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
10 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
11 must require respondents to file a return “within *three days* unless for good cause
12 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
13
14

15 11. Courts have long recognized the significance of the habeas statute in
16 protecting individuals from unlawful detention. The Great Writ has been referred
17 to as “perhaps the most important writ known to the constitutional law of England,
18 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
19 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
20
21

22 **PARTIES**

23 12. Petitioner Franyelit Stefany Ponte-Guanare is a native and citizen of
24 Venezuela who entered the United States in El Paso, Texas, and currently resides
25 in California. On July 25, 2025, the Immigration Judge denied Petitioner’s request
26 for bond, citing lack of jurisdiction based on the Board’s recent holding in *Matter*
27
28

1 of *Q. Li*, 29 I&N Dec. 66 (BIA 2025).

2 13. Respondent John Archambeault is the Field Office Director for ICE
3 Enforcement and Removal Operations (ERO) in San Diego, California. As the ERO
4 Seattle Field Office Director, he is Petitioner's immediate custodian, responsible
5 for her detention at Otay Mesa Detention Center (OMDC), and the person with the
6 authority to authorize her detention or release. Respondent Archambeault is sued in
7 his official capacity.
8
9

10 14. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa
11 Detention Center, oversees the day-to-day functioning of OMDC, and has
12 immediate physical custody of Petitioner pursuant to a contract with ICE to detain
13 noncitizens. Mr. LaRose is sued in his official capacity as the Warden of a federal
14 detention facility.
15
16

17 15. Respondent Kristi Noem is the Secretary of the Department of Homeland
18 Security. As Secretary, she oversees the federal agency responsible for
19 implementing and enforcing the INA, including the detention of noncitizens. She is
20 sued in her official capacity.
21
22

23 16. Respondent Department of Homeland Security (DHS) is the federal agency
24 responsible for implementing and enforcing the INA, including the detention of
25 noncitizens.
26

27 17. Respondent Pamela Bondi is the Attorney General of the United States and
28

1 head of the U.S. Department of Justice. In that capacity, she oversees EOIR and the
2 immigration court system the agency administers. She is ultimately responsible for
3 the agency's operation. She is sued in her official capacity.
4

5 18. Respondent EOIR is a component agency of the Department of Justice
6 responsible for conducting removal and bond hearings of noncitizens. EOIR is
7 comprised of a lower adjudicatory body administered by IJs and an appellate body
8 known as the Board of Immigration Appeals. IJs issue initial decisions in bond
9 hearings, which are then subject to appeal to the BIA.
10
11

12 19. Respondent Sirce Owen is the Director of EOIR and has ultimate
13 responsibility for overseeing the operation of the immigration courts and the Board
14 of Immigration Appeals, including bond hearings. He is sued in her official capacity.
15

16 20. The Otay Mesa Immigration Court is the adjudicatory body within EOIR
17 with jurisdiction over the removal and bond cases of all individuals detained at the
18 OMDC.
19
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21

22 **STATEMENT OF FACTS**

23 21. Petitioner entered the United States on or about September 10, 2023, near El
24 Paso, Texas, and was later apprehended by CBP officers inside the United States.
25

26 22. After processing, Petitioner was issued a Notice to Appear (NTA) and was
27 released on her own recognizance. She was not detained, nor was she granted parole
28

1 under INA § 212(d)(5).

2 23. Following her release, Petitioner did not receive proper instructions from her
3 then representatives for her scheduled removal hearing. As a result, she failed to
4 appear, and the Immigration Court issued an *in-absentia* removal order.
5

6 24. On May 21, 2025, while complying with inspection appointments, Petitioner
7 was inadvertently taken into ICE custody, where she has remained detained since.
8 While detained, she filed a motion to reopen her removal proceedings based on
9 exceptional circumstances, which was subsequently granted by the Immigration
10 Judge. The *in-absentia* order was vacated, and her removal case was reopened and
11 is now pending.
12
13
14

15 25. While in ICE custody, Petitioner requested a custody redetermination
16 hearing under *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005) and applicable
17 regulations. However, on July 25, 2025, the Immigration Judge denied her request
18 for bond, citing a lack of jurisdiction to redetermine custody on the grounds that
19 Petitioner had been "paroled" and was therefore subject to *Matter of Q. Li*, 29 I&N
20 Dec. 66 (BIA 2025). In *Q. Li*, the BIA held that noncitizens released on their own
21 recognizance without parole remain "applicants for admission" and are not eligible
22 for bond under INA § 236(a).
23
24
25

26 26. Petitioner has strong ties to the United States. She is married to a U.S. citizen,
27 who is currently deployed on active-duty military service overseas with the United
28

1 States Army.

2 27. The Petitioner filed applications for Parole-in-place¹ with USCIS and ICE.
3
4 However, she could not comply with USCIS' biometrics appointment due to her
5 unlawful incarceration. ICE has not made any decision on the request for parole-in-
6 place filed with that agency.
7

8 28. Upon her return, Petitioner's wife intends to file a Form I-130, Petition for
9 Alien Relative, on her behalf and re-file an I-131, Parole in Place, creating a viable
10 path to legal status and eventual adjustment of status. Petitioner's detention
11 seriously impairs her ability to communicate with her spouse and prepare for her
12 immigration case.
13
14

15 29. Conditions at Otay Mesa have further exacerbated her distress, including
16 lack of adequate medical care, restricted communication with her spouse and
17 counsel, and intimidation by certain facility staff. This mistreatment shows the
18 urgent need for judicial intervention in her ongoing detention.
19
20

21 30. Investigations have also confirmed substantiated allegations of sexual abuse
22 by correctional staff, overuse of solitary confinement, and unsafe conditions at the
23
24
25

26 ¹ Parole in Place is a form of discretionary parole granted by the Department of Homeland Security to certain
27 undocumented family members of U.S. military personnel, veterans, and enlistees. It allows eligible noncitizens who
28 entered without inspection to be granted lawful parole without leaving the United States, preserving family unity and
enabling them to adjust status under INA § 245(a). Granting Parole in Place to Petitioner would create a viable path
to lawful permanent residence.

1 facility^{2 3 4}. LGBTQ+ detainees, in particular, have reported assault, medical
2 neglect, and punitive segregation⁵.
3

4 31. These conditions of confinement further show the urgency of Petitioner's
5 release, as her continued detention not only subjects her to an unreasonable risk of
6 harm but also serves no legitimate governmental purpose given her lack of
7 dangerousness or flight risk.
8

9 32. Petitioner poses no danger or flight risk, and there has been no individualized
10 determination of necessity for her continued detention. Under the current
11 misapplication of *Matter of Q. Li*, Petitioner is effectively denied any meaningful
12 opportunity to challenge her detention, in violation of the Fifth Amendment's Due
13 Process Clause and the Administrative Procedure Act.
14
15

16 33. Petitioner remains in ICE custody with no available administrative
17 mechanism to seek release. She seeks relief from this Court through a writ of habeas
18 corpus under 28 U.S.C. § 2241 and declaratory relief under the Administrative
19
20
21

22
23 ² California Attorney General, *Completely Unacceptable: California Attorney General Report Finds Immigration
24 Detention Centers Are Failing* (Feb. 1, 2024), [https://www.10news.com/completely-unacceptable-california-
attorney-general-report-finds-immigration-detention-centers-are-failing?utm_source=chatgpt.com](https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing?utm_source=chatgpt.com)

25 ³ KPBS, *Overcrowded Conditions Plague Otay Mesa and Other Immigrant Detention Facilities* (July 28, 2025),
26 [https://www.kpbs.org/news/local/2025/07/28/overcrowded-conditions-plague-otay-mesa-and-other-immigrant-
detention-facilities?utm_source=chatgpt.com](https://www.kpbs.org/news/local/2025/07/28/overcrowded-conditions-plague-otay-mesa-and-other-immigrant-detention-facilities?utm_source=chatgpt.com)

27 ⁴ A federal press report revealed a **sexual misconduct case**, where a DHS case manager assigned to oversight duties
28 at Otay Mesa allegedly had a sexual relationship with a detainee [https://www.justice.gov/usao-sdca/pr/otay-mesa-
detention-facility-case-manager-accused-having-sex-detainee?utm_source=chatgpt.com](https://www.justice.gov/usao-sdca/pr/otay-mesa-detention-facility-case-manager-accused-having-sex-detainee?utm_source=chatgpt.com)

⁵ Them.us, *Maura Martinez, a Trans Immigrant, Released From ICE Deportation Custody* (Aug. 9, 2022),
https://www.them.us/story/maura-martinez-trans-immigrant-released-ice-deportation?utm_source=chatgpt.com.

1 Procedure Act, to remedy this ongoing unlawful detention.

2 LEGAL FRAMEWORK

3 Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)

4
5 34. The Immigration and Nationality Act (“INA”) authorizes the detention of
6 noncitizens in removal proceedings under three primary provisions: INA § 236(a)
7 (8 U.S.C. § 1226(a)), INA § 235(b) (8 U.S.C. § 1225(b)), and 8 U.S.C. § 1231(a)–
8 (b).
9

10
11 35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard
12 non-expedited removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals
13 in § 1226(a) detention are entitled to a bond hearing at the outset of their detention,
14 see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested,
15 charged with, or convicted of certain crimes are subject to mandatory detention, see
16 8 U.S.C. § 1226(c).
17

18
19 36. Second, the INA provides for mandatory detention of noncitizens subject to
20 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking
21 admission referred to under § 1225(b)(2).
22

23 37. Last, the Act also provides for detention of noncitizens who have been
24 previously ordered removed, including individuals in withholding-only
25 proceedings, *see* 8 U.S.C. § 1231(a)–(b).
26

27 38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
28

1 39. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part
2 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of
3 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to
4 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year
5 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
6

7
8 40. Following enactment of the IIRIRA, EOIR drafted new regulations
9 explaining that, in general, people who entered the country without inspection were
10 not considered detained under § 1225 and that they were instead detained under §
11 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal
12 of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
13 10312, 10323 (Mar. 6, 1997).
14

15
16 41. Thus, in the decades that followed, most people who entered without
17 inspection—unless they were subject to some other detention authority—received
18 bond hearings. That practice was consistent with many more decades of prior
19 practice, in which noncitizens who were not deemed “arriving” were entitled to a
20 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
21 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
22 “restates” the detention authority previously found at § 1252(a)).
23
24

25
26 42. The text of § 1226 also explicitly applies to people charged as being
27 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §
28

1 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by
2 default, such people are afforded a bond hearing under subsection (a). Section 1226
3 therefore leaves no doubt that it applies to people who face charges of being
4 inadmissible to the United States, including those who are present without
5 admission or parole.
6

7
8 43.8 U.S.C. § 1225(b), by contrast, mandates detention of certain arriving aliens
9 and applicants for admission during the pendency of expedited or full removal
10 proceedings. However, this provision only applies to individuals who are “seeking
11 admission” and who are either subject to expedited removal or placed into § 240
12 proceedings as applicants for admission.
13
14

15 44. A key distinction in this framework is “parole” under INA § 212(d)(5),
16 which permits the Secretary of Homeland Security, in his discretion, to parole an
17 individual into the United States temporarily for urgent humanitarian reasons or
18 significant public benefit. Parole is an express legal status that must be granted
19 affirmatively and documented by the issuance of Form I-94 or other evidence of
20 parole.
21
22

23 45. The Board of Immigration Appeals’ decision in *Matter of Q. Li*, 29 I&N Dec.
24 66 (BIA 2025), held that individuals who have been formally “paroled” into the
25 United States under § 212(d)(5) are not eligible for a bond hearing under INA §
26 236(a), because they are considered “arriving aliens” subject to § 235.
27
28

1 46. However, *Q. Li* does not apply to individuals who, like Petitioner, were
2 never formally granted parole but were instead released on their own recognizance
3 after being processed and issued an NTA. DHS cannot unilaterally designate an
4 individual as “paroled” absent a formal parole determination under § 212(d)(5) and
5 issuance of appropriate documentation.
6
7

8 47. The Fifth Amendment guarantees that no person shall be deprived of liberty
9 without due process of law. Prolonged detention without an individualized custody
10 determination by a neutral arbiter violates due process. See *Zadvydas v. Davis*, 533
11 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583
12 U.S. 131 (2018).
13
14

15 48. Where DHS has misclassified a person as paroled to avoid judicial review
16 of custody under § 236(a), courts retain habeas jurisdiction to correct such errors
17 and order a bond hearing. See *Padilla v. ICE*, 354 F. Supp. 3d 1218, 1228 (W.D.
18 Wash. 2018); *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *7
19 (S.D.N.Y. May 23, 2018).
20
21

22 49. The Administrative Procedure Act, 5 U.S.C. §§ 701–706, provides a cause
23 of action for individuals aggrieved by final agency action that is arbitrary,
24 capricious, contrary to law, or in excess of statutory authority. DHS’s and the
25 Immigration Judge’s reliance on *Q. Li* under the mistaken belief that Petitioner had
26 been “paroled” constitutes final agency action that is contrary to law and subject to
27
28

1 review under the APA.

2 **The BIA's Practice of Delayed Decisions in Bond Proceedings**

3
4 50. The BIA's appellate process does not offer a meaningful avenue to correct
5 the Otay Mesa Immigration Court's errors.

6
7 51. According to the agency's own data, during FY 2024, the agency's average
8 processing time for a bond appeal was 204 days, or nearly seven months.

9
10 52. The lengthy delays in bond appeal determinations do not affect only Mrs.
11 Ponte-Guanare and similarly situated individuals subject to the Board of
12 Immigration Appeals' decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)
13 described above. It also affects all noncitizens who are detained, who have a right
14 to a bond hearing, and who have their request for a bond denied or cannot afford
15 the bond they are provided.

16
17
18 53. This average of 204 days tells only part of the story. The data released by
19 EOIR shows that in many cases, the BIA review takes far longer—in some cases, a
20 year or more—to decide a person's bond appeal.

21
22 54. These processing times defy the Due Process Clause.

23
24 55. The Supreme Court and the Ninth Circuit have explained that appellate
25 review is a critical component of a constitutional civil detention scheme, including
26 in immigration cases. *See, e.g., Schall v. Martin*, 467 U.S. 253, 280 (1984); *Singh*
27 *v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011); *Prieto-Romero v. Clark*, 534 F.3d
28

1 1053, 1065–66 (9th Cir. 2008).

2 56. The Supreme Court has also made clear that *timely* appellate review is a key
3 feature of any civil detention scheme. As the Court has explained, “[r]elief [when
4 seeking review of detention] must be speedy if it is to be effective.” *Stack v. Boyle*,
5 342 U.S. 1, 4 (1951).
6
7

8 57. Most notably, the Court upheld the federal pretrial detention under the Bail
9 Reform Act in part because the statute “provide[s] for immediate appellate review
10 of the detention decision.” *United States v. Salerno*, 481 U.S. 739, 752 (1987). As
11 the Ninth Circuit later elaborated, “[e]ffective review of pretrial detention orders
12 necessarily entails a speedy review in order to prevent unnecessary and lengthy
13 periods of incarceration on the basis of an incorrect magistrate’s decision.” *United*
14 *States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (9th Cir. 1987).
15
16
17

18 58. These principles derive from the federal pretrial context, where, by
19 definition, individuals are subject to federal criminal proceedings. Yet here, where
20 only civil proceedings are at issue, the BIA provides nothing like the speedy review
21 federal district and appellate courts provide of magistrate judge detention decisions.
22
23

24 59. Without timely review, appellate review is meaningless. Indeed, the
25 Supreme Court has explained that the opportunity to obtain “freedom before
26 conviction permits the unhampered preparation of a defense, and serves to prevent
27 the infliction of punishment prior to conviction.” *Stack*, 342 U.S. at 4. Additionally,
28

1 such detention “may imperil the [detained person’s] job, interrupt his source of
2 income, and impair his family relationships.” *Gerstein v. Pugh*, 420 U.S. 103, 114
3 (1975).
4

5 60. During the many months the BIA takes to review a bond appeal, a detained
6 noncitizen will be forced to defend themselves against their removal on the merits,
7 depriving them of a meaningful chance to assemble evidence outside detention,
8 coordinate with family, or communicate with potential witnesses in other countries.
9
10

11 61. Indeed, their very detention significantly reduces their likelihood of
12 obtaining legal representation. In removal proceedings, noncitizens have the right
13 to be represented by legal counsel but “at no expense to the government.” 8 U.S.C.
14 § 1362. Those detained while in removal proceedings face significant challenges to
15 accessing and communicating with counsel or other forms of legal assistance. *See*,
16 e.g., ACLU, No Fighting Chance: ICE’s Denial of Access to Counsel in U.S.
17 Immigration Detention Centers 6 (June 9, 2022). ⁶
18
19

20 62. The lack of legal representation in turn dramatically reduces the potential for
21 successful outcomes in their underlying removal proceedings. *Id.* at 12.
22

23 63. The months a noncitizen waits for appellate review also deprives them of
24
25

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27 ⁶ [https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-](https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers)
28 [centers.](https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers)

1 time with their spouses, children, parents, and other family members. These
2 individuals—who are often U.S. citizens or lawful permanent residents—are
3 similarly deprived of the love, care, and financial support that the detained person
4 provides.
5

6
7 64. Time in detention is also difficult in other ways. Detained persons are often
8 incarcerated in jail-like settings, forced to sleep in communal spaces, receive
9 inadequate medical care, and subjected to other degrading treatment.
10

11 65. While not all noncitizens succeed in their appeals, some do. The BIA's
12 months-long appellate review means that for those individuals, they have spent
13 months of unnecessary time in detention and suffered the many harms outlined
14 above.
15

16 66. Such review processing times violate the Due Process Clause and do not
17 constitute a reasonable time as required by the APA.
18

19 **Bia's Precedent in *Matter of Q. Li* Should Not Be Applied in This Matter**

20 67. The Board of Immigration Appeals (BIA) decision in *Matter of Q. Li* should
21 be viewed as an agency interpretation of a statute. The Supreme Court's decision
22 in *Loper Bright Enterprises v. Raimondo*, which overturned the *Chevron deference*,
23 fundamentally alters how courts should review such agency interpretations.
24
25

26 68. The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* (U.S.
27 June 28, 2024) represents a significant shift in administrative law. The Court
28

1 expressly abrogated the Chevron framework, which previously instructed courts to
2 defer to an agency's reasonable interpretation of an ambiguous statute. The Court
3 concluded that the Chevron doctrine was a misapplication of judicial power and
4 that it improperly shifted the judicial function of interpreting the law to the
5 executive branch. The judiciary's role is to say, "what the law is," as established in
6 *Marbury v. Madison*. This means that courts must now interpret statutes *de novo*,
7 or as if for the first time, without any special deference to an agency's interpretation.
8

9
10
11 69. The BIA, as part of the Department of Justice, is an administrative body
12 charged with interpreting and applying the Immigration and Nationality Act (INA).
13 Its decisions, such as *Matter of Q. Li*, are classic examples of agency interpretations
14 of a statute. In this case, the BIA interpreted a specific provision of the INA to
15 determine eligibility for a particular form of relief. Under the old *Chevron*
16 framework, a court would have likely deferred to the BIA's interpretation as long
17 as it was a reasonable construction of an ambiguous statute.
18
19

20
21 70. With *Loper Bright*, the legal landscape has changed. When a court now
22 reviews BIA's decision in *Matter of Q. Li*, it cannot simply accept the BIA's
23 interpretation. Instead, the court must undertake its own independent analysis of
24 the statute. The court must use all traditional tools of statutory interpretation—such
25 as the plain language of the statute, legislative history, and statutory context—to
26 determine the correct meaning of the law. The BIA's interpretation is no longer
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28

1 entitled to deference. It is simply one possible reading of the statute, which the
2 court can consider but is not bound by. This new approach restores the judiciary's
3 power to serve as the ultimate arbiter of statutory meaning, ensuring a more
4 uniform and consistent application of the law.
5

6
7 71. *Matter of Q. Li* (29 I&N Dec. 66 (BIA 2025)) contradicts the plain language
8 of the statute by expanding the scope of "arriving aliens" beyond the clear meaning
9 of the law. The decision's interpretation effectively erases the distinction between
10 individuals apprehended at the border and those who have already entered the
11 United States, which is a critical distinction in the Immigration and Nationality Act
12 (INA). By doing so, it subjects a broader category of individuals to mandatory
13 detention under § 235(b) of the INA, despite the fact that they would otherwise be
14 eligible for a bond hearing under § 236(a).
15
16
17

18 72. The legal principle of statutory interpretation, specifically the "plain
19 meaning" rule dictates that if the language of a statute is clear and unambiguous, a
20 court must apply it as written, without looking at outside sources to interpret its
21 meaning.
22

23 73. INA § 235(b) governs the processing of "arriving aliens" and those seeking
24 admission to the United States. It mandates the detention of individuals who are
25 "applicants for admission" and are found to be inadmissible. The plain language of
26 this statute applies to individuals who are physically presenting themselves at a
27
28

1 port of entry or are otherwise in the process of seeking admission.

2 74. INA § 236(a), in contrast, applies to a broader class of non-citizens who are
3 in the United States and have been arrested for a removable offense. It explicitly
4 allows for the release of these individuals on bond while their removal proceedings
5 are pending.
6
7

8 75. The key legal distinction between these two sections is whether a non-citizen
9 is an "arriving alien" or has already "entered" the United States. Traditionally, an
10 individual apprehended miles away from a port of entry has been considered to
11 have already entered and, therefore, is eligible for a bond hearing under § 236(a).
12
13

14 76. The Board of Immigration Appeals (BIA) in *Matter of Q. Li* contradicts this
15 established understanding by reclassifying a person apprehended several miles
16 from the border as an "arriving alien." This classification is a direct expansion of
17 the statutory language. The BIA's decision essentially holds that an individual is
18 an "arriving alien" so long as they were apprehended "while arriving in the United
19 States," regardless of their physical location or distance from a port of entry.
20
21

22 77. The BIA's ruling effectively renders the geographic distinction between "at
23 a port of entry" and "in the United States" meaningless. The statute's structure, with
24 its two separate detention provisions, clearly intended for these to be different
25 categories.
26

27 78. By defining "arriving" so broadly, the BIA's decision expands the scope of
28

1 mandatory detention under § 235(b) to encompass individuals who would have
2 previously been subject to the bond-eligible detention provisions of § 236(a).
3

4 79. The purpose of § 236(a) is to provide a mechanism for releasing certain non-
5 citizens on bond. By moving these individuals into a mandatory detention category,
6 *Matter of Q. Li* bypasses the discretionary authority of immigration judges and
7 thwarts the legislative intent to allow for bond hearings in these cases.
8

9 80. Here, the petitioner was apprehended already in the United States, released
10 on her own recognizance, and later re-apprehended when she was complying with
11 mandatory inspection appointments before the Immigration and Customs
12 Enforcement – ICE. This fact pattern differs entirely from the Congressional intent
13 at the time § 235(b) was written.
14
15

16 **CAUSES OF ACTION**

17

18 **COUNT I**

19 **Violation of 8 U.S.C. § 1226(a) – Unlawful Denial of Bond Hearings**

20

21 81. Petitioner realleges and incorporates by reference all preceding paragraphs
22 as if fully set forth herein.
23

24 82. Under 8 U.S.C. § 1226(a), the Attorney General may detain an alien pending
25 a decision on removal proceedings, but the statute expressly authorizes release on
26 bond or conditional parole after a custody redetermination.
27

28 83. Petitioner was denied bond by the Immigration Judge on the sole basis of

1 *Matter of Q-Li*, 29 I&N Dec. 66 (BIA 2025), under the erroneous finding that she
2 had been “paroled” when she was, in fact, released on her own recognizance and
3 she was not detained at a port-of-entry.
4

5 84. The Immigration Judge’s denial of bond without consideration of the
6 statutory factors in § 1226(a) and applicable regulations deprived Petitioner of the
7 individualized custody determination guaranteed by law.
8

9 85. This constitutes an unlawful application of § 1226(a), warranting habeas
10 relief.
11

12 **COUNT II**

13 **Violation of the Administrative Procedure Act – Unlawful Denial of Bond**

14 86. Petitioner realleges and incorporates by reference all preceding paragraphs
15 as if fully set forth herein.
16

17 87. The APA, 5 U.S.C. §§ 701–706, prohibits agency action that is arbitrary,
18 capricious, an abuse of discretion, or otherwise not in accordance with law.
19

20 88. The denial of bond under an incorrect factual premise—that Petitioner was
21 paroled—was arbitrary and capricious, contrary to the plain record of her release
22 on her own recognizance.
23

24 89. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
25 to noncitizens residing in the United States who are subject to the grounds of
26 inadmissibility because they originally entered the United States without inspection.
27
28

1 Such noncitizens are detained under § 1226(a), unless they are subject to another
2 detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.
3

4 90. Respondents' bond decision was not in accordance with the INA, the APA,
5 or due process, and therefore must be set aside under 5 U.S.C. § 706(2).
6

7 **COUNT III**
8 **Violation of the Due Process Clause of the Fifth Amendment –**
9 **Delayed Adjudication of Bond Appeals**

10 91. Petitioner realleges and incorporates by reference all preceding paragraphs
11 as if fully set forth herein.

12 92. The Due Process Clause of the Fifth Amendment guarantees that liberty may
13 not be deprived without adequate procedural safeguards.
14

15 93. The Due Process Clause guarantees persons in civil detention timely
16 appellate review of the decision to detain.
17

18 94. By not adjudicating appeals within sixty days of the filing of a notice of
19 appeal, the BIA does not provide timely appellate review of detention decisions.
20

21 95. This failure to provide timely appellate review violates the Due Process
22 Clause of the Fifth Amendment.

23 96. Moreover, *Matter of Q. Li* significantly expands the category of individuals
24 subject to mandatory detention under INA § 235(b) to include a broader population,
25 notably those previously released on parole and individuals apprehended further
26 from the immediate border. This expansion inherently means that a larger number
27
28

1 of noncitizens will face prolonged periods of detention without access to a bond
2 hearing before an immigration judge. Simultaneously, the Fifth Amendment's Due
3 Process Clause serves as a critical safeguard, prohibiting arbitrary and prolonged
4 detention without a meaningful opportunity for review. Historically, federal courts
5 have established specific "triggers" or timeframes after which detention becomes
6 constitutionally prolonged, necessitating judicial intervention.
7

8
9 97. The sheer volume of individuals now falling under *Q. Li*'s mandatory
10 detention framework means that many will inevitably experience detention periods
11 that, under existing constitutional jurisprudence, would be deemed "prolonged."
12

13 **PRAYER FOR RELIEF**

14
15 WHEREFORE, Petitioner respectfully requests that this Court grant the following
16 relief:
17

- 18 1) Assume jurisdiction and proper venue over this matter;
- 19 2) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents
20 to immediately release Petitioner from immigration detention or, in the
21 alternative, order the immigration court to schedule a custody determination
22 hearing without considering *Matter of Q.Li* within 10 days or any time this court
23 deems reasonable.
24
- 25 3) Declare that Respondents' denial of bond under *Matter of Q-Li* was unlawful
26 under 8 U.S.C. § 1226(a), the Administrative Procedure Act, and the Due
27
28

1 Process Clause of the Fifth Amendment;

2 4) Declare that Respondents' prolonged delay in adjudicating Petitioner's bond
3 appeal violates the Administrative Procedure Act and the Due Process Clause
4 of the Fifth Amendment;

5
6 5) Enjoin Respondents from further detaining Petitioner without providing a
7 lawful and individualized custody determination;

8
9 6) Award Petitioner reasonable attorneys' fees and costs under the Equal Access
10 to Justice Act, 28 U.S.C. § 2412; and

11 7) Grant such other and further relief as this Court deems just and proper.
12
13
14

15 Date: August 13, 2025

16 Respectfully submitted,
17

18 /s/ Marcelo Gondim

19
20 Marcelo Gondim (SBN 271302)
21 Gondim Law Corp.
22 1880 Century Park East, Suite 400
23 Los Angeles, CA 90067
24 Telephone: 323-282-777
25 Email: court@gondim-law.com
26 *Attorney for the Petitioner*
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Franyelit Stefany Ponte-Guanare

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gondim Law Corp., 1880 Century Park E, Suite 400
Los Angeles, CA 90067, Telephone: 323-282-7770

DEFENDANTS

John Archambeault, Christopher J. LaRose,
Kristi Noem, Pamela Bondi, and Sirce OwenCounty of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'25CV2081 TWR KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	LABOR	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 740 Railway Labor Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
REAL PROPERTY	CIVIL RIGHTS	IMMIGRATION	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 448 Education			
	PRISONER PETITIONS			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	Other:			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 2241 - Petition for Writ of Habeas CorpusBrief description of cause:
Immigration detention challenge

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/13/2025

SIGNATURE OF ATTORNEY OF RECORD

/s/ Marcelo Gondim

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.