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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MIRIAN E. MENJIVAR SANCHEZ, Petitioner, v. **MINGA WOFFORD**, Warden, Mesa Verde Immigrant Processing Center; **NANCY GONZALEZ**, Acting Director of Bakersfield, CA Field Office, U.S. Immigration & Customs Enforcement; **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; and **PAMELA BONDI**, Attorney General of the United States, in their official capacities, Respondents.	Case No. _____ **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Mirian E. Menjivar Sanchez ("Petitioner" or "Ms. Menjivar") respectfully petitions this Honorable Court for a writ of habeas corpus to remedy her unlawful detention by Respondents (the "government"), as follows:

INTRODUCTION

This petition concerns new policies adopted by Respondents and the Board of Immigration Appeals ("BIA"), which subject millions of noncitizens to mandatory detention, contrary to decades of practice.

Ms. Menjivar is an immigrant from El Salvador who has lived in this country for twenty years, while becoming a mother to three children who are citizens of the United States and also working for a janitorial service. She has been in the custody of Immigration and Customs Enforcement ("ICE") since June 18, 2025, at Mesa Verde Immigrant Processing Center in Bakersfield, California. Petitioner suffers from diabetes and is not receiving adequate medical care at Mesa Verde. (Exhibit A)

On August 25, 2025, an immigration judge ("IJ") ordered Ms. Menjivar's release on $3000 bond, after finding that she is being detained under the authority of 8 U.S.C. § 1226 (Immigration and Nationality Act § 236), rather than 8 U.S.C. § 1225 (I.N.A. §235). The IJ concluded that the BIA's recent decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), was distinguishable because Ms. Menjivar was not detained while arriving in the United States. (Exhibit B) The Department of

Homeland Security (DHS) filed a notice of intent to appeal (Form EOIR-43), which invoked an automatic stay of the IJ's decision and prevented Ms. Menjivar from posting bond. *See* 8 C.F.R. §1003.19(i)(2). (Exhibit C)

On September 4, 2025, DHS filed its notice of appeal, which extended the automatic stay for 90 days or more. *See* 8 C.F.R. §1003.6. DHS filed its appellate brief along with the notice of appeal. The brief argues that the IJ erred by applying section 1226 instead of section 1225. (Exhibit D)

On September 5, 2025, the BIA issued its decision in *Matter of Yajure Hurtado*, holding that 8 U.S.C. § 1225 applies to all noncitizens who are in the United States without admission—even if they have resided here for years—thereby subjecting these individuals, such as Petitioner, to mandatory detention for the duration of their removal proceedings. 29 I&N Dec. 216, 220 (BIA 2025). In other words, the BIA adopted DHS's arguments regarding the correct interpretation of the two statutes.

Petitioner submits that the new interpretations of sections 1225 and 1226 are erroneous. Further, the new interpretations, combined with the automatic stay of 8 C.F.R. §1003.19(i)(2), violate her right to due process.

JURISDICTION

This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. §1101 et seq.

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

This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §2241 et seq., the Declaratory Judgment Act, 28 U.S.C. §2201 et seq., and the All Writs Act, 28 U.S.C. §1651.

VENUE

Venue is proper because Petitioner is detained at Mesa Verde Immigrant Processing Center in Bakersfield, CA, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. §2243

The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. §2243. If an order to show cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

Petitioner is present within the United States without admission. She had an *in absentia* removal order from 2005 when she was arrested on June 18, 2025, but that order has since been reopened and rescinded. She has been detained at Mesa

Verde Immigrant Processing Center since June 18, 2025. She was a resident of Santa Rosa, CA for approximately twenty years prior to that arrest. She is in the custody of and under the direct control of Respondents and their agents.

Respondent Minga Wofford is the warden of the Mesa Verde Immigrant Processing Center in Bakersfield, CA and has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens. Minga Wofford is a legal custodian of Petitioner.

Respondent Nancy Gonzalez is sued in her official capacity as the Acting Director of the I.C.E. Field Office in Bakersfield, CA. Respondent Gonzalez is a legal custodian of Petitioner and has authority to release her.

Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent is a legal custodian of Petitioner.

Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, Respondent Bondi has the authority to adjudicate

removal cases and to oversee the Executive Office for Immigration Review, which administers the Immigration Courts and the BIA. Resppondent is a legal custodian of Petitioner.

STATEMENT OF FACTS

Petitioner is a 44-year-old citizen of El Salvador. She entered the United States in January, 2005 without admission, was briefly detained some 10-15 days after entering, and then released on her own recognizance. (Exhibit A, B) Ms. Menjivar was unable to receive her mail due to an abusive relationship, was never informed of her Immigration Court hearing, and was ordered removed *in absentia* in September, 2005. (Exhibit A)

Ms. Menjivar resided in Santa Rosa, California, primarily, for twenty years and has three children born in the United States who are now 19, 18 and 12 years old, respectively. She suffers from diabetes and is dependent on insulin. Before her detention, she treated her diabetes with twice-per-day injections of insulin and an oral medication called Metformin. (Exhibit A)

Ms. Menjivar was arrested by ICE in Santa Rosa, outside of the dental office she was cleaning as an employee of a janitorial service, on June 18, 2025. (Exhibit A) She was taken to Mesa Verde detention center and has been in custody there since.

Ms. Menjivar has been transported to a Bakersfield hospital three times since her arrest due to uncontrolled hyperglycemia. She reports that she is frequently given only one injection of insulin per day, that on one of the occasions of transport to the hospital she was told her "blood sugar was over 700," and that she frequently has blood sugar tests in the 300 and 400 range. (Exhibit A)

Undersigned counsel made an urgent request to the ICE Field Office at Bakersfield for Ms. Menjivar's release on humanitarian parole on July 16, 2025, but has never received a direct response. (Exhibit E) Undersigned counsel did receive a phone call from Officer Jerome of that office who stated that he checked with the Mesa Verde detention center's health services office and was told that Ms. Menjivar is receiving appropriate care. (Exhibit A) Again, there has been neither approval nor denial of the request for parole.

Ms. Menjivar's Santa Rosa medical provider, [redacted] M.P.H., FAAFP, provided a letter in late July, giving some detail about her diagnosis and treatment regimen. (Exhibit F)

A Motion to Reopen the removal proceedings was filed on June 18, 2025 and was granted by the Immigration Court on July 8, 2025. (Exhibit G)

Ms. Menjivar received a custody redetermination hearing before an IJ on August 25, 2025. The IJ determined that Petitioner was detained under the authority of 8 U.S.C. §1226(a) (Immigration and Nationality Act § 236(a)), not 8

U.S.C. § 1225 (I.N.A. § 235). (Exhibit B) The IJ weighed the evidence of danger to the community and flight risk and found that Ms. Menjivar was not a danger and only a minimal flight risk. (Exhibit A)

DHS filed a Form EOIR-43, invoking an automatic stay of the IJ Order pursuant to 8 C.F.R. §§1003.6 and 1003.19. (Exhibit C) It then filed a notice of appeal (Exhibit D), which extended the automatic stay for 90 days or more. *See* 8 C.F.R. §1003.6.

LEGAL FRAMEWORK

This case involves the interplay of two statutes: 8 U.S.C. §§ 1225 and 1226. Section 1225(a)(1) states, "An alien present in the United States who has not been admitted or who arrives in the United States" is considered an "applicant for admission." Section 1225(b)(2)(A) states, "[I]n 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 1229(a) of this title [a removal proceeding]."

Section 1226(a) states, "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." The Attorney General may release these

individuals on bond, except as provided in section 1226(c). Subsection 1226(c) provides for the mandatory detention of "criminal aliens."

For decades, it has been understood that section 1226 applies to noncitizens who are present in the United States, and that these individuals are not subject to mandatory detention except pursuant to section 1226(c). Despite years of promoting and following this understanding, DHS and the BIA decided this year to subject all individuals in removal proceedings to mandatory detention. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *4, *8 (D. Mass. July 24, 2025).

EXHAUSTION

Petitioner brings this habeas proceeding while the government's appeal is pending before the BIA. The doctrine of exhaustion of administrative remedies should not apply for the following reasons.

In habeas proceedings, exhaustion is a prudential, rather than jurisdictional, doctrine. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Prudential exhaustion may be required when agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; when relaxation of the requirement would encourage the deliberate bypass of the administrative

scheme; and when administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. *Id.*

Here, Petitioner's challenge to her detention is based on legal questions that can be resolved through statutory and constitutional interpretation. Likewise, DHS's arguments before the BIA center on statutory interpretation. Because only legal issues are involved, agency expertise and an additional record are not needed to reach a proper decision. *See id.* at 989 (holding that no administrative appellate record was needed to resolve the purely legal questions presented by a challenge to government policy); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385, 394 (2024) (holding that courts should apply independent judgment in determining the meaning of statutes). In addition, relaxing the exhaustion requirement will not encourage future bypass of the administrative scheme because once these legal questions are decided they should not arise again. *See Hernandez*, 872 F.3d at 989. And finally, administrative review will not allow the BIA to correct its own mistakes because its position on the issue is already set. *See id.* ("[W]here the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required." (internal quotation marks omitted)).

Even if the factors above weighed in favor of exhaustion, this court should waive the requirement because Petitioner's administrative remedies are inadequate

and not efficacious, pursuit of those remedies would be futile, and irreparable injury will occur. *See id.* at 988 (stating that exhaustion should be waived if these results will occur).

The appellate proceedings before the BIA will not be adequate or efficacious to vindicate Petitioner's interest in being released on bond. In fact, the government's appeal is delaying her release on bond. And any arguments she makes to the BIA will be futile because the BIA has already held that all inadmissible aliens are subject to mandatory detention.

Most importantly, Petitioner will suffer irreparable injury if she has to wait for the administrative appeal process to play out. A district court recently cited evidence "showing an average processing time of 204 days for bond appeals in 2024" and that "200 bond appeal cases took a year or longer to resolve." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025) (internal quotation marks omitted). Many detainees' claims are mooted during the time it takes for the BIA to resolve an appeal. *Id.* "[D]istrict courts in this circuit have routinely waived prudential exhaustion requirements for noncitizens like [Petitioner] facing prolonged detention while awaiting administrative appeals." *Id.* at 1253-54.

The Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to immigration detention." *Hernandez*, 872 F.3d at 995 (citing "subpar medical and psychiatric care in ICE detention facilities, the economic burdens

imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained"). "Irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of administrative remedies." *Gomes v. Hyde*, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025).

In addition to the harm visited on all individuals subject to immigration detention, Petitioner is suffering unique irreparable injury. She is a diabetic who needs insulin twice per day. In detention, she often receives only one injection of insulin per day. As a result, she has been transported to a hospital three times since her arrest due to uncontrolled hyperglycemia. On one of those occasions, her blood sugar was over 700. She frequently has blood sugar readings in the 300-400 range. *See Rodriguez*, 779 F. Supp. 3d at 1254 (finding unique harm because the petitioner had several health problems requiring daily medication, which he did not receive for over a week after being detained).

Other courts have recently waived the exhaustion requirement in the situation presented here, *i.e.*, where an IJ granted release on bond, but the government obtained an automatic stay pending appeal. *See Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, slip op. at 11-13 (D. Mass. Sept. 9, 2025) (Exhibit I); *Leal-Hernandez v. Noem*, Civ. No. 1:25-cv-02428-JRR, slip op. at 18-21 (D. Md. Aug. 24, 2025) (Exhibit J).

For all these reasons, Petitioner should not be required to exhaust administrative remedies.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1226(a)

The allegations in the above paragraphs are realleged and incorporated herein.

Although the IJ held that this case is governed by 8 U.S.C. § 1226 and ordered Petitioner released on bond, the BIA subsequently held that 8 U.S.C. § 1225 applies to all noncitizens who are in the United States without admission, even if they have resided here for years. According to the BIA, these individuals are now subject to mandatory detention for the duration of their removal proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025).

Petitioner submits that *Yajure Hurtado* was wrongly decided and that this court should not defer to the BIA's interpretation of the applicable statutes. Instead, this court should consider the statutes together and conclude that section 1226 governs this case, just as the IJ did here and as other district courts have concluded under similar circumstances.[1]

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[1] To interpret the statutes at issue here, the BIA and district courts both cite *Jennings v. Rodriguez*, 583 U.S. 281 (2018), yet the BIA and the courts reach opposite results. *See, e.g., Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025); *Lopez Benitez v. Francis*,

Courts must exercise independent judgment in determining the meaning of statutes. *Loper Bright*, 603 U.S. at 385, 394. This court should not adopt the BIA's interpretation of the statues at issue here because it conflicts with the statutory language, with courts' interpretation of that language, and with longstanding administrative practice.

Section 1225 states that "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." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Use of the word "shall" demonstrates that detention under this section is mandatory. By contrast, section 1226 provides for discretionary detention. It states that "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). Generally speaking, the

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2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216. In *Jennings*, the issue was whether sections 1225 and 1226 impose an implicit six-month time limit on detention. *See* 583 U.S. at 291-92. Thus, as one district judge has noted, *Jennings* did not consider whether section 1225 applies to all noncitizens who are in the country without admission. *See Rodriguez*, 779 F. Supp. 3d at 1258. Petitioner submits that the quotations from *Jennings* in *Yajure Hurtado* were taken out of context and should be read in light of the Supreme Court's focus on whether the statutes imposed a time limit on detention. *See, e.g., Matter of Yajure Hurtado*, 29 I&N Dec. at 218, 225. If this court determines that *Jennings* is relevant to the issues in this case, Petitioner notes that *Jennings* contains abundant language to support her position. *See Jennings*, 583 U.S. at 289 ("In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)."); *id.* at 303 ("[Section] 1226 applies to aliens already present in the United States.").

government may detain an alien subject to this section or release her on bond or parole. *See id.*; *but see* 8 U.S.C. § 1226(c) (mandating detention for individuals implicated in certain crimes).

Many district courts have held that section 1226(a), rather than section 1225(b)(2), applies to noncitizens who reside in the United States. *See., e.g., Lopez Benitez v. Francis*, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025); *Sampiao*, slip op. at 23 (citing at least thirteen cases that have reached this result). (Exhibit I)

By its terms, section 1225(b)(2)(A) only applies to aliens who are "seeking admission." Courts have logically reasoned that aliens who are already residing here are not "seeking admission." *Lopez Benitez*, 2025 WL 2371588 at *5; *Martinez*, 2025 WL 2084238, at *6-7. The use of the present progressive tense in "seeking admission" denotes an ongoing process. *See Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020): *Martinez*, 2025 WL 2084238, at *6. Moreover, if all applicants for admission were subject to mandatory detention, the phrase "seeking admission" would become mere surplusage. *See Lopez Benitez*, 2025 WL 2371588 at *6; *Martinez*, 2025 WL 2084238, at *6. The canons of statutory construction assume that Congress "acted intentionally in choosing different words

in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 2025 WL 2371588 at *6.

Another portion of section 1226 would be rendered superfluous by the BIA's interpretation of the statutes. Subsection (c)(1)(E) mandates detention for aliens who are both inadmissible and who are implicated in certain crimes. If the mandatory detention provision of section 1225 applies to all noncitizens who have not been admitted, then section 1226(c)(1)(E), which only applies to a subset of that group, is meaningless. *Rodriguez*, 779 F. Supp. 3d at 1258; *see also Lopez Benitez*, 2025 WL 2371588, at *7; *Martinez*, 2025 WL 2084238, at *7; *Gomes*, 2025 WL 1869299, at *7.

Furthermore, some of the provisions of section 1226(c) were enacted by Congress just months ago in the Laken Riley Act. *Rodriguez*, 779 F. Supp. 3d at 1259. When Congress amends a statute, courts should "presume it intends its amendment to have real and substantial effect." *Id.* (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)).

Although section 1226(a) expressly excludes certain "criminal aliens" from its discretionary detention framework, it does not expressly exclude noncitizens who would be subject to mandatory detention under section 1225(b)(2). *See* 8 U.S.C. § 1226(a) (allowing for release "[e]xcept as provided in subsection (c)"). This one express exception to section 1226(a) implies that there are no other

circumstances under which detention is mandated. *Gomes*, 2025 WL 1869299, at *6. When Congress creates a specific exception to a statute's applicability, courts should presume that the statute applies unless the specific exception pertains. *Rodriguez*, 779 F. Supp. 3d at 1256-57.

Statutes should also be construed to avoid absurd or impracticable results. *United States v. Romo-Romo*, 246 F.3d 1272, 1275 (9th Cir. 2001). If section 1225(b)(2)(A) applied to all inadmissible aliens, millions of undocumented immigrants would be subject to mandatory detention. *Martinez*, 2025 WL 2084238, at *5. It is absurd to think that Congress intended such an impracticable result.

Agency "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright*, 603 U.S. at 394. The detention provisions of sections 1225(b)(2) and 1226(c) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Shortly thereafter, EOIR drafted regulations explaining that immigrants who are present without having been admitted would be eligible for bond. *See Martinez*, 2025 WL 2084238, at *8; 62 Fed. Reg. 10312, 10323 (March 6, 1997). For decades, this has been the rule. However, on July 8th of this year, ICE, in coordination with DOJ, announced a new policy, which states that all applicants for admission are subject

to mandatory detention under section 1225. *See Martinez*, 2025 WL 2084238, at *4. The BIA adopted ICE's interpretation in *Yajure Hurtado*, disregarding the decades of contrary practice and statements in its own prior cases. 29 I&N Dec. at 225 & n.6; *see Rodriguez*, 779 F. Supp. 3d at 1261 (discussing unpublished BIA decisions that seem to conflict with *Yajure Hurtado*); *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025) (distinguishing, in May of this year, between "an applicant for admission who is arrested and detained without a warrant while arriving in the United States" and aliens who may be detained pursuant to section 1226).

In *Yajure Hurtado*, the BIA stated that it would be "incongruous" to reward aliens who enter unlawfully and remain in the country for years by allowing them an opportunity for a bond hearing, while aliens who present themselves at a port of entry are ineligible for bond. 29 I&N Dec. at 228. However, courts have noted that there is a good reason to treat aliens who have been in the country for years differently—their ties to the country. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Indeed, "the idea that a different detention scheme would apply to non-citizens

'already in the country,' . . . as opposed to those 'seeking admission into the country,' . . . is consonant with the core logic of our immigration system." *Martinez*, 2025 WL 2084238, at *8 (quoting *Jennings*, 583 U.S. at 289); *see also D.H.S. v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (distinguishing between "aliens who have established connections in this country" and those "at the threshold of entry").

Here, Petitioner entered the United States without admission in January 2005, was briefly detained some 10-15 days after entering, and was released on her own recognizance. She was ordered removed *in absentia* in September 2005. After residing in the United States for twenty years, she was arrested on June 18, 2025, and has been in custody at Mesa Verde since then. Although Petitioner and her counsel do not have copies of the warrant used for her arrest on June 18, 2025, a motion to reopen was granted on July 8, 2025. Therefore, Petitioner cannot currently be detained pursuant to a final order of removal. Nor is she being detained pursuant to her initial arrest in 2005. Instead, she can only be detained now pending a decision on removal pursuant to section 1226(a). *See Lopez Benitez*, 2025 WL 2371588, at *8 ("Mr. Lopez Benitez's initial arrest is not what is at issue in this case. It is his 2025 arrest, which occurred at a time when he was (and had long been) residing in the United States, and thus subject to §1226(a).").

Since Petitioner is subject to section 1226(a), the IJ was correct to conclude that she had authority to release Petitioner on bond.[2]

COUNT TWO

Violation of Fifth Amendment Right to Procedural Due Process

The allegations in the above paragraphs are realleged and incorporated herein.

The Due Process Clause of the Fifth Amendment prohibits the government from detaining immigrants without due process of law. *Hernandez*, 872 F.3d at 990. "In the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally

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[2] A few months before issuing *Matter of Yajure Hurtado*, the BIA issued *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). There, the BIA held "that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section . . . 1225(b), and is ineligible for subsequent release on bond under section . . . 1226(a)." 29 I&N Dec. at 69. Petitioner submits that *Q. Li* was not correctly decided because, as discussed above, section 1226(a) clearly allows release on bond. *See Lopez Benitez*, 2025 WL 2371588 at *8 (holding that the circumstances of an alien's initial arrest are not controlling in determining which statute applies). Assuming for purposes of argument that *Q. Li* was correctly decided, the IJ correctly distinguished *Q. Li* from this case because she found that Petitioner had been in the United States for 10-15 days before first being detained and thus was not detained while arriving. Furthermore, it is undisputed that Petitioner was released on her own recognizance. This form of relief is not available for individuals who are detained under section 1225, but is available under section 1226. *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007); *Martinez*, 2025 WL 2084238, at *3; *Matter of Q. Li*, 29 I&N Dec. at 69. Therefore, Petitioner must not have been detained pursuant to section 1225, and *Q. Li* is inapposite.

protected interest in avoiding physical restraint." *Id.* (internal quotation marks and citation omitted).

In this case, the IJ ordered Petitioner released on $3000 bond. Nevertheless, Petitioner is still detained because of the automatic stay provided by 8 C.F.R. §1003.19(i)(2). Her detention under these circumstances deprives Petitioner of procedural due process.

The three-factor test of *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976), governs procedural due process claims. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022) (assuming without deciding that *Matthews* applies to a challenge to immigration detention and noting that other circuits have applied *Matthews* to such challenges); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025) (noting that district courts in this circuit "regularly apply *Matthews* to due process challenges in [the] immigration context"). The *Matthews* three-factor test balances the private interest at stake, the risk of erroneous deprivation, and the governmental interest. 424 U.S. at 335.

As noted above, Petitioner was placed in removal proceedings and released on her own recognizance after her initial brief detention. Accordingly, she has a substantial interest in avoiding further detention. *See Hernandez*, 872 F.3d at 990; *see also Ramirez Clavijo*, 2025 WL 2419263, at *6. This interest is particularly strong because of Petitioner's serious health issues. *See Ramirez Clavijo*, 2025 WL

2419263, at *6 ("Petitioner, who has serious medical conditions, has an interest in remaining home, being with family members, and monitoring her medical conditions out of immigration custody.").

Moreover, Petitioner faces a potentially long period of detention because of the stay. When the government filed its notice of appeal, that stay was extended for ninety days, pending the BIA's decision. *See* 8 C.F.R. §1003.6(c)(4). The government can seek additional stays as well. *See* 8 C.F.R. §1003.6(c)(5), (d).

The risk of erroneous deprivation is obvious here, because Petitioner has already demonstrated her entitlement to release on bond to the satisfaction of the IJ, and is only being deprived of her liberty because of the stay. The government has not shown that Petitioner is a flight risk or a danger to the community. The IJ ordered Petitioner to be released on $3000 bond. The IJ's order thus establishes that Petitioner is not a serious flight risk or a danger to the community. Therefore, subjecting Petitioner to detention erroneously deprives her of her liberty. *See Ramirez Clavijo*, 2025 WL 2419263, at *6; *see also Lopez Benitez*, 2025 WL 2371588, at *12 (holding that the absence of evidence that petitioner was a flight risk or danger to the community established a high risk of erroneous deprivation of his liberty interest).

Turning to the third factor, the government generally has a strong interest in the enforcement of immigration law. *Rodriguez Diaz*, 53 F.4th at 1209. However,

Petitioner has lived in the United States for twenty years, has a job and family ties here, and no significant criminal record.[3] The government has no particular need to detain her. *See Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future proceedings can be reasonably ensured by a lesser bond or alternative conditions."); *Lopez Benitez*, 2025 WL 2371588, at *12 (holding that the government clearly failed to show a significant interest in the petitioner's detention where there was no evidence that petitioner was a flight risk or danger to the community). Although there is an administrative cost to conducting bond hearings, that cost has already been incurred in this case, and the administrative cost of conducting hearings should be balanced against the likely greater amount of money that the government would spend in detaining Petitioner and others similarly situated.

On balance, the three *Matthews* factors show that Petitioner was entitled to a bond hearing and that her detention pursuant to the automatic stay violates her right to procedural due process. *See Sampiao*, slip op. at 19-26 (finding a denial of procedural due process in the circumstances presented here) (Exhibit I); *Leal-*

[3] At the bond hearing, the government presented a rap sheet from Nevada. Although the rap sheet is unclear, counsel for the government indicated that it reflected an arrest for disturbing the peace. (Exhibit H)

Hernandez, slip op. at 23-25 (same) (Exhibit J); *Mayo Anicasio v. Kramer*, No. 4:25CV3158, slip op. at 5-8 (D. Neb. Aug. 14, 2025 (same) (Exhibit K).

COUNT THREE

Violation of Fifth Amendment Right to Substantive Due Process

The allegations in the above paragraphs are realleged and incorporated herein.

Detention violates due process unless it is ordered in a criminal proceeding with adequate procedural protections, or there is a special justification in narrow and nonpunitive circumstances. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). There is no special justification for Petitioner's continued detention. *See Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076-77 (N.D. Cal. 2004) (holding that an earlier version of the automatic stay provision violated substantive due process); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 668-69 (D.N.J. 2003) (same); *see also Leal-Hernandez*, slip op. at 21-22 (holding that the current version of the automatic stay provision violated substantive due process in the circumstances here) (Exhibit J); *Mayo Anicasio*, slip op. at 8-9 (same) (Exhibit K).

Moreover, as a civil detainee, Petitioner is entitled to more considerate treatment than criminal detainees. *See Castillo v. Barr*, 449 F. Supp. 3d 915, 919 (C.D. Cal. 2020) (noting that immigration detainees are civil detainees). Unlike criminal detainees, a civil detainee cannot be subjected to conditions that amount

to punishment under the Fifth Amendment. *Id.* at 919-20. "If the Government fails to provide for a detainee's basic human needs, including medical care and reasonable safety, the Due Process Clause is violated." *Id.* at 920. "A civil detainee's constitutional rights are violated if a condition of his confinement places him at substantial risk of suffering serious harm." *Id.*

The government violates the Fifth Amendment when it makes an intentional decision with respect to the conditions of confinement; those conditions put the petitioner at substantial risk of suffering serious harm; the government fails to take reasonable available measures to abate the risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved; and by not taking such measures, the government causes the petitioner's injuries. *Roman v. Wolf*, 977 F.3d 935, 943 (9th Cir. 2020). The "remedy for unsafe conditions need not await a tragic event." *Id.* (internal quotation marks omitted).

Here, the warden and agents of Mesa Verde Immigrant Processing Center have made an intentional decision to confine Petitioner without addressing the treatment needs of her diabetes in a way that maintains anything close to a normal or healthy blood sugar level. Those conditions put her at risk of coma or diabetic shock in the acute situation; and blindness, kidney and heart failure in the more chronic situation. Despite warnings provided by the hospitalization and the urgent request for humanitarian parole, the warden and agents did not take available

measures to abate these risks, but rather exhibited reckless disregard to the risks. And the failure to take these measures has led to extremely high blood glucose levels and other symptoms. Accordingly, Petitioner has been placed in imminent danger of permanent and irreversible injury by the conditions of her confinement.

There is no special justification to detain Petitioner where she is in imminent danger of permanent and irreversible injury. Accordingly, prolonged detention violates substantive due process as applied to Petitioner.

PRAYER FOR RELIEF

For the reasons stated above, Petitioner requests that this court:

Issue a writ of habeas corpus, requiring Respondents to release her on bond; and

Award attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other basis in law.

_9/11/2025__	_/s/_Richard L. Coshnear
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Table of Exhibits