

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

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LEIDY SANCHEZ BALLESTROS,  
Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security, in her official capacity;

TODD M. LYONS, Acting Director of U.S.  
Immigration and Customs Enforcement, in his  
official capacity;

SAMUEL OLSON, Field Office Director,  
Chicago Field Office, Immigration and  
Customs Enforcement, in his official  
capacity;

JASON WOOSLEY, Jailer, Grayson County,  
Kentucky, custodian of detainees of the  
Grayson County Detention Center,

Respondents.

Case No. 3:25-cv-00594-RGJ

**AMENDED PETITION FOR A WRIT  
OF HABEAS CORPUS**

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**INTRODUCTION**

1. Petitioner Leidy Sanchez Ballestros (“Petitioner” or “Ms. Sanchez”) is a noncitizen woman from Colombia who seeks protection in the United States after facing severe physical and emotional abuse by a former partner. Prior to fleeing, Ms. Sanchez was also diagnosed with a brain tumor, for which she requires continued treatment and monitoring. Fearing for her life, Ms. Sanchez fled Colombia and turned herself in to U.S. immigration authorities in April 2024.

2. Shortly after her arrival in the United States, Respondents paroled her into the United States, releasing her on her own recognizance, and placed her in standard removal proceedings under 8 U.S.C. § 1229a. That process guaranteed her the right to present an asylum claim with the due process rights enshrined in the statute, including the right to counsel of her choosing, the opportunity to present evidence in support of her application in a full hearing before an immigration judge, and the right to appellate review. For over a year after her release into this country, Ms. Sanchez was complying with all conditions of release and timely filed an application for asylum before the immigration court.

3. But then, on July 9, 2025, over a year after releasing her, Respondents unlawfully reversed course. Without advance personal notice to Petitioner, individualized justification, or change in her personal circumstances, Respondents moved to dismiss her standard removal proceedings to place her in expedited removal proceedings pursuant to 8 U.S.C. § 1225. Even though the Immigration Judge did not dismiss proceedings that day, the Department of Homeland Security (DHS) detained her after she appeared at the Chicago Immigration Court. Ms. Sanchez is currently detained at the Grayson County Detention Center in Kentucky.

4. In detaining Ms. Sanchez, Respondents rely on the mandatory detention provisions of 8 U.S.C. § 1225 of the Immigration and Naturalization Act (INA). But for several reasons, this detention is invalid and unlawful. The mandatory-detention provisions Respondents rely on apply only to noncitizens, unlike Ms. Sanchez, who are not already in standard removal proceedings, on release, and applying for asylum. Because over a year ago the government placed Petitioner in standard removal proceedings, released her, and allowed her to apply for asylum, under the INA and its implementing regulations, the Respondents may not eject her from her own case to pursue expedited removal. Neither can they subject her to mandatory detention

as an “applicant for admission” when she has been in the United States and actively pursuing relief for over a year, meaning that she is no longer “seeking admission” as the statute requires for mandatory detention to apply. In addition, by reversing, without individualized justification, its decision to release her and to allow her to apply for asylum in standard removal proceedings, her detention is arbitrary and violates both the Administrative Procedure Act (APA) and her right to due process. Finally, by detaining Ms. Sanchez while simultaneously denying her potentially life-saving medical care that she could otherwise seek, her detention is unreasonable as a matter of due process.

5. For these reasons, Ms. Sanchez is entitled to a writ of habeas corpus under § 2241 and release from custody. In the alternative, Petitioner respectfully requests that this Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

#### **PARTIES**

6. Ms. Sanchez is a 37-year-old Colombian national and mother of four minor children. One year after the government released her into the United States on her own recognizance so that she could pursue her claim for asylum, it reversed itself by arresting and detaining her. It did so as she was complying with her obligation to attend an immigration hearing in connection with her asylum application. She is now detained at the Grayson County Detention Center in Kentucky.

7. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Ms. Sanchez.

8. Respondent Todd Lyons is named in his official capacity as Acting Director of Immigration and Customs Enforcement (ICE). As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Ms. Sanchez. As such, he is also a legal custodian of Ms. Sanchez.

9. Respondent Sam Olson is sued in his official capacity as the Chicago Field Office Director of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Ms. Sanchez's detention and which contracts with the Grayson County Detention Facility, where Ms. Sanchez is detained.

10. Respondent Jason Woosley is the Grayson County Jailer, where Ms. Sanchez is currently detained. He is sued in his official capacity. In that capacity, he is the custodian of detained noncitizens, including Ms. Sanchez, housed at the Grayson County Detention Center.

#### **JURISDICTION AND VENUE**

11. 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). Federal questions in this case arise under the Immigration and Naturalization Act, 8 U.S.C. § 1101-1524, and the United States Constitution.

12. 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., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

13. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because Ms. Sanchez is in respondents' custody in the Western District of Kentucky. Venue is further proper because a substantial part of the events or omissions giving rise to Ms. Sanchez's claims occurred in this district, where Ms. Sanchez is now in Respondent's custody.

### EXHAUSTION OF REMEDIES

14. No statutory requirement of administrative exhaustion applies to Ms. Sanchez's challenge to the unlawfulness of her detention. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Ms. Sanchez's present challenge, as there are no prescribed administrative remedies to which she could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

15. DHS has taken the position that Ms. Sanchez is subject to mandatory detention under 8 U.S.C. § 1225. Further, in a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, regardless of her prior release and placement in standard removal proceedings, Ms. Sanchez is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that Ms. Sanchez could exhaust before seeking habeas relief.

16. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

### FACTUAL BACKGROUND

17. Ms. Sanchez is a 37-year-old woman from Colombia. Exh. E. While living in Colombia, Ms. Sanchez was in a physically and emotionally abusive relationship with her ex-partner, during which [REDACTED] *Id.* Although she filed a police report, and it led to her ex-partner's arrest, Colombian authorities eventually released him from criminal custody, and he continued to traumatize Ms. Sanchez. *Id.*

18. Fearing for her life if she remained in Colombia, Ms. Sanchez fled Colombia and arrived in the United States in April 2024, where, on or around April 2, 2024, she turned herself in to immigration authorities, near El Paso, Texas. Exh. A. After she turned herself in, federal immigration authorities paroled her into the United States, releasing her on her own recognizance and initiating standard removal proceedings by filing a Notice to Appear. *Id.*; Exh. D.

21. On January 14, 2025, Ms. Sanchez timely submitted an application for asylum, withholding of removal, and relief under the Convention Against Torture before the Chicago Immigration Court. Exh. E. Ms. Sanchez remained compliant with all conditions of her release for over a year after her arrival in the United States.

22. On June 9, 2025, Ms. Sanchez appeared for an immigration hearing before the Chicago Immigration Court. At the hearing, the government moved orally to dismiss her removal proceedings in order to pursue expedited removal.<sup>1</sup> The IJ reset the case for another hearing to allow Ms. Sanchez the opportunity to respond to the government's motion. As Ms. Sanchez was leaving the courtroom, federal officials acting at the behest of Respondents detained her, even though the government's dismissal motion had not been granted and despite the government's prior decision to release her on her own recognizance and permit her to apply for asylum. Ms.

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<sup>1</sup> The government subsequently filed a written motion to dismiss on July 15, 2025. Exh. B.

Sanchez was then transferred to the Grayson County Detention Center in Kentucky, where she remains detained.<sup>2</sup>

23. One month after her transfer, on July 9, 2025, she requested release on her own recognizance or parole, but DHS denied her request. Exh. F.

24. On July 10, 2025, Ms. Sanchez, through counsel, filed an opposition to the government's motion to dismiss her standard removal proceedings. At a hearing on July 15, DHS argued that Ms. Sanchez is subject to mandatory custody and ineligible for bond as an "applicant for admission" and pursuant to the BIA's recent decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

25. On July 16, 2025, the IJ granted DHS's motion to dismiss. Exh. C. Ms. Sanchez has appealed the IJ's decision to the Board of Immigration Appeals and her appeal remains pending, meaning that the IJ's decision granting dismissal is not administratively final. 8 U.S.C. § 101(a)(47)(B); 8 C.F.R. § 1003.39.

26. Even though Ms. Sanchez arrived in the United States over a year ago, the government released her from custody over a year ago, and it allowed her to apply for asylum over a year ago, the Respondents seek to subject her to expedited removal under § 1225 and to mandatory detention—all while its attempt to dismiss her standard removal proceeding is not final.

27. On July 25 and August 11, 2025, counsel for Ms. Sanchez contacted DHS by email to request that Ms. Sanchez be afforded a credible fear interview. Exh. G. To date, DHS has not responded to the request.

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<sup>2</sup> Venue for the immigration proceeding was thereafter changed from Chicago to the Cleveland Immigration Court.

28. Ms. Sanchez is detained in unreasonable conditions of confinement. She currently experiences several serious medical conditions, including a brain tumor, near-fainting episodes, depression, anxiety, abdominal pain, dizziness, sleeplessness, and vomiting. Exh. F. While she was living in Chicago, she saw a doctor for some of these symptoms and was able to arrange for treatment. *Id.* Before her detention, she had been receiving prescription medication to treat her gastrointestinal ailments, vomiting, and nausea. *Id.* At Grayson, she is not receiving adequate treatment for any of these conditions, including the brain tumor, gastrointestinal issues, nausea, and vomiting, despite the urgent need for care.

## LEGAL BACKGROUND

### A. Framework for Standard and Expedited Removal Proceedings

29. As relevant here, the Immigration and Naturalization Act, 8 U.S.C. §1101-1524, describes two means of handling the custody and potential removal of noncitizens.

30. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard removal proceedings. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

31. In addition, while on release, the noncitizen may apply for asylum or other relief in the United States. 8 U.S.C. § 1158. While a grant of asylum is discretionary, the right to apply for asylum is not. The Refugee Act, codified in various sections of the INA, broadly affords a right to apply for asylum to any noncitizen, like Petitioner, “who is physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1); Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

32. The INA guarantees to noncitizens in standard removal proceedings who apply for asylum and other relief valuable procedural rights that reduce the risk of an erroneous decision. These include the rights to legal counsel, 8 U.S.C. § 1229a(b)(4)(A) and § 1362; to present supporting evidence (both documentary and through lay and expert witness testimony) and to challenge through cross-examination adverse evidence during a full adversarial hearing before an immigration judge (IJ), 8 U.S.C. § 1148(b)(1)(B); to seek reconsideration or reopening of an adverse decision, 8 U.S.C. § 1229a(c)(6)-(7), to appeal an adverse decision of an IJ to the Board of Immigration Appeals based on the full evidentiary record, 8 U.S.C. § 1229a(c)(5), and to appeal an adverse decision of the Board to a federal circuit court of appeals, 8 U.S.C. § 1252(b).

33. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

34. The second relevant means of detention is governed by 8 U.S.C. § 1225, which provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission under 8 U.S.C. § 1225(b)(2). Respondents treat noncitizens subject to mandatory detention under § 1225 as ineligible for bond.

35. The mandatory detention scheme under 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at U.S. ports of entry who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] *seeking to enter* the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added). *See infra* ¶ 36-38.

36. As to 8 U.S.C. § 1225(b)(1), this subsection provides for mandatory detention of noncitizens subject to expedited removal. Because expedited removal provides very few procedural protections, it applies narrowly to only those noncitizens who are inadmissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). As relevant here, the government may not subject any other person to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

37. For noncitizens in expedited removal, the INA does not grant them the rights enshrined in standard removal proceedings. To begin, an immigration officer may order them removed "without further hearing or review," 8 U.S.C. § 1225(b)(1)(A)(i), unless the noncitizen has expressed an intent to apply for asylum or a fear of persecution. But even then, the noncitizens' rights are truncated. Although the immigration officer "shall refer the [noncitizen] for an interview by an asylum officer," 8 U.S.C. § 1225(b)(1)(A)(i)-(ii), a "credible fear" interview differs from an asylum application. First, the INA does not, as it does during standard removal proceedings, guarantee the noncitizen with the rights to counsel, to present documents or witness testimony, or to cross-examine adverse evidence. *See id.* § 1225(b)(1)(B)(iv). Second,

if the asylum officer decides that the noncitizen does not have a credible fear of persecution, the noncitizen may seek review before an IJ, but review is limited to the record of the interview. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). Finally, if the IJ concurs with the asylum officer, the noncitizen is removed without any further review by the Board of Immigration Appeals or a federal court. Only if a noncitizen passes a credible fear interview may they apply for asylum and related relief in full removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

38. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).

39. These two processes have governed removal proceedings for nearly three decades. The release provisions for noncitizens placed in standard removal proceedings under § 1226 and the mandatory detention provisions for noncitizens recently arriving in the United States under § 1225(b)(1) and (b)(2) were enacted in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585.

40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited

Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

41. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)); *Martinez v. Hyde*, 2025 WL 2084238, at \*8 (D. Mass. July 24, 2025) (“The idea that a different detention scheme would apply to non-citizens ‘already in the country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system”) (citing *Jennings v. Rodriguez*, 583 U.S. at 289) (cleaned up)).

#### **B. Respondents Recent Efforts to Expand the Use of Expedited Removal**

42. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) to prioritize civil immigration enforcement procedures including through the use of mass detention.

43. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued for public inspection and effective immediately a designation expanding the scope of expedited removal to apply nationwide and to certain noncitizens who are unable to prove they have been in the country continuously for two years. On January 24, 2025, DHS published a Notice that expanded the application of expedited removal. Office of the Secretary, Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 ("January 2025 Designation"). The designation was "effective on" January 21, 2025.

44. The January 2025 Designation expands the pool of noncitizens who can be subjected to the summary removal process substantially to include noncitizens who are apprehended anywhere in the United States and who have not been in the United States continuously for more than two years. *Id.* at 8140.

45. The January 2025 Designation does not state that it applies to noncitizens who were in the United States before its effective date.

46. On July 8, 2025, without congressional authorization, the Executive Branch announced a new policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." The policy asserts that all undocumented noncitizens deemed "applicants for admission" are subject to mandatory detention under § 1225(b)(2)(A). The policy purports to apply even to those, like Ms. Sanchez, whom at the time of the policy shift, the government had already placed in standard removal proceedings, released from custody, and allowed to apply for asylum. The policy shift also violates the government's own regulations. These regulations limit the government from seeking dismissal of full removal proceedings unless it can show that the "[c]ircumstances of *the case* have changed". *See* 8 C.F.R. §

239.2(a)(7) (emphasis added). But the government's new policy purports to allow it to seek dismissal based on changed circumstances independent of the noncitizen's case.

47. Adopting this same position, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bonds. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

48. ICE and EOIR have adopted this policy even though numerous federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239; *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion). Accordingly, federal courts have roundly rejected Respondent's erroneous interpretation of the INA since ICE implemented its July 8, 2025 memo. *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15,

2025); *Arazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025).

49. Further, and as relevant here, while the government appears to have initially sought dismissal to pursue expedited removal, Ms. Sanchez has not been served with an expedited removal order, nor has she been afforded a credible fear interview. *See* Exh. G. As such, it seems the government initially purported to detain Ms. Sanchez under 8 U.S.C. § 1225(b)(1), the provision governing detention of noncitizens in expedited removal. However, based on the July 8 memo and the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), it appears the government now likely purports to detain Ms. Sanchez pursuant to § 1225(b)(2).

50. Ms. Sanchez's detention under either § 1225(b)(1) or (b)(2) is invalid. As to § 1225(b)(1), she is not now in expedited removal proceedings, because the government has not served her with an expedited removal order or provided her a credible fear interview. Further, as discussed above, *supra* ¶ 25, she has appealed the IJ's decision dismissing her case to the BIA and her appeal remains pending, meaning that decision is not administratively final.

51. Ms. Sanchez's detention under § 1225(b)(2) is likewise invalid. As numerous federal courts have now found, § 1225(b)(2) applies to noncitizens *seeking admission* into the United States. It does not apply to noncitizens, like Ms. Sanchez, who were paroled into the country, placed in standard removal proceedings, and allowed to apply for asylum. *Supra* ¶ 38.

## CLAIMS FOR RELIEF

### COUNT I

#### Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

52. This ground for release incorporates all previous paragraphs.

53. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

54. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

55. To avoid an abuse of discretion, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

56. By revoking Ms. Sanchez’s order of release on recognizance without consideration of any individualized facts and circumstances applicable to her, and without finding that she is a danger to the community or a flight risk, and while her standard removal proceedings are still pending, Respondents have violated the APA.

57. The government previously considered Ms. Sanchez’s facts and circumstances and determined that she was not a flight risk or danger to the community. No changes to the facts have occurred that might justify this revocation of her release. Indeed, respondents could not plausibly contend that Ms. Sanchez is a flight risk because she was arrested while voluntarily appearing as required at her immigration proceedings.

58. The fact that Respondents have already released Ms. Sanchez under the same facts and circumstances shows that Respondents do not consider her to be a danger to the community or a flight risk.

59. By detaining the Ms. Sanchez without articulating a rationale based on her individualized circumstances, and by detaining her in contradiction of her individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA.

#### COUNT II

#### **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act and Federal Regulations – 8 C.F.R. § 239.2(c)**

60. This ground for release incorporates all previous paragraphs.

61. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

62. Once a removal proceeding has been initiated, regulations allow for the proceedings to be dismissed for a reason set forth at 8 C.F.R. § 239.2(a).

63. The initiation of expedited removal proceedings is not an enumerated ground upon which a standard removal proceeding may be dismissed.

64. Under the APA, an agency must provide “reasoned explanation for its action” and “may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

65. Agency action taken without lawful authority is invalid.

66. Respondents decided to dismiss Petitioner’s removal proceedings because of their intent to eliminate the due process rights available to Petitioner in § 1229a removal proceedings. This basis is not among the reasons to seek dismissal permitted by 8 C.F.R. § 239.2(a).

67. In deciding to dismiss Petitioner’s removal proceedings in order to subject Petitioner to expedited removal, Respondents further violated the APA by “entirely fail[ing] to consider an important aspect of the problem” – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering “particular reliance interests” is arbitrary and capricious in violation of the APA).

68. Because the dismissal of Ms. Sanchez’s standard removal proceeding was not made in furtherance of an enumerated reason related to the facts of her case, and because Respondents failed to consider Petitioner’s reliance on the procedural rights of § 1229a immigration proceedings, the dismissal and the resulting custodial detention of Ms. Sanchez is invalid.

**COUNT III**  
**Violation of the Immigration and Nationality Act**

69. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

70. To the extent that Respondents purport to detain Ms. Sanchez pursuant to 8 U.S.C. § 1225(b)(2), her detention under that statute is unlawful. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who

previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

71. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

**COUNT IV**  
**Violation of Due Process**  
**(Arbitrary Detention)**

72. This ground for release incorporates all previous paragraphs.

73. The Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to all persons within the United States. Once a noncitizen enters this country, whether the presence is “lawful, unlawful, temporary, or permanent,” the Due Process Clause applies to the noncitizen. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

74. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V.

75. Petitioner has a fundamental interest in liberty and being free from official restraint.

76. The government’s detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

**COUNT V**  
**Violation of the Due Process**  
**(Detention Deprives Petitioner of Right to Apply for Asylum)**

77. The right to apply for asylum applies to any noncitizen in the United States. 8 U.S.C. § 1158(a)(1). Specifically, any noncitizen who is “physically present in the United States

or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum.” *Id.*

78. The statutory right is a valuable property and liberty interest, and it includes the right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, *see id.* § 1229a(c)(6)-(7).

79. The deprivation of this right to apply for asylum without due process violates the Fifth Amendment of the U.S. Constitution.

80. By seeking to place Ms. Sanchez in expedited removal proceedings and detaining her in custodial detention without lawful justification, the respondents have deprived her of her rights, associated with her application for asylum, without due process.

**COUNT VI**  
**Violation of Due Process**  
**(Detention Unreasonable Because of Conditions of Confinement)**

81. This ground for release incorporates all previous paragraphs.

82. The Due Process Clause of the Constitution prohibits the government from civilly detaining persons not convicted of crimes to conditions that are unreasonably dangerous.

83. Ms. Sanchez’s confinement is unreasonably dangerous. She is not receiving treatment for any of her current medical conditions, some of which, like her brain tumor, may be life threatening without timely treatment. She is also not receiving her medication for her abdominal issues or her mental health concerns of depression, anxiety, and sleeplessness. She

was and could receive treatment for some or all of these issues while she was at liberty in Chicago before the government detained her.

84. Because the government has denied Ms. Sanchez treatment for potentially life-threatening medical ailments while keeping her in custody, and because such treatments may be available to her upon release, as a matter of due process Ms. Sanchez is entitled to a writ of habeas corpus for her immediate release.

#### **Request for Relief**

WHEREFORE, Ms. Sanchez respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that Ms. Sanchez's current detention without an individualized determination is unlawful;
3. Issue a writ of habeas corpus ordering Respondents to release Ms. Sanchez from custody, or, in the alternative, hold a prompt bond hearing to determine whether she should remain in custody;
4. Prohibit the Respondents from transferring Ms. Sanchez from the district without the court's approval;
5. Award Ms. Sanchez attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this court deems just and proper.

Dated: September 24, 2025

s/ Colleen Cowgill  
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**VERIFICATION**

I, s/ Colleen Cowgill, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 2242 that, on information and belief, the factual statements in the foregoing Amended Petition for Habeas Corpus are true and correct.

Dated: September 24, 2025