UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KETUCKY

[redacted]

Petitioner,

v.

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

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

Jeremy BACON, Field Office Director of Enforcement and Removal Operations, Louisville Field Office, Immigration and Customs Enforcement, in his official capacity;

Samuel J. OLSON, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity;

Tom WATT, Sherrif of Grayson County, Kentucky, custodian of detainees of the Grayson County Detention Center,

Respondents.

Case No. 4:25cv-112-RGJ

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner, [redacted] (also known as Penelope Contreras Orellana) is a noncitizen transgender woman from El Salvador, who is seeking asylum in the United States. Petitioner has been in the United States since 2013, when she was forced to flee her native El Salvador due to threats and discrimination. While in the United States, Petitioner was the victim of sex trafficking and is living with HIV.

2. Upon arrival in the United States, Respondents released her on her own recognizance and placed her in standard removal proceedings under 8 U.S.C. § 1229a. On May 18, 2022, an Immigration Judge dismissed those proceedings.

3. On March 29, 2024, Respondents detained Petitioner and issued Petitioner a new Notice to Appear, once again placing her in removal proceedings under section § 1229a. Respondents released Petitioner on a bond of $6000.

4. On August 26, 2025, Petitioner was again detained by Respondents, and has been in custody ever since.

5. In detaining Petitioner, Respondents reply on the mandatory detention provisions of 8 U.S.C. § 1225. Respondents, embarking on an arbitrary and capricious course of action, have determined that all noncitizens present in the United States without admission or parole are "applicants for admission" and therefore subject to the mandatory detention provisions of U.S.C. § 1225.

6. Because Petitioner has been present in the United States since 2013, and Respondents released her on a $6000 bond in 2024 and placed her in removal proceedings under 8 U.S.C. § 1229a, they cannot lawfully detain her under the mandatory detention provisions of 8 U.S.C. § 1225, as an "applicant for admission."

7. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

8. Respondents' new legal interpretation of § 1226(a) is plainly contrary to the statutory framework and contrary to decades of agency practice in applying 1226(a) to people like Petitioner.

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released from detention. 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.

II. PARTIES

10. Petitioner, [redacted] (also known as Penelope Contreras Orellana), is a 32-yaer-old El Salvadoran transgender woman. Respondents released her on a bond amount of $6000 in 2024, so that she could pursue relief from removal, namely, an asylum case. Respondents did this despite the fact that Petitioner has never missed a court hearing and is cooperating with all terms of her release on bond. In short, there are no circumstances for Respondents to justify revoking Petitioner's bond a re-detaining her. Petitioner is now detained at the Grayson County Jail.

11. 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 Petitioner.

12. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). He is sued in his official capacity. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also the legal custodian of Petitioner.

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

14. Respondent Tom Watt is the Sheriff of Grayson County in Kentucky. He is sued in his official capacity. In that capacity, he is the custodian of detained non-citizens, including Petitioner, housed at the Grayson County Detention Center.

III. JURISDICTION AND VENUE

15. 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.

16. 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).

17. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because Petitioner 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 Petitioner's claims occurred in this district, where Petitioner is now in Respondent's custody.

Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States.

IV. EXHAUSTION OF REMEDIES

18. No statutory requirement of administrative exhaustion applies to Petitioner'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 Petitioner'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).

19. DHS has taken the position that Petitioner 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, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that Petitioner could exhaust before seeking habeas relief.

20. 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").

V. FACTUAL BACKGROUND

21. Petitioner [redacted] (also known as Penelope Contreras Orellana) is a noncitizen transgender woman from El Salvador, who is seeking asylum in the United States. Petitioner has been in the United States since 2013, when she was forced to flee her native El Salvador due to threats and discrimination she faced on account of [redacted]

22. While in the United States, Petitioner was repeatedly the victim of sex trafficking and is living with HIV as a result. Petitioner has reported the trafficking to the authorities, and in addition to asylum, Petitioner is pursuing a T visa for victims of trafficking. *See* Ex. D.

23. Petitioner was initially released from ICE custody in 2013 and placed in removal proceedings under 8 U.S.C. § 1229a. *See* Ex. A. Those removal proceedings were dismissed by an Immigration Judge on May 18, 2022. *Id.*

24. On March 29, 2024, Respondents again detained Petitioner, issued Petitioner a new NTA. *See* Ex. B. On June 21, 2024, Respondents released Petitioner on a bond in the amount of $6,000. *See* Ex. C.

25. Petitioner has never missed a immigration court hearing and has cooperated with all conditions of her release on bond under 8 U.S.C. § 1226(a). Nevertheless, without any notice, Respondents again detained Petitioner on August 26, 2025, due to an ICE hold placed on Petitioner.

26. Petitioner is detained in unreasonable conditions of confinement. Prior to being detained, Petitioner was in a program to focus on her mental health and sobriety, as well as programming to address her trauma as a victim of sex trafficking. *See* Ex. E. Petitioner has no access to the

services that she is reliant on to continue in her recovery. Petitioner is also a transgender woman being detained in a male facility, which causes her to fear for her safety. Finally, Petitioner is living with HIV and needs medication and medical treatment that she is currently unable to access.

VI. LEGAL BACKGROUND

27. 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.

28. 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)).

29. 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).

30. 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).

31. 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).

32. 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

33. 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).

34. 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).

35. 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).

36. 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).

37. 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.

38. 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)).

39. 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.

40. 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.

41. 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.

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

43. 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 Petitioner, 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.

44. 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).

45. 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); *Arrazola-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).

46. Petitioner's detention under either § 1225(b)(1) or (b)(2) is invalid. As to § 1225(b)(1), she is not in expedited removal proceedings, because the government has not served her with an expedited removal order or provided her with a credible fear interview. Respondents have not claimed, and indeed how could they claim, that Petitioner is subject to the provisions of §

1225(b)(1). Petitioner is not "arriving in the United States", she has been in the United States for twelve years and has a pending I-589 Application for Asylum and Withholding of Removal.

47. Petitioner'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 Petitioner, who were paroled into the country, placed in standard removal proceedings, and allowed to apply for asylum.

48. In short, Respondent's detention of Petitioner under 8 U.S.C. § 1225(b)(2) is patently unlawful, violates due process, and violates the Administrative Procedure Act.

VII. CLAIMS FOR RELIEF

COUNT I

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

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

50. 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).

51. 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)).

52. 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).

53. By revoking Petitioner's order of release on a bond of $6,000 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.

54. The government previously considered Petitioner'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.

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

56. By detaining Petitioner 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 Immigration and Nationality Act

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

58. To the extent that Respondents purport to detain Petitioner 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.

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

COUNT III

Violation of Due Process
(Arbitrary Detention)

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

61. 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).

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

63. 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 IV.

Violation of Due Process
(Detention Unreasonable Because of Conditions of Confinement)

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

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

66. Petitioner's confinement is unreasonably dangerous. She is not receiving treatment for any of her current medical conditions, including her HIV, and her mental health conditions.

67. Because the government has denied Petitioner 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 Petitioner is entitled to a writ of habeas corpus for her immediate release.

Prayer for Relief

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's current detention without an individualized determination is unlawful;
3. Issue a writ of habeas corpus ordering Respondents to release Petitioner 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 Petitioner from the district without the court's approval;
5. Award Petitioner 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 23, 2025

/s/ Evangeline Dhawan-Maloney
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Verification by Petitioner's Legal Counsel

Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Attorney for the Petitioner.. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status are true and correct to the best of my knowledge.

/s/ Evangeline Dhawan-Maloney Date: September 23, 2025
Evangeline Dhawan-Maloney, Esq.