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11 UNITED STATES DISTRICT COURT

12 SOUTHERN DISTRICT OF CALIFORNIA

13 ROSAURA PABLO MIGUEL,

14 Petitioner,

15 v.

16 Christopher LAROSE, Facility
17 Administrator at Otay Mesa Detention
18 Center, San Diego, California; Joseph
19 FREDEN, Field Office Director of San
20 Diego Office of Detention and Removal,
21 U.S. Immigrations and Customs
22 Enforcement; U.S. Department of
23 Homeland Security; Todd M. LYONS,
24 Acting Director, Immigration and
Customs Enforcement, U.S. Department
of Homeland Security; Kristi NOEM, in
her Official Capacity, Secretary, U.S.
Department of Homeland Security;
Pam BONDI, in her Official Capacity,
Attorney General of the United States;
PAM BONDI, Attorney General of the
United States;

Respondents.

Case No.: '25CV2644 AGS MSB

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW CAUSE
WITHIN THREE DAYS; COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

PETITIONER'S DHS NO.:

A 

1 Petitioner ROSAURA PABLO MIGUEL petitions this Court for a writ of habeas
2 corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining her unlawfully,
3 and states as follows:
4

5 INTRODUCTION

6 1. Petitioner, ROSAURA PABLO MIGUEL ("Ms. Pablo Miguel" or "Petitioner"), by
7 and through her undersigned counsel, hereby files this petition for writ of habeas
8 corpus and complaint for declaratory and injunctive relief to compel her immediate
9 release from immigration detention where she has been held by the U.S. Department
10 of Homeland Security (DHS) since being detained on August 10, 2025. Petitioner is
11 in the physical custody of Respondents at the Otay Mesa Detention Center in Otay
12 Mesa, California.

13 2. Petitioner is unlawfully detained. The Department of Homeland Security
14 (DHS) and the Executive Office for Immigration Review (EOIR) have improperly
15 concluded that Petitioner, despite being physically present within the interior of and
16 residing in the U.S. and being arrested near her residence in San Diego, California,
17 should be deemed to be seeking admission to the United States and therefore
18 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

19 3. DHS has placed Petitioner in removal proceedings pursuant to 8 U.S.C. §
20 1229a and has charged Petitioner with being present in the United States without
21 admission and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).
22
23
24

1 4. Based on the charge of removability, DHS has denied Petitioner's release from
2 immigration custody. This denial is in large part based upon a new DHS policy
3 issued on July 8, 2025,¹ instructing all Immigration and Customs Enforcement (ICE)
4 employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e.,
5 present without admission - to be an "applicant for admission" under 8 U.S.C. §
6 1225(b)(2)(A) and therefore subject to mandatory detention during the removal
7 hearing process.
8

9 5. Petitioner sought a bond hearing before an immigration judge (IJ), and on
10 August 25, 2025, the IJ accepted jurisdiction and granted bond over DHS' objection.
11 DHS reserved appeal and filed Form EOIR-43, Notice of Service of Intent to Appeal
12 Custody Redetermination.

13 6. This notice not only appeals any IJ decision granting bond but also triggers an
14 automatic stay of the bond decision during the appeal, resulting in the continued
15 unlawful detention of Petitioner to date. *See* § 1003.19(i)(2). The "auto-stay"
16 provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and
17 being released even though the IJ granted bond. DHS subsequently filed an appeal
18 with the Board of Immigration Appeals (BIA), which is presently pending
19 adjudication.
20
21

22 ¹ "Interim Guidance Regarding Detention Authority for Applicants for Admission",
23 ICE, July 8, 2025. Available at: [https://immpolicytracking.org/policies/ice-](https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments)
24 [issuesmemo-](https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments)
[eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments](https://immpolicytracking.org/policies/ice-issuesmemo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policydocuments).

1 7. Shortly after the IJ granted the Petitioner bond, the BIA issued *Matter of*
2 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which defies decades of precedent and
3 practice by Respondents stating that the plain language of INA 235(b)(2)(A)
4 divests jurisdiction from immigration judges to redetermine the custody of aliens
5 who are present in the United States without admission.
6

7 8. As a result, the IJ issued a memorandum on September 11, 2025 stating that in
8 light of *Matter of Yajure Hurtado*, he did not find Ms. Pablo Miguel had been
9 admitted and as such that the IJ lacked jurisdiction to redetermine Respondent's
10 custody.

11 9. Both prior to and since the issuance of *Matter of Yajure Hurtado*, other district
12 courts nationwide have overwhelmingly concluded that individuals similarly
13 situated to Petitioner, present and residing within the United States, are not
14 "applicants for admission" who are "seeking admission" and subject to mandatory
15 detention under § 1225(b)(2)(A).
16

17 10. Petitioner's detention on this basis violates the plain language of the
18 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. Section
19 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered
20 and are now present and residing in the United States. Instead, such individuals are
21 subject to a different statute, § 1226(a), that allows for release on conditional parole
22 or bond. That statute expressly applies to people who, like Petitioner, are charged as
23 removable for having entered the United States without inspection and being
24 present without admission.

1 11. The BIA and Respondents' new legal interpretation of the INA is plainly
2 contrary to the statutory framework and contrary to decades of agency practice
3 applying § 1226(a) to people like Petitioner who are present within the United
4 States. The new interpretation also conflicts with Ninth Circuit and Supreme Court
5 precedent. See Jennings v. Rodriguez, 583 U.S. 281, 288, 301 (2018); Torres v. Barr,
6 976 F.3d 918, 926 (9th Cir. 2020); and United States v. Gambino-Ruiz, 91 F.4th 981,
7 989 (9th Cir. 2024).

8
9 12. In addition to Petitioner's statutory right to a bond hearing under §
10 1226(a), individuals within the United States have constitutional rights. "[T]he Due
11 Process Clause applies to all 'persons' within the United States, including aliens,
12 whether their presence here is lawful, unlawful, temporary, or permanent."
13 Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

14 13. Accordingly, Petitioner seeks a writ of habeas corpus requiring that
15 she be released, or at a minimum that she be released upon payment of the \$6,500
16 bond ordered by the IJ at the prior bond hearing.

17 JURISDICTION

18
19 14. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1331
20 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of
21 sovereign immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I,
22 Section 9, clause 2 of the United States Constitution (the Suspension Clause).

1 after payment of a bond and with the imposition of other mitigating conditions.

2 Accordingly, the Court granted the Petitioner's request for a change in her custody
3 status, allowing her release upon payment of a \$6,500 bond. DHS appealed the IJ's
4 order granting bond. In light of the recent issuance of *Matter of Yajure Hurtado*, 29
5 I&N Dec. 216 (BIA 2025) by the Board, the bond granted by the IJ will be reversed.

6
7 19. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in
8 San Diego, California and is named in his official capacity. ICE is the component of the
9 DHS that is responsible for detaining and removing noncitizens according to immigration
10 law and oversees custody determinations. In his official capacity, he is the legal custodian
11 of Petitioner.

12 20. Respondent Todd M. LYONS is the Acting Director of ICE and is named
13 in his official capacity. Among other things, ICE is responsible for the administration
14 and enforcement of the immigration laws, including the removal of noncitizens. In
15 his official capacity as head of ICE, he is the legal custodian of Petitioner.

16
17 21. Defendant Sirce OWEN is the Acting Director of EOIR and has ultimate
18 responsibility for overseeing the operation of the immigration courts and the Board
19 of Immigration Appeals, including bond hearings. Executive Office for Immigration
20 Review (EOIR) is the federal agency responsible for implementing and enforcing the
21 INA in removal proceedings, including for custody redeterminations in bond
22 hearings. She is sued in her official capacity.

23 22. Respondent Kristi NOEM is the Secretary of the DHS and is named in
24 her official capacity. DHS is the federal agency encompassing ICE, which is

1 responsible for the administration and enforcement of the INA and all other laws
2 relating to the immigration of noncitizens. In her capacity as Secretary, Respondent
3 Noem has responsibility for the administration and enforcement of the immigration
4 and naturalization laws pursuant to section 402 of the Homeland Security Act of
5 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
6 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.
7

8 23. Respondent Pam BONDI is the Attorney General of the United States
9 and the most senior official in the U.S. Department of Justice (DOJ) and is named in
10 her official capacity. She has the authority to interpret the immigration laws and
11 adjudicate removal cases. The Attorney General delegates this responsibility to the
12 Executive Office for Immigration Review (EOIR), which administers the immigration
13 courts and the BIA.

14 24. Respondent Christopher LAROSE is the Warden of the Otay Mesa
15 Detention Center where Petitioner is being held. Respondent Christopher LaRose
16 oversees the day-to-day operations of the Otay Mesa Detention Center and acts at
17 the Direction of Respondents Freden, Lyons and Noem. Respondent Christopher
18 LaRose is a custodian of Petitioner and is named in their official capacity.
19

20 **LEGAL FRAMEWORK**

21 25. The INA prescribes three basic forms of detention for the vast majority
22 of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.
23
24

1 26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a
2 removal proceedings before an IJ. Individuals covered by § 1226(a) detention are
3 generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§
4 1003.19(a), 1236.1(d), while certain noncitizens who have been arrested, charged
5 with, or convicted of certain crimes are subject to mandatory detention. See 8 U.S.C.
6 § 1226(c).
7

8 27. Second, the INA provides for mandatory detention of noncitizens
9 subject to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1)
10 and for other noncitizen applicants for admission to the U.S. who are deemed not
11 clearly entitled to be admitted. See 8 U.S.C. § 1225(b)(2).
12

13 28. Last, the INA provides for detention of noncitizens who have been
14 ordered removed, including individuals in withholding-only proceedings. See 8
15 U.S.C. § 1231(a)–(b).
16

17 29. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and
18 1225(b)(2).
19

20 30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted
21 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)
22 of 1996, Pub. L. No. 104--208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to
23 3009–583, 3009–585. Section 1226(a) was most recently amended in early 2025 by
24 the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
25

26 31. Following the enactment of the IIRIRA, EOIR drafted new regulations
27 applicable to proceedings before immigration judges explaining that, in general,
28

1 people who entered the country without inspection – also referred to as being
2 “present without admission” – were not considered detained under § 1225 and that
3 they were instead detained under § 1226(a). See Inspection and Expedited Removal
4 of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
5 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

6
7 32. Thus, in the decades that followed, most people who entered without
8 inspection and were placed in standard § 1229a removal proceedings received bond
9 hearings before IJs, unless their criminal history rendered them ineligible. That
10 practice was consistent with many more decades of prior practice, in which
11 noncitizens who were not deemed “arriving” were entitled to a custody hearing
12 before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep.
13 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the
14 detention authority previously found at § 1252(a)).

15 33. This practice both pre- and post-enactment of IIRIRA is consistent with
16 the fact that noncitizens present within the United States – as opposed to
17 noncitizens present at a border and seeking admission – have constitutional rights.
18 “[T]he Due Process Clause applies to all ‘persons’ within the United States, including
19 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”
20 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

21
22 34. On July 8, 2025, ICE “in coordination with” the Department of Justice,
23 announced a new policy that rejected the well-established understanding of the
24 statutory framework and reversed decades of practice.

1 35. The new policy, entitled “Interim Guidance Regarding Detention
2 Authority for Applicants for Admission,”² claims that all noncitizens present within
3 the United States who entered without inspection shall now be deemed “applicants
4 for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
5 detention under § 1225(b)(2)(A). The policy applies regardless of when a person is
6 apprehended and affects those who have resided in the United States for months,
7 years, and even decades.
8

9 36. On September 5, 2025, the Board of Immigration Appeals (BIA) adopted
10 this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) stating
11 that all persons who entered without inspection are applicants for admission and
12 are subject to mandatory detention under INA 235(b)(2). The BIA stated that
13 “[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and
14 Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority
15 to hear bond requests or to grant bond to aliens who are present in the United
16 States without admission.”
17

18 37. The overwhelming majority of district courts to consider this question
19 across the country (including this Court), however, have rejected the ICE policy
20 memo and the BIA’s decision. Courts have instead held that Section 1225 governs
21 detention of noncitizens outside the country who are “seeking admission” to the
22 United States, while Section 1226 governs those living in the United States who
23

24 ² Available at: <https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 entered without inspection. See Maldonado Bautista, No. 5:25-cv-01873-SSS-BFM
2 (C.D. Calif July 28, 2025) Order Granting Temporary Restraining Order, Dkt. 14 at 9
3 (“[T]he Court finds that the potential for Petitioners’ continued detention without
4 an initial bond hearing would cause immediate and irreparable injury, as this
5 violates statutory rights afforded under § 1226(a).”); Ceja Gonzalez, No. 5:25-cv-
6 02054-ODW-BFM (C.D. Cal. August 13, 2025), Order Granting Ex Parte Application
7 for TRO and OSC, Dkt. 12 at 7 (§ 1226 applies to aliens present in the United States.);
8 see also Arrazola- Gonzalez v. Noem, No. 5:25-cv01789, 2025 WL 2379285 (C.D. Cal.
9 Aug. 15, 2025); Lopez Benitez, 2025 WL 2371588; Rosado v. Figueroa, No. CV-25-
10 02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation
11 adopted without objection, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Martinez v.
12 Hyde, No. CV 25-11613-BEM, (D. Mass. July 24, 2025); Gomes v. Hyde, No. 1:25-cv-
13 11571, 2025 WL 1869299 (D. Mass. July 7, 2025); Ceja Gonzalez, et al. v. Noem, et
14 al., No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025); Rodriguez Vazquez v.
15 Bostock, 2025 WL 1193850, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

16
17
18 38. As the court in Rodriguez Vazquez explained, the plain text of the
19 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people
20 like Petitioner. Section 1226(a) applies by default to all persons “pending a decision
21 on whether the [noncitizen] is to be removed from the United States.” Rodriguez
22 Vazquez, 2025 WL 1193850 at *12.

23 39. Other portions of the text of § 1226 also explicitly apply to people
24 charged as being inadmissible, including those who entered without inspection. See

1 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals
2 makes clear that, by default, inadmissible individuals not subject to subparagraph
3 (E)(ii) are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez*
4 court explained, "[w]hen Congress creates "specific exceptions" to a statute's
5 applicability, it "proves" that absent those exceptions, the statute generally applies.
6 *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic*
7 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

9 40. On September 19, 2025, the Western District of Kentucky, Louisville
10 Division, reached the same conclusion taking notice of the recent Congressional
11 amendments, the Laken Riley Act, to Section 1226. See Barrera v. Tindall, No. 3:25-
12 cv-541-RGJ (W.D. Ken., Sept. 19, 2025). The Laken Riley Act added new a new
13 subsection under Section 1226(c) for certain individuals who would have otherwise
14 fallen under Section 1226(a). The Barrera Court noted that if § 1225(b)(2) already
15 mandated detention of any alien who has not been admitted, regardless of how long
16 they have been here, then "adding § 1226(c)(1)(E) to the statutory scheme was
17 pointless and this Court, too, will not find that Congress passed the Laken Riley Act
18 to 'perform the same work' that was already covered by § 1225(b)(2)." See Barrera,
19 at *9-10.

21 41. In its further analysis of the text, the Barrera Court observed,
22 "Respondents 'completely ignore,' or even read out, the term 'seeking' from 'seeking
23 admission.'" (citing Lopez-Campos, 2025 WL 2496379, at *6). The term "seeking"
24 "implies action." Id. Noncitizens who are present in the country for years, like Barrera

1 who has been here 20 years, are not actively "seeking admission." Id. Since the plain
2 language of Section 1225 requires someone to be "seeking admission" to be subject to
3 mandatory detention, the Petitioner here (like Barrera) is not subject to mandatory
4 detention.

5 42. Relying on the Supreme Court's decision in Jennings v. Rodriguez, 583
6 U.S. 281 (2018), the court in Lopez Santos v. Noem, 3:25-cv-01193-TAD-KDM (W.D.
7 La., September 11, 2025) also reached the same conclusion. The Lopez Santos Court
8 noted that the Supreme Court in Jennings held that Section 1225(b), the provision at
9 issue in the instant habeas petition, "applies primarily to aliens seeking entry into
10 the United States" (Jennings at 297), and that Section 1226 "applies to aliens already
11 present in the United States." Id. at 303. As such the Court in Lopez Santos v. Noem,
12 too determined that a noncitizen residing in the U.S. is entitled to a bond hearing.
13 Lopez Santos v. Noem at *11.

15 43. In light of the foregoing and the plain language of Sections 1225 and
16 1226, Section 1226 applies to noncitizens who are present without admission and
17 who face charges in removal proceedings of being inadmissible to the United States.

18 44. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or
19 who recently entered the United States and are encountered at or near the border.
20 The statute's entire framework is premised on inspections at the border of people
21 who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).
22
23
24

1 45. Accordingly, the mandatory detention provision of § 1225(b)(2) does
2 not apply to people like Petitioner who have already entered and were residing in
3 the United States at the time they were apprehended.

4 46. Finally, courts have further found that the invocation of the auto-stay
5 regulation itself violates due process. The “auto-stay” provision of 8 C.F.R. §
6 1003.19(i)(2) prevents noncitizens from posting bond and being released during
7 the pendency of an appeal to the BIA even though the IJ granted bond.
8

9 47. In Garcia Silva v. LaRose et al, 3:25-cv-02329-JES-KSC, (S.D. Ca. Sept. 29,
10 2025), this Court stated that “under the automatic stay regulation, Petitioner’s
11 detention could very well span months, or even years, despite his significant interest
12 in freedom from physical confinement.” Garcia Silva v. LaRose, at *7-8. The Court
13 went on to find that “DHS’ unchecked power to prolong an individual’s detention,
14 cannot possibly be construed as a ‘carefully limited exception’ to one’s right to
15 liberty as required by the Due Process Clause” and that “the automatic stay
16 provision creates a substantial risk of erroneous and arbitrary confinement.” Id. at
17 *8-9.
18

19 48. The Garcia Silva Court concluded that that, “under these circumstances
20 and as applied to him, the Petitioner’s detention under the automatic stay regulation
21 violates his procedural due process rights.” Id. at *10. See also Sampiao v. Hyde, No.
22 1:25-cv-11981, 2025 WL 2607924, at *10 (D. Mass. Sept. 9, 2025) (noting that the
23 automatic stay provision “allows the government to bypass its burden of proof at
24 bond hearings and usurp the role of the Immigration Judge.”).

FACTS

49. Petitioner Rosaura Pablo Miguel is an indigenous young woman from Guatemala who has been residing in San Diego, California since 2019. Ms. Pablo Miguel entered the United States with her father without inspection in June of 2019.

50. Ms. Pablo Miguel and her father fled Guatemala after she was nearly kidnapped by one of the powerful criminal “mara” groups in Guatemala which the corrupt Guatemalan government cannot and/or will not control. Moreover, Ms. Pablo Miguel and her family are indigenous Mayan. Indigenous people in Guatemala, especially indigenous women are at particularly high risk for persecution by the government and/or transnational criminal groups the Guatemalan government cannot and/or will not control.

51. Ms. Pablo Miguel was issued a Notice to Appear after she and her father entered without inspection in June of 2019. She attended all her court hearings until her proceedings were ultimately dismissed by the Immigration Judge in approximately October of 2022.

52. On August 10, 2025, Ms. Pablo Miguel was a passenger in a car driven by her cousin. They were driving on Westview Parkway near Mira Mesa Boulevard in the city of San Diego when ICE stopped them and arrested and detained Ms. Pablo Miguel. Ms. Pablo Miguel has no criminal history and never missed a court date.

53. On August 25, 2025, after considering all the information, evidence, and arguments presented by the parties, the Immigration Judge (“IJ”) found that Ms. Pablo Miguel demonstrated that she neither poses a danger to the community nor such a significant flight risk that she could not be released after payment of a bond and with the imposition of other mitigating conditions. Accordingly, the Court granted Ms. Pablo Miguel’s request for a change in her custody status, allowing her release upon payment of a \$6,500 bond.

54. DHS reserved appeal and filed Form EOIR-43, Notice of Service of Intent to Appeal Custody Redetermination. This notice not only appeals any IJ decision granting bond but also triggers and automatic stay of the bond decision during the appeal, resulting in the continued unlawful detention of Petitioner to date. *See* § 1003.19(i)(2). The “auto-stay” provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and being released even though the IJ has rejected DHS’ unlawful reinterpretation of § 1225(b)(2) and has granted bond. DHS subsequently filed an appeal with the Board of Immigration Appeals (BIA), which is presently pending adjudication.

EXHAUSTION

55. Exhaustion in this case is futile. In fact, it is plainly evident that DHS's appeal to the BIA will result in the bond granted by the IJ being reversed.

59. As such, for the reasons discussed above, exhaustion is futile.

FIRST CLAIM FOR RELIEF

Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a)

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

1 61. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
2 apply to Petitioner who is present and residing in the United States and has been
3 placed under § 1229a removal proceedings and charged with inadmissibility
4 pursuant 8 U.S.C. § 1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply
5 to those who previously entered the country and have been present and residing in
6 the United States prior to being apprehended and placed in removal proceedings by
7 Respondents. Such noncitizens may only be detained pursuant to § 1226(a), unless
8 subject to § 1226(c), or § 1231.
9

10 62. The application of § 1225(b)(2) to Petitioner unlawfully mandates her
11 continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).
12

13 **SECOND CLAIM FOR RELIEF**

14 **Petitioner's Detention Violates the Administrative Procedure Act,**

15 **5 U.S.C. § 706(2)**

16 63. Petitioner incorporates by reference the allegations of fact set forth in the
17 preceding paragraphs.
18

19 64. Under the Administrative Procedure Act, a court must "hold unlawful and
20 set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or
21 otherwise not in accordance with the law," that is "contrary to constitutional right
22 [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or
23 short of statutory right." 5 U.S.C. § 706(2)(A)-(C).
24

66. Petitioner's detention is arbitrary, capricious, an abuse of discretion, violative of the Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

Petitioner's Detention Violates Her Fifth Amendment Right to Due Process

68. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

70. The Respondents' continued detention of Petitioner without allowing the Petitioner to post bond when an IJ granted bond (determining Petitioner is not a

1 danger to the community and not such a flight risk that bond is inappropriate)
2 violates her right to Due Process.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully asks that this Court take jurisdiction
6 over this matter and grant the following relief:

7 a. Issue a Writ of Habeas Corpus requiring Respondents to release
8 Petitioner, or in the alternative, that the Respondents allow Petitioner to pay the
9 existing \$6,500 bond and then release Petitioner (as an IJ has already held a bond
10 hearing pursuant to 8 U.S.C. § 1226(a) and granted Petitioner bond);

11 b. Award Petitioner attorney's fees and costs under the Equal Access to
12 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other
13 basis justified under law; and
14

15 c. Grant any other and further relief that this Court deems just and
16 proper.

17 Dated: October 6, 2025

Respectfully submitted,

19 By: /s/ Bashir Ghazialam
20 Bashir Ghazialam
21 Attorney for Petitioner
22
23
24

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this October 6, 2025, in San Diego, California.

/s/ Kirsten Zittlau
Kirsten Zittlau
Attorney for Petitioner