UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
(BROWNSVILLE DIVISION)

M.AM.H. *Petitioner*, **KRISTI NOEM**, in her official capacity as Secretary of the U.S. Department of Homeland Security; **TODD LYONS**, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; **JUAN AGUDELO**, in his official capacity as Director of the Harlingen Field Office, **PAMELA BONDI**, in her official capacity as Attorney General of the United States, and **FRANCISCO VANEGAS**, in his official capacity as Warden, El Valle Detention Center. *Respondents*.	§ § § § § § § § § § § § § § § §	Case No. 1:25-cv-240 **PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

1. Petitioner M.A.M.H. is a [redacted]-year-old woman and [redacted] victim who fled [redacted] inflicted upon her there by [redacted].

2. Petitioner arrived to the United States in 2013, [redacted]. After a brief detention by the Department of Homeland Security (DHS), she was released from Immigration and Customs Enforcement (ICE) custody on her own recognizance.

3. After her release from federal custody nearly 12 years ago, Petitioner has built a life and established substantial ties to her community in the [redacted] area. She applied for asylum, obtained proper work authorization, has held steady and gainful employment for nearly two years as [redacted], and supports her children. She has paid her taxes. She is [redacted] for which she receives regular medical attention. She has complied with every requirement and request asked of her by the government since her release in December 2013.

4. Now, after nearly 12 years of living in the United States, following every instruction and rule asked of her, and lawfully pursuing her asylum application that remains pending, Respondents have suddenly re-detained Petitioner despite the fact that nothing has changed since 2013 that would now make her a flight risk or a threat to public safety.

5. Despite repeated requests, DHS has failed to articulate a basis for detaining Ms. M.A.M.H. Respondents re-detained Petitioner when, in the course of her lawful employment as a [redacted], she necessarily transited through a CBP checkpoint near [redacted], Texas.

6. Petitioner's re-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 at the time of their arrest. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.
7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
8. Respondents have further acted in violation of the Administrative Procedures Act ("APA") in arbitrarily and capriciously revoking Petitioner's order of release on recognizance, and doing so without complying with the governing regulations for revocation of such release from custody.
9. Respondents' re-detention, and ongoing detention, of Petitioner also violates her Fifth Amendment right to due process.
10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released anew on her own recognizance, or in the alternative, be released unless Respondents provide a bond hearing under § 1226(a) within seven days with conditions imposed by this court to ensure fairness and due process in the bond hearing.

II. JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the El Valle Detention Center in Raymondville, Texas.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Petitioner currently is detained.

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Texas.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who

entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. PARTIES

18. Petitioner M.A.M.H. is a citizen of [redacted] who has been in immigration detention since October 7, 2025. After CBP arrested Petitioner at a CBP checkpoint and transferred her to ICE custody, ICE did not set bond and Petitioner is unable to obtain review of her custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

20. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE). Mr. Lyons is a legal custodian of Petitioner and has authority to release her. Mr. Lyons has custodial authority over Petitioner and is sued in his official capacity.

21. Respondent Juan Agudelo is the Director of the Harlingen Field Office of ICE's Enforcement and Removal Operations division. As such, Respondent Juan Agudelo is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

22. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

23. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and

the immigration court system it operates is a component agency. She is sued in her official capacity.

24. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

25. Respondent Francisco Venegas is employed by Management and Training Corporation as Warden of the El Valle Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

VI. LEGAL FRAMEWORK

A. Asylum Framework

26. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

27. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca,* 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Ramirez-Osorio v. Immigration & Naturalization Serv.*, 745 F.2d 937, 943 (5th Cir. 1984).

28. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

29. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

30. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

B. <u>Civil Immigration Detention Framework</u>

31. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

32. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993). 21. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).

33. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. *See* 8 U.S.C. § 1229a.

34. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

35. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

36. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *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), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

37. Second, the INA 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 referred to under § 1225(b)(2).

38. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

40. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of 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. Section

1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

41. 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).

42. 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 pursuant to 8 U.S.C. § 1226(c). 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)).

43. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

44. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

---

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

45. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

46. Since Respondents adopted their new policies, courts across the country, including in this district and within the Fifth Circuit, have rejected Respondents' recent interpretation and application of mandatory detention provisions of the Immigration and Nationality Act to noncitizens within the United States, like Petitioner, as either incorrect or likely incorrect. *See Buenrostro-Mendez v. Bondi, et al.,* No. 4:25-cv-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Ortiz-Ortiz v. Bondi. et al.*, 5:25-cv-00132 (S.D. Tex. Oct. 15, 2025). *Padron-Covarrubias v. Vergara,* 5:25-cv-00112, (S.D. Tex. Oct. 8, 2025); *Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278 (W.D. La. Sep. 11, 2025); *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *see also, e.g. Torres v. Wamsley,* No. 3:25-cv-5772, 2025 WL 2855379, at *3 (W.D. Wash. Oct. 8, 2025); *Guzman Alfaro v. Wamsley,* No. 2:25-cv-01706, 2025 WL 2822113, at *3 (W.D. Wash. Oct. 2, 2025); *Rodriguez v. Bostock,* No. 3:25-cv-05240, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025); *Aceros v. Kaiser*, No. 3:25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, No. 1:25-cv-11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, No. 1:25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government's motion for reconsideration); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL

2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, No. 3:25-cv-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft*, No. 2:25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 1:25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte TRO motion after finding likelihood of success); *Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Mata Velasquez v. Kurzdorfer*, No. 1:25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, No. 4:25-cv-3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *Guerrero Orellana v. Moniz*, No. 1:25-cv-12664, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025); *Morales v. Plymouth Cnty. Corr. Facility*, No. 1:25-cv-12602 (D. Mass. Sep. 30, 2025); *Inlago Tocagon v. Moniz*, No. 1:25-cv-12453, 2025 WL 2778023, at *3 (D. Mass. 2025); *Sampiao v. Hyde*, No. No. 1:25-cv-11981, 2025 WL 2607924, at *8 (D. Mass. 2025); *Lepe v. Andrews,* No. 1:25-cv-01163, 2025 WL 2716910, at *9 (E.D. Cal. 2025); *Hasan v. Crawford,* No. 1:25-

cv-1408, 2025 WL 2682255, at *9 (E.D. Va. Sept. 19, 2025); *Pablo Sequen v. Kaiser,* No. 5:25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 2025); *Francisco T. v. Bondi,* No. 0:25-cv-03219, 2025 WL 2629839, at *3-4 (D. Minn. Aug. 29, 2025); *Belsai D.S. v. Bondi*, No. 0:25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) (joining the "chorus" of courts concluding that § 1226 applies); *Choglló Chafla v. Scott*, No. 2:25-cv-437, 2025 WL 2688541, at *5 (D. Me. Sept. 21, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180 (S.D. Ca. Sept. 3, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal. July 28, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054 (C.D. Cal. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025); *Chanaguano Caiza v. Scott*, No. 1:25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Luna Quispe v. Crawford, et al.,* No. 1:25-cv-1471, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025); *Vazquez v. Bostock*, No. 3:25-cv-05240, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, No. 1:25-cv-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 2:25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *Lopez v. Hardin*, No. 2:25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Giron Reyes v. Lyons*, No. 5:25-cv-04048 , 2025 WL 2712427, at *5 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 4:25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025); *Anicasio v. Kramer*, No. 4:25-cv-3158, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025); *Vargas Lopez v. Trump*, No. 8:25-cv-526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025); *S.D.B.B. v. Johnson et. al.,* No. 1:25-cv-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Cerritos-Echevarria v Bondi*,

No. 2:25-cv-03252, 2025 WL 2821282 (D. Az. Oct. 3, 2025); *Cardin-Alvarez v. Rivas*, No. 2:25-cv-02943, 2025 WL 2898389 (D. Az. Oct. 7, 2025); *Salcedo-Aceros v. Bondi*, No. 3:25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 19, 2025); *but see Chavez v. Noem*, 3:25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas-Lopez v. Trump, et al.*, 8:25-cv-526, 2025 WL 2780351 (D. Neb. Sept. 29, 2025).

47. Courts have repeatedly rejected Respondents' new interpretation because it defies the INA. As the *Kostak v. Trump* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

48. As the *Kostak* court found, the Supreme Court's analysis in *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830 (2018) "explains the necessity for both statutes by differentiating between the detention of arriving aliens who are seeking entry into the United States under Section 1225 and the detention of those who are already present in the United States under Section 1226. *Kostak v. Trump,* 2025 WL 2472136, at *3.

49. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. The text of § 1226 also 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). "When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d, at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

51. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or 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).

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

54. Furthermore, custody determinations for individuals in § 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

55. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

56. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8

U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.

57. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

VII. FACTS

58. Petitioner is a survivor of atrocious violence in [redacted]

59. Petitioner [redacted] crossing the border on or about [redacted], 2013.

60. DHS apprehended Petitioner, detained her, and on [redacted], 2013 issued her a Notice to Appear (NTA) that charged her with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as present with lawful admission or parole.

61. On or about [redacted], 2013, DHS released Petitioner on her own recognizance. Implicit in that decision to release her was a determination by DHS that Petitioner was neither a flight risk nor a threat to public safety. *See* 8 C.F.R. § 1236.1(c)(8). On the same day, DHS filed the NTA with the Executive Office for Immigration Review, commencing removal proceedings under § 1229a.

62. Following her release, Petitioner established a life with her children in the United States. She applied for asylum and followed all requirements of her asylum process as it proceeded through the [redacted] Immigration Court. Her asylum case was scheduled for a hearing on the merits of her application in [redacted].

63. On [redacted], 2022, the Immigration Judge granted DHS's motion to dismiss Petitioner's removal proceedings without prejudice. Petition Exh. 1. DHS's motion was based on "the Department's determination that this case is not a priority for enforcement and assessment that continuation of the proceedings is 'no longer in the best interest of the government.'" *Id.*

64. Following dismissal of her removal proceedings before EOIR, Petitioner then followed DHS guidance to re-file her asylum application before U.S. Citizenship and Immigration Services, which assumed jurisdiction over her application. At the time Petitioner was re-detained, her application remained pending with USCIS and she was awaiting an interview on her application to be scheduled.

65. On October [redacted], 2025, Petitioner was [redacted] when she approached a CBP checkpoint. She stopped at the checkpoint, where she presented her valid Texas driver's license and her valid Employment Authorization Document, issued by USCIS. At that point, CBP officers told her to pull over. They then told her that they had to take all over her identification documents and that she was being detained under "new laws under Trump." No other reason was given for her re-detention.

66. Respondents have re-detained Petitioner after more than 11 years of continuous physical presence in the United States, and apparently placed her, once again, into § 1229a proceedings. Respondents, however, have not provided counsel or Petitioner with a copy

of the NTA, or informed Petitioner or her attorneys of the basis of her re-detention. Respondents' action to put her again into full removal proceedings under § 1229a makes clear that she cannot lawfully be detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

67. Since her release in [redacted] 2013, Petitioner secured lawful work authorization and employment to support her children. She has complied for nearly 12 years with every condition of her release.

68. Petitioner had endured years of atrocious abuse at the hands of [redacted] when she fled [redacted] and seeking safety in the United States. In the nearly 12 years since she was released from federal custody, she has been rebuilding her life and establishing security and safety for herself and her minor children.

69. Petitioner is a loving, dedicated mother of [redacted] children. [redacted]. Petitioner is the primary caretaker for both of her children, who are attending [redacted] school and thriving in school and with the support of their mother.

70. Since her release from federal custody in 2013, she has complied with every instruction and requirement of her Order of Release on Recognizance. She has no criminal convictions. The only charges she has are related to a single traffic incident in 2022, and those charges were dismissed. Petitioner is neither a flight risk nor a danger to the community.

71. On October [redacted], 2025, Petitioner, who is authorized to work in the United States, was stopped when she transited through a CBP checkpoint near [redacted], Texas, in the course of her job duties [redacted]. CBP officers then contacted ICE, who, on information and

belief, advised CBP to detain her and transfer her to the ICE Rio Grande Processing Center in Harlingen, Texas. There, upon information and belief, an ICE Enforcement and Removal Operations counsel instructed ICE to detain Petitioner. Respondents re-detained Petitioner despite the fact that she has no final order of removal, and despite the fact that DHS itself released her from custody nearly 12 years ago. Respondents re-detained petitioner despite the fact that EOIR granted DHS's motion three years ago and dismissed her removal proceedings. Respondents re-detained Petitioner despite the fact that her asylum application remains pending before USCIS. Respondents re-detained Petitioner despite her having no criminal history or otherwise posing any threat to the safety of her community or the United States, and despite having duly complied with every instruction and condition Respondents have required of her since her release from custody in 2013.

72. Following Petitioner's arrest and transfer to El Valle Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

73. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request.

74. As a result, Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years, in immigration custody, deprived of her liberty, separated from her children and community, and deprived of employment to support her family.

VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act

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

76. 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, were released on an Order of Recognizance, placed into Section 240 removal proceedings, and have been residing in the United States. Such noncitizens are re-detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. *See Gomes v. Hyde,* No. 1:25-cv-11571-JEK, 2025 WL 11869299 (D. Mass. July 7, 2025)

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

COUNT II

Violation of Fifth Amendment Right to Due Process

78. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

79. 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).

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

81. The government's re-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. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 26918283 (W.D. Tex. Sep. 21, 2025); *see also Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025).

COUNT III

Violation of APA:
Prohibition on Arbitrary and Capricious Agency Actions

82. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein. Respondents' sudden and unexplained decision to revoke Plaintiff-Petitioner's order of release on recognizance was arbitrary and capricious, and therefore a violation of the Administrative Procedure Act. Agency action may be deemed arbitrary where the agency ignores an important factor, relies on explanations that run counter to the evidence, or offers reasoning so implausible that it cannot be ascribed to a difference in expertise or judgment. 5 U.S.C. § 706(2)(A); *see Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Respondents' revocation of release violated the APA because agency action absent an explanation or individualized assessment is arbitrary and capricious under 5 U.S.C. § 706(2). *See Jimenez v. Bostock*, No. 3:25-cv-00570-MTK, 2025 WL 2430381 (D. Or. 2025).

COUNT IV

Violation of APA:
Prohibition on Actions Not In Accordance With Law

83. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

84. Respondents' sudden revocation of Petitioner's release after nearly 12 years violates the APA because the action was not in accordance with law, in excess of statutory authority or limitations, and without observance of procedure required by law. 5 U.S.C. § 706(2)(A)-(D). Respondents have not and cannot demonstrate that that the decision to revoke Petitioner's release was made by any of the individuals listed in 8 C.F.R. § 1236.1(c)(9), which regulates who may revoke a prior decision to release a noncitizen taken into custody. Such action is contrary to 8 C.F.R. 1236.1(c)(9) and therefore in violation of the APA. *See Jimenez v. Bostock*, 2025 WL 2430381.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern District of Texas while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner on her own recognizance, parole, or reasonable conditions of supervision, or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days, in which the government shall have the burden to justify continued detention by clear and convincing evidence, and in which the

immigration judge shall consider Petitioner's ability to pay a bond and alternatives to detention.

e. Declare that Petitioner's detention is unlawful; and

f. Grant any other and further relief that this Court deems just and proper.

DATED this 22 of October, 2025.

/s/ Stephen O'Connor
Stephen O'Connor
Counsel for Petitioner
O'Connor & Associates
7703 N. Lamar Blvd, Ste 300
Austin, TX 78752
Tel: (512) 617-9600
steve@oconnorimmigration.com

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, M.A.M.H., and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 22nd day of October, 2025.

s/ Stephen O'Connor

Stephen O'Connor