

1 Bashir Ghazialam (CA Bar No. 212724)
2 Kirsten Zittlau (CA Bar No. 220809)
3 LAW OFFICES OF BASHIR GHAZIALAM
4 P.O. Box 928167
5 San Diego, California 92192
6 Tel: (619) 795-3370
7 Fax: (866) 685-4543
8 bg@lobg.net
9 zittlaulaw@gmail.com
10 Attorneys for Petitioner

11 UNITED STATES DISTRICT COURT
12
13 SOUTHERN DISTRICT OF CALIFORNIA

14 ARACELI PELICO CALEL,

15 Petitioner,

16 v.

17 CHRISTOPHER J. LAROSE, Senior
18 Warden, Otay Mesa Detention Center,
19 San Diego, California;
20 JOSEPH FREDEN, Field Office Director of
21 San Diego Office of Detention and
22 Removal, U.S. Immigrations and Customs
23 Enforcement; U.S. Department of
24 Homeland Security;
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
SIRCE OWEN, Acting Director for
Executive Office for Immigration
Review;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
PAM BONDI, Attorney General of the
United States;

Respondents.

Case No.: '25CV2883 GPC JLB

**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.:

~~XXXXXXXXXXXX~~

1 Petitioner ARACELI PELICO CALEL 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 INTRODUCTION

5
6 1. Petitioner, ARACELI PELICO CALEL ("Ms. Pelico Calel" or "Petitioner"), by and
7 through her undersigned counsel, hereby files this petition for writ of habeas corpus
8 and complaint for declaratory and injunctive relief to compel her immediate release
9 from immigration detention where she has been held by the U.S. Department of
10 Homeland Security (DHS) since being detained on July 21, 2025. Petitioner is in the
11 physical custody of Respondents at the Otay Mesa Detention Center in Otay Mesa,
12 California.

13
14 2. Petitioner is unlawfully detained. The Department of Homeland Security
15 (DHS) and the Executive Office for Immigration Review (EOIR) have improperly
16 concluded that Petitioner, despite being physically present within the interior of and
17 residing in the United States and being arrested just outside of her residence in
18 Riverside County, California, should be deemed to be seeking admission to the
19 United States and therefore subject to mandatory detention pursuant to 8 U.S.C. §
20 1225(b)(2)(A).

21 3. DHS has placed Petitioner in removal proceedings pursuant to 8 U.S.C. §
22 1229a and has charged Petitioner with being present in the United States without
23
24

1 admission and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and 8
2 U.S.C. § 1182(a)(7)(A)(i)(I).

3 4. DHS has denied, and continues to deny, Petitioner's release from immigration
4 custody. This denial is in large part based upon a new DHS policy issued on July 8,
5 2025,¹ instructing all Immigration and Customs Enforcement (ICE) employees to
6 consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e., present
7 without admission - to be an "applicant for admission" under 8 U.S.C. §
8 1225(b)(2)(A) and therefore subject to mandatory detention during the removal
9 hearing process.
10

11 5. Petitioner sought a bond hearing before an immigration judge (IJ), and on
12 August 1, 2025, the IJ accepted jurisdiction and granted bond. DHS reserved appeal
13 and filed Form EOIR-43, Notice of Service of Intent to Appeal Custody
14 Redetermination. DHS subsequently filed an appeal with the Board of Immigration
15 Appeals (BIA or Board).
16

17 6. On October 20, 2025, the BIA issued its decision sustaining the appeal of DHS
18 and vacating the bond granted by the IJ.

19 7. The BIA relied on its September 5, 2025 precedential decision *Matter of*
20 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which defies decades of precedent and
21

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

1 practice by Respondents stating that 8 U.S.C. § 1225 (b)(2)(A) divests jurisdiction
2 from immigration judges to redetermine the custody of aliens who are present in
3 the United States without admission.

4 8. Both prior to and since the issuance of *Matter of Yajure Hurtado*, other district
5 courts nationwide have overwhelmingly concluded that individuals similarly
6 situated to Petitioner, present and residing within the United States, are not
7 “applicants for admission” who are “seeking admission” and subject to mandatory
8 detention under § 1225(b)(2)(A).
9

10 9. Petitioner’s detention on this basis violates the plain language of the
11 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. Section
12 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered
13 and are now present and residing in the United States. Instead, such individuals are
14 subject to a different statute, § 1226(a), that allows for release on conditional parole
15 or bond. That statute expressly applies to people who, like Petitioner, are charged as
16 removable for having entered the United States without inspection and being
17 present without admission.
18

19 10. The BIA and Respondents’ new legal interpretation of the INA is
20 contrary to the statutory framework and to decades of agency practice applying §
21 1226(a) to people like Petitioner who are present within the United States. The new
22 interpretation also conflicts with Ninth Circuit and Supreme Court precedent. See
23 Jennings v. Rodriguez, 583 U.S. 281, 288, 301 (2018); Torres v. Barr, 976 F.3d 918, 926
24 (9th Cir. 2020); and United States v. Gambino-Ruiz, 91 F.4th 981, 989 (9th Cir. 2024).

1 11. In addition to Petitioner's statutory right to a bond hearing under §
2 1226(a), individuals within the United States have constitutional rights. "[T]he Due
3 Process Clause applies to all 'persons' within the United States, including aliens,
4 whether their presence here is lawful, unlawful, temporary, or permanent."
5 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

6 12. Accordingly, the Petitioner seeks a writ of habeas corpus requiring that
7 she be released as soon as possible, or at a minimum that she be released upon
8 payment of the \$4,500 bond ordered by the IJ at the prior bond hearing.
9

10 JURISDICTION

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

15 14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
16 Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. §
17 1651.
18

19 VENUE

20 15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
21 484, 493- 500 (1973), venue lies in the United States District Court for the Central
22 District of California, the judicial district in which Petitioners are currently detained.
23
24

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

5 **PARTIES**

6
7 17. Petitioner Araceli Pelico Cael is a Guatemalan national who was
8 residing in Riverside County with her family prior to being detained. Ms. Pelico Cael
9 entered the United States in 2007 without inspection. Ms. Pelico Cael was arrested
10 by ICE agents on July 21, 2025 near her residence in Corona, California. Ms. Pelico
11 Cael has been in immigration detention since that date. After arresting Petitioner,
12 ICE did not set bond and Petitioner requested review of her custody by an IJ. On
13 August 1, 2025, after considering all the information, evidence, and arguments
14 presented by the parties, the Immigration Judge ("IJ") found that the Petitioner
15 demonstrated that she neither poses a danger to the community nor such a
16 significant flight risk that she could not be released after payment of a bond and
17 with the imposition of other mitigating conditions. Accordingly, the Court granted
18 the Petitioner's request for a change in her custody status, allowing her release upon
19 payment of a \$4,500 bond. DHS appealed the IJ's order granting bond. In light of the
20 recent issuance of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) by the
21 Board, the Board issued a decision on October 20, 2025 sustaining the DHS' appeal
22 and vacating the IJ's bond order.
23
24

1 18. Respondent Joseph FREDEN is the Field Office Director of ICE in San
2 Diego, California and is named in his official capacity. ICE is the component of the
3 DHS that is responsible for detaining and removing noncitizens according to
4 immigration law and oversees custody determinations. In his official capacity, he is
5 the legal custodian of Petitioner.

6 19. Respondent Todd M. LYONS is the Acting Director of ICE and is named
7 in his official capacity. Among other things, ICE is responsible for the administration
8 and enforcement of the immigration laws, including the removal of noncitizens. In
9 his official capacity as head of ICE, he is the legal custodian of Petitioner.

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

16 21. Respondent Kristi NOEM is the Secretary of the DHS and is named in
17 her official capacity. DHS is the federal agency encompassing ICE, which is
18 responsible for the administration and enforcement of the INA and all other laws
19 relating to the immigration of noncitizens. In her capacity as Secretary, Respondent
20 Noem has responsibility for the administration and enforcement of the immigration
21 and naturalization laws pursuant to section 402 of the Homeland Security Act of
22
23
24

1 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
2 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

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

9
10 23. Respondent Christopher LAROSE is the Warden of the Otay Mesa
11 Detention Center where Petitioner is being held. Respondent Christopher LaRose
12 oversees the day-to-day operations of the Otay Mesa Detention Center and acts at
13 the Direction of Respondents Freden, Lyons and Noem. Respondent Christopher
14 LaRose is a custodian of Petitioner and is named in their official capacity.

15 **LEGAL FRAMEWORK**

16
17 24. The INA prescribes three basic forms of detention for the vast majority
18 of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

19 25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a
20 removal proceedings before an IJ. Individuals covered by § 1226(a) detention are
21 generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§
22 1003.19(a), 1236.1(d), while certain noncitizens who have been arrested, charged
23
24

1 with, or convicted of certain crimes are subject to mandatory detention. See 8 U.S.C.
2 § 1226(c).

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

7 27. Lastly, the INA provides for detention of noncitizens who have been
8 ordered removed, including individuals in withholding-only proceedings. See 8
9 U.S.C. § 1231(a)–(b).

10 28. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and
11 1225(b)(2).

12 29. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted
13 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)
14 of 1996, Pub. L. No. 104--208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to
15 3009–583, 3009–585. Section 1226(a) was most recently amended in early 2025 by
16 the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

17 30. Following the enactment of the IIRIRA, EOIR drafted new regulations
18 applicable to proceedings before immigration judges explaining that, in general,
19 people who entered the country without inspection – also referred to as being
20 “present without admission” – were not considered detained under § 1225 and that
21 they were instead detained under § 1226(a). See Inspection and Expedited Removal
22
23
24

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

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

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

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

1 34. 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 35. 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 36. The overwhelming majority of district courts to consider this question
19 across the country (including in this district), however, have rejected the ICE policy
20 memo and the BIA’s decision in *Matter of Yajure Hurtado*. Courts have instead held
21 that Section 1225 governs detention of noncitizens outside the country who are
22 “seeking admission” to the United States, while Section 1226 governs those living in
23

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

the United States who entered without inspection. See Garcia v. Noem, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) Order Granting Temporary Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for Petitioners’ continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a).”); Ceja Gonzalez, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025); Lopez Benitez v. Francis, No. 25-Civ-5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Rosado v. Figueroa, No. CV-25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted without objection, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Martinez v. Hyde, No. CV 25-11613-BEM, (D. Mass. July 24, 2025); Gomes v. Hyde, No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); Padron Covarrubias v. Vergara, No. 5:25-cv-00112 (S.D. Tex. Oct. 8, 2025); Rodriguez Vazquez v. Bostock, 2025 WL 1193850, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); Diosdado A.V. v. Bondi, No. 25-cv-3162 (KMM/ECW), Doc. No. 16 (D. Minn. Aug. 19, 2025); Lopez-Campos v. Raycraft, No. 2:25-cv-12486-2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Kostak v. Trump, No. 3:25-cv-01093-JE-KDM, Doc. 20 at 7 (W.D. La. Aug. 27, 2025); Benitez v. Noem, No. 5:25-cv-02190-RGK-AS, Doc. 11 at 5 (C.D. Cal. Aug. 26, 2025); Leal-Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *10 (D. Md. Aug. 24, 2025); Romero v. Hyde, No. 25-11631-BEM, 2025 WL 2403827, at *13 (D. Mass. Aug. 19, 2025); Arrazola-Gonzalez v. Noem, No. 5:25-cv-01789-ODW, 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15,

2025); Dos Santos v. Noem, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *8 (D. Mass. Aug. 14, 2025); Belsai v. Bondi, et al., 2025 WL 2802947, at *5 (D. Minn., 2025); Buenrostro Mendez v. Bondi, 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025); Pizarro Reyes, 2025 WL 2609425, at *4; Lopez-Arevelo, 2025 WL 2691828, at *7; Chogollo Chafila v. Scott, No. 2:25-cv-437, 2025 WL 2688541, at *5 (D. Me. Sep. 21, 2025); Eliseo v. Olson et al, 25-3381 JWB/DJF (D. Minn. Oct. 8, 2025).

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

38. Other portions of the text of § 1226 also explicitly apply 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 inadmissible individuals makes clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) 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*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

39. On September 19, 2025, the Western District of Kentucky, Louisville Division, reached the same conclusion taking notice of the recent Congressional

1 amendments, the Laken Riley Act, to Section 1226. See Barrera v. Tindall, No. 3:25-
2 cv-541-RGJ (W.D. Ken., Sept. 19, 2025). The Laken Riley Act added new a new
3 subsection under Section 1226(c) for certain individuals who would have otherwise
4 fallen under Section 1226(a). The Barrera Court noted that if § 1225(b)(2) already
5 mandated detention of any alien who has not been admitted, regardless of how long
6 they have been here, then “adding § 1226(c)(1)(E) to the statutory scheme was
7 pointless and this Court, too, will not find that Congress passed the Laken Riley Act
8 to ‘perform the same work’ that was already covered by § 1225(b)(2).” See Barrera,
9 at *9-10.

11 40. In its further analysis of the text, the Barrera Court observed,
12 “Respondents ‘completely ignore,’ or even read out, the term ‘seeking’ from ‘seeking
13 admission.’” (citing Lopez-Campos, 2025 WL 2496379, at *6). The term “seeking”
14 “implies action.” Id. Noncitizens who are present in the country for years, like Barrera
15 who has been here 20 years, are not actively “seeking admission.” Id. Since the plain
16 language of Section 1225 requires someone to be “seeking admission” to be subject to
17 mandatory detention, the Petitioner here (like Barrera) is not subject to mandatory
18 detention.

19 41. Relying on the Supreme Court’s decision in Jennings v. Rodriguez, 583
20 U.S. 281 (2018), the court in Lopez Santos v. Noem, 3:25-cv-01193-TAD-KDM (W.D.
21 La., September 11, 2025) also reached the same conclusion. The Lopez Santos Court
22 noted that the Supreme Court in Jennings held that Section 1225(b), the provision at
23 issue in the instant habeas petition, “applies primarily to aliens seeking entry into
24

1 the United States" (Jennings at 297), and that Section 1226 "applies to aliens already
2 present in the United States." Id. at 303. As such the Court in Lopez Santos v. Noem,
3 too determined that a noncitizen residing in the U.S. is entitled to a bond hearing.
4 Lopez Santos v. Noem at *11.

5 42. In light of the foregoing and the plain language of Sections 1225 and
6 1226, Section 1226 applies to noncitizens who are present without admission and
7 who face charges in removal proceedings of being inadmissible to the United States.
8

9 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or
10 who recently entered the United States and are encountered at or near the border.
11 The statute's entire framework is premised on inspections at the border of people
12 who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

13 44. Accordingly, the mandatory detention provision of Section 1225(b)(2)
14 does not apply to people like Petitioner who have already entered and were residing
15 in the United States at the time they were apprehended. Instead, Section 1226(a)
16 applies.
17

18 **FACTS**

19 45. Petitioner Araceli Pelico Cael is a devoted wife and mother of five
20 children residing in Corona, California with her family prior to her arrest and
21 detention. She has resided in the U.S. since 2007 when she left Guatemala and
22 entered the U.S. without inspection.
23
24

1 46. On July 21, 2025 while driving only blocks away from her home, Ms.
2 Pelico Cael was arrested by ICE. She has no criminal record and was violating no
3 traffic laws.

4 47. Ms. Pelico Cael is also a model member of her community, volunteering
5 at both her church and the elementary school. She prepares meals for the unhoused
6 and other vulnerable persons.

7 48. In August of 2019, Ms. Pelico Cael was the victim of an assault with a
8 deadly weapon. As such, she is pursuing a U-visa with USCIS.

9 49. In court, she is pursuing asylum and related relief due to the disturbing
10 pattern and practice of persecution against indigenous women such as herself in
11 Guatemala. Ms. Pelico Cael is also pursuing cancellation of removal for certain
12 nonpermanent residents based upon the extreme and exceptionally unusual
13 hardship her five U.S. citizen children would suffer if she were removed from the
14 U.S.

15 50. On August 1, 2025, after considering all the information, evidence, and
16 arguments presented by the parties, the Immigration Judge ("IJ") found that Ms.
17 Pelico Cael demonstrated that she neither poses a danger to the community nor such
18 a significant flight risk that she could not be released after payment of a bond and
19 with the imposition of other mitigating conditions. Accordingly, the Court granted Ms.
20
21
22
23
24

1 Pelico Cael's request for a change in her custody status, allowing her release upon
2 payment of a \$4,500 bond.

3 51. DHS reserved appeal and filed Form EOIR-43, Notice of Service of Intent
4 to Appeal Custody Redetermination. DHS subsequently filed an appeal with the Board
5 of Immigration Appeals (BIA).
6

7 52. On October 20, 2025 the Board issued a decision affirming the appeal of
8 the DHS and vacating the bond order by the IJ. As such, Ms. Pelico Cael has exhausted
9 all administrative remedies, and absent a determination on this habeas petition, Ms.
10 Pelico Cael will continue to be unlawfully detained for the foreseeable future.
11

12 **FIRST CLAIM FOR RELIEF**

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

14 53. Petitioner incorporates by reference the allegations of fact set forth in the
15 preceding paragraphs.

16 54. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
17 apply to Petitioner who is present and residing in the United States and has been
18 placed under § 1229a removal proceedings and charged with inadmissibility
19 pursuant 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). As relevant
20 here, § 1225(b)(2) does not apply to those who previously entered the country and
21 have been present and residing in the United States prior to being apprehended and
22 placed in removal proceedings by Respondents. Such noncitizens may only be
23 detained pursuant to § 1226(a), unless subject to § 1226(c), or § 1231.
24

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

3 **SECOND CLAIM FOR RELIEF**
4 **Petitioner's Detention Violates the Administrative Procedure Act,**
5 **5 U.S.C. § 706(2)**

6 56. Petitioner incorporates by reference the allegations of fact set forth in the
7 preceding paragraphs.

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

13 58. Respondents' detention of Petitioner pursuant to § 1225(b)(2) is
14 arbitrary and capricious. Respondents' detention of Petitioner violates the INA and
15 the Fifth Amendments. Respondents do not have statutory authority under §
16 1225(b)(2) to detain Petitioner.

17 59. Petitioner's detention is arbitrary, capricious, an abuse of discretion,
18 violative of the Constitution, and without statutory authority in violation of 5 U.S.C. §
19 706(2).
20
21
22
23
24

THIRD CLAIM FOR RELIEF

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

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

61. 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).

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

63. The Respondents' continued detention of Petitioner without allowing the Petitioner to post bond when an IJ granted bond (determining Petitioner is not a danger to the community and not such a flight risk that bond is inappropriate) violates her right to Due Process, as does the Board's decision vacating that IJ bond order.

PRAYER FOR RELIEF

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

a. Issue a Writ of Habeas Corpus requiring Respondents to release

1 Petitioner, or in the alternative, that the Respondents allow Petitioner to pay the
2 existing \$4,500 bond and then release Petitioner (as an IJ has already held a bond
3 hearing pursuant to 8 U.S.C. § 1226(a) and granted Petitioner bond);

4 b. Award Petitioner attorney's fees and costs under the Equal Access to
5 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other
6 basis justified under law; and
7

8 c. Grant any other and further relief that this Court deems just and
9 proper.

10 Dated: October 27, 2025

Respectfully submitted,

11
12 By: /s/ Bashir Ghazialam
13 Bashir Ghazialam
14 Attorney for Petitioner
15
16
17
18
19
20
21
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 27, 2025, in San Diego, California.

/s/ Kirsten Zittlau
Kirsten Zittlau
Attorney for Petitioner