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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Case No. 1:25-cv-3743

MARIA RODRIGUEZ ROMERO,
Petitioner
v.
JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,
Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Respondents illegally incarcerate Petitioner Maria Rodriguez Romero ("Ms. Rodriguez Romero") at Immigration and Customs Enforcement's ("ICE") Denver Contract Detention Facility in Aurora, Colorado. Ms. Rodriguez Romero is entitled to a writ of *habeas corpus* to end her unlawful loss of liberty.

I. INTRODUCTION

1. Under the Deferred Action for Childhood Arrivals ("DACA") program, the U.S. Citizenship and Immigration Services ("USCIS"), a sub-agency of the Department of Homeland Security ("DHS"), strictly vets individuals who affirmatively seek deferred action from removal.

The applicants—colloquially known as "Dreamers"—are individuals brought to the United States as children. USCIS imposes specific and rigorous criteria to each applicant, deciding whether they have resided continuously in the United States since 2007, whether they meet education requirements, and whether they pose a threat to national security or public safety. If granted, Dreamers receive a two-year grant of deferred action and a work permit. After two years, the applicant must go through the application process again.

2. Ms. Rodriguez Romero is a Dreamer. USCIS granted Ms. Rodriguez Romero DACA in 2012 and has approved her renewal applications multiple times since, including her current receipt of DACA which is valid until April 28, 2027.[1] She is twenty-seven years old and has resided in the United States since [redacted] of 1999 when she was four months old.

3. Nevertheless, Immigration and Customs Enforcement ("ICE") jailed Ms. Rodriguez Romero on October 7, 2025, alleging that its authority to do so was pursuant to section 236 of the Immigration and Nationality Act ("INA").[2] ICE incarcerated her as she was leaving court for a now-resolved criminal matter in El Paso County, Colorado.[3] ICE charges her as removable for entering without inspection pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).[4]

4. Respondents illegally jail Ms. Rodriguez Romero at the ICE Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility").[5] Her ongoing incarceration serves no

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[1] Petitioner Ex. 1, Employment Authorization Document (indicating valid DACA until Apr. 28, 2027).

[2] Petitioner Ex. 2, Notice of Custody Determination

[3] Ms. Rodriguez Romero's only contact with the criminal legal system resolved on October 25, 2025 with a guilty plea to two counts in violation of Colorado Revised Statutes ("C.R.S.") § 18-3-204(1)(a).

[4] Petitioner Ex. 3, Notice to Appear

[5] This Petition does not refer to the Aurora Facility or Mr. Hernandez Vazquez's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *Arostegui-Maldonado v. Baltazar*, ---F.Supp.3d---, 2025 WL 2280357, at *7 (D. Colo. 2025)

legitimate purpose. Respondents granted her DACA and cannot remove her. Her loss of liberty therefore violates the fundamental Due Process protections of the U.S. Constitution and runs afoul of the government's own regulations. Ms. Rodriguez Romero respectfully requests the Court issue a writ of habeas corpus immediately ordering her release from custody or, in the alternative, that she be granted a bond hearing within five days pursuant to 8 U.S.C. § 1226(a) before a neutral adjudicator at which ICE must demonstrate that her continued detention is necessary by clear and convincing evidence.

II. PARTIES

Petitioner

5. ICE jails Ms. Rodriguez Romero at the Aurora Facility in Aurora, Colorado. Ms. Rodriguez Romero has lived in the United States for nearly twenty-seven years. She has been lawfully present in the United States since at least 2012 when USCIS granted her initial DACA application. She has a large U.S. citizen family and has maintained steady employment.

Respondents

6. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Ms. Rodriguez Romero, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Ms. Rodriguez Romero. He is sued in his official capacity.

7. Robert Hagan is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Hagan is the immediate custodian of Ms. Rodriguez Romero and is responsible for Ms. Rodriguez Romero's detention and removal.

(concluding that "the conditions at the Aurora Facility strongly resemble penal confinement"); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) (citation omitted) (same).

8. Kristi Noem is the Secretary of DHS. Ms. Noem is responsible for the implementation and enforcement of the INA. DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Ms. Rodriguez Romero's illegal detention. Ms. Noem has ultimate custodial authority over Ms. Rodriguez Romero and is sued in her official capacity.

9. Todd M. Lyons is the Acting Director of U.S. ICE and is sued in his official capacity. Mr. Lyons is responsible for Ms. Rodriguez Romero's illegal detention and has custodial authority over her.

10. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice (DOJ). The Executive Office for Immigration Review (EOIR) and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. JURISDICTION AND VENUE

11. Respondents incarcerated Ms. Rodriguez Romero at the Aurora Facility in Aurora, Colorado on or about October 7, 2025. Ms. Rodriguez Romero is currently imprisoned in this District and is under the control of Respondents and their agents.

12. Ms. Rodriguez Romero brings this action under 28 U.S.C. § 2241, the INA and its implementing regulations, the Administrative Procedures Act (5 §§ U.S.C. 500-596, 701-706), the All Writs Act (8 U.S.C. § 1651), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention.

13. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the U.S.

14. Venue is proper under 28 U.S.C. § 1391 because Respondents imprison Ms. Rodriguez Romero in Aurora, Colorado, within the jurisdiction of this Court. Likewise, Ms. Rodriguez Romero is a resident of this District, her counsel is in this District, and a substantial part of the events giving rise to the claims in this action took place within this District.

IV. LEGAL FRAMWORK

The DACA Program

15. On June 15, 2012, the Secretary of DHS announced the DACA policy, authorizing case-by-case deferred action for certain individuals who were brought to the United States as children, met specific educational and public-safety criteria, and passed background checks. Mem. From Janet Napolitano, Sec'y of DHS, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (June 15, 2012) ("Napolitano Memo").[6]

16. DACA recipients are "talented young people, who, for all intents and purposes, are Americans—they've been raised as Americans, understand themselves to be part of this country." The DACA program was intended to "lift the shadow of deportation from these young people" and to "mend our Nation's immigration policy to make it more fair, more efficient, and more just." President Barack Obama, Remarks on Immigration Reform, 2012 Daily Comp. Pres. Doc. 1 (June 15, 2012).[7]

17. Under DACA, "to prevent [these] low priority individuals from being removed from the United States,' ICE 'exercise[s] prosecutorial discretion[ ] on individual basis . . . by deferring action for a period of two years, subject to renewal." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 10 (2020). Those who meet DACA's strict requirements are

[6] Petitioner Ex. 4, Napolitano Memo
[7] Petitioner Ex. 5, Remarks by President Barack Obama

thus "granted 'affirmative . . . relief' from removal." *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 (6th Cir. 2022) (citing *Regents*, 591 U.S. at 10).

18. In 2022, DHS promulgated a final rule codifying DACA's structure, adjudicative standards, collateral consequences, and termination procedure. *Deferred Action for Childhood Arrivals*, 87 Fed. Reg. 53, 152 (Aug. 30, 2022) (codified at 8 C.F.R. §§ 236.21—236.23). The rule defines deferred action as "a form of enforcement discretion not to pursue the removal of certain [noncitizens]," or a "temporary forbearance from removal." 8 C.F.R. § 236.21(c)(1).

19. DHS treats DACA recipients as lawfully present for the duration of the deferred action period and therefore the agency provides them certain benefits like work authorization if they demonstrate economic need. 8 C.F.R. § 236.23(d) (2024); 87 Fed. Reg. at 53,177–80; *see also Texas v. United States*, 809 F.3d 134, 166 (5th Cir. 2015), *aff'd by an equally divided Court*, 579 U.S. 547 (2016) ("Deferred action . . . is much more than noneforcement. It . . . affirmatively confer[s] 'lawful presence' and associated benefits . . . .").

20. DACA applicants must pay substantial, recurring filing fees, disclose sensitive biographical and biometric information, and submit to a comprehensive background and security checks to receive these benefits. Ex. 4, *supra*; 87 Fed. Reg. at 53, 158–61; 8 C.F.R. §§ 236.1–236.23. DHS only grants a DACA applicant if the applicant satisfies specific and uniform criteria, including educational, residency, age, and public-safety requirements. *Id.*

21. If approved, DACA is valid for two years and indefinitely renewable. 8 C.F.R. § 236.23(a)(4). The renewal process requires the applicant to resubmit themselves to the same rigorous application process.

22. That strict process prohibits USCIS from granting DACA to individuals in immigration detention. 8 C.F.R. § 236.23(a)(2). Similarly specific are the regulations laying out

how USCIS may terminate someone's DACA status. 8 C.F.R. § 236.23(d). First, only DHS' sub-agency USCIS may terminate DACA. 8 C.F.R. §§ 236.23(a)(2), (d). With very few exceptions inapplicable here, USCIS may only terminate an individual's DACA after providing them with a Notice of Intent to Terminate ("NOIT") and then a reasonable opportunity to respond prior to termination. 8 C.F.R. § 236.23(d)(1). A NOIT does not always lead to termination, as a DACA recipient's response may often ameliorate the concerns underlying USCIS' NOIT.

23. This structured, uniform, and oft-repeated process through which DACA recipients navigate creates predictable, government-induced expectations upon which DACA recipients reasonably rely to order their lives—including seeking and securing employment, education, housing, government benefits, and structuring familial responsibilities. The DACA program was designed to do just that: in exchange for disclosure and compliance, recipients reasonably expect not to be targeted for arrest, detention, and removal based solely on their immigration status while their deferred action remains in effect. *E.g.*, Letter from Secretary Jeh Johnson to Rep. July Chu (Dec. 30, 2016);[8] Transcript of CNN Town Hall with Speaker Paul Ryan, CNN (Jan. 12, 2017),[9] (then-Speaker of the House Paul Ryan stating that the government must ensure that "the rug doesn't get pulled out from under" Dreams, who have "organize[d] [their] li[ves] around" the DACA program); Ted Hesson & Seung Min Kim, *Wary Democrats Look to Kelly for Answers on Immigration*, Politico (Mar. 29, 2017),[10] (then-DHS Secretary Kelly reaffirming that "DACA status" is a "commitment . . . by the government towards the DACA person, or the so-called Dreamer"); Transcript of President Elect Trump in Meet the Press, NBC News (Dec. 8, 2024),[11]

[8] Petitioner Ex. 6, Letter from Secretary Jeh Johnson
[9] Petitioner Ex. 7, Paul Ryan Transcript
[10] Petitioner Ex. 8, Politico Article
[11] Petitioner Ex. 9, President Donald J. Trump Transcript

(then-President Elect Trump stating "Republicans are very open to the Dreamers. The Dreamers, we're talking many years ago they were brought into this country. Many years ago. Some of them are no longer young people. And in many cases, they've become successful. They have great jobs. In some cases they have small businesses. Some cases they might have large businesses." When asked "You want them to be able to stay, that's what you're saying?" President Elect Trump answered "I do.").

24. **Under these circumstances, there is no lawful basis to jail Ms. Rodriguez Romero**. Indeed, federal courts have repeatedly found that ICE's decision to jail someone with deferred action is unlawful. *Gamez Lira v. Noem*, 1:25-cv-00855-WJ-KK, 2025 WL 2581710, at *2–3 (D.N.M. Sept. 5, 2025) (granting temporary restraining order, finding a due process violation and that the DACA recipients incarceration bore no reasonable relationship to a legitimate purpose); *Santiago v. Noem*, No. EP-25-cv-361-KC, 2025 WL 2792588, at *12 (W.D. Tex. Oct. 2, 2025) ("Where an individual is protected from removal through deferred action, their detention serves no valid purpose"); *F.R.P., Petitioner v. Cammilla Wamsley et al.*, 3:25-cv-01917-AN, 2025 WL 3037858, at *5 (D. Or. Oct. 30, 2025 (collecting cases and stating that "the Court is unaware of any [cases] that held that ICE could lawfully detain deferred action recipients without notice or an individualized finding").

Legal Authority for Immigration Detention.

25. When ICE has the authority to jail someone, it is prescribed by statute. Section 1226(a) of 8 U.S.C. establishes discretionary detention for noncitizens ICE arrests "[o]n a warrant issued by the Attorney General" and then place in 8 U.S.C. § 1229a removal proceedings. 8 U.S.C. § 1226(a). Those noncitizens may then request an immigration judge ("IJ") to redetermine the arresting immigration officer's "initial custody determination" at any time prior to a final order of

removal. *Id.*; 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), (b). During the custody redetermination request, i.e., bond hearing, the IJ determines whether the noncitizen establishes by the preponderance of the evidence if they are a risk of flight or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006).

26. Section 1226(c) of 8 U.S.C. establishes mandatory detention for noncitizens with certain criminal legal contacts in § 1229a removal proceedings. 8 U.S.C. § 1226(c). IJs do not have the authority to consider these noncitizens' request for release on bond unless ICE is substantially unlikely to establish that the noncitizen falls within one of § 1226(c)'s mandatory detention provisions. *See generally Matter of Joseph*, 22 I. & N. Dec. 799 (B.I.A. 1999).

27. The statute also provides for mandatory detention of a narrow subset of noncitizens subject to an expedited removal pursuant to § 1225(b) or for other noncitizen "applicants for admission" to the U.S. who are apprehended at the border or port of entry. *See* 8 U.S.C. § 1225(b)(2). Section 1225 focuses on noncitizens "arriv[ing]" "whether or not at a designated port of arrival," and applies to people like those who were "interdicted in international or United State waters" (§ 1225(a)(1)), are "stowaways" (§ 1225(a)(2)), and who are otherwise "applicants for admission" into the U.S. (§ 1225(a)(3)). In contrast to § 1226, § 1225 discusses matters such as "screening" "claims for asylum" (§ 1225(b)(1)(A)(i)-(ii)) at the border, "inspection" by an immigration officer to determine if a noncitizen "is … clearly and beyond a doubt entitled to be admitted" (§ 1225(b)(2) & (d)), and "removal" of "an arriving [noncitizen]" (§ 1225(c)(1)).

28. Finally, the statute provides for detention of noncitizens with final removal orders. 8 U.S.C. § 1231(a), (b).

29. The Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas v. Davis*,

533 U.S. 678, 690 (2001) (quotation omitted). Those limited interests are to mitigate risk of flight and danger to the community while DHS seeks to effectuate removal. *Id. Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). In other words, incarceration in ICE jail is illegal for someone who is not removable, *Santiago*, 2025 WL 2792588, at *12, or if removable, neither a risk of flight nor a danger to the community, *Zadvydas*, 533 U.S. at 690.

30. Here, Ms. Rodriguez Romero is not removable because she is a DACA recipient. Nor does she have criminal legal contact rendering her subject to 8 U.S.C. § 1226(c). She is also not subject to § 1231 detention because she does not have a final removal order. Respondents' position that she is subject to detention at all—let alone pursuant to § 1225 instead of § 1226—is erroneous.

31. The Supreme Court summarizes the interplay between §§ 1226 and 1225 as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission *into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings v. Rodriguez*, 582 U.S. 281, 289 (2018) (Alito, J., emphasis added).

32. Both the § 1226 and § 1225 detention provisions 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 in early 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).

33. Following the enactment of the IIRIRA in 1996, EOIR wrote regulations applicable to proceedings before IJs explaining that, in general, people who entered the country without

inspection (also known as "present without admission") were *not* detainable under § 1225 and instead could only be 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

34. Thus, in the following decades, people who entered without inspection and did not have certain criminal legal contacts received § 1226(a) bond hearings when placed in § 1229a proceedings. That practice was consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not "arriving" or seeking entry into the United States 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 the new § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

35. This practice – both pre- and post-enactment of the IIRIRA – is consistent with the fact that noncitizens present in the U.S. have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

36. Despite this long-standing practice and the plain text of the statute, the Board of Immigration Appeals (BIA) issued an unpublished decision on May 22, 2025 holding that noncitizens who entered the United States without inspection were subject to § 1225(b)(2) mandatory detention as "applicants for admission."

37. On July 8, 2025, ICE, "in coordination with" the DOJ announced a new policy consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy, titled

"Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all noncitizens present within the U.S. who entered without inspection – no matter how long ago, no matter where, and no matter how – are deemed "applicants for admission" under 8 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A).[12] The new policy applies regardless of when and where a person was apprehended and affects people who have resided in the U.S. for years.

38. On September 5, 2025 the BIA published a precedential decision finding the same. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). IJs across the country, including those in Colorado, are now required to apply Respondents' unlawful detention regime absent federal court intervention.

39. The federal courts have since resoundingly rejected Respondents' position. *Rodriguez-Vazquez v. Bostock*, No. 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9 (D. Mass. July 24, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025); *Escalante v. Bondi*, No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025) (report and recommendation to grant preliminary relief, adopted *sub nom O.E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025)); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D. N.Y. Aug. 8, 2025); *de Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation to grant *habeas* relief, adopted without objection at 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aquilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL

[12] Petitioner Ex. 10, Interim Guidance to all ICE Employees

2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025); *Romero v. Hyde*, --- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, Doc. 20 (D. Md. Aug. 24, 2025); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-dcv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F.Supp.3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d --- , 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, --- F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025).

40. The federal courts' overwhelming rejection of Respondents' position continues unabated after *Matter of Yajure Hurtado*. *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Sampiao v. Hyde*, --- F.Supp.3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D.N.H. Sept. 9, 2025) ; *Lopez Santos v. Noem*, 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025); *Velasquez Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL

2676729 (D. N.M. Sept. 17, 2025); *Barrera v. Tindall*, No. 3:25-cv-00541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chafla et al. v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541, at *6 (D. Me. Sept. 21, 2025). *See also Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D. N.H. Sept. 9, 2025); *Lamidi v. FCI Berlin*, No. 25-cv-297-LM-TSM, ECF 14 (D. N.H. Sept. 15, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2631828 (W.D. Tex. Sept. 22, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lepe v. Andrews*, --- F.Supp.3d ---, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 1:25-cv-830, (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Savane v. Francis*, 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v.* ICE, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); Santiago *Helbrum v. Williams*, 4:25-cv-00349, WL (S.D Iowa, Sept. 30, 2025); *Belsai D.S. v. Bondi*, 0:25-cv-3682, 2025 WL 2802947 (D.Min.. Oct. 1, 2025); *Rocha v. Hyde*, 25-cv-12584, 2025 WL 2807692 (D.Mass. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, 2:25-cv-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Ayala Casun v. Hyde*, 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v.*

Kaiser, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25-5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D.Minn. Oct. 8, 2025); *Eliseo v. Olson*, 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (D. Minn. Oct. 11, 2025) *E.C. v. Noem et al.*, 2:25-cv-01789-RFB-BNW (D. Nev. Oct. 14, 2025); *Garcia Domingo v. Castro*, --- F.Supp.3d ---, 2025 WL 2941217 (D.N.M. Oct. 25, 2025); *Teyim v. Perry et al.*, 1:25-cv-01615-MSN-WEF, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025); *Perez Pina v. Stamper*, 2:25-cv-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025); *Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct. 17, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025) *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025); *Buestan v. Chu*, No. 25-16034 (MEF), 2025 WL 2972252 (D. N.J. Oct. 21, 2025); *Maldonado v. Baker*, No. 25-3084-TDC (D. Md. Oct. 21, 2025); *Gonzalez Martinez v. Noem*, EP-25-cv-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Aguilar Guerra v. Joyce*, 2:25-cv-00534, 2025 WL 2986316 (D. Me. Oct. 24, 2025); *Esquivel-Pina v. Larose*, No. 25-cv-2672, 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, 2:25-cv-01987, 2025 WL 3014023 (D. Nev. Oct. 27, 2025); *Puerto-Hernandez v. Lynch*, ---F.Supp.3d---, 2025 WL 3012033 (W.D. Mich.

Oc. 28, 2025); *Corona Diaz v. Olson*, 25-cv-12141, 2025 WL 3022170 (N.D. Ill. Oc. 29, 2025); *Ramirez Valverde v. Olson*, 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *L.A.E. v. WAMSLEY*, 3:25-CV-01975, 2025 WL 3037856 (D. Or. Oct. 30, 2025); *Rosales Ponce v. Olson*, 25-cv-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *J.A.M. v. Streeval*, 25-cv-342, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Flores v. Olson*, 25-cv-12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *Hernandez-Alonso v. Tindall*, 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Reyes Arizmendi v. Noem*, 25-cv-13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025).

41. This includes the Western District of Washington's grant of summary judgement to a class of incarcerated noncitizens presenting the same arguments Plaintiff does here. *Rodriguez Vazquez v. Bostock*, 3:25-cv-05240, ---F.Supp.3d.---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

42. This District's uniform rejection of Respondents' position began on October 17, 2025 in *Mendoza v. Baltasar et al.*, 1:25-cv-02720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025), ECF 33. There, Judge Rodriguez ordered Petitioner's immediate release, finding that "the balance of the equities and public interest factors favors a preliminary injunction enjoining Respondents from denying Petitioner bond on the basis that he is detained under § 1225(b)(2)." *Id.* p. 25.

43. Judges in this District have since unanimously followed suit, finding Respondents' position regarding § 1225 unlawful and granting relief. *E.g.*, *Moya Pineda v. Baltasar et al.*, 1:25-cv-02955-GPG-TPO (D. Colo. Oct. 20, 2025), ECF 21; *Loa Caballero v. Baltazar et al.*, 1:25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025), ECF 18; *Hernandez Vazquez v. Baltazar et al.*, 1:25-cv-03049-GPG-TPO (D. Colo. 23, 2025), ECF 22; *Hernandez v. Baltazar et al.*, 1:25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025), ECF 26; *Cervantes Arredondo v.*

Baltazar et al., 25-cv-3040-RBJ (D. Colo. Oct. 31, 2025), ECF 21; *Artola Aruaz v. Baltasar et al.*, 25-cv-3260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025), ECF 16; *Campos v. Baltazar et al.*, 1:25-cv-3062-GPG-NRN (D. Colo. Nov. 13, 2025), ECF 33; *Ortiz Rosales v. Baltazar et al.*, 1:25-cv-03275-GPG-KAS (D. Colo. Nov. 16, 2024), ECF 25; *See Garcia Cortes v. Noem et al.*, 1:25-cv-02677-CNS, 2025 WL 2652880 at *3 (D. Colo. Sept. 16, 2025).

44. Respondents' interpretation that § 1225(b) governs detention in this case defies the plain language of the INA, fundamental canons of statutory construction, and the agency's long-extant implementing regulations.

There is No Lawful Basis to Jail Ms. Rodriguez Romero, but if there were, it is Pursuant to § 1226(a)

45. **The statute's plain text demonstrates § 1226(a)** – not § 1225(b) – applies to people who entered without inspection and were jailed in the interior of the United States. Section 1226(a) is the "default rule" applying to all persons "pending a decision on whether the [noncitizen] is to be removed." *Rodriguez Vazquez*, 779 F.Supp.3d at 1246; *Jennings*, 582 U.S. at 281.

46. The plain language of § 1226 applies to people charged as inadmissible for entering without inspection. *E.g.*, 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 entitled to a bond hearing under subjection (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*, 779 F.Supp.3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

47. Congress made additional specific exceptions to § 1226 in January 2025. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (LRA). The amendments make people charged under § 1182(a)(6)(A)(i) for entering without inspection or (a)(7) for lacking valid documentation and who have had certain criminal encounters subject to mandatory detention under § 1226(c). 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6)(A) or (a)(7). "[W]hen 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 1256-57 (quoting *Shady Grove*, 559 U.S. at 400).

48. Several canons of interpretation reinforce this understanding. First is the canon against rendering statutory language superfluous. *See, e.g., Clark v. Rameker*, 573 U.S. 122, 131 (2014) ("a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous," internal citations omitted). Defendants' position does just that. As the *Rodriguez Vazquez* court explained, this is so because if "Section 1225 … and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." *Rodriguez Vazquez*, 779 F.Supp.3d at 1258 (citation modified).

49. Second, "when Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Estrada v. Smart*, 107 F.4th 1254, 1268 (10th Cir. 2024) (cleaned up). That presumption applies here, given LRA's amendments to § 1226. *See Rodriguez Vazquez*, 779 F.Supp.3d at 1259 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). LRA's amendments explicitly provide that § 1226(a) covers people like Plaintiff. This is because the "specific exceptions [in the LRA] for inadmissible noncitizens who are arrested, charged with, or

convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention." *Id.* 1259 (emphasis in original, citation modified). *See also, e.g., Diaz Martinez*, 2025 WL 2084238, at *7 ("if, as the Government argue[s], … a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 [LRA] amendment would have no effect").

50. Finally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction," courts "generally presume[] the new provision should have been understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). This canon also supports Plaintiff's position because "Congress adopted the new amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [Plaintiffs]." *Rodriguez Vazquez*, 779 F.Supp.3d, at 1259.

51. **Section § 1225's structure also supports § 1226(a) applying to Plaintiff.** "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also Biden v. Tex.*, 597 U.S. 785, 799-800 (2022) (interpreting INA).

52. The Supreme Court has described the structure of § 1226 and § 1225 as distinguishing between the two basic groups of noncitizens. Section 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. By contrast, § 1225(b)(2) mandatory detention 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." *Id.* at 287. The whole purpose of § 1225 is to define how DHS

inspects, processes, and detains people at the border. *See id.* at 297 ("[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the [U.S.] …"). *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29 (explaining the purpose of § 1225).

53. Section 1225's text reinforces its limited temporal scope. To begin, § 1225 concerns the "inspection" and "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. For example, § 1225(b)(1) encompasses only "inspection" of certain "arriving" noncitizens, and only those who are "inadmissible" for having misrepresented information or lacking entry documents.

54. Section 1225(b)(2) is similarly limited to people applying for admission on arrival, but whom (b)(1) does not cover. The title explains that it addresses "[i]nspection of other [noncitizens]." The subsection further specifies it applies only to "applicants for admission" (defined at § 1225(a)(1)) who "seek[] admission." By stating § 1225(b)(2) applies only to those "seeking admission," Congress confirmed it did not intend to sweep up those who previously entered and began residing in the United States. A commonsense example clarifies the point:

> [S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not describe them as 'seeking admission' (or 'seeking' 'lawful entry') at that point – one would say they had entered unlawfully but now seek a lawful means of remaining there.

Lopez Benitez, 2025 WL 2267803, *7; *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original); *see also Lopez Benitez*, 2025 WL 2267803, at *7 (this is the "plain, ordinary meaning" of "seeking admission"). "This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A) by requiring that a person be an "applicant for admission" and "also

[be] *doing* something" to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original). The statute's temporal focus on people "arriving" is evident in other respects too. Section 1225(b)(2)(C) addresses "[t]reatment of [noncitizens] *arriving* from contiguous territory" (emphases added).

55. Defendants reading of § 1225 would also render significant portions of § 1225 meaningless. Several requirements must be met for § 1225(b)(2)'s mandatory detention regime to apply; namely, (1) an "examining immigration officer" (2) must conclude during an "inspection" (3) of an "applicant for admission" (4) who is also "seeking admission" (5) that the person "is not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A). Defendants' interpretation of § 1225 reads out three of those five requirements.

56. First, it makes superfluous the requirements that the "examining immigration officer" conduct an "inspection." *Jimenez*, 2025 WL 2639390 at *7. "[E]xamination is not an unbound concept. Rather, it is the specific legal process one undergoes while trying to enter the country." *Id.* (citations omitted). The regulations make that plain. 8 C.F.R. § 235.1(a) (noting that "scope of examination" occurs while on seeks to "enter the United States" "at a U.S. port-of-entry . . ."). Nor is the inspection requirement untethered to entry to the United States. See 8 U.S.C. § 1225(a)(3) ("All [noncitizens] who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers") (emphasis added). Defendants' interpretation renders both the examination officer and inspection requirements superfluous.

57. Second, it renders superfluous §1225(b)(2)(A)'s requirement that the noncitizen be "seeking admission." *Jimenez*, 2025 WL 2639390, at *8. The statute defines admission to mean "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an

immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). "While an applicant for admission has not been 'admitted' to the United States, it does not follow that an applicant for admission continues to be actively seeking . . . lawful entry." *Jimenez*, 2025 WL 2639390, at *8 (citation omitted). "If as the Government argues, all applicants for admission are deemed to be 'seeking admission' for as long as they remain applicants, then the phrase 'seeking admission' would add nothing to the provision" in § 1225(b)(2)(A). *Salcedo Aceros*, 2025 WL 2637503, at *10. Defendants' position would similarly "read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla*, 2025 WL 2688541, at *6.

58. The implementing regulation for § 1225(b) supports Plaintiff's reading, noting that §1225(b) applies to "any arriving [noncitizen] who appears to the inspection officer to be inadmissible." 8 C.F.R. § 235.3 (emphasis added). "The regulation thus contemplates that 'applicants seeking admission' are a subset of applicants 'roughly interchangeable' with "arriving [noncitizens]." *Salcedo Aceros*, 2025 WL 2637503, at *10 (quoting *Martinez*, 2025 WL 2084238, at *6); *See* 8 C.F.R. § 1.2 (defining an arriving noncitizen as an applicant for admission "coming or attempting to come into the United States at a port-of-entry").

59. While Petitioner is not lawfully admitted, he is not actively "seeking admission i.e., seeking lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Jimenez*, 2025 WL 2639390, *8.

60. **IIIRA's legislative history supports the conclusion that § 1226(a) applies**. In the IIRIRA, Congress focused on recent arrivals who lacked documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29. Congress said nothing about subjecting all people present in the U.S. to mandatory detention.

61. Before the IIRIRA, people like Plaintiff were not subject to mandatory detention under any theory. *See* 8 U.S.C. § 1252(a) (1994). Had Congress intended a monumental shift in immigration law, it would have clearly said so. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (finding "implausible that Congress would give to the [agency] through these modest words [such] power"). In fact, Congress said the opposite: the new § 1226(a) just "restates the current provisions … regarding the authority … to arrest, detain, and release on bond a[] [noncitizen]." H.R. Rep. No. 104-469, pt. 1, at 229. "Because noncitizens like [Plaintiff] were entitled to discretionary detention under [§] 1226(a)'s predecessor statute and Congress declared its scope unchanged … this background supports [Plaintiff's] position that he too is subject to discretionary detention." *Rodriguez Vazquez*, 779 F.Supp.3d at 1260.

62. **Respondents' view violates EOIR regulations**. Following the IIRIRA, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted ... will be eligible for bond." 62 Fed. Reg. at 10323. In the following decades, the relevant regulations remain unchanged. *Compare* 63 Fed. Reg. 27441, 27448 (May 19, 1998), *with* 8 C.F.R. § 1003.19(h)(2). The regulation governing IJs' bond jurisdiction still only limits an IJ's bond jurisdiction to noncitizens subject to certain conditions irrelevant here 8 C.F.R. § 1003.19(h)(2). Regulatory "guidance and the agency's subsequent years of unchanged practice is persuasive." *Rodriguez Vazquez*, 779 F.Supp.3d at 1261. "When an agency claims to discover in a long-extant statute an unheralded power … [courts] greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 574 U.S. 302, 324 (2014).

63. In sum, § 1226 applies to noncitizens like Ms. Rodriguez Romero who are present without inspection, face inadmissibility charges in removal proceedings due to their entrance without inspection, and who do not have certain criminal legal contacts.

64. By contrast, § 1225(b) applies to people *arriving at* U.S. ports of entry or who *recently entered* the U.S. and are encountered *at or near the border*. Section 1225's entire framework is premised around inspection at the border of people who are "seeking admission" to the U.S. 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*, 582 U.S. at 287.

65. Accordingly, contrary to Respondents' erroneous interpretation of the statute, the mandatory detention provisions of § 1225(b)(2) do not apply to people like Ms. Rodriguez Romero who "arrived" in the country long ago and have resided in Colorado for years before ICE jailed them. Indeed, there is no statutory authority through which Respondents can jail Ms. Rodriguez Romero because she is not removable.

Ms. Rodriguez Romero's Illegal Detention Without Bond

66. Ms. Rodriguez Romero has resided continuously in the United States for almost twenty-seven years and been lawfully present since 2012. Most of that time has been in Pueblo, Colorado with her large U.S. citizen family, including her maternal grandparents, four siblings, and her stepfather. She has held steady employment and graduated high school. She has strong ties to the community and does not have any criminal legal contacts that disqualify her for bond. In other words, Ms. Rodriguez Romero is an excellent candidate for release on bond so that she can fight her removal proceedings while at liberty. *E.g.*, *Matter of Guerra*, 24 I. & N. Dec at 40 (listing factors relevant for bond).

67. Nevertheless, ICE jailed Ms. Rodriguez Romero on October 7, 2025, Ex. 2, while a passenger in a car leaving the El Paso County criminal court, charging her as removable pursuant

to 8 U.S.C. § 1182(a)(6)(A)(i), Ex. 3. She had recently appeared for a case that was resolved on October 25, 2025 with two guilty pleas to misdemeanor assault pursuant to C.R.S. § 18-3-204(1)(a). She does not have any other criminal legal contact and her limited criminal legal contact neither bars her from bond, 8 U.S.C. § 1226(c), nor renewal of DACA, 8 C.F.R. § 236.22 (b)(6).

68. Respondents' decision to jail Ms. Rodriguez Romero without being able to remove her inflicts concrete, ongoing harm that undermines the rule-of-law commitments upon which she—and all other DACA recipients—reasonably relied.

69. The harm is exacerbated by Respondents' refusal to offer her a bond hearing due to its erroneous position that its authority to jail her, if any, is pursuant to § 1225(b)(2)(A) instead of § 1226(a).

V. CLAIMS FOR RELIEF

COUNT I
Respondents Jail Ms. Rodriguez Romero in Violation of 8 U.S.C. § 1226(a)

70. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

71. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Ms. Rodriguez Romero because she was present and residing in the U.S., has been placed in § 1229a removal proceedings, and charged with inadmissibility pursuant to 8 U.S.C. § 1182. Simply, § 1225 does not apply to people like Ms. Rodriguez Romero who previously entered the country and reside in the U.S. prior to being detained and placed in removal proceedings. Such noncitizens may only be detained pursuant to § 1226(a), unless they are subject to mandatory detention provisions irrelevant here. Detention under § 1226(a) requires access to bond.

72. Applying § 1225 to Ms. Rodriguez Romero unlawfully mandates her continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

COUNT II
Respondents are Detaining Ms. Rodriguez Romero in Violation of the INA Bond Regulations (8 C.F.R. §§ 236.1, 1236.1 & 1003.19)

73. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

74. Respondent EOIR and the then Immigration and Naturalization Service issued a rule to interpret and apply the IIRIRA under the heading "Apprehension, Custody, and Detention of [Noncitizens]," which explained: "Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond*." 62 Fed. Reg. at 10323 (emphasis added). Respondents thus long-ago made clear that people like Ms. Rodriguez Romero who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and the implementing regulations.

75. Nonetheless, Respondents here deem Ms. Rodriguez Romero subject to mandatory detention under § 1225.

76. Respondents' application of § 1225(b)(2) to Ms. Rodriguez Romero unlawfully requires her continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Respondents are Detaining Ms. Rodriguez Romero in Violation of the Administrative Procedures Act (5 U.S.C. § 706(2))

77. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

78. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is

"contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

79. Respondents' detention of Ms. Rodriguez Romero pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution. Respondents do not have statutory authority under § 1225 to detain Ms. Rodriguez Romero.

80. Respondents' detention of Ms. Rodriguez Romero without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, and without statutory authority, all in violation of 5 U.S.C. § 706(2).

COUNT IV
Respondents Incarcerate Ms. Rodriguez Romero in Violation of her Fifth Amendment Procedural Due Process Rights

81. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

82. 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 [Fifth Amendment's due process] Clause protects." *Zadvydas*, 533 U.S. at 690. This procedural due process guarantee requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty of property interests. *Mathews v. Davis*, 424 U.S. 319, 332 (1976). Whether government action violates procedural due process requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function

involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

83. Ms. Rodriguez Romero has a fundamental interest in liberty and being free from official restraint, such as imprisonment in the Aurora Facility. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The private interest at stake here "is the *most significant liberty interest* there is—the interest in being free from imprisonment." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d. Cir. 2020) (emphasis added) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Incarceration in the United States is meant to be "the carefully limited exception," *U.S. v. Salerno*, 481 U.S. 739, 755 (1987), and it "constitutes a significant deprivation of liberty that requires due process protection" no matter its purpose, *Jones v. United States*, 463 U.S. 354, 361 (1983). Respondents violate this fundamental right without statutory authority. The likelihood of erroneous deprivation is significant considering federal courts' overwhelming rejection of Respondents' misapplication of the statutory scheme, *see* ¶¶ 39–43, and Respondents' inability to remove her, *See Santiago*, 2025 WL 2792588, at *12. Finally, the Government "has no interest in the detention without bond of someone against whom no criminal charges are pending and who is an active member of [their] community." *Garcia Cortes*, 2025 WL 2652880, at*4 (citation omitted); *Velasco Lopez*, 978 F.3d at 857; *Hernandez Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021).

84. Respondents' detention of Ms. Rodriguez Romero when it cannot remove her and without providing her a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to Due Process.

COUNT V
Respondents Incarcerate Ms. Rodriguez Romero in Violation of her Fifth Amendment Substantive Due Process Rights

85. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

86. The Supreme Court has long recognized that noncitizens present in the United States are entitled due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews*, 426 U.S. at 77. Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

87. Respondents decision to jail someone like Ms. Rodriguez Romero who has valid, unrevoked DACA violates the Fifth Amendment's protection of substantive due process for two reasons.

88. First, the Due Process Clause requires incarceration to always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

89. The only legitimate reasons consistent with due process for federal civil immigration detention are to prevent flight by ensuring the incarcerated person's attendance at legal hearings or their removal and to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690–1.

90. Here, Ms. Rodriguez Romero's loss of liberty is not reasonably related to a legitimate purpose. First and foremost, the Government has no authority to remove her because she is lawfully present pursuant to her valid, unrevoked DACA. *Santiago*, 2025 WL 2792588, at *12. When a noncitizen is not deportable, the Due Process Clause requires that any deprivation of liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507

U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying a less rigorous standard for "deportable [noncitizens]"). Here, Ms. Rodriguez Romero is not removable. She has significant ties to the United States and has repeatedly passed rigorous, semiannual security checks to maintain her DACA grant. Accordingly, Respondents have no compelling state interest to incarcerate her.

COUNT VI
Respondents Incarceration of Ms. Rodriguez Romero Violates the Administrative Procedures Act

91. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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

93. At the time Respondents arrested her and at all time since, Ms. Rodriguez Romero has a valid grant of DACA and cannot be removed, rendering her lawfully present in the United States pursuant to 8 C.F.R. § 236.21(c)(3).

94. Jailing Ms. Rodriguez Romero despite her valid grant of DACA, which prohibits her removal from the United States, and her long-standing ties to this country is arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence.

COUNT VII
Respondents Incarceration of Ms. Rodriguez Romero Violates the *Accardi* Doctrine with Respect to 8 C.F.R. § 236.23(d)

95. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

96. The *Accardi* doctrine requires the government and its agencies to follow their own binding rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Where a regulation governing agency action is promulgated, citizens and noncitizens alike are entitled to "that due process required by the regulation." *Id.* at 268.

97. Here, DHS' own regulations recognize that DHS' grant of Ms. Rodriguez Romero's DACA renders her "lawfully present" in the United States. 8 C.F.R. § 236.21(c)(3). The regulations also recognize the limited means by which USCIS can revoke her lawful presence pursuant to DACA. 8 C.F.R. § 236.23(d). That process requires, as relevant here, that USCIS issue a NOIT Ms. Rodriguez Romero's DACA and an opportunity to respond prior to termination. 8 C.F.R. § 236.23(d)(1).

98. Because DACA cannot be renewed from detention, 8 C.F.R. § 236.23(a)(2), jailing a DACA recipient without an opportunity for a bond hearing is tantamount to termination of DACA outside of the regulatorily-proscribed procedures.

99. Here, USCIS never sent Ms. Rodriguez Romero a NOIT and instead jailed her without a legitimate purpose. Her continued loss of liberty is a de facto DACA termination that contravenes DHS' own regulations thereby running afoul of the *Accardi* doctrine.

COUNT VIII
Respondents' Incarceration of Ms. Rodriguez Romero Violates her Procedural Due Process Rights Protected by the Fifth Amendment.

100. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

101. Here, Ms. Rodriguez Romero reasonably relied on government assurances—made explicit through innumerable public statements—that DACA provides some protection from arrest, detention, and removal for those with a valid DACA grant. The *Mathews v. Eldridge* test therefore applies and Respondents' decision to jail her without notice and without an opportunity to be heard despite her DACA grant violates procedural due process.

102. Indeed, Ms. Rodriguez Romero possessed a "cognizable interest in her continued freedom from detention" due to her almost twenty-seven years in the United States, almost twenty of which were pursuant to the Government's permission under DACA. *Santiago*, 2025 WL 2792588, at *11. Federal courts have held that several types of government-created liberty interests are entitled due process protection. *E.g.*, *Morrissey v. Brewer*, 408 U.S. 471 (1972) (revocation of parole conditions without due process is a deprivation of a protected liberty interest); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973) (revocation of probation without due process is a deprivation of a protected liberty interest); *Young v. Harper*, 520 U.S. 143 (1997) (revocation of pre-parole conditional supervision program is a deprivation of a protectable liberty interest); *U.S. v. Sanchez*, 225 F.3d 172, 175 (2d. Cir. 2000) (revocation of supervised release is a liberty interest entitled due process); *United States v. Higgs*, 731 F.2d 167 (3d Cir. 1984) (denial of bail following jury verdict is a deprivation of protected liberty interest); *Chhoen v. Marin*, 306 F.Supp.3d 1147 (C.D.Cal. 2018) (issuing a preliminary injunction prohibiting the government from removing

people it re-detained after originally releasing them years earlier without providing procedural remedies to seek release and relief from removal).

103. Here, "[g]iven the civil context, [Ms. Rodriguez Romero's] liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D. Cal. Jul. 17, 2025) (citations omitted). Moreover, ICE jails Ms. Rodriguez Romero in a facility that every court in this District has determined is akin to a penal institution. *E.g.*, *Daley v. Choate*, 22-cv-03034 (RM), 2023 WL 2336052 at *4 (D. Colo. 2023).

104. Second, the risk of erroneous deprivation of Ms. Rodriguez Romero's liberty interest is significant because ICE's decision to jail her lacked any procedures at all and Respondents have not provided her with any process since. *Lopez v. Sessions*, 18-cv-4189-RWS, 2025 WL 2932726 at *11 (S.D.N.Y. June 12, 2018) (finding that detention "in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest"). "That is especially true where, as here, there has been no individualized explanation of any kind for [Ms. Rodriguez Romero's] detention . . . . [Because] Respondents' position appears to be that she was arrested pursuant to a policy change that subjects her and those like her to mandatory detention." *Santiago*, 2025 WL 2792588, at *12.

105. Third, the Government's interest is not served by the process it gave Ms. Rodriguez Romero because, once again, it gave her no process. The Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). The non-existent process to jail Ms. Rodriguez Romero without notice, without cause, and without an interview after having repeatedly granted her DACA does not

address the government's purported interests and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. Once again, that is especially true where, as here, "it is undisputed that [Ms. Rodriguez Romero] is currently protected by DACA until [April 2027]" and Respondents are therefore prohibited from removing her while she is protected thereunder. *Santiago,* 2025 WL 2792588, at *12.

COUNT IX
Respondents' Incarceration of Ms. Rodriguez Romero Violates the Fourth Amendment of the Constitution and 8 U.S.C. § 1357(a)(2)

106. Ms. Rodriguez Romero incorporates by reference the allegations of fact set forth in the preceding paragraphs.

107. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme court has consistently recognized that immigration arrests and detentions are "seizures" within the meaning of the Fourth Amendment. *E.g. INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984).

108. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 US. 103, 114 (1975). That neutral adjudication can occur either before the arrest, in the form of a warrant, or promptly thereafter, in the form of a prompt judicial probable cause determination. *Id.* Arrest and continued incarceration of a person, including a noncitizen, absent a neutral, judicial determination of probable cause violates the Fourth Amendment. *Id. Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *Cnty. of Riverside*, 500 U.S. at 57.

109. Congress therefore enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407 – 08 (2012). The INA thus provides

immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Specifically, an officer must have "reason to believe" the person is violating the immigration laws and that the person is likely to escape before a warrant can be obtained." *Id.* Federal regulations track this strict limitation on warrantless arrests. 8 C.F.R. § 287.8(c)(2)(ii).

110. Here, DHS seized Ms. Rodriguez Romero while she was lawfully present in the United States pursuant to her current, unrevoked DACA grant. 8 C.F.R. § 236.23(d). No officer could therefore have reasonably believed that she was present in violation of the immigration laws or that she was likely to escape before a warrant could be issued. *See Gamez Lira*, 2025 WL 2581710, at *3–4.

111. Respondents therefore had no valid basis upon which to arrest her, and the Government is now required under the Fourth Amendment to secure a prompt judicial probable cause hearing before a neutral adjudicator. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Respondents have provided her no such hearing.

PRAYER FOR RELIEF

Ms. Rodriguez Romero respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

1. Issue a writ of *habeas corpus* requiring Respondents to either release Ms. Rodriguez Romero immediately or provide her with a bond hearing pursuant to 8 U.S.C. § 1226(a) within five days;

2. Considering the due process violations discussed herein, order that Respondents must carry a clear and convincing evidence burden at any forthcoming § 1226(a) bond hearing to demonstrate that its decision to incarcerate Ms. Rodriguez Romero was lawful and that her continued incarceration is necessary;

3. Enjoin respondents from transferring Ms. Rodriguez Romero outside the jurisdiction of the District of Colorado pending resolution of this case;

4. Declare Respondents' arrest of Ms. Rodriguez Romero and her continued incarceration in violation of the Fifth Amendment of the U.S. Constitution, the APA, the *Accardi* doctrine, and the Fourth amendment of the U.S. Constitution.

5. Award Ms. Rodriguez Romero attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and,

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

Dated: November 19, 2025

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VERIFICATION

I, Leslie Bezanilla, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and believe, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.:

/s/ Leslie Bezanilla
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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on November 19, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Leslie Bezanilla, hereby certify that I will mail via certified mail a copy of the attached and the accompanying papers to the following individuals at the following addresses within 48 hours unless the Court orders otherwise.

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And to: Kristi Noem and Todd Lyons, DHS/ICE, c/o:

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And to:

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