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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Blanca Nubia Higuita Florez,[1]

Petitioner,

v.

Fred Figueroa, in his official capacity as the Facility Administrator of the Eloy Detention Center;

Director, ICE Phoenix Field Office, in his or her official capacity;

Todd Lyons, in his official capacity as Acting Director of U.S. Customs and Immigration Enforcement;

Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security; and

Pamela Bondi, in her official capacity as Attorney General of the United States,

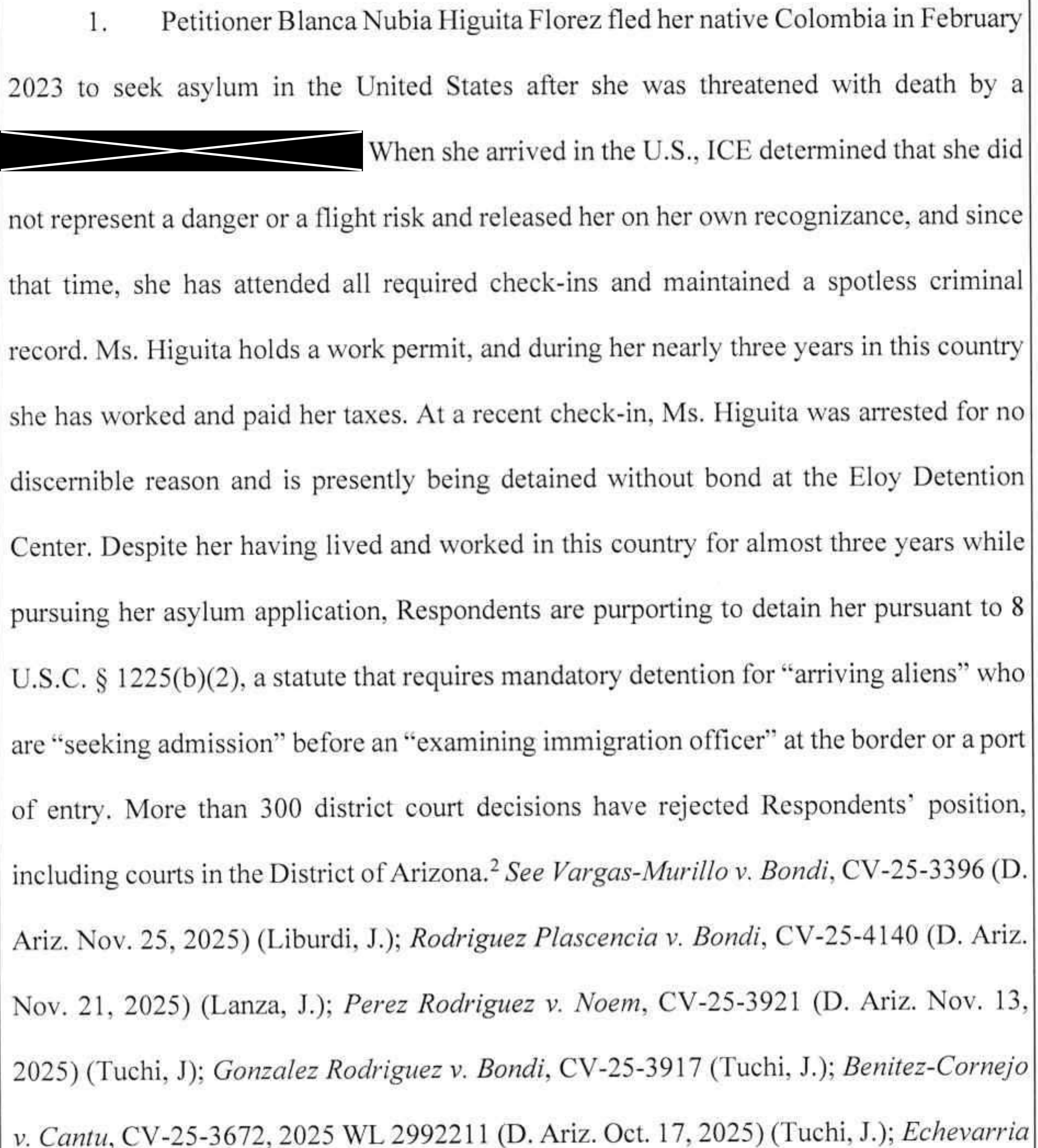
Respondents.

Case No. ________________

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

[1] Petitioner's name is misspelled "Flores" in some of the documents referenced herein.

INTRODUCTION



1. Petitioner Blanca Nubia Higuita Florez fled her native Colombia in February 2023 to seek asylum in the United States after she was threatened with death by a [redacted] When she arrived in the U.S., ICE determined that she did not represent a danger or a flight risk and released her on her own recognizance, and since that time, she has attended all required check-ins and maintained a spotless criminal record. Ms. Higuita holds a work permit, and during her nearly three years in this country she has worked and paid her taxes. At a recent check-in, Ms. Higuita was arrested for no discernible reason and is presently being detained without bond at the Eloy Detention Center. Despite her having lived and worked in this country for almost three years while pursuing her asylum application, Respondents are purporting to detain her pursuant to 8 U.S.C. § 1225(b)(2), a statute that requires mandatory detention for "arriving aliens" who are "seeking admission" before an "examining immigration officer" at the border or a port of entry. More than 300 district court decisions have rejected Respondents' position, including courts in the District of Arizona.[2] *See Vargas-Murillo v. Bondi*, CV-25-3396 (D. Ariz. Nov. 25, 2025) (Liburdi, J.); *Rodriguez Plascencia v. Bondi*, CV-25-4140 (D. Ariz. Nov. 21, 2025) (Lanza, J.); *Perez Rodriguez v. Noem*, CV-25-3921 (D. Ariz. Nov. 13, 2025) (Tuchi, J); *Gonzalez Rodriguez v. Bondi*, CV-25-3917 (Tuchi, J.); *Benitez-Cornejo v. Cantu*, CV-25-3672, 2025 WL 2992211 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Echevarria*

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[2] The court's opinion in *Demirel v. Fed. Detention Ctr. Philadelphia*, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025), cites 288 decisions. A dozen or more new ones are added each day on Westlaw.

v. Bondi, CV-25-3252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) (Lanza, J.); *Rosado v. Figueroa*, CV-25-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (Rayes, J.). In these cases, and hundreds of others like them, federal courts have ordered that Respondents either release individuals like Ms. Higuita or provide them with a bond hearing pursuant to 8 U.S.C. § 1226(a).

2. Additionally, Ms. Florez is a member of the class certified in *Maldonado Bautista v. Santacruz*, 5:25-cv-1873-SSS-BFM, Dkt. 82 (C.D. Cal. Nov. 25, 2025). The *Maldonado Bautista* court entered partial summary judgment on November 25, 2025, declaring that class members are detained pursuant to § 1226(a), not § 1225(b). *Id.* at Dkt. 81. That ruling is now res judicata as to Ms. Higuita's claim that she is properly detained pursuant to § 1226(a).

3. Petitioner has been placed in removal proceedings, where she is charged with entering the United States without inspection pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and entry without a valid entry document pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(1). She is represented by counsel in her removal proceedings. In her immigration case, Ms. Higuita will be seeking asylum based on past persecution in Colombia, as well as a U visa, a special form of relief for those who have been victims of a crime. Her eligibility for the latter stems from an incident where her phone was stolen and she was blackmailed by the thief, who posted intimate photos from her phone to her social media account.

4. On July 8, 2025, DHS issued a new policy instructing all Immigration and

1 Customs Enforcement (ICE) employees to consider anyone inadmissible under
2 § 1182(a)(6)(A)(i)—*i.e.*, those who entered the United States without inspection—to be
3 an "applicant for admission" under § 1225(b)(2)(A) and therefore subject to mandatory
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5 detention. Consistent with this policy, DHS has denied Petitioner release from
6 immigration custody.
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8 5. Petitioner's detention on this basis violates the plain language of the INA.
9 Section 1225(b)(2) does not apply to individuals like Petitioner, given that she entered the
10 United States nearly three years ago and is not seeking admission at the border or a port
11 of entry. Instead, such individuals are subject to discretionary detention under § 1226(a),
12 which allows for release on conditional parole or bond. That statute expressly applies to
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14 people who, like Petitioner, are charged as inadmissible for having entered the United
15 States without inspection.
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17 6. Respondents' new legal interpretation is plainly contrary to the statutory
18 text, statutory framework, Congressional intent, decades of agency practice, and decisions
19 of federal courts across the nation, including several courts in this district, which apply
20 § 1226(a) to people like Petitioner. Further, Respondents' detention of individuals like
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22 Petitioner without a bond hearing to determine whether they are a flight risk or danger to
23 others violates their right to due process.
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25 7. In addition, district courts, including several in the Ninth Circuit, have held
26 that when a petitioner has previously been released on an order of release on recognizance,
27 like Ms. Higuita, Respondents may not revoke that person's liberty without a pre-
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deprivation hearing. As discussed more fully below, Respondents' failure to afford Petitioner a pre-deprivation hearing before revoking her release on recognizance violates her right to due process and requires her immediate release on the terms that existed before her re-detention.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring her immediate release, or in the alternative, a bond hearing under § 1226(a), at which Respondents bear the burden to demonstrate by clear and convincing evidence that his continued detention is warranted.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Eloy Detention Center in Eloy, Arizona, within the jurisdiction of this Court.

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

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

VENUE

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

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because

Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

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

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000). The Supreme Court "has constantly emphasized the fundamental importance of the writ of habeas corpus in our constitutional scheme, and the Congress has demonstrated its solicitude for the vigor of the Great Writ." *Johnson v. Avery*, 393 U.S. 483, 485 (1969).

PARTIES

16. Petitioner Blanca Nubia Higuita Florez is a citizen of Colombia who has resided in the United States since February 2023. She has been in immigration detention since September 22, 2025.

17. Respondent Fred Figueroa is the Warden of the Eloy Detention Center, which detains individuals suspected of civil immigration violations pursuant to a contract with Immigration and Customs Enforcement (ICE). He is named in his official capacity.

18. Respondent Director of the ICE Phoenix Field Office is responsible for ICE activities in Arizona, including the Eloy Detention Center. This position was recently held by John Cantu, but he has apparently been replaced, and it is unclear who now fills this position. Once this individual's name is supplied by Respondents in this case, his name can be substituted in the caption. Respondent's place of business is in the District of Arizona, and he or she is an immediate legal custodian responsible for Petitioner's detention. He or she is named in his or her official capacity.

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

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

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

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

FACTUAL BACKGROUND

22. Petitioner Blanca Nubia Higuita Florez is a national of Colombia. She entered the United States without inspection on February 27, 2023 and has lived here ever since. She lived in Maryland prior to her detention.

23. Ms. Higuita was issued a Notice to Appear on February 28, 2023, placing her in removal proceedings; however, the case was ultimately closed by the immigration judge for ICE's failure to prosecute. *See* ECF No. 1-1 (EOIR case screenshot).

24. When ICE arrested her and put her in removal proceedings in February 2023, it released her on an Order of Release on Recognizance, which required her to attend period ICE check-ins and follow other requirements. *See* ECF No. 1-2 (Order of Release on Recognizance). She complied with all the requirements of the release order, including appearing at check-ins at considerable difficulty and expense to herself, given that she lived in Maryland and ICE scheduled the check-ins in Texas.

25. After her release, she hired someone she believed was a legal assistant to assist her in completing and submitting an asylum application to USCIS. That application was filed on or around June 28, 2023. However, USCIS apparently closed that application, although Ms. Higuita does not know when or why, as she never received a copy of any notice.

26. On September 22, 2025, DHS issued Ms. Higuita a new Notice to Appear (ECF No. 1-3), charging her with being "an alien present in the United States who has not been admitted or paroled" pursuant to U.S.C. § 1182(a)(6)(A)(i) because she had entered the United States without inspection. Notably, despite Respondents' use of § 1225(b)(2) to detain her, the box stating "You are an arriving alien" is not checked on the NTA. *See, e.g., E.M. v. Noem*, 2025 WL 3157839 (D. Minn. Nov. 12, 2025), at *7 (citing this as evidence that § 1226, not § 1225, applied to petitioner's detention); *Guaita Quinapanta v. Bondi*, 2025 WL 3157867 (W.D. Wis. Nov. 12, 2025), at *5 (same).

27. Ms. Higuita has no criminal history in either the U.S. or Colombia. *See* ECF No. 1-4 at 2 (Form I-213, noting "Subject has no criminal history.") She has a valid Employment Authorization Document and lawfully worked and paid taxes until her detention, which now prevents her from working to earn money to support herself.

28. Petitioner is represented by counsel in her removal proceedings. She is seeking asylum as a result of persecution she suffered in Colombia, as well as a U visa as a crime victim.

29. Pursuant to Respondents' new policy, discussed *infra*, Petitioner remains in mandatory detention. Absent relief from this Court, she faces the prospect of months, or even years, in immigration custody, separated from her family and community, without ever receiving an individualized bond hearing to determine whether her continued detention is warranted or necessary. This is a violation both of the INA and the Due Process Clause.

EXHAUSTION OF REMEDIES

30. No statutory requirement of administrative exhaustion applies to Petitioner's case. *See, e.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024) (noting that in habeas cases under 28 U.S.C. § 2241, "the government admits administrative exhaustion is not required by statute"). Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which she could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

31. In particular, DHS has taken the position that noncitizens like Petitioner, who entered without inspection, are subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that she could exhaust before seeking habeas relief. *See Singh v. Lewis*, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) ("[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS.

Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review"); *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) ("Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.").

32. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-,* 27 I&N Dec. 803, 804 n.2 (BIA 2020) (holding that IJs and the BIA lack authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); s*ee also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

33. As courts have held, the Government's argument that petitioners should be forced to exhaust futile administrative remedies before seeking habeas relief "is Kafkaesque. Requiring Petitioner to exhaust his administrative remedies would be futile because Respondents' position is that he is *statutorily precluded* from obtaining the relief he seeks." *Delgado Avila v. Crowley*, -- F. Supp. 3d --, 2025 WL 3171175 (S.D. Ind. Nov. 13, 2025), at *2 (citing *Valencia v. Noem*, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025), at *2).

ARGUMENT

I. Despite Respondents' recent attempts to expand mandatory detention under § 1225(b), Petitioner in this case remains subject to discretionary detention under § 1226(a) and is eligible for release.

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

35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens who are in removal proceedings. *See* 8 U.S.C. § 1229a; *see also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings"). Under § 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained, but are generally entitled to seek release on bond. The bond may be set by ICE itself as part of an initial custody determination, *see* 8 C.F.R. § 1236.1(c)(8), and/or the individual may seek a bond hearing in immigration court at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Section 1226(a) is the statute that, for decades, has been applied to people like Petitioner, who has been living in the United States and is charged with inadmissibility under § 1182(a)(6)(A)(i).

36. Section 1226(c) "carves out a statutory category" of noncitizens from § 1226(a) for whom detention is mandatory, composed of individuals who have committed certain "enumerated … criminal offenses [or] terrorist activities." *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens.

§ 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under § 1226(a). Courts have confirmed this understanding of § 1226. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); *see also, e.g.*, *Gomes v. Hyde*, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)'s discretionary detention framework").

37. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). *See Jennings*, 583 U.S. at 287, 289 (explaining that § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States."). Noncitizens subject to mandatory detention under § 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300. Section 1225(b)(2) is the statute that Respondents have suddenly decided is applicable to people like Petitioner.

38. Section 1225 is split into two categories. Section 1225(b)(1) provides for mandatory detention of noncitizens charged with enumerated grounds of inadmissibility

and placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry.

39. Lastly, the INA also provides for detention of noncitizens who have already been ordered removed, *see* 8 U.S.C. § 1231. Section 1231 is not relevant here.

40. This case challenges Respondents' erroneous decision that Petitioner is subject to mandatory detention without bond under § 1225(b)(2), rather than being bond-eligible under § 1226(a).

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

42. Following the 1996 enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not detained under § 1225 and were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, [noncitizens] 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.").

43. Thus, in the three decades that followed, people who entered without inspection and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

44. However, on July 8, 2025, ICE, "in coordination with" the Department of Justice, suddenly announced a new governmental policy that rejected the well-established understanding of the statutory framework and reversed decades of agency practice.

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

46. In decision after decision, federal courts—both nationwide and here in the District of Arizona—have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *See Vargas-Murillo v. Bondi*, CV-25-3396 (D. Ariz. Nov. 25, 2025) (Liburdi, J.); *Rodriguez Plascencia v. Bondi*, CV-25-

4140 (D. Ariz. Nov. 21, 2025) (Lanza, J.); *Perez Rodriguez v. Noem*, CV-25-3921 (D. Ariz. Nov. 13, 2025) (Tuchi, J); *Gonzalez Rodriguez v. Bondi*, CV-25-3917 (Tuchi, J.); *Benitez-Cornejo v. Cantu*, CV-25-3672, 2025 WL 2992211 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Echevarria v. Bondi*, CV-25-3252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) (Lanza, J.); *Rosado v. Figueroa*, CV-25-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (Rayes, J.); *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Lopez Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, -- F. Supp. 3d --, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, -- F. Supp. 3d --, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Larysa Kostak v. Trump et al.*, 25-CV-1093 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, -- F. Supp. 3d --, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Garcia v. Noem*, 2025 WL 2549431 (S.D. Ca. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5,

1 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025);
2 *Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*,
3 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D.
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5 Mass. Sept. 9, 2025); *Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025);
6 *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez Santos v.*
7 *Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL
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9 2637503 (N.D. Cal. Sept. 12, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo.
10 Sept. 16, 2025); *Maldonado Vazquez v. Feeley,* 2025 WL 2676082 (D. Nev. Sept. 17,
11 2025); *Velasquez Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan*
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13 *v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, 2025
14 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565
15 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21,
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17 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito*
18 *Barrajas v. Noem*, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, 2025
19 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 2025 WL 2732717
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21 (M.D. Fla. Sept. 25, 2025); *Valencia Zapata v. Kaiser*, 2025 WL 2741654 (N.D. Cal. Sept.
22 26, 2025); *Zumba v. Noem*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Tocagon v. Moniz*,
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25 2778036 (D. Mass. Sept. 29, 2025); *J.U. v. Maldonado*, 2025 WL 2772765 (E.D.N.Y.
26 Sept. 29, 2025); *Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Quispe-*
27 *Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *A.A. v. Olson*, 2025 WL
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2886729 (D. Minn. Oct. 8, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Miguel v. Noem*, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Loa Caballero v. Baltazar*, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Martinez-Elvir v. Olson*, 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025); *Ayala Amaya v. Bondi*, 2025 WL 3033880 (D.N.J. Oct. 30, 2025); *Tumba Huamani v. Francis*, 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025); *Reyes Arizmendi v Noem*, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025); *Chilel v. Sheehan*, 2025 WL 3158617 (N.D. Iowa Nov. 12, 2025); *Guaita Quinapanta v. Bondi*, 2025 WL 3157867 (W.D. Wis. Nov. 12, 2025); *Delgado Avila v. Crowley*, -- F. Supp. 3d --, 2025 WL 3171175 (S.D. Ind. Nov. 13, 2025); *Mairena-Munguia v. Arnott*, -- F. Supp. 3d --, 2025 WL 3229132 (W.D. Mo. Nov. 19, 2025).

47. This list is far from complete. As the media has reported, the government's new no-bond policy has "led to dozens of recent rulings from gobsmacked judges who say the administration has violated the law and due process rights .... The pile up of decisions is growing daily." Kyle Cheney and Myah Ward, *Trump's New Detention Policy Targets Millions Of Immigrants. Judges Keep Saying It's Illegal*, Politico (Sept. 20, 2025, at 4:00 PM ET), https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850. In fact, as of November 18, 2025, 288 district court opinions around the country support Petitioner's position, compared with only 6 that have endorsed Respondents' novel arguments. *Demirel v. Fed. Detention Ctr. Philadelphia*, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025), at *1 (listing all 288 cases in an appendix).

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48. In recent months, courts in this district have repeatedly rejected the Government's interpretation of the INA and granted writs of habeas corpus to detained noncitizens to whom Respondents denied a bond hearing.

49. On October 3, 2025, in *Echevarria*, Judge Lanza granted habeas relief to a petitioner whom DHS purported to detain under § 1225(b), finding that "[i]t is hard to see how Petitioner could be deemed to have been 'seeking' admission at the time of [his detention]. By that point, Petitioner had already been present in the United States for 24 years." 2025 WL 2821282 at *6. The court found that the petitioner was detained subject to § 1226(a), not § 1225(b). 2025 WL 2337099, at *5, (noting that "[t]he Court … agrees with the majority of courts that have conclude that § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.").

50. Similarly, on November 13, 2025, in *Perez Rodriguez* Judge Tuchi cited the fact that "the vast majority of courts concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention. This Court agrees with the weight of authority." *Perez Rodriguez*, 25-CV-3921, Dkt. 8, at 3-4 (collecting cases). Judge Tuchi agreed with Judge Lanza that Respondents' interpretation "would push the statutory text beyond its breaking point" and "fails to take account of the entirety of the statutory scheme." *Id.* at 3 (citing *Echevarria*, 2025 WL 2821212, at *6, 9).

51. On September 5, 2025, the BIA issued a precedential decision that rejected the overwhelming consensus of the federal courts. *See Matter of Yajure Hurtado*, 29 I&N

Dec. 216 (BIA 2025). That decision held that all noncitizens who entered the United States without admission or parole are ineligible for bond hearings before an IJ.

52. The *Yajure Hurtado* decision—like the government policy it seeks to uphold—defies the INA. As one court recently wrote, the BIA's reasoning is unpersuasive and "a non-binding decision that [] deviat[es] from longstanding practice." *Alejandro*, 2025 WL 2896348, at *6. *See also Sampiao*, 2025 WL 2607924, at *8 n.11 (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Beltran Barrera*, 2025 WL 2690565, at *5 (same); *Chogllo Chafla*, 2025 WL 2688541, at *7-8 (same).

53. As court after court has explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

55. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez*, 779 F. Supp. 3d at 1256-57 (citation omitted).

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

57. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). *See Jennings*, 583 U.S. at 287 (explaining 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.").

58. The text of § 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms "applicant for admission" and "seeking admission" in § 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

59. Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (emphasis added). As courts have recognized, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to § 1226's general title: "Apprehension and detention of aliens."

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60. Further, § 1225(b)(2)'s specific subheading, "Inspection of Other Aliens," subsection 1225(b)(2)(B)'s mention of "crewm[e]n" and "stowaway[s]," and § 1225(b)(2)(C)'s use of the present participle "arriving," reinforce the limited scope of § 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

61. Finally, the term "seeking" in "seeking admission" "implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera,* 2025 WL 2690565, at *4. Noncitizens who have been present in the country for years are not "seeking admission." *Lopez-Campos*, 2025 WL 2496379, at *6; *Beltran Barrera*, 2025 WL 2690565, at *4.

62. The INA's entire framework is premised on § 1225 governing detention of "arriving [noncitizens]" while § 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301; *see also Lopez Benitez*, 2025 WL 2371588, at *8 ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez*, 792 F. Supp. 3d at 222 ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission

into the country,' is consonant with the core logic of our immigration system") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

63. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]") (cleaned up). The government's current reading of § 1225(b)(2) violates this principle.

64. Section 1226(c) includes carve-outs for certain categories of inadmissible noncitizens, who would otherwise fall under § 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve-outs in § 1226(c) indicates that, contrary to Respondents' interpretation, there are noncitizens who have not been admitted and that are not governed by § 1225's mandatory detention scheme. Indeed, if the government's interpretation were correct, it would render these portions of § 1226(c) superfluous since those same individuals would already be subject to mandatory detention under § 1225(b)(2).

65. The recent amendment to § 1226(c) confirms this statutory framework. Just this year, Congress passed the Laken Riley Act, which added additional categories of § 1226(a) carve-outs that are now subject to mandatory detention under § 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically,

the Laken Riley Act mandates detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if § 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL 2690565, at *4; *Lopez-Campos*, 2025 WL 2496379, at *8.

66. As the court made clear in *Singh v. Bondi*, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025), at *5, the fact that Ms. Higuita was released on an order of recognizance is "strong evidence" that she is detained pursuant to § 1226, not § 1225. This is because "[i]f [Ms. Higuita] was deemed an applicant for admission by virtue of [her] entry into the United States, the government was statutorily obligated to detain [her] under § 1225(b) at the time [she] was initially apprehended. It did not do so. Instead, [Ms. Higuita] was released on [her] own recognizance, subject to conditions of supervision, based expressly on § 1226. In fact, § 1226 was the *only* basis cited for [Ms. Higuita's] release. Under § 1225, the government's options were limited to removal or detention pending review by an asylum officer. The fact that the government's release of [Ms. Higuita], on [her] own recognizance, was based on § 1226 is strong evidence that [she] currently remains subject" to that statute.

67. Both the Notice to Appear and the Order of Release on Recognizance specifically cite to § 1226, but rather than acknowledge its own prior position on

Petitioner's eligibility for bond as stated in its own agency documents, Respondents baldly claim that Petitioner is detained under § 1225(b)(2). This Court should discount Respondents' conclusory statements and instead take DHS's documentation citing to detention authority under § 1226 "at face value." *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025), at *6. Post-hoc justifications purporting to change the basis for an individual's detention deserve no credit. *Beltran Barrera v. Tindall,* 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025), at *4; *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025), at *5; *Lopez-Campos*, 2025 WL 2496379, at *7.

68. The mandatory-detention provision of § 1225(b)(2) does not apply to people who have already entered and were long residing in the United States at the time they were apprehended by immigration authorities and detained. Because § 1226(a), not § 1225(b), is the applicable statute, Petitioner's detention without eligibility for bond is unlawful.

II. Petitioner's Detention Violates the INA

69. As discussed above, mandatory detention under § 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals who entered without inspection and were later detained inside the country.

70. Here, "there is nothing in the record to suggest that [Petitioner] ever attempted to gain lawful entry." *Lopez-Campos*, 2025 WL 2496379, at *6. Petitioner entered without inspection and lived in the United States for nearly three years before being detained. In addition, Petitioner's Notice to Appear indicates that she is a noncitizen present in the United States; the "arriving alien" box is not checked. Furthermore, she was

previously released on her own recognizance under § 1226. As such, Petitioner is not subject to mandatory detention under § 1225(b)(2).

71. Petitioner's ongoing detention is not authorized under § 1226(a), either. As discussed above, § 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, where Ms. Higuita has no criminal history and has ties to her community, including her work, she would be eligible for bond under § 1226(a).

72. Lacking any statutory basis for her detention, Respondents must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether she should remain in custody. At such a bond hearing, Respondents must bear the burden to demonstrate by clear and convincing evidence that Petitioner's continuing detention is warranted. "When granting immigrant detainees' habeas petitions, an 'overwhelming consensus' of courts have placed the burden on the government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025), at *8 (citing cases from the First, Second, Third, and Ninth Circuits and several district courts); *see also L.G.*, 744 F. Supp. 3d at 1186 (recognizing that "the rights of noncitizens are not the same as citizens" but nonetheless concluding that due process requires the burden to be on the Government).

III. Applying the three-part test from *Mathews v. Eldridge*, Petitioner's detention violates her due process rights.

73. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S.

292, 306 (1993)). To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

74. Under *Mathews*, courts weigh three factors: (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." 424 U.S. at 335.

a. Private Interest

75. As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained for over two months in conditions that are indistinguishable from criminal incarceration. This detention prevents her from seeing her family, going to work to support herself, and deprives her of any privacy and freedom of movement. Courts in similar cases have not hesitated to find that the first *Mathews* factor weighs in favor of petitioners. *See, e.g., Sanchez Alvarez v. Noem,* 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025), at *7 ("The first *Mathews* factor weighs strongly in favor of Petitioner. There is no dispute that Petitioner has a significant private interest in avoiding detention."); *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025), at *7

("Ochoa Ochoa has a cognizable private interest in being freed from unlawful detention without any opportunity for a bond hearing").

b. ***Risk of Erroneous Deprivation***

76. As to the second *Mathews* factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025). The current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention.

77. As discussed above, the statutory text and framework, congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation leave no doubt that § 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

78. Here, Petitioner was not arriving at a border or port of entry when she was detained. Instead, she entered without inspection and lived in the United States for nearly three years before being detained. As such, Petitioner is not subject to mandatory detention under § 1225(b)(2).

79. Therefore, it is clear that the government's current procedure, subjecting Petitioner to mandatory detention under § 1225(b)(2), creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement.

80. Additionally, there are reasonable alternatives available for Respondents to pursue. As discussed above, § 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under § 1226(a) but first requires a bond hearing to make an individualized determination of their risk of flight or dangerousness. Courts have held that without such a bond hearing, the risk of erroneous deprivation of a petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness."); *Ochoa*, 2025 WL 2938779, at *7 ("there is a severe risk of erroneous deprivation"); *Sanchez Alvarez*, 2025 WL 2942648, at *8 ("The second *Mathews* factor also weighs in Petitioner's favor. An individualized bond hearing ensures that an immigration judge can assess whether Petitioner poses a flight risk or a danger to the community, reducing the risk that Petitioner will suffer an erroneous deprivation of his rights.") (internal quote marks omitted).

c. Government Interest

81. As to the third *Mathews* factor, the government's interest in maintaining the current procedure is minimal here. The new interpretation of § 1225(b)(2) – that people like Petitioner who have resided in the United States for years are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, congressional intent, almost three decades of prior practice, and the decisions of federal

courts across the nation. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of § 1226(a), which requires a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether she is a danger to the community or a flight risk. *See, e.g., Sanchez Alvarez*, 2025 WL 2942648, at *8 ("Respondents have not established a significant interest in potentially detaining someone who could convince a neutral adjudicator … that his ongoing detention is not warranted") (cleaned up); *Ochoa*, 2025 WL 2938779, at *7 ("the government's interest is slight insofar as Ochoa Ochoa has been redetained without an individualized custody determination evaluating dangerousness and flight risk.").

IV. Respondents' failure to provide Petitioner with a pre-deprivation hearing provides an additional, independent basis for this Court to order her release.

82. Petitioner was originally released on an order of recognizance (Form I-220A), which required Petitioner to comply with certain requirements, such as not breaking any laws and making sure to attend all immigration court hearings. *See* ECF No. 1-2. Petitioner complied with all the terms of her release order.

83. Due process requires that if DHS seeks to re-arrest a person like Petitioner—who has lived in the United States for nearly three years without incident after DHS first released her, and has attended all required immigration check-ins and complied with the terms of her release—the government must afford a hearing before a neutral decisionmaker

to determine whether re-detention is justified, and whether the person is a flight risk or danger to the community.

84. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

85. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." *Id.*

86. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires "adequate procedural protections" that test whether the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

87. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner.") (cleaned up); *see also, e.g.*, *Morrissey*, 408 U.S. at 485 (requiring

"preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (cleaned up)).

88. Numerous courts have recognized that these principles apply with respect to the re-detention of the many noncitizens that DHS has recently begun taking back into custody, often after such persons have been released for months or years. Some of these cases deal with noncitizens released on parole, while others involve noncitizens released subject to an order of release on recognizance or an order of supervision, but the legal analysis is the same, regardless of the nomenclature.

89. For example, in *J.C.L.A. v. Wofford*, 2025 WL 2959250 (E.D. Cal. Oct. 17, 2025), the court determined that the petitioner's "release on his own recognizance pending his removal proceedings is similar" to the scenarios in *Morrissey* and other Supreme Court cases, finding that the petitioner "has a protected liberty interest" in his release on recognizance. *Id.* at *4. The *J.C.L.A.* court applied the framework from *Mathews v. Eldridge*, 424 U.S. 319 (1976), to hold that the petitioner's re-detention could not occur absent a pre-deprivation bond hearing. *Id.* at *5-7.

90. In applying the three *Mathews* factors, the *J.C.L.A.* court held that the petitioner "has a significant private interest in remaining free from detention … Petitioner had been out of custody for over a year, and during that time, he obtained a work authorization and he lived with and cared for his family, including his two minor children.

His detention denies him that freedom." *Id.* at *6. The court further explained that the risk of an erroneous deprivation of liberty is high "where, as here, the petitioner has not received any bond or custody redetermination hearing." *Id.* (cleaned up). Finally, the court explained that "the Government's interest in detaining petitioner without a hearing is low. In immigration court, custody hearings are routine and impose a minimal cost." *Id.* at *7 (cleaned up). As a result, the court ordered the petitioner's immediate release. *Id.* at *8.

91. Other courts have reached similar conclusions in similar scenarios. *See, e.g.*, *E.A. T.-B. v. Wamsley*, -- F. Supp. 3d --, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025) (ordering immediate release of petitioner who was redetained without a hearing after having previously been released on his own recognizance); *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, -- F. Supp. 3d --, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar); *Rodriguez v. Kaiser*, 2025 WL 2855193 (E.D. Cal. Oct. 8, 2025), at *6 (similar); *Faizyan v. Casey*, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025), at *7 (similar).

92. The same framework and principles apply here and compel Petitioner's immediate release. *See, e.g., Lopez v. Lyons*, 2025 WL 3124116 (E.D. Cal. Nov. 7, 2025), at *3-4 ("Petitioner was released on his own recognizance by the Government in 2022. Since that time, he has remained out of custody, without incident. Petitioner has a clear

liberty interest in his continued freedom. . . . [Petitioner] is entitled to process, and that process should have been afforded to him immediately upon detention.")

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

94. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being detained and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. But Respondents' actions here violate § 1226(a) too because, to date, Respondents have failed to conduct a bond hearing for Petitioner.

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

COUNT II

Violation of the Due Process Clause (U.S. Const. amend. V)

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

97. 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*, 533 U.S. at 690.

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

99. Petitioner entered the country without inspection and lived in the United States for nearly three years before being detained. Such an individual may only be subject to discretionary detention under 8 U.S.C. § 1226(a), which provides for release on bond. Respondents now erroneously detain Petitioner under the mandatory provision in § 1225(b)(2).

100. Respondents' detention of Petitioner without any neutral decisionmaker having determined that her continued detention is warranted because of danger or flight risk violates her due process rights.

101. Additionally, Respondents' revocation of Petitioner's release on recognizance without a pre-deprivation hearing violates her right to due process and requires her immediate release.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause ordering Respondents to show cause within

three days as to why this Petition should not be granted as required by 28 U.S.C. § 2243;

c. Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner subject to the same terms as her original Order of Release on Recognizance;

d. In the alternative, issue a writ of habeas corpus requiring Petitioner's immediate release unless Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days, at which Respondents bear the burden of justifying Petitioner's continued detention by clear and convincing evidence;

e. Enjoin Respondents from denying bond on the basis of § 1225(b) or *Yajure Hurtado*;

f. Enjoin Respondents from re-detaining Petitioner without first affording her a pre-deprivation hearing before a neutral decisionmaker;

g. Declare that Petitioner's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;

h. Award Petitioner her reasonable attorney's fees and costs under the Equal Access to Justice Act or other applicable law;

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

Dated: November 26, 2025

Respectfully submitted,

/s/ James D. Jenkins
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Counsel for Petitioner

**TO BE ADMITTED PRO HAC VICE*

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's immigration attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 26, 2025

Respectfully submitted,

/s/ Larisa Antonisse
Larisa Antonisse