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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Minerva Lopez Hernandez,

9 Petitioner,

10 vs.

11
12 Pamela Bondi, Attorney General of the
13 United States;

14 John Cantu, U.S. Immigration and
15 Customs Enforcement Phoenix Field
16 Office Director;

17 Kristi Noem, Secretary of the U.S.
18 Department of Homeland Security;

19 Fred Figueroa, Warden, Eloy Detention
20 Center;

21 Todd M. Lyons, Acting Director,
22 Immigration and Customs Enforcement,
23 U.S. Department of Homeland Security;

24 Respondents.
25

Case No.:

File No: 

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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

**ORAL ARGUMENT
REQUESTED**

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INTRODUCTION

Comes now, Petitioner, Minerva Lopez Hernandez, brings this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; Article I, Section 9, Clause 2 of the United States Constitution (“Suspension Clause”). The efforts to continually detain petitioner constitute a “severe restraint” on her individual liberty such that Petitioner is “in custody” of the Respondents in violation of the ... laws of the United States. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241. DHS asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), however, that provision does not apply to her. Instead, Petitioner’s custody is governed by 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole. By denying Petitioner an individualized bond hearing, Respondents violate the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the United States Constitution.

Petitioner, who entered the United States in 2011 and has resided here ever since, is not an applicant for admission. Her custody is properly governed by 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole.

1 The Board of Immigration Appeals recently issued *Matter of Yajure*
2 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)(2)(A) to require
3 mandatory detention of all individuals who entered without inspection. That
4 decision represents the agency’s most recent view of the detention statute, but it
5 illustrates DHS’s unlawful expansion of § 235(b)(2)(A). That decision does not
6 control this Court. Petitioner entered the United States on 2011 and lived in the
7 U.S ever since before ICE arrested her. She is not an “arriving alien” at the
8 threshold seeking admission, but rather a long-term resident who falls under §
9 236(a).
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13 Pursuant to this Court’s inherent powers in habeas corpus proceedings,
14 Petitioner respectfully requests this Court order Respondents to release her from
15 detention.
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18 **I. PARTIES**

19 A. Petitioner Minerva Lopez Hernandez is a native of Mexico. She is currently
20 detained at Eloy Correctional Center, 1705 E Hannah Rd, Eloy, AZ 85131.
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22 B. Respondent Pamela Bondi is named in her official capacity as the Attorney
23 General of the United States. In this capacity, she is responsible for the
24 administration of the immigration laws as exercised by the Executive Office
25 for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. §
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1 1103(g). She routinely transacts business in the District of Arizona, is legally
2 responsible for administering Petitioner's removal proceedings and the
3 standards used in those proceedings, and as such, is the legal custodian of
4 Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950
5 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.
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8 C. Respondent, John Cantu, is the Phoenix Field Office Director for
9 Enforcement and Removal Operations, U.S. Immigration and Customs
10 Enforcement. He is the local ICE official who has immediate authority over
11 the Petitioner. Respondent Cantu's address is Field Office Director,
12 Enforcement and Removal Operations, U.S. Immigration and Customs
13 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,
14 85004.
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18 D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of
19 Homeland Security ("DHS"), the federal agency responsible for enforcing
20 Petitioner's arrest, detention and removal. DHS's address is U.S.
21 Department of Homeland Security, Washington, DC 20528.
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23 E. Respondent, Fred Figueroa, is the warden of the Eloy Detention Center,
24 where Petitioner is being held. He is the custodian of Petitioner and is named
25 in his official capacity.
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1 F. Todd M. Lyons is the Acting Director, Immigration and Customs
2 Enforcement, U.S. Department of Homeland Security, the federal agency
3 responsible for enforcing Petitioner's arrest, detention and removal. DHS's
4 address is U.S. Department of Homeland Security, Washington, DC 20528.
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7 **II. JURISDICTION AND VENUE**
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9 The Court has jurisdiction under the Suspension Clause. The Suspension
10 Clause provides, "The privilege of the Writ of Habeas Corpus shall not be
11 suspended, unless when in Cases of Rebellion or Invasion the public Safety may
12 require it." U.S. Const. Art. I § 9, cl. 2.
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14 This case arises under the United States Constitution; the INA, 8 U.S.C. §§
15 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth
16 Amendment and the Fourteenth Amendment. Petitioner's current detention
17 pending her removal order as enforced by Respondents constitutes a "severe
18 restraint [] on [Petitioner's] individual liberty," such that Petitioner is "in custody
19 in violation of the . . . laws . . . of the United States." *See Hensley*, 411 U.S. at 351
20 (1973); 28 U.S.C. § 2241(c)(3).
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23 No Supreme Court or Ninth Circuit precedent applicable to immigration
24 detainees, nor the habeas statute, indicate that venue is not proper in the District of
25 Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because
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1 a substantial part of the events and omissions which gave rise to this action
2 occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at
3 the Eloy Detention Center in Eloy, Arizona. She is in removal proceedings before
4 the Immigration Court in Florence, Arizona, and on December 1st, 2025, her
5 request for a custody redetermination was denied on the grounds that DHS had
6 classified her as subject to mandatory detention under 8 U.S.C. § 1225(b)(2).
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9 **III. FACTS GIVING RISE TO THE HABEAS PETITION**

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11 Petitioner, Minerva Lopez Hernandez, is a native and citizen of Mexico. She
12 entered the United States on 2011 and has resided continuously in in the U.S since
13 that date.
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15 Officers of U.S. Immigration and Customs Enforcement (“ICE”) arrested
16 Petitioner in Arizona and placed her in removal proceedings under § 240 of the
17 Immigration and Nationality Act (“INA”). She was taken into custody and
18 transported to the Eloy Detention Center in Florence, Arizona, where she remains
19 detained today.
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22 Following her arrest, ICE determined that Petitioner was subject to
23 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). Petitioner requested a
24 custody redetermination before an Immigration Judge, but her request was denied
25 on December 1st, 2025, on the grounds that the Immigration Court lacked
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1 jurisdiction because DHS had classified her as subject to § 1225(b)(2) pursuant to
2 *Matter of Yajure Hurtado*.
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4 On September 5, 2025, the Board of Immigration Appeals issued *Matter of*
5 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who
6 entered without inspection are “applicants for admission” subject to mandatory
7 detention under INA § 235(b)(2)(A). That decision does not bind this Court.
8
9 Petitioner, who entered the United States in 2011 and has lived here ever since, is
10 not an arriving alien at the border but a long-term resident whose custody falls
11 under § 236(a). For decades, Immigration Judges conducted bond hearings for
12 individuals in Petitioner’s position, a practice the Board itself acknowledged before
13 abruptly reversing course. DHS’s reliance on § 1225(b)(2) to justify Petitioner’s
14 detention is contrary to the statute’s plain text, longstanding administrative
15 practice, and decades of settled interpretation. Because DHS has improperly
16 categorized her under § 1225(b)(2), Petitioner has been deprived of the opportunity
17 for an individualized bond hearing, leaving her in prolonged and unlawful
18 detention in violation of the INA, the APA, and the U.S. Constitution.
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23 Petitioner has no disqualifying criminal convictions that would render her
24 subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is she an applicant
25 for admission apprehended at a port of entry. Instead, she has lived in the interior
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1 of the United States for more than a decade, working, raising her family, and
2 establishing significant ties to the community in Arizona.
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4 DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary
5 to the statute's plain text, longstanding administrative practice, and decades of
6 settled interpretation.
7

8 Because DHS has improperly categorized her under § 1225(b)(2), Petitioner
9 has been deprived of the opportunity for an individualized bond hearing, leaving
10 her in prolonged and unlawful detention in violation of the INA, the APA, and the
11 U.S. Constitution.
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13 **IV. APPLICABLE LAW**

14 Respondents' power to detain and deport someone is not limitless, nor is it
15 shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950
16 (S.D.N.Y. 2018) (appeal withdrawn sub nom.).
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19 "Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S.
20 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy.
21 *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering
22 the release of a petitioner and is to "be administered with the initiative and
23 flexibility essential to ensure that miscarriages of justices within its reach are
24 surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas
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1 corpus “never has been a static, narrow, formalistic remedy; its scope has been to
2 achieve its grand purpose - the protection of individuals against erosion of their
3 right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*,
4 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a
5 means of reviewing the legality of Executive detention, and it is in that context that
6 its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004)
7 (citations omitted). These protections extend fully to noncitizens subject to an
8 order of removal. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its
9 talismanic significance in protecting individual liberty from unlawful detention,
10 habeas corpus is fundamentally governed by equity. The Supreme Court has
11 granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct.
12 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court
13 has noted the writ’s “scope and flexibility--its capacity to reach all manner of
14 illegal detention--its ability to cut through barriers of form and procedural mazes.”
15 *Harris*, 394 U.S. at 291.
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22 V. REQUEST FOR RELIEF

23 Pending the adjudication of this Petition, Petitioner respectfully requests that
24 the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file
25 a return within three days, unless they can show good cause for additional time.
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1 See 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas
2 corpus should not be granted should be “returned within three days unless for good
3 cause additional time, not exceeding twenty days, is allowed”).
4

5 Petitioner requests that this Court issue an order that Respondents must
6 notify the Court and Petitioner’s counsel five days prior to any removal of
7
8 Petitioner.

9 Petitioner further asks this Court to declare that she is not subject to
10 mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner also requests that the
11 Court grant such other and further relief as it deems just and proper.
12

13 Furthermore, Petitioner requests to be released from detention.
14

15 **VI. EXHAUSTION OF REMEDIES**

16
17 Exhaustion of remedies is not required for this habeas petition because
18 Petitioner challenges the government’s unlawful classification of her detention as
19 mandatory under 8 U.S.C. § 1225(b)(2). The Immigration Court has taken the
20 position that it lack jurisdiction to review custody where DHS asserts mandatory
21 detention. Any further attempt to pursue administrative remedies would therefore
22 be futile.
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25 Even if exhaustion were required, Petitioner has already sought custody
26 redetermination before an Immigration Judge. On December 1st, 2025, her request
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1 for bond was denied on the grounds that DHS had classified her under §
2 1225(b)(2). Having raised the issue and been denied relief, Petitioner has satisfied
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4 or, in the alternative, is excused from any exhaustion requirement.

5 Because the BIA has now ruled in *Yajure Hurtado* that § 235(b)(2)(A)
6 mandates detention, further pursuit of administrative remedies would be futile.
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8 Only this Court has the authority to determine whether that interpretation is lawful
9 and constitutional.

10 PRELIMINARY INJUNCTION

11 **1. Legal Standard**

12 The legal standard for granting preliminary injunction relief is well
13 established. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir.1983). This Court
14 may issue injunctive relief maintaining the status quo when the movant
15 demonstrates: (1) a likelihood of irreparable harm in the absence of the injunction;
16 and (2) either a likelihood of success on the merits or sufficiently serious questions
17 going to the merits to make them a fair ground for litigation, with a balance of
18 hardships tipping decidedly in the movant's favor. *Id.* While a petitioner seeking a
19 preliminary injunction has the burden of demonstrating likelihood of success on the
20 merits, they are not required to prove their case in full at the preliminary injunction
21 stage, but only such portions that enable them to obtain the injunctive relief that they
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1 seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

2 **2. Petitioner is Entitled to Injunctive Relief**

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4 Petitioner is unlawfully detained under the government’s assertion that she is
5 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is
6 contrary to the plain text of the statute, longstanding agency practice, and recent
7 federal district court rulings. As a noncitizen who entered the United States on 2011
8 and was arrested more than a decade later inside the country, Petitioner is not
9 “seeking admission” at a port of entry and therefore cannot be held under §
10 1225(b)(2). Her custody is properly governed by 8 U.S.C. § 1226(a), which
11 authorizes an individualized custody determination and potential release on bond.
12 The denial of a bond hearing deprives Petitioner of liberty without due process of
13 law.
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15 Under the Due Process Clause of the Fifth Amendment, no person shall be
16 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.
17 V. Non-citizens on U.S. soil have constitutional rights, including the right to due
18 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,
19 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing,
20 Respondents subject her to prolonged and arbitrary detention beyond what the
21 Constitution and the statute allow.
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1 In this circumstance, if the noncitizen “provides good reason to believe that
2 there is no significant likelihood of removal in the reasonably foreseeable future,
3 the Government must respond with evidence sufficient to rebut that showing.” *Id.*

4
5 **a. Irreparable Harm in the Absence of an Injunction**

6 An injury is “irreparable” if it is “not accurately measurable or adequately
7 compensable by money damages.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*
8 102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v.*
9 *Textron, Inc.* 836 F.2d 6, 8 (1st Cir. 1987).

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12 Due process cases recognize a broad liberty interest rooted in the fact of
13 deportation, not just the process of removal proceedings. *See Bridges v. Wixon,*
14 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual
15 and deprives him of the right to stay and live and work in this land of freedom.”);
16 *see also Chhoeun v. Marin,* 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018)
17 (finding a “strong liberty interest” where being deported means being separated
18 from home and family). While this liberty interest typically arises in removal
19 proceedings, courts have found procedural due process violations for persons not
20 in removal proceedings. *See, e.g., Walters v. Reno,* 145 F.3d 1032 (9th Cir. 1998)
21 (forms issued to noncitizens charged with civil document fraud violated due
22 process clause); *Rojas v. Johnson,* 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar.

1 29, 2018) (concluding that “Agency Defendants do not provide sufficient notice of
2 the one-year deadline to satisfy the Due Process clause” to asylum-seeker
3 subclasses both in and out of removal proceedings).
4

5 Here, Petitioner suffers irreparable harm with each additional day of
6 detention without an opportunity to demonstrate that she is neither a danger to the
7 community nor a flight risk. The deprivation of liberty cannot be remedied by
8 monetary damages. Moreover, the balance of equities favors Petitioner because the
9 government has no legitimate interest in detaining her under an unlawful statutory
10 framework. The public interest also favors ensuring compliance with constitutional
11 guarantees and statutory limits on detention authority.
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15 **b. Likelihood of Success on the Merits and Serious Questions Going**
16 **to the Merits**

17 Immigrants who pursue lawful immigrant status in the United States have
18 rights under the Due Process Clause of the Fifth Amendment. Once a petitioner
19 has identified protected liberty or property interest, the Court must determine
20 whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S.
21 at 335. In making this determination, the Court balances (1) “the private interest
22 that will be affected by the official action”; (2) “the risk of an erroneous
23 deprivation of such interest through the procedures used, and the probable value, if
24 any, of additional or substitute procedural requirement would entail;” and (3) “the
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1 government's interest, including the function involved and the fiscal and
2 administrative burdens that the additional or substitute procedural requirement
3 would entail." *Id.*

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5 Due process protects a noncitizen's liberty interest in the adjudication of
6 discretionary applications for relief and benefits made available under the
7 immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003)
8 (recognizing protected interests in the "right to seek relief" even when there is no
9 "right to the relief itself"). Petitioner has a protected due process interest in her
10 claim of unlawful detention, and due process requires that since she cannot be
11 removed to Mexico, and she cannot stay detained, that she must be released.
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15 The Government's actions toward Petitioner violate or will violate the APA
16 and the Fifth Amendment. The APA provides that a court "shall. . . hold unlawful
17 and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of
18 discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To
19 satisfy the APA, an agency must "examine the relevant data and articulate a
20 satisfactory explanation for its action including a rational connection between the
21 facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.
22 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut.*
23 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
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1 When the Government has promulgated “[r]egulations with the force and
2 effect of law,” those regulations “supplement the bare bones” of federal statutes
3 and in areas of the law, such that agencies must follow their own “existing valid
4 regulations,” even where Government officers have broad discretion, such as in
5 immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268
6 (1954) (reversing in immigration case after review of warrant for deportation); *see*
7 *also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“[I]t is incumbent upon agencies to
8 follow their own procedures . . . even where [they] are possibly more rigorous than
9 otherwise would be required.”); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir.
10 2005) (“*Accardi* has come to stand for the proposition that agencies may not
11 violate their own rules and regulations to the prejudice of others.”). Breaches of
12 *Accardi*’s rule constitute violations of both the APA and the Fifth Amendment’s
13 Due Process Clause. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)
14 (“*Accardi* doctrine is premised on fundamental notions of fair play underlying the
15 concept of due process”); *see also Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541,
16 545, 546 (6th Cir. 2004) (noting that an *Accardi* violation may be a due process
17 violation, and the Government’s action may be set aside pursuant to the APA);
18 *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An
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1 agency's failure to follow its own regulations . . . may result in a violation of an
2 individual's constitutional right to due process.”).

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4 1. *Accardi's* “ambit” is “not limited” to “rules attaining the status of
5 formal regulation.” *Montilla*, 926 F.2d at 167. It applies to both promulgated
6 regulations and other processes and programs that guide the Government's
7 discretion. *See Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994)
8 (holding that the Government violated the APA by ignoring its non- promulgated
9 immigration “program”); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th
10 Cir. 1983) (same, but for informal criteria). *Accardi* means that when the
11 Government sets out a process whereby relief can be pursued, a “right to *seek*
12 relief” is created, even when there is no “right to the relief itself.” *Arevalo v.*
13 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S.
14 at 268).

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19 Federal district courts have already recognized that DHS's reliance on §
20 1225(b)(2) to categorically deny bond hearings is unlawful. In *Ramon Rodriguez*
21 *Vazquez v. Bostock*, No. 3:25-cv-05240 (N.D. Cal. Apr. 24, 2025), the court issued
22 a preliminary injunction requiring ICE to provide a bond hearing to a petitioner
23 detained under § 1225(b)(2), holding that custody in such circumstances properly
24 falls under § 1226(a). Similarly, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-
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1 01873 (C.D. Cal. 2025), the court granted a temporary restraining order requiring
2 bond hearings within seven days and prohibiting ICE from transferring or
3 removing petitioners without court approval. These rulings demonstrate both the
4 statutory error and constitutional infirmity of Respondents' position. Petitioner's
5 claim is therefore not novel, but squarely aligned with other federal courts that
6 have already granted the precise relief sought here.
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9 **c. There is No Substantial Injury to Other Parties and Injunctive**
10 **Relief is in the Public Interest**

11 The issuing of a temporary restraining order and a preliminary injunction is
12 warranted because the balance of equities tips in the favor of the Petitioner and the
13 injunction is squarely within the public interest. The government's equities also
14 weigh in favor of issuing a preliminary injunction here.
15

16 The Petitioner, the public, and the Government all have a vested interest in
17 fair and equitable legal proceedings for all people, citizens and non-citizens alike.
18 *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to
19 5th Amendment due process).
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21 Further, granting injunctive relief in this case will not cause substantial injury
22 to Respondents or to the government. The government has no legally cognizable
23 interest in detaining Petitioner under an unlawful statutory framework. An injunction
24 requiring that Petitioner be provided a custody hearing under 8 U.S.C. § 1226(a)
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1 merely enforces the law as written and ensures compliance with constitutional
2 protections. As courts have consistently recognized, the government cannot be
3 harmed by an order that prevents it from engaging in unlawful conduct.
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5 The Government “cannot suffer harm from an injunction that merely ends an
6 unlawful practice or reads a statute as required to avoid constitutional concerns.”

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8 *R.I.L-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez*
9 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, “the public interest is
10 served when administrative agencies comply with [the requirements of U.S. law].”

11
12 *Id.*

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14 **d. Matter of Yajure Hurtado Is Not Binding on this Court and Should
15 Not Be Followed**

16 The BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
17 (BIA 2025), extends § 235(b)(2)(A) beyond its text and purpose to bar bond for all
18 individuals who entered without inspection, no matter how long they have resided
19 in the United States. That interpretation is deeply flawed.
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21 First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs
22 “applicants for admission”, those encountered at or near the border. Petitioner, who
23 has resided in the interior of the United States for more than a decade, is not in that
24 category. Section 236(a) is the detention authority that properly applies.
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26 Second, the decision departs from decades of agency practice. The Board
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1 itself acknowledged that “for years Immigration Judges conducted bond hearings for
2 aliens who entered the United States without inspection.” *Id.* at 225. This admission
3 underscores that § 236(a) has long been understood to provide custody authority in
4 such cases. The Board’s sudden reversal represents an unexplained break from
5 settled practice, rendering it arbitrary and unexplained under the APA.
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8 Although the Board later attempted to walk back this acknowledgment, stating
9 that “our acknowledgment that aliens detained under § 236 may be eligible for
10 discretionary release on bond does not mean all aliens are eligible,” *id.* at 227, this
11 disclaimer does not erase the historical fact of settled agency practice. Nor does it
12 explain why individuals like Petitioner who entered more than a decade ago,
13 established long-term residence, and were arrested in the interior should suddenly
14 be stripped of bond eligibility. The Board’s narrowing language only underscores
15 the arbitrariness of its reinterpretation. By conceding the longstanding bond practice
16 yet declaring it “beyond the scope” to resolve, the BIA effectively confirmed that its
17 shift was policy-driven, not compelled by statutory text. That makes the decision
18 both unpersuasive and invalid.
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23 Third, the decision raises serious constitutional problems. Mandatory
24 detention without access to a bond hearing, especially for long-term residents like
25 Petitioner with strong family and community ties, violates the Due Process Clause.
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1 Courts construe statutes to avoid such constitutional infirmities. This Court should
2 therefore reject *Yajure Hurtado*'s interpretation and apply § 236(a), which
3 authorizes discretionary release on bond.
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5 The Board's interpretation in *Matter of Yajure Hurtado* is not only
6 inconsistent with statutory text and decades of settled practice but has also already
7 faced judicial correction. Federal courts considering the same issue have recognized
8 that DHS's expansion of § 1225(b)(2) produces unlawful and unconstitutional
9 results. In recent cases from the Northern and Central Districts of California, the
10 courts required ICE to provide bond hearings to noncitizens whom DHS had
11 classified under § 1225(b)(2), making clear that custody in such cases is properly
12 governed by § 236(a). These rulings reflect a growing recognition among Article III
13 courts that DHS's reading of § 1225(b)(2) cannot stand. This Court should follow
14 the same reasoning and hold that Petitioner's detention without access to bond is
15 unlawful.
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21 **e. Federal Courts have rejected DHS's position.**

22 Recent federal court decisions confirm that Respondents' reliance on §
23 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas*
24 *Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025), the
25 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its
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1 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the
2 interior after long residence in the United States are properly detained under §
3 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that entry
4 without inspection does not permanently bar a person from eligibility for bond once
5 they are living in the country. That holding directly applies here.
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8 Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D.
9 Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure*
10 forecloses administrative relief, rendering exhaustion futile. The same is true for
11 Petitioner, who cannot meaningfully seek bond redetermination before EOIR given
12 that the IJ held that he had no jurisdiction.
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15 Finally, in *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.
16 2025), the district court issued a preliminary injunction requiring ICE to provide a
17 bond hearing to a petitioner detained under § 1225(b)(2), holding that custody in
18 such circumstances falls under § 1226(a). That decision confirms that habeas relief
19 is the proper vehicle and that this Court has the authority to order the same remedy
20 for Petitioner.
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23 These cases establish that DHS's reliance on § 1225(b)(2) for long-term
24 residents like Petitioner is inconsistent with statutory text, contrary to constitutional
25 protections, and already rejected by multiple courts within this Circuit.
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1 In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district court
2 granted a habeas petition and ordered release, finding that DHS's reclassification of
3 interior arrests under § 1225(b)(2) violated both the INA and due process. The court
4 rejected the government's reliance on *Matter of Yajure Hurtado*, concluding that "an
5 individual is not 'seeking admission' when he never attempted to do so," and held
6 that detention must proceed under § 1226(a). The court further found that the
7 automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully deprived the
8 petitioner of liberty without due process and ordered his immediate release upon
9 posting bond.
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13 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept. 19,
14 2025), the court held that DHS's blanket application of § 1225(b)(2) to individuals
15 apprehended years after entering the United States was contrary to the statutory text
16 and structure of the INA. The court emphasized that Congress intended § 1225 to
17 govern only applicants for admission encountered at the border, and it therefore
18 ordered the petitioner's release under § 1226(a)
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22 Finally, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW) (D.
23 Ariz. 2025), the District of Arizona granted habeas relief on the same statutory
24 question presented here, holding that individuals arrested in Arizona after years of
25 residence fall under § 1226(a) and must receive individualized bond hearings. The
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1 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth
2 Circuit's due-process jurisprudence and the statutory framework of the INA
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4 Aside from the Ninth Circuit, numerous district courts have disagreed with
5 the BIA's analysis in *Matter of Yajure Hurtado* and granted habeas relief to
6 petitioners similarly situated to Petitioner, recognizing that custody in such cases
7 properly falls under § 236(a).
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10 • **First Circuit:** *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
11 (expressly disagreeing with BIA's analysis in *Yajure Hurtado*); *Jimenez v.*
12 *FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v.*
13 *Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025
14 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238
15 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.
16 Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).
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18 • **Second Circuit:** *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug.
19 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).
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21 • **Fourth Circuit:** *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug.
22 24, 2025).
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24 • **Fifth Circuit:** *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).
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26 • **Sixth Circuit:** *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich.
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1 Sept. 9, 2025) (rejecting BIA’s analysis in *Yajure Hurtado*); *Lopez-Campos*
2 *v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).

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- 4 • **Eighth Circuit:** *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb.
5 Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept.
6 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025);
7 *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*,
8 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL
9 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL
10 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224
11 (D. Neb. Aug. 14, 2025).

- 12 • **Ninth Circuit:** *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal.
13 Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal.
14 Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal.
15 Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal.
16 Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,
17 2025).

18 Because multiple courts have already recognized the unlawfulness of DHS’s
19 reliance on § 1225(b)(2) to deny bond hearings. Petitioner’s claim for relief thus
20 aligns with an established and growing consensus.
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1 **VII. CLAIMS FOR RELIEF**

2 **1. PETITIONER’S CONTINUED DETENTION VIOLATES DUE**
3 **PROCESS, THE INA, AND THE APPLICABLE REGULATIONS**

4 Petitioner re-alleges and incorporates by reference each and every allegation
5 contained in the preceding paragraphs as if set forth fully herein. Due process
6 protects a noncitizen’s liberty interest in freedom from arbitrary civil confinement.
7 Petitioner has a protected due process interest in seeking judicial review of her
8 continued detention and in obtaining a custody determination in accordance with
9 the INA. By treating Petitioner as subject to mandatory detention under §
10 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have
11 deprived her of her liberty without adequate process and in excess of their statutory
12 authority.
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14 Respondents’ reliance on INA § 235(b)(2)(A), as reinforced by the BIA’s
15 recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of her
16 statutory right to a bond hearing under § 236(a). Even the Board admitted that for
17 years Immigration Judges conducted such hearings for EWIs before abruptly
18 reversing course. That reversal is inconsistent with the INA, arbitrary and
19 capricious under the APA, and unconstitutional under the Due Process Clause of
20 the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should
21 decline to follow it.
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1 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**
2 **ADMINISTRATIVE PROCEDURE ACT**

3 Petitioner re-alleges and incorporates by reference each and every allegation
4 contained in the preceding paragraphs as if set forth fully herein. Respondents'
5 actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in
6 accordance with law" and "in excess of statutory jurisdiction, authority, or
7 limitations." 5 U.S.C. §§ 706(2)(A), (C). For decades, DHS and EOIR interpreted
8 the INA to mean that individuals like Petitioner, those apprehended in the interior
9 long after entry, are detained under § 1226(a). The abrupt reversal of this settled
10 interpretation, without explanation or notice-and-comment, violates the APA.
11 Absent this Court's intervention, Petitioner has no adequate remedy to challenge
12 the unlawful classification of her custody.
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14 **3. PETITIONER'S CONTINUED DETENTION VIOLATES THE**
15 **SUSPENSION CLAUSE**

16 Petitioner re-alleges and incorporates by reference each and every allegation
17 contained in the preceding paragraphs as if set forth fully herein. The government's
18 assertion that § 1225(b)(2) mandates detention for individuals like Petitioner
19 effectively forecloses meaningful habeas review by depriving her of any
20 opportunity to obtain a bond hearing or individualized custody determination. Such
21 a denial of judicial review undermines the Suspension Clause of the United States
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1 Constitution, which guarantees the right to challenge unlawful detention through
2 habeas corpus.
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4 **4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED**
5 **DANGER**

6 The Due Process Clause provides that no person shall “be deprived of life,
7 liberty, or property, without due process of law.” U.S. Const. amend. V. Its
8 protections extend to “every person within the nation’s borders,” regardless of
9 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014);
10 *id.* (“Even one whose presence in this country is unlawful, involuntary, or
11 transitory is entitled to that constitutional protection.”) (quoting *Mathews v.*
12 *Diaz*, 426 U.S. 67, 77 (1976)). The government violates an individual’s right to
13 due process when it (1) “affirmatively place[s] [the] individual in danger,” (2) by
14 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*
15 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of*
16 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,
17 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a
18 situation that [is] more dangerous than the one in which [it] found him,” the
19 government has affirmatively placed that individual in danger. *Hernandez v. City*
20 *of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).
21 The critical inquiry is thus whether the government’s actions “create[d] or
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1 expose[d] an individual to a danger which he or she would not have otherwise
2 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK
3 (SKx), 2019 WL 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government
4 “acted with deliberate indifference to a known or obvious danger’ by
5 implementing the [family separation] policy with awareness of the potential harm
6 it would cause and intending to use that as a basis to deter future attempts by those
7 similarly situated to enter the United States” (alterations omitted) (quoting
8 *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner
9 was required to show deliberate indifference as civil detainees—and she is not, see
10 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—he could easily do so. The
11 government acts with deliberate indifference to a known or obvious danger when it
12 “recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]
13 to such risks without regard to the consequences to [the plaintiff].” *Hernandez*, 897
14 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974
15 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions
16 of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).

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23 Here, Respondents have placed Petitioner in greater danger by misclassifying
24 her under § 1225(b)(2) and denying her the bond procedures guaranteed under §
25 1226(a). By treating her as mandatorily detained without any individualized
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1 assessment of flight risk or danger, the government has subjected her to prolonged
2 confinement in punitive conditions with no lawful basis for denying her access to
3 bond. Respondents acted with deliberate indifference to the obvious risk of harm
4 inherent in prolonged and unnecessary detention, including the physical,
5 emotional, and familial harms that flow from being confined when the statute does
6 not authorize it.
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10 **VIII. REQUEST FOR ORAL ARGUMENT**

11 Petitioner respectfully requests oral argument on this Petition.
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13 **IX. PRAYER FOR RELIEF**

14 **WHEREFORE**, Petitioner respectfully requests that this Court:
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- 16 1. Assume jurisdiction over this matter;
- 17 2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued
18 detention is unlawful and order her immediate release;
- 19 3. In the alternative, issue injunctive relief ordering Respondents to provide
20 Petitioner with an individualized custody determination before an
21 Immigration Judge under 8 U.S.C. § 1226(a) within seven (7) days, or to
22 release her immediately;;
- 23 4. Order Respondents file a return within three days pursuant to 28 U.S.C. §
24 2243;
- 25 5. Declare that the process as applied to Petitioner by Respondents violates the
26 Suspension Clause, the Due Process Clause of the Fifth Amendment, the
27 INA, the APA, and federal regulations;

- 1 6. Order Respondents to provide five days of notice to the Court and Petitioner
2 of her imminent removal;
- 3 7. Order Respondents to follow the applicable rules, regulations, law, and the
4 Constitution.
- 5 8. Award Petitioner her costs and reasonable attorneys' fees in this action as
6 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other
7 statutes;
- 8 9. Grant such further relief as the Court deems just and proper.

9 Dated: December 2, 2025,
10 Tucson, AZ,

Respectfully submitted,
By: /s/ Siovhan Ayala
Siovhan Ayala

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