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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ROSA AGUILAR-PEREZ,

Petitioner,

vs.

CHRISTOPHER J. LAROSE, WARDEN OF OTAY MESA DETENTION CENTER,

GREGORY J. ARCHAMBEAULT, IN HIS OFFICIAL CAPACITY AS SAN DIEGO FIELD OFFICE DIRECTOR, ICE ENFORCEMENT AND REMOVAL OPERATIONS;

KRISTI NOEM, SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY; AND

PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES,

IN THEIR OFFICIAL CAPACITIES,

Respondents

PETITION FOR WRIT OF HABEAS CORPUS

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

Case No. '25CV3409 LL DDL

INTRODUCTION

1. For more than a decade, the United States government permitted Rosa Aguilar-Perez—a mother of three U.S. citizen children, a long-time San Diego resident who has lived in this country for over thirty-five years, and a stable, compliant member of her community—to live openly under the ordinary custody framework Congress created in 8 U.S.C. § 1226(a). DHS arrested her in 2014, served her with a Notice to Appear, and then affirmatively released her "in accordance with section 236 of the Act." For the next ten years, Ms. Aguilar-Perez did exactly what the law required: she attended every ICE check-in, maintained continuous employment, lived with and cared for her lawful permanent resident husband, and participated meaningfully in her § 240 removal proceedings. Nothing changed during that decade—no new arrest, no new allegation, no hint of danger or flight risk.

2. Yet in October 2025, during the same routine check-in she had attended for years, ICE abruptly re-detained her without notice, without explanation, and without identifying a single changed circumstance. The agency then refused to provide her any individualized custody hearing, insisting instead that she must be treated as a mandatory-detention "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A)—a provision that applies at the border, not to long-term residents released under § 1226(a) and living in the United States for decades. The immigration judge confirmed he lacked jurisdiction to consider bond under Matter of Yajure Hurtado, leaving Ms. Aguilar-Perez with no hearing at all.

3. This position is unlawful. Congress established two distinct detention schemes: § 1225, which governs initial border processing, and § 1226, which governs custody of individuals already present in the United States and placed into removal proceedings. Once DHS issues a Notice to Appear and releases a person under § 1226(a), § 1225(b) is no longer available. That is now the overwhelming

consensus of district courts across California and the Ninth Circuit. They have rejected, repeatedly and emphatically, the government's recent effort to reclassify long-time residents as perpetual border detainees, explaining that such an approach contradicts the statutory text, renders the Laken Riley Act's amendments to § 1226(c) meaningless, and cannot be reconciled with decades of agency practice.

4. DHS's conduct also violates the Fifth Amendment. Release under § 1226(a) creates a significant liberty interest in remaining out of custody, one that cannot be revoked without the constitutional safeguards required before depriving any person of physical liberty. For ten years, Ms. Aguilar-Perez built her life around that conditional liberty—working, supporting her family, checking in with ICE exactly as required. Revoking that liberty without notice, without neutral review, and without any evidence of danger or flight risk is a textbook violation of procedural due process under *Mathews v. Eldridge.*

5. Finally, the agency's actions must be set aside under the Administrative Procedure Act because they are contrary to law, in excess of statutory authority, arbitrary and capricious, and taken without observance of the procedures required by both the INA and decades of binding precedent. DHS ignored the settled requirement—recognized in *Matter of Sugay* and enforced consistently across this Circuit—that revocation of release requires "new circumstances or information." Here, there were none.

6. Ms. Aguilar-Perez's ongoing detention lacks any statutory basis, disregards the Constitution, and upends the careful framework Congress enacted to govern immigration custody. She is entitled to immediate release, or, at minimum, a prompt and constitutionally adequate § 1226(a) custody hearing at which the government must prove—by clear and convincing evidence and with consideration of less restrictive alternatives—that detention is necessary.

7. The Court's intervention is urgently needed to restore the rule of law and protect Petitioner from an unlawful and ongoing deprivation of liberty.

JURISDICTION & VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody under the authority of the United States and seeks a writ of habeas corpus. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution, laws, and treaties of the United States, and under 5 U.S.C. §§ 701–706 because Petitioner challenges agency action that is arbitrary, capricious, and not in accordance with law.

9. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202.

10. Neither 8 U.S.C. §§ 1252(b)(9) nor 1252(g) bar this Court's review.

11. Section 1252(b)(9) is a "zipper clause" that channels review of final orders of removal to the courts of appeals; it does not apply where, as here, no final removal order exists and the petitioner challenges only the statutory authority under which he is detained. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999). As the Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), detention claims that raise "questions of law"—including whether statutory provisions require detention without a bond hearing—do not "arise from" removal proceedings and therefore fall outside § 1252(b)(9). Id. at 292–95. The Ninth Circuit has repeatedly held that §§ 1252(a)(5) and (b)(9) do not preclude district-court review of claims that are "independent of or collateral to the removal process," including challenges to unlawful or prolonged immigration detention. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031–32 (9th Cir. 2016); *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012). Every recent decision in this district addressing the exact § 1225/§ 1226 misclassification issue has rejected the government's § 1252(b)(9) argument for this same reason. See, e.g.,

Monica Adriana Ruiz Yarleque v. Noem, No. 5:25-cv-02836-MEMF-SP, 2025 WL 3043936, at *5–7 (C.D. Cal. Oct. 31, 2025); Garcia v. Noem*, No. 5:25-cv-02771-ODW (PDX), 2025 WL 2986672, at *3–4 (C.D. Cal. Oct. 22, 2025); Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMX), 2025 WL 2379285, at *1–2 (C.D. Cal. Aug. 15, 2025); E.C. v. Noem*, No. 5:25-cv-02612-ODW (PDX), at *3 (C.D. Cal. Oct. 28, 2025); Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884–85 (C.D. Cal. 2025).

12. Section 1252(g) likewise poses no bar. The Supreme Court has held that § 1252(g) applies only to three discrete discretionary actions—commencing proceedings, adjudicating cases, and executing removal orders—and does not cover legal challenges to the scope of DHS's detention authority. *Reno*, 525 U.S. at 482; *Jennings*, 583 U.S. at 294–96. Petitioner challenges none of those actions. His claim is a "purely legal question" that does not implicate any exercise of prosecutorial discretion, and district courts retain jurisdiction over such claims. *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025). Consistent with this binding authority, courts in this district have repeatedly held that § 1252(g) does not bar review of claims alleging detention under the wrong statutory provision. *Ruiz Yarleque*, 2025 WL 3043936, at *5–6; Garcia*, 2025 WL 2986672, at *3; Arrazola-Gonzalez*, 2025 WL 2379285, at *1; E.C.*, at *3. Accordingly, this Court has jurisdiction to hear and resolve this petition.

13. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(e) because Petitioner is detained at the Otay Mesa Detention Center, located within this judicial district, and because a substantial part of the events or omissions giving rise to this action occurred in this district.

PARTIES

14.Petitioner ROSA AGUILAR-PEREZ is a 52 year old mother of three currently detained at the Otay Mesa Detention Center.

15.Respondent CHRISTOPHER LAROSE is the Warden of the Otay Mesa Detention Center and is sued in his official capacity as the immediate custodian of Petitioner.

16.Respondent GREGORY J. ARCHAMBEAULT is the San Diego Field Office Director for ICE Enforcement and Removal Operations ("ERO") and is sued in his official capacity. He exercises authority over the detention and removal of noncitizens in the Los Angeles region, including Petitioner.

17.Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), the federal agency responsible for immigration enforcement and detention. She is sued in her official capacity.

18.Respondent PAM BONDI is the Attorney General of the United States and the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review ("EOIR") and immigration judges. She is sued in her official capacity.

FACTUAL BACKGROUND

19.Rosa Aguilar-Perez is a 53-year-old mother of three U.S. citizen children who has lived in the United States for more than thirty-five years. She is a native and citizen of Mexico and entered the United States at or near San Ysidro, California on or about January 1, 1992, at fourteen-years-old, without being admitted or paroled.

20.She has resided continuously in the United States since that time, raising her family, working alongside her LPR husband, and building deep ties to her community in San Diego.

21.Ms. Aguilar-Perez has been married for more than twenty-five years to Miguel A. Perez González, a lawful permanent resident. The couple share three

adult U.S. citizen children: Ismael (born 1992), Miguel (born 1994), and Rosita (born 1998).

22. The family has lived together for decades at their San Diego home at [redacted] where they have long maintained stable residence and employment. Mr. Perez González has submitted a sworn, notarized statement confirming that he stands ready to house, support, and ensure Ms. Aguilar-Perez's full compliance with all immigration obligations upon release, supplemented by utility bills, tax filings, and income records demonstrating stable financial capacity.

23. For many years, Ms. Aguilar-Perez worked and helped support the family's janitorial business, while serving as the primary caregiver and homemaker for their three children. A licensed clinical psychologist who evaluated her in 2014 described her as cooperative, stable, remorseful about past mistakes, and deeply committed to her family and community. That evaluation documented her consistent caregiving role, strong family bonds, and longstanding community involvement.

24. In 2014, Ms. Aguilar-Perez was served with a Notice to Appear following a traffic-related incident for which she accepted responsibility in the California court system.

25. Although DHS executed an arrest warrant on December 10, 2014, the agency issued a Notice of Custody Determination releasing her on her own recognizance, without bond. *See* Exhibit B, 2023 NTA.

26. She then remained in the community for approximately a decade without incident, fully compliant with all immigration obligations and living a quiet, stable family life in San Diego. For the past six years, Ms. Aguilar-Perez has maintained steady, long-term employment with DMSD Foods, Inc., where she has worked since 2019. As a dedicated employee and the primary homemaker in her family, she contributed materially to the household and helped support her three U.S.

citizen children and her husband, a long-time lawful permanent resident. Her sustained work history demonstrates financial stability, deep community integration, and consistent responsibility.

27. In October 2025, after ten years of stability and full compliance, Ms. Aguilar-Perez was arrested by DHS at a routine ICE check-in, the same type of appointment she had attended reliably for years. She had received no warning or indication that she would be taken into custody. Her sudden arrest separated her from her husband and adult children, disrupted her caregiving responsibilities, and caused significant distress for the family.

28. After being placed in detention, Ms. Aguilar-Perez sought a custody redetermination hearing before the Otay Mesa Immigration Court. On November 21, 2025, Immigration Judge Guy Grande denied her request solely on jurisdictional grounds under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), concluding that he lacked authority to consider release.

29. The denial did not evaluate her individual circumstances, her long record of compliance, or the extensive evidence demonstrating her stability and deep community ties. The decision did not reach—or even consider—any individualized assessment of danger or flight risk, despite extensive evidence demonstrating her stability, community ties, and decades-long record of lawful behavior and compliance.

30. That evidence included substantial documentation of her family's residence, employment, and financial stability, as well as deeply personal letters attesting to the hardship her detention has caused. Her daughter Rosita wrote that the family was "in the middle of celebrating birthdays and preparing for the holidays" when Ms. Aguilar-Perez was suddenly taken into custody, and described her mother as "the backbone of our family," the person "who holds all six of us together." She emphasized Ms. Aguilar-Perez's extensive volunteer work distributing food in the

community, her strength, and her unwavering role as the emotional center of the family.

31. Despite her decades of residence, her strong family ties, her history of compliance, and her profound community roots, Ms. Aguilar-Perez remains detained today—without any opportunity for the individualized custody hearing the Constitution requires.

LEGAL FRAMEWORK

Petitioner's Custody is Governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)

32. Federal immigration detention before a final order is governed by two distinct statutory schemes, 8 U.S.C. §§ 1225 and 1226, which operate in separate and mutually exclusive spheres. Section 1225 is a border-processing statute that applies to "applicants for admission" during initial inspection and, in limited circumstances, expedited removal processing. By contrast, § 1226 governs custody of individuals already present in the United States who are "detained pending a decision on whether the alien is to be removed from the United States," and it expressly authorizes both detention and release on bond or conditional parole. 8 U.S.C. § 1226(a).

33. Section 1226(a) "sets out the default rule": the Attorney General may arrest and detain a noncitizen "pending a decision on whether the alien is to be removed," but "may release" that person on bond or recognizance, subject only to the narrow mandatory-detention carve-outs in § 1226(c). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Federal regulations implementing § 1226(a) guarantee access to an individualized bond hearing before an immigration judge, and permit subsequent bond redetermination hearings upon a material change in circumstances. See 8 C.F.R. §§ 236.1(c)(8), (d)(1), 1003.19(e).

34. Section 1225, by contrast, "applies primarily to [noncitizens] seeking entry into the United States ('applicants for admission' in the language of the statute)."

Jennings, 583 U.S. at 297. Section 1225(b)(2)(A) provides that "an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, shall be detained for a proceeding under § 1229a." 8 U.S.C. § 1225(b)(2)(A). An "applicant for admission" is defined as an alien "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival)." Id. § 1225(a)(1). But as numerous courts have now held, § 1225(b) cannot be stretched to cover long-term residents in the interior who were previously released under § 1226(a) and placed into full § 240 removal proceedings.

35.The Laken Riley Act confirms that § 1226(a) is the default detention authority for "inadmissible" noncitizens present in the United States. That Act added § 1226(c)(1)(E), which requires *mandatory* detention only for those who are (1) inadmissible under § 1182(a)(6)(A), (6)(C), or (7), and (2) arrested or charged with specified crimes. 8 U.S.C. § 1226(c)(1)(E). As courts have recognized, this structure presupposes that inadmissible noncitizens who *do not* meet § 1226(c)(1)(E)'s crime requirement fall under § 1226(a)'s ordinary, discretionary bond framework. See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (explaining that the Riley carve-out "lends strong textual support" that inadmissible noncitizens "are included within Section 1226" when they do not trigger § 1226(c)).

36.Reading § 1225(b)(2) to cover all inadmissible noncitizens already living in the United States would render the Riley Act's addition of § 1226(c)(1)(E) largely "unnecessary," because DHS could simply detain those same individuals under § 1225(b)(2)(A) without ever invoking § 1226. *Garcia v. Noem*, 2025 WL 2549431, at *5–6 (S.D. Cal. Sept. 3, 2025). Courts have therefore rejected the government's effort to treat every inadmissible person in the interior as an "applicant for

admission" automatically "seeking admission" for purposes of § 1225(b)(2)(A). *Id*; *Faizyan v. Casey*, No. 3:25-CV-02884-RBM-JLB, 2025 WL 3208844, at *6 (S.D. Cal. Nov. 17, 2025 ("noncitizens who entered the United States without inspection but have been "residing in the United States" and were "not apprehended upon arrival" are governed by § 1226's discretionary detention procedures"); *Martinez* v. *Hyde*, 792 F. Supp. 3d at 214 ("for § 1225(b)(2)(A) to apply, a noncitizen must be: "(1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted.").

37. The majority of courts addressing this issue now hold that "seeking admission" under § 1225(b)(2)(A) requires an affirmative act—such as presenting at a port of entry, submitting an application for admission, or otherwise voluntarily seeking entry status—and does *not* include long-time residents arrested in the interior who have already been placed into § 240 proceedings. See, e.g., *Mosqueda v. Noem*, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *Vazquez v. Feeley*, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Guzman v. Andrews,* 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025); *Garcia*, 2025 WL 2549431, at *5–8; *Valdovinos*, No. 25-CV-2439 TWR (KSC), slip op. at 9; *Yohan Diaz-Villatoro v. LaRose*, 2025 WL 3251377, at *3–4 (S.D. Cal. Nov. 21, 2025); *Aparicio Sanchez v. Noem*, 2025 WL 3214987, at *3–4 (S.D. Cal. Nov. 18, 2025).

38. In *Estrada-Samayoa v. Cruz*, the Eastern District of California synthesized this statutory landscape and held that § 1225(b) "cannot apply to those noncitizens who are already present in the United States and who had previously been released under section 1226." 2025 WL 3268280, at *3–4 (E.D. Cal. Nov. 24, 2025). Following earlier decisions in *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187-SKO (HC), 2025 WL 2959274, at *3-7 (E.D. Cal. Oct. 17, 2025) (collecting cases); *see also Rodriguez v. Bostock,* 779 F. Supp. 3d 1239, 1258-61 (W.D. Wash. 2025); *Reyes v. Larose, et al.,* No. 25-CV-2938 JLS (VET), 2025 WL 3171743, at

*5 (S.D. Cal. Nov. 13, 2025); *Lepe v. Andrews,* No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4-9 (E.D. Cal. Sept. 23, 2025); *Salvador v. Bondi,* No. 2:25-CV-07946-MRA-MAA, 2025 WL 2995055, at *7 (C.D. Cal. Sept. 2, 2025); *Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5-7 (D. Mass. July 7, 2025), and others, the court explained that the government's expansive reading of § 1225(b) would "render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens" and create "irreconcilable contradictions in the statutory scheme as a whole." Id. (collecting cases).

39. Here, Respondents purport to detain Ms. Aguilar-Perez under § 1225(b)(2) as an "applicant for admission" based solely on the fact that she is charged as inadmissible under INA § 212(a)(6)(A)(i). But Ms. Aguilar-Perez's custody history places her squarely within § 1226(a), not § 1225(b)(2). In 2014, DHS served her with a Notice to Appear, charged her under § 212(a)(6)(A)(i), and then affirmatively released her on her own recognizance "in accordance with section 236 of the Immigration and Nationality Act"—the provision codified at 8 U.S.C. § 1226. She thereafter lived in the community for more than a decade, raising her three U.S. citizen children, caring for her LPR husband, maintaining steady employment, and complying with all immigration obligations while her § 240 proceedings remained pending.

40. Once DHS chose to exercise § 1226(a) authority and release Ms. Aguilar-Perez on recognizance, its detention power derived from § 1226—not § 1225. As in *Estrada-Samayoa*, Respondents "do not dispute" that release occurred under § 236/§ 1226 and that her removal case has long proceeded in § 240 removal proceedings. See 2025 WL 3268280, at *3–4. Under the statute, regulations, and long-standing agency practice, a person in that posture is governed by § 1226(a)'s discretionary bond framework, including access to an individualized custody

hearing and subsequent bond redetermination upon changed circumstances. See *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011) (confirming that individuals placed into § 240 proceedings are detained, if at all, under § 1226).

41. Ms. Aguilar-Perez was not encountered at a port of entry, during initial inspection, or near the border as she attempted to enter the United States. She was re-arrested in the interior, at a routine ICE check-in that she attended consistently for years—precisely the fact pattern that courts across this Circuit have held does *not* make a person an "applicant for admission" "seeking admission" within the meaning of § 1225(b)(2)(A). See *Mosqueda*, 2025 WL 2591530, at *5; *Diaz-Villatoro*, 2025 WL 3251377, at *3–4; *Aparicio Sanchez*, 2025 WL 3214987, at *3–4 (each holding that long-term residents arrested in the interior are not "applicants for admission" subject to § 1225(b)(2)).

42. Nor does the mere fact that Ms. Aguilar-Perez is charged as inadmissible under § 1182(a)(6)(A)(i) convert her into a perpetual § 1225(b) detainee. To the contrary, *Rodriguez v. Bostock* and *Gagandeep Singh* explain that the Riley amendment to § 1226(c) demonstrates Congress's understanding that inadmissible noncitizens present without admission, but not charged with specified criminal offenses, fall within § 1226(a) and are thus eligible for discretionary bond and bond redetermination. *Rodriguez*, 2025 WL 2782499, at *17; Singh, 2025 WL 3251437, at *5–6. Ms. *Aguilar-Perez* has no such qualifying criminal charges; she therefore fits squarely within § 1226(a)'s default regime.

43. Respondents rely on the Board's recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to argue that any noncitizen "present without admission" must be treated as an § 1225(b)(2) "applicant for admission" ineligible for bond. But as multiple courts have already held, agency interpretation "carries little, if any, weight in resolving questions of statutory interpretation" after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and cannot override

Congress's carefully drawn distinction between §§ 1225 and 1226. See *Garcia*, 2025 WL 2549431, at *5–6; *Singh*, 2025 WL 3251437, at *5–6; Estrada-Samayoa, 2025 WL 3268280, at *3–4. Those courts "join the majority" nationwide in rejecting DHS's recent attempt to expand § 1225(b)(2)(A)'s mandatory detention to noncitizens already residing here. See *Estrada Elias v. Knight*, 2025 WL 3228262, at *1 (D. Idaho Nov. 19, 2025) (collecting cases).

44. In short, Ms. Aguilar-Perez is not an "applicant for admission" "seeking admission" within the meaning of § 1225(b)(2)(A). She is a long-time resident of the United States, previously released on her own recognizance under § 1226(a), who complied with supervision for more than a decade and is now detained "pending a decision on whether [she] is to be removed." 8 U.S.C. § 1226(a). Under the INA, her custody is governed—if at all—by § 1226(a, not § 1225(b), and thus she is entitled to an individualized bond hearing before a neutral adjudicator at which the government bears the burden of justifying continued detention.

DHS's Prior § 1226(A) Release Created a Protected Liberty Interest in Petitioner's Continued Freedom From Custody

45. The Due Process Clause of the Fifth Amendment protects all "persons" in the United States, including noncitizens, from deprivations of life, liberty, or property without due process of law. U.S. Const. amend. V; see *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (due process applies to all persons, "including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Trump v. J.G.G.*, 604 U.S. 670 (2025).

46. Freedom from physical restraint lies "at the core" of the liberty protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. But due process protects not only those who have never been detained; it also protects individuals who have

been released from custody on a conditional status such as parole, preparole, probation, or supervised release.

47.In a line of cases beginning with *Morrissey v. Brewer*, the Supreme Court has held that once the government releases an individual from custody into a conditional status that permits them to live in the community, a protected liberty interest arises in remaining at liberty absent lawful revocation procedures. *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972) (parolee has a liberty interest in "continued liberty" because he can live at home, work, and be with family and friends); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (probation); *Young v. Harper*, 520 U.S. 143, 147–49 (1997) (preparole program). The Court has explained that such conditional release is accompanied by at least an "implicit promise" that liberty will only be revoked if the person fails to live up to the conditions of release. Morrissey, 408 U.S. at 482.

48.Federal courts have applied this framework directly to noncitizens released from immigration detention. These decisions recognize that release under § 1226—whether on bond, parole, or an order of recognizance—creates a liberty interest functionally indistinguishable from the conditional liberty of parolees in Morrissey. See *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019) (noncitizen released on bond has a liberty interest "just as" those on parole or probation); *Guillermo M.R. v. Kaiser*, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025) (liberty interest after immigration release is "inherent in the Due Process Clause"); *Ortega v. Kaiser*, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (collecting cases); *Reyes v. Larose*, 2025 WL 3171743, at *5 (S.D. Cal. Nov. 13, 2025); *Rodriguez v. Kaiser*, 2025 WL 2855193, at *5–6 (E.D. Cal. Sept. 4, 2025); *Arzate v. Andrews*, 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025).

49.Building on *Morrissey* and *Young*, these courts hold that a noncitizen who was detained under § 1226, then affirmatively released to live and work in the

community, "has a liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); see also *Estrada-Samayoa v. Cruz*, 2025 WL 3268280, at *6 (E.D. Cal. Nov. 24, 2025) (same); *Espinoza v. Kaiser*, 2025 WL 2675785, at *14 (E.D. Cal. Sept. 18, 2025); *Hernandez v. Wofford*, 2025 WL 2420390, at *12–15 (E.D. Cal. Aug. 21, 2025).

50. The liberty interest is particularly strong where, as in those cases, the person has spent years building a life in the United States: forming a family, working, and integrating into the community. See *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (noncitizens present in the United States have a "weighty" interest in staying to "live and work" here and "rejoin [their] immediate family"); *Estrada-Samayoa*, 2025 WL 3268280, at *6 (emphasizing decades of residence, family, caregiving, and employment).

51. Petitioner's history fits squarely within this framework. DHS initially detained her, then affirmatively released her on her own recognizance under § 236 of the INA/§ 1226(a), allowing her to live openly in the community while her removal proceedings remained pending. In the years that followed, she maintained a home, worked consistently, and cared for her family—all with DHS's knowledge and under ongoing supervision. That release reflected an official determination that she was neither a danger to the community nor a flight risk. See *Pinchi*, 792 F. Supp. 3d at 1034 (because ICE may not release someone who is a danger or a flight risk under § 1226(a), release itself implies the opposite finding); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (same principle).

52. Under Morrissey and its progeny, and consistent with the growing body of post-Riley immigration cases, Petitioner therefore "has a liberty interest in her release, implicating her rights under the Constitution's Due Process Clause." *Estrada-Samayoa*, 2025 WL 3268280, at *6; see also Pinchi, 792 F. Supp. 3d at

1032–34; *Espinoza*, 2025 WL 2675785, at *14; *Reyes*, 2025 WL 3171743, at *5; *Guillermo M.R.*, 2025 WL 1983677, at *4.

53. Once DHS has conferred that conditional liberty—by releasing a person on bond, parole, or recognizance—"the resulting conditional liberty interest prohibits the agency from re-detaining the person without procedural safeguards." *Pinchi*, 2025 WL 2084921, at *4–5; *Espinoza*, 2025 WL 2675785, at *14; *Hernandez*, 2025 WL 2420390, at *12–15. That is precisely what occurred here: DHS revoked Petitioner's long-standing release and returned her to custody, with no notice, no neutral decisionmaker, and no opportunity to contest whether detention was necessary.

54. Federal law has long constrained DHS's ability to revoke a noncitizen's conditional release. Although regulations state that ICE may "at any time" revoke a bond or order of recognizance, the Board of Immigration Appeals has made clear for over four decades that revocation is permissible only where there is a material change in circumstances—"new circumstances or information" not present at the time of release. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). Courts have strictly applied this rule: re-detention is unlawful where "the underlying facts remain unchanged," and DHS may not re-detain an individual based on a mere shift in agency preference or a re-evaluation of the same information previously considered. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), aff'd, 905 F.3d 1137 (9th Cir. 2018); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021).

55. These statutory limits operate alongside the Fifth Amendment, which independently prohibits revocation of conditional liberty without constitutionally adequate procedures. District courts across California have applied these principles in this context, holding that DHS must identify new material evidence and afford a bond or custody hearing before re-detaining a noncitizen who has been living in

the community. See *Meza v. Bonnar,* 2018 WL 2554572, at *2–3 (N.D. Cal. June 4, 2018); Ortega v. Bonnar, 415 F. Supp. 3d 963, 971–73 (N.D. Cal. 2019); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); Romero v. Kaiser, 2022 WL 1443250, at *3–4 (N.D. Cal. May 6, 2022); *Enamorado v. Kaiser*, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025); *Doe v. Becerra*, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025). DHS satisfied none of these requirements here: it identified no new evidence, no changed circumstances, and provided Petitioner with no pre-deprivation process whatsoever.

Detaining Petitioner Without a Pre-Deprivation Bond Hearing Violates the Due Process Clause

56.Procedural due process requires the government to provide constitutionally adequate procedures before depriving a person of a protected liberty interest. A procedural due process claim has two elements: (1) the deprivation of a protected liberty or property interest; and (2) the denial of adequate procedural safeguards. *Brewster v. Bd. of Educ.*, 149 F.3d 971, 982 (9th Cir. 1998); *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989).

57.As described above, Petitioner's prior release under § 1226(a) created a significant liberty interest in remaining out of custody. The question, then, is whether the procedures DHS used to revoke that liberty and re-detain her satisfy constitutional requirements. Courts analyze that question under the three-part test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which weighs:

(1) the private interest affected by the official action;

(2) the risk of erroneous deprivation under the procedures used, and the value of additional safeguards; and

(3) the government's interests, including the burden of additional procedures.

58. At minimum, due process required a neutral hearing—pre- or promptly post-deprivation—under § 1226(a), with the government bearing the burden.

59. **Private interest.** Petitioner's interest in continuing to live and work in the community, care for her family, and remain free from physical confinement is extraordinarily weighty. See *Zadvydas*, 533 U.S. at 690 (freedom from imprisonment is at the heart of due process); *Landon*, 459 U.S. at 34 (noncitizens present in the United States have a "weighty" interest in staying, living, and working here with family). Like the petitioners in *Pinchi*, *Estrada-Samayoa,* and *Faizyan*, Petitioner had already been living in the United States under DHS-authorized release, with stable employment and deep family ties, before ICE abruptly revoked that liberty. See *Pinchi*, 792 F. Supp. 3d at 1032–33; *Gagandeep Singh v. Bowen*, 2025 WL 3251437, at *6–8 (C.D. Cal. Nov. 21, 2025); *Majid Faizyan v. Casey*, 2025 WL 3208844, at *6–7 (S.D. Cal. Nov. 17, 2025).

60. **Risk of erroneous deprivation and value of additional procedures.** The risk of error is unacceptably high when DHS can revoke release and re-detain a person unilaterally, without a hearing before a neutral decisionmaker. Civil immigration detention is legitimate only to prevent flight or protect the community. *Zadvydas*, 533 U.S. at 690, 693–94. Yet in these post-release re-detention cases, the government typically offers no new evidence that the person has become dangerous or a flight risk; the re-detention is based purely on its own change of heart or internal policy. See *Pinchi*, 792 F. Supp. 3d at 1034–35; *Gonzalez Salazar v. Casey*, 2025 WL 3063629, at *3–4 (S.D. Cal. Nov. 3, 2025); *Faizyan*, 2025 WL 3208844, at *6–7; *Singh v. Andrews*, 2025 WL 1918679, at *7–8 (E.D. Cal. July 11, 2025).

61. Courts have emphasized that ICE's initial decision to release under § 1226(a) itself reflects a determination that the individual is neither a danger nor a flight risk, because ICE lacks authority to release someone who fails those criteria.

See *Pinchi*, 792 F. Supp. 3d at 1034; *Saravia*, 280 F. Supp. 3d at 1176. Where, as here, there has been no bond hearing, no changed-circumstances determination by a neutral adjudicator, and no opportunity for Petitioner to present evidence, the "risk of an erroneous deprivation of liberty is high." *Singh v. Andrews*, 2025 WL 1918679, at *7; *Gonzalez Salazar*, 2025 WL 3063629, at *3–4; *Estrada-Samayoa*, 2025 WL 3268280, at *6.

62. A simple bond hearing under § 1226(a) would drastically reduce that risk by requiring the government to articulate the reason for detention and prove, before an immigration judge, that confinement is actually necessary. Courts applying *Mathews* in this context have repeatedly found that additional procedures—a pre- or prompt bond hearing before a neutral decisionmaker, where the government bears the burden—have enormous probative value. See *Estrada-Samayoa*, 2025 WL 3268280, at *6; *Pinchi*, 792 F. Supp. 3d at 1035–36; *Faizyan*, 2025 WL 3208844, at *6–7; *Orozco Acosta v. Albarran*, 2025 WL 3114454, at *2–3 (N.D. Cal. Nov. 6, 2025); *Pablo Sequen v. Albarran*, 2025 WL 2935630, at *5–8, 12 (N.D. Cal. Oct. 15, 2025).

63. **Government interests and burdens.** The government has no legitimate interest in detaining individuals who were previously found suitable for release and for whom detention is not necessary to ensure appearance or public safety. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017); *Pinchi*, 792 F. Supp. 3d at 1036. Immigration custody hearings are routine and impose only "minimal" administrative cost. *Singh v. Andrews*, 2025 WL 1918679, at *8; *Khan v. Noem*, 2025 WL 3089352, at *7 (E.D. Cal. Nov. 5, 2025); *Lopez*, 2025 WL 3124116, at *4 (N.D. Cal. Sept. 19, 2025). As multiple courts have concluded, the government's interest in avoiding a hearing is low to nonexistent. See *Ortega*, 415 F. Supp. 3d at 970; *Ortega v. Kaiser*, 2025 WL 1771438, at *3.

64.Balancing these factors, courts in materially identical circumstances have held that re-detaining a previously released noncitizen without a hearing violates procedural due process. See *Pinchi*, 792 F. Supp. 3d at 1035–36; *Espinoza*, 2025 WL 2675785, at *14; Estrada-Samayoa, 2025 WL 3268280, at *6; *Faizyan,* 2025 WL 3208844, at *6–7; *Orozco Acosta*, 2025 WL 3114454, at *2–3; *Pablo Sequen*, 2025 WL 2935630, at *5–8, 12. Those courts have ordered either immediate release with a pre-deprivation hearing requirement before any future re-detention, or an individualized bond hearing under § 1226(a) at which the government must establish, by clear and convincing evidence, that detention is necessary to prevent flight or protect the public. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1199–1200 (9th Cir. 2022) (clear-and-convincing standard required in immigration bond hearings); *Pinchi*, 792 F. Supp. 3d at 1035–36; *Faizyan*, 2025 WL 3208844, at *6–7.

65.The same analysis applies here. Petitioner's prior § 1226(a) release created a powerful liberty interest in her continued freedom; ICE revoked that liberty and re-detained her at a routine check-in, without notice, without a neutral decisionmaker, and without any showing that she had become dangerous or a flight risk. Under *Mathews*, that procedure is constitutionally inadequate. The Due Process Clause requires, at minimum, that Petitioner be afforded an individualized custody hearing before a neutral adjudicator, applying the proper statutory framework (§ 1226(a)) and burden of proof, before she may be lawfully deprived of her liberty again.

The Government Bears the Burden of Proof at Any Required § 1226(a) Custody Hearing

66.Because Petitioner has been denied that process entirely, the burden applicable at any required § 1226(a) hearing is governed by constitutional principles, not agency default rules.

67. Although § 1226(a) does not expressly allocate the burden at bond hearings—and the BIA has historically placed that burden on detainees, *see In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006); *In re Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999)—courts within the Ninth Circuit have repeatedly held that once a detainee has been denied the individualized process the Constitution requires, due process—not agency practice—controls. *See Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019).

68. Under the Fifth Amendment, the government must justify continued civil detention by clear and convincing evidence. *See Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011); *Singh v. Barr*, 400 F. Supp. 3d at 1018; *Rajnish v. Jennings*, 2020 WL 7626414, at *4–5 (N.D. Cal. Dec. 22, 2020); *Hernandez v. Wofford*, 2025 WL 2420390, at *7–8 (E.D. Cal. Aug. 21, 2025). The Ninth Circuit's decision in *Rodriguez Diaz* acknowledged that *Singh* grounded this burden rule in "general principles of procedural due process," and expressly declined to decide whether *Singh* "remains good law in any respect" after *Jennings*. 53 F.4th 1189, 1196, 1199, 1202 n.4 (9th Cir. 2022). Subsequent Ninth Circuit decisions have continued to apply the government-bears-the-burden rule in practice. *See Martinez v. Clark*, 36 F.4th 1219, 1231 (9th Cir. 2022) (noting BIA properly placed the burden on the government to prove danger by clear and convincing evidence for a § 1226(c) detainee), reaffirmed on remand, 124 F.4th 775, 785–86 (9th Cir. 2024).

69. District courts addressing § 1226(a), § 1225(b), and revocation cases regularly order that the government must justify detention by clear and convincing evidence before any re-detention. See *Hernandez v. Wofford*, 2025 WL 2420390, at *7–8 (E.D. Cal. Aug. 21, 2025) (requiring government to justify detention by clear and convincing evidence prior to any re-detention); *Pablo Sequen v. Albarran*, 2025 WL 2935630, at *1 (N.D. Cal. Oct. 15, 2025) (same); *Faizyan v.*

Casey, 2025 WL 3208844, at *8 (S.D. Cal. Nov. 17, 2025) (same); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1038 (N.D. Cal. 2025) ("may not be detained unless the government demonstrates…by clear and convincing evidence…"); *Salazar v. Dedos*, 2025 WL 2676729, at *7–9 (D.N.M. Sept. 17, 2025); *Sadeqi v. LaRose*, 2025 WL 3154520, at *4 (S.D. Cal. Nov. 12, 2025).

70. Accordingly, where a noncitizen detained under § 1226(a) (or erroneously treated under § 1225(b)) has been denied the individualized custody process due process requires, the Constitution governs the remedial hearing: the government must prove, by clear and convincing evidence, that continued detention is necessary to prevent flight or protect the community. This allocation is essential to minimize the risk of erroneous deprivations of liberty and to give real effect to the Fifth Amendment's protections.

CLAIMS FOR RELIEF

COUNT ONE

(*Unlawful Detention Under the Immigration and Nationality Act and the Administrative Procedure Act*)

71. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

72. Respondents have treated Petitioner as if she were detained pursuant to 8 U.S.C. § 1225(b), invoking mandatory detention and refusing to provide her with the individualized custody process guaranteed under 8 U.S.C. § 1226(a) and its implementing regulations. That position is contrary to the statutory text, the structure of the INA, longstanding BIA precedent, federal rulemaking, and the overwhelming weight of district-court authority across this Circuit.

73. DHS itself has long recognized that service of a Notice to Appear severs § 1225(b) authority. The BIA squarely held in *Matter of E–R–M– & L–R–M–* that once DHS issues an NTA and places an individual in § 240 proceedings, custody is

governed by § 1226(a). 25 I. & N. Dec. 520, 520 (BIA 2011) (confirming that individuals charged under § 212(a)(6)(A)(i) are entitled to bond under § 1226(a)). DHS's own rulemaking also states that noncitizens present without admission "will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

74. Courts across the Ninth Circuit uniformly follow this framework. When DHS releases a person from initial § 1225(b) custody and places them in removal proceedings before the immigration court, § 1225(b)'s mandatory detention authority is extinguished. Any later custody must proceed under § 1226(a). See *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at 8–10 (N.D. Cal. Sept. 12, 2025) (holding that § 1225(b) "cannot serve as an endless source of detention authority once DHS has made the choice to release an individual"); *Hernandez v. Wofford*, 2025 WL 2420390, at 12–15 (E.D. Cal. Aug. 21, 2025) (rejecting DHS's attempt to rely on § 1225(b) after release); *Espinoza v. Kaiser*, 2025 WL 2675785, at 5–8 (E.D. Cal. Sept. 18, 2025) (release reflects DHS's determination that the person is neither a danger nor a flight risk and that § 1226(a) governs subsequent custody); See also *Reyes v. Larose*, 2025 WL 3171743, at *4–5 (S.D. Cal. Nov. 13, 2025); *Estrada-Samayoa v. Cruz*, 2025 WL 3268280, at *5–6 (E.D. Cal. Nov. 24, 2025); *Arzate v. Andrews*, 2025 WL 2230521, at *3–4 (E.D. Cal. Aug. 4, 2025); *Guillermo M.R. v. Kaiser*, 2025 WL 1983677, at *3–4 (N.D. Cal. July 17, 2025).

75. Petitioner's case fits squarely within this line of authority. DHS initially detained her, then affirmatively released her under § 1226(a) on her own recognizance—an action the statute and regulations permit only after DHS determines that the individual is *not* a danger or flight risk. 8 C.F.R. § 236.1(c)(8); see *Saravia v. Sessions,* 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (release under § 1226(a) presumes suitability for release). For years thereafter, Petitioner lived in the community, maintained steady employment, complied with all ICE

check-ins, and participated in ongoing § 240 removal proceedings. Her NTA has been pending before the immigration court throughout this period.

76.Respondents' attempt to treat Petitioner as a mandatory § 1225(b) detainee—*years after her release*—is therefore outside the bounds of the INA. Once DHS conferred release, supervised her in the community, and routed her case to the immigration court, § 1226(a) became the sole governing detention authority.

77.Because § 1226(a) governs her custody, Petitioner is entitled to a constitutionally adequate individualized custody hearing before an immigration judge, applying the correct burden of proof, procedural safeguards, and statutory standard. *Jennings*, 583 U.S. at 306; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196–1200 (9th Cir. 2022).

78.By asserting § 1225(b) as the basis for her re-detention at a routine ICE check-in, denying her any bond hearing, and refusing to treat her custody as governed by § 1226(a), Respondents have acted in violation of the INA, its regulations, and binding authority. Petitioner's detention is therefore unlawful and must be corrected through immediate relief.

COUNT TWO

(Violation of Fifth Amendment's Due Process Clause)

79.Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

80.Ms. Aguilar-Perez has lived in the United States for more than thirty-five years, since entering as a teenager in 1992. In 2014, after a traffic-related incident, DHS served her with an NTA but released her on her own recognizance. For the next decade—2014 through her sudden re-detention in October 2025—she complied with every ICE check-in, maintained the same long-term residence with her lawful permanent resident husband and their three U.S. citizen children, worked steadily, and remained actively engaged in her removal proceedings.

DHS's prior release and decade of supervision necessarily reflected a determination that she posed neither a danger nor a flight risk.

81. Despite this long record of compliance and stability, DHS abruptly re-detained her at a routine ICE check-in in October 2025 without any notice, explanation, or identification of changed circumstances. When she requested a custody redetermination, the Immigration Judge denied jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and conducted no individualized danger or flight-risk assessment. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the procedures afforded to her were constitutionally inadequate.

82. Private Interest: Petitioner's private interest is "the most elemental of liberty interests"—freedom from physical confinement. *Zadvydas*, 533 U.S. at 690. Ms. Aguilar-Perez has lived in the United States for more than thirty-five years, with her entire family, home, and community life rooted in San Diego. For the past decade, following DHS's own decision to release her, she complied with every ICE check-in, maintained stable employment, and continued caring for her family. Her sudden re-detention therefore did not just interrupt a period of supervision—it upended a decades-long life lived entirely in the community. The severity of that disruption, combined with her deep and longstanding ties, makes her private interest in continued liberty extraordinarily weighty under *Mathews*.

83. Risk of Erroneous Deprivation: The risk of error was exceptionally high because ICE provided no notice, no charges, no explanation, and no process whatsoever at the time of re-detention. Petitioner had complied with every ICE check-in for a full decade, maintained long-term employment, lived stably with her LPR husband and U.S. citizen children, and had no criminal convictions. Nothing in the record suggests any material change in circumstances that could justify revocation. Without a neutral hearing, she had no opportunity to contest detention,

present evidence, or understand the basis for the abrupt termination of her conditional liberty.

84. Government Interest and Administrative Burden: The government's interest in detaining Petitioner without a hearing is minimal to nonexistent. DHS previously determined—after issuing her NTA in 2014 and conducting custody review—that Petitioner was neither a danger nor a flight risk and could safely remain in the community. Over the next ten years, she demonstrated perfect compliance with supervision, deepened her community ties, maintained continuous employment, supported her family, and committed no new offenses. Nothing in the record indicates any material change since DHS's original release determination. The government has no legitimate interest in re-detaining a person who has long proven herself safe and reliable under supervision. Nor does DHS have any valid interest in bypassing the statutory and constitutional procedures that govern custodial decisions: "the government has no legitimate interest in an erroneous deprivation of liberty." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). Providing a § 1226(a) bond hearing imposes only a minimal administrative burden—Immigration Judges conduct such hearings routinely—and courts throughout this Circuit have held that requiring the government to follow ordinary § 1226(a) procedures is not burdensome at all. See *Pinchi v. Noem*, 2025 WL 2084921, at *4–5; *Espinoza v. Kaiser*, 2025 WL 2675785, at *14; *Hernandez v. Wofford*, 2025 WL 2420390, at *12–15. Less restrictive alternatives such as bond, supervised release, periodic reporting, or electronic monitoring were readily available and would have fully met any legitimate governmental objective, confirming that the fiscal and administrative burden of providing a brief custody hearing is negligible compared to the profound deprivation of liberty at stake.

85. Balancing the Mathews factors confirms that Petitioner's re-detention violated procedural due process.

COUNT THREE

(Administrative Procedure Act, 5 U.S.C. §§ 701–706)

86.Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

87.Respondents' actions—re-detaining Petitioner under 8 U.S.C. § 1225(b)(2), refusing to treat her custody as governed by § 1226(a), and denying her access to the individualized bond process required by statute and regulation—constitute final agency action reviewable under the Administrative Procedure Act ("APA"). 5 U.S.C. §§ 702, 704.

88.Under the APA, a court must "hold unlawful and set aside agency action" that is "not in accordance with law," "in excess of statutory jurisdiction," or taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C), (D).

89.Respondents' reliance on § 1225(b)(2) is contrary to the text, structure, and long-settled implementation of the Immigration and Nationality Act. As set forth in Count One, the INA draws a clear distinction between border-processing detention under § 1225 and ordinary, discretionary civil custody under § 1226(a). Once DHS served Petitioner with a Notice to Appear in 2014 and released her "in accordance with section 236 of the Act," § 1226(a) became—and remained—the sole source of detention authority. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520 (BIA 2011).

90.Federal courts across California have repeatedly held that DHS acts in excess of statutory jurisdiction when it attempts to detain a long-term resident under § 1225(b)(2) after prior release under § 1226(a). See *Estrada-Samayoa v. Cruz*, 2025 WL 3268280, at *3–6 (E.D. Cal. Nov. 24, 2025); *Garcia v. Noem*, 2025 WL 2549431, at *5–8 (S.D. Cal. Sept. 3, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025); *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187-SKO (HC), 2025 WL 2959274, at *3-7 (E.D. Cal. Oct. 17, 2025)

(collecting cases); *see also Reyes v. Larose, et al.*, No. 25-CV-2938 JLS (VET), 2025 WL 3171743, at *5 (S.D. Cal. Nov. 13, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4-9 (E.D. Cal. Sept. 23, 2025); *Salvador v. Bondi*, No. 2:25-CV-07946-MRA-MAA, 2025 WL 2995055, at *7 (C.D. Cal. Sept. 2, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5-7 (D. Mass. July 7, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4-9 (E.D. Cal. Sept. 23, 2025).

91. Those decisions uniformly reject DHS's attempt to treat an interior arrestee—already placed in § 240 proceedings—as an "applicant for admission" subject to mandatory detention. Respondents' contrary position here is therefore not in accordance with law and must be set aside. 5 U.S.C. § 706(2)(A), (C).

92. Even if Respondents could theoretically invoke § 1225(b)(2), their application of it here is arbitrary and capricious. An agency acts arbitrarily where it "entirely fails to consider an important aspect of the problem," "relied on factors Congress did not intend it to consider," or offers an explanation that "runs counter to the evidence." *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). Respondents did all three:

a. They ignored Petitioner's decade of compliance, stability, and deep community ties, all of which weighed strongly against detention
b. They failed to identify any new circumstances that would justify revoking her long-standing release under § 1226(a).
c. They relied entirely on a categorical status—"present without admission"—that Congress did not make dispositive and that district courts across this Circuit have held cannot justify § 1225(b)(2) detention for long-term residents previously released under § 1226(a).

93. Courts have repeatedly held that re-detaining an individual with no new evidence, no changed circumstances, and no individualized danger-or-flight

determination is arbitrary and capricious under the APA. See *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034–36 (N.D. Cal. 2025); *Espinoza v. Kaiser*, 2025 WL 2675785, at *14 (E.D. Cal. Sept. 18, 2025); *Meza v. Bonnar*, 2018 WL 2554572, at *2–3 (N.D. Cal. June 4, 2018). DHS's abrupt re-detention of Petitioner—without notice, explanation, or individualized analysis—fits squarely within those precedents.

94. Respondents' conduct also violated the APA because it was taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

95. Under long-standing BIA precedent, DHS may revoke release under § 1226(a) only when "new circumstances or information" arise. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). DHS ignored this requirement entirely. It did not identify new evidence; it did not conduct a custody review; and it did not offer Petitioner any opportunity to contest detention. This failure to apply mandatory procedures independently renders the re-detention unlawful.

96. Because Respondents' actions (1) exceed statutory authority, (2) are contrary to law, (3) are arbitrary and capricious, and (4) were executed without required procedures, the Court must set them aside under 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody, as her detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful under the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment;

b. In the alternative, order Respondents to provide Petitioner with a prompt, individualized, and constitutionally adequate custody hearing before a neutral decisionmaker under 8 U.S.C. § 1226(a), to be held within seven

(7) days, at which the Government bears the burden of proving, by clear and convincing evidence, that continued detention is necessary to prevent flight or protect the community and that no less restrictive alternative would reasonably satisfy the Government's legitimate interests;

c. Declare that Respondents' reliance on § 1225(b)(2)(A) to detain Petitioner—years after DHS released her under § 1226(a) and placed her in § 240 removal proceedings—is contrary to law and in excess of statutory authority, in violation of 5 U.S.C. § 706(2);

d. Declare that Respondents' re-detention of Petitioner without notice, without identifying any material change in circumstances, and without providing constitutionally required procedures violates the Fifth Amendment's Due Process Clause;

e. Expedite briefing and adjudication of this petition pursuant to 28 U.S.C. § 1657(a) and the Court's inherent authority, given Petitioner's ongoing and unlawful deprivation of liberty;

f. Award attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable authority; and

g. Grant such other and further relief as the Court deems just and proper.

DATED: October 21, 2025

Respectfully Submitted,

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EXHIBIT LIST

- Exhibit A: Bond Packet
- Exhibit B: 2023 NTA
- Exhibit C: Nov. 20, 2025 Bond Denial / Jurisdiction Order

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.