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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Maria Guadalupe Hernandez Santiago,

Petitioner,

vs.

Pamela Bondi, Attorney General of the United States;

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

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

Fred Figueroa, Warden, Eloy Detention Center;

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

Respondents.

Case No.:

File No: A[redacted]

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

INTRODUCTION

Comes now, Petitioner, Jose Antonio Najarro Zuniga, 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 Untied 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 2006 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.

The Board of Immigration Appeals recently issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)(2)(A) to require mandatory detention of all individuals who entered without inspection. That decision represents the agency's most recent view of the detention statute, but it illustrates DHS's unlawful expansion of § 235(b)(2)(A). That decision does not control this Court. Petitioner entered the United States on 2006 and lived in the U.S ever since before ICE arrested her. She is not an "arriving alien" at the threshold seeking admission, but rather a long-term resident who falls under § 236(a).

Pursuant to this Court's inherent powers in habeas corpus proceedings, Maria Guadalupe Hernandez Santiago respectfully requests this Court order Respondents to release her from detention.

I. PARTIES

A. Petitioner Maria Guadalupe Hernandez Santiago is a native of Mexico. She is currently detained at Eloy Detention Center, 1705 Hanna Rd, Eloy, AZ 85131.

B. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the Untied States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office

for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. § 1103(g). She routinely transacts business int eh District of Arizona, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such, is the legal custodian of Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

C. Respondent, John Cantu, is the Phoenix Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has immediate authority over the Petitioner. Respondent Cantu's address is Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ, 85004.

D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of Homeland Security ("DHS"), the federal agency responsible for enforcing Petitioner's arrest, detention and removal. DHS's address is U.S. Department of Homeland Security, Washington, DC 20528.

E. Respondent, Fred Figueroa., is the warden of the Eloy Detention Center, where Petitioner is being held. He is the custodian of Petitioner and is named in his official capacity.

F. Todd M. Lyons is the Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security, the federal agency responsible for enforcing Petitioner's arrest, detention and removal. DHS's address is U.S. Department of Homeland Security, Washington, DC 20528.

II. JURISDICTION AND VENUE

The Court has jurisdiction under the Suspension Clause. The Suspension Clause provides, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I § 9, cl. 2.

This case arises under the United States Constitution; the INA, 8 U.S.C. §§ 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth Amendment and the Fourteenth Amendment. Petitioner's current detention pending her removal order as enforced by Respondents constitutes a "severe restraint [] on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley*, 411 U.S. at 351 (1973); 28 U.S.C. § 2241(c)(3).

No Supreme Court or Ninth Circuit precedent applicable to immigration detainees, nor the habeas statute, indicate that venue is not proper in the District of Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because a substantial part of the events and omissions which gave rise to this action occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at the Eloy Detention Center in Eloy, Arizona. She is in removal proceedings before the Immigration Court in Eloy, Arizona, and on December 8, 2025, her request for a custody redetermination was denied on the grounds that Petitioner had been classified as subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

III. FACTS GIVING RISE TO THE HABEAS PETITION

Petitioner, Maria Guadalupe Hernandez Santiago, is a native and citizen of Mexico. She entered the United States without inspection on 2006 and has resided continuously in in the U.S since that date.

Officers of U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner in Arizona and placed her in removal proceedings under § 240 of the Immigration and Nationality Act ("INA"). She was taken into custody and transported to the Eloy Detention Center in Florence, Arizona, where she remains detained today.

Following her arrest, ICE determined that Petitioner was subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). On December 2nd, 2025, Petitioner requested a custody redetermination before an Immigration Judge, but her request was denied on the grounds that the Immigration Court lacked jurisdiction because DHS had classified her as subject to § 1225(b)(2) on December 8, 2025.

On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who entered without inspection are "applicants for admission" subject to mandatory detention under INA § 235(b)(2)(A). That decision does not bind this Court. Petitioner, who entered the United States in 2006 and has lived here ever since is not an arriving alien at the border but a long-term resident whose custody falls under § 236(a). For decades, Immigration Judges conducted bond hearings for individuals in Petitioner's position, a practice the Board itself acknowledged before abruptly reversing course. DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary to the statute's plain text, longstanding administrative practice, and decades of settled interpretation. Because DHS has improperly categorized her under § 1225(b)(2), Petitioner has been deprived of the opportunity

for an individualized bond hearing, leaving her in prolonged and unlawful detention in violation of the INA, the APA, and the U.S. Constitution.

Petitioner has no disqualifying criminal convictions that would render her subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is she an applicant for admission apprehended at a port of entry. Instead, she has lived in the interior of the United States for more than a decade, working, raising her family, and establishing significant ties to the community in the U.S.

DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary to the statute's plain text, longstanding administrative practice, and decades of settled interpretation.

Because Petitioner has improperly been categorized under § 1225(b)(2), Petitioner has been deprived of the opportunity for an individualized bond hearing, leaving her in prolonged and unlawful detention in violation of the INA, the APA, and the U.S. Constitution.

IV. APPLICABLE LAW

Respondents' power to detain and deport someone is not limitless, nor is it shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950 (S.D.N.Y. 2018) (appeal withdrawn sub nom.).

"Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy. *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering the release of a petitioner and is to "be administered with the initiative and flexibility essential to ensure that miscarriages of justices within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas corpus "never has been a static, narrow, formalistic remedy; its scope has been to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). At its historical core, habeas corpus "has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (citations omitted). These protections extend fully to noncitizens subject to an order of removal. *See Martinez v, McAleenan*, 385 F.Supp.3d 349, 355 ("Due to its talismanic significance in protecting individual liberty from unlawful detention, habeas corpus is fundamentally governed by equity. The Supreme Court has granted the writ when justice has so required.") (citing *Munaf v. Grren*, 128 S.Ct. 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court has noted the writ's "scope and flexibility--its capacity to reach all manner of

illegal detention--its ability to cut through barriers of form and procedural mazes." *Harris*, 394 U.S. at 291.

V. REQUEST FOR RELIEF

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

Petitioner requests that this Court issue an order that Respondents must notify the Court and Petitioner's counsel five days prior to any removal of Petitioner.

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

Furthermore, Petitioner requests to be released from detention.

VI. EXHAUSTION OF REMEDIES

Exhaustion of remedies is not required for this habeas petition because Petitioner challenges the government's unlawful classification of her detention as

mandatory under 8 U.S.C. § 1225(b)(2). The Immigration Court has taken the position that it lack jurisdiction to review custody where DHS asserts mandatory detention. Any further attempt to pursue administrative remedies would therefore be futile.

Even if exhaustion were required, Petitioner has already sought custody redetermination before an Immigration Judge. On December 8, 2025, her request for bond was denied on the grounds that Petitioner falls under § 1225(b)(2). Having raised the issue and been denied relief, Petitioner has satisfied or, in the alternative, is excused from any exhaustion requirement.

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

PRELIMINARY INJUCTION

1. Legal Standard

The legal standard for granting preliminary injunction relief is well established. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir.1983). This Court may issue injunctive relief maintaining the status quo when the movant demonstrates: (1) a likelihood of irreparable harm in the absence of the injunction;

and (2) either a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation, with a balance of hardships tipping decidedly in the movant's favor. *Id.* While a petitioner seeking a preliminary injunction has the burden of demonstrating likelihood of success on the merits, they are not required to prove their case in full at the preliminary injunction stage, but only such portions that enable them to obtain the injunctive relief that they seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

2. Petitioner is Entitled to Injunctive Relief

Petitioner is unlawfully detained under the government's assertion that he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is contrary to the plain text of the statute, longstanding agency practice, and recent federal district court rulings. As a noncitizen who entered the United States on 2006 and was arrested many years later inside the country, Petitioner is not "seeking admission" at a port of entry and therefore cannot be held under § 1225(b)(2). Her custody is properly governed by 8 U.S.C. § 1226(a), which authorizes an individualized custody determination and potential release on bond. The denial of a bond hearing deprives Petitioner of liberty without due process of law.

Under the Due Process Clause of the Fifth Amendment, no person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.

V. Non-citizens on U.S. soil have constitutional rights, including the right to due process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*, 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing, Respondents subject hers to prolonged and arbitrary detention beyond what the Constitution and the statute allow.

In this circumstance, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

a. Irreparable Harm in the Absence of an Injunction

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

Due process cases recognize a broad liberty interest rooted in the fact of deportation, not just the process of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) (finding a "strong liberty interest" where being deported means being separated

from home and family). While this liberty interest typically arises in removal proceedings, courts have found procedural due process violations for persons not in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (forms issued to noncitizens charged with civil document fraud violated due process clause); *Rojas v. Johnson*, 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar. 29, 2018) (concluding that "Agency Defendants do not provide sufficient notice of the one-year deadline to satisfy the Due Process clause" to asylum-seeker subclasses both in and out of removal proceedings).

Here, Petitioner suffers irreparable harm with each additional day of detention without an opportunity to demonstrate that she is neither a danger to the community nor a flight risk. The deprivation of liberty cannot be remedied by monetary damages. Moreover, the balance of equities favors Petitioner because the government has no legitimate interest in detaining her under an unlawful statutory framework. The public interest also favors ensuring compliance with constitutional guarantees and statutory limits on detention authority.

b. Likelihood of Success on the Merits and Serious Questions Going to the Merits

Immigrants who pursue lawful immigrant status in the United States have rights under the Due Process Clause of the Fifth Amendment. Once a petitioner has identified protected liberty or property interest, the Court must determine

whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S. at 335. In making this determination, the Court balances (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail;" and (3) "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* Interpreted under the Constitution, the INA and its applicable regulations do not permit continual detention of Petitioner after he has been granted immigration relief and surpassed the 90-day removal allotment given under the INA. 8 U.S.C. § 1231.

Due process protects a noncitizen's liberty interest in the adjudication of discretionary applications for relief and benefits made available under the immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself"). Petitioner has a protected due process interest in her claim of unlawful detention, and due process requires that since she cannot be removed to Mexico, and she cannot stay detained, that she must be released.

The Government's actions toward Petitioner violate or will violate the APA and the Fifth Amendment. The APA provides that a court "shall. . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To satisfy the APA, an agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

When the Government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes and in areas of the law, such that agencies must follow their own "existing valid regulations," even where Government officers have broad discretion, such as in immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954) (reversing in immigration case after review of warrant for deportation); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required."); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005) ("*Accardi* has come to stand for the proposition that agencies may not

violate their own rules and regulations to the prejudice of others."). Breaches of *Accardi*'s rule constitute violations of both the APA and the Fifth Amendment's Due Process Clause. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) ("*Accardi* doctrine is premised on fundamental notions of fair play underlying the concept of due process"); *see also Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 545, 546 (6th Cir. 2004) (noting that an *Accardi* violation may be a due process violation, and the Government's action may be set aside pursuant to the APA); *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations . . . may result in a violation of an individual's constitutional right to due process.").

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

Ashcroft, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S. at 268).

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

c. There is No Substantial Injury to Other Parties and Injunctive Relief is in the Public Interest

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

The Petitioner, the public, and the Government all have a vested interest in fair and equitable legal proceedings for all people, citizens and non-citizens alike. *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to 5th Amendment due process).

Further, granting injunctive relief in this case will not cause substantial injury to Respondents or to the government. The government has no legally cognizable interest in detaining Petitioner under an unlawful statutory framework. An injunction requiring that Petitioner be provided a custody hearing under 8 U.S.C. § 1226(a) merely enforces the law as written and ensures compliance with constitutional protections. As courts have consistently recognized, the government cannot be harmed by an order that prevents it from engaging in unlawful conduct.

The Government "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *R.I.L-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez v. Robbins,* 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, "the public interest is served when administrative agencies comply with [the requirements of U.S. law]." *Id.*

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

The BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216

(BIA 2025), extends § 235(b)(2)(A) beyond its text and purpose to bar bond for all individuals who entered without inspection, no matter how long they have resided in the United States. That interpretation is deeply flawed.

First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs "applicants for admission", those encountered at or near the border. Petitioner, who has resided in the interior of the United States since 2006, is not in that category. Section 236(a) is the detention authority that properly applies.

Second, the decision departs from decades of agency practice. The Board itself acknowledged that "for years Immigration Judges conducted bond hearings for aliens who entered the United States without inspection." *Id.* at 225. This admission underscores that § 236(a) has long been understood to provide custody authority in such cases. The Board's sudden reversal represents an unexplained break from settled practice, rendering it arbitrary and unexplained under the APA.

Although the Board later attempted to walk back this acknowledgment, stating that "our acknowledgment that aliens detained under § 236 may be eligible for discretionary release on bond does not mean all aliens are eligible," *id.* at 227, this disclaimer does not erase the historical fact of settled agency practice. Nor does it explain why individuals like Petitioner who entered more than two decades ago, established long-term residence, and were arrested in the interior should suddenly

be stripped of bond eligibility. The Board's narrowing language only underscores the arbitrariness of its reinterpretation. By conceding the longstanding bond practice yet declaring it "beyond the scope" to resolve, the BIA effectively confirmed that its shift was policy-driven, not compelled by statutory text. That makes the decision both unpersuasive and invalid.

Third, the decision raises serious constitutional problems. Mandatory detention without access to a bond hearing, especially for long-term residents like Petitioner with strong family and community ties, violates the Due Process Clause. Courts construe statutes to avoid such constitutional infirmities. This Court should therefore reject *Yajure Hurtado*'s interpretation and apply § 236(a), which authorizes discretionary release on bond.

The Board's interpretation in *Matter of Yajure Hurtado* is not only inconsistent with statutory text and decades of settled practice but has also already faced judicial correction. Federal courts considering the same issue have recognized that DHS's expansion of § 1225(b)(2) produces unlawful and unconstitutional results. In recent cases from the Northern and Central Districts of California, the courts required ICE to provide bond hearings to noncitizens whom DHS had classified under § 1225(b)(2), making clear that custody in such cases is properly governed by § 236(a). These rulings reflect a growing recognition among Article III

courts that DHS's reading of § 1225(b)(2) cannot stand. This Court should follow the same reasoning and hold that Petitioner's detention without access to bond is unlawful.

e. Petitioner's Conviction Does Not Trigger Mandatory Detention Under § 1226(c).

In the December 8, 2025 bond denial, the Immigration Judge made an alternative finding that Petitioner would be subject to mandatory detention even if jurisdiction existed. That conclusion is incorrect. Petitioner's conviction for Criminal Possession of a Forgery Device, a class 6 misdemeanor under A.R.S. § 13-2003(A)(1), does not fall within any category covered by § 1226(c). That statute authorizes mandatory detention only for individuals who have committed specified aggravated felonies, controlled substance offenses, firearm offenses, certain crimes involving moral turpitude committed within five years of admission, or offenses relating to sexual abuse of a minor. A misdemeanor forgery-device conviction does not fall into any of these categories and has never been treated as such under the INA..

The offense is not an aggravated felony because it does not involve a financial loss, trafficking, or any of the elements required under the INA's aggravated felony definitions. It is also not a crime involving moral turpitude. The Arizona statute does

not require proof of intent to defraud, obtaining anything of value, or any conduct courts have treated as inherently immoral. A conviction under A.R.S. § 13-2003(A)(1) can be sustained without showing any intent to harm or deceive a victim, which places it outside the narrow CIMT provisions incorporated into § 1226(c). Even if the government attempted to recharacterize the offense as involving fraud, the record contains no conviction documents supporting such a theory.

Because her conviction does not meet any of the statutory grounds for mandatory detention, DHS cannot rely on § 1226(c). Petitioner should have been treated as a § 1226(a) detainee and given an individualized bond hearing, as has long been the practice for individuals arrested in the interior with no qualifying convictions. The failure to classify her properly resulted in the denial of a bond hearing to which she was entitled and deprived her of the procedures required by statute and due process.

In addition, treating this offense as a basis for mandatory detention would dramatically expand § 1226(c) beyond its text and purpose. Congress limited mandatory detention to serious criminal categories that present heightened risks, not low-level misdemeanor offenses that carry no element of violence, fraud, or harm. Nothing in the statute or the INA's structure suggests that Congress intended to sweep simple possession of a forgery device into the mandatory detention scheme,

and DHS's attempt to do so here only underscores the legal error in the Immigration Judge's alternative finding.

F. Federal Courts have rejected DHS's position.

Recent federal court decisions confirm that Respondents' reliance on § 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025), the district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the interior after long residence in the United States are properly detained under § 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that entry without inspection does not permanently bar a person from eligibility for bond once they are living in the country. That holding directly applies here.

Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure* forecloses administrative relief, rendering exhaustion futile. The same is true for Petitioner, who cannot meaningfully seek bond redetermination before EOIR given that the IJ held that he had no jurisdiction.

Finally, in *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025), the district court issued a preliminary injunction requiring ICE to provide a

bond hearing to a petitioner detained under § 1225(b)(2), holding that custody in such circumstances falls under § 1226(a). That decision confirms that habeas relief is the proper vehicle and that this Court has the authority to order the same remedy for Petitioner.

These cases establish that DHS's reliance on § 1225(b)(2) for long-term residents like Petitioner is inconsistent with statutory text, contrary to constitutional protections, and already rejected by multiple courts within this Circuit.

In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district court granted a habeas petition and ordered release, finding that DHS's reclassification of interior arrests under § 1225(b)(2) violated both the INA and due process. The court rejected the government's reliance on *Matter of Yajure Hurtado*, concluding that "an individual is not 'seeking admission' when he never attempted to do so," and held that detention must proceed under § 1226(a). The court further found that the automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully deprived the petitioner of liberty without due process and ordered his immediate release upon posting bond.

Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept. 19, 2025), the court held that DHS's blanket application of § 1225(b)(2) to individuals apprehended years after entering the United States was contrary to the statutory text

and structure of the INA. The court emphasized that Congress intended § 1225 to govern only applicants for admission encountered at the border, and it therefore ordered the petitioner's release under § 1226(a)

Finally, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW) (D. Ariz. 2025), the District of Arizona granted habeas relief on the same statutory question presented here, holding that individuals arrested in Arizona after years of residence fall under § 1226(a) and must receive individualized bond hearings. The court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth Circuit's due-process jurisprudence and the statutory framework of the INA

Aside from the Ninth Circuit, numerous district courts have disagreed with the BIA's analysis in *Matter of Yajure Hurtado* and granted habeas relief to petitioners similarly situated to Petitioner, recognizing that custody in such cases properly falls under § 236(a).

- **First Circuit**: *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (expressly disagreeing with BIA's analysis in *Yajure Hurtado*); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.

Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

- **Second Circuit**: *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).
- **Fourth Circuit**: *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025).
- **Fifth Circuit**: *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).
- **Sixth Circuit**: *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (rejecting BIA's analysis in *Yajure Hurtado*); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).
- **Eighth Circuit**: *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).
- **Ninth Circuit**: *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal.

Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025).

Because multiple courts have already recognized the unlawfulness of DHS's reliance on § 1225(b)(2) to deny bond hearings. Petitioner's claim for relief thus aligns with an established and growing consensus.

VII. CLAIMS FOR RELIEF

1. PETITIONER's CONTINUED DETENTION VIOLATES DUE PROCESS, THE INA, AND THE APPLICABLE REGULATIONS

Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein. Due process protects a noncitizen's liberty interest in freedom from arbitrary civil confinement. Petitioner has a protected due process interest in seeking judicial review of her continued detention and in obtaining a custody determination in accordance with the INA. By treating Petitioner as subject to mandatory detention under § 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have deprived her of her liberty without adequate process and in excess of their statutory authority.

Respondents' reliance on INA § 235(b)(2)(A), as reinforced by the BIA's recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of her statutory right to a bond hearing under § 236(a). Even the Board admitted that for years Immigration Judges conducted such hearings for EWIs before abruptly reversing course. That reversal is inconsistent with the INA, arbitrary and capricious under the APA, and unconstitutional under the Due Process Clause of the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should decline to follow it.

2. CONTNUED DETENTION OF PETITIONER VIOLATES THE ADMINISTRATIVE PROCEDURE ACT

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

3. PETITIONER'S CONTINUED DETENTION VIOLATES THE SUSPENSION CLAUSE

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

4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED DANGER

The Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Its protections extend to "every person within the nation's borders," regardless of immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014); id. ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.") (quoting *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)). The government violates an individual's right to due process when it (1) "affirmatively place[s] [the] individual in danger," (2) by "acting with 'deliberate indifference to [a] known or obvious danger.'" *Kennedy v.*

City of Ridgefield, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)). When the government's actions leave an individual "in a situation that [is] more dangerous than the one in which [it] found him," the government has affirmatively placed that individual in danger. *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting Munger, F.3d at 1086). The critical inquiry is thus whether the government's actions "create[d] or expose[d] an individual to a danger which he or she would not have otherwise faced." *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK (SKx), 2019 WL 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government "'acted with deliberate indifference to a known or obvious danger' by implementing the [family separation] policy with awareness of the potential harm it would cause and intending to use that as a basis to deter future attempts by those similarly situated to enter the United States" (alterations omitted) (quoting *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner was required to show deliberate indifference as civil detainees—and he is not, see *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—she could easily do so. The government acts with deliberate indifference to a known or obvious danger when it "recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]

to such risks without regard to the consequences to [the plaintiff]." *Hernandez*, 897 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).

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

VIII. REQUEST FOR ORAL ARGUMENT

Petitioner respectfully requests oral argument on this Petition.

IX. PRAYER FOR RELIEF

WHWEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued detention is unlawful and order her immediate release;

3. In the alternative, issue injunctive relief ordering Respondents to provide Petitioner with an individualized custody determination before an Immigration Judge under 8 U.S.C. § 1226(a) within seven (7) days, or to release her immediately;;

4. Order Respondents file a return within three days pursuant to 28 U.S.C. § 2243;

5. Declare that the process as applied to Petitioner by Respondents violates the Suspension Clause, the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations;

6. Order Respondents to provide five days of notice to the Court and Petitioner of her imminent removal;

7. Order Respondents to follow the applicable rules, regulations, law, and the Constitution.

8. Award Petitioner her costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statutes;

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

Dated: December 9, 2025,
Tucson, AZ,

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

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

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

Dated: December 9, 2025,

Tucson, AZ,

By: */s/ Ayala*
Siovhan Ayala
Attorney for the Petitioner
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