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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Maria Guadalupe Hernandez Santiago

Petitioner-Plaintiff,

v.

Pam Bondi, in her Official Capacity, Attorney General of the United States; et al.

Respondents-Defendants.

Case No.

A-[redacted]

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Petitioner Maria Guadalupe Hernandez Santiago applies to this honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain Petitioner based on an unlawful action by ICE, (2) ordering her immediate release from immigration detention; and (3) from removing Petitioner from the United States.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: December 9, 2025

Respectfully submitted,

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner-Plaintiff Client Name

I. INTRODUCTION

Respondents unlawfully detain Petitioner, Maria Guadalupe Hernandez Santiago, under a mistaken assertion that INA § 235(b)(2) requires mandatory detention of individuals who entered without inspection. Petitioner entered the United States on 2006 and has lived in the U.S ever since. She is not an "arriving alien" at the border but a long-term resident, properly detained under INA § 236(a), which authorizes bond hearings.

The Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025*), does not compel a different result. Federal habeas courts are not bound by BIA precedent, and numerous courts, including in this Circuit have rejected DHS's attempt to expand § 235(b)(2) to the interior. Because DHS has improperly invoked § 235(b)(2), Petitioner has been deprived of the opportunity for an individualized bond hearing and remains in unlawful detention in violation of the INA, the APA, and the Constitution.

Petitioner meets the TRO standard. She is likely to succeed on the merits, she faces immediate and irreparable harm from unlawful detention, and the equities and public interest weigh heavily in her favor.

II. STATEMENT OF FACTS AND CASE

Petitioner is a native and citizen of Mexico. She entered the United States without inspection on or about 2006, more than nineteen years ago and has resided in the U.S for more than nineteen years. During this time, she established strong family and community ties.

Petitioner applied for release on bond before the Immigration Court on December 2, 2025. Her request was denied on the ground that she classified as

subject to mandatory detention under INA § 235(b)(2), making her categorically ineligible for a bond hearing.

Historically, individuals in Petitioner's position—those who entered without inspection but were apprehended years later inside the United States—were detained under § 236(a) and provided bond hearings before an Immigration Judge. For decades, immigration judges adjudicated such custody matters under § 236(a). Indeed, the BIA in *Yajure* acknowledged this longstanding practice, noting that immigration courts have historically granted bond hearings to noncitizens apprehended in the interior who had entered without inspection. *Id.* at 225.

Petitioner has been detained without the opportunity for a bond hearing. She has requested relief through counsel, but DHS continues to maintain that her custody is mandatory and that the court has no jurisdiction. Without judicial intervention, she faces indefinite detention without due process, despite her long-standing residence in the United States and her eligibility for release on bond under § 236(a).

LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if she establishes that she is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if she raises "serious questions" as to the merits of her claims, the

balance of hardships tips "sharply" in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies the standards for a temporary restraining order.

III. ARGUMENT

A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Petitioner is likely to remain in unlawful custody in violation of her due process rights without intervention by this Court. Petitioner will continue to suffer irreparable injury if she continues to be detained without due process.

1. Petitioner is Likely to Succeed on the Merits of Her Claim That She be Released from Detention

Petitioner is likely to succeed on her claim that, in her particular circumstances, her current detention is unlawful because the Due Process Clause and the statute.

The District of Arizona has recognized that when the government seeks to revoke or stay a noncitizen's release from custody, due process under the Fifth Amendment requires a meaningful opportunity to be heard before the deprivation occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of

erroneous deprivation; and 3) the burden on the government – "the fundamental requirement of due process – the opportunity to be heard at a meaningful time and manner." *Organista*, No. CV-18-00285-PHX-GMS, at 4.; *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003). In weighing the *Matthews* factors, the court declared that "there is no meaningful dispute that Petitioner has a liberty interest in being heard before the BIA can prolong her detention." *Organista*, No. CV-18-00285-PHX-GMS, at 4.

Likewise, federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner *before* ICE detains her. *See, e.g.*, *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

Courts analyze procedural due process claims such as this one in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any

deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Petitioner Has a Protected Liberty Interest in Her Conditional Release

Petitioner's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Since 2006, Petitioner has lived continuously in the U.S, where she has worked, supported her family, and built enduring community ties. She was apprehended more than nineteen years after her entry, far from the border. Despite these circumstances, DHS has categorized her as an "applicant for admission" under § 235(b)(2) and placed her in mandatory detention, denying her the opportunity for an individualized bond hearing. Accordingly, she retains a weighty liberty interest under the Fifth Amendment in avoiding continued incarceration. See *Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972).

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn,

"[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also*, *e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles her to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would

be inconsistent with fundamental principles of liberty and justice" to return her to prison) (internal quotation marks and citation omitted).

Here, when this Court "'compares the release in Petitioner's case, with the liberty interest in parole as characterized by *Morrissey*,'" they bear similar features in liberty interests. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner's release "enables her to do a wide range of things open to persons,'" including to live at home, work, care for her family, for whom she helps financially, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

b. Petitioner's Liberty Interest Mandates Her Release from Unlawful Custody

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of her liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v.*

Eldridge, 424 U.S. 319, 335 (1976)).

The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing deprivation process," can the government avoid providing pre-deprivation process. *Id.*

Because, in this case, the provision of a bond hearing is both possible and essential to preventing an erroneous deprivation of liberty, ICE is required to provide Petitioner the opportunity for an individualized bond determination before a neutral decisionmaker. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and requires a deprivation hearing before a neutral adjudicator.

i. Petitioner's Private Interest in Her Liberty is Profound

The private interest at stake, freedom from physical restraint, is "at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S.

71, 80 (1992); see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

Petitioner entered the United States without inspection on 2006 and has lived continuously in the U.S for more than nineteen years. During this time, she has worked, supported her family, and formed enduring ties in her community. She was apprehended more than two nineteen years after her entry, not at the threshold of the border.

As the Supreme Court recognized in *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972), even conditional liberty carries profound constitutional significance. A person who is free in the community "can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." Id. The Court further noted that terminating such liberty "inflicts a grievous loss on the parolee and often others," and emphasized that "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." Id.

So too here. Petitioner's long-standing residence, family responsibilities, and deep community ties reflect a profound liberty interest that cannot lawfully be extinguished through misclassification as an "applicant for admission" under § 1225(b)(2). By detaining her without any opportunity for an individualized custody determination, Respondents have arbitrarily deprived her of the very liberty the Constitution protects..

ii. The Government's Interest in Continued Incarceration of Petitioner is Low and the Burden

on the Government to Refrain from Releasing Her is Minimal

The government's interest in maintaining mandatory detention and without allowing a bond hearing hearing is low, and when weighed against Petitioner's significant private interest in her liberty, the scale tips sharply in favor of enjoining Respondents from keeping her in unlawful custody. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process she seeks—a bond proceeding to which she is entitled to—is a standard course of action for the government. Providing Petitioner with a bond hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like Petitioner. Continuing to detain her under § 235(b)(2), despite her eligibility for a bond hearing under § 236(a), is unlawful

As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Petitioner under the mandatory detention provisions of § 235(b)(2), because she entered the United States more than nineteen years ago and was apprehended in the interior, not at the border. She properly falls under § 236(a), which authorizes a bond hearing The government's interest in detaining Petitioner at this time is extremely low. Moreover, the "fiscal and administrative burdens" that her immediate release is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek

a unique or expensive form of process, but rather release from unlawful detention, where removal is not reasonably foreseeable.

As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

Releasing Petitioner from unlawful custody and enjoining Petitioner's continued detention is far *less* costly and burdensome for the government than keeping her detained. *Hernandez*, 872 F.3d at 996.

Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Petitioner's continued incarceration is warranted.

As the above-cited authorities show, Petitioner is likely to succeed on her claim that the current detention is unlawful. And, at the very minimum, she clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

2. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

Petitioner will suffer irreparable harm were she to remain detained after being deprived of her liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016).

As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[1]

As detailed *supra*, Petitioner contends that her continued detention violates her due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Petitioner from suffering irreparable harm by being subject to unlawful and unjust detention.

3. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

[1] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed Feb. 6, 2024).

The balance of equities and the public interest undoubtedly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Petitioner. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring the ICE to release Petitioner from unlawful custody is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

A temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Petitioner in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration

detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

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.

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 her 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.

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IV. CONCLUSION

For all the above reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction ordering that Respondents (1) release her from her unlawful custody; and (2) refrain from sending her to any place outside of the United States.

Dated: December 9, 2025,

Respectfully submitted,

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner-Plaintiff