

1 Siovhan Ayala  
2 AYALA LAW OFFICE, PC  
3 P.O. Box 18986  
4 Tucson, AZ 85731  
(520) 202-0391

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

8 Ingrid-Julisa Vasquez-Vigil,

9 Petitioner,

10 vs.  
11

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

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

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

19 Fred Figueroa, Warden, Eloy Detention  
20 Center;

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

24 Respondents.  
25

Case No.:

File No: 

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

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

**ORAL ARGUMENT  
REQUESTED**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## INTRODUCTION

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

Petitioner, who entered the United States in 2012 and has resided here ever since, is not an applicant for admission. Her custody is properly governed by 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole.

1 The Board of Immigration Appeals recently issued *Matter of Yajure*  
2 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)(2)(A) to require  
3 mandatory detention of all individuals who entered without inspection. That  
4 decision represents the agency’s most recent view of the detention statute, but it  
5 illustrates DHS’s unlawful expansion of § 235(b)(2)(A). That decision does not  
6 control this Court. Petitioner entered the United States on 2012 and lived in the  
7 U.S ever since before ICE arrested her. She is not an “arriving alien” at the  
8 threshold seeking admission, but rather a long-term resident who falls under §  
9 236(a).  
10  
11  
12

13 Pursuant to this Court’s inherent powers in habeas corpus proceedings,  
14 Ingrid-Julisa Vasquez-Vigil respectfully requests this Court order Respondents to  
15 release her from detention.  
16  
17

18 **I. PARTIES**

19 A. Petitioner Ingrid-Julisa Vasquez-Vigil is a native of Mexico. She is currently  
20 detained at Eloy Detention Center, 1705 Hanna Rd, Eloy, AZ 85131.  
21

22 B. Respondent Pamela Bondi is named in her official capacity as the Attorney  
23 General of the United States. In this capacity, she is responsible for the  
24 administration of the immigration laws as exercised by the Executive Office  
25 for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. §  
26  
27

1 1103(g). She routinely transacts business in the District of Arizona, is legally  
2 responsible for administering Petitioner's removal proceedings and the  
3 standards used in those proceedings, and as such, is the legal custodian of  
4 Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950  
5 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.  
6  
7

8 C. Respondent, John Cantu, is the Phoenix Field Office Director for  
9 Enforcement and Removal Operations, U.S. Immigration and Customs  
10 Enforcement. He is the local ICE official who has immediate authority over  
11 the Petitioner. Respondent Cantu's address is Field Office Director,  
12 Enforcement and Removal Operations, U.S. Immigration and Customs  
13 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,  
14 85004.  
15  
16  
17

18 D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of  
19 Homeland Security ("DHS"), the federal agency responsible for enforcing  
20 Petitioner's arrest, detention and removal. DHS's address is U.S.  
21 Department of Homeland Security, Washington, DC 20528.  
22

23 E. Respondent, Fred Figueroa., is the warden of the Eloy Detention Center,  
24 where Petitioner is being held. He is the custodian of Petitioner and is named  
25 in his official capacity.  
26  
27  
28

1 F. Todd M. Lyons is the Acting Director, Immigration and Customs  
2 Enforcement, U.S. Department of Homeland Security, the federal agency  
3 responsible for enforcing Petitioner's arrest, detention and removal. DHS's  
4 address is U.S. Department of Homeland Security, Washington, DC 20528.  
5

6  
7 **II. JURISDICTION AND VENUE**  
8

9 The Court has jurisdiction under the Suspension Clause. The Suspension  
10 Clause provides, "The privilege of the Writ of Habeas Corpus shall not be  
11 suspended, unless when in Cases of Rebellion or Invasion the public Safety may  
12 require it." U.S. Const. Art. I § 9, cl. 2.  
13

14 This case arises under the United States Constitution; the INA, 8 U.S.C. §§  
15 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth  
16 Amendment and the Fourteenth Amendment. Petitioner's current detention  
17 pending her removal order as enforced by Respondents constitutes a "severe  
18 restraint [] on [Petitioner's] individual liberty," such that Petitioner is "in custody  
19 in violation of the . . . laws . . . of the United States." *See Hensley*, 411 U.S. at 351  
20 (1973); 28 U.S.C. § 2241(c)(3).  
21  
22

23  
24 No Supreme Court or Ninth Circuit precedent applicable to immigration  
25 detainees, nor the habeas statute, indicate that venue is not proper in the District of  
26 Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because  
27

1 a substantial part of the events and omissions which gave rise to this action  
2 occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at  
3 the Eloy Detention Center in Eloy, Arizona. She is in removal proceedings before  
4 the Immigration Court in Eloy, Arizona, and on December 8, 2025, her request for  
5 a custody redetermination was denied on the grounds that Petitioner had been  
6 classified as subject to mandatory detention under 8 U.S.C. § 1225(b)(2).  
7

8  
9 **III. FACTS GIVING RISE TO THE HABEAS PETITION**

10  
11 Petitioner, Ingrid-Julisa Vasquez-Vigil, is a native and citizen of Mexico.  
12 She entered the United States without inspection on 2012 and has resided  
13 continuously in in the U.S since that date. She is the single mother of three U.S.  
14 Citizen children.  
15

16 Officers of U.S. Immigration and Customs Enforcement (“ICE”) arrested  
17 Petitioner in Arizona and placed her in removal proceedings under § 240 of the  
18 Immigration and Nationality Act (“INA”). She was taken into custody and  
19 transported to the Eloy Detention Center in Florence, Arizona, where she remains  
20 detained today.  
21

22 Following her arrest, ICE determined that Petitioner was subject to  
23 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). On December 2nd, 2025,  
24 Petitioner requested a custody redetermination before an Immigration Judge, but  
25  
26  
27

1 her request was denied on the grounds that the Immigration Court lacked  
2 jurisdiction because DHS had classified her as subject to § 1225(b)(2) on  
3  
4 December 8, 2025.

5 On September 5, 2025, the Board of Immigration Appeals issued *Matter of*  
6 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who  
7 entered without inspection are “applicants for admission” subject to mandatory  
8 detention under INA § 235(b)(2)(A). That decision does not bind this Court.  
9  
10 Petitioner, who entered the United States in 2012 and has lived here ever since is  
11 not an arriving alien at the border but a long-term resident whose custody falls  
12 under § 236(a). For decades, Immigration Judges conducted bond hearings for  
13 individuals in Petitioner’s position, a practice the Board itself acknowledged before  
14 abruptly reversing course. DHS’s reliance on § 1225(b)(2) to justify Petitioner’s  
15 detention is contrary to the statute’s plain text, longstanding administrative  
16 practice, and decades of settled interpretation. Because DHS has improperly  
17 categorized her under § 1225(b)(2), Petitioner has been deprived of the opportunity  
18 for an individualized bond hearing, leaving her in prolonged and unlawful  
19 detention in violation of the INA, the APA, and the U.S. Constitution.  
20  
21  
22  
23  
24

25 Petitioner has no disqualifying criminal convictions that would render her  
26 subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is she an applicant  
27  
28

1 for admission apprehended at a port of entry. Instead, she has lived in the interior  
2 of the United States for more than a decade, working, raising her family, and  
3 establishing significant ties to the community in the U.S.  
4

5 DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary  
6 to the statute's plain text, longstanding administrative practice, and decades of  
7 settled interpretation.  
8

9 Because Petitioner has improperly been categorized under § 1225(b)(2),  
10 Petitioner has been deprived of the opportunity for an individualized bond hearing,  
11 leaving her in prolonged and unlawful detention in violation of the INA, the APA,  
12 and the U.S. Constitution.  
13  
14

15 **IV. APPLICABLE LAW**

16 Respondents' power to detain and deport someone is not limitless, nor is it  
17 shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950  
18 (S.D.N.Y. 2018) (appeal withdrawn sub nom.).  
19

20 "Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S.  
21 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy.  
22 *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering  
23 the release of a petitioner and is to "be administered with the initiative and  
24 flexibility essential to ensure that miscarriages of justices within its reach are  
25  
26  
27  
28

1 surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas  
2 corpus “never has been a static, narrow, formalistic remedy; its scope has been to  
3 achieve its grand purpose - the protection of individuals against erosion of their  
4 right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*,  
5 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a  
6 means of reviewing the legality of Executive detention, and it is in that context that  
7 its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004)  
8 (citations omitted). These protections extend fully to noncitizens subject to an  
9 order of removal. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its  
10 talismanic significance in protecting individual liberty from unlawful detention,  
11 habeas corpus is fundamentally governed by equity. The Supreme Court has  
12 granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct.  
13 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court  
14 has noted the writ’s “scope and flexibility--its capacity to reach all manner of  
15 illegal detention--its ability to cut through barriers of form and procedural mazes.”  
16 *Harris*, 394 U.S. at 291.  
17  
18  
19  
20  
21  
22

## 23 V. REQUEST FOR RELIEF

24 Pending the adjudication of this Petition, Petitioner respectfully requests that  
25 the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file  
26  
27  
28

1 a return within three days, unless they can show good cause for additional time.  
2 See 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas  
3 corpus should not be granted should be “returned within three days unless for good  
4 cause additional time, not exceeding twenty days, is allowed”).  
5

6 Petitioner requests that this Court issue an order that Respondents must  
7 notify the Court and Petitioner’s counsel five days prior to any removal of  
8  
9 Petitioner.  
10

11 Petitioner further asks this Court to declare that she is not subject to  
12 mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner also requests that the  
13 Court grant such other and further relief as it deems just and proper.  
14

15 Furthermore, Petitioner requests to be released from detention.

16 **VI. EXHAUSTION OF REMEDIES**  
17

18 Exhaustion of remedies is not required for this habeas petition because  
19  
20 Petitioner challenges the government’s unlawful classification of her detention as  
21 mandatory under 8 U.S.C. § 1225(b)(2). The Immigration Court has taken the  
22 position that it lack jurisdiction to review custody where DHS asserts mandatory  
23 detention. Any further attempt to pursue administrative remedies would therefore  
24 be futile.  
25  
26  
27  
28

1 Even if exhaustion were required, Petitioner has already sought custody  
2 redetermination before an Immigration Judge. On December 8, 2025, her request  
3 for bond was denied on the grounds that Petitioner falls under § 1225(b)(2).  
4 Having raised the issue and been denied relief, Petitioner has satisfied or, in the  
5 alternative, is excused from any exhaustion requirement.  
6  
7

8 Because the BIA has ruled in *Yajure Hurtado* that § 235(b)(2)(A) mandates  
9 detention, further pursuit of administrative remedies would be futile. Only this  
10 Court has the authority to determine whether that interpretation is lawful and  
11 constitutional.  
12

### 13 **PRELIMINARY INJUNCTION**

#### 14 **1. Legal Standard**

15 The legal standard for granting preliminary injunction relief is well  
16 established. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9<sup>th</sup> Cir.1983). This Court  
17 may issue injunctive relief maintaining the status quo when the movant  
18 demonstrates: (1) a likelihood of irreparable harm in the absence of the injunction;  
19 and (2) either a likelihood of success on the merits or sufficiently serious questions  
20 going to the merits to make them a fair ground for litigation, with a balance of  
21 hardships tipping decidedly in the movant's favor. *Id.* While a petitioner seeking a  
22 preliminary injunction has the burden of demonstrating likelihood of success on the  
23  
24  
25  
26  
27  
28

1 merits, they are not required to prove their case in full at the preliminary injunction  
2 stage, but only such portions that enable them to obtain the injunctive relief that they  
3 seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).  
4

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

6  
7 Petitioner is unlawfully detained under the government’s assertion that he is  
8 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is  
9 contrary to the plain text of the statute, longstanding agency practice, and recent  
10 federal district court rulings. As a noncitizen who entered the United States on 2012  
11 and was arrested many years later inside the country, Petitioner is not “seeking  
12 admission” at a port of entry and therefore cannot be held under § 1225(b)(2). Her  
13 custody is properly governed by 8 U.S.C. § 1226(a), which authorizes an  
14 individualized custody determination and potential release on bond. The denial of a  
15 bond hearing deprives Petitioner of liberty without due process of law.  
16  
17

18  
19 Under the Due Process Clause of the Fifth Amendment, no person shall be  
20 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.  
21 V. Non-citizens on U.S. soil have constitutional rights, including the right to due  
22 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,  
23 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing,  
24 Respondents subject hers to prolonged and arbitrary detention beyond what the  
25  
26  
27  
28

1 Constitution and the statute allow.

2 In this circumstance, if the noncitizen “provides good reason to believe that  
3 there is no significant likelihood of removal in the reasonably foreseeable future,  
4 the Government must respond with evidence sufficient to rebut that showing.” *Id.*  
5

6  
7 **a. Irreparable Harm in the Absence of an Injunction**

8 An injury is “irreparable” if it is “not accurately measurable or adequately  
9 compensable by money damages.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*  
10 102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v.*  
11 *Textron, Inc.* 836 F.2d 6, 8 (1st Cir. 1987).  
12

13  
14 Due process cases recognize a broad liberty interest rooted in the fact of  
15 deportation, not just the process of removal proceedings. *See Bridges v. Wixon,*  
16 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual  
17 and deprives him of the right to stay and live and work in this land of freedom.”);  
18 *see also Chhoeun v. Marin,* 2018 WL 566821, at \*9 (C.D. Cal., Jan. 25, 2018)  
19 (finding a “strong liberty interest” where being deported means being separated  
20 from home and family). While this liberty interest typically arises in removal  
21 proceedings, courts have found procedural due process violations for persons not  
22 in removal proceedings. *See, e.g., Walters v. Reno,* 145 F.3d 1032 (9th Cir. 1998)  
23 (forms issued to noncitizens charged with civil document fraud violated due  
24  
25  
26  
27  
28

1 process clause); *Rojas v. Johnson*, 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar.  
2 29, 2018) (concluding that “Agency Defendants do not provide sufficient notice of  
3 the one-year deadline to satisfy the Due Process clause” to asylum-seeker  
4 subclasses both in and out of removal proceedings).  
5

6 Here, Petitioner suffers irreparable harm with each additional day of  
7 detention without an opportunity to demonstrate that she is neither a danger to the  
8 community nor a flight risk. The deprivation of liberty cannot be remedied by  
9 monetary damages. Moreover, the balance of equities favors Petitioner because the  
10 government has no legitimate interest in detaining her under an unlawful statutory  
11 framework. The public interest also favors ensuring compliance with constitutional  
12 guarantees and statutory limits on detention authority.  
13  
14  
15

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

18 Immigrants who pursue lawful immigrant status in the United States have  
19 rights under the Due Process Clause of the Fifth Amendment. Once a petitioner  
20 has identified protected liberty or property interest, the Court must determine  
21 whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S.  
22 at 335. In making this determination, the Court balances (1) “the private interest  
23 that will be affected by the official action”; (2) “the risk of an erroneous  
24 deprivation of such interest through the procedures used, and the probable value, if  
25  
26  
27  
28

1 any, of additional or substitute procedural requirement would entail;” and (3) “the  
2 government’s interest, including the function involved and the fiscal and  
3 administrative burdens that the additional or substitute procedural requirement  
4 would entail.” *Id.* Interpreted under the Constitution, the INA and its applicable  
5 regulations do not permit continual detention of Petitioner after he has been  
6 granted immigration relief and surpassed the 90-day removal allotment given  
7 under the INA. 8 U.S.C. § 1231.

8  
9  
10  
11 Due process protects a noncitizen’s liberty interest in the adjudication of  
12 discretionary applications for relief and benefits made available under the  
13 immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003)  
14 (recognizing protected interests in the “right to seek relief” even when there is no  
15 “right to the relief itself”). Petitioner has a protected due process interest in her  
16 claim of unlawful detention, and due process requires that since she cannot be  
17 removed to Mexico, and she cannot stay detained, that she must be released.

18  
19  
20  
21 The Government’s actions toward Petitioner violate or will violate the APA  
22 and the Fifth Amendment. The APA provides that a court “shall. . . hold unlawful  
23 and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of  
24 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). To  
25 satisfy the APA, an agency must “examine the relevant data and articulate a  
26  
27  
28

1 satisfactory explanation for its action including a rational connection between the  
2 facts found and the choice made.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.  
3 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut.*  
4 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

5  
6 When the Government has promulgated “[r]egulations with the force and  
7 effect of law,” those regulations “supplement the bare bones” of federal statutes  
8 and in areas of the law, such that agencies must follow their own “existing valid  
9 regulations,” even where Government officers have broad discretion, such as in  
10 immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268  
11 (1954) (reversing in immigration case after review of warrant for deportation); *see*  
12 *also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“[I]t is incumbent upon agencies to  
13 follow their own procedures . . . even where [they] are possibly more rigorous than  
14 otherwise would be required.”); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir.  
15 2005) (“*Accardi* has come to stand for the proposition that agencies may not  
16 violate their own rules and regulations to the prejudice of others.”). Breaches of  
17 *Accardi*’s rule constitute violations of both the APA and the Fifth Amendment’s  
18 Due Process Clause. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)  
19 (“*Accardi* doctrine is premised on fundamental notions of fair play underlying the  
20 concept of due process”); *see also Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541,  
21  
22  
23  
24  
25  
26  
27  
28

1 545, 546 (6th Cir. 2004) (noting that an *Accardi* violation may be a due process  
2 violation, and the Government's action may be set aside pursuant to the APA);  
3  
4 *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An  
5 agency's failure to follow its own regulations . . . may result in a violation of an  
6 individual's constitutional right to due process.").  
7

8 1. *Accardi's* "ambit" is "not limited" to "rules attaining the status of  
9 formal regulation." *Montilla*, 926 F.2d at 167. It applies to both promulgated  
10 regulations and other processes and programs that guide the Government's  
11 discretion. *See Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994)  
12 (holding that the Government violated the APA by ignoring its non- promulgated  
13 immigration "program"); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th  
14 Cir. 1983) (same, but for informal criteria). *Accardi* means that when the  
15 Government sets out a process whereby relief can be pursued, a "right to *seek*  
16 relief" is created, even when there is no "right to the relief itself." *Arevalo v.*  
17 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S.  
18 at 268).  
19  
20  
21  
22

23 Federal district courts have already recognized that DHS's reliance on §  
24 1225(b)(2) to categorically deny bond hearings is unlawful. In *Ramon Rodriguez*  
25 *Vazquez v. Bostock*, No. 3:25-cv-05240 (N.D. Cal. Apr. 24, 2025), the court issued  
26  
27  
28

1 a preliminary injunction requiring ICE to provide a bond hearing to a petitioner  
2 detained under § 1225(b)(2), holding that custody in such circumstances properly  
3 falls under § 1226(a). Similarly, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-  
4 01873 (C.D. Cal. 2025), the court granted a temporary restraining order requiring  
5 bond hearings within seven days and prohibiting ICE from transferring or  
6 removing petitioners without court approval. These rulings demonstrate both the  
7 statutory error and constitutional infirmity of Respondents' position. Petitioner's  
8 claim is therefore not novel, but squarely aligned with other federal courts that  
9 have already granted the precise relief sought here.  
10  
11  
12

13  
14 **c. There is No Substantial Injury to Other Parties and Injunctive  
15 Relief is in the Public Interest**

16 The issuing of a temporary restraining order and a preliminary injunction is  
17 warranted because the balance of equities tips in the favor of the Petitioner and the  
18 injunction is squarely within the public interest. The government's equities also  
19 weigh in favor of issuing a preliminary injunction here.  
20

21 The Petitioner, the public, and the Government all have a vested interest in  
22 fair and equitable legal proceedings for all people, citizens and non-citizens alike.  
23 *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to  
24 5th Amendment due process).  
25

26 Further, granting injunctive relief in this case will not cause substantial injury  
27

1 to Respondents or to the government. The government has no legally cognizable  
2 interest in detaining Petitioner under an unlawful statutory framework. An injunction  
3 requiring that Petitioner be provided a custody hearing under 8 U.S.C. § 1226(a)  
4 merely enforces the law as written and ensures compliance with constitutional  
5 protections. As courts have consistently recognized, the government cannot be  
6 harmed by an order that prevents it from engaging in unlawful conduct.  
7

8  
9 The Government “cannot suffer harm from an injunction that merely ends an  
10 unlawful practice or reads a statute as required to avoid constitutional concerns.”  
11 *R.I.L-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez*  
12 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, “the public interest is  
13 served when administrative agencies comply with [the requirements of U.S. law].”  
14  
15

16 *Id.*

17  
18 **d. Matter of Yajure Hurtado Is Not Binding on this Court and Should**  
19 **Not Be Followed**

20 The BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216  
21 (BIA 2025), extends § 235(b)(2)(A) beyond its text and purpose to bar bond for all  
22 individuals who entered without inspection, no matter how long they have resided  
23 in the United States. That interpretation is deeply flawed.  
24

25 First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs  
26 “applicants for admission”, those encountered at or near the border. Petitioner, who  
27

1 has resided in the interior of the United States since 2012, is not in that category.  
2 Section 236(a) is the detention authority that properly applies.  
3

4 Second, the decision departs from decades of agency practice. The Board  
5 itself acknowledged that “for years Immigration Judges conducted bond hearings for  
6 aliens who entered the United States without inspection.” *Id.* at 225. This admission  
7 underscores that § 236(a) has long been understood to provide custody authority in  
8 such cases. The Board’s sudden reversal represents an unexplained break from  
9 settled practice, rendering it arbitrary and unexplained under the APA.  
10  
11

12 Although the Board later attempted to walk back this acknowledgment, stating  
13 that “our acknowledgment that aliens detained under § 236 may be eligible for  
14 discretionary release on bond does not mean all aliens are eligible,” *id.* at 227, this  
15 disclaimer does not erase the historical fact of settled agency practice. Nor does it  
16 explain why individuals like Petitioner who entered more than a decade ago,  
17 established long-term residence, and were arrested in the interior should suddenly  
18 be stripped of bond eligibility. The Board’s narrowing language only underscores  
19 the arbitrariness of its reinterpretation. By conceding the longstanding bond practice  
20 yet declaring it “beyond the scope” to resolve, the BIA effectively confirmed that its  
21 shift was policy-driven, not compelled by statutory text. That makes the decision  
22 both unpersuasive and invalid.  
23  
24  
25  
26  
27  
28

1 Third, the decision raises serious constitutional problems. Mandatory  
2 detention without access to a bond hearing, especially for long-term residents like  
3 Petitioner with strong family and community ties, violates the Due Process Clause.  
4 Courts construe statutes to avoid such constitutional infirmities. This Court should  
5 therefore reject *Yajure Hurtado*'s interpretation and apply § 236(a), which  
6 authorizes discretionary release on bond.  
7  
8

9 The Board's interpretation in *Matter of Yajure Hurtado* is not only  
10 inconsistent with statutory text and decades of settled practice but has also already  
11 faced judicial correction. Federal courts considering the same issue have recognized  
12 that DHS's expansion of § 1225(b)(2) produces unlawful and unconstitutional  
13 results. In recent cases from the Northern and Central Districts of California, the  
14 courts required ICE to provide bond hearings to noncitizens whom DHS had  
15 classified under § 1225(b)(2), making clear that custody in such cases is properly  
16 governed by § 236(a). These rulings reflect a growing recognition among Article III  
17 courts that DHS's reading of § 1225(b)(2) cannot stand. This Court should follow  
18 the same reasoning and hold that Petitioner's detention without access to bond is  
19 unlawful.  
20  
21  
22  
23  
24

25 **F. Federal Courts have rejected DHS's position.**

26 Recent federal court decisions confirm that Respondents' reliance on §  
27

1 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas*  
2 *Guzman v. Andrews*, 2025 WL 2617256, at \*3 n.4 (E.D. Cal. Sept. 9, 2025), the  
3 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its  
4 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the  
5 interior after long residence in the United States are properly detained under §  
6 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that entry  
7 without inspection does not permanently bar a person from eligibility for bond once  
8 they are living in the country. That holding directly applies here.

9  
10  
11  
12 Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D.  
13 Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure*  
14 forecloses administrative relief, rendering exhaustion futile. The same is true for  
15 Petitioner, who cannot meaningfully seek bond redetermination before EOIR given  
16 that the IJ held that he had no jurisdiction.

17  
18  
19 Also, in *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.  
20 2025), the district court issued a preliminary injunction requiring ICE to provide a  
21 bond hearing to a petitioner detained under § 1225(b)(2), holding that custody in  
22 such circumstances falls under § 1226(a). That decision confirms that habeas relief  
23 is the proper vehicle and that this Court has the authority to order the same remedy  
24 for Petitioner.  
25  
26  
27  
28

1 These cases establish that DHS's reliance on § 1225(b)(2) for long-term  
2 residents like Petitioner is inconsistent with statutory text, contrary to constitutional  
3 protections, and already rejected by multiple courts within this Circuit.  
4

5 In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district court  
6 granted a habeas petition and ordered release, finding that DHS's reclassification of  
7 interior arrests under § 1225(b)(2) violated both the INA and due process. The court  
8 rejected the government's reliance on *Matter of Yajure Hurtado*, concluding that "an  
9 individual is not 'seeking admission' when he never attempted to do so," and held  
10 that detention must proceed under § 1226(a). The court further found that the  
11 automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully deprived the  
12 petitioner of liberty without due process and ordered his immediate release upon  
13 posting bond.  
14  
15  
16  
17

18 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept. 19,  
19 2025), the court held that DHS's blanket application of § 1225(b)(2) to individuals  
20 apprehended years after entering the United States was contrary to the statutory text  
21 and structure of the INA. The court emphasized that Congress intended § 1225 to  
22 govern only applicants for admission encountered at the border, and it therefore  
23 ordered the petitioner's release under § 1226(a)  
24  
25

26 Finally, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW) (D.  
27

1 Ariz. 2025), the District of Arizona granted habeas relief on the same statutory  
2 question presented here, holding that individuals arrested in Arizona after years of  
3 residence fall under § 1226(a) and must receive individualized bond hearings. The  
4 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth  
5 Circuit's due-process jurisprudence and the statutory framework of the INA  
6  
7

8 Aside from the Ninth Circuit, numerous district courts have disagreed with  
9 the BIA's analysis in *Matter of Yajure Hurtado* and granted habeas relief to  
10 petitioners similarly situated to Petitioner, recognizing that custody in such cases  
11 properly falls under § 236(a).  
12

- 13  
14 • **First Circuit:** *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)  
15 (expressly disagreeing with BIA's analysis in *Yajure Hurtado*); *Jimenez v.*  
16 *FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v.*  
17 *Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025  
18 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238  
19 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.  
20 Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).  
21  
22 • **Second Circuit:** *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug.  
23 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).  
24  
25 • **Fourth Circuit:** *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug.  
26  
27  
28

1 24, 2025).

- 2 • **Fifth Circuit:** *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).
- 3
- 4 • **Sixth Circuit:** *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich.
- 5 Sept. 9, 2025) (rejecting BIA’s analysis in *Yajure Hurtado*); *Lopez-Campos*
- 6 *v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).
- 7
- 8 • **Eighth Circuit:** *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb.
- 9 Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept.
- 10 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025);
- 11 *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*,
- 12 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL
- 13 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL
- 14 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224
- 15 (D. Neb. Aug. 14, 2025).
- 16
- 17
- 18
- 19 • **Ninth Circuit:** *Caicedo Hinstroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal.
- 20 Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal.
- 21 Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal.
- 22 Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal.
- 23 Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,
- 24 2025).
- 25
- 26
- 27

1 Because multiple courts have already recognized the unlawfulness of DHS's  
2 reliance on § 1225(b)(2) to deny bond hearings. Petitioner's claim for relief thus  
3 aligns with an established and growing consensus.  
4

5 **VII. CLAIMS FOR RELIEF**

6 **1. PETITIONER'S CONTINUED DETENTION VIOLATES DUE**  
7 **PROCESS, THE INA, AND THE APPLICABLE REGULATIONS**

8 Petitioner re-alleges and incorporates by reference each and every allegation  
9 contained in the preceding paragraphs as if set forth fully herein. Due process  
10 protects a noncitizen's liberty interest in freedom from arbitrary civil confinement.  
11 Petitioner has a protected due process interest in seeking judicial review of her  
12 continued detention and in obtaining a custody determination in accordance with  
13 the INA. By treating Petitioner as subject to mandatory detention under §  
14 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have  
15 deprived her of her liberty without adequate process and in excess of their statutory  
16 authority.  
17  
18  
19  
20

21 Respondents' reliance on INA § 235(b)(2)(A), as reinforced by the BIA's  
22 recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of her  
23 statutory right to a bond hearing under § 236(a). Even the Board admitted that for  
24 years Immigration Judges conducted such hearings for EWIs before abruptly  
25 reversing course. That reversal is inconsistent with the INA, arbitrary and  
26  
27  
28

1 capricious under the APA, and unconstitutional under the Due Process Clause of  
2 the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should  
3 decline to follow it.  
4

5 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**  
6 **ADMINISTRATIVE PROCEDURE ACT**

7 Petitioner re-alleges and incorporates by reference each and every allegation  
8 contained in the preceding paragraphs as if set forth fully herein. Respondents'  
9 actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in  
10 accordance with law" and "in excess of statutory jurisdiction, authority, or  
11 limitations." 5 U.S.C. §§ 706(2)(A), (C). For decades, DHS and EOIR interpreted  
12 the INA to mean that individuals like Petitioner, those apprehended in the interior  
13 long after entry, are detained under § 1226(a). The abrupt reversal of this settled  
14 interpretation, without explanation or notice-and-comment, violates the APA.  
15 Absent this Court's intervention, Petitioner has no adequate remedy to challenge  
16 the unlawful classification of her custody.  
17

18 **3. PETITIONER'S CONTINUED DETENTION VIOLATES THE**  
19 **SUSPENSION CLAUSE**

20 Petitioner re-alleges and incorporates by reference each and every allegation  
21 contained in the preceding paragraphs as if set forth fully herein. The government's  
22 assertion that § 1225(b)(2) mandates detention for individuals like Petitioner  
23 effectively forecloses meaningful habeas review by depriving her of any  
24  
25  
26  
27  
28

1 opportunity to obtain a bond hearing or individualized custody determination. Such  
2 a denial of judicial review undermines the Suspension Clause of the United States  
3 Constitution, which guarantees the right to challenge unlawful detention through  
4 habeas corpus.  
5

#### 6 **4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED** 7 **DANGER**

8 The Due Process Clause provides that no person shall “be deprived of life,  
9 liberty, or property, without due process of law.” U.S. Const. amend. V. Its  
10 protections extend to “every person within the nation’s borders,” regardless of  
11 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014);  
12 *id.* (“Even one whose presence in this country is unlawful, involuntary, or  
13 transitory is entitled to that constitutional protection.”) (quoting *Mathews v. Diaz*,  
14 426 U.S. 67, 77 (1976)). The government violates an individual’s right to due  
15 process when it (1) “affirmatively place[s] [the] individual in danger,” (2) by  
16 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*  
17 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2012) (quoting *Munger v. City of*  
18 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,  
19 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a  
20 situation that [is] more dangerous than the one in which [it] found him,” the  
21 government has affirmatively placed that individual in danger. *Hernandez v. City*  
22  
23  
24  
25  
26  
27  
28

1 of *San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).  
2  
3 The critical inquiry is thus whether the government’s actions “create[d] or  
4 expose[d] an individual to a danger which he or she would not have otherwise  
5 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK  
6 (SKx), 2019 WL 6723686, at \*36 (C.D. Cal. Nov. 5, 2019) (federal government  
7 “acted with deliberate indifference to a known or obvious danger’ by  
8 implementing the [family separation] policy with awareness of the potential harm  
9 it would cause and intending to use that as a basis to deter future attempts by those  
10 similarly situated to enter the United States” (alterations omitted) (quoting  
11 *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner  
12 was required to show deliberate indifference as civil detainees—and he is not, see  
13 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—she could easily do so. The  
14 government acts with deliberate indifference to a known or obvious danger when it  
15 “recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]  
16 to such risks without regard to the consequences to [the plaintiff].” *Hernandez*, 897  
17 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974  
18 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions  
19 of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Here, Respondents have placed Petitioner in greater danger by misclassifying  
2 her under § 1225(b)(2) and denying her the bond procedures guaranteed under §  
3 1226(a). By treating her as mandatorily detained without any individualized  
4 assessment of flight risk or danger, the government has subjected her to prolonged  
5 confinement in punitive conditions with no lawful basis for denying her access to  
6 bond. Respondents acted with deliberate indifference to the obvious risk of harm  
7 inherent in prolonged and unnecessary detention, including the physical,  
8 emotional, and familial harms that flow from being confined when the statute does  
9 not authorize it.  
10  
11  
12

13 **VIII. REQUEST FOR ORAL ARGUMENT**

14  
15 Petitioner respectfully requests oral argument on this Petition.  
16

17 **IX. PRAYER FOR RELIEF**

18  
19 WHEREFORE, Petitioner respectfully requests that this Court:

- 20 1. Assume jurisdiction over this matter;
- 21 2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued  
22 detention is unlawful and order her immediate release;
- 23 3. In the alternative, issue injunctive relief ordering Respondents to provide  
24 Petitioner with an individualized custody determination before an  
25 Immigration Judge under 8 U.S.C. § 1226(a) within seven (7) days, or to  
26 release her immediately;;  
27  
28

- 1 4. Order Respondents file a return within three days pursuant to 28 U.S.C. §  
2 2243;
- 3 5. Declare that the process as applied to Petitioner by Respondents violates the  
4 Suspension Clause, the Due Process Clause of the Fifth Amendment, the  
5 INA, the APA, and federal regulations;
- 6 6. Order Respondents to provide five days of notice to the Court and Petitioner  
7 of her imminent removal;
- 8 7. Order Respondents to follow the applicable rules, regulations, law, and the  
9 Constitution.
- 10 8. Award Petitioner her costs and reasonable attorneys' fees in this action as  
11 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other  
12 statutes;
- 13 9. Grant such further relief as the Court deems just and proper.

14 Dated: December 18, 2025,  
15 Tucson, AZ,

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 18, 2025,  
Tucson, AZ,

By: /s/Siovhana Ayala  
Siovhana Ayala  
Attorney for the Petitioner  
AYALA LAW OFFICE, PC  
P.O. Box 18986  
Tucson, AZ 85731  
(520) 202-0391

**CERTIFICATE OF SERVICE**

I hereby certify that I have made service of the foregoing VERIFIED PETITION FOR WRIT OF HABEAS CORPUS; MOTION FOR TEMPORARY RESTRAINING ORDER; AND SUPPORTING EXHIBITS by delivering by first class mail, certified, return receipt requested, a true, exact copy thereof, enclosed in an envelope on December 18, 2025, addressed to:

U.S. Attorney's Office  
40 N Central Ave # 1800  
Phoenix, AZ 85004

And

Pamela Bondi, U.S. Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue Room B-103  
Washington DC 20530-0001

/s/Siovhan Ayala  
Siovhan Ayala  
AYALA LAW OFFICE, PC  
PO Box 18986  
Tucson, Arizona 85731  
(520) 202-0391