

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

**GABRIELA ALEJANDRA LOZANO
SOUSA**

Petitioner,

v.

GARRETT RIPA, Field Office Director of
Enforcement and Removal Operations, Miami
Field Office, Immigration and Customs
Enforcement;

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security;

PAMELA BONDI, U.S. Attorney General;

SCOTTY RHODEN, Sheriff of Baker
County Detention Center;

Defendants.

Case No.: 3:25-cv-1617

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, by and through undersigned counsel, states as follows:

I. INTRODUCTION

1. Petitioner, Gabriela Alejandra Lozano Sousa, is currently in the custody of Respondents at the BAKER COUNTY DETENTION CENTER in MACCLENNY, FLORIDA. She now faces unlawful detention because the Department of Homeland Security (DHS) has concluded that she is subject to mandatory detention.

2. Petitioner lawfully entered the USA with inspection in April of 2023 under a pre-authorized 2-year grant of parole. Since that time she has formed a life in the United States, including marriage to her U.S. citizen husband.
3. Petitioner had a lovers' quarrel with her American husband in October 2025 in Broward County, Florida where they live. Officers from the Hollywood Police Department were contacted and both Petitioner and her husband were arrested. The couple never intended for police to be involved and considered it a misunderstanding. Ultimately, the State of Florida did not file charges on either. The husband was released, but the wife was taken into custody by ICE.
4. Petitioner has been in DHS detention since approximately November 14, 2025. She was originally being held in the Broward Transitional Center in South Florida (which was near her home and husband). But she was arbitrarily moved to the Baker County Detention Center in Macclenny, Florida on November 30, 2025 where she is currently being held (5.5 hours drive from her home). She is being charged as removable for being an immigrant not in possession of documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I).
5. Based on this charge in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody claiming that she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

7. In short, while Petitioner was, and continues to be an “applicant for admission,” she is no longer “seeking admission” because she already entered the United States and has established a life here. Therefore, she is not subject to §1225(b)(2) mandatory detention and should be afforded a bond hearing under § 1226(a).
8. Petitioner is aware of the *Luis Gonzalo Duenas Garcia v. ICE* case from this district (2:25-cv-1004) in which a habeas petitioner was denied relief on the basis of his being a parolee, but the matter at hand is distinguishable from that case. Namely, the petitioner in that other case entered the U.S. illegally and was issued a Notice to Appear at the time of his apprehension and then released on parole. But in the matter at hand, the Petitioner entered the U.S. lawfully with a pre-approved grant of parole and was never detained or issued a Notice to Appear at the time of her entry into the country. This distinction is salient for reasons discussed herein.
9. Petitioner’s detention in the Baker County Detention Center is unlawful as a matter of constitutional right because it exceeds the authority delegated to the Baker County Sheriff’s Office under its 287(g) agreement with ICE. That agreement entailed that the Baker County Sheriff’s Office would detain aliens that they arrested in the course of their typical law enforcement duties within its own jurisdiction and then either give those aliens to ICE or keep them in their facility pending removal proceedings. Nowhere in the 287(g) agreement does it permit ICE to use the Baker County Detention Center as an overflow facility for detainees from other jurisdictions, such as how they are detaining the Petitioner.
10. If Petitioner remains in DHS custody, she will not be able to apply for adjustment of status due to the combined effects of new unlawful USCIS policy alerts that prevent her from providing biometric measurements while in detention. The 12/5/2025 Policy Alert (PA-

2025-28) states that USCIS will deny applications where the subject does not appear at their biometrics appointment, and that *USCIS will no longer cooperate with ICE to attain biometrics* from detained individuals whose applications are under USCIS jurisdiction, e.g., arriving aliens like Petitioner. The 12/12/2025 Policy Alert (PA-2025-29) states that USCIS will require new biometrics appointments for all applications for adjustment of status. Under the combined effects of these two policy alerts, arriving aliens in detention are procedurally prevented from being able to adjust their status in a manner that offends the Administrative Procedures Act (“APA”). First, because they essentially create an *ultra vires* new requirement that arriving aliens cannot adjust if in ICE detention. USCIS and ICE are both sub agencies of the DHS. To permit this *ultra vires* new requirement would allow DHS’s left hand to blame the right for the deprivation of Petitioner’s ability to adjust status. Second, because in addition to being *ultra vires* these are actually regulatory rules that were not promulgated through notice and comment period as required by the APA.

11. Further, and in violation of established law and DHS’s 287(g) agreement with Baker County Sheriff’s Office, ICE is not permitting Baker County deputies to take Petitioner to her medical appointments so she can undergo the medical requirements for her to adjust status based on her husband’s I-130.
12. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

II. JURISDICTION

13. Petitioner is in the custody of Respondents. Petitioner is detained at the BAKER COUNTY DETENTION CENTER in MACCLENNY, FLORIDA.

14. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) and (5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Administrative Procedure Act at 5 U.S.C. § 704.
16. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not apply to this claim. The claim does not challenge a final order of removal, does not arise from removal proceedings, and does not implicate a discretionary decision. It is a collateral legal challenge to the legality of Petitioner’s arrest and detention, reviewable under 28 U.S.C. §§ 1331 and 2241. See *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020).
17. The availability of declaratory relief in this context is well established. In *Nielsen v. Preap*, 139 S. Ct. 954, 962 (2019), the Supreme Court affirmed that district courts retain jurisdiction to entertain requests for declaratory relief even where injunctive relief may be limited under 8 U.S.C. § 1252(f)(1).
18. In *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044–47 (1984), the Court declined to apply the exclusionary rule in civil immigration proceedings, in part, because it reasoned that declaratory relief remains available as an alternative for individuals in custody. The Court noted that the INS had developed rules and procedures to protect Fourth Amendment rights and that suppression might still be appropriate in cases involving “egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness” or “widespread violations” of constitutional protections. See *id.* at 1050–51.

III. VENUE

19. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF FLORIDA, the judicial district in which Petitioner currently is detained.
20. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT OF FLORIDA.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

21. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith” why the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
22. Habeas corpus, aka *the Great Writ*, is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS FUTILE

23. Although courts generally require administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus, exhaustion is a prudential, not statutory, requirement. There are “a number of exceptions” to the application of discretionary exhaustion requirements, including when “(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003). Three of the exceptions to exhaustion apply here: Petitioner can be excused from administrative exhaustion because she has no genuine opportunity for adequate relief, a DHS bond hearing would be futile, and she has raised a substantial constitutional question.
24. First, a custody re-determination pursuant to 8 C.F.R. § 236.1(d) is an inadequate remedy because there is no initial DHS decision to review. DHS did not *abuse its discretion* in detaining Petitioner; it exercised *no discretion at all*. Having detained Petitioner pursuant to the wrong statute, DHS afforded her no process.
25. Second, there is no doubt that — like others placed in the same position by the government’s untethered reading of § 1225 — this Petition raises a substantial constitutional question that cannot properly be adjudicated administratively. *See, e.g., Kelly*, 2025 WL 2381591, at *3. Here, Petitioner does not merely seek an opportunity to contest her detention. Instead, she argues that her detention under § 1226 absent an individualized assessment is a violation of her due process rights. Neither an immigration judge nor the BIA has jurisdiction to adjudicate constitutional issues. *See Quintanilla*, 2021

WL 707062, at *2. They are therefore not “positioned to properly adjudicate [Petitioner’s] claim.” *Lopez Benitez*, 795 F. Supp. 3d at 497.

26. Further, EOIR will deny her bond motion as a matter of policy due to her categorization as an “arriving alien” in her Notice To Appear, rendering a bond motion to EOIR futile. Petitioners need not exhaust administrative remedies if “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Immigration courts have made a blanket determination that noncitizens categorized on their NTAs as “Arriving Aliens,” such as Petitioner, are subject to mandatory detention and are not eligible for bond hearings. Thus, requiring Petitioner to make an administrative request for a bond hearing would be futile because the result is predetermined.

VI. PARTIES

27. Petitioner GABRIELA ALEJANDRA LOZANO SOUSA is a national of Venezuela who lawfully entered the United States in April 2023 with a pre-authorized grant of parole. She is now the beneficiary of a pending I-130 filed by her U.S. citizen husband, and she seeks to file her adjustment of status but cannot for reasons described below. She is currently being unlawfully detained by DHS in the Baker County Detention Center in Macclenny, Florida.

28. Respondent GARRETT RIPA is the Director of the Miami Field Office of ICE’s Enforcement and Removal Operations division; As such, he is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He or his acting counterpart is named in his or her official capacity.

29. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
30. Respondent PAMELA BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.
31. Respondent, Sheriff SCOTTY RHODEN, is employed by Baker County, Florida and is in charge of the Baker County Sheriff's Office and the Baker County Detention Center in Macclenny, Florida, where Petitioner is detained. His organization and facility have been contracted by the Government as an agent to confine immigrants under a 287(g) agreement entered into in 2019. He has immediate physical custody of Petitioner. He is sued in his official capacity.

VII. LEGAL FRAMEWORK

32. The crux of this matter is whether an alien who entered lawfully under a grant of parole without the issuance of a Notice to Appear upon her entry, and thereafter spent a substantial period of time in the United States before the issuance of a Notice to Appear is detainable under INA § 1226, under which bond is allowed, or § 1225, under which bond is not allowed.
33. “[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after entry, irrespective of its legality.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958).

Recognizing this dichotomy, the INA “authorizes the [g]overnment to detain certain [noncitizens] *seeking admission into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the [g]overnment to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). Detention is mandatory for the former but discretionary for the latter. Importantly, “a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226.” *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025).

34. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
36. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).
37. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
39. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-

–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

40. Section 1225(b)(2)(A) provides that “in the case of [a noncitizen] who is an **applicant for admission**, if the examining immigration officer determines that [a noncitizen] **seeking admission** is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained” pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A) (“§ 1225” or “§ 1225(b)(2)”) (emphasis added).

41. The emphasized portions demonstrate that this mandatory detention provision applies to “applicants for admission” who are presently “seeking admission.” In other words, it does not apply to those applicants for admission like the Petitioner who has already entered.

Mandatory detention under Section 1225(b)(2)

42. Thus, for § 1225’s mandatory detention requirement to apply, an “‘examining immigration officer’ must determine that the individual is:

- (1) an ‘applicant for admission’;
- (2) ‘**seeking admission**’; and
- (3) ‘not clearly and beyond a doubt entitled to be admitted.’”

Lopez Benitez, 795 F. Supp. 3d at 487 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 214 (D. Mass. 2025)); *J.G.O. v. Francis*, No. 25-cv-07233 (AS), 2025 WL 3040142, at *2-3 (S.D.N.Y. Oct. 28, 2025). With the narrow exception of temporary parole under 8 U.S.C. § 1182(d)(5)(A), “there are no other circumstances under which [noncitizens] detained under § 1225(b) may be released.” *Jennings*, 583 U.S. at 300 (emphasis omitted).

43. Pursuant to § 1182(d)(5)(A), noncitizens detained following inspection under § 1225 can be paroled into the United States “for urgent humanitarian reasons or significant public benefit,” based on a “case-by-case” assessment by DHS. § 1182(d)(5)(A). Notably, humanitarian or public interest parole may only be granted “provided the [noncitizen] present[s] neither a security risk nor a risk of absconding.” See 8 C.F.R. § 212.5(b).
44. Parole under 1182(d)(5)(A) is temporary. It may terminate “automatically” upon the noncitizen’s “departure from the United States” or “at the expiration of the time for which parole was authorized.” 8 C.F.R. § 212.5(e)(1). Alternatively, it may terminate “upon written notice to the [noncitizen].” § 212.5(e)(2)(i). In the latter case, a “charging document,” such as a Notice to Appear (“NTA”), may act as “written notice” if it is “served on the [noncitizen].” *Id.*; see also 8 C.F.R. § 244.1 (defining the term “[c]harging document” to include a “Notice to Appear”).
45. Once parole terminates, § 1182(d)(5)(A) requires the noncitizen to “forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).
46. Accordingly, the end of parole — notwithstanding the method of termination — triggers processing under 8 C.F.R. § 212.5(e)(2). See 8 C.F.R. § 212.5(e)(1)(ii) (“[T]he [noncitizen] shall be processed in accordance with paragraph (e)(2) of this section except that no written notice shall be required.”). Under § 212.5(e)(2), a noncitizen is “restored to the status that he or she had at the time of parole,” and “[a]ny further inspection or hearing shall be conducted under section 235 or 240 of the [INA] and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed.” § 212.5(e)(2)(i).

Discretionary detention under Section 1226(a)

47. Section 1226 governs the detention of noncitizens “inside the United States,” *Jennings*, 583 U.S. at 288, who are awaiting “a decision on whether [they are] to be removed from the United States,” 8 U.S.C. § 1226(a). There are two categories of detention under the statute.
48. The first category, established by Section 1226(a), provides that “[o]n a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a) (“§ 1226” or “§ 1226(a)”). Under this “discretionary detention framework,” *Lopez Benitez*, 795 F. Supp. 3d at 484 (quoting *Gomes v. Hyde*, --- F. Supp. 3d ---, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025)), DHS may (1) continue to detain the noncitizen; (2) release the noncitizen on bond; or (3) release the noncitizen on conditional parole, 8 U.S.C. § 1226(a)(1)-(2). When DHS exercises its discretion to detain, “§ 1226(a) and its implementing regulations require [DHS] to make an individualized custody determination.” *Velasaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2000), *appeal withdrawn sub nom. Velasaca v. Wolf*, No. 20-2153, 2020 WL 7973940 (2d Cir. Oct. 13, 2020).
49. Moreover, § 1226(a)’s implementing regulations mandate that DHS officers base their individualized determination on two factors: (1) whether the noncitizen is a “danger to property or persons” and (2) whether the noncitizen is “likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8).

50. If, after conducting such an assessment, DHS ultimately decides to detain the noncitizen, that noncitizen has a right to appeal that decision before an immigration judge, who must consider the same two factors. See 8 C.F.R. §§ 1003.19(d),(e) (allowing immigration judges to review bond and custody determinations); *Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018) (“[A noncitizen] in a custody determination under [§ 1226], must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.”).
51. The second category, established by Section 1226(c), provides that DHS “shall take into custody any [noncitizen]” who falls under certain enumerated categories related to criminal and terrorist activity. 8 U.S.C. § 1226(c)(1). This “mandatory detention framework . . . ‘carves out a statutory category of [noncitizens] who may *not* be released’ from detention pending the conclusion of their removal proceedings.” *Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3314420, at *10 (E.D.N.Y. Nov. 28, 2025) (emphasis in original) (quoting *Jennings*, 583 U.S. at 289).
52. A growing number of federal courts have rejected ICE and EOIR’s expanded interpretation of the Immigration and Nationality Act’s detention provisions, holding that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. For example, other district courts recognize that parolees who have already entered the United States are eligible for bond hearings. See e.g., *Campbell v. Almodovar*, 1:25-cv-09509-JLR (SDNY December 10, 2025)(“*Unlike noncitizens just apprehended at the border or held in processing centers, [petitioner] was paroled into the United States and has called New York home for four years...all while living peacefully and without any pending removal*

proceedings against him... Accordingly, the Court recognizes [petitioner's] actual presence within the United States at the time of his 2025 re-arrest and finds that his detention falls under the provisions of § 1226(a)."); See also, Munoz Materano v. Arteta, 1:25-cv-6137 (SDNY September 9, 2025).

53. Petitioner is aware of the *Luis Gonzalo Duenas Garcia v. ICE* case from this district (2:25-cv-1004) in which a habeas petitioner was denied relief on the basis of his being a parolee, but the matter at hand is distinguishable from that case. Namely, the petitioner in that other case entered the U.S. illegally and was issued a Notice to Appear at the time of his apprehension and then released on parole. But in the matter at hand, the Petitioner entered the U.S. lawfully with a pre-approved grant of parole and was never detained or issued a Notice to Appear at the time of her entry into the country. Rather, an NTA was first issued on November 17, 2025. This distinction is salient because, unlike in *Duenas Garcia*, her 2025 detention was “*not simply a continuation of [her] initial border encounter following the termination of [her] parole. It was an independent decision to detain*” made months after her parole expired, based on an arrest by local law enforcement with a 287(g) agreement, and in connection with a new NTA. (quoting *Campbell v. Almodovar*, 1:25-cv-09509-JLR (SDNY December 10, 2025)). This independent decision to detain is in line with 1226 discretionary detention as applied to aliens already in the United States.

54. Another key distinction between *Duenas Garcia* and this matter is that although both were restored to the status they had at time of parole:

- the *Duenas Garcia* petitioner was restored to the position of an “applicant for admission” who was “seeking entry” due to the issuance of an NTA for lacking entry documents that was issued to him right after his illegal entry.

- the Petitioner in the matter at hand was restored to the position of an “applicant for admission” but was not “seeking entry” because she was granted lawful entry in 2023 when she entered with a pre-authorized grant of parole and no NTA was issued upon her entry into the United State.

55. Based on these distinctions, Petitioner in this matter was detained under Section 1226(a), which applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

56. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who are inadmissible for lack of documentation under 1182(a)(7) such as Petitioner. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.

57. Section 1226 therefore applies to people who face charges of being inadmissible to the United States, including those who are present on expired parole.

58. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. §

1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

59. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people who are no longer seeking admission.

Judicial Estoppel

60. Judicial estoppel is an equitable doctrine designed to protect the integrity of the judicial process by prohibiting parties from assuming inconsistent positions in litigation to gain unfair advantage. It is “especially” applicable “if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” *Davis v. Wakelee*, 156 U.S. 680, 689 (1895).

61. The Supreme Court reaffirmed this principle in *New Hampshire v. Maine*, holding that judicial estoppel applies when: (1) a party’s later position is “clearly inconsistent” with its earlier position; (2) the party succeeded in persuading a court to accept the earlier position, such that acceptance of the later position would create the perception that the court was misled; and (especially) when (3) the party would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. 532 U.S. 742, 749–51 (2001). The Court emphasized that these factors are not “inflexible prerequisites or an exhaustive formula,” and that “additional considerations may inform the doctrine’s application in specific factual contexts.” *Id.* at 751.

62. In *New Hampshire*, the Court barred the state from asserting a boundary interpretation that contradicted its prior position, which had been accepted by the Court and had yielded a favorable outcome. The Court found that the reversal would “undermine the integrity of the judicial process” and create a “risk of inconsistent court determinations.” Id. at 751, 755.
63. In *Jennings v. Rodriguez*, a case in which the government prevailed, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b).
64. During *Jennings v. Rodriguez* oral argument before the Supreme Court, the government clarified that individuals who have already effected an entry into the United States are to be placed in INA § 236 proceedings under 8 U.S.C. § 1226(a), rather than INA § 235 proceedings under 8 U.S.C. § 1225(b), unless they are apprehended within 100 miles of the border and within 14 days of entry. Justice Sotomayor specifically asked whether unadmitted aliens who are found in the U.S. illegally fall under mandatory detention under 1225(b) or discretionary detention under 1226(a). Solicitor General Gershengorn stated: “So they are held under -- if they are not -- if they are not detained within 100 miles of the border or within 14 days, so they've been there longer than those two things, then they are under 1226(a) and not 1226(c).” (Transcript of Oral Argument at 8, *Jennings v. Rodriguez*, No. 15-1204 (U.S. argued Nov. 30, 2016)).
65. On page 8, lines 21–25, Solicitor General Gershengorn further clarified that an alien who entered illegally and resides 50 miles from the border for 20 years “is held under 1226(a)

and that they get a bond hearing under -- and this is at page 156a of the appendix.”

(Id. at 8).

66. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

67. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

Administrative Procedure Act

68. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A-D), provides that courts shall set aside agency action that is arbitrary, capricious, an abuse of discretion, in excess of statutory authority, or taken without observance of procedure required by law.

69. Courts have consistently invalidated immigration enforcement actions that disregard statutory and regulatory limits. See: *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d 1, 41–43 (D.D.C. 2018).

70. Where regulations create novel requirements that go beyond those provided in the statutes, courts have invalidated agency action as *ultra vires*. E.g., *Shalom Pentecostal Church V. Beers*, 1:11-cv-04491, (D.N.J. Jan 15, 2013).

71. Courts have also invalidated immigration enforcement actions that violate an agency's own policies or directives. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).
72. The APA requires that substantive agency rules be promulgated through notice-and-comment rulemaking unless a statutory exception applies. 5 U.S.C. § 553(b), (c). An agency action that imposes new rights, obligations, or eligibility criteria rather than merely interpreting existing law is a legislative rule and must undergo notice and comment.
73. Where an agency fails to follow these procedural requirements, courts must "hold unlawful and set aside" the resulting regulation or policy. 5 U.S.C. § 706(2)(D); Accordingly, immigration regulations or policies adopted without compliance with the APA's notice-and-comment mandate are subject to judicial invalidation.
74. Courts can also toll or pause the accrual of unlawful presence while federal litigation is pending. The APA gives District Court judges the authority to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." This includes pausing the accrual of unlawful presence during pendency of litigation to preserve the status quo and prevent petitioners from becoming subject to bars on reentry under 8 U.S.C. § 1182(a)(9)(B).

BCSO detention authority as delegated in 287(g) Memoranda of Understanding

75. The Tenth Amendment to the Constitution protects state sovereignty in our federal system. It prohibits the federal government from compelling states law enforcement officers to perform its federal tasks. *Printz v. United States*, 521 U.S. 898 (1997).
76. DHS "cooperates" with state law enforcement agencies in order to detain aliens in non-federal taxpayer funded detention facilities. In order to get around Tenth Amendment

issues, DHS signs “287(g) Memoranda of Understanding” (“287(g) MOA”) with each state law enforcement agency with whom it cooperates. These MOAs are governed by the statute at 8 U.S.C. § 1237(g).

77. In 2019 DHS signed such a 287(g) MOA with the Baker County Sheriff’s Office (“BCSO”), which is presumably still in effect and governing the cooperative detention of the Petitioner. **Exhibit 8.**

78. The 287(g) MOA between DHS and the Baker County Sheriff’s Office expressly states that its “purpose” is “facilitating the custodial transfer of specific aliens in BCSO’s jail/correctional facilities to ICE for removal purposes at the time of the alien’s scheduled release from criminal custody.” In other words, this agreement contemplates BCSO holding those aliens that were detained during state-level law enforcement and transferring them to ICE. It was not intended to authorize BCSO to become an immigration detention overflow facility for detainees from ICE’s operations elsewhere.

79. The 287(g) MOA’s section entitled “responsibilities” reiterates this very limited purpose by stating “the [BCSO] is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which it has jurisdiction. ICE will assume custody of an alien only after said individual has been released from BCSO custody.”

80. The 287(g) MOA also contains an Appendix A with Standard Operating Procedures that also make clear the intended use of the agreement because it states that BCSO personnel or “only delegated...two authorities” that include:

- The power and authority to serve and execute warrants of arrest for immigration violations . . . on designated aliens in BCSO’s jail/correctional facilities at the time of the alien’s scheduled release from criminal custody in order to transfer custody of the alien to ICE.
- The power and authority to serve warrants of removal...on designated aliens in BCSO’s jail/correctional facilities at the time of the alien’s scheduled release

from criminal custody that executes the custodial transfer of the alien to ICE for removal purposes. *Id.*

Again, this demonstrates that the MOA is contemplating aliens in BCSO custody being transferred to ICE—not that BCSO would become an ICE overflow detention center as it is currently being used.

81. Given that the Petitioner has never committed a crime in Baker County, Florida and was never arrested by that law enforcement agency or otherwise in contact with that jurisdiction, it is clear that her current detention by the BCSO exceeds their authority as delegated in the 287(g) MOA.

ICE supervision authority as provided in 287(g) Memoranda of Understanding

82. The 287(g) MOA between DHS and the Baker County Sheriff's Office discusses training, cost allocation, legal liability, responsibilities, and more. It states that “the exercise of the immigration enforcement authority delegated under this MOA to participating BCSO personnel shall occur only as provided in this MOA.” *Id.*
83. The 287(g) MOA provides that “ICE is responsible for providing the [BCSO] with the applicable DHS and ICE policies. However, when engaged in immigration enforcement activities, no participating BCSO personnel will be expected or required to violate or otherwise fail to maintain the BCSO’s rules, standards, or policies...”
84. The BCSO “Inmate/Detainee Handbook” makes clear that their policy is to allow inmates to attend medical appointments, and even to provide transportation. **Exhibit 9.** For example, page 30 of that handbook reads “ICE detainees... shall be provided access to medical care and sick call at no charge.” Further, page 32 of that handbook reads “Outside

medical appointments will be coordinated through the medical service provider and you will be responsible for all costs, including travel.”

VIII. FACTS

85. Petitioner is currently detained by the Baker County Sheriff's Office under direction of U.S. Immigration and Customs Enforcement (ICE) at the Baker County Detention Center in Macclenny, Florida. **Exhibit 1.**
86. Petitioner first entered the United States in April 2023 under a pre-authorized grant of parole. She was inspected at Miami airport and granted lawful entry with parole for a 2-year period. **Exhibit 2.**
87. No Notice to Appear was issued upon her entry into the United States.
88. Since that time, Petitioner has established a life in the United States. Of key importance, she fell in love with a U.S. citizen, got married on April 17, 2025 in Fort Lauderdale, Florida. **Exhibit 3.**
89. Her American husband filed an I-130 on her behalf, which is pending before USCIS with a priority date of November 4, 2025. **Exhibit 3.**
90. Petitioner had a lovers' quarrel with her American husband in October 2025 in Broward County, Florida where they live. Officers from the Hollywood Police Department were contacted and both Petitioner and her husband were arrested. The couple never intended for police to be involved and considered it a misunderstanding. Ultimately, the State of Florida refused to file charges on her. **Exhibit 4.**
91. The police relinquished both husband and wife—but the husband got to go home whereas the wife was transferred into custody of DHS agents.
92. Petitioner has been in DHS detention since approximately November 14, 2025.

93. Based on this charge in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody claiming that she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
94. A Notice to Appear was issued on November 17, 2025. Petitioner is being charged as removable for being an immigrant not in possession of documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I). **Exhibit 5.**
95. ICE's reliance on 1225(b) was communicated to Petitioner's counsel via an email from SDDO Gregory Valcourt on November 24, 2025 while Petitioner was still being detained in Broward County, Florida where she lives. Petitioner's counsel requested that she be released under 212(d)(5) parole. SDDO Valcourt responded to the email, stating: "*Dear Attorney Pilehvar, Pursuant to INA 235(b)(2)(A), applicants for admission "shall" be detained during removal proceedings. As parolees are considered applicants for admission, your client remains subject to mandatory detention.*" **Exhibit 6.** She was shortly thereafter moved to Macclenny, Florida.
96. Petitioner was originally being held in the Broward Transitional Center near her home in South Florida, but then she was arbitrarily moved to the Baker County Detention Center in Macclenny, Florida where she is currently being held.
97. Petitioner attended her first EOIR hearing on December 6, 2025 and the Immigration Judge granted a 2-week continuance for her to file her I-485 Application for Adjustment of Status (i.e., green card application).
98. Petitioner is prepared to file her I-485 but ICE is preventing her from attaining the necessary medical examination that must be submitted with the I-485. Specifically, ICE

refused to allow the Baker County Sheriff Office to follow its usual protocol of taking inmates to medical appointments.

99. Petitioner's counsel planned with Lieutenant Joshua Whitehead of the Baker County Sheriff Department for a deputy to drive Petitioner to her medical exam, lab tests, and vaccinations.

100. The BCSO Lieutenant was agreeable to assist and her appointments were made for December 15, 2025.

101. On December 15, 2025—the day of her medical exam appointments—Lieutenant Whitehead informed Petitioner's counsel that ICE did not approve the trip.

102. On December 17, 2025 Petitioner's counsel emailed Lieutenant Whitehead to check on whether ICE had approved her for her medical exams so we could schedule new appointments. He responded: "*This has been denied, the medical entities must conduct the services at the detention facilities.*" **Exhibit 7.**

103. The only registered civil surgeon found in the area who offers onsite medical exams charges \$4000 for a visit and can only provide the medical opinion part of the exam. She does not provide vaccines and cannot perform the required lab exams for tuberculosis or syphilis. But she did write the Petitioner a prescription for six vaccinations and lab tests for tuberculosis and syphilis.

104. Despite exhaustive effort, Petitioner's husband or counsel cannot find a pharmacist who has all six prescribed vaccinations who is willing to travel to a jail to administer vaccines.

105. Despite exhaustive effort, Petitioner's husband or counsel cannot find a laboratory that is willing to travel to a detention center to perform the required lab tests for tuberculosis and syphilis.

106. Due to these circumstances, ICE is essentially making it impossible (or at least cost prohibitive) for the Petitioner to adjust her status based on her pending I-130 with her American husband.

IX. CLAIMS FOR RELIEF

COUNT I

Violation of the INA

107. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

108. DHS is violating the INA by considering Petitioner "mandatory detention" under § 1225, which was intended for detentions effected at the border.

109. In short, the vital difference between INA §§ 1225 and 1226 is whether the alien is at the border requesting entry, or is already in the country. Thus, for § 1225's mandatory detention requirement to apply, an "'examining immigration officer' must determine that the individual is:

- (1) an 'applicant for admission';
- (2) '**seeking admission**'; and
- (3) 'not clearly and beyond a doubt entitled to be admitted.'"

110. Petitioner does not satisfy all of these elements. Admittedly, she was, and remains, "an applicant for admission." But she is not "seeking admission."

111. “[A]pplicant for admission” is a term of art that covers both noncitizens who “arrive[] in the United States” and those already “present in the United States who ha[ve] not been admitted.” 8 U.S.C. § 1225(a)(1); *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 91 n.5 (1991) (noting that terms of art “depart from ordinary meaning”). “Admitted” is in turn defined as having gained “lawful entry . . . into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).

112. Here, Petitioner remained an “applicant for admission” despite having been paroled. Section 1182(d)(5)(A) specifically provides that “parole . . . shall not be regarded as an admission of the [noncitizen].” 8 U.S.C. § 1182(d)(5)(A). The applicable DHS regulation further provides that once a noncitizen’s parole terminates, he is “restored to the status that he . . . had at the time of parole,” 8 C.F.R. 212.5(e)(2)(i) — that of an applicant for admission. *See, e.g., United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they . . . are treated as applicants for admission into the country.”). Thus, at the time of her 2025 detention, Petitioner was “present in the United States” and “ha[d] not been admitted,” making her an applicant for admission. 8 U.S.C. § 1225(a)(1).

113. However, though she remained an applicant for admission, Petitioner was no longer “seeking admission” at the time of her 2025 arrest and detention. Unlike “applicant for admission,” “seeking admission” has no statutory definition. Determining the plain meaning of the phrase is straightforward. *See United States v. Rowland*, 826 F.3d 100, 108 (2d Cir. 2016) (“Where, as here, there is no statutory definition of a term, we consider ‘the ordinary, common-sense meaning of the words.’” (quoting *Dauray*, 215 F.3d at 260)); *id.* (“If the meaning is plain, the inquiry ends there.”). First, to “seek” is “to ask for” or “to try

to acquire or gain.” *Seek*, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/seek> (last visited Dec. 9, 2025). The use of a present participle, “seeking,” “necessarily implies some sort of present-tense action.” *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 218); *see also J.G.O.*, 2025 WL 3040142, at *3; *Tumba Huamani v. Francis*, No. 25-cv-08110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025). Next, the applicant must be seeking “admission,” which is statutorily defined as “lawful entry . . . into the United States.” 8 U.S.C. § 1101(a)(13)(A). “Entry” is not defined in the INA, *see generally id.* § 1101, so it can be given its “ordinary, contemporary, common meaning,” *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227 (2014) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)). That meaning is “[t]he action or an act of entering a place.” *Entry*, *Oxford English Dictionary*, <https://doi.org/10.1093/OED/8274517121> (last visited Dec. 9, 2025); *see also Entry*, *Black’s Law Dictionary* (12th ed. 2024) (“Any entrance of [a noncitizen] into the United States, whether voluntary or involuntary.”).

114. Entry therefore implies a geographic limit of entering a place, here the United States’s entrance (*i.e.*, the border). All combined, “seeking admission” means presently trying to enter the United States at or near the border. *See J.G.O.*, 2025 WL 3040142, at *3 (noting that “seeking admission” would “require[] [a noncitizen] . . . to want to *go into* the country”); *Alvarez Ortiz v. Freden*, --- F. Supp. 3d ---, 2025 WL 3085032, at *7 (W.D.N.Y. Nov. 4, 2025) (observing that “seeking admission” “must refer to seeking physical entry at the border, not the legal right to enter”); *Hyppolite v. Noem*, No. 25-cv-04304 (NRM), 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (finding that “seeking admission” “refer[s] to

those who are presenting themselves at the border, or who were recently apprehended just after entering”).

115. In sum, when DHS agents detained Petitioner in 2025, she was no longer seeking to enter the country. She was already in — and had been for several years. *See Lopez Benitez*, 795 F. Supp. 3d at 489 (holding that because “§1225(b)(2)(A) applies only to those noncitizens who are actively ‘seeking admission’ to the United States, it cannot, according to its ordinary meaning, apply to [the petitioner], because he has already been residing in the United States for several years”); *Rodriguez-Acurio*, 2025 WL 3314420, at *16 n.6 (“[A]lthough a Section 1182(d)(5)(A) parolee remains ‘at the border’ in the sense that they remain an applicant for admission, these parolees have nevertheless entered into the United States by virtue of their parole . . .”). Therefore, § 1225 does not apply to Petitioner.

116. To disregard the “seeking admission” requirement would be to violate the rule against surplusage twice-over. *See United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (“‘[E]very clause and word of a statute’ should have meaning.” (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883))). “If, as Respondents argue, § 1225[] were intended to apply to all ‘applicant[s] for admission,’ then there would be no need to include the phrase ‘seeking admission’ in the statute.” *Lopez Benitez*, 795 F. Supp. 3d at 488. That is, § 1225 would simply read: “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.” “Seeking admission” would be mere surplusage of the “applicant” requirement, 8 U.S.C. § 1225(b)(2)(A), in contravention of the canons of interpretation, *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“[N]o clause, sentence, or word shall be

superfluous, void, or insignificant.” (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); see also *Yale New Haven Hosp. v. Becerra*, 56 F.4th 9, 21 (2d Cir. 2022) (describing the “meaningful-variation canon” as “the principle that ‘where a statutory scheme has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea’” (alterations adopted) (quoting *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022))).

117. Respondents’ reading of § 1225 would likewise render superfluous the mandatory detention provisions found in § 1226(c)(1)(A), (D), and (E). Section 1226(c)(1)(A) mandates detention for “any [noncitizen] who is inadmissible by reason of having committed an offense covered in section 1182(a)(2) of this title,” such as offenses related to controlled substances. See *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”); see also *Bilski v. Kappos*, 561 U.S. 593, 608 (2010) (“[The canon against surplusage], of course, applies to interpreting any two provisions in the U.S.[]Code, even when Congress enacted the provisions at different times.”).

118. U.S.C. §1226(c)(1)(A); 8 U.S.C. §1182(a)(2)(A)(i)(II). “[T]his mandatory detention under §1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to §1225(b)’s mandatory detention provisions.” *J.U. v. Maldonado*, No. 25-cv-04836 (OEM), 2025 WL 2772765, at *8 (E.D.N.Y. Sept. 29, 2025) (quoting *Hasan v. Crawford*, ---F. Supp. 3d ---, 2025 WL2682255, at *9 (E.D. Va. Sept. 19, 2025)). The Laken Riley Act, which amended §1226 earlier this year, would likewise be rendered purposeless. See Pub. L. No. 119-1, §2, 139 Stat. 3 (2025) (codified

as amended at 8 U.S.C. §1226(c)(1)(E). The Act makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions of 8 U.S.C. §§1182(a) and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes. 8 U.S.C. §1226(c)(1)(E). Under this amendment, Congress intended for mandatory detention to be triggered only when the inadmissibility *and* the criminal conduct criterion are met. But anyone who is “inadmissible under paragraph (6)(A), (6)(C) or (7) of section 1182(a)” is, by definition, an “applicant for admission,” which would mean that they were already covered under Respondents’ reading of §1225—without any additional criminal conduct requirement. *Id.*; see 8 U.S.C. §1182(a). In other words, the text added by the Laken Riley Act would be almost entirely redundant. See *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”); see also *Bilski v. Kappos*, 561 U.S. 593, 608 (2010) (“[The canon against surplusage], of course, applies to interpreting any two provisions in the U.S.[]Code, even when Congress enacted the provisions at different times.”); *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (“When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.”). Accordingly, it is clear that Congress intended for § 1226(a)’s discretionary framework to apply to noncitizens arrested while residing in the United States, except as provided in §1226(c). It follows, then, that DHS detained Petitioner under § 1226(a).

119. Petitioner is aware of the *Luis Gonzalo Duenas Garcia v. ICE* case from this district (2:25-cv-1004) in which a habeas petitioner was denied relief on the basis of his being a parolee, but the matter at hand is distinguishable from that case. Namely, the petitioner in that other case entered the U.S. illegally and was issued a Notice to Appear at the time of

his apprehension and then released on parole. But in the matter at hand, the Petitioner entered the U.S. lawfully with a pre-approved grant of parole and was never detained or issued a Notice to Appear at the time of her entry into the country.

120. This distinction is salient because there were no proceedings pending against the Petitioner in this matter during her period of parole. No NTA was issued when she was paroled into the United States in 2023. That means that her 2025 detention was “*not simply a continuation of [her] initial border encounter following the termination of [her] parole. It was an independent decision to detain*” made after her parole expired and in connection with a new NTA. (quoting *Campbell v. Almodovar*, 1:25-cv-09509-JLR (SDNY December 10, 2025)). This independent decision to detain is in line with 1226 discretionary detention as applied to aliens already in the United States.

121. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention without a bond hearing and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT II

Violation of Fifth Amendment Due Process “As Applied”

122. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

123. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

124. Petitioner, who legally entered the United States, has a fundamental interest in liberty and being free from official restraint.

125. Courts across the nation are recognizing that noncitizens who are not at the threshold of entry, like Petitioner, have “*a due process right to an individualized bond hearing, and neither the legislature nor the executive can strip him of that right by classifying him as detained under § 1225.*” *Destino v. Tatum*, 1:25-cv-374 (New Hampshire District Court). Accord, *Merino v. Ripa*, no. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *4 (S.D. Fla. Oct. 15, 2025); *Hernandez-Fernandez v. Lyons*, no. 5:25-cv-773, 2025 WL 2976923, at *8 n.2 (W.D. Tex. Oct. 21, 2025); *Ochoa Ochoa v. Noem*, no. 25-CV-10865, 2025 WL 2938779, at *7 (N.D. Ill. Oct. 16, 2025); *Escobar-Ruiz v. Raycraft*, no. 1:25-CV-1232, 2025 WL 3039255, at *6 (W.D. Mich. Oct. 31, 2025)); see also, e.g., *Ordonez-Lopez*, 2025 WL 3123828, at *3; *Rojas*, 2025 WL 3038262, at *2–3; *Espinoza v. Kaiser*, no. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *10–11 (E.D. Cal. Sept. 5, 2025); *Rosado v. Figueroa*, no. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019); *Carillo Fernandez v. Knight*, no. 2:25-CV-02221-RFB-BNW, 2025 WL 3485800, at *6 (D. Nev. Dec. 4, 2025); *Garcia-Arauz v. Noem*, no. 2:25-CV-02117-RFB-EJY, 2025 WL 3470902, at *6–7 (D. Nev. Dec. 3, 2025); *Silva Hernandez v. Noem*, no. 2:25-CV-02304-RFBEJY, 2025 WL 3470903, at *8 (D. Nev. Dec. 3, 2025); *Avila Aranda v. Olson*, no. 4:25-CV-00156-GNS, 2025 WL 3499061, at *6–8 (W.D. Ky. Dec. 5, 2025); *Doe v. Moniz*, 2025 WL 2576819, at *11; *Rincon*, 2025 WL 3122784, at *5–7; *Fils-Aime v. FCI Berlin, Warden*, No. 1:25-CV-287-JL-TSM, 2025 WL 3063164, at *3 (D.N.H. Oct. 31, 2025); *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL 3280555, at *4 (D. Mass. Nov. 25, 2025).

126. Petitioner is and has been inside the United States since 2023, freely living her life. She is not currently seeking admission. In non-admission contexts such as this, which do not directly implicate the executive's sovereign prerogative, the Due Process Clause protects liberty interests that may accrue regardless of statutory allowances. Liberty interests may spring from lives lived, connections fostered, and promises made or implied. "Thus, even without disturbing the metaphysical 'entry fiction' that may obstruct, in some senses, our ability to admit that a non-citizen is really 'here,' one can still constitutionally recognize [a petitioner's] actual life in this country—his years as part of our community—not so easily set aside." *Id.* quoting *Tenemasa-Lema*, 2025 WL 3280555, at *4.
127. DHS has violated Petitioner's substantive due process rights by unfairly and unlawfully categorizing her in a way that denies her a bond hearing based only on whether she is a danger to the community or a flight risk.
128. DHS has violated Petitioner's procedural due process rights by preventing her from attaining the necessary medical exam, laboratory tests, vaccinations, and biometrics readings for her to apply for adjustment of status.
129. Regardless of how Petitioner is categorized by the DHS, her detention without a bond hearing is an "as applied" violation of the Fifth Amendment based on the fact that she has accrued a liberty interest by way of her lawful entry into the United States in 2023.

COUNT III
Judicial Estoppel

130. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

131. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government prevailed, and in doing so argued that unadmitted aliens who were not apprehended within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016).

132. Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government’s reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

COUNT IV

Violation of the Tenth Amendment to the U.S. Constitution

BCSO detention exceeds authority delegated to them in their 287(g) MOA

132. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

133. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. U.S. Const. amend. X.

134. The Tenth Amendment to the U.S. Constitution protects states rights in a federal system by, in part, prohibiting the federal government from “commandeering” state employees to carry out federal prerogatives. *Printz v. United States*, 521 U.S. 898 (1997).

135. DHS and the Baker County Sheriff's Office (BCSO) cooperate under a 287(g) Memorandum of Understanding that is intended to reconcile their relationship with the Tenth Amendment.

136. But while the 287(g) MOA gives BCSO the authority to detain and transfer to ICE those aliens that were arrested in their jurisdiction, it does not grant BCSO the authority to detain aliens transferred by ICE from outside of their jurisdiction and to be essentially used as an overflow detention center. **Exhibit 8.**

137. Therefore, BCSO's detention of Petitioner exceeds their authority as delegated in the 287(g) MOA.

COUNT V

Violation of the Tenth Amendment to the U.S. Constitution

ICE supervision exceeds authority provided in 287(g) MOA

138. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

139. The Tenth Amendment to the U.S. Constitution protects states rights in a federal system by, in part, prohibiting the federal government from "commandeering" state employees to carry out federal prerogatives. *Printz v. United States*, 521 U.S. 898 (1997).

140. DHS and the Baker County Sheriff's Office (BCSO) cooperate under a 287(g) Memorandum of Understanding that is intended to reconcile their relationship with the Tenth Amendment.

141. But while the 287(g) MOA provides ICE supervisory responsibility over BCSO's enforcement of immigration laws, it specifically states that "when engaged in immigration

enforcement activities, no participating BCSO personnel will be expected or required to violate or otherwise fail to maintain the BCSO's rules, standards, or policies.”

142. The BCSO policies and standards allow them to take inmates to offsite medical exams. In fact, its inmate/detainee handbook states: “ICE detainees... shall be provided access to medical care and sick call at no charge” and “[o]utside medical appointments will be coordinated through the medical service provider and you will be responsible for all costs, including travel.” **Exhibit 9.**

143. Indeed, a Lieutenant from BCSO was standing by and ready to take Petitioner to her scheduled medical exams which are necessary for her to apply for adjustment of status to permanent resident. But ICE prevented the BCSO from taking Petitioner to her medical appointments, thereby forcing them to violate their own standards/policies. **Exhibit 7.**

144. Therefore, ICE exceeded its authority as provided in the 287(g) MOA and violated the Tenth Amendment.

COUNT VI

Injunctive Relief under the Administrative Procedure Act

146. Petitioner incorporates by reference the allegations of fact and legal standards set forth in the preceding paragraphs.

147. Petitioner requests that the 12/5/2025 and 12/12/2025 USCIS Policy Alerts be set aside as unlawful insofar as they make it procedurally impossible for detained arriving aliens to adjust status with USCIS. These agency actions are tantamount to a new regulatory rule that arriving aliens in detention are ineligible for adjustment of status.

148. The 12/5/2025 Policy Alert (PA-2025-28) states that USCIS will deny applications where the subject does not appear at their biometrics appointment, and that *USCIS will no*

longer cooperate with ICE to attain biometrics from detained individuals whose applications are under USCIS jurisdiction, e.g., arriving aliens like Petitioner.

149. The 12/12/2025 Policy Alert (PA-2025-29) states that USCIS will require new biometrics appointments for all applications for adjustment of status.

150. Under the combined effects of these two policy alerts, arriving aliens in detention are procedurally prevented from being able to adjust their status in a manner that offends the Administrative Procedures Act (“APA”). These two policy alerts essentially create an *ultra vires* new requirement that arriving aliens cannot adjust if in ICE detention.

151. USCIS and ICE are both sub agencies of the DHS. To permit this *ultra vires* new requirement would allow DHS’s left hand to blame the right for the deprivation of Petitioner’s ability to adjust status.

152. Such a requirement is absent from the statutes regarding adjustment of status for arriving aliens, found at 8 U.S.C. § 1255. In fact, federal courts have confirmed that “*the statute is not silent — it defines persons who have parole status as eligible for adjustment of status and does not carve out an exception for parolees who are in removal proceedings.*” *Succar v. Ashcroft*, 394 F.3d 8 (1st Cir. 2005). The mere fact that a statute gives the Attorney General discretion as to whether to grant relief after application does not by itself give the Attorney General the discretion to define eligibility for such relief. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 443, 107 S. Ct. 1207, 94 L. Ed. 2d 434 (1987).

153. Because these two policy alerts have a combined effect of creating a new eligibility requirement for detained arriving aliens to adjust status that is not supported by statutory authority, they are *ultra vires* and therefore invalid under the APA.

154. Further, two policy alerts and any actions based on them are nonetheless invalid because the new rule is a legislative rule that was not promulgated through notice and comment period as required by the Administrative Procedure Act. They are therefore invalid under the APA.

COUNT VII

Declaratory Relief under the Administrative Procedure Act

155. Petitioner incorporates by reference the allegations of fact and legal standards set forth in the preceding paragraphs.

156. Petitioner seeks declaratory relief under the APA declaring DHS's use of 1225(b) to detain the Petitioner as arbitrary and capricious and not in accordance with law.

157. Petitioner seeks a declaration that the ICE's improper refusal to follow the 287(g) agreement and allow BCSO to take inmates to offsite medical appointments is arbitrary and capricious and not in accordance with law.

158. Petitioner seeks a declaration that DHS's 12/5/2025 and 12/12/2025 Policy Alerts are invalid because they are *ultra vires* and not promulgated in accordance with the APA.

X. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the MIDDLE DISTRICT OF FLORIDA while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- e. Pause the Petitioner's accrual of unlawful presence while this writ is pending using the authority of 5 U.S.C. § 705 so that Petitioner doesn't risk becoming subject to a 10-year bar on reentry if she ultimately has to leave the country;
- f. Declare DHS's use of 1225(b) to detain the Petitioner as arbitrary and capricious and not in accordance with law;
- g. Declare that the ICE's improper refusal to follow the 287(g) agreement and allow BCSO to take inmates to offsite medical appointments is arbitrary and capricious and not in accordance with law;
- h. Declare that DHS's 12/5/2025 and 12/12/2025 Policy Alerts are invalid because they are *ultra vires* and not promulgated in accordance with the APA;
- i. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- j. Any further relief the Court deems proper.

DATED: December 29, 2025

Respectfully Submitted,

/s/ Taymoor M. Pilehvar
Taymoor M. Pilehvar
Attorney for Petitioner
Florida Bar No. 1018387
Pilehvar Law, PLLC

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

I represent Petitioner, Gabriela Alejandra Lozano Sousa, and submit this verification on her behalf.

I have conducted an appropriate inquiry into the circumstances of this case, and I believe that all factual allegations contained in the Petition for Writ of Habeas Corpus are true. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Taymoor M. Pilehvar

CERTIFICATE OF SERVICE

I certify that on the 29th day of December, 2025 I electronically filed the foregoing document and attachments with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is/are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Taymoor M. Pilehvar



Report

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Facility Page

Detention Information For:

GABRIELA ALEJANDRA LOZANO SOUSA

Country of Birth: Venezuela

A-Number: 

Current Detention Facility:

BAKER COUNTY FACILITY
1 SHERIFF'S OFFICE DRIVE
MACCLENNY, FL 32063
Visitor Information: (904) 259-2231

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