UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MISHELA VILLEGAS DE LA CRUZ,

Petitioner,

v.

JONATHAN FLORENTINO, Acting Newark Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE)

TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE);

KRISTI NOEM, in her Official Capacity, Secretary of the U.S. Department of Homeland Security;

Respondents.

Case No.

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

ORAL ARGUMENT REQUESTED

INTRODUCTION

1. This case concerns the illegal arrest and the illegal subsequent detention of Petitioner, Mishela Villegas De La Cruz ("Ms. Villegas De La Cruz"), a forty-year-old asylum seeker who fled Peru and entered on October 23, 2022, with her minor daughter. DHS allowed Ms. Villegas De La Cruz and her daughter to enter the United States through parole, and since then, she has done everything the government asked of her. She followed the process in the United States for individuals seeking asylum in immigration court proceedings, timely filed her asylum application, and received her work authorization. She also filed a guardianship petition for her daughter, V[redacted] who was approved for Special Immigrant Juvenile

status.

2. Ms. Villegas De La Cruz's arrest and detention are wholly unjustified and unrelated to any individualized consideration of her circumstances. When she initially presented herself at the port of entry, she was permitted to enter the United States pursuant to a grant of parole under INA § 212(d)(5). She timely filed her asylum application and was awaiting an interview date with U.S. Citizenship and Immigration Services.

3. Ms. Villegas De La Cruz respectfully asks this Court to hold that her arrest was unlawful, to hold that her continued detention is unlawful, and to order her immediate release from custody. Petitioner's case is factually similar to *Rivas Rodriguez v. Rokosky*, where the court ordered the petitioner's release after concluding that, because he had been paroled into the United States, the government could not lawfully subject him to mandatory detention under 8 U.S.C. § 1225(b)(1). Like the petitioner in *Rivas Rodriguez*, Ms. Villegas De La Cruz was granted parole under INA § 212(d)(5) and therefore does not fall within § 1225(b)(1)'s limited reach to individuals "who have not been admitted or paroled into the United States." Accordingly, Respondents lack statutory authority to detain her under § 1225(b)(1), and the Court should order her immediate release.

4. Every day Ms. Villegas De La Cruz remains in detention, she is subjected to ongoing and irreparable harm, as is her daughter, who lives with her mother and is currently attending Kean University. Immediate relief is necessary to ensure that Ms. Villegas De La Cruz is no longer subjected to continued violations of her substantive and procedural due process rights

JURISDICTION & VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq*.

6. Venue is proper because the Petitioner was arrested on January 12, 2026 at 970 Broad Street, Newark, New Jersey, at what was supposed to be a routine check-in. *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

8. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge ("IJ") because of the Board of Immigration Appeals ("BIA") recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

9. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of her due process rights, and it would therefore be futile for her to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

10. Petitioner Ms. Villegas De La Cruz is a forty-year-old native and citizen of Peru. Before her arrest and detention, she resided with her daughter at [redacted] [redacted] She was detained on January 12, 2026, at approximately 11:30 a.m., at 970 Broad Street and has been in ICE custody since that time.

11. Respondent Jonathan Florentino is named in his official capacity as the Acting Director of the Newark, NJ, Field Office of Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE). Respondent Florentino is a legal custodian of the Petitioner and has the authority to release her.

12. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of New Jersey, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

13. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

LEGAL BACKGROUND

A. Due Process Principles

14. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

15. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

16. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, *St. Cyr*, 533 U.S. at 302.

17. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

18. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

19. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

B. Legal Framework of Removal Proceedings

20. Section 240 removal proceedings provide non-citizens with an opportunity to be heard in full immigration court hearings before an Immigration Judge. 8 U.S.C. § 1229a sets out

the procedures and rights afforded to non-citizens in Section 240 removal proceedings. These include: "the privilege of being represented . . . by counsel of the alien's choosing who is authorized to practice in such proceedings" 8 U.S.C. § 1229a(4)(A) and "a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(4)(B).

21. Decisions made by "Immigration Judges may be appealed to the Board of Immigration Appeals." 8 C.F.R. § 1003.38(a). Final orders of removal may be appealed to the Federal Court of Appeals for the judicial circuit in which the respective Section 240 proceedings terminate. See 8 U.S.C. § 1252.

22. The statutorily guaranteed procedures and rights in Section 240 proceedings are significantly more expansive than those available to non-citizens designated for expedited removal under 8 U.S.C. § 1225.

23. Traditionally, non-arriving noncitizens living in the United States were only subject to removal proceedings under 8 U.S.C. § 1229a, not the fast-track expedited removal process under § 1225.

24. Unlike Section 240 proceedings, expedited removal is a process that begins—and often concludes—outside of immigration court. Non-citizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i).

25. The lone exception to this rule is that if a non-citizen indicates an intention to apply for asylum or a fear of persecution, the officer "shall refer the alien for an interview by an asylum officer" to conduct a credible fear interview. 8 U.S.C § 1225(b)(1)(A)(i)-(ii).

26. If the asylum officer determines that an noncitizen does not have a credible fear of

persecution, the officer shall order the noncitizen removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). Upon a non-citizen's request, an immigration judge shall expeditiously review a determination "that the alien does not have a credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

27. If the asylum officer determines that a noncitizen does have a credible fear of persecution, the officer shall rescind the expedited removal order and refer the case for full consideration of asylum and related protection in § 240 removal proceedings. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 C.F.R. §§ 208.30(f), 235.3(b)(4)(ii).

C. Detention Authority

28. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

29. Section 1226 governs the detention of noncitizens "already in the country pending the outcome of removal proceedings." Jennings v. Rodriguez, 583 U.S. 281, 289 (2018) (emphasis added); see also id. at 288, (explaining that, "once inside the United States . . . an alien present in the country may still be removed" under "Section 1226" (emphasis added)). Section 1226 distinguishes between "two different categories" of detention under the statute. Id. at 288.

30. The first category is "a discretionary detention framework" established by Section 1226(a). Lopez Benitez v. Francis, No. 25-cv-5937, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025). Section 1226(a) provides that, for a noncitizen who is "arrested and detained" "[o]n a warrant issued by the Attorney General," the Attorney General: (1) "may continue to detain" the 20 Case 2:25-cv-06065-NJC Document 25 Filed 11/28/25 Page 21 of 70 PageID #: <pageID> arrested noncitizen; (2) "may release"

the noncitizen on "bond"; or (3) "may release" the noncitizen on "conditional parole." 8 U.S.C. § 1226(a)(1)–(2).

31. The second category is a mandatory detention framework established by Section 1226(c), which "carves out a statutory category of [noncitizens] who may not be released" on bond or conditional parole pending the conclusion of removal proceedings. Jennings, 583 U.S. at 289 (emphasis in original). Specifically, Section 1226(c) provides that the "Attorney General shall take into custody any alien" who falls into one of five enumerated categories involving criminal offenses and terrorist activities. 8 U.S.C. § 1226(c)(1).

32. If a non-citizen passes a credible fear interview, they are permitted to apply for asylum through Section 240 proceedings. See 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

33. 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, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

34. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered

without inspection) will be eligible for bond and bond redetermination").

35. Thus, the INA distinguishes between non-citizens seeking entry into the United States and those "already in the country." *See Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018).

36. In the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

37. Section 1225(b)(1) provides for mandatory detention of non-citizens subject to its provisions—that is, a non-citizen "arriving in the United States" who seeks to apply for admission. Applicants who indicate a fear of persecution if returned to their country of origin "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(iii)(IV). Applicants who do demonstrate a credible fear "shall be detained for further consideration of the application for asylum." § 1225(b)(1)(B)(ii). Detention is "mandate[d] . . . throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings*, 583 U.S. at 302. Under the statute, applicants are not entitled to a bond hearing. *See id.* at 301.

38. Section 1225(b)(1) applies to a non-citizen who *is* arriving in the United States or a port of entry may be placed into expedited removal proceedings if the Department of

Homeland Security determines that they are inadmissible under §§ 212(a)(6)(C), fraud or misrepresentation, or 212(a)(7), lack of valid entry document and the non-citizen is either *arriving* in the United States, has not been admitted or paroled into the United States, and cannot show that they have been continuously present in the United States for two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

39. DHS's authority to parole individuals detained under 8 U.S.C. § 1225(b)(1) is preserved by the general parole statute at 8 U.S.C. § 1182(d)(5)(A). Even though § 1225(b)(1)(B)(ii) states that individuals who have been found to have a credible fear of persecution "shall be detained for further consideration of the application for asylum," Congress did not repeal or displace DHS's long-standing discretionary authority to "parole into the United States temporarily under such conditions as [it] may prescribe on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). The implementing regulations likewise recognize that noncitizens "who are arriving aliens or certain other aliens described in section 235(b)(1) of the Act" may be considered for parole on a case-by-case basis under these standards. See 8 C.F.R. § 212.5(b), (c). Thus, even for individuals subject to § 1225(b)(1), DHS retains—and routinely exercises—parole authority where urgent humanitarian concerns or significant public benefit justify release, and nothing in Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), eliminates or restricts that statutory parole power.

D. Re-arrest

40. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires "adequate procedural protections" that test whether the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690

(citation modified).

41. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).

42. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

43. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

44. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

45. This Circuit has stated that conditional parole "provides a mechanism whereby an [noncitizen] may be released pending the determination of removal, as long as she is not a 'danger to persons or property' and 'is likely to appear for any further proceeding.'" *Delgado-Sobalvarro v. Attorney Gen. of U.S.*, 625 F.3d 782, 787 (3d Cir. 2010); *See also Matter of Castillo-Padilla,* 25 I&N Dec. 257, 261 (BIA 2010).

46. In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings," without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority); *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

47. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). And those due process protections extend to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

48. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

49. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal); and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore v. Kim*, 538 U.S. 510, 519-20, 527–28, 531 (2003). It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an "individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690; *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015).

50. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482.

51. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

52. These principles apply with at least equal force to people released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

53. Thus, if 8 U.S.C. § 1226(b) were construed as allowing ICE to re-arrest and re-detain noncitizens for no reason at all, it would raise serious constitutional questions under both the Fourth Amendment and the Due Process Clause.

STATEMENT OF THE FACTS

54. Ms. Villegas De La Cruz entered the United States on or about October 23, 2022, after fleeing Peru with her daughter.

55. Upon entry on or about October 24, 2022, Ms. Villegas De La Cruz was paroled into the United States.

56. In or around October 10, 2023, Petitioner and her daughter affirmatively filed Form I-589, Application for Asylum with the U.S. Citizenship and Immigration Office because there was no filed Notice to Appear.

57. Petitioner applied for and received her work authorization.

58. On January 12, 2026, Petitioner went to a routine ICE check-in at 970 Broad Street, where she was re-arrested.

59. Petitioner did not violate the terms of her parole.

60. Through this petition, Petitioner Mishela Villegas De La Cruz asks this Court to find that Respondents have deprived her of her due process rights by re-detaining her and have violated the INA by re-detaining her without the possibility of a bond hearing under 8 U.S.C. § 1226(a). Petitioner seeks her immediate

release from custody and an Order to Show Cause within three days as to why the government is re-detaining her.

CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution (Substantive Due Process); 5 U.S.C. §§ 702, 706

61. Petitioner restates and realleges all preceding paragraphs as if fully set forth herein.

62. Petitioner Mishela Villegas De La Cruz, a native and citizen of Peru, had been continuously living in the United States for over three years after she was paroled into the United States when she was unlawfully arrested and unlawfully detained. Accordingly, Petitioner is being detained in violation of her constitutional right to due process under the Fifth Amendment.

63. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

64. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause of the Fifth Amendment protects." *Zadvydas*, 533 U.S. at 690.

65. First, immigration detention must always bear a reasonable relation to the purpose for which the individual was committed. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

66. Where, as here, the government released Petitioner on parole to apply for asylum, and Petitioner did so, Respondents cannot simply re-arrest and re-detain Petitioner without justification.

67. The government's authority to arrest a noncitizen and revoke her release is constrained by the Due Process Clause because individuals released from custody possess a protected liberty interest in their

freedom. To safeguard that interest, due process requires notice and a hearing prior to any re-arrest, at which the individual must be afforded an opportunity to present arguments as to why her release should not be revoked.

68. Second, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993); *Demore*, 538 U.S. at 528.

69. Petitioner's ongoing imprisonment does not satisfy even that standard, as there was no material change in circumstances after Petitioner was released from custody and she continues to have a pending asylum application.

70. Third, the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention. *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

71. Detaining Ms. Villegas De La Cruz was arbitrary because she had been paroled into the United States, released from custody, authorized to work in the United States, caring for her daughter, and had no criminal arrests or convictions.

SECOND CLAIM FOR RELIEF

Violation of 8 U.S.C. §§ 1226(a), 1225(b), *Mandatory Detention For Those Seeking Admission*

72. Petitioner restates and realleges all paragraphs as if fully set forth here.

73. In October 2022, Ms. Villegas De La Cruz presented herself for inspection upon entry and paroled her into the United States.

74. Because DHS previously exercised its discretion to release her from detention through parole, and in its discretion released the Petitioner from detention, the government lacks authority to re-detain her under § 1225(b)(1) or (b)(2)'s mandatory provisions. At the time of Petitioner's re-arrest on January 12, 2026, Petitioner had been living in the United States for over three years, had a pending asylum application, a

work permit, and was the guardian for her daughter's Special Immigrant Juvenile petition. Therefore, Petitioner was not subject to detention pursuant to § 1225(b), and any custody must proceed, if at all, under § 1226(a).

75. Petitioner's continuing re-detention is therefore unlawful.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause within seventy-two hours why this Petition should not be granted;
3. Declare that Petitioner's re-detention is unlawful;
4. Issue an Order preventing Respondents from removing Petitioner from the United States to any country without notice and an opportunity to be heard;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
6. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
8. Grant any further relief this Court deems just and proper.

Dated: January 12, 2026

Respectfully Submitted,

/s/ Veronica Cardenas

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