

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

JANINA STEFANIA MONTERO
GRANDA

Petitioner,

v.

ANGEL GARITE, in his official
capacity as Assistant Field Office
Director of Enforcement and Removal
Operations, El Paso Field Office,
U.S. Immigration and Customs
Enforcement;

MARY DE ANDA-YBARRA, in her
official capacity as Field Office
Director of Enforcement and Removal
Operations, El Paso Field Office, U.S.
Immigration and Customs
Enforcement;

TODD LYONS, in his official capacity
as Acting Director and Senior Official
Performing the Duties of the Director
of U.S. Immigration and Customs
Enforcement;

KRISTI NOEM, in her official
capacity as Secretary of the U.S.
Department of Homeland Security;

Case No. 3:26-cv-235

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 OR ORDER
TO SHOW CAUSE WITHIN 3
DAYS**

1 MAJ. GEN. CURTIS TAYLOR, in his
2 official capacity as Senior Commander
3 of Fort Bliss, Texas;

4 and

5 PAMELA BONDI, in her official
6 capacity as United States Attorney
7 General

8 Respondents.

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 OR ORDER TO SHOW CAUSE WITHIN 3 DAYS**

INTRODUCTION

1. Petitioner, Janina Stefania Montero Granda, is in the physical custody of Respondents at the Camp East Montana. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. On September 06, 2021, the Petitioner first entered the United States without inspection. She was encountered by border patrol and released on her own recognizance.

3. On August 30, 2022, the Petitioner was served and charged by Immigration and Customs Enforcement ("ICE") for lacking a valid unexpired immigrant visa or other valid entry document at the time of entry pursuant to INA 212(a)(7)(A)(i) (a.k.a. 8 U.S.C. § 1182(a)(7)(A)(i)).

4. Petitioner filed an application for asylum.

5. On January 10, 2025, Petitioner was detained and later transferred to El Paso. Petitioner had resided in Minneapolis prior to detention.

1 6. On January 20, 2026, Immigration Judge Stephen Ruhle ruled
2 that he had no jurisdiction to grant bond due to the *Matter of Yajure*
3 *Hurtado*, 29 I&N Dec. 216 (BIA 2025).

4 7. DHS denied Petitioner release from immigration custody,
5 consistent with a new DHS policy formalized by the BIA decision *Matter of*
6 *Yajure Hurtado*, under which all ICE employees are to consider anyone
7 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who entered the
8 United States without inspection—to be an “applicant for admission” under 8
9 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
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11 8. Petitioner’s detention on this basis violates the plain language of
12 the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to
13 individuals like Petitioner who previously entered and are now residing in
14 the United States. Instead, such individuals are subject to a different statute,
15 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That
16 statute expressly applies to people who, like Petitioner, are charged as
17 inadmissible for having entered the United States without inspection.
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19 9. Respondents’ new legal interpretation is plainly contrary to the
20 statutory framework and contrary to decades of agency practice applying §
21 1226(a) to people like Petitioner.
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1 giving rise to the claims occurred in the Western District of Texas, El Paso
2 Division.

3 **REQUIREMENTS OF 28 U.S.C. § 2243 TO SHOW CAUSE**

4 16. The Court must grant the petition for writ of habeas corpus or
5 order Respondents to show cause "forthwith," unless the petitioner is not
6 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the
7 Respondents must file a return "within three days unless for good cause
8 additional time, not exceeding twenty days, is allowed." *Id.*

10 17. Habeas corpus is "perhaps the most important writ known to the
11 constitutional law . . . affording as it does a *swift* and imperative remedy in
12 all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400
13 (1963) (emphasis added). "The application for the writ usurps the attention
14 and displaces the calendar of the judge or justice who entertains it and
15 receives prompt action from him within the four corners of the application."
16 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

18 **PARTIES**

19 18. Petitioner Janina Stefania Montero Granda is a citizen of
20 Ecuador who has resided in the United States for over four years. Petitioner
21 has been in immigration detention since January 10, 2026. After arresting
22 Petitioner in Minnesota, ICE did not set bond.
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1 19. Respondent Angel Garite is the Assistant Field Office Director
2 for the El Paso Field Office. As such, he is the immediate physical custodian
3 of the Petitioner. His address is 8915 Montana Avenue, El Paso, Texas 79925.
4 He is named in his official capacity.

5 20. Respondent Mary De Anda-Ybarra is the Director of the El Paso
6 Field Office of ICE's Enforcement and Removal Operations division. As such,
7 she is the Petitioner's immediate custodian and is responsible for his
8 detention and removal. Her address is ICE El Paso Field Office, 11541
9 Montana Avenue, Suite E, El Paso, Texas 79936. She is named in her official
10 capacity.
11

12 21. Respondent Todd Lyons is the acting director of U.S.
13 Immigration and Customs Enforcement (ICE). He is responsible for
14 overseeing the federal agency responsible for Petitioner's detention. His
15 address is U.S. Immigration and Customs Enforcement, Office of the
16 Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C.
17 20536. Mr. Lyons has custodial authority over Petitioner and is sued in his
18 official capacity.
19

20 22. Respondent Kristi Noem is the Secretary of the U.S. Department
21 of Homeland Security. In this capacity, she is responsible for the
22 administration of immigration laws pursuant to 8 U.S.C. § 1103(a) and is
23 legally responsible for pursuing any effort to confine and remove the
24

1 Petitioner. As such, she is a custodian of the Petitioner. Respondent Noem's
2 address is Office of the General Counsel, MS 0485 Department of Homeland
3 Security, 2707 Martin Luther King, Jr. Ave. SE, Washington, D.C. 20528-
4 0525. Ms. Noem has ultimate custodial authority over the Petitioner and is
5 sued in her official capacity.

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7 23. Respondent Pam Bondi is the Attorney General of the United
8 States and the senior official of the U.S. Department of Justice. Respondent
9 Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue,
10 NW, Washington, D.C. 20530-0001. An agency under her authority, the
11 Board of Immigration Appeals, recently declared that immigration judges
12 (IJs) do not have jurisdiction to set bond for immigrants who are not
13 admitted or paroled into the United States. *See Matter of Yajure Hurtado*, 29
14 I. & N. Dec. 216 (BIA 2025). Ms. Bondi has custodial authority over
15 Petitioner and is sued in her official capacity.

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17 24. Major General Curtis Taylor is the Senior Commander of Fort
18 Bliss, Texas. He has custodial authority over detainees at the ERO El Paso
19 Camp East Montana in El Paso, Texas. His mailing address is HQ, US Army
20 Garrison, Fort Bliss, ATTN: AMIM-BLG-ZA, 1741 Marshall Road, Fort Bliss,
21 TX 79916.

LEGAL FRAMEWORK

A. Discretionary Detention

25. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “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).

26. Due Process requires that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

27. “The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is

1 due, this Court should consider (1) the private interest affected by the
2 government action; (2) the risk that current procedures will cause an
3 erroneous deprivation of that private interest, and the extent to which that
4 risk could be reduced by additional safeguards; and (3) the government's
5 interest in maintaining the current procedures, including the governmental
6 function involved and the fiscal and administrative burdens that the
7 substitute procedural requirement would entail. *Id.* at 335.

9 28. The INA prescribes three basic forms of detention for the vast
10 majority of noncitizens in removal proceedings.

11 29. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
12 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals
13 in § 1226(a) detention are generally entitled to a bond hearing at the outset of
14 their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who
15 have been arrested, charged with, or convicted of certain crimes are subject to
16 mandatory detention, *see* 8 U.S.C. § 1226(c).

18 30. Second, the INA provides for mandatory detention of noncitizens
19 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
20 arrivals seeking admission referred to under § 1225(b)(2).

21 31. Last, the INA also provides for detention of noncitizens who have
22 been ordered removed, including individuals in withholding-only proceedings,
23 *see* 8 U.S.C. § 1231(a)–(b).
24

1 32. This case concerns the detention provisions at §§ 1226(a) and
2 1225(b)(2).

3 33. The detention provisions at § 1226(a) and § 1225(b)(2) were
4 enacted as part of the Illegal Immigration Reform and Immigrant
5 Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03,
6 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
7 most recently amended earlier this year by the Laken Riley Act, Pub. L.
8 No.119-1, 139 Stat. 3 (2025).

9 34. Following the enactment of the IIRIRA, EOIR drafted new
10 regulations explaining that, in general, people who entered the country
11 without inspection were not considered detained under § 1225 and that they
12 were instead detained under § 1226(a). *See* Inspection and Expedited
13 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
14 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

15 35. Thus, in the decades that followed, most people who entered
16 without inspection and were placed in standard removal proceedings received
17 bond hearings, unless their criminal history rendered them ineligible. That
18 practice was consistent with many more decades of prior practice, in which
19 noncitizens who were not deemed “arriving” were entitled to a custody
20 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
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1 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
2 simply “restates” the detention authority previously found at § 1252(a)).

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

6 37. The new policy, entitled “Interim Guidance Regarding Detention
7 Authority for Applicants for Admission,” claims that all persons who entered
8 the United States without inspection shall now be deemed “applicants for
9 admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
10 detention provision under § 1225(b)(2)(A). The policy applies regardless of
11 when a person is apprehended and affects those who have resided in the
12 United States for months, years, and even decades.

13 38. On September 5, 2025, the Board of Immigration Appeals (BIA)
14 parroted this same position in the case of *Matter of Yajure Hurtado*, 29 I&N
15 Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the
16 United States without admission or parole are considered applicants for
17 admission and are ineligible for immigration judge bond hearings.

18 39. Under the Supreme Court’s recent decision in *Loper Bright v.*
19 *Raimondo*, this Court should independently interpret the statute and give
20 the BIA’s expansive interpretation of § 1225(b)(2) no weight, as it conflicts
21 with the statute, regulations, and precedent. 603 U.S. 369 (2024).
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1 40. ICE and EOIR have adopted this position even though federal
2 courts have rejected this exact conclusion. For example, after IJs in the
3 Tacoma, Washington, immigration court stopped providing bond hearings for
4 persons who entered the United States without inspection and who have
5 since resided here, the U.S. District Court in the Western District of
6 Washington found that such a reading of the INA is likely unlawful and that
7 § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon
8 arrival to the United States. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239
9 (W.D. Wash. 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, ---
10 F.Supp.3d ----, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting
11 habeas petition based on same conclusion).
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13 41. “The idea that a different detention scheme would apply to non-
14 citizens ‘already in the country,’ as compared to those ‘seeking admission into
15 the country,’ is consonant with the core logic of our immigration system.”
16 *Martinez v. Hyde*, 792 F.Supp.3d 211, 222 (D. Mass. 2025) (citing *Jennings v.*
17 *Rodriguez*, 583 U.S. 281, 289 (2018)).
18

19 42. The interpretation endorsed by DOJ and DHS is contrary to the
20 INA. As the *Rodriguez* court explained, the plain text of the statutory
21 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
22 Petitioner.
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1 43. Section 1226(a) applies by default to all persons “pending a
2 decision on whether the [noncitizen] is to be removed from the United
3 States.” These removal hearings are held under § 1229a, to “decid[e] the
4 inadmissibility or deportability of a[] [noncitizen].”
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6 44. Courts in the Western District have held that noncitizens
7 detained within the United States are detained pursuant to 1226(a) rather
8 than 1225(b). *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 684 (W.D. Tex.
9 2025); *Vieira v. De Anda-Ybarra*, --- F.Supp.3d ----, 2025 WL 2937880, *5
10 (W.D. Tex. Oct. 16, 2025); *Vega v. Thompson*, Case No. 5:25-cv-01439-XR
11 (W.D. Texas, Nov. 19, 2025)

12 45. The text of § 1226 also explicitly applies to people charged as
13 being inadmissible, including those who entered without inspection. *See* 8
14 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes
15 clear that, by default, such people are afforded a bond hearing under
16 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
17 creates “specific exceptions” to a statute’s applicability, it “proves” that
18 absent those exceptions, the statute generally applies. *Rodriguez v. Bostock*,
19 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove*
20 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
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1 46. Section 1226 therefore leaves no doubt that it applies to people
2 who face charges of being inadmissible to the United States, including those
3 who are present without admission or parole.

4 47. By contrast, § 1225(b) applies to people arriving at U.S. ports of
5 entry or who recently entered the United States. The statute's entire
6 framework is premised on inspections at the border of people who are
7 "seeking admission" to the United States. 8 U.S.C.

8 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this
9 mandatory detention scheme applies "at the Nation's borders and ports of
10 entry, where the Government must determine whether a[] [noncitizen]
11 seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S.
12 281, 287 (2018).

13 48. Accordingly, the mandatory detention provision of § 1225(b)(2)
14 does not apply to people like Petitioner, who have already entered and were
15 residing in the United States at the time they were apprehended.

16 49. Once proceedings have been categorized under 8 U.S.C. § 1226(a),
17 they cannot be arbitrarily recategorized under 8 U.S.C. § 1225(b). *Mayamu K.*
18 *v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, *3 (D.Minn. Oct.
19 20, 2025).

FACTS

50. Petitioner has resided in the United States for over four years and lived in Minnesota prior to her detention.

51. On January 10, 2025, the U.S. Department of Homeland Security arrested the Petitioner. No new I-200, I-213, or NTA has been served to date.

52. The Petitioner is now detained at Camp East Montana.

53. Petitioner's criminal history contains no offenses that would subject her to mandatory detention.

54. Petitioner has an active pending I-589 asylum application, as does her daughter as a derivative.

55. Petitioner is neither a flight risk nor a danger to the community.

56. Currently, Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years, in immigration custody, separated from her family and community.

57. Any attempt to pursue a bond appeal before the BIA, while available, is futile for her release. Immigration judges are currently bound the recent BIA decision in *Yajure Hurtado*, which would subject the Petitioner to detention without discretionary bond, likely in contravention of federal law. Moreover, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General were defendants, DOJ affirmed its position that individuals like Petitioner are applicants for admission and subject to

1 detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v.*
2 *Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–
3 31.

4
5 **CLAIMS FOR RELIEF**

6 **COUNT I**

7
8 **Violation of 8 U.S.C. § 1226(a)**
9 **Unlawful Denial of Release on Bond**

10 58. Petitioner incorporates by reference the allegations of fact set
11 forth in the preceding paragraphs.

12 59. Petitioner may be detained, if at all, pursuant to 8 U.S.C. §
13 1226(a).

14 60. Under § 1226(a) and its associated regulations, Petitioner is
15 entitled to a bond hearing. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

16 61. Petitioner has not been, and will not be, provided with a bond
17 hearing on the merits as required by law.

18 62. Petitioner's continuing detention is therefore unlawful.

19 **COUNT II**

20 **Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and**
21 **1003.19 Unlawful Denial of Release on Bond**
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1 63. Petitioner incorporates by reference the allegations of fact set
2 forth in the preceding paragraphs.

3 64. In 1997, after Congress amended the INA through IIRIRA, EOIR
4 and the then-Immigration and Naturalization Service ("INS") issued an
5 interim rule to interpret and apply IIRIRA. Specifically, under the heading of
6 "Apprehension, Custody, and Detention of [Noncitizens]," the agencies
7 explained that "[d]espite being applicants for admission, [noncitizens] who
8 are present without having been admitted or paroled (formerly referred to as
9 [noncitizens] who entered without inspection) will be eligible for bond and
10 bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear
11 that individuals who had entered without inspection were eligible for
12 consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226
13 and its implementing regulations.

14 65. The application of § 1225(b)(2) to Petitioner unlawfully mandates
15 her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
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20 **COUNT III**

21 **Violation of the INA By Erroneously Categorizing Petitioner's**
22 **detention as being pursuant to 8 U.S.C. § 1225(b)(2)**
23
24

1 66. Petitioner incorporates by reference the allegations of fact set
2 forth in the preceding paragraphs.

3 67. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does
4 not apply to all noncitizens residing in the United States who are subject to
5 the grounds of inadmissibility. As relevant here, it does not apply to those
6 who previously entered the country and have been residing in the United
7 States prior to being apprehended again by Respondents. *Lopez-Arevelo v.*
8 *Ripa*, 801 F.Supp.3d 668, 684 (W.D. Tex. 2025); *Vieira v. De Anda-Ybarra*, ---
9 F.Supp.3d ----, 2025 WL 2937880, *5 (W.D. Tex. Oct. 16, 2025) Such
10 noncitizens are detained under § 1226(a), unless they are subject to § 1226(c)
11 or § 1231.
12

13 68. Petitioner has resided in the U.S. for over four years. She is
14 therefore neither an arriving alien nor an alien who is now seeking admission
15 to the United States.
16

17 69. The application of § 1225(b)(2) to Petitioner unlawfully mandates
18 her continued detention and violates the INA.

19 **COUNT IV**

20 **Violation of Due Process**

21
22 70. Petitioner repeats, re-alleges, and incorporates by reference each
23 and every allegation in the preceding paragraphs as if fully set forth herein.
24

1 71. The government may not deprive a person of life, liberty, or
2 property without due process of law. U.S. Const. amend. V. “Freedom from
3 imprisonment—from government custody, detention, or other forms of
4 physical restraint—lies at the heart of the liberty that the Clause protects.”
5 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
6 (2001).
7

8 72. The government’s detention of Petitioner is unjustified.
9 Respondents deprived the Petitioner of the opportunity to demonstrate she
10 need not be detained. See *Zadvydas*, 533 U.S. at 690 (finding immigration
11 detention must further the twin goals of (1) ensuring the noncitizen’s
12 appearance during removal proceedings and (2) preventing danger to the
13 community). Petitioner cannot present facts demonstrating that she can be
14 safely released back to her community when the Respondents illegally
15 deprive any IJ of jurisdiction to hear her case.
16

17 73. Respondents’ continued immigration detention of the Petitioner
18 is disconnected from a “reasonable relationship” to any legitimate
19 nonpunitive purpose. *Zadvydas*, 533 U.S. at 690. Petitioner has a
20 fundamental interest in liberty and being free from official restraint.
21

22 74. The government’s detention of Petitioner without a bond
23 redetermination hearing to determine whether she is a flight risk or danger
24 to others violates her right to due process. The court should issue a writ of

1 habeas corpus directing Respondents to release Petitioner to safeguard her
2 Fifth Amendment liberties.

3
4 **COUNT V**

5 **Respondents' Custody Determination is Contrary to Law**

6 75. Petitioner incorporates by reference the preceding paragraphs.

7 76. The Administrative Procedure Act (APA) provides that courts
8 "shall ... hold unlawful and set aside agency action" that is "arbitrary,
9 capricious, an abuse of discretion, or otherwise not in accordance with
10 law" or is "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A),
11 (E).

12
13 77. The APA claim is properly raised in the habeas petition because
14 it concerns a regulation that impacts the fact and duration of
15 confinement. "Challenges to the validity of any confinement or to
16 particulars affecting its duration are the province of habeas corpus[.]"
17 *Muhammad v. Close*, 540 U.S. 749, 750 (2004); *see also Otey v. Hopkins*,
18 5 F.3d 1125, 1130 (8th Cir. 1993).

19
20 78. Here, Petitioner's APA challenge concerns the *Yajure Hurtado*
21 and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) decisions that affected
22 the duration of Ms. Montero Granda's confinement by stripping the IJ
23 of jurisdiction.
24

1 79. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369
2 (2024), the Supreme Court held that “[c]ourts must exercise their
3 independent judgment in deciding whether an agency has acted within
4 its statutory authority, as the APA requires.” *Loper Bright Enters. v.*
5 *Raimondo*, 603 U.S. 369, 410 (2024).
6

7 80. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the
8 BIA held that all noncitizens who entered the United States without
9 admission or parole are now considered applicants for admission under
10 8 U.S.C. § 1225 and thus are ineligible for immigration judge bond
11 hearings. This precedential decision has been applied against the
12 Petitioner in her bond hearing.
13

14 81. Because the BIA’s precedential decision *Matter of Yajure*
15 *Hurtado*, categorizes Petitioner as detained under § 1225(b), *a statute*
16 *which does not apply to her*, the BIA decision is arbitrary, capricious,
17 and unlawful and should be set aside. Instead, Petitioner should be
18 categorized as detained under § 1226(a), which allows for release on
19 conditional parole or bond for individuals who entered the United
20 States without inspection.
21

22 82. For this reason, this Court should enter a declaratory judgment
23 finding that Petitioner is detained under 8 U.S.C. § 1226(a) and order
24 her released on the bond issued by the IJ.

COUNT VI

***Matter of Yajure Hurtado and Matter of Q. Li Violate Procedural Due
Process as Applied***

83. Petitioner incorporates by reference the preceding paragraphs.

84. When the government interferes with a liberty interest, “the procedures attendant upon that deprivation [must be] constitutionally sufficient.” *Ky. Dept. of Corrections v. Thompson*, 490 U.S. at 460. The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews*, 424 U.S. at 335.

85. Petitioner has a weighty liberty interest as her freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 693.

86. The risk of erroneous deprivation of Petitioner’s liberty is extremely high, given that the government, pursuant to erroneous recent decisions by the BIA, is detaining Petitioner under a statute that

1 does not apply to her and denying her statutory right to a bond hearing
2 on the erroneous assertion that she is subject to mandatory detention.

3 87. Finally, the government's interest in preserving its unilateral
4 authority to prevent the release of noncitizens who have already shown
5 they are neither a flight risk nor a danger is minimal. Providing
6 additional procedural protections here introduces no additional
7 administrative burdens as Petitioner is statutorily entitled to a bond
8 hearing under 8 U.S.C. § 1226(a).
9

10 88. Because Respondents have custody of Petitioner in violation of
11 her Fifth Amendment rights, the Court should issue a writ of habeas
12 corpus directing Respondents to release Petitioner to safeguard her
13 constitutional liberties. 28 U.S.C. § 2241. Numerous courts throughout
14 the country have found that the use of the mandatory detention
15 provision, as affirmed in *Matter of Yajure-Hurtado*, violates an
16 individual's right to meaningful procedural due process. *See, e.g.,*
17 *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12
18 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193,
19 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*,
20 No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025);
21 *Hyppolite v. Noem*, 25-CV-4304 (NRM), . --- F.Supp.3d ---, 2025 WL
22 2829511, *12 (E.D.N.Y. Oct. 06, 2025) ("If his detention is and has
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1 always been “mandatory” under § 1225(2)(A), [...] it is hard to
2 see how the United States government would, or even could,
3 have granted him permission to seek employment outside the
4 confines of an ICE detention facility.”) (emphasis added). As such,
5 this Court should likewise find that Petitioner’s detention represents a
6 violation of her right to procedural due process and order her released
7 according to the bond conditions set by the IJ.
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12 PRAYER FOR RELIEF

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

- 14 a. Assume jurisdiction over this matter;
- 15 b. Issue a writ of habeas corpus requiring that Respondents release
16 Petitioner or provide Petitioner with a bond hearing pursuant to
17 8 U.S.C. § 1226(a) within 14 days;
- 18 c. If Respondents disclaim jurisdiction to conduct a bond hearing,
19 Petitioner should be immediately released;
- 20 d. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243,
21 directing Respondents to show cause why the petition for writ of
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1 habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241
2 should not be granted within three days;

3 e. Issue a writ of habeas corpus requiring that Respondents
4 immediately return Petitioner's work permit, driver's license, and
5 any other seized documents or property lawfully issued to her, so
6 as not to impair her liberty upon release;

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8 f. Issue an order enjoining Respondents from redetaining Petitioner
9 on any legal theories or interpretations rejected by the Court in
10 its order on the habeas petition; and

11 g. Grant any other and further relief that this Court deems just and
12 proper.

13 DATED this 29th day of January 2026.

14
15 /s/Brenda M. Villalpando
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