UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

MARIA T. ALMIDON VILLANUEVA [redacted] *Petitioner* v. **KRISTI NOEM**, in her official capacity as U.S. Secretary of Homeland Security; **PAMELA JO BONDI**, in her official capacity as Attorney General of the United States; and **VERNON LIGGINS**, in his official capacity as Field Office Director, Baltimore, Maryland Field Office, Immigration and Customs Enforcement and as the Warden for Baltimore Hold Room. *Respondents.*	**Case No.** 8:26-cv-406 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Maria Teresa Almidon Villanueva ("Ms. Almidon") is a native and citizen of Peru who has resided in the United States since she first entered the country over three years ago. Ms. Almidon has no criminal offenses in or outside the United States. Yet on or about January 31, 2026, U.S. Immigration and Customs Enforcement ("ICE") took her into custody.

2. She remains unlawfully detained at Baltimore Hold Room without the opportunity to seek release on bond pending her removal proceedings. The Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have determined that Ms. Almidon is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), concluding that Ms. Almidon is "seeking admission" into the country she has lived in since in or around August 2022.

3. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete departure from the interpretation that the government has embraced since the statute's enactment, DHS's prior practice, Supreme Court precedent, and the statute's plain language.
4. This Court should grant Ms. Almidon's petition for writ of habeas corpus and order her release from immigration custody or, in the alternative, require a bond hearing under 8 U.S.C. § 1226(a) at which the immigration court and DHS are precluded from denying bond on the basis that Ms. Almidon is subject to mandatory detention under § 1225(b)(2).
5. Separately, Ms. Almidon brings this petition for a writ of habeas corpus to seek enforcement of her rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

JURISDICTION AND VENUE

6. This action arises under the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.
7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief).
8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
9. Respondents are currently detaining Ms. Almidon at the Baltimore Hold Room, which sits in the District of Maryland. Venue lies in the judicial district in which Ms. Almidon is detained when she files her petition. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

10. Under 28 U.S.C. § 2243, a court "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled

thereto." 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

11. Habeas corpus 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).

12. Ms. Almidon, who has resided in the United States since in or around August 2022, has been unlawfully detained without the opportunity to challenge her continued detention since on or about January 31, 2026. DHS's application of the mandatory detention provision at 8 U.S.C. § 1225(b)(2) to any individual who has entered the United States without inspection, including Ms. Almidon, has been almost universally rejected by district courts across the country, including this Court. Allowing Respondents to continue detaining Ms. Almidon without the opportunity to seek release on bond based on a strained reading of the INA that has been overwhelmingly rejected only compounds the due process concerns in this case.

13. Ms. Almidon requests that the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, given the significant and unlawful restraint on her liberty.

TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT

14. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

15. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals

detained within the "judicial district unless and until the Court issues a contrary order." *Garcia Guardado v. Lyons*, No. 1:25-cv-1741-MSN-WBP (E.D. Va. Oct. 15, 2025) (citing 28 U.S.C. § 1651; *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) ("The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to 'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'"); *see also Guevara Gomez v. Crawford*, No. 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

16. Ms. Almidon requests that this Court invoke the All Writs Act to prevent any transfer out of the District of Maryland during the pendency of her habeas action, given the strong possibility that she will be released or ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. Ms. Almidon's counsel operates primarily in Virginia. Transferring Ms. Almidon out of the district will make it more difficult for Ms. Almidon to coordinate with her counsel ahead of a bond hearing ordered by the Court. Further, she will incur additional, unnecessary expenses returning to her home in Gaithersburg, Maryland should she be released on bond after being transferred out of state. *See* https://www.tsa.gov/travel/security-screening/identification (listing documents required to board an airplane, which does not include ICE release paperwork); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, -- F. Supp. 3d --, 2025 WL 1310745, at *13 (E.D. Va. May 6, 2025).

PARTIES

17. Petitioner Maria Teresa Almidon Villanueva is a native and citizen of Peru who has been in immigration detention since on or about January 31, 2026. ICE is currently detaining her at the Baltimore Hold Room in Baltimore, Maryland.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is

responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Ms. Almidon's detention. Secretary Noem has ultimate custodial authority over Ms. Almidon and is sued in her official capacity.

19. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over EOIR, which oversees the immigration courts and the Board of Immigration Appeals. She is sued in her official capacity.

20. Respondent Vernon Liggins is the Field Office Director for ICE's Baltimore, Maryland Field Office. He oversees the operation of detention facilities within the Washington D.C. Field Office's area of responsibility, including the Baltimore Hold Room. Mr. Liggins is sued in his official capacity.

EXHAUSTION

21. The failure to exhaust administrative remedies does not bar Ms. Almidon's claims unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

22. Even if the Court were inclined to require exhaustion of administrative remedies as a prudential matter, seeking administrative review of ICE's initial custody determination would be futile and should be excused in this case. *See Carr v. Saul*, 593 U.S. 83, 93 (2021) ("[T]his Court has consistently recognized a futility exception to exhaustion requirements.").

23. Critically, the Board of Immigration Appeals issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopting the new interpretation of 8 U.S.C. § 1225(b)(2) that DHS announced in its recent July 8, 2025, policy memorandum. *Matter of Yajure Hurtado* holds that noncitizens who entered the United States without inspection at any point are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Although, as discussed below, this decision is legally erroneous, all immigration judges—including those at the Board of Immigration Appeals—

are obligated to apply the Board's published precedent and deny any administrative appeal filed by Ms. Almidon. 8 C.F.R. § 103.10(b). And indeed, immigration courts have continued to apply this precedent notwithstanding recent orders from the U.S. District Court for the Central District of California certifying a nationwide class and granting summary judgment in an action for declaratory judgment challenging DHS's and EOIR's erroneous interpretation of the INA. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d , 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d , 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment)

24. For this reason, Ms. Almidon need not go through the futile exercise of seeking a bond hearing before an immigration judge. *See Cabrera v. Barr*, 930 F.3d 627, 633 (4th Cir. 2019) ("We agree with . . . our sister circuits that a petitioner has exhausted his administrative remedies when the BIA has issued a definitive ruling on the issue.").

25. Finally, because Ms. Almidon's continued detention violates her constitutional right to due process, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

STATEMENT OF FACTS

26. Ms. Almidon entered the United States without inspection on or about August 23, 2022. She has resided continuously in this country ever since. Prior to her detention, Ms. Almidon resided in Gaithersburg, Maryland.

27. Since she arrived on or about August 23, 2022, Ms. Almidon has established strong ties to the

United States. She resides in Gaithersburg, Maryland with her siblings and parents and is an active member of Saint Rose of Lima Catholic Church.

28. On or about January 31, 2026, Ms. Almidon was taken into custody and detained at the Baltimore Hold Room in Baltimore, Maryland. ICE has served Ms. Almidon with a Notice to Appear placing her in removal proceedings under § 240 of the INA (codified at 8 U.S.C. § 1229a).

29. Ms. Almidon remains detained at Baltimore Hold Room in Baltimore, Maryland.

LEGAL BACKGROUND

30. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, which set forth separate procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens who have entered and established a presence in the United States, even those who did so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a. For individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

31. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. For noncitizens subject to detention under § 1226, § 1226(a) sets forth the default rule, giving the government the discretion to arrest and detain noncitizens "pending a decision on whether the alien is to be removed from the United States," while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c). After an initial arrest, a noncitizen subject to detention under § 1226(a) may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

32. When a noncitizen is detained under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have DHS's initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

33. In contrast to the discretionary detention scheme established for noncitizens already in the United States, IIRIRA created a separate, expedited removal process for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a[noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

34. The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

35. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States

for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility").

36. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

37. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2).

38. Since IIRIRA was first enacted, courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 ("While the language of §§

1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."); *see also Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

39. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

40. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it adopted when IIRIRA was first enacted and embraced for the next thirty years. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Ex. 2, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

41. On September 5, 2025, the Board adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted

at any point.[1] *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

42. Yet the legislative history contradicts the Board's analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims for the Committee on the Judiciary, wrote to the former Immigration and Naturalization Service (INS) in response to the INS's proposed rulemaking to implement the provisions of IIRIRA. *See* Ex. 1, IIRIRA Legislative History. In his comment on the proposed regulation, he explained the legislative intent behind several provisions of IIRIRA that focused on "prompt apprehension, adjudication, and removal of aliens who are not lawfully present in the United States." *Id.* at 4. Specifically, he discussed expedited removal, the concept of arriving aliens, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.*

43. Relevant here, Congressman Smith explained that the definition of "arriving alien" should be limited. He noted that the legislation used the term "arriving alien" "to distinguish aliens at the border of the United States from those who have made a substantial physical entry into the United States." *Id.* at 5-6. Congressman Smith thus recommended that the proposed regulations adopt a temporally limited measure as to who is considered "arriving," because "[c]riteria based on time are preferable . . . [and] would embrace both those who remain close to the border as well as those who escape shortly after having made an entry." *Id.* at 6. Congressman Smith continued, "[b]riefly put, if the alien is caught on the day he or she arrives, the alien is an 'arriving' alien, but not

[1] Nearly 30 years of agency interpretation of the law would have provided Ms. Almidon with an opportunity to seek review of DHS's custody determination in a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Matter of Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

otherwise. This is a commonsense approach that should be easy for INS officials to understand and implement." *Id.*

44. Indeed, courts that have reviewed this issue have almost universally agreed with this "common sense approach" and overwhelmingly rejected Respondents' new reading of the statute. *Maldonado Merlos v. Noem*, No. 1:25-cv-1645 (E.D. Va. Oct. 9, 2025); *Singh v. Noem*, No. 1:25-cv-1525 (E.D. Va. Oct. 7, 2025); *Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Hasan v. Crawford*, 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025). *See also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025);; *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025).

45. The new Board precedent violates the INA and deprives Ms. Almidon of due process by subjecting her, a woman who has resided in the United States since August 2022, to the same mandatory detention regime reserved for applicants at the border seeking initial entry into the United States.

Bautista Class Membership

46. On November 25, 2025, a district court in the Central District of California certified a nationwide class of all noncitizens who:

(1) Have entered or will enter the United States without inspection;

(2) were not or will not be apprehended upon arrival; and

(3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

See Bautista, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

47. Ms. Almidon is a member of the certified class as she entered the United States without inspection in August 2022, was not apprehended upon arrival but instead more than three years later in the interior of the United States, and she is not subject to detention under §§ 1226(c), 1225(b)(1), or 1231.

48. After certifying the nationwide class, the district court in *Bautista* held unlawful the Department of Homeland Security's policy of treating all inadmissible noncitizens arrested inside the United States as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Bautista*, -- F. Supp. 3d --, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On December 18, 2025, the *Bautista* court granted a motion for reconsideration, entering final judgment in favor of the certified class. *See Bautista*, No. 5:25-cv-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92.

49. In its order, the *Bautista* court vacated the Department of Homeland Security Immigration and Customs Enforcement July 8, 2025, memorandum and policy, and ruled that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) "is no longer controlling; the legal conclusion underlying the decision is no longer tenable." *Id.* at 6.

50. In doing so, the district court declared that members of the certified class, including Ms. Almidon, are not subject to mandatory detention under § 1225(b)(2). Respondents are bound by the judgment in *Maldonado Bautista*, as it is now a final judgment.

51. Even if Respondents are not willing to recognize and abide by the judgment of a district court, this Court should and grant Ms. Almidon's release or, at a minimum, the bond hearing that the district court in *Bautista* declared that she is entitled to under § 1226(a).

CLAIMS FOR RELIEF
COUNT ONE
Violation of Immigration and Nationality Act

52. Ms. Almidon realleges and incorporates by reference the paragraphs above.

53. Ms. Almidon is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). She is properly subject to detention under § 1226(a) and entitled to a bond hearing by statute and regulation as countless district court decisions have affirmed. *See supra* ¶ 44.

54. The plain language of the INA is clear: § 1225(b)(2) "authorizes the Government to detain aliens *seeking admission into the country*," while § 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added); *accord Sampiao v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025).

55. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are already in the United States and who the Government is seeking to remove through removal proceedings. *Id.* at 303.

56. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Ms. Almidon cannot reasonably be described as "seeking admission" to a country she has lived in for the past three years.

57. Conversely, to apply the statute to "all applicants for admission" regardless of whether they are "seeking admission" (as the Board did in *Matter of Hurtado*) would render the phrase "seeking

admission" redundant. *See Martinez*, 2025 WL 2084238, at *2. And to "treat[] the terms 'applicant for admission' and 'alien seeking admission' as synonymous [would] violate[] the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Benitez*, 2025 WL 2371588, at *6.

58. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render recent amendments to the INA in the Laken Riley Act redundant. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Specifically, the recent amendment to § 1226(c)(1) require mandatory detention for individuals who are present in the United States without being admitted or paroled *and* who have committed certain criminal offenses. *Sampiao*, 2025 WL 2607924, at *8. Yet if all noncitizens who are inadmissible are subject to mandatory detention under § 1225(b)(2), as Respondents contend, there would be no need for Congress to identify subcategories of inadmissible noncitizens who are subject to mandatory detention under § 1226(c), rendering the provision completely redundant. *Sampiao*, 2025 WL 2607924, at *8 (citing the *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

59. Finally, even if the text of the statute were unclear, the statutory titles and headings reinforce the distinction between noncitizens who entered without inspection and are subject to discretionary detention under § 1226(a) and arriving aliens inspected upon initial entry to the United States who are subject to mandatory detention under § 1225(b). *Compare* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 302, 110 Stat. 3009 (entitled "*Inspection* of Aliens; Expedited Removal of Inadmissible *Arriving Aliens*; Referral for Hearing) (codified at 8 U.S.C. § 1225) (emphasis added), *with* IIRIRA, § 303 (codified at 8 U.S.C.

§ 1226) (entitled "Apprehension and Detention of Aliens"). *See also Zumba v. Bondi*, No. 25-cv-14626-KSH, 2025 WL 2753496, at *6 (D.N.J. Sept. 26, 2025) (concluding that "§ 1225 repeatedly cabin[s] its application to 'Inspections,' which, as petitioner convincingly argues, occurs at ports of entry, their functional equivalent, or near the border.").

60. Thus, this Court must find that subjecting Ms. Almidon to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and denying her the bond hearing she is entitled to under § 1226(a) violates the INA.

COUNT TWO
Violation of Substantive Due Process

61. Ms. Almidon realleges and incorporates by reference the paragraphs above.

62. As a person living within the United States for over three years, Ms. Almidon is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

63. 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*, 533 U.S. at 690.

64. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). Substantive due process "prevents the government from engaging in conduct that . . . interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

65. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings, and indeed even those who have already been ordered removed from the United States on account of past criminal violations. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

66. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

67. Ms. Almidon has a fundamental interest in liberty and being free from arbitrary detention. Her detention without a bond hearing before a neutral arbiter to determine whether that continued detention is necessary to ameliorate any flight risk or protect the community violates her substantive due process rights.

COUNT THREE

Violation of Procedural Due Process

68. Ms. Almidon realleges and incorporates by reference the paragraphs above.

69. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). While the Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), this maxim does not apply to Ms. Almidon.

70. After living in the United States continuously since in or around August 2022, Ms. Almidon is not on the threshold of initial entry. Indeed, it is well established that noncitizens who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic

borders."). Thus, even if the Court were to agree that Ms. Almidon is properly detained under § 1225(b)(2)— which she is not—her mandatory detention does not comply with due process.

71. As an individual who has "passed through our gates," Ms. Almidon is entitled to greater constitutional protections than those at the threshold of initial entry for whom due process is defined by the procedures set by Congress. *Mezei*, 345 U.S. at 212.

72. A procedural due process challenge is governed by a three-factor balancing test weighing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards"; and (3) "the Government's interest" *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335).

73. Each of these factors weigh in Ms. Almidon's favor and support a finding that she may not be detained without an opportunity to seek release on bond before an immigration judge.

74. Ms. Almidon has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom 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. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

75. While the Government has an interest in ensuring Ms. Almidon's appearance at her removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an

individualized assessment of her flight risk and the danger she may pose to the community. And the Government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Ms. Almidon who have established a presence in the United States after previously entering without inspection.

76. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Ms. Almidon without any opportunity to challenge their detention before the administrative agency. Without a bond hearing, there is a high probability that Ms. Almidon will be detained even though her continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure her appearance at removal proceedings.

77. In short, denying Ms. Almidon any opportunity to demonstrate that her continued detention is unnecessary to protect the community or ensure her appearance at proceedings violates her procedural due process rights.

PRAYER FOR RELIEF

Based on the foregoing, Ms. Almidon requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that 8 U.S.C. § 1226(a) governs Ms. Almidon's detention by U.S. immigration authorities;

(4) Order that Ms. Almidon be released from immigration custody or, alternatively, afforded a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied; and

(5) Grant any other and further relief this Court deems just and proper.

Dated: January 31, 2026

Respectfully submitted,
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CERTIFICATE OF REPRESENTATION

Undersigned counsel submits that he represents Petitioner in this action and submits this pleading on her behalf. 28 U.S.C. § 2242.

Dated: January 31, 2026

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