

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

Maria Jesus Lema Lema,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of  
Homeland Security,

Todd M. Lyons, Acting Director of Immigration  
and Customs Enforcement,

Marisa Flores, Director, El Paso Field Office  
Immigration and Customs Enforcement, and

Curtis Taylor, Major General, U.S. Army at Camp  
Bliss,

Respondents.

Case No. 3:26-cv-353

**VERIFIED PETITION  
FOR WRIT OF  
HABEAS CORPUS**

Expedited Handling Requested

**INTRODUCTION**

1. Petitioner Maria Jesus Lema Lema, by and through the undersigned attorney, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement (ICE) to release Petitioner from her illegal confinement.

2. Ms. Lema Lema is a 39-year-old mother who resides in Minneapolis, Minnesota with her husband and four children, including their infant son. Ms. Lema Lema has a pending asylum application and no final order of removal entered against her.

3. On January 10, 2026, ICE agents arrested Ms. Lema Lema while she was out shopping for essentials for her baby with her husband.

4. ICE transported Ms. Lema Lema from Minnesota to Texas. She is currently being detained at the Camp East Montana detention facility in El Paso, Texas.

5. This case is one of thousands that have been filed nationwide stemming from the Government's unlawful detention of noncitizens under an inapplicable statute. Respondents are purportedly detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2), a statute that requires mandatory detention for "arriving aliens" who are "seeking admission" before an "examining immigration officer" at the border or a port of entry. Such detentions have been rejected by courts in this District. *Mendoza-Menjivar v. Bondi*, 25-cv-2060-DAE (W.D. Tex. Jan. 12, 2026) (Ezra, J.); *Gonzalez Alvarez v. Noem*, 2026 WL 93972 (W.D. Tex. Jan. 9, 2026) (Pulliam, J.); *Guillen-Mora v. Lyons*, 2026 WL 94656 (W.D. Tex. Jan. 9, 2026) (Rodriguez, J.); *Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026) (Briones, J.); *Ramirez-Morales*, EP-25-cv-476-DCG-RFC, 2025 WL 3767065 (W.D. Tex. Dec. 30, 2025) (Guaderrama, J.); *Lopez Soto v. Noem*, 25-cv-1910, Dkt. 7 (W.D. Tex. Dec. 19, 2025) (Albright, J.); *Lopez Miranda v. Flores*, EP-25-cv-584-KC (W.D. Tex. Dec. 10, 2025) (Cardone, J.); *Vieira v. De Anda-Ybarra*, -- F. Supp. 3d --, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (Briones, J.). In these cases, and hundreds of others like them around the nation, federal courts have ordered that the respondents either release individuals like Ms. Lema Lema or provide them with a bond hearing pursuant to 8 U.S.C. § 1226(a). *See generally Barco Mercado v. Francis*, -- F. Supp. 3d --, 2025 WL 3295903, at \*4 (S.D.N.Y. Nov. 26, 2025) (citing "350 cases decided by over 160 different judges sitting in about fifty different courts spread across the United States" who have rejected Respondents' position).

6. Ms. Lema Lema's detention violates the plain language of the Immigration and Nationality Act (INA). Respondents seemingly purport to detain Ms. Lema Lema under § 1225(b)(2)(A). But this Section does not apply to individuals like Ms. Lema Lema who previously entered and are now residing in the United States.

7. Ms. Lema Lema's present detention by Respondents is contrary to the statutory framework and contrary to decades of agency practice. Accordingly, Ms. Lema Lema seeks a writ of habeas corpus requiring that she be released, or, in the alternative, requiring Respondents to provide a bond hearing within seven days.

### **JURISDICTION AND VENUE**

8. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

9. Federal question jurisdiction exists because Ms. Lema Lema seeks to challenge her custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

10. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (DHS). *Denmore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 292–293 (2018); and *Nielsen v. Preap*, 586 U.S. 392, 401–402 (2019).

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because Ms. Lema Lema is detained within the Western District of Texas.

12. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this District.

### **PARTIES**

13. Petitioner is a citizen of Ecuador and a resident of Minneapolis, Minnesota. Ms. Lema Lema was detained on January 10, 2026, in Minnesota. She is currently being held at the Camp East Montana detention facility in El Paso, Texas, which is housed within Fort Bliss U.S. Army base. Petitioner is under the direct control of Respondents and has no scheduled release date.

14. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Ms. Lema Lema.

15. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Western District of Texas, supervises the ICE field offices, and is legally responsible for pursuing Ms. Lema Lema's detention and removal. As such, Respondent Noem is a legal custodian of Ms. Lema Lema.

16. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

17. Respondent Marisa Flores is being sued in her official capacity as the Field Office Director for the El Paso Field Office for ICE within DHS. In that capacity, Field Office Director Marisa Flores has supervisory authority over the ICE agents responsible for detaining Ms. Lema Lema. The address for the El Paso Field Office is 1541 Montana Ave, Suite E, El Paso, Texas, 79936.

18. Respondent Major General Curtis Taylor is being sued in his official capacity as the Commanding General responsible for the El Paso Processing Center within the U.S. Army Fort Bliss. Because Petitioner is detained in the El Paso Processing Center, Major General Taylor has immediate day-to-day control over Petitioner.

#### **FACTUAL ALLEGATIONS**

19. Ms. Lema Lema is a resident of Minneapolis, Minnesota and a citizen of Ecuador. She has lived continuously in the United States since October 2023.

20. Ms. Lema Lema entered the United States without inspection in October 2023. Following Ms. Lema Lema's entry into the United States, she was detained at the border and then released on her own recognizance. After her release, Ms. Lema Lema and her family were under supervision orders and attended weekly check-ups, complying with all conditions of her release.

21. In November 2025, Ms. Lema Lema applied for asylum and received an A-Number from the Executive Office for Immigration Review.

22. Ms. Lema Lema's next asylum hearing is an in-person hearing, scheduled for April 20, 2026, in Fort Snelling, Minnesota. *See* Exhibit 1, Notice of In-Person Hearing.

23. Ms. Lema Lema is a beloved community member. She has an extended network of family and friends in Minnesota, including her two sisters, her brother, and her parents. Ms. Lema Lema's strong network will ensure that she returns to court.

24. Upon a search of Petitioner's public criminal history on the Minnesota Court Records Online (MCRO) on February 4, 2026, Ms. Lema Lema has no criminal convictions on her record.

25. ICE apprehended and arrested Ms. Lema Lema on January 10, 2026. Ms. Lema Lema and her husband had left their house to buy essentials for their 11-month-old baby. While the couple was on the corner of 31st Avenue and 4th Street in Minneapolis, agents detained Ms. Lema Lema, as well as other individuals in the general vicinity.

26. In the same incident, agents also arrested Ms. Lema Lema's husband, who also has a pending asylum case and no final order of removal entered against him. As such, Ms. Lema Lema's four minor children are, at present, unaccompanied by either of their parents. Around the time of the arrests, Ms. Lema Lema's oldest child, who is 16, received a text from his mother's cell phone informing him that his parents had been detained and that he was responsible for taking care of his siblings.

27. Upon information and belief, ICE did not have a warrant or probable cause to arrest Ms. Lema Lema. They did not provide a reason for her detention and, to date, have not vacated or modified the release on her own recognizance.

28. At some point, agents identified Ms. Lema Lema by an A-number that did not match the A-Number Ms. Lema Lema was previously given. Ms. Lema Lema's A-Number, as

stated on the receipt for her asylum application, attached to this petition as Exhibit 2, is [REDACTED]. The A-Number agents associated with Ms. Lema Lema in her present detention was [REDACTED]. A search of the database of the Executive Office for Immigration Review reveals that the number ending in [REDACTED] belongs to a different asylum seeker, whose name is Maria Digna Lema Guaman. Ms. Lema Guaman appears to have a final order of removal entered against her in New York. Ms. Lema Lema has no relation to Ms. Lema Guaman, has never been to New York, and has never had a final removal order entered against her.

29. As of February 5, 2026, Ms. Lema Lema (the petitioner here) does not appear in the ICE Detainee Locator at all, whereas Ms. Lema Guaman (a different person) appears in the ICE Detainee Locator as being detained at the Camp East Montana Facility. Proof of Ms. Lema Lema's identity can be further substantiated through a copy of her passport. Exhibit 3, Lema Lema Passport.

30. On information and belief, agents detained Ms. Lema Lema, who has legal status to reside in the United States as an asylum seeker, as a matter of mistaken identity.

31. Ms. Lema Lema's arrest is part of an operation in the greater Twin Cities area, including western Wisconsin, called "Operation Metro Surge." This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with covered or mismatched license plates) holding themselves out as ICE agents, detaining immigrants and demonstrators. The operation has been met with resistance from impacted communities in the Twin Cities, resulting in clashes between civilians and DHS, with some community members complaining of Constitutional violations. Contemporaneous accounts detail these agents handcuffing a woman "facedown in the snow," "removing her clothes and cut[ting] off her wedding ring," "pull[ing] [a pregnant woman] onto her stomach, with the agents kneeling on

her back,” “pepper spray[ing] [a] crowd with no warning,” and “ram[ming] right into” a woman exercising her First Amendment rights with a Dodge Charger, “knocking [her] to the ground.” *See Tincher et. al. v. Noem*, No. 25-cv-04669-KMM-DTS, Dkt. 85 at 5–6, 12, 23, 27. (D. Minn. Jan. 16, 2026).

32. Since the operation began on December 1, 2025, the number of immigration officials in the Twin City metro area has increased fourfold. Courts in this district have observed that the increase in immigration presence in Minnesota has its “genesis” in the “government pursuit of daily deportation quotas.” *See Conejo Arias v. Noem*, No. 26-cv-00415-FB, Dkt. 9 at 1 (W.D. Tex. Jan. 31, 2026) (Biery, J.). This vast immigration enforcement action has swept up people of all races, nationalities, and citizenship statuses in the Twin Cities metro area, including asylum seekers and their children, as young as five. *See id.*

33. Ms. Lema Lema was given only a two-to-three minute phone call to communicate to her sister that she had been detained and was being identified by Ms. Lema Guaman’s A-number. She was already in Texas at that time, though she did not know the location of the detention facility where she was detained.

34. On information and belief, Ms. Lema Lema is presently detained at ERO El Paso Camp East Montana detention facility El Paso, Texas. She is being held far away from family, local legal counsel, and the Fort Snelling, MN asylum offices to which she must report for her next asylum hearing.

35. Detained immigrants have reported physical and sexual abuse at Camp East Montana, as well as spoiled or partially frozen food, squalid and unsafe living conditions, a lack of access to basic hygiene products, and lack of access to medical care. Haddy Gassama, *Detained Immigrants Detail Physical Abuse and Inhumane Conditions at Largest Immigration*

*Detention Center in the U.S.*, ACLU (Dec. 8, 2025). Three detainees have died at Camp East Montana in the past two months, with one death being considered a likely homicide. Jeff Abbott, *Nicaraguan man arrested by ICE in Minnesota dies at Camp East Montana*, El Paso Times (Jan. 18, 2026), <https://www.elpasotimes.com/story/news/immigration/2026/01/18/third-immigrant-dies-at-ice-camp-east-montana-in-el-paso-victor-manuel-diaz-of-nicaragua/88243759007/>. Similar inhumane conditions have led to a measles outbreak at the South Texas Family Residential Center in Dilley, Texas. See María Luisa Paúl, David Ovalle, & David Nakamura, *Measles cases identified at ICE's largest detention facility for children*, WASH. POST (Feb. 3, 2026), <https://www.washingtonpost.com/immigration/2026/02/03/ice-immigration-measles-texas-children/>. Detainees are frequently moved between various detention centers across the state and country.

36. Ms. Lema Lema poses no risk to society and has strong connections to Minneapolis. She is the primary caretaker of her infant child, who resides in Minneapolis, and is too young to be separated from his mother. She is required to attend court in Minneapolis pursuant to her pending asylum application.

37. Detaining Ms. Lema Lema is an expensive and pointless endeavor. She respectfully seeks the opportunity to return to her home in Minneapolis, Minnesota and to continue following the legal processes set up by Congress and DHS for immigrants seeking asylum in this country.

#### **REQUIREMENTS OF 28 U.S.C. § 2243**

38. 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).

39. Within three days, unless good cause for a delay is shown, “[a] court, justice or judge entering 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 or person detained is not entitled thereto.” 28 U.S.C. § 2243.

40. Courts have jurisdiction to hear habeas petitions filed by noncitizens who have no final removal order, whose challenges to their arrest and detention are “independent of any future removal order.” *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at \*3 (W.D. Tex. Sept. 22, 2025). “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

### **EXHAUSTION OF REMEDIES**

41. No statutory requirement of administrative exhaustion applies to this case. *See, e.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024) (noting that in habeas cases under 28 U.S.C. § 2241, “the government admits administrative exhaustion is not required by statute”). Where, as here, there are no prescribed administrative remedies to which she could resort, Ms. Lema Lema is also not bound by any judicially-created exhaustion rule. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

42. DHS has publicly and repeatedly taken the position that noncitizens like Ms. Lema Lema, who entered without inspection, are subject to mandatory detention under 8 U.S.C. § 1225. The Executive Office for Immigration Review has affirmed that view. The Board of Immigration Appeals (BIA) has adopted the same position, holding that “Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Thus, under the BIA’s interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection, and thus there are no administrative remedies that she could exhaust before seeking habeas relief. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 680 (W.D. Tex. 2025) (finding administrative exhaustion unnecessary wherein “[r]equiring [Petitioner] to wait, indefinitely, for a ruling on that appeal would . . . exacerbate his alleged constitutional injury—detention without a bond hearing”).

43. Additionally, administrative exhaustion is not required in this case because neither an immigration judge (IJ) nor the BIA can rule on Ms. Lema Lema’s due process claims raised in this petition. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 n.2 (BIA 2020) (holding that IJs and the BIA lack authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”).

44. Appealing any bond denial by an IJ to the BIA, which will necessarily deny it pursuant to *Yajure Hurtado*, would be plainly futile. To require Ms. Lema Lema to file a bond

appeal that is guaranteed to fail and then make her wait six-to-twelve months (or more) for that inevitable denial only underscores the nature of the futility here, given that Ms. Lema Lema's immigration case may be over by that time anyway, leaving her without effective recourse to challenge her unlawful detention. *See Lopez-Arevelo*, 801 F. Supp. 3d at 680.

### **LEGAL FRAMEWORK**

45. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.

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

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

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

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

50. Following the enactment of the IIRIRA, 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).

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

52. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, American Immigration Lawyers Association (July 8, 2025), <https://perma.cc/N5L5-G9QG>.

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

54. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. 29 I&N Dec. 216 (BIA 2025).

55. This interpretation has been rejected by courts in this District and a majority of courts around the country, who have concluded that 8 U.S.C. § 1225(b)(2) only authorizes detention for noncitizens who are at the border seeking physical entry at the time of detention, not those who are already present in the United States, and whose detention is discretionary and governed by 8 U.S.C. § 1226(a):

In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect. *See Lopez-Campos v. Raycraft*, — F. Supp. 3d —, — n.5, 2025 WL 2496379, at \*8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); *see, e.g., Jimenez v. FCI Berlin, Warden*, — F. Supp. 3d —, — & n.9, 2025 WL 2639390, at \*10 & n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *Lopez Santos*, 2025 WL 2642278, at \*5; *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at \*3 (W.D. La. Aug. 27, 2025).

*Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 675 (W.D. Tex. 2025). This position has been repeatedly reiterated by Judges in this district. *See Mendoza-Menjivar v. Bondi*, 25-cv-2060-DAE (W.D. Tex. Jan. 12, 2026) (Ezra, J.); *Gonzalez Alvarez v. Noem*, 2026 WL 93972 (W.D. Tex. Jan. 9, 2026) (Pulliam, J.); *Guillen-Mora v. Lyons*, 2026 WL 94656 (W.D. Tex. Jan. 9, 2026) (Rodriguez, J.); *Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026) (Briones, J.); *Ramirez-Morales*, EP-25-cv-476-DCG-RFC, 2025 WL 3767065 (W.D. Tex. Dec. 30, 2025) (Guaderrama, J.); *Lopez Soto v. Noem*, 25-cv-1910, Dkt. 7 (W.D. Tex. Dec. 19, 2025) (Albright, J.); *Lopez Miranda v. Flores*, EP-25-cv-584-KC (W.D. Tex. Dec. 10, 2025) (Cardone, J.); *Vieira v. De Anda-Ybarra*, -- F. Supp. 3d --, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (Briones, J.).

56. Nor may citizens who entered the United States without inspection later be detained under 8 U.S.C. § 1225(b)(2) because, by definition, they are not “seeking admission” within the meaning of the INA at the time of their detention. *Gallardo Brito v. Thompson*, No. SA-26-CA-00079-XR, 2026 WL 195761, at \*3 (W.D. Tex. Jan. 22, 2026) (Rodriguez, J.). As the Supreme Court has explained, “U.S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2).” *Jennings*, 583 U.S. at 289 (emphasis in original). “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). A noncitizen who enters without inspection “[is] not seeking entry, much less ‘lawful entry . . . *after inspection and authorization*.” *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314, at \*6 (W.D. Tex. Nov. 26, 2025) (emphasis added) (citing *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), *as amended* (June 5, 2008) (“Under th[e] statutory definition, ‘admission’ is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status.”) (emphasis in original)).

57. While the United States Court of Appeals for the Fifth Circuit has not ruled on this issue, the Seventh Circuit recently rejected the government’s argument, finding in the context of a motion to stay pending appeal, that 8 U.S.C. § 1226(a) applies to noncitizens found already residing in the United States. *Castanon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025) (holding that ICE and DHS were “not likely to succeed on the merits of their argument that those individuals, whom ICE arrested in Chicago without a warrant, are subject to mandatory detention under §§ 1225(b)(2)(A)”).

58. To hold otherwise would risk absurd results, such as subjecting all noncitizens who entered the country outside of a port of entry to mandatory detention without bond so long as the Attorney General does not initiate formal removal proceedings. Courts in this district have rejected this proposition. *See, e.g., De Luque Roa v. Noem*, No. 5:25-CV-1807-JKP, 2026 WL 94650, at \*6 n.2 (W.D. Tex. Jan. 6, 2026) (“[T]his Court agrees that: ‘Overwhelmingly, courts have rejected the interpretation . . . that § 1225(b)(2) requires the detention of all noncitizens living in the country who are ‘inadmissible’ because they entered the United States without inspection.’”) (citing *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at \*5 (D. Minn. Oct. 1, 2025) (collecting cases)).

59. The weight of judicial authority reiterates the common-sense position that § 1225(b)(2)(A)’s provision for “aliens seeking admission” does not apply to people like Ms. Lema Lema, who have resided continuously for years in the United States before they were detained.

60. The Government’s reading is also at odds with the immediately preceding provision of § 1225(b)(1), which specifically prohibits the detention of a noncitizen who has resided in the United States for two years or more prior to a determination of inadmissibility. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II). The plain meaning of the statute, its application throughout its history, and the majority of precedent across judicial circuits support that § 1225(b) does not apply to noncitizens already residing in the United States such as Ms. Lema Lema.

61. Nor can Respondents justify mandatory detention under § 1225(b)(1). The Government has taken the position, in similar cases, where petitioners were initially detained upon entering the United States but released on their own recognizance, that mandatory detention is appropriate, many years later, because the initial release was “an exercise of

prosecutorial discretion.” *See Mercado v. Lyons*, No. 5:25-CV-1623-JKP, 2025 WL 3654268, at \*5 (W.D. Tex. Dec. 11, 2025) (Pulliam, J.). Courts in this district have rejected this line of reasoning. *See id.* (“The arguments seem to ignore that she was released on her own recognizance and later applied for asylum.”); *Diaz Perez v. Thompson*, No. 5:25-CV-1664-JKP, 2025 WL 3654333, at \*5 (W.D. Tex. Dec. 15, 2025) (Respondents’ position “conflicts with the plain language of § 1225(b)(1)”). To detain Ms. Lema Lema under § 1225(b)(1), Respondents must show that she “was determined to be inadmissible under either 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) within two years of [her] entry into the United States.” Here, there has been no determination of inadmissibility, and Ms. Lema Lema has been physically present in the United States for more than two years. Thus, § 1225(b)(1) provides no authority for her detention. *Alvarez Vasquez v. Noem*, No. 5:25-CV-1839-JKP, 2026 WL 93976, at \*5 (W.D. Tex. Jan. 5, 2026) (“Reliance on § 1225(b)(1)(A)(iii)(II) is foreclosed [. . .] if Petitioners have ‘been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under [subparagraph (b)].’”). Nor has Petitioner been placed in expedited removal proceedings. Thus, she cannot be held in mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (authorizing mandatory detention of immigrants in expedited removal proceedings). *See Alvarez*, 2026 WL 93972, at \*6 (“Respondents cannot detain Petitioners in connection with expedited removal proceedings that do not exist.”).

62. Nor do any other provisions of law justify Ms. Lema Lema’s detention without a bond hearing. Only under certain circumstances are immigrants subject to ongoing detention without a bond hearing. *See, e.g.*, 8 U.S.C. § 1226(c) (individuals with certain criminal convictions may be detained without a bond hearing for the pendency of removal proceedings)

and 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (authorizing mandatory detention of immigrants in expedited removal proceedings).

63. Ms. Lema Lema has no disqualifying criminal conduct that would justify mandatory detention. To bring a detained individual under the purview of 8 U.S.C. § 1226(c), an individual's criminal conviction must be one enumerated in the INA under 8 U.S.C. §§ 1182(a)(2), 1182(a)(3)(B), 1227(a)(2)(A)(i–iii) or 1227(a)(2)(B–D). These specified offenses include crimes of moral turpitude, violations of laws regulating controlled substances, terroristic activities, firearm offenses, espionage, treason, and other serious crimes. *Id.* As stated, Ms. Lema Lema has no criminal convictions on her record according to a search of her public criminal history on the MCRO performed on February 4, 2026. Ms. Lema Lema is lawfully present in the United States as an asylum seeker with an active asylum application and no final order of removal. *See Kewayfati v. Bondi*, No. 25-20073, 2026 WL 100809, at \*1 (5th Cir. Jan. 14, 2026) (Asylum “permits an alien who qualifies as a refugee to lawfully remain in the United States”); 8 U.S.C. §§ 1158(b)(1)(A); 1101(a)(42).

64. Respondents presumably will assert 8 U.S.C. § 1225(b) as a basis for detaining Petitioner without a bond hearing. This is wrong. *See Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026).

65. Ms. Lema Lema's status as a resident of the United States also requires that she be afforded more Constitutional Due Process than that afforded by statute. *See Zadvydas*, 533 U.S. at 693 (“[O]nce an alien enters the country, the legal circumstance changes...”). Courts in this District have therefore found § 1225(b) unconstitutional as applied to noncitizens similarly situated to Ms. Lema Lema on Due Process grounds. *See, e.g., Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at \*6 (W.D. Tex. Oct. 16, 2025);

*Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at \*8 (W.D. Tex. Oct. 2, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 WL 2976923, at \*7-8 (W.D. Tex. Oct. 21, 2025). Courts have found that Due Process required a bond hearing for noncitizens detained under § 1225(b) without bond. *See Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at \*5 (W.D. Tex. Oct. 21, 2025).

66. Most courts in this District have held the appropriate relief in circumstances such as these is either immediate release or a bond hearing.

67. In many cases, courts in this District have ordered immediate release. *Guillen-Mora v. Lyons*, No. SA-25-CA-01864-XR, 2026 WL 94656, at \*3 (W.D. Tex. Jan. 9, 2026) (“Petitioner cannot be detained under Section 1225(b)(1) or (b)(2).<sup>7</sup> Because Respondents do not claim that Petitioner is being detained under Section 1226, ‘the Court sees no reason to consider’ Section 1226 as a basis for Petitioner’s current detention. ... Thus, Petitioner’s detention is unlawful, and habeas relief is proper. Petitioner must be released from detention.”) (Rodriguez, J.) (internal citation omitted); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at \*14 (W.D. Tex. Oct. 2, 2025) (Cardone, J.) (citations omitted).

68. In other cases, courts in this district, “have determined that the appropriate relief for an immigration detainee held in violation of due process is to require a bond hearing before an IJ.” *Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at \*4 (W.D. Tex. Dec. 10, 2025) (Cardone, J.).

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violation of the Due Process Clause of the Fifth Amendment**

69. Petitioner realleges and incorporates by reference the allegations of fact set forth above.

70. Ms. Lema Lema has due process rights as a resident of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

71. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

72. Here, all three factors favor the petitioner.

73. First, Ms. Lema Lema has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas*, 533 U.S. at 690, ("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."). She is currently being detained in conditions that are indistinguishable from criminal incarceration. She is separated from family, including her infant child, friends, and local legal counsel. Courts assessing similar cases have concluded that detention in this manner weighs heavily towards granting relief. *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178, at \*4 (W.D. Tex. Dec. 16, 2025) ("Petitioner possess a strong liberty interest in his freedom from detention because he has established a life here[.]").

74. Second, there is a strong risk of erroneous deprivation under DHS's current procedure. Petitioner is being detained under a policy which precludes her from accessing a

bond hearing. Courts have held that detention under such circumstances creates a high risk of erroneous deprivation of a petitioner's freedom. *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at \*7 (W.D. Tex. Oct. 16, 2025) ("Section 1225(b)(2) as applied creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings."). The value of additional procedural safeguards in such circumstances is significant. *See Garcia v. Noem*, No. EP-25-CV-00624-DB, 2025 WL 3645179, at \*4 (W.D. Tex. Dec. 16, 2025) (finding that this factor also weighs in petitioner's favor, as "the value of additional safeguards is high given that it will allow an immigration judge conducting a bond hearing to make a determination on specific facts whether continued detention is necessary").

75. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Ms. Lema Lema poses no safety threats to the community. Releasing her, or holding a hearing to release her on bond, would in fact save the government the resources and expense of continuing to detain her. Any interests the Government possesses would be better vindicated by a bond hearing. *See Garcia*, 2025 WL 3645179, at \*4 ("The government's interest is generally protected by affording bond hearings like the one Petitioner is requesting."); *Chinchilla*, 2025 WL 3645178, at \*5 (same).

76. The placement of Ms. Lema Lema in mandatory detention pending the resolution of her proceedings in immigration court violates her constitutional rights to due process guaranteed in the Fifth Amendment.

**COUNT TWO**  
**Violation of the Immigration and Nationality Act, 8 U.S.C. § 1226**

77. Petitioner realleges and incorporates by reference the allegations of fact set forth above.

78. Respondents violate the Immigration and Nationality Act by attempting to hold Petitioner in mandatory detention through 8 U.S.C. § 1225(b)(2). The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to those, such as Petitioner, who have been residing in the United States for several years prior without a final order of removal.

79. Ms. Lema Lema is detained, notwithstanding her continuous presence in the United States for more than the last two years without being afforded an opportunity to advocate for her release back into her community, as the law requires.

**COUNT THREE**  
**Violation of the Administrative Procedure Act**

80. Ms. Lema Lema realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

81. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

82. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

83. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents.

84. Nonetheless, the Board has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

85. Respondents, through a recent administrative decision, failed to articulate reasoned explanations for their new interpretation of the Act. The Board's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

86. The application of § 1225(b)(2) to Ms. Lema Lema is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

### **PRAYER FOR RELIEF**

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

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause ordering Respondents to show cause within three days as to why this Petition should not be granted as required by 28 U.S.C. § 2243;
- c. Issue a writ of habeas corpus requiring that Respondents immediately cease their unlawful detention, provide for Petitioner's safe return back to the Minnesota ICE field office, and release Petitioner;
- d. In the alternative, issue a writ of habeas corpus requiring Petitioner's immediate release unless Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days, at which Respondents bear the burden of justifying Petitioner's continued detention by clear and convincing evidence;
- e. Enjoin Respondents from denying bond on the basis of § 1225(b) or *Yajure Hurtado*;
- f. Enjoin Respondents from imposing any conditions of release, including but not limited to a GPS ankle monitor, unless approved by an immigration judge at the bond hearing;

- g. Enjoin Respondents from re-detaining Petitioner without first affording her a pre-deprivation hearing before a neutral decisionmaker;
- h. Declare that Petitioner's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;
- i. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: February 5, 2026

/s/ R/ Mitch Verboncoeur

R. Mitch Verboncoeur

Texas State Bar No. 24105732

mverboncoeur@mckoolsmith.com

**McKool Smith, P.C.**

303 Colorado Street, Suite 2100

Austin, TX 78701

Tel: (512) 692-8752

**Verification by Someone Acting on  
Petitioner's Behalf Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. An attorney on my team has discussed the factual assertions in this petition with a member of Petitioner's family, who is also acting on Petitioner's behalf and who I understand to have personal knowledge of the facts alleged herein. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Date: February 5, 2026

/s/ R. Mitch Verboncoeur  
R. Mitch Verboncoeur