

1
2
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF NEW MEXICO**
5

6 JANINA STEFANIA MONTERO
7 GRANDA

8 Petitioner,

9 v.

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

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

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

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

24

Case No. 2:26-294

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

1 DORA CASTRO, in her official
2 capacity as Warden of the Otero
3 County Processing Center;

4 and

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

8 Respondents.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

3 **INTRODUCTION**

4 1. Petitioner, Janina Stefania Montero Granda, is in the physical
5 custody of Respondents at the Otero County Processing Center. She now
6 faces unlawful detention because the Department of Homeland Security
7 (DHS) and the Executive Office of Immigration Review (EOIR) have
8 concluded Petitioner is subject to mandatory detention.
9

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

13 3. On August 30, 2022, the Petitioner was served and charged by
14 Immigration and Customs Enforcement (“ICE”) for lacking a valid unexpired
15 immigrant visa or other valid entry document at the time of entry pursuant
16 to INA 212(a)(7)(A)(i) (a.k.a. 8 U.S.C. § 1182(a)(7)(A)(i)).
17

18 4. Petitioner filed an application for asylum.

19 5. On January 10, 2025, Petitioner was detained and later
20 transferred to El Paso. Shortly afterwards, she was transferred to the Otero
21 County Processing Center. Petitioner had resided in Minneapolis, Minnesota,
22 prior to detention.
23
24

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. A prior habeas petition was dismissed without prejudice. *Montero*
5 *Granda v. Garite*, No. 3:26-CV-00235-LS, Doc. No.5 (W.D. Tex. Feb. 06, 2026)

6 8. DHS denied Petitioner release from immigration custody,
7 consistent with a new DHS policy formalized by the BIA decision *Matter of*
8 *Yajure Hurtado*, under which all ICE employees are to consider anyone
9 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who entered the
10 United States without inspection—to be an “applicant for admission” under 8
11 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
12

13 9. Petitioner’s detention on this basis violates the plain language of
14 the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to
15 individuals like Petitioner who previously entered and are now residing in
16 the United States. Instead, such individuals are subject to a different statute,
17 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That
18 statute expressly applies to people who, like Petitioner, are charged as
19 inadmissible for having entered the United States without inspection.
20

21 10. Respondents’ new legal interpretation is plainly contrary to the
22 statutory framework and contrary to decades of agency practice applying §
23 1226(a) to people like Petitioner.
24

1 11. Accordingly, Petitioner seeks a writ of habeas corpus requiring
2 that she be released unless Respondents provide a bond hearing under §
3 1226(a) within fourteen days.

4 **JURISDICTION**

5 12. Petitioner is in the physical custody of Respondents. Petitioner is
6 detained at the Otero County Processing Center in Chaparral, New Mexico.

7 13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas
8 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2
9 of the United States Constitution (the Suspension Clause).

10 14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
11 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28
12 U.S.C. § 1651.

13 **VENUE**

14 15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*,
15 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court
16 for the District of New Mexico, the judicial district in which Petitioner
17 currently is detained.

18 16. Venue is also properly in this Court pursuant to 28 U.S.C. §
19 1391(e) because Respondents are employees, officers, and agencies of the
20 United States, and because a substantial part of the events or omissions
21 giving rise to the claims occurred in the District of New Mexico.
22
23
24

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

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

7
8 18. Habeas corpus is “perhaps the most important writ known to the
9 constitutional law . . . affording as it does a *swift* and imperative remedy in
10 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
11 (1963) (emphasis added). “The application for the writ usurps the attention
12 and displaces the calendar of the judge or justice who entertains it and
13 receives prompt action from him within the four corners of the application.”
14 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

15
16 **PARTIES**

17 19. Petitioner Janina Stefania Montero Granda is a citizen of
18 Ecuador who has resided in the United States for over four years. Petitioner
19 has been in immigration detention since January 10, 2026. After arresting
20 Petitioner in Minnesota, ICE did not set bond.

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

1 is legally responsible for pursuing any effort to confine and remove the
2 Petitioner. As such, she is a custodian of the Petitioner. Respondent
3 Noem's address is Office of the General Counsel, MS 0485 Department
4 of Homeland Security, 2707 Martin Luther King, Jr. Ave. SE,
5 Washington, D.C. 20528-0525. Ms. Noem has ultimate custodial
6 authority over the Petitioner and is sued in her official capacity.
7

8 21. Respondent Angel Garite is the Assistant Field Office Director
9 for the El Paso Field Office. As such, he is a physical custodian of the
10 Petitioner. His address is 8915 Montana Avenue, El Paso, TX 79925. He is
11 named in his official capacity.

12 22. Respondent Mary De Anda-Ybarra is the Director of the El Paso
13 Field Office of ICE's Enforcement and Removal Operations division. As such,
14 she is the Petitioner's immediate custodian and is responsible for his
15 detention and removal. Her address is ICE El Paso Field Office, 11541
16 Montana Avenue, Suite E, El Paso, TX 79936. She is named in her official
17 capacity.
18

19 23. Respondent Todd Lyons is the acting director of U.S.
20 Immigration and Customs Enforcement (ICE). He is responsible for
21 overseeing the federal agency responsible for Petitioner's detention. His
22 address is U.S. Immigration and Customs Enforcement, Office of the
23 Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C.
24

1 or other forms of physical restraint—lies at the heart of the liberty that [the
2 Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

13
14 28. “The fundamental requirement of due process is the opportunity
15 be heard at a meaningful time and in a meaningful manner.” *Mathews v.*
16 *Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is
17 due, this Court should consider (1) the private interest affected by the
18 government action; (2) the risk that current procedures will cause an
19 erroneous deprivation of that private interest, and the extent to which that
20 risk could be reduced by additional safeguards; and (3) the government's
21 interest in maintaining the current procedures, including the governmental
22
23
24

1 function involved and the fiscal and administrative burdens that the
2 substitute procedural requirement would entail. *Id.* at 335.

3 29. The INA prescribes three basic forms of detention for the vast
4 majority of noncitizens in removal proceedings.

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

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

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

17 33. This case concerns the detention provisions at §§ 1226(a) and
18 1225(b)(2).

19 34. The detention provisions at § 1226(a) and § 1225(b)(2) were
20 enacted as part of the Illegal Immigration Reform and Immigrant
21 Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03,
22
23
24

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

4 35. Following the enactment of the IIRIRA, EOIR drafted new
5 regulations explaining that, in general, people who entered the country
6 without inspection were not considered detained under § 1225 and that they
7 were instead detained under § 1226(a). *See* Inspection and Expedited
8 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
9 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)
10 (“[A]liens who are present without having been admitted or paroled (formerly
11 referred to as aliens who entered without inspection) will be eligible for bond
12 and bond redetermination.”).

13
14 36. The Supreme Court has noted that contemporaneous Executive
15 Branch interpretations that remained consistent over time have been
16 afforded significant respect when interpreting statutes. *Loper Bright*
17 *Enterprises v. Raimondo*, 603 U.S. 369, 385-6 (2024); *see also Edwards’ Lessee*
18 *v. Darby*, 25 U.S. 206, 210 (1827) (“In the construction of a doubtful and
19 ambiguous law, the cotemporaneous construction of those who were called
20 upon to act under the law, and were appointed to carry its provisions into
21 effect, is entitled to very great respect.”).

1 37. Thus, in the decades that followed, most people who entered
2 without inspection and were placed in standard removal proceedings received
3 bond hearings, unless their criminal history rendered them ineligible. That
4 practice was consistent with many more decades of prior practice, in which
5 noncitizens who were not deemed “arriving” were entitled to a custody
6 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
7 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
8 simply “restates” the detention authority previously found at § 1252(a)).
9

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

13 39. The new policy, entitled “Interim Guidance Regarding Detention
14 Authority for Applicants for Admission,” claims that all persons who entered
15 the United States without inspection shall now be deemed “applicants for
16 admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
17 detention provision under § 1225(b)(2)(A). The policy applies regardless of
18 when a person is apprehended and affects those who have resided in the
19 United States for months, years, and even decades.
20

21 40. On September 5, 2025, the Board of Immigration Appeals (BIA)
22 parroted this same position in the case of *Matter of Yajure Hurtado*, 29 I&N
23 Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the
24

1 United States without admission or parole are considered applicants for
2 admission and are ineligible for immigration judge bond hearings.

3 41. Under the Supreme Court’s recent decision in *Loper Bright v.*
4 *Raimondo*, this Court should independently interpret the statute and give
5 the BIA’s expansive interpretation of § 1225(b)(2) no weight, as it conflicts
6 with the statute, regulations, and precedent. 603 U.S. 369 (2024).
7

8 42. ICE and EOIR have adopted this position even though federal
9 courts have rejected this exact conclusion. For example, after Immigration
10 Judges in the Tacoma, Washington, immigration court stopped providing
11 bond hearings for persons who entered the United States without inspection
12 and who have since resided here, the U.S. District Court in the Western
13 District of Washington found that such a reading of the INA is likely
14 unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
15 apprehended upon arrival to the United States. *Rodriguez v. Bostock*, 779 F.
16 Supp. 3d 1239 (W.D. Wash. 2025); *see also Gomes v. Hyde*, No. 1:25-CV-
17 11571-JEK, --- F.Supp.3d ----, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025)
18 (granting habeas petition based on same conclusion).
19

20 43. “The idea that a different detention scheme would apply to non-
21 citizens ‘already in the country,’ as compared to those ‘seeking admission into
22 the country,’ is consonant with the core logic of our immigration system.”
23
24

1 *Martinez v. Hyde*, 792 F.Supp.3d 211, 222 (D. Mass. 2025) (citing *Jennings v.*
2 *Rodriguez*, 583 U.S. 281, 289 (2018)).

3 44. The interpretation endorsed by DOJ and DHS is contrary to the
4 INA. As the *Rodriguez* court explained, the plain text of the statutory
5 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
6 Petitioner.

7 45. Section 1226(a) applies by default to all persons “pending a
8 decision on whether the [noncitizen] is to be removed from the United
9 States.” These removal hearings are held under § 1229a, to “decid[e] the
10 inadmissibility or deportability of a[] [noncitizen].”

11 46. Courts in the District of New Mexico have held that noncitizens
12 detained after entering the United States are detained pursuant to 1226(a)
13 rather than 1225(b). *Hernandez-Parilla v. De Anda-Ybarra*, No. 2:25-cv-
14 01224-MIS-KK, 2025 WL 3632769, *4 (D.N.M. Dec. 15, 2025); *Cortez-*
15 *Gonzalez v. Noem*, No. 2:25-cv-00985-MLG-KK, --- F.Supp.3d ----, 2025 WL
16 3485771, *3 (D.N.M. Dec. 04, 2025); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-
17 cv-01031-KG-JFR, 2025 WL 3187432, *3 (D.N.M. Nov. 14, 2025); *Velasquez*
18 *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, --- F.Supp.3d ----, 2025 WL
19 2676729, *4 (D.N.M. Sept. 12, 2025). District Courts in other states within
20 the Tenth Circuit have found that 1226(a) governs the detention of
21 noncitizens arrested within the United States.
22
23
24

1 47. The text of § 1226 also explicitly applies to people charged as
2 being inadmissible, including those who entered without inspection. *See* 8
3 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes
4 clear that, by default, such people are afforded a bond hearing under
5 subsection (a). As the *Rodriguez* court explained, “[w]hen Congress creates
6 “specific exceptions” to a statute’s applicability, it “proves” that absent those
7 exceptions, the statute generally applies. *Rodriguez v. Bostock*, 779 F. Supp.
8 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs.,*
9 *P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

11 48. Section 1226 therefore leaves no doubt that it applies to people
12 who face charges of being inadmissible to the United States, including those
13 who are present without admission or parole.

14 49. By contrast, § 1225(b) applies to people arriving at U.S. ports of
15 entry or who recently entered the United States. The statute’s entire
16 framework is premised on inspections at the border of people who are
17 “seeking admission” to the United States. 8 U.S.C.

18 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this
19 mandatory detention scheme applies “at the Nation’s borders and ports of
20 entry, where the Government must determine whether a[] [noncitizen]
21 seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S.
22 281, 287 (2018).

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

3 56. The Petitioner is now detained at Otero County Processing
4 Center.

5 57. Petitioner's criminal history contains no offenses that would
6 subject her to mandatory detention.
7

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

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

11 60. Currently, Petitioner remains in detention. Without relief from
12 this court, she faces the prospect of months, or even years, in immigration
13 custody, separated from her family and community.
14

15 61. Any attempt to pursue a bond appeal before the BIA, while
16 available, is futile for her release. Immigration judges are currently bound
17 the recent BIA decision in *Yajure Hurtado*, which would subject the
18 Petitioner to detention without discretionary bond, likely in contravention of
19 federal law. Moreover, in the *Rodriguez Vazquez* litigation, where EOIR and
20 the Attorney General were defendants, DOJ affirmed its position that
21 individuals like Petitioner are applicants for admission and subject to
22 detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v.*
23
24

1 *Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–3

2
3 **CLAIMS FOR RELIEF**

4 **COUNT I**

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

7 62. Petitioner incorporates by reference the allegations of fact set
8 forth in the preceding paragraphs.

9 63. Petitioner may be detained, if at all, pursuant to 8 U.S.C. §
10 1226(a).

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

13 65. Petitioner has not been, and will not be, provided with a bond
14 hearing on the merits as required by law.

15 66. Petitioner’s continuing detention is therefore unlawful.

16
17 **COUNT II**

18 **Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and**
19 **1003.19 Unlawful Denial of Release on Bond**

20 67. Petitioner incorporates by reference the allegations of fact set
21 forth in the preceding paragraphs.
22
23
24

1 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
2 (2001).

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

12 77. Respondents’ continued immigration detention of the Petitioner
13 is disconnected from a “reasonable relationship” to any legitimate
14 nonpunitive purpose. *Zadvydas*, 533 U.S. at 690. Petitioner has a
15 fundamental interest in liberty and being free from official restraint.
16

17 78. The government’s detention of Petitioner without a bond
18 redetermination hearing to determine whether she is a flight risk or danger
19 to others violates her right to due process. The court should issue a writ of
20 habeas corpus directing Respondents to release Petitioner to safeguard her
21 Fifth Amendment liberties.
22
23
24

COUNT V

**Respondents’ Custody Determination is Contrary to Law under
the APA**

79. Petitioner incorporates by reference the preceding paragraphs.

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

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

82. Here, Petitioner’s APA challenge concerns the *Yajure Hurtado* and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) decisions that affected the duration of Ms. Montero Granda’s confinement by stripping the IJ of jurisdiction.

83. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court held that “[c]ourts must exercise their

1 independent judgment in deciding whether an agency has acted within
2 its statutory authority, as the APA requires.” *Loper Bright Enters. v.*
3 *Raimondo*, 603 U.S. 369, 410 (2024).

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

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

19 86. Detaining Petitioner without bond based on BIA cases that
20 misread 1225(b)(2) and 1226(a) violate the APA by preventing
21 Petitioner from having a bond hearing on the merits.
22
23
24

1 87. For this reason, this Court should enter a declaratory judgment
2 finding that Petitioner is detained under 8 U.S.C. § 1226(a) and order
3 her released on the bond issued by the IJ.
4

5 **COUNT VI**

6 ***Matter of Yajure Hurtado and Matter of Q. Li* Violate Procedural Due**

7 **Process as Applied**

8 88. Petitioner incorporates by reference the preceding paragraphs.

9 89. When the government interferes with a liberty interest, “the
10 procedures attendant upon that deprivation [must be] constitutionally
11 sufficient.” *Ky. Dept. of Corrections v. Thompson*, 490 U.S. at 460. The
12 constitutional sufficiency of procedures is determined by weighing
13 three factors: (1) the private interest that will be affected by the official
14 action, (2) the risk of erroneous deprivation of that interest through the
15 available procedures, and (3) the government’s interest, including the
16 function involved and the fiscal and administrative burdens that
17 additional or substitute procedures would entail. *Mathews*, 424 U.S. at
18 335.
19

20 90. Petitioner has a weighty liberty interest as her freedom “from
21 government . . . detention . . . lies at the heart of the liberty that [the
22 Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 693.
23
24

1 91. The risk of erroneous deprivation of Petitioner's liberty is
2 extremely high, given that the government, pursuant to erroneous
3 recent decisions by the BIA, is detaining Petitioner under a statute that
4 does not apply to her and denying her statutory right to a bond hearing
5 on the erroneous assertion that she is subject to mandatory detention.
6

7 92. Finally, the government's interest in preserving its unilateral
8 authority to prevent the release of noncitizens who have already shown
9 they are neither a flight risk nor a danger is minimal. Providing
10 additional procedural protections here introduces no additional
11 administrative burdens as Petitioner is statutorily entitled to a bond
12 hearing under 8 U.S.C. § 1226(a).
13

14 93. Because Respondents have custody of Petitioner in violation of
15 her Fifth Amendment rights, the Court should issue a writ of habeas
16 corpus directing Respondents to release Petitioner to safeguard her
17 constitutional liberties. 28 U.S.C. § 2241. Courts throughout the
18 country have found that the use of the mandatory detention provision,
19 as affirmed in *Matter of Yajure-Hurtado*, violates an individual's right
20 to meaningful procedural due process. *See, e.g., Lopez-Arevelo v. Ripa*,
21 801 F.Supp.3d 668, 687 (W.D. Tex. 2025); *Kostak v. Trump*, No. CV
22 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Hyppolite*
23 *v. Noem*, 25-CV-4304 (NRM), . --- F.Supp.3d ----, 2025 WL 2829511, *12
24

1 (E.D.N.Y. Oct. 06, 2025) (“**If his detention is and has always been**
2 **“mandatory” under § 1225(2)(A), [...] it is hard to see how the**
3 **United States government would, or even could, have granted**
4 **him permission to seek employment outside the confines of an**
5 **ICE detention facility.”) (emphasis added). As such, this Court**

6 should likewise find that Petitioner’s detention represents a violation of
7 her right to procedural due process and order her released according to
8 the bond conditions set by the IJ.

9
10
11 **PRAYER FOR RELIEF**

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

- 13
- 14 a. Assume jurisdiction over this matter;
 - 15 b. Issue a writ of habeas corpus requiring that Respondents
16 immediately release Petitioner or provide Petitioner with a bond
17 hearing pursuant to 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
22
- 23
24

1 habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241
2 should not be granted within three days;

- 3 e. Order the Respondents to safely transport Petitioner back to
4 Minneapolis, Minnesota following her release;
- 5 f. Issue a writ of habeas corpus requiring that Respondents
6 immediately return Petitioner's work permit, driver's license, and
7 any other seized documents or property lawfully issued to her, so
8 as not to impair her liberty upon release;
- 9 g. Issue an order enjoining Respondents from re-detaining
10 Petitioner on any legal theories or interpretations rejected by the
11 Court in its order on the habeas petition; and
- 12 h. Grant any other and further relief that this Court deems just and
13 proper.
14
15

16 DATED this 6th day of February 2026.

17 */s/ Evan Brown*

18 Evan Brown, Esq.
19 District of New Mexico Bar ID: 26-108
20 MN Attorney ID: 0401171
21 Contreras Edin Law, P.A.
22 663 University Avenue W.
23 STE 200
24 Saint Paul, MN 55104
EvanB@ConterasEdinLaw.com

Attorney for Petitioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24