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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Khadra Hassan Abshir,
Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; Department of Homeland Security, in her official capacity;

Todd M. LYONS, Acting Director of Immigration and Customs Enforcement; Immigration and Customs Enforcement, in her official capacity;

David EASTERWOOD, Field Office Director of Enforcement and Removal Operations, Minneapolis - St. Paul Field Office, Immigration and Customs Enforcement, in his official capacity

Mary DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement, in her official capacity;

Warden of Otero County Processing Center, custodian of detainees at the Otero County Processing Center, in their official capacity.

Respondents.

Case No. 0:26-cv-01073

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Khadra Hassan Abshir, is a non-citizen asylum seeker from Somalia. Petitioner entered the United States on or about February 16, 2023.

2. Upon her entry to the United States on or about February 16, 2023, Petitioner was released from custody on her own recognizance under I.N.A. § 236, 8 U.S.C. 1226, which allows the Attorney General to release a noncitizen from custody "pending a decision on whether the alien is to be removed from the United States." *Id*. *See* Ex. A. Order of Release on Recognizance. Petitioner was also issued a notice to appear and placed in full removal proceedings pursuant to 8 U.S.C. § 1229a. *See* Ex. B. Notice to Appear.

3. Petitioner affirmatively and timely filed an I-589 Application for Asylum and Withholding of Removal with USCIS on April 24, 2023. *See* Ex. C. Form I-589, Application for Asylum and Withholding of Removal Receipt Notice. She is now seeking asylum in the United States and has initiated the asylum application process in accordance with applicable immigration laws and procedures.

4. Petitioner has a valid work permit. Petitioner has never missed a court hearing. Petitioner, like thousands of other asylum seekers, is waiting for an individual merits hearing so that her asylum claims can be considered by an immigration judge. Upon information and belief, aside from a minor civil parking violation, Petitioner has no criminal history. In short, Petitioner has done everything that the government has required of her to lawfully seek asylum.

5. For the past nearly 3 years, Petitioner has lived peaceably in Minnesota. She has strong ties to the community.

6. Nevertheless, despite fully cooperating with the adjudication of her asylum claim, she was taken into ICE custody on January 13, 2026. ICE officers detained Petitioner again without adequate consideration of her prior case history or procedural status. Her mandatory detention appears arbitrary and inconsistent with established principles of due process and proportional immigration enforcement.

7. Respondents did not provide Petitioner or counsel with any written custody determination or explanation for the detention.

8. Petitioner was unlawfully arrested in Minnesota and without explanation or due process, transported by Respondents to the ERO El Paso East Montana Camp in El Paso, Texas, without notice to counsel, before again being transferred to the Otero County Processing Center in Chaparral, New Mexico, without notice to counsel. Petitioner is currently being detained by Respondents at the Otero County Processing Center in Chaparral, New Mexico.

9. Despite having no apparent reason to detain Petitioner, and despite having explicitly released Petitioner pursuant to 8 U.S.C. 1226, Respondents now contend that Petitioner is detained under the mandatory provisions of 8 U.S.C 1225, as an "applicant for admission."

10. Because Petitioner has been present in the United States since 2023, and Respondents released her under 8 U.S.C 1226 and placed her in removal proceedings under 8 U.S.C. § 1229a, they cannot lawfully detain her under the mandatory detention provisions of 8 U.S.C. § 1225, as an "applicant for admission."

11. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section §1225(b)(2)(A) does not apply to individuals like Petitioner

who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

12. Respondents' new legal interpretation of § 1226(a) is plainly contrary to the statutory framework and contrary to decades of agency practice in applying 1226(a) to individuals like Petitioner.

13. Petitioner respectfully requests that this Court grant her a Writ of Habeas Corpus and order Respondents to release her from custody. Petitioner seeks habeas relief under 28 U.S.C. 2241, which is the proper vehicle for challenging civil immigration detention. *See Soberanes v. Comfort,* 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas") (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)). In the alternative, Petitioner respectfully requests that this Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C.

PARTIES

14. Petitioner, Khadra Hassan Abshir, is a 29-year-old Somalia national who is seeking asylum in the United States. Respondents detained Petitioner on January 13, 2026, in the State of Minnesota. Petitioner is now detained at the Otero County Processing Center in Chaparral, New Mexico.

15. Respondent Kristi Noem is the Secretary of Homeland Security. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Petitioner. She is sued in her official capacity.

16. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As the head of ICE, she is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also the legal custodian of Petitioner. He is sued in his official capacity.

17. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. He is sued in his official capacity.

18. Respondent Mary De Anda Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, she is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is sued in her official capacity.

19. Respondent Warden of the Otero County Processing Center, is the custodian of detained non-citizens, including Petitioner, housed at the Otero County Processing Center. They are sued in their official capacity.

JURISDICTION AND VENUE

20. This court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Federal questions in this case arise under the Immigration and Naturalization Act, 8 U.S.C. § 1101-1524, and the United States Constitution.

21. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

22. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because Petitioner was apprehended in the State of Minnesota on January 13, 2026, before being transferred to the State of Texas. *Sue H. v. Donald Trump*, No. 26-cv-00416 (D. Minn. Jan. 20, 2026), and *Victor P. v. Kristi Noem, et al*., No. 26-cv-430 (MJD/SGE)(D. Minn. Jan. 19, 2026); s*ee also Jose A. v. Kristi Noem*, No. 26-cv-480 (JMB/ECW) (finding that jurisdiction was proper in Minnesota despite petitioner being transferred to El Paso, Texas, because the decision to detain and arrest petitioner was made in Minnesota, witnesses of Petitioner's arrest are in Minnesota, and Petitioner was for some time actually detained in Minnesota). Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States.

23. This Court has previously found that its habeas jurisdiction attached at the time of an individual's apprehension in this District. Petitioner was apprehended within the District of Minnesota by federal officers and immediately placed into federal custody, therefore, this Court holds jurisdiction over the habeas petition. The Court's jurisdiction over the habeas petition is not defeated by any subsequent decision by Respondents to transfer Petitioner to another state. Habeas jurisdiction turns on custody and control, not on the Government's unilateral post-seizure movement of the detainee. The position that jurisdiction lies exclusively in the district to which Respondents transfer Petitioner would

permit the Government to determine the forum for judicial review through its own logistics. Federal courts may not be divested of jurisdiction in that manner.

24. The Court should not dismiss this case or transfer it to the State of New Mexico; under *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004), the Supreme Court stated the district of confinement rule applies to "core habeas petitions challenging present physical confinement." 542 U.S. at 443. Further, the Court expressly declined to decide whether habeas petitions filed by noncitizens "detained pending deportation" are this type of "core challenge[]"." *Id.* at 435 & n.8.

25. Critically, in *Padilla*, the Supreme Court held that the only proper respondent to a traditional habeas corpus petition involving a "core challenge[]" to "present physical confinement" is the actual or "immediate custodian" of the facility where the individual is detained. *Id*. at 435. Here, the Supreme Court expressly left open the question of the identity of the proper respondent(s) to a petition filed by a noncitizen "detained pending deportation." *Id.* at 435 n.8 (recognizing circuit split on "the question whether the Attorney General is a proper respondent to a habeas petition filed by [a noncitizen] detained pending deportation" and stating "[b]ecause the issue is not before us today, we again decline to resolve it").

26. Notably, numerous Courts, including this Court, have repeatedly recognized national-level policy making officials, such as the U.S. Attorney General, as proper respondents. See, e.g., *Santos v. Smith*, 260 F. Supp. 3d 598, 607-08 (W.D. Va. 2017); *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 723-25 (D. Md. 2016); *Somir v. United States*, 354 F. Supp. 2d 215, 217-18 (E.D.N.Y. 2005); *S.N.C. v. Sessions,* 325 F. Supp. 3d 401, 407 (S.D.N.Y. 2018).

27. Still others recognize as the proper respondent the federal official with responsibility over the detention facility or the federal contract governing the detention facility, usually the ICE Field Office Director, or the person with legal authority over the claim. *See, e.g., Campbell v. Ganter*, 353 F. Supp. 2d 332, 336 (E.D.N.Y. 2004); *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1301-02 (S.D. Fla. 2020).

28. Significantly, in order to exercise personal jurisdiction over a habeas petition, a district court need only find that one named respondent is proper. *Dunn v. U.S. Parole Commission*, 818 F.2d 742, 744 (10th Cir. 1987) ("So long as the petitioner names as respondent a person or entity with power to release him, there is no reason to avoid reaching the merits of his petition.") (quoting Lee v. United States, 501 F.2d 494, 502-03 (8th Cir. 1974) (Webster, J. concurring)).

29. Indeed, a NILA survey of attorneys who regularly file habeas petitions challenging detention reveals that most name the warden or superintendent of the detention facility, the ICE Field Office Director, the DHS Secretary, and the U.S. Attorney General. In cases involving unaccompanied children detained in the custody of the Office of Refugee Resettlement (ORR), the relevant officers and agencies would be national-level officials or officials with responsibility over the detention facility from ORR or the U.S. Department of Health and Human Services. *See, e.g., Santos*, 260 F. Supp. 3d at 607-08 (finding director of ORR and director of juvenile detention center proper respondents).

30. In the case of Petitioner, named respondents include U.S. Secretary of Homeland Security, Kristi Noem, Acting Director of Immigration and Customs Enforcement (ICE), Todd M. Lyons, Minneapolis-St. Paul Field Office Director of Enforcement and Removal

Operations (ERO), David Easterwood, El Paso Field Office Director of ERO, Mary De Anda-Ybarra, and the Warden of the Otero County Processing Center.

31. Although petitions brought under 28 U.S.C. § 2241 provide only district court with subject matter jurisdiction, Petitioner's writ of habeas corpus is expressly brought under 28 U.S.C. § 2241 and 28 U.S.C. § 1391(b), (e). If a petition is not filed in the district of confinement, the venue section must explain why venue is proper under 28 U.S.C. § 1391(e).

32. Petitioner maintains that venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because Petitioner was apprehended in the state of Minnesota prior to being transferred to the State of Texas, a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, and Respondents in this case are national-level officials and officials with responsibility over the detention facility where Petitioner is detained. *Sue H. v. Donald Trump*, No. 26-cv-00416 (D. Minn. Jan. 20, 2026), and *Victor P. v. Kristi Noem*, et al., No. 26-cv-430 (MJD/SGE)(D. Minn. Jan. 19, 2026); see also *Jose A. v. Kristi Noem*, No. 26-cv-480 (JMB/ECW) (finding that jurisdiction was proper in Minnesota despite petitioner being transferred to El Paso, Texas because the decision to detain and arrest petitioner was made in Minnesota, witnesses of petitioner's arrest are in Minnesota, and petitioner was for some time actually detained in Minnesota).

FACTUAL BACKGROUND

33. Petitioner, Khadra Hassan Abshir, is a 29-year-old Somalia national who is seeking asylum in the United States. Petitioner arrived in the United States on or about February 16, 2023. *See* Ex. B. Respondents then released Petitioner on her own

recognizance pursuant to I.N.A. § 236, 8 U.S.C. § 1226. *See* Ex. A. Petitioner was issued a NTA and placed in full removal proceedings under 8 U.S.C. § 1229a. *See* Ex. B.

34. Petitioner affirmatively and timely filed an I-589 Application for Asylum and Withholding of Removal with USCIS on April 24, 2023. *See* Ex. C. Petitioner has a valid work permit based upon her pending asylum application. Petitioner has never missed a court hearing or otherwise violated the conditions of her release from custody. Upon information and belief, aside from a minor civil parking violation, Petitioner has no criminal history, either in the United States or elsewhere.

35. Despite this, Respondents detained Petitioner on January 13, 2026, for no apparent lawful reason.

36. Petitioner is currently in removal proceedings and has complied with all requirements imposed by U.S. immigration authorities.

37. Petitioner was transferred to the State of Texas without any proper notice before being transferred to the State of New Mexico without any proper notice and is currently detained at the Otero County Processing Center in Chaparral, New Mexico.

38. Detaining Petitioner is an expensive and pointless endeavor. Petitioner respectfully seeks the opportunity to return home and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

LEGAL BACKGROUND

39. As relevant here, the Immigration and Naturalization Act, 8 U.S.C. §1101-1524, describes two means of handling the custody and potential removal of noncitizens.

40. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard removal proceedings. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention is

generally entitled to a bond hearing at the outset of their detention. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs.*, *P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

41. In addition, while on release, the noncitizen may apply for asylum or other relief in the United States. 8 U.S.C. § 1158. While a grant of asylum is discretionary, the right to apply for asylum is not. The Refugee Act, codified in various sections of the INA, broadly affords a right to apply for asylum to any noncitizen, like Petitioner, "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1); Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

42. The INA guarantees to noncitizens in standard removal proceedings who apply for asylum and other relief valuable procedural rights that reduce the risk of an erroneous decision. These include the rights to legal counsel, 8 U.S.C. § 1229a(b)(4)(A) and § 1362; to present supporting evidence (both documentary and through lay and expert witness testimony) and to challenge through cross-examination adverse evidence during a full adversarial hearing before an immigration judge (IJ), 8 U.S.C. § 1148(b)(1)(B); to seek reconsideration or reopening of an adverse decision, 8 U.S.C. § 1229a(c)(6)-(7), to

appeal an adverse decision of an IJ to the Board of Immigration Appeals based on the full evidentiary record, 8 U.S.C. § 1229a(c)(5), and to appeal an adverse decision of the Board to a federal circuit court of appeals, 8 U.S.C. § 1252(b).

43. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

44. The second relevant means of detention is governed by 8 U.S.C. § 1225, which 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 under 8 U.S.C. § 1225(b)(2). Respondents treat noncitizens subject to mandatory detention under § 1225 as ineligible for bond

45. The mandatory detention scheme under 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at U.S. ports of entry who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added).

46. As to 8 U.S.C. § 1225(b)(1), this subsection provides for mandatory detention of noncitizens subject to expedited removal. Because expedited removal provides very few procedural protections, it applies narrowly to only those noncitizens who are inadmissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants

for admission without required documentation, 8 U.S.C. § 1182(a)(7). As relevant here, the government may not subject any other person to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

47. For noncitizens in expedited removal, the INA does not grant them the rights enshrined in standard removal proceedings. To begin, an immigration officer may order them removed "without further hearing or review," 8 U.S.C. § 1225(b)(1)(A)(i), unless the noncitizen has expressed an intent to apply for asylum or a fear of persecution. But even then, the noncitizens' rights are truncated. Although the immigration officer "shall refer the [noncitizen] for an interview by an asylum officer," 8 U.S.C § 1225(b)(1)(A)(i)-(ii), a "credible fear" interview differs from an asylum application. First, the INA does not, as it does during standard removal proceedings, guarantee the noncitizen with the rights to counsel, to present documents or witness testimony, or to cross-examine adverse evidence. See id. § 1225(b)(1)(B)(iv). Second if the asylum officer decides that the noncitizen does not have a credible fear of persecution, the noncitizen may seek review before an IJ, but review is limited to the record of the interview. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). Finally, if the IJ concurs with the asylum officer, the noncitizen is removed without any further review by the Board of Immigration Appeals or a federal court. Only if a noncitizen passes a credible fear interview may they apply for asylum and related relief in full removal proceedings. See 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

48. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver.

8 U.S.C.§ 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C)

49. These two processes have governed removal proceedings for nearly three decades. The release provisions for noncitizens placed in standard removal proceedings under § 1226 and the mandatory detention provisions for noncitizens recently arriving in the United States under § 1225(b)(1) and (b)(2) were enacted in 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.

50. 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. 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)); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system ") (citing *Jennings v. Rodriguez*, 583 U.S. at 289) (cleaned up)).

51. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an

order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) to prioritize civil immigration enforcement procedures including through the use of mass detention.

52. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued for public inspection and effective immediately a designation expanding the scope of expedited removal to apply nationwide and to certain noncitizens who are unable to prove they have been in the country continuously for two years. On January 24, 2025, DHS published a Notice that expanded the application of expedited removal. Office of the Secretary, Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 ("January 2025 Designation"). The designation was "effective on" January 21, 2025.

53. The January 2025 Designation expands the pool of noncitizens who can be subjected to the summary removal process substantially to include noncitizens who are apprehended anywhere in the United States and who have not been in the United States continuously for more than two years. *Id*. at 8140.

54. The January 2025 Designation does not state that it applies to noncitizens who were in the United States before its effective date.

55. On July 8, 2025, without congressional authorization, the Executive Branch announced a new policy entitled "Interim Guidance Regarding Detention Authority for

Applicants for Admission." The policy asserts that all undocumented noncitizens deemed "applicants for admission" are subject to mandatory detention under § 1225(b)(2)(A). The policy purports to apply even to those, like Petitioner, whom at the time of the policy shift, the government had already placed in standard removal proceedings, released from custody, and allowed to apply for asylum. The policy shift also violates the government's own regulations. These regulations limit the government from seeking dismissal of full removal proceedings unless it can show that the "[c]ircumstances of the case have changed". See 8 C.F.R. § 239.2(a)(7) (emphasis added). But the government's new policy purports to allow it to seek dismissal based on changed circumstances independent of the noncitizen's case.

56. Adopting this same position, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bonds. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

57. ICE and EOIR have adopted this policy even though numerous federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. Rodriguez Vazquez v. Bostock, 779 F. Supp. 3d 1239; see also Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July

7, 2025) (granting habeas petition based on same conclusion). Accordingly, federal courts have roundly rejected Respondent's erroneous interpretation of the INA since ICE implemented its July 8, 2025 memo. See *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025*); Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al*., 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025); *Eliseo A.A. v. Olson*, No. 25-CV-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), Doc. No. 226 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v Noem*, No. 0:25-cv-04584 (JWB-DJF), Doc. No 10. (D. Minn. December 18, 2025).

58. Petitioner's detention under § 1225(b)(2) is likewise invalid. As numerous federal courts have now found, § 1225(b)(2) applies to noncitizens *seeking admission* into the United States. It does not apply to noncitizens, like Petitioner, who entered the country without inspection and were released on their own recognizance before being placed in standard removal proceedings, and allowed to apply for asylum.

59. In short, Respondent's detention of Petitioner under 8 U.S.C. § 1225(b)(2) is patently unlawful, violates due process, and violates the Administrative Procedure Act.

CLAIMS FOR RELIEF

COUNT I
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

60. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

61. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

62. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

63. To avoid an abuse of discretion, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

64. By revoking Petitioner's order of release on her own recognizance, without consideration of any individualized facts and circumstances applicable to him, and without finding that she is a danger to the community or a flight risk, and while her standard removal proceedings are still pending, Respondents have violated the APA.

65. The government previously considered Petitioner's facts and circumstances and determined that she was not a flight risk or danger to the community. No changes to the facts have occurred that might justify this revocation of her release.

66. The fact that Respondents have already released Petitioner under the same facts and circumstances shows that Respondents do not consider her to be a danger to the community or a flight risk.

67. By detaining Petitioner without articulating a rationale based on her individualized circumstances, and by detaining her in contradiction of her individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA.

COUNT II

Violation of the Immigration and Nationality Act

68. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

69. To the extent that Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2), her detention under that statute is unlawful. 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 were explicitly released under 8 U.S.C. 1226. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT III

Violation of Due Process
(Arbitrary Detention)

71. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

72. The Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to all persons within the United States. Once a noncitizen enters this country, whether the presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies to the noncitizen. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

73. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

74. While the government has discretion to detain individuals under 8 U.S.C. §1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

75. Petitioner has a fundamental interest in liberty and being free from official restraint.

76. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;

2. Declare that Petitioner's current detention without an individualized determination is unlawful;
3. Issue a writ of habeas corpus ordering Respondents to release Petitioner from custody, or, in the alternative, hold a prompt bond hearing to determine whether she should remain in custody;
4. Prohibit the Respondents from transferring Petitioner from the district without the court's approval;
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this court deems just and proper.

Dated: February 5, 2026.

By: */s/Karen V. Bryan*_

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Verification by Petitioner's Legal Counsel
Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Attorney for the Petitioner. 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.

/s/Karen V. Bryan Date: February 5, 2026
Karen V. Bryan, Esq.