

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

Yoselin Suleyma Jimenez-Menendez and
Evelyn Vanessa Jimenez-Menendez,

Petitioners,

vs.

KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, PAMELA BONDI, in her official capacity as Attorney General of the United States, TODD LYONS, in his official capacity as Acting Director, United States Immigration and Customs Enforcement, Joel GARCIA, in his official capacity as Director of the ICE El Paso Field Office, and JOHN DOE, in their official capacity as the Warden of the El Paso Processing Center in El Paso, Texas,

Respondents.

Case No.: 3:26-CV-374

**EMERGENCY PETITION FOR
WRIT OF HABEAS CORPUS**

Expedited Handling Requested

INTRODUCTION

1. This case challenges the unlawful detention of Yoselin Suleyma Jimenez-Menendez and her daughter, Evelyn Vanessa Jimenez-Menendez, (“Petitioners”) by officers of Respondents.

2. Petitioners should be released immediately because their detention violates the Fifth Amendment, the Fourth Amendment, the Immigration and Nationality Act and implementing regulations, and the Administrative Procedure Act. Petitioners bring this action for habeas, injunctive and/or declaratory relief ordering Respondents to release

Petitioners from detention. Only this Court can stop Respondents' violations of Petitioners' constitutional rights.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1361 (federal employee mandamus action); U.S. Const. art. I, § 9, cl. 2 (the Suspension Clause); the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and 5 U.S.C. § 702 (waiver of sovereign immunity).

4. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

5. 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"). 28 U.S.C. § 2241; *see also Demore v. Kim*, 538 U.S. 510 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018); *Nielsen v. Preap*, 586 U.S. 392, 399–405 (2019).

6. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Respondents are holding Petitioners at the El Paso Processing Center in El Paso, Texas, which is within the jurisdiction of this District.

PARTIES

7. Petitioner Yoselin Suleyma Jimenez-Menendez is a citizen of Guatemala and current resident of Faribault, Minnesota. Upon information and belief, Petitioner is currently being held at the El Paso Processing Center in El Paso, Texas. Petitioner is under the direct control of the Respondents.

8. Petitioner Evelyn Vanessa Jimenez-Menendez is a citizen of Guatemala. She is the 19-year-old daughter of Petitioner Yoselin Suleyma Jimenez-Menendez. She is a citizen of Guatemala and current resident of Faribault, Minnesota. Upon information and belief, Petitioner is currently being held at the El Paso Processing Center in El Paso, Texas. Petitioner is under the direct control of the Respondents.

9. Respondent Kristi Noem is being sued in her official capacity as the Secretary of DHS. In this capacity, Secretary Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq. She oversees Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”), the component agencies responsible for Petitioners’ arrest, detention, and custody. Secretary Noem is a legal custodian of Petitioners and has authority to release them.

10. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (“DOJ”). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (“EOIR”), which administers the

immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioners and has authority to release them.

11. Respondent Todd Lyons is being sued in his official capacity as the Acting Director of ICE. Respondent Lyons is a legal custodian of Petitioners and has authority to release them.

12. Respondent Daren Margolin is being sued in his official capacity as Acting Director of the EOIR. Respondent Margolin is a legal custodian of Petitioners and has authority to release them.

13. Respondent John Doe is the Warden or other official in charge of the facility detaining Petitioners who has immediate physical custody of Petitioners pursuant to the facility's contract with ICE to detain noncitizens. Respondent Doe is a legal custodian of Petitioners.

14. Respondents are immediate custodians of Petitioners and are sued in their official capacities.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

15. Petitioners are mother and daughter who entered the United States on or about May 22, 2024.

16. On May 23, 2024, Petitioners were paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). Petitioner Evelyn Vanessa Jimenez-Menendez was issued documentation evidencing her parole. *See* Ex. A.¹

¹ Personally-identifying information has been redacted from the submitted exhibits.

17. On the same day, Petitioner Yoselin Suleyma Jimenez-Menendez was scheduled for a credible fear interview to take place on June 10, 2024, at the USCIS St. Paul Field Office in Minneapolis, Minnesota.

18. On June 10, 2024, Petitioner Yoselin Suleyma Jimenez-Menendez timely appeared for and completed her credible fear interview. The asylum officer found that she had demonstrated a credible fear of persecution or torture. *See* Ex. B.

19. On June 17, 2024, Petitioners were issued Notices to Appear. *See id.* The Notices state that Petitioners are noncitizens “present in the United States who ha[ve] not been admitted or paroled.” *Id.*

20. Petitioners applied for asylum on July 31, 2024. Petitioners’ asylum application remains open and pending.

21. Since being released on their own recognizance, Petitioners have appeared for all required check-ins. Petitioners have never missed a required check-in.

22. Prior to their unlawful arrest and detention, Petitioners were employed with legal authorization and worked the night shift cleaning industrial machinery at a turkey processing plant in Minnesota.

23. Petitioner Yoselin Suleyma Jimenez-Menendez is the mother of three children. Two of her minor children—a 3-year-old and a 16-year-old—remain in Minnesota.

24. On information and belief, Petitioner Evelyn Vanessa Jimenez-Menendez has exhibited symptoms consistent with diabetes and requires medical evaluation and proper monitoring and care.

25. On information and belief, Petitioners have never been arrested, charged, cited, or convicted of any crime or civil infraction. Petitioners have no criminal history.

26. On January 10, 2026, Petitioners were passengers in a vehicle with other individuals lawfully driving on a road near their home, returning from shopping at a grocery store. On information and belief, without any reasonable suspicion or probable cause to believe any violation of law occurred, and without identifying any alleged violation of law, Respondents' armed agents stopped the vehicle and arrested and detained both Petitioners. Petitioners were processed at Respondents' detention facility in Minnesota, and soon transferred out-of-state to Texas, leaving behind Yoselin Suleyma Jimenez-Menendez's 3-year-old and 16-year-old children.

27. Petitioners are currently in Respondents' custody and, based on the most recent communications with Petitioners' family members and close friends, are detained at the El Paso Processing Center in El Paso, Texas.

LEGAL STANDARD

28. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to by U.S. Courts as "perhaps the most important writ known to the constitutional law of England, 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), *abrogated in part on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977).

29. Under 28 U.S.C. § 2241(c)(3), Petitioners may seek a writ of habeas corpus when their custody violates the U.S. Constitution or a federal law, and their petition should

be granted if the Petitioners meets their burden of proof—a preponderance of evidence. *Villanueva v. Tate*, 801 F. Supp. 3d 689, 696 (S.D. Tex. 2025); *Jamshidiparvar v. Thompson*, No. 25-CV-1326-JKP, 2026 WL 301070, at *2 (W.D. Tex. Feb. 2, 2026).

30. Detained immigrants petitioning under 28 U.S.C. § 2241 face no statutory exhaustion requirements. *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 680–81 (W.D. Tex. 2025).

Due Process

31. “[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).

32. Immigration detention is civil and must “bear[] a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.* at 683; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). “Retribution and deterrence are not legitimate nonpunitive governmental objectives.” *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979).

Asylum and Immigration Detention Framework

33. Congress created asylum as a domestic protection remedy. By statute, only a noncitizen who is “physically present in the United States or who arrives in the United States ... irrespective of such alien’s status” may apply. 8 U.S.C. § 1158(a)(1). There is no statutory mechanism for a person who remains outside the United States to file an

affirmative asylum application with USCIS or to invoke the jurisdiction of an immigration court.

34. The INA reflects a deliberate congressional design: individuals who fear persecution may reach the United States or its border—even without prior authorization—to invoke the asylum process. The statute does not require lawful entry as a prerequisite. To the contrary, it expressly provides that eligibility exists “irrespective of status.” 8 U.S.C. § 1158(a)(1).

35. Section 1226 of the INA applies to the detention of noncitizens who, like Petitioners, are already in the country pending the outcome of removal proceedings. *See Jennings*, 583 U.S. at 289. It is the “default rule” applicable to noncitizens already in the country. *Id.* at 288. Under this default rule, an immigration officer initially determines to either detain or release the noncitizen. If detained, the noncitizen may request a bond hearing before an immigration judge. 8 C.F.R. § 1236.1(c)(8), (d)(1).

36. In contrast, Section 1225 of the INA applies to non-citizens upon entry or “seeking admission.” Under Section 1225(b)(2), detention is considered mandatory and detained individuals are not entitled to a bond hearing unless they are paroled “for urgent humanitarian reasons or significant public benefit” pursuant to 8 U.S.C. § 1182(d)(5)(A). *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1111 (E.D. Cal. 2025) (citing *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025). “Other than this limited exception[,]...detention under § 1225(b)(2) is considered mandatory...[and] [i]ndividuals detained under § 1225 are not entitled to a bond hearing.” *Id.* (quoting *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484, (S.D.N.Y. 2025)).

37. When immigrants are authorized to enter pursuant to 8 U.S.C. § 1182(d)(5)(A), they may enter and remain in the United States as a statutory exception to Section 1225 and its mandatory detention regime. Section 1182(d)(5)(A) provides that “[t]he Secretary of Homeland Security may... in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any [non-citizen] applying for admission to the United States.” Parole under this provision may only be granted where the non-citizen “present[s] neither a security risk nor a risk of absconding.” 8 C.F.R. § 212.5(b).

38. When individuals are allowed entry under parole, it is not a formal “admission,” and the individuals therefore remain “applicants for admission” within the meaning of 8 U.S.C. §§ 1225(a)(1) and 1182(d)(5)(A). However, once these individuals have been paroled, have physically entered the country, and have remained in the country, they are no longer applicants for admission who are actively “seeking admission” for the purposes of Section 1225(b). Such facts are not altered by the legal fiction that parole is not an “admission” within the meaning of 8 U.S.C. § 1225(a). *See Gonzales v. Ortega*, No. 25-CV-1156-JKP, 2025 WL 3471571, at *1, n.1 (W.D. Tex. Nov. 24, 2025) (“The Court recognizes . . . while the phrase ‘mandatory detention’ is often used to describe detention under 8 U.S.C. § 1225(b), the phrase is somewhat of a misnomer[.]”).

39. The plain language of § 1252(b)(2) applies its mandatory-detention provision only where the applicant for admission is “seeking admission.” *See* 8 U.S.C. § 1252(b)(2)(A). “Seeking” is a “present-tense, or current, ongoing action, and varies

materially from the passive state of being an applicant.” *Covarrubias v. Vergara*, No. 25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025).

40. Courts in this district have recognized this distinction and granted habeas relief in similar contexts. *See, e.g., Arias v. Noem*, No. SA-26-CV-415-JB, 2026 WL 255706 (W.D. Tex. Jan. 31, 2026); *Smirnov v. Warden, El Paso Camp East Montana*, Case No. EP-25-CV-669-KC, slip op. at 2 (W.D. Tex. Dec. 23, 2025) (granting habeas petition based on due process violation when immigrant was paroled and released into the country); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025) (granting habeas petition in part by ordering bond hearing or release based on procedural due process violation).

41. Petitioners are not “seeking admission,” nor have they ever been classified as “arriving aliens.” They were released on their own recognizance more than 20 months ago. Since then, they have been in the United States. They have been granted work authorization, completed all required check-ins with immigration officials, have never missed a check-in, and have not violated any law nor been convicted of any crime. They filed claims for asylum, which remain pending, and are waiting for their next hearing. There is no basis for a redetermination of custody or for detaining Petitioners.

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment Procedural Due Process

Respondents are Confining Petitioners without a Valid Legal Basis or any Semblance of Due Process.

42. Petitioners reallege and incorporate by reference the allegations contained above.

43. The Constitution establishes due process rights for all “persons” within the United States, including noncitizens, whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas*, 533 U.S. at 693.

44. Even if this Court were to conclude that Petitioners are subject to mandatory detention under Section 1225, the inquiry does not end there. The Due Process Clause applies regardless of whether a noncitizen’s presence is lawful, unlawful, temporary, or permanent—and regardless of whether detention is purportedly authorized by Sections 1225 or 1226. *Id.*; *Hernandez*, 872 F.3d at 990 (“[I]t is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority.”). A noncitizen’s interest in freedom from physical restraint is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

45. 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. Here, all three factors favor the Petitioners.

46. First, Petitioners have 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."). Petitioners are wrongfully confined, representing a direct attack on Petitioners' liberty interests. Petitioners' liberty interest is heightened here: Petitioners were affirmatively paroled into the United States and released on their own recognizance. They have lived here for more than one year—building stability, relationships, and reliance on the government's own decision to release them—only to be seized and re-detained without warning and without any individualized explanation. Under these circumstances, Petitioners plainly possess a constitutionally protected interest in remaining free from arbitrary confinement. Petitioners' liberty interest is further heightened in light of Petitioner Evelyn Vanessa Jimenez-Menendez's medical condition that is consistent with diabetes and may require medical evaluation and monitoring.

47. Where, as here, a noncitizen is initially released on parole and later re-detained, Courts have repeatedly recognized that such individuals possess a protected

liberty interest in remaining out of custody. *See Pinchi v. Noem*, 792 F. Supp. 3d 1015, 1025, 1032–33 (N.D. Cal. 2025) (collecting cases); *Tesara v. Wamsley*, No. C25-1723-KKE-TLF, 2025 WL 3288295, at *4 (W.D. Wash. Nov. 25, 2025) (holding that mandatory detention under § 1225(b), without consideration of noncitizens’ deep financial, community, and familial ties, raises serious constitutional concerns) (citing *Salgado v. Mattos*, No. 2:25-cv-01872-RJB-EJY, 2025 WL 3205356, at *20 (D. Nev. Nov. 17, 2025)); *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *4 (S.D. Cal. Nov. 25, 2025) (explaining that where re-detention violates due process, the choice between Sections 1225 and 1226 is not before the court because detention is improper regardless of which statute applies); *Rodriguez-Acurio v. Almodovar*, No. 25-CV-6065 (NJC), 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025).

48. Second, the risk of erroneous deprivation is extraordinarily high. Petitioners were re-detained without any individualized assessment, without notice, and without an opportunity to be heard. Respondents’ position treats parole as meaningless and permits liberty to be withdrawn at any moment based solely on shifting policy, rather than on facts particular to the individual. Courts have recognized that such regime creates an intolerable risk that people who pose no danger and no flight risk will be needlessly incarcerated. *See Tesara*, 2025 WL 3288295, at *4; *Pinchi*, 792 F. Supp. 3d at 1032–33.

49. Third, Respondents’ interest in continued civil detention is minimal. Petitioners pose no safety threat to the community. They have no criminal history and have been living in Minnesota without issue for more than a year. Petitioners are already in removal proceedings, subject to the Immigration Court’s jurisdiction, and fully available

for supervision through less restrictive means. Respondents previously concluded that Petitioners could safely remain at liberty. Re-detaining them without individualized justification does not meaningfully advance any legitimate governmental objective; it merely imposes confinement for confinement's sake. Releasing Petitioners, or at a minimum holding a bond hearing, would in fact *save* the government the resources and expense of continued detention.

50. Accordingly, even assuming *arguendo* that Section 1225 governs, Petitioners' continued detention without individualized process violates the Due Process Clause. Mandatory detention cannot be wielded as a blunt instrument to extinguish liberty where the Constitution demands reasoned, person-specific justification.

51. Moreover, Petitioners' detention is punitive because it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, there is every indication that Petitioners' detention is not to facilitate removal, or protect against risk of flight or dangerousness, but for the purpose of "sending a message" that other immigrant families and parents must cooperate with ICE or self-deport or risk having their children detained or separated from them.

52. Because Petitioners' continued detention violates their constitutional rights to due process guaranteed in the Fifth Amendment, this Habeas Petition should be granted and Petitioners immediately released.

COUNT TWO

Fifth Amendment Substantive Due Process

Petitioner's Ongoing Detention Violates Their Fifth Amendment Rights to Substantive Due Process.

53. To comply with the Due Process Clause, detention must always bear “some reasonable relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).

54. Petitioners’ detention violates their substantive right to due process because it does not further the two legitimate purposes for immigration detention. *Zadvydas*, 533 U.S. at 690.

55. The only legitimate purposes, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person’s attendance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Id.* at 690–91 (finding that immigration detention is justified in two scenarios: (1) ensuring a noncitizen’s appearance during removal proceedings and (2) preventing danger to the community).

56. Here, there is no legitimate purpose for Petitioners’ detention. First, Petitioners pose no flight risk because there is no reason to believe that Petitioners would not attend immigration check-ins or proceedings. Petitioners have reliably complied with all required check-ins. Petitioners have made a life in Minnesota, living and working there with authorization for more than a year. Second, Petitioners pose no safety threat to the community. Petitioners have not violated any law nor been convicted of any crime.

57. Petitioners' continued detention is unrelated to the purposes justifying it as a constitutional matter, and therefore contravenes the fundamental Due Process protections in the Fifth Amendment of the Constitution and is causing Petitioners substantial and irreparable harm.

COUNT THREE

Fourth Amendment

Respondents Arrested Petitioners and Continue to Detain Them without a Valid Legal Basis in Violation of Petitioners' Fourth Amendment Rights

58. Petitioners reallege and incorporate by reference each and every allegation contained above.

59. An immigration officer's authority to make a warrantless arrest of a noncitizen is limited. 8 U.S.C. § 1357(a); *Arizona v. United States*, 567 U.S. 387, 408 (2012). An immigration officer may only make a warrantless arrest when the officer "has reason to believe that the individual 'is in the United States in violation of [the immigration laws]' and 'is likely to escape before a warrant can be obtained for his arrest.'" *Ramirez Ovando v. Noem*, --- F. Supp. 3d ---, 2025 WL 3293467, at *2 (D. Colo. Nov. 25, 2025) (citing 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii)). "[R]eason to believe" is "the equivalent of the constitutional requirement of probable cause." *Id.* (collecting cases).

60. "The Fourth Amendment requires that immigration stops must be based on reasonable suspicion of illegal presence, stops must be brief, arrests must be based on probable cause, and officers must not employ excessive force." *Trump v. Illinois*, 146 S.Ct.

432, 436 n. 4 (2025) (Kavanaugh, J., concurring). “Moreover, the officers must not make interior immigration stops or arrests based on race or ethnicity.” *Id.*

61. Petitioners’ detention violates their Fourth Amendment rights because the officers arresting them had no reasonable suspicion of illegal presence or probable cause for their arrest at the time.

62. An arrest in violation of the Fourth Amendment is grounds for habeas relief. *See Garrison G., v. Bondi, et al.*, No. 26-CV-172 (JMB/DJF), 2026 WL 157677, at *4 (D. Minn. Jan. 17, 2026).

63. Because Petitioners’ arrest and detention was made in violation of their Fourth Amendment rights, they must be released immediately.

COUNT FOUR

Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)

Petitioners’ Ongoing Detention Pursuant to 8 U.S.C. § 1225(b)(2) is Unlawful because Petitioners are not “Arriving Aliens” or Seeking Admission and therefore cannot be held under that Authority

64. Petitioners reallege and incorporate by reference each and every allegation contained above.

65. Respondents are violating the Immigration and Nationality Act by attempting to apply mandatory detention, through 8 U.S.C. § 1225(b)(2), to Petitioners. At the time they were re-detained, Petitioners were nowhere near the border and were not “arriving aliens” or “seeking admission.”

66. Section 1225 governs the threshold act of inspection—what happens at the border before a non-citizen is permitted to enter. Section 1226 governs custody inside the

United States, after entry has occurred and removal proceedings are underway. Petitioners were formally paroled into the United States, and have lived in the country for more than a year. Under these circumstances, any re-detention is governed by Section 1226, not Section 1225.

67. Respondents' theory converts the meaning of "seeking admission" from a description of a moment in time to some form of a permanent legal identity. The INA does not permit that transformation. "Seeking" is an event, not a lifelong condition. Once DHS exercised its discretion to parole Petitioners into the United States, Petitioners no longer fit within the categories in Section 1225 and therefore must fit only within Section 1226.

68. Respondents authorized Petitioners to enter and remain in the United States as a statutory exception to Section 1225 and its mandatory detention requirements. *See* 8 U.S.C. § 1182(d)(5)(A); *see* Ex. A.

69. Parol is not a hollow gesture. It is a substantive statutory determination that the individual may enter and remain in the United States and that the person presents neither a security risk nor a risk of flight. Those findings are fundamentally incompatible with the premise of mandatory detention. Respondents cannot conclude that Petitioners are appropriate for humanitarian parole and later assert that Congress commands their automatic detention as if they were still standing at the border. Such an approach would render parole under Section 1182(d)(5)(A) meaningless—granting presence one day while reserving the power to resurrect border detention at any time, long after entry.

70. Petitioners are not "seeking admission" in any ordinary or statutory sense, and therefore Section 1225(b)(2)'s mandatory detention regime has no application here.

Respondents' attempt to impose it is ultra vires and violates the Immigration and Nationality Act. Petitioners' continued detention is unlawful, and they should be released

71. Because Petitioners' continued detention violates their statutory rights, this Habeas Petition should be granted and Petitioners immediately released.

COUNT FIVE

Administrative Procedure Act, 5 U.S.C. § 706

Detaining Petitioners Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225(b)(2) violates the Administrative Procedure Act

72. Petitioners re-allege and incorporate by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

73. 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).

74. 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).

75. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *F.C.C. v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

76. Respondents' detention of Petitioners was contrary to the agency's constitutional power under the Fourth and Fifth Amendments, as explained in Count 1 through Count 3.

77. Respondents' detention of Petitioners was also not in accordance with the INA and implementing regulations governing detention insofar as none of the statutes that authorize Respondents to detain non-citizens are implicated by the facts and circumstances of Petitioners' case, as explained in Count 4.

78. Nonetheless, DHS has adopted a policy and practice of applying § 1225(b)(2) to Petitioners and others in the same position.

79. Respondents, through their recent administrative decision, failed to articulate any reasoned explanations for new interpretation of the Act. DHS's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and long-standing administrative precedent.

80. Accordingly, Petitioner's detention should be held unlawful and set aside because it was (1) arbitrary, capricious, and not otherwise in accordance with law, *see* 5 U.S.C. § 706(2)(A); (2) contrary to the agency's constitutional authority, *see id.* § 706(2)(B); and (3) not in accordance with the INA and implementing regulations, *see id.* § 706(2)(D).

REMEDY

81. An available remedy for Respondents' unlawful conduct as outlined in this complaint is for Petitioners to be released.

82. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose, and there is no indication that Petitioners’ detention was based on any facts that might indicate that Petitioners should be in custody for some reason.

83. Section 1225 does not apply to noncitizens who are in Petitioners’ situation—those who are not currently present at the border seeking physical entry at the time of detention, who have been released on their own recognizance, and who are residing within the United States while seeking lawful status—as opposed to those who are detained while in the process of physically entering the United States. *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Mendoza Euceda v. Noem*, No. SA-25-CV-01234-OLG, slip op. at 6–7 & nn. 2–3 (W.D. Tex. Nov. 17, 2025) (collecting cases); *Granados v. Noem*, No. SA-25-CA-1464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Pineda v. Noem*, No. SA-25-CA-1518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025); *Perez v. Noem*, No. SA-25-CA-01534-XR, 2025 WL 3654262 (W.D. Tex. Dec. 5, 2025); *Alvarez v. Noem*, No. 26-CV-0013-JKP, 2026 WL 93972 (W.D. Tex. Jan. 9, 2026); *see also Rodriguez-Acurio v. Almodovar*, No. 25-CV-6065 (NJC), 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025).

84. When a habeas petitioner’s detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the “typical remedy” for “unlawful executive detention”).

85. Further, detention under § 1226(a) requires a warrant issued by the Attorney General. 8 U.S.C. § 1226(a). Upon information and belief, Respondents had no such warrant. Absent a warrant, a noncitizen may not be arrested and detained under Section 1226. *See, e.g., Chogllo Chafila v. Scott*, --- F. Supp. 3d ---, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025).

86. Upon information and belief, no warrant has been issued by the Attorney General for the arrest and detention of Petitioners. Therefore, if the Court rules that Petitioners should have been detained pursuant to Section 1226, instead of Section 1225, then the remedy is outright release.

PRAYER FOR RELIEF

Accordingly, Petitioners respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days absent good cause for a short extension, and set the matter for prompt hearing;
- 3) Order Respondents to release Petitioners immediately during the pendency of these proceedings so that they do not have to await for this relief while in custody;
- 4) In the alternative, immediately enjoin and restrain Respondents from transferring or removing Petitioners from the jurisdiction of this District pending these proceedings;

- 5) Declare that Petitioner's arrest and continued detention violate the Fifth Amendment of the U.S. Constitution, the Fourth Amendment of the U.S. Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act;
- 6) Grant the writ of habeas corpus and order Petitioners' immediate release from ICE custody;
- 7) In the alternative, order an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention;
- 8) In the alternative, grant bail pending the conclusion of the habeas review; *see, e.g., Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, WL 1118718 (W.D. Tex. Apr. 28, 2004) (granting bail where the applicant does not pose a risk of flight or danger, and finding that such relief is necessary to "give effect to the requested habeas relief");
- 9) Award Petitioners costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, *see Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025), and on any other basis justified under law; and
- 10) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Dated: February 6, 2026

/s/ Robert Painter

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* *Pro Hac Vice Applications Forthcoming*

Attorneys for Petitioners

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant, the undersigned certifies and states that the true and correct copies of this Petition for Writ of Habeas Corpus, with Exhibits (4 pages) will be served upon all counsels of record via the online CM/ECF system, on or before February 6, 2026.

/s/ Robert Painter
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