UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

YITZELKA MENDOZA-GOMEZ

Petitioner

V. Case No. **1:26-cv-831**

Agency File [redacted]

WARDEN, Denver Contract Detention Facility;

FIELD OFFICE DIRECTOR, Denver Field Office,
U.S. Immigration and Customs Enforcement,;

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The petitioner, Yitzelka Mendoza-Gomez, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Yitzelka Mendoza-Gomez is in the physical custody of Respondents at the Denver Contact Detention Facility (ICE) located at 3130 N. Oakland St., Aurora, Colorado, 80010. She is unlawfully detained pursuant mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR).
2. Petitioner has been detained by U.S. Immigration and Customs Enforcement ("ICE") since February 10, 2026, without a bond hearing.

3. Petitioner is currently in §1229a removal proceedings with the next hearing scheduled for March 5, 2026.
4. Prolonged detention under § 1226 (a) or §236(a) without an individualized custody determination violates the Immigration and Nationality Act, its implementing regulations, and the Due Process Clause of the Fifth Amendment.
5. Petitioner seeks immediate release or, at a minimum, a constitutionally adequate bond hearing before a neutral adjudicator.
6. While the petitioner's detention is pursuant to 8 U.S.C. § 1226, the respondents are treating her otherwise under 8 U.S.C.§ 1225.
7. Petitioner is charged with having entered the United States without admission or parole at or near Eagle Pass, Texas in December 2023. See 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation, DHS and EOIR deem Petitioner subject to mandatory detention as an "applicant for admission" who is "seeking admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
8. DHS has adopted and EOIR has applied an interpretation of nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A).

9. Petitioner's detention based on § 1225(b)(2) 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. Indeed, § 1226(a) expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without admission or parole.

10. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring her release unless the respondents provide a new bond hearing under § 1226(a) within fourteen days.

JURISDICTION

11. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 et seq., Title 8 of the Code of Federal Regulations.

12. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

13. The Court has authority to grant relief under 28 U.S.C. § 2241 and its inherent habeas powers.

VENUE

14. Venue is proper in this district under 28 U. S. C. §§ 1391(e)(1) & 2241 because: (1) "a substantial part of the events or omissions giving rise to the

claim occurred" in this district; and (2) this is the district where the "the custodian can be reached by service of process." *Montez v. McKinna, 208* F.3d 862, 865 (10th Cir. 2000).

15. Additionally, the Petitioner is being held in the custody of the respondents in this district.

PARTIES

16. Petitioner, **Yitzelka Mendoza-Gomez**, is a citizen of Panama. She was present in the United States as a result of entering the United States sometime around the end of 2023, via the border, was encountered then released and was only recently re-arrested and placed in detention by the respondents. She is being held in ICE custody at the at the Denver Contact Detention Facility (ICE) located at 3130 N. Oakland St., Aurora, Colorado, 80010, under the jurisdiction of the respondents.

17. Respondent, **Warden**, Denver Contact Detention Facility (ICE) located at 3130 N. Oakland St., Aurora, Colorado, 80010, is sued in his or her official capacity. In this capacity, the Warden has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

18. Respondent, **Field Office Director,** Denver, CO Sub-Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner

EXHAUSTION OF REMEDIES

19. Exhaustion is not jurisdictionally required for Petitioner's habeas claim. The Tenth Circuit has made clear that 28 U.S.C. § 2241 "does not contain an explicit exhaustion requirement," and that any exhaustion doctrine in this context is judicially created and prudential rather than statutory or jurisdictional. *Garza v. Davis,* 596 F.3d 1198, 1203 (10th Cir. 2010)("A narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is futile"). Accordingly, courts retain discretion to excuse exhaustion where appropriate. See also *McCarthy v. Madigan,* 503 U.S. 140, 144 (1992) (requiring courts to weigh the institutional interests in exhaustion against the individual interests in prompt judicial review).

20. Exhaustion is particularly unwarranted where no administrative mechanism exists that can provide the relief sought. Because the habeas petition challenges the legality and authority for detention itself, rather than an issue committed to agency discretion, there is no statute, regulation, or binding administrative procedure capable of granting the relief requested, rendering exhaustion futile and unnecessary under Tenth Circuit prudential principles. *See Garza v. Davis,* 596 F.3d at 1203. (recognizing courts may excuse exhaustion where remedies are inadequate or futile).

21. Moreover, administrative exhaustion is not required where the claim falls outside the agency's competence, such as constitutional challenges or questions of statutory authority. The Tenth Circuit has recognized that the administrative exhaustion requirement applicable in immigration review

statutes does not bar review of issues the agency lacks authority to decide, including constitutional claims. *McIntosh v. U.S. Parole Comm'n,* 115 F.3d 809, 811 (10th Cir. 1997) ("The fundamental purpose of a § 2241 habeas proceeding…they are "an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody").

22. Because the Board of Immigration Appeals cannot adjudicate the validity of statutes or resolve certain constitutional challenges, those claims need not be exhausted before seeking habeas relief in federal court.

23. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush,* 553 U. S. 723, 783 (2008).

REQUIREMENTS OF 28 U.S.C. § 2243

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

25. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the

calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Johnson v. Rogers,* 917 F.2d 1283, 1284 (10th Cir. 1990). See also *Yong v. I.N.S.,* 208 F. 3d 1116, 1120 (9th Cir. 2000)(citation omitted).

FACTUAL ALLEGATIONS

26. Yitselka Mendoza-is a native and citizen of Panama.
27. Ms. Mendoza-Gomez initially entered the U.S. in 2023 without inspection or admission at or around Eagle Pass, Texas.
28. She was processed and issued a Notice to Appear (charging document) and released on her own recognizance on December 17, 2023.
29. Ms. Mendoza-Gomez has a pending asylum claim that was timely filed and has a case pending in the immigration court with next hearing date of March 5, 2026.
30. Ms. Mendoza-Gomez has no criminal history.
31. She attended five ICE appointments as required, she was scheduled for a February 9, 2026 appointment which was cancelled for severe weather conditions, was rescheduled for the next day where she was detained upon arrival.
32. Some two years after her entry and release, the petitioner was encountered by immigration officials and has been detained since.
33. The respondents (as well as the immigration judges) are refusing to acknowledge that the petitioner is not subject to mandatory detention and the immigration judges are refusing to take jurisdiction.

LEGAL FRAMEWORK

8 U.S.C. § 1225 & §1226

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

35. First, 8 U.S.C. § 1225 mandates detention of noncitizens during the inspection phase when determining whether to place the alien into removal proceedings.

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

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

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

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

40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

41. Thus, in the decades that followed, most people who entered without admission or parole 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)).

42. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

43. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a

person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

44. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado.* There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

45. Numerous federal courts have rejected Respondents' new interpretation of the INA's detention authorities.

46. In fact, on February 18, 2026, a district court in California vacated the Matter of Yajure-Hurtado, however, immigration judges in some parts of the United States are still declining to take jurisdiction. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026) vacating *Matter of Yajure-Hurtado* nationwide under APA.

47. Even before the vacatur of *Yajure Hurtado*, court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy and EOIR's new interpretation. See, e.g., *Rodriguez Vazquez v. Bostock,* 779 F. Supp. 3d 1239 (W.D. Wash. 2025)*; v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde,* No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa,* No. CV 25-02157, PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis,* No. 25 CIV.

5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump,* No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi,* No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft,* No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025*); Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft,* No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde,* No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump,* No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same);

Anicasio v. Kramer, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

48. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioners.

49. Subsection 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. 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,* 779 F. Supp. 3d at 1257 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

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

52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or 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).

53. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like the petitioner, who have already entered and were residing in the United States at the time they were apprehended.

CLAIMS FOR RELIEF

COUNT I:
Unlawful Detention in Violation of Due Process

54. The allegations in paragraphs 1-53 are realleged and incorporated herein.

55. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *See also Demore v. Kim,* 538 U.S. 510 (2003).

56. The petitioner has a fundamental interest in liberty and being free from official restraint.

57. The government's detention of the petitioner without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates their right to due process.

58. Detention without an individualized determination is unconstitutional unless justified by special circumstances.

59. Therefore, the petitioner is entitled to a writ of habeas corpus granting her a bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk.

COUNT II:
Violation of the Immigration and Nationality Act

60. The allegations in paragraphs 1-53 are realleged and incorporated herein.

61. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

62. Where two statutes govern detention, government must use the correct one. *Jennings v. Rodriguez,* 583 U.S. 281 (2018)

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

PRAYER FOR RELIEF

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

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;

(c) Issue a writ of habeas corpus declaring that Petitioner is detained under §1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to petitioner;

(d) Order the Respondents to refrain from transferring the Petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the Petitioner remains in the Respondents' custody;

(e) Alternatively, grant the petitioner a writ of habeas corpus ordering that the petitioner be afforded bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk;

(f) Award petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(g) Grant any other and further relief that the Court deems just and proper.

Dated March 2, 2026

/s/Bonnie Smerdon
Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway

Cudjoe Key, FL 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com

Attorney for Petitioner

VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Yitselka Mendoza-Gomez based on discussions with her and review of the record. On the basis of these discussions and reviewing the record, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 2, 2026

/s/Bonnie Smerdon
Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway
Cudjoe Key, FL 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com

Attorney for Petitioner