

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Kelin Lebroc Banarez Banarez,
Agency No. 

Petitioner,

v.

Nikita Baker,
in her official capacity as Field Office
Director, Baltimore Field Office, U.S.
Immigration and Customs
Enforcement, U.S. Department of
Homeland Security;

Kristi Noem,
in her official capacity as Secretary,
U.S. Department of Homeland
Security; and

Pamela Bondi,
in her official capacity as Attorney
General, U.S. Department of Justice;

Respondents.

Civil Action No. 1:26-cv-951

Petition for Writ of Habeas Corpus
Pursuant to 28 U.S.C. § 2241

INTRODUCTION

1. Kelin Lebroc Banarez Banarez (“Petitioner” or “Ms. Banarez Banarez”) respectfully petitions for a writ of habeas corpus. Ms. Banarez Banarez, a native of Chile, was brought into the United States as a thirteen- or fourteen-year-old in or around May 2000. She has resided in the United States since her initial entry, building significant community here. Ms. Banarez Banarez has multiple U.S.-citizen children who depend on her, including an eighteen-year-old son who has Type 1 diabetes and a four-year-old who is non-verbal.

2. U.S. Department of Homeland Security (“DHS” or “Department”) officials encountered Ms. Banarez Banarez during a traffic stop on or about March 5, 2026. Upon information and belief, DHS is presently detaining Ms. Banarez Banarez at U.S. Immigration and Customs Enforcement (“ICE”)’s Baltimore Field Office. The Department purportedly holds Mr. Banarez Banarez under its changing interpretation of 8 U.S.C. § 1225(b)(2)(A), a mandatory detention statute.

3. DHS changed its interpretation of Section 1225(b)(2)(A) in 2025. It presently believes that all noncitizens who have not effectuated an “admission,” 8 U.S.C. § 1101(a)(13)(A), into the United States is subject to Section 1225(b)(2)(A)-detention. The Department’s new view departs from decadeslong practice and application of the Immigration and Nationality Act’s (“INA”) detention provisions.

4. The Executive Office of Immigration Review (“EOIR”), which adjudicates immigration matters, recently adopted the same reinterpretation of the immigration detention laws. EOIR held, in *Matter of Yajure Hurtado*, that noncitizens who have entered the United States without inspection are mandatorily detained under Section 1225(b)(2)(A). *See* 29 I. & N. Dec. 216, 228 (BIA 2025). DHS and EOIR’s new interpretation conflicts with the plain language and structure of the immigration detention statutes. It has been widely rejected by district judges around the country, including within this Circuit. *See, e.g., Leal-Hernandez v. Noem*, 803 F. Supp. 3d 409, 421–23 (D. Md. 2025); *Duarte Escobar v. Perry*, 807 F. Supp. 3d 564, 576–81 (E.D. Va. 2025).¹ Respondents’ application of 8 U.S.C. § 1225(b)(2) to Petitioner is contrary to law,

¹ *See also, e.g., Rivas-Muñoz v. Noem*, No. 26-cv-45, 2026 WL 123968, at *1–2 (D. Md. Jan. 16, 2026); *Bautista Villaneuva v. Bondi*, No. 25-cv-4152, 2026 WL 100595, at *1–2 (D. Md. Jan. 14, 2026); *Villanueva Funes v. Noem*, No. 25-cv-3860, 2026 WL 92860, at *4 (D. Md. Jan. 13, 2026); *Afghan v. Noem*, No. 25-cv-4105, 2025 WL 3713732, at *2 (D. Md. Dec. 23, 2025); *Luna Sanchez v. Bondi*, No. 25-cv-18888, 2025 WL 3191922, at *3–4 (E.D. Va. Nov. 14, 2025);

violating both the Immigration and Nationality Act (“INA”) and the Administrative Procedure Act (“APA”).

5. Respondents’ sudden detention of Ms. Banarez Banarez under Section 1225(b)(2)(A) further violates her substantive and procedural due process rights. Respondents’ categorical detention of all noncitizens who are subject to inadmissibility grounds without any individualized hearing lacks a “reasonable relation to the purpose for which the individual was committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Their detention of Ms. Banarez Banarez without any pre-deprivation assessment or showing that Ms. Banarez Banarez presents a flight or danger risk—the only two valid bases for civil immigration detention, *see id.*—violated her substantive due process right to be free from unwarranted custody.

6. Respondents’ detention of Ms. Banarez Banarez also violates her procedural due process right for meaningful procedures to reduce the risk of an erroneous deprivation of her liberty. Each of the *Mathews v. Eldridge* balancing test favors Ms. Banarez Banarez, a noncitizen who has resided in this country for over two decades. *See* 424 U.S. 319, 335 (1976).

7. Ms. Banarez Banarez respectfully requests that this Court issue a writ of habeas corpus and order Respondents to release her from their custody. *See, e.g., Tumba Huamani v. Francis*, --- F. Supp. 3d ---, 2025 WL 3079014, at *8 (S.D.N.Y. Nov. 4, 2025) (granting the

Perez-Gomez v. Warden, Camp East Montana Det. Facility, No. 25-cv-773, 2025 WL 3141103, at *2–4 (E.D. Va. Nov. 10, 2025); *Garcia v. Noem*, No. 25-cv-1712, 2025 WL 3111223, at *2–3 (E.D. Va. Nov. 6, 2025); *Boquin Oliva v. Noem*, No. 25-cv-1592, 2025 WL 3145712, at *2–3 (E.D. Va. Oct. 29, 2025); *Velasquez v. Noem*, --- F. Supp. ---, 2025 WL 3003684, at *3–7 (D. Md. Oct. 27, 2025); *Yobani v. Noem*, No. 25-cv-1666, 2025 WL 2997507, at *2–3 (E.D. Va. Oct. 24, 2025); *Flores Pineda*, 2025 WL 2980729, at *2–3; *Maldonado v. Baker*, No. 25-cv-3084, 2025 WL 2968042, at *5–8 (D. Md. Oct. 21, 2025); *Teyim v. Perry*, No. 25-cv-1615, 2025 WL 2950183, at *2–3 (E.D. Va. Oct. 15, 2025); *Quispe-Ardiles v. Noem*, No. 25-cv-1382, 2025 WL 2783800, at *4–7 (E.D. Va. Sept. 30, 2025); *Luna Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *4–6 (E.D. Va. Sept. 29, 2025).

“‘typical remedy’ for ‘unlawful executive detention,’ which ‘is, of course, release’”) (quoting *Munaf v. Geren*, 553 U.S. 674, 693 (2008)); see also *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[T]he traditional function of the writ is to secure release from illegal custody.”).

PARTIES

8. Petitioner Kelin Lebroc Banarez Banarez is a native of Chile and a longtime resident of the United States. She entered the country in or around 2000, when she was thirteen or fourteen years old. She has lived in this country since, establishing firm community here. DHS encountered Ms. Banarez Banarez during a routine traffic stop on or about March 5, 2026, and took her into immigration detention. Upon information and belief, DHS officials currently detain Ms. Banarez Banarez at the ICE Baltimore Field Office.

9. Respondent Nikita Baker is sued in her official capacity as the Field Office Director of the ICE Baltimore Field Office. She has direct custodianship over Petitioner.

10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. DHS is responsible for administering and enforcing the immigration laws, including decisions to detain noncitizens during the course of their removal proceedings. Secretary Noem has ultimate legal custodianship over Petitioner.

11. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She is responsible for the Department of Justice, including the Executive Office of Immigration Review. EOIR adjudicates individual immigration matters, including in removal and custody proceedings.

JURISDICTION AND VENUE

12. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

13. This Court has subject matter jurisdiction pursuant to Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 2241, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant equitable relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

14. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and those agencies' officers, who are sued in their in their official capacities. 5 U.S.C. § 702.

15. Venue is proper in this District because the Petitioner is detained in Baltimore, Maryland, which is located within this District. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

16. 28 U.S.C. § 2243 instructs courts, sitting in habeas, to either grant a petition for writ of habeas corpus or order respondents to show cause. If an order to show cause is issued, respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

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

STATEMENT OF FACTS

18. Ms. Banarez Banarez came to the United States in or around 2000. She has lived in this country for over two decades and established community here. Ms. Banarez Banarez has multiple U.S.-citizen children who depend on her, including an eighteen-year-old son who has Type 1 diabetes and a four-year-old who is non-verbal.

19. DHS encountered Ms. Banarez Banarez on a routine traffic stop on or about March 5, 2026. Officials took her into custody. Upon information and belief, the Department currently holds Ms. Banarez Banarez at the ICE Baltimore Field Office.

20. Respondents presumably detained Ms. Banarez Banarez under their revised interpretation of the immigration detention statutes; specifically their new view that all noncitizens who have not been “admitted,” 8 U.S.C. § 1101(a)(13)(A), are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

LEGAL FRAMEWORK

I. Section 1226(a) Governs the Detention of People Like Petitioner Who are Detained in the United States and Have Not Previously Been Admitted.

21. The Immigration and Nationality Act contains several provisions authorizing the detention of noncitizens. Title 8 U.S.C. § 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. *See also* 8 C.F.R. § 1236.1(d). Title 8 U.S.C. § 1225(b), meanwhile, mandates the detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for recent arrivals “seeking admission” under (b)(2).

22. The detention provisions at 8 U.S.C. § 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. “Upon

passing IIRIRA, Congress declared that the new Section 1226(a) ‘restates the current provisions in the predecessor statute,’” which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

23. After IIRIRA’s enactment, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under 8 U.S.C. § 1225, and that they were instead detained under 8 U.S.C. § 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) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”).

24. In the decades that followed, most people who entered without inspection and were thereafter arrested by DHS were considered for release on bond. They also received bond hearings before an immigration judge, unless their criminal history rendered them ineligible. *See Leal-Hernandez*, 803 F. Supp. 3d at 422 (finding that DHS and EOIR had “[s]ince at least 1996” determined that “a noncitizen arrested in the interior of the United States . . . is detained under 8 U.S.C. § 1226(a)”). That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

25. Respondents abruptly changed course this past year. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal position and believed that 8 U.S.C. § 1225, not

§ 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025).

26. And on September 5, 2025, the BIA followed suit and issued a precedential decision in *Yajure Hurtado*, holding that noncitizens “who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I. & N. Dec. at 220.

27. The *Yajure Hurtado* interpretation has been soundly rejected by Article III Courts. Judges from all around the country, including from the District of Maryland, have held that people who are present without having been admitted are eligible for bond pursuant to § 1226(a). *See, e.g., Leal-Hernandez*, 803 F. Supp. 3d at 421–23; *see also Demirel v. Fed. Detention Ctr. Philadelphia*, No. 25-cv-5488, 2025 WL 3218243, at *5–13 (listing out 288 cases that have rejected *Yajure Hurtado*); Nate Raymond, Kristian Cooke & Brad Heath, *Courts Have Ruled 4,400 Times That ICE Jailed People Illegally. It Hasn't Stopped.*, Reuters, <https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/> (updated Feb. 17, 2026).

28. As these decisions explain, the BIA’s position in *Yajure Hurtado* defies the INA. The plain text of the statute shows that 8 U.S.C. § 1226(a), not § 1225(b), applies to immigrants like Ms. Banarez Banarez. Section 1226(a) applies by default to all persons “pending a decision on whether the[y] . . . [are] to be removed from the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 8 U.S.C. § 1226(a) as the “default rule” for the detention of noncitizens pending removal).

29. The text of 8 U.S.C. § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from Section 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under Section 1182(6)(A), *i.e.*, persons inadmissible for entering without inspection, 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.” 779 F. Supp. 3d at 1256–57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

30. Under the BIA’s interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Yajure Hurtado*, 29 I. & N. Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(13)(A) (defining an admission). Therefore, this interpretation would render all the grounds of mandatory detention in 8 U.S.C. § 1226(c) applied to inadmissible noncitizens, including the recently passed Laken Riley Act, superfluous. *Gomes v. Hyde*, 804 F. Supp. 3d 265, 275 (D. Mass. 2025); *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”). This statutory structure demonstrates that Congress did not intend to make 8 U.S.C. § 1226(a) inapplicable to all inadmissible noncitizens, but rather viewed it as the default bond provision for people arrested within the United States, as the Supreme Court confirmed in *Jennings*.

31. By contrast, 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who very 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); *see also* *Martinez*, 792 F. Supp. 3d at 222 ("[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.") (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). 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*, 583 U.S. at 287.

32. The government's "interpretation of 'seeking admission' and § 1225(b)(2) would render several provisions of the INA superfluous." *Duarte Escobar*, 807 F. Supp. 3d at 576. Section 1225(b)(2) only applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Duarte Escobar*, 807 F. Supp. 3d at 575. The BIA's interpretation makes all applicants for admission subject to mandatory detention, leaving the "seeking admission" criterion unnecessary and violating the rule against surplusage. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 487 (S.D.N.Y. 2025); *Martinez*, 792 F. Supp. 3d at 217.

33. Instead, the phrase "seeking admission" indicates that 8 U.S.C. § 1225(b)(2)(A) applies to people who are taking "some sort of present-tense action;" in other words, coming or attempting to come into the United States. *Diaz Martinez*, 2025 WL 2084238, at *6; *see also* *Matter of M-C-D-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020) (stating that "the use of the present progressive tense . . . denotes an ongoing process"). Therefore, 8 U.S.C. § 1226(a), not

§ 1225(b)(2)(A), governs the detention of people, like Ms. Banarez Banarez, detained within the United States who are not actively seeking admission, as required by the statute.

34. Finally, as discussed below, the BIA’s interpretation of 8 U.S.C. § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. To the degree that the statute remains ambiguous, the Court should presume that Congress “did not intend the alternative which raises serious constitutional doubts” and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381–82 (2005). Section 1225(b)(2)(A) does not govern Ms. Banarez Banarez’s detention.

II. The BIA’s Application of Mandatory Detention to Noncitizens Like Petitioner Violates Substantive and Procedural Due Process.

35. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “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. *Zadvydas*, 533 U.S. at 690. This fundamental protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

36. Absent adequate procedural protections, substantive due process requires a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; *accord, e.g., Herrera Torralba v. Knight*, 798 F. Supp. 3d 1184, 1199 (D. Nev. 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 25-cv-506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (same); *Luna Quispe*, 2025 WL 2783799, at *7 (same). In the immigration context, the Supreme

Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Zadvydas*, 533 U.S. at 693; *Demore*, 538 U.S. at 528. To withstand constitutional scrutiny, the nature of government-enforced immigration detention must be reasonably related to these purposes.

37. Respondents' detention of Ms. Banarez Banarez without any pre-deprivation assessment of her flight or danger risks violates her substantive due process rights. Because DHS requires a "special justification," *Zadvydas*, 533 U.S. at 690, to engage in civil immigration detention, its failure to provide any justification for detaining Ms. Banarez Banarez was improper. *See, e.g., Kourouma v. Jamison*, No. 26-cv-182, 2026 WL 120208, at *5 (E.D. Pa. Jan. 15, 2026) ("This Court will order the release of Petitioner because he was unlawfully detained."); *Tumba Huamani*, 2025 WL 3079014, at *9 (ordering release after finding "the complete absence of any reason for Petitioner's arrest" by DHS); *Lopez Benitez*, 795 F. Supp. 3d at 499 (ordering release after rejecting the government's "suggestion that [its] agents may sweep up any person they wish, for no reason whatsoever . . . so long as the person will, at some unknown point in time, be allowed to ask some other official for her or her release") (cleaned up).

38. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews*, 424 U.S. at 335, weighing (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural

safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Black v. Decker*, 103 F.4th 133, 147–48 (2d Cir. 2024); *Gayle v. Warden Monmouth Cnty. Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara v. Lyons*, 10 F.4th 19 at 28 (1st Cir 2021); *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Each factor favors providing Ms. Banarez Banarez additional process.

39. First, the “importance and fundamental nature” of an individual’s liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Duarte Escobar*, 807 F. Supp. 3d at 582 (“The interest in being free from physical detention’ is ‘the most elemental of liberty interests.’”) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). For people “who can face years of detention before resolution of their immigration proceedings, ‘the individual interest at stake is without doubt particularly important.’” *Linares Martinez v. Decker*, No. 18-cv-6527, 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018).

40. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the noncitizen “could not maintain employment or see her family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone.” 978 F.3d at 851–52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the noncitizen was incarcerated “alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to maintain her employment.” 10 F.4th at 28. Because Ms. Banarez Banarez has the same core interest in her liberty, the first factor weighs in her favor.

41. Second, Respondents' blanket detention of all inadmissible noncitizens creates a large risk of erroneous deprivation. Particularly, it has led and continues to lead to the detention of many—like Ms. Banarez Banarez—who the government cannot prove to be a flight risk or a danger to the community. *See, e.g., Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187–88 (D. Minn. 2025) (noting that lack of consideration of “individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals’ private rights”); *Duarte Escobar*, 807 F. Supp. 3d at 583 (finding in the noncitizen’s favor on the second factor because the noncitizen “ha[d] not received even the *baseline* amount of process due to him regarding his detention status”) (emphasis in original). Ensuring Respondents conduct a pre-deprivation assessment prior to the detention of those, like Ms. Banarez Banarez, who have been in the United States for decades strikes the proper procedural balance. The second factor therefore weighs in Ms. Banarez Banarez’s favor.

42. Finally, the burden on Respondents to conduct pre-deprivation reviews is not a large burden. They need only conduct an individualized assessment of Ms. Banarez Banarez’s circumstances prior to detention. Such a burden serves—not hampers—the government’s interest because the government has an interest in “minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted).

The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings. The third factor therefore weighs in affording Ms. Banarez Banarez additional procedural protections.

43. Given Respondents did not conduct any pre-deprivation assessment of Ms. Banarez Banarez's risks prior to her re-detention, she merits release. *See, e.g., Kourouma*, 2026 WL 120208, at *5 (“This Court will order the release of Petitioner because he was unlawfully detained.”).

44. If, alternatively, this Court orders for a bond hearing, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 (“[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof.”). Such a “standard of proof serves to [properly] allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision.” *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020) (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Multiple circuits have long ordered for the government to bear a clear and convincing burden at a constitutionally mandated bond hearing. *See, e.g., German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 224 n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022); *Hernandez-Lara*, 10 F.4th at 39–40; *Velasco Lopez*, 978 F.3d at 855–56. Any assessment of custody should include consideration of alternatives to detention and ability to pay. *See, e.g., Black*, 103 F.4th at 155.

45. Should this Court order for a bond hearing, it should preside over such a hearing rather than assign it to an EOIR administrative judge. *See Swann v. Charlotte Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (“[T]he scope of a district court’s equitable powers to remedy past

wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”); *see also Zadvydas*, 533 U.S. at 700 (authorizing federal courts to “condition[]” a noncitizen’s release “on any of the various forms of supervised release that are appropriate in the circumstances.”). A hearing before an immigration judge does not provide a sufficient assurance of neutrality. Immigration judges, who serve at the pleasure of the U.S. Attorney General—a respondent in this matter—have been removed from service for not following the Executive’s deportation goals. *See, e.g., Joshua Goodman, Military Lawyer Swiftly Fired from Immigration Bench After Defying Trump Deportation Push*, Times Union (updated Dec. 19, 2025), <https://www.timesunion.com/news/politics/article/military-lawyer-swiftly-fired-from-immigration-21252504.php>. And they have continued to contest whether they are bound to follow federal court orders requiring them to consider noncitizens for release on bond. *See Nate Raymond, Top US Immigration Judge Says Bond Hearings Should Be Denied Despite Court Rulings, Documents Show*, Reuters, <https://www.reuters.com/legal/government/top-us-immigration-judge-says-bond-hearings-should-be-denied-despite-court-2026-01-16/> (updated Jan. 16, 2026).

FIRST CLAIM FOR RELIEF
Violation of the Immigration and Nationality Act
Unlawful Application of Mandatory Detention Provision

46. Petitioner re-alleges and incorporates by reference the above paragraphs.

47. 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 grounds of inadmissibility. Specifically, it does not apply to Ms. Banarez Banarez, who has been living in the United States since 2000, for over two decades prior to her detention in March 2026.

48. Ms. Banarez Banarez was not “seeking admission” in 2026. At the time of her detention, she was no longer engaged in that “present-tense action.” *Martinez*, 792 F. Supp. 3d at 218. She therefore no longer met the requirements of Section 1252(b)(2)(A).

49. Respondents’ unlawful and arbitrary application of 8 U.S.C. § 1225(b)(2) to Ms. Banarez Banarez violates the INA.

SECOND CLAIM FOR RELIEF
Violation of the Administrative Procedure Act
Agency Policy and Practice is Arbitrary, Capricious, and Contrary to Law

50. Petitioner re-alleges and incorporates by reference the above paragraphs.

51. 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 grounds of inadmissibility. Specifically, it does not apply to Ms. Banarez Banarez, who has been living in the United States since 2000.

52. In taking a contrary position, Respondents have reversed decades of prior practice and attempted to “expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application.” *Lopez Benitez*, 795 F. Supp. 3d at 490. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the immigration detention policy; and have offered explanations for their decisions that run counter to the evidence before the agencies.

53. 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). Respondents’ application of 8 U.S.C. § 1225(b)(2) to Ms. Banarez Banarez is arbitrary, capricious, and not in accordance with law. It should be set aside.

THIRD CLAIM FOR RELIEF
Violation of the Fifth Amendment Due Process Clause
Detention Without Any Relation to Limited Goals of Civil Immigration Detention Violates
Substantive Due Process

54. Petitioner re-alleges and incorporates by reference the above paragraphs.

55. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Substantive due process requires that immigration detention be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

56. Respondents’ detention of Ms. Banarez Banarez without any consideration of her particular flight or danger risks bears no relation to the limited goals of immigration detention. Their detention of Ms. Banarez Banarez—a noncitizen who has resided in this country for more than twenty-five years—violates her substantive right to be free from unjustified government detention.

FOURTH CLAIM FOR RELIEF
Violation of the Fifth Amendment Due Process Clause
Detention Without Any Procedures to Limit Erroneous Deprivation of a Core Private
Right Violates Procedural Due Process

57. Petitioner re-alleges and incorporates by reference the above paragraphs.

58. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Courts

apply the *Mathews* balancing test to determine what procedural protections the due process clause requires. *Leal-Hernandez*, 803 F. Supp. 3d at 426–28.

59. The first factor is the private interest that will be affected by the official action. *Id.* The deprivation of Ms. Banarez Banarez’s liberty is a particularly weighty interest. *See Morrissey*, 408 U.S. at 482 (describing the substantial private interest in remaining out of custody, which “enables [one] to do a wide range of things open to persons” who are free from custody).

60. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Respondents’ blanket application of Section 1225(b)(2)(A) to all noncitizens who have not been admitted creates great risk of unnecessary detention because their interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Duarte Escobar*, 807 F. Supp. 3d at 583. Respondents’ procedures—or lack thereof—create an erroneously high risk of wrongly depriving those, like Ms. Banarez Banarez, their protected interest in being free from government custody.

61. The final factor is the government’s interest and burden in providing additional procedures. *Id.* The government has no legitimate interest in detaining those like Ms. Banarez Banarez when detention is not necessary to ensure her appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond could serve those same purposes. *Hernandez-Lara*, 10 F.4th at 32–33; *see also Ousman D. v. Decker*, No. 20-cv-9646, 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (holding that due process requires consideration of less restrictive alternatives to detention that would address the government’s legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241–42 (W.D.N.Y. 2019) (same). Affording noncitizens pre-deprivation review of their flight or danger risks presents a minimal burden and

serves the government's interest in ensuring only those individuals that need to be detained are detained. *See Velasco Lopez*, 978 F.3d at 857 (the government "has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to her community" and the public has an "interest in seeing that individuals who need not be jailed are not incarcerated"). Respondents' detention of Petitioner without any assessment of whether that detention is necessary violates procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue an order administratively staying Respondents from transferring Petitioner outside of this Court's geographic jurisdiction pending the Court's adjudication of the petition;²

² Petitioner requests a stay of her transfer to ensure that should this Court grant him relief, she may quickly and reasonably access such relief.

At a recent show cause hearing, Judge Jerry W. Blackwell of the U.S. District Court for the District of Minnesota outlined the collateral difficulties of acquiring adequate government compliance if the government transfers a noncitizen outside of the habeas court's jurisdiction. He explained that it takes "repeat, after repeat, after follow-up, after follow-up with the Government" to receive information and procure a noncitizen's return. Tr. of Show Cause Hr'g, ECF No. 19, *Segundo A.P.G. et al. v. Bondi*, No. 26-cv-603 (D. Minn. Feb. 3, 2026), at 11. And he traced the difficulty in prescribing adequate remedies, describing:

For example, if we say, release the person immediately, then we learn that, having transported [the noncitizen] to El Paso or New Mexico, [the government] do[esn't] bring him back. We learn that somebody is put out on the street with just the clothes on their backs and have to figure out how to get back here when they should not have been arrested here in the first place, let alone flown halfway across the continent of North America. And have to – so now we have to address that. We have to say, bring them back.

And then we say, all right, so you brought them back. We can't have them released when it's minus 14 outside. And so now we have to address that. Don't release them in the circumstances that might endanger their health or safety.

- 3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 4) Issue a Writ of Habeas Corpus and order Petitioner's immediate release from custody;
- 5) In the alternative, conduct a custody hearing at which Respondents must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;
- 6) Grant such further relief as the Court deems just and proper.

And so once that's addressed, then we learn they've been released, but now conditions have been imposed. That somebody who should not have been arrested in the first place is now being told, you're going to be released if you wear an ankle monitor, which the Court didn't order because the person was unlawfully detained in the first place. Then we have to go back and address that now.

Id. at 33–34.

Respectfully submitted,

/s/ Christopher M. Casazza

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Pro Bono Counsel for Petitioner

DATED: Mar. 5, 2026
Philadelphia, PA

Certification Pursuant to Local Standing Order
2025-01

I, the undersigned, hereby certify pursuant to Fed. R. Civ. P. 11, as follows:

(1) I understand the Petitioner to be presently detained in Maryland, based on the fact that Petitioner was arrested by ICE in Maryland today;

(2) emergency relief is necessary, because Petitioner is at risk of unlawful removal from the United States; and

(3) this Court has subject-matter jurisdiction over the Petitioner pursuant to 28 U.S.C. § 2241, and no jurisdiction-stripping statute applies to prevent habeas corpus review of detention and unlawful removal.

Respectfully submitted,

Date: March 5, 2026

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