UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LISSIE MILAGRO VIATORO PEREZ,
Baltimore Hold Room, ICE Enforcement and Removal Operations, 31 Hopkins Plz., 6th Fl., Baltimore, MD 21201
A# [redacted]

Petitioner,

v.

VERNON LIGGINS, *in his official capacity as Acting Field Office Director for Detention & Removal*, U.S. Immigration and Customs Enforcement, 31 Hopkins Plz., 6th Fl., Baltimore, MD 21201;

TODD LYONS, *in his official capacity as Director*, U.S. Immigration and Customs Enforcement, 500 12th St. SW, Washington, DC 20536;

MARKWAYNE MULLIN, *in his official capacity as Secretary*, U.S. Department of Homeland Security, Washington, DC 20528; and

TODD BLANCHE, *in his official capacity as Acting Attorney General of the United States*, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Lissie Milagro Viatoro Perez (hereinafter "Ms. Viatoro Perez"), a native and citizen of Honduras, with Alien Registration Number [redacted], petitions this Court for a Writ of Habeas Corpus, 28 U.S.C. § 2241, to challenge her continued custodial detention by the United States Department of Homeland Security ("DHS"), through its component arm, United States Immigration and Customs Enforcement ("ICE").

2. Ms. Viatoro Perez challenges Respondents' erroneous assertion that she is subject to mandatory detention under 8 U.S.C. § 1225(b). That assertion is premised on Respondents' July 2025 reinterpretation of the detention provisions of the Immigration and Nationality Act, as amended ("INA"), 8 U.S.C. § 1101 et seq. *See Martinez v. Hyde*, 792 F. Supp. 3d 211, 217 (July 24, 2025) ("Indeed, mandatory detention for all applicants has only been the official policy of the Department of Homeland Security . . . since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had revisited its legal position.").

3. Under Respondents' reinterpretation of this provision, any foreign national who is present in the United States without having been admitted or paroled is subject to mandatory detention.

4. On November 25, 2025, the United States District Court for the Central District of California issued a decision in *Maldonado Bautista v. Noem* granting certification to the class put forth, defined as:

> "Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8

> U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination."

No. 5:25-cv-01873-SSS-BFM, Doc. 82 #:1460, p. 15 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the Court issued a final judgment declaring that (1) all eligible class members are detained under 8 USC § 1226(a) and are not subject to mandatory detention under § 1225(b)(2) and (2) eligible class members are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge. *See id.*, Doc. 94 #:1785 (C.D. Ca. Dec. 18, 2025). On February 18, 2026, the Court granted Petitioners' Motion to Enforce Judgment in light of Respondents' continued violations of its final judgment.[1] *See id.*, Doc. 116 #:2078 (C.D. Ca. Feb. 18, 2026) at 10 ("Respondents still insist they can continue their campaign of illegal action."), 15 ("Respondents have violated and continue to violate the law by detaining Bond Eligible Class members in contravention of the Final Judgment."); *see also* Exhibit H (Guidance from Chief Immigration Judge Teresa Riley, Jan. 13, 2026) (ordering immigration judges to continue applying *Yajure Hurtado*). Ms. Viatoro Perez meets all requirements for *Maldonado Bautista* class membership.

5. Even as a *Maldonado Bautista* class member, Petitioner is not guaranteed a bond hearing. Respondents have asserted immigration judges must "follow circuit precedent and the statutory text under their *own interpretive authority*." *See Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, Doc. 116 #:2078, at 8 (emphasis in original). If an immigration judge independently interprets the INA's detention provisions per Respondents' guidance, Petitioner will be denied a bond hearing. *See Matter of Bulnes*, 25 I&N Dec. 57, 59 (BIA

[1] The Ninth Circuit stayed that Order for jurisdictions outside of the Central District of California on March 6, 2026, pending its adjudication of the case. *See Maldonado Bautista v. U.S. Dep't Homeland Sec.*, No. 26-1044, Doc. 5.1 (9th Cir. Mar. 6, 2026).

2009) ("An Immigration Judge has the authority to consider and decide whether he has jurisdiction over a matter presented to him. In other words, an Immigration Judge has jurisdiction to determine his jurisdiction."); *see also* Exec. Off. for Immigr. Rev. Policy Manual, pt. II, ch. 8.3(b) ("[A]n Immigration Judge has jurisdiction to rule on whether he or she has jurisdiction to conduct a bond hearing."). Should Ms. Viatoro Perez be transferred to a detention facility within the jurisdiction of the United States Courts of Appeals for the Fifth or Eighth Circuits, an immigration judge following circuit precedent would find they lacked jurisdiction to adjudicate Ms. Viatoro Perez's bond request. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (upholding Respondents' interpretation of the detention provisions as lawful); *Avila v. Bondi*, --- F.4th ---, 2026 WL 819258 (8th Cir. Mar. 25, 2026) (relying heavily on the reasoning in *Buenrostro-Mendez* to determine the Respondents' interpretation is lawful).

6. There is a growing body of case law from within and outside of this judicial district holding that Respondents' reinterpretation of 8 U.S.C. § 1225(b)(2)(A) is contrary to law. *See, e.g.*, *Maldonado v. Baker*, No. 25-3084-TDC, 2025 WL 2968042, at *8 (D. Md. Oct. 21, 2025) (collecting cases) ("[T]he Court finds that, consistent with the vast majority of federal courts that have recently considered this issue, the detention of inadmissible noncitizens who, like Maldonado, are already present in the United States is governed by the discretionary detention provision of § 1226(a), rather than the mandatory detention provisions of § 1225(b)."); *Quispe v. Crawford*, No. 1:25-cv-01471, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025) (stating "as Respondents recognize, other federal courts around the country have found that in order to be detained under § 1225(b)(2), applicants for admission must be actively 'seeking admission' and not be just 'present' in the U.S.");

Cabrera Valenzuela v. Mason, No. 2:26-cv-00057, 2026 WL 357872, at *1 (S.D. W. Va. Feb. 9, 2026) ("The authority the political branches possess over immigration does not include the power to seize liberty first and justify confinement later. Due process is not a courtesy extended at the government's convenience. Due process is the condition that makes custody lawful in the first place. Congress itself has recognized this principle by requiring that civil immigration detention be tethered to a lawful custody determination—one that determines whether continued detention is warranted or whether release on bond is appropriate."); *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-61 (7th Cir. 2025) (describing the government's interpretation of 8 U.S.C. § 1225 as "superficial" and rendering portions of the INA "superfluous, violating one of the cardinal rules of statutory construction"); *see also Afghan v. Noem*, No. SAG-25-04105, 2025 WL 3713732 (D. Md. Dec. 23, 2025); *Ibarra v. Warden of the Fed. Det. Ctr. Phila.*, No. 25-6312, 2025 WL 3294726 (E.D. Pa. Nov. 25, 2025); *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Y-C- v. Genalo*, No. 25-cv-06558 (NCM), 2025 WL 3653496 (E.D.N.Y. Dec. 17, 2025); *Brito Hidalgo v. Raycraft*, No. 25-cv-13588, 2025 WL 3473360 (E.D. Mich. Dec. 3, 2025); *Amaya-Quinteros v. Coreciviv, Inc.*, No. 1:25-cv-1672 AC P, 2025 WL 3687642 (E.D. Cal. Dec. 19, 2025); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025). This is another such case.

7. Recent decisions from the Fifth and Eighth Circuits incorrectly deem Respondents' reinterpretation lawful. *See Buenrostro-Mendez*, 166 F.4th 494; *Avila*, 2026 WL 819258. *But see, e.g.*, *Castañon-Nava*, 161 F.4th at 1060-61; *Jacobo Ramirez v. Mullin*, No. 2:25-cv-02136, at *3 (D. Nev. Mar. 30, 2026) ("[T]he Court continues to find that the government's reading of § 1225(b)(2)(A), and its unprecedented mass detention policies

flowing from that interpretation, violate the INA."); *Lemus Cristales v. Arbon*, No. 2-26-cv-00217-JNP, 2026 WL 892874 (D. Utah Mar. 31, 2026); *Blanco Cabrera v. Raycraft*, No. 4-26-CV-00085-DAR, 2026 WL 904606 (N.D. Ohio Apr. 2, 2026); *Fuentes-Lopez v. Noem*, No. 2:26-cv-00708-SPC-NPM, 2026 WL 858327 (M.D. Fla. Mar. 30, 2026); *Guerra Flores v. Chestnut*, No. 2-26-cv-00627-DJC-CSK, 2026 WL 926071 (E.D. Cal. Apr. 6, 2026). The reasoning adopted by the Fifth and Eighth Circuits has been explicitly rejected by almost every single district court in the country and has been summarily rejected by this Court in every case. *See, e.g.*, *Alonzo Cortes v. Liggins*, No. GLR-26-588 (D. Md. Feb. 17, 2026) (citing cases rejecting *Yajure Hurtado*); *see also Vega Davila v. Bondi*, No. 26-3240 (SDW), 2026 WL 937312, at *2 (D.N.J. Apr. 7, 2026) ("Federal courts have similarly rejected Respondents' position in near unanimity *in hundreds of cases* to date.") (emphasis added). This Court is not required to accept the reasoning of out-of-circuit decisions. *See Folkes v. Nelsen*, 34 F.4th 258, 286 (4th Cir. 2022) (finding "no persuasive value" in out-of-circuit precedent and rejecting their reasoning).

8. Thus, Ms. Viatoro Perez's continued detention by Respondents without a mechanism to challenge her confinement violates the Due Process Clause of the Fifth Amendment to the United States Constitution and the Administrative Procedure Act, and presents a federal question under 28 U.S.C. § 1331 through the INA. Petitioner seeks declaratory and injunctive relief under 28 U.S.C. § 1331 in conjunction with 28 U.S.C. § 2201, in the form of an order from this Court requiring her immediate release because she is not lawfully detained under § 1225(b) or, alternatively, that Respondents provide her with a constitutionally-compliant bond hearing before a truly neutral and impartial adjudicator.

JURISDICTION AND VENUE

9. As of the time of this filing, Ms. Viatoro Perez's last known place of detention is ICE's Baltimore Hold Room in Baltimore, Maryland, which is within the jurisdiction of the United States District Court for the District of Maryland. *See* Exhibit A.[2]

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 ("habeas corpus"), 28 U.S.C. § 1651 ("All Writs Act"), 28 U.S.C. § 1331 ("federal question"), the INA, and the Fifth Amendment to the United States Constitution (the "Due Process Clause").

11. This Court has jurisdiction to adjudicate habeas corpus claims brought by foreign nationals who challenge the legality of their detention by United States immigration officials. *See Reno v. Flores*, 507 U.S. 292, 307 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."); *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 915 (E.D. Va. 2024) ("The federal habeas corpus statute gives a district court jurisdiction to review immigration-related detention cases.") (citing 28 U.S.C. § 2241(c)(3)).

12. Title 8 U.S.C. § 1252(g) does not operate as a jurisdictional bar because that statute does not apply to actions taken to detain foreign nationals. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("Section 1252(g) 'applies only to three discrete actions,' i.e. commencement of removal proceedings, adjudication of removal cases, and execution of removal orders.").

13. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction because that statute applies to review of removal orders and not to detention decisions made prior to the issuance of a removal

[2] The ICE Detainee Locator system identifies Ms. Viatoro Perez is currently detained at the Baltimore Hold Room located at 31 Hopkins Plaza, 6th Floor, Baltimore, Maryland 21201. *See* Exhibit A. Lauren Wilhelm, Esq., of Eldridge Crandell, LLC, went in-person to the ICE Baltimore Hold Room on April 10, 2026, and confirmed Ms. Viatoro Perez was detained there.

order. *See Demore v. Kim*, 538 U.S. 510, 517 (2003) (quoting *Webster v. Doe*, 486 U.S. 592, 603 (1988)) (explaining that "'where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear'").

EXHAUSTION

14. Generally, a petitioner seeking habeas corpus under 28 U.S.C. § 2241 must exhaust administrative remedies. *See, e.g., Braden v. 30th Judicial Circuit Ct. of Ky.*, 410 U.S. 484, 489-492 (1973); *Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000). "The INA does not require a noncitizen to exhaust administrative remedies before asserting a constitutional challenge to immigration detention procedures." *Maldonado*, 2025 WL 2968042, at *4 (citing *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022)); *see also Jarpa v. Mumford*, 211 F. Supp. 3d 706, 710-12 (D. Md. 2016). A petitioner need not "exhaust administrative remedies where the issue presented involves only statutory construction," *Vasquez v. Strada*, 684 F.3d 431, 433-34 (3d Cir. 2012), because those cases evince that agencies have "predetermined the issue before [them]" or there is an "unreasonable or indefinite timeframe for administrative action." *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992).

15. There are no applicable statutory exhaustion requirements and the issue in this case hinges entirely on the statutory construction of 8 U.S.C. §§ 1225 and 1226, so Ms. Viatoro Perez is not required to exhaust.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court should grant this Petition for Writ of Habeas Corpus or issue an order to show cause to Respondents forthwith, unless Ms. Viatoro Perez is not entitled to relief. *See* 28 U.S.C. § 2243. If an order to show cause is issued, the Court should require Respondents

to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

17. Ms. Viatoro Perez is detained in the ICE Baltimore Hold Room in Baltimore, Maryland, which is within the jurisdiction of the United States District Court for the District of Maryland. *See* Exhibit A. She is in the custody and under the direct control of Respondents and their agents.

18. Respondent Vernon Liggins is sued in his official capacity as the Acting ICE Field Office Director for Baltimore. He supervises and oversees the ICE Baltimore Hold Room.

19. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. He supervises and oversees Respondent Baker.

20. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of DHS. In this capacity, Respondent Mullin is responsible for implementation and enforcement of the INA, and oversees ICE, the component agency directly responsible for Ms. Viatoro Perez's detention. *See* 8 U.S.C. § 1103(a). Respondent Mullin is a legal custodian of Petitioner.

21. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. The Attorney General oversees the Executive Office for Immigration Review and, within the Executive Branch, is the arbiter of all questions of law pertaining to the INA. *See* 8 U.S.C. § 1103(a)(1), (g).

STATEMENT OF FACTS

22. Ms. Viatoro Perez is a native and citizen of Honduras. She last entered the United States around 2024 without being inspected and admitted by an immigration officer. She was

detained by immigration authorities, then released and ordered to attend regular scheduled check-ins with ICE.

23. Ms. Viatoro Perez has remained in the United States since her last entry, residing in Maryland for two years. She has no known criminal history anywhere in the world.

24. Ms. Viatoro Perez has an asylum application currently pending before the immigration court. *See* Exhibit B (EOIR Automated Case Information System Printout).

25. Ms. Viatoro Perez was apprehended by ICE in Maryland on April 10, 2026, when she attended her check-in appointment with ICE. She has been in immigration detention since her apprehension.

CLAIMS FOR RELIEF

COUNT ONE
Violation of INA, 8 U.S.C. §§ 1225(b) and 1226(a)

26. Ms. Viatoro Perez incorporates and realleges the factual statements above as if fully set forth here.

27. Respondents' theory that Ms. Viatoro Perez is subject to mandatory detention under 8 U.S.C. § 1225(b) rests on their erroneous recent reinterpretation of the INA's detention provisions at 8 U.S.C. §§ 1225(b) and 1226(a). Several reasons demonstrate the incorrectness of the Respondents' position.

28. First, Respondents' reinterpretation of the INA's detention provisions conflicts with the Supreme Court's opinion in *Jennings v. Rodriguez*. 583 U.S. 281 (2018).

29. In *Jennings*, the Supreme Court instructed that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. Section 1226, on the other hand, "applies to aliens already present in the United States." *Id.* at 303. "Section 1226(a) creates a default rule for those

aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.* "Section 1226(a) also permits the Attorney General to release those aliens on bond . . ." *Id.*

30. Ms. Viatoro Perez has been in the United States for two years. By any measure, she is "already present in the United States." *Jennings*, 583 U.S. at 303. Under these circumstances, *Jennings* instructs that the authority to detain Ms. Viatoro Perez does not stem from 8 U.S.C. § 1225(b). Respondents' reinterpretation of §§ 1225(b) and 1226(a) conflicts with *Jennings*, so it must be rejected.

31. Second, it is settled that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (internal quotations omitted)); *see, e.g.*, *Lawson v. Suwanee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1941) (cautioning against statutory interpretations that would create "obvious incongruities in the [statutory] language" or erase from the statute an entire subsection). Respondents' reinterpretation of § 1225(b) "would also make recently adopted provisions in 8 U.S.C. § 1226 completely superfluous." *Ndiaye v. Jamison*, 2:25-cv-06007, 2025 WL 3229307, at *6 (E.D. Pa. Nov. 19, 2025); *see also Castañon-Nava*, 161 F.4th at 1061.

32. In 2025, Congress passed the Laken Riley Act, which amended § 1226(c) to add new categories of noncitizens subject to mandatory detention. *See* Laken Riley Act, Pub. L. No. 119-1 § 2, 139 Stat. 3, 3 (2025). "The amended subsection explicitly requires mandatory detention of all noncitizens who (1) are 'inadmissible' for entering the country without being admitted or paroled and (2) have been charged with or convicted of certain crimes such as burglary." *Ndiaye*, 2025 WL 3229307, at *6 (citing 8 U.S.C. §

1226(c)(1)(E)). If § 1225(b) required what the Respondents now claim that it does—mandatory detention of all foreign nationals who entered the United States illegally—there would have been no need for Congress to amend the statute to require detention for those who illegally entered and committed certain enumerated crimes. *See id.*; *accord Demirel v. Fed. Det. Ctr. Phila.*, No. 2:25-cv-05488, 2025 WL 3218243, at *4 (E.D. Pa. Nov. 18, 2025); *see also Stone v. INS*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.").

33. Third, Respondents' reinterpretation of the detention provisions "would upend decades of practice. Indeed, mandatory detention for all applicants has only been the official policy of [DHS] . . . since July 8, 2025, when Acting Director of [ICE], Todd M. Lyons, issued an internal memorandum explaining that the agency had revisited its legal position." *Martinez*, 792 F. Supp. 3d at 217 (internal quotation omitted). In short, "[p]ast agency practice also favors applying § 1226 to noncitizens like" Ms. Viatoro Perez. *Ndiaye*, 2025 WL 3229307, at *6; *see Maldonado*, 2025 WL 2968042, at *8 (noting "Respondents' new interpretation of these detention provisions so as to require mandatory detention of all inadmissible noncitizens runs counter to nearly 30 years of government immigration practice").

34. The novelty of Respondents' new theory of immigration detention is underscored by the conflicting pronouncements of it by Respondents themselves. In an August 4, 2025, order, the Attorney General determined that foreign nationals arrested in the interior of the United States (other than at a port of entry) are detained under 8 U.S.C. § 1226, thus, entitled to bond hearings. *See Matter of Akhmedov*. 29 I&N Dec. 166 (BIA 2025). She

did this by designating it as precedent "in all proceedings involving the same or similar issues" the Board's decision in *Akhmedov*. *Id.* at 166 n.1.

35. In *Akhmedov*, the Board considered DHS's appeal of an Immigration Judge's grant of bond to a foreign national arrested in the interior of the United States. *See id.* at 166, 168. The Board's decision—as adopted by the Attorney General—is clear: "The respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2018)." *Id.* at 166.

36. Just like the foreign national in *Akhmedov*, Ms. Viatoro Perez was arrested by immigration officers in the interior of the United States. Just like the foreign national in *Akhmedov*, Ms. Viatoro Perez is, at a minimum, entitled to a bond hearing.

37. Under the pertinent regulation, "[t]he Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act)." 8 C.F.R. § 1003.1(d)(1)(i). By statute, the Attorney General's determinations and rulings on all questions of law pertaining to the INA bind the Executive Branch. *See* 8 U.S.C. § 1103(a)(1).

38. On September 5, 2025, the Board of Immigration Appeals issued its decision in *Matter of Yajure Hurtado*. 29 I&N Dec. 216 (BIA 2025). In that case, the Board determined that a foreign national who has not been admitted to the United States is detained under 8 U.S.C. § 1225(b)(2)(A) and not entitled to a bond hearing. *See id.* at 220. *Yajure Hurtado* cannot be reconciled with the Attorney General's decision in *Akhmedov*, where the Attorney General determined that 8 U.S.C. § 1226(a) governs foreign nationals who enter

the United States unlawfully and who immigration officers later encounter. *See Akhmedov*, 29 I&N Dec. at 166.

39. The Board's attempt to reconcile the Attorney General's decision in *Akhmedov* with its own decision in *Yajure Hurtado* underscores this point. *See* 29 I&N Dec. at 226. In *Yajure Hurtado*, the Board articulated no reasoning for its disagreement with the Attorney General other than stating the opinion that a foreign national's presence in the United States "does not somehow eviscerate or nullify section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), or vest the Immigration Judge with authority over the respondent's bond request." *Id.* at 226. But the Attorney General's decision controls the Board. *See* 8 U.S.C. § 1103(a)(1); 8 C.F.R. § 1003.1(d)(1)(i).

40. The Board's observation in *Yajure Hurtado* that 8 U.S.C. § 1225(b) was not before the Attorney General in *Akhdemov* does not give license to the Board to act contrary to both statutory and regulatory authority declaring that the Attorney General—and not the Board—speaks for the Executive Branch with respect to "all questions of law." 8 U.S.C. § 1103(a)(1); *see* 8 C.F.R. § 1003.1(d)(1)(i). Nor can it invalidate the Attorney General's determination that custody determinations of foreign nationals arrested in the United States interior are "governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2018)." *Akhmedov*, 29 I&N Dec. at 166.

41. *Yajure Hurtado*'s inconsistency with prior pronouncements reduces even its "power to persuade." *Loper Bright Enters. v. Riamondo*, 603 U.S. 369, 402 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Accordingly, the Court should grant the petition for a Writ of Habeas Corpus.

42. Petitioner recognizes that on February 18, 2026, the United States District Court for the Central District of California vacated the Board's decision in *Yajure Hurtado* under the Administrative Procedure Act. *See Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, Doc. 116 #:2078, at 16. Still, she is not guaranteed a bond hearing. In *Matter of K-S-*, the Board held that it "is not bound to follow the published decision of a United States district court in cases arising within the same [or a different] jurisdiction." 20 I&N Dec. 715, 718 (BIA 1993). In light of this holding—and Respondents' repeated violations of binding federal court orders—it is not clear that Respondents will comport with the *Maldonado Bautista* order to provide bond hearings to class members. *See, e.g.*, No. 5:25-cv-01873-SSS-BFM, Doc. 116 #:2078, at 6; *see also Juan T.R. v. Noem*, No. 26-CV-0107, 2026 WL 232015, at *2-4 (D. Minn. Jan. 28, 2026) (identifying nearly 100 instances in which Respondents failed to comply with court orders in habeas cases in January 2026 alone); *see also* Exhibit H. As Respondents' noncompliance is the norm, Petitioner should be immediately released from their custody.

43. Fourth, dozens of courts across the country have agreed that the appropriate remedy in habeas cases like Ms. Viatoro Perez's is release on recognizance without further conditions of release. *See, e.g.*, *Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); *Gonzalez Centeno v. Lowe*, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Feisal O. v. Noem*, No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13,

2026) (same); *Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same) *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D. Mich. Dec. 29, 2025) (same); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary where there was no record indication petitioner was a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (same); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026) (same); *see also Mata Velasquez v. Kurzdorfer*, --- F. Supp. 4th ---, No. 25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (ordering release and that petitioner could not be re-detained without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025) (same); *Sekhon v. Warden of Golden State Annex Det. Facility*, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (same).

44. These courts have correctly determined that release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before arrest, which cannot be remedied by a post-deprivation hearing. *See Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (holding that because the petitioner had been previously released to the community and holding a bond hearing would prolong her unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention"); *Qasemi v. Francis*, No. 25-cv-10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (noting a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and

detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (ordering release, finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (holding that given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing); *see also Garrison G. v. Bondi*, No. 26-CV-172, 2026 WL 157677, at *4 (D. Minn. Jan. 17, 2026) (finding that ICE's violation of the Fourth Amendment by entering petitioner's home without a warrant or consent alone also warranted immediate release).

45. Immediate release is also warranted because requesting bond before an immigration court is, at this point, futile. *See, e.g.*, Exhibit C (Declaration of Jorge E. Artieda) (describing how "Immigration Judge[s] appeared to apply [bond determination] factors that, if consistently applied, would make bond impossible for virtually any detained individual in removal proceedings;" that "[t]here did not appear to be meaningful individualized assessment" of individuals' circumstances; and that "[t]he hearings appeared to be perfunctory exercises designed to create a veneer of due process while ensuring predetermined outcomes"); Exhibit D (*Politico* Article, Feb. 10, 2026) ("More recently, judges who have ordered the administration to hold bond hearings for detainees before an immigration court—administered by the executive branch rather than the judiciary—have been frustrated to learn that those bond hearings were, effectively, stacked against detainees from the start."); Exhibit E (*Colorado Politics* Article, Dec. 23, 2025) (noting

that immigration judges "us[ed] faulty reasoning, dubious evidence"[3] to deny an individual bond for flight risk); Exhibit G (Declaration of Former Immigration Judge Lawrence Burman) ("Over my time on the bench, I found that concerns about flight risk were usually addressed by setting an appropriate bond amount. It was rare for a bond to be denied solely based on flight risk; more often, a higher bond amount was imposed to ensure the individual's appearance at future hearings."); Exhibit I (*Politico* Article, Mar. 6, 2026) ("Increasingly, however, judges are finding that the hearings they're ordering—conducted by immigration judges who work for the Trump administration—have been fundamentally flawed or even pre-cooked, designed to result in findings of 'danger to the community' or 'flight risk' without a fair consideration of the evidence."); *see also Mendez Trigueros v. Gaudian*, No. 1:26-cv-205 (AJT-WPB), Doc. 13 at 6-7 (E.D. Va. Feb. 18, 2026) ("In sum, the considerations upon which it was determined that Petitioner constitutes a flight risk were so lacking in probative value as to that issue that their use in determining flight risk failed to provide the Petitioner with constitutionally sufficient due process."); *Cervantes Arredondo v. Baltazar*, No. 1:25-cv-03040-RBJ, Doc. 26 (D. Colo. Dec. 18, 2025).

46. Petitioner's counsel's own experience reflects the same trend. In numerous cases in which this Court has ordered an immigration court to conduct an individualized bond hearing before a neutral and impartial adjudicator, the immigration judge has denied bond

[3] The Honorable R. Brooke Jackson, Senior Judge for the United States District Court for the District of Colorado, noted that in some cases, the government's evidence against individuals is "inaccurate." *See* Exhibit E. Petitioner's counsel has seen the same. On the rare occasions in which the government presents its own evidence in bond proceedings, it presents a Form I-213, Record of Deportable/Inadmissible Alien ("I-213"). In three of Petitioner's counsel's cases, the I-213s submitted have contained inaccurate information, but the immigration judges still found the I-213s reliable and denied bond for flight risk. *Cf. Matter of Mejia*, 16 I&N Dec. 6 (BIA 1976) (holding that *in the absence of proof* that the I-213 contains incorrect information, it is inherently trustworthy); *see, e.g., Saravia Sigaran v. Liggins*, No. 1:26-cv-00329-LKG, Doc. 9 (D. Md. Feb. 16, 2026).

for flight risk despite strong evidence of the individuals' ties to the United States. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (outlining factors to consider in assessing flight risk). None of these individuals had criminal history beyond minor traffic infractions. All had close family ties in the United States, and all had been present in the United States for six years or more. Some owned their own businesses and others owned real property in the United States. In each case, the immigration judge alleged—apparently regardless of the individuals' personal circumstances—that they presented such a flight risk that there was no monetary amount that could secure their presence in court. *See Matter of C-M-M-*, 29 I&N Dec. 141, 144 (BIA 2025) (explaining that flight risk can be mitigated by imposing some amount of monetary bond). It is virtually impossible to secure a bond under Respondents' current policy of denying bond for flight risk in any case. *See also* Exhibits C, D, G.

47. Further, in the last year, ICE has been appealing nearly all bond grants to the Board, thereby invoking the "automatic stay" regulation in 8 C.F.R. § 1003.19(i)(2) to prohibit individuals from posting bond and being released. Dozens of habeas courts have ruled that the automatic stay violates due process and have had to order Respondents to allow a petitioner to post her bond. *See, e.g.*, *Merchan-Pacheo v. Noem*, No. 1:25-cv-03860, 2026 WL 88526, at *16 (D. Colo. Jan. 12, 2026) (finding automatic stay violates due process); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (same, noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process, and collecting cases at n.6); *Otilio B.F. v. Andrews*, No. 1:25-cv-01398, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025) (finding the automatic

stay likely violates due process and granting preliminary injunction); *Guasco v. McShane*, No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting that other habeas courts have "assailed the Government's practice of acting both as the prosecution and the judge in making a unilateral and unreviewed decision as to detention") (internal citation omitted). This, too, renders bond requests futile.

48. Moreover, even in cases in which a federal court orders an immigration court to conduct a bond hearing, as noted by many federal courts across the country, Respondents routinely fail to comply with those orders. *See, e.g.*, *Juan T.R.*, 2026 WL 232015, at *2-4 (identifying nearly 100 instances in which Respondents failed to comply with court orders in habeas cases in January 2026 alone); *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, Doc. 116 #:2078, at 6 (describing numerous violations of court orders); *Cruz Gomez v. Noem*, No. 1:26-cv-00269-SAG, Doc. 9 (D. Md. Feb. 6, 2026) (ordering immediate release because Respondents repeatedly refused to comply with this Court's order to conduct a bond hearing within ten days of her filing of a Motion for Custody Redetermination with the immigration court); *see also* Exhibit D ("The most acute concern from judges has been a recent surge of violations that occur *after* judges have ordered ICE to release people. In a growing number of cases, ICE has taken days or weeks to comply, sometimes requiring emergency motions by detainees' lawyers and contempt threats from judges."); Exhibit F (*New Yorker* Article, Feb. 3, 2026) (explaining that "the Trump Administration [is] often appearing to blatantly ignore court orders, or to comply with them only after being repeatedly warned to do so" and describing "very similar patterns of either the court ordering the government to release somebody and them not being released, or the court ordering the government to present

the person to the court physically, and them not being allowed to leave detention, or the court ordering someone not to be taken out of its jurisdiction"). Immediate release is therefore warranted.

COUNT TWO
Violation of the Fifth Amendment Right to Due Process

49. Ms. Viatoro Perez incorporates and realleges the factual allegations above as if fully set forth here.

50. It is settled that the Fifth Amendment's Due Process Clause applies to all "persons" within the United States. *See Matthews v. Diaz*, 426 U.S. 67, 77 (1976). Ms. Viatoro Perez has been in the United States for two years.

51. The term "persons" includes foreign nationals like Ms. Viatoro Perez. *See id.*

52. It is equally well settled that freedom from confinement is a core liberty interest and violation of that liberty interest raises a colorable substantive due process claim. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *Reno v. Flores*, 507 U.S. 292, 301 (1993) (collecting cases); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (noting bodily freedom is the "most elemental of liberty interests").

53. As such, Ms. Viatoro Perez also has the right to procedural due process. Immigration proceedings are civil and they are intended to be "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690. More than a century of Supreme Court precedent instructs that the Fifth Amendment entitles foreign nationals to procedural due process. *See Reno*, 507 U.S. at 306 (citing *The Japanese Immigrant Case*, 189 U.S. 86 (1903)). A failure to provide any process whatsoever contravenes no less than one hundred years of Supreme

Court precedent interpreting the Due Process Clause as applying to foreign nationals such as Ms. Viatoro Perez. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

54. "To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Quispe-Ardiles*, No. 1:25-cv-01382 (MSN), 2025 WL 2783800,, at *22 (E.D. Va. Sept. 30, 2025). "Under that test, courts must weigh (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.'" *Id.* (quoting *Mathews*, 424 U.S. at 335).

55. Ms. Viatoro Perez invokes "'the most elemental of liberty interests'; '[t]he interest in being free from physical detention.'" *Id.* at *17 (quoting *Hamdi*, 542 U.S. at 529) (alterations in original). To be sure, Respondents' refusal to provide any process whatsoever creates significant risk that Ms. Viatoro Perez will be deprived of that interest.

56. The Government's interest in implementing its reinterpretation of 8 U.S.C. § 1225(b) is minimal. This new "approach attempts to upend decades of immigration practice." *Hasan*, 2025 WL 2682255, at *24. "Indeed, mandatory detention for all applicants has only been the official policy . . . since July 8, 2025 . . . ." *Martinez*, 792 F. Supp. 3d at 217. In contrast, the resumed application of decades of agency practice will satisfy the Government's interest in enforcement of the immigration laws.

57. In Ms. Viatoro Perez's case, all three *Mathews* factors weigh heavily in favor of holding that Respondents' refusal to provide her any process whatsoever violates her right to procedural due process. The Court should grant the petition for a Writ of Habeas Corpus for this reason as well.

COUNT THREE
Violation of the Administrative Procedure Act under 8 C.F.R. § 212.5

58. In the alternative, even if this Court determines Respondents properly detained Ms. Viatoro Perez under 8 U.S.C. § 1225, it follows that her initial release from custody must have been pursuant to 8 U.S.C. § 1182(d)(5).

59. Implementing regulations provide for the parole from custody of, *inter alia*, individuals whose cases present "urgent humanitarian reasons" for parole or in cases of "significant public benefit." 8 C.F.R. § 212.5(b).

60. The revocation provisions in 8 C.F.R. § 212.5 require that the individuals receive notice of the reasons for the termination of their parole. *Id.* § 212.5(e)(2)(i). Ms. Viatoro Perez was not provided any such reason.

61. In fact, the termination of her parole and redetention appears to be arbitrary and capricious under the Administrative Procedure Act ("APA"). *See* 5 U.S.C. § 706.

62. Moreover, to the extent that her initial parole was premised on a determination that her status as a then-twenty-six-year-old asylum seeker amounted to a "humanitarian" or "public interest" ground for parole, *see* 8 C.F.R. § 212.5(b); those factors remain present in this case, further justifying the continuation of her parole and release from detention.

63. Because Respondents violated 8 C.F.R. § 212.5(b) in revoking Ms. Viatoro Perez's parole and redetaining her, their actions are impermissibly arbitrary and capricious under the APA. *See* 5 U.S.C. § 706.

64. As such, Ms. Viatoro Perez should be released from custody.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause as to why this petition should not be granted within three (3) days;

(3) Declare that Petitioner's detention by Respondents under 8 U.S.C. § 1225(b) is unlawful under the INA and in violation of the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, in the alternative, order that a truly neutral and impartial adjudicator conduct an individualized, constitutionally-compliant bond hearing pursuant to 8 U.S.C. § 1226(a);[4]

(5) Enjoin Respondents from transferring Petitioner outside of this judicial district; and

(6) Grant Petitioner any further relief this Court deems just and proper.

Dated:

Respectfully submitted,

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[4] Should this Court order Respondents to schedule a bond hearing for Petitioner, Petitioner requests Respondents notify her counsel when the bond request has been submitted. Often, when the government is ordered to file the bond request, Petitioner's counsel is not immediately notified of the date and time of the hearing because he cannot enter his appearance in the case until after the bond request is submitted. In several cases, Petitioner's counsel has become aware of a scheduled bond hearing mere hours before it was set to begin, and only became aware of the hearing because Respondents' counsel informed him it had been scheduled.