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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**

7
8 Maria Aide Vargas-Murillo,
9 Petitioner,

Case No.:

10 vs.

File No: A# 

11 Pamela Bondi, Attorney General of the
12 United States;

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

13 John Cantu, U.S. Immigration and
14 Customs Enforcement Phoenix Field
15 Office Director;

16 Kristi Noem, Secretary of the U.S.
17 Department of Homeland Security;

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

18 Fred Figueroa, Warden, Eloy Detention
19 Center;

20 Todd M. Lyons, Acting Director,
21 Immigration and Customs Enforcement,
22 U.S. Department of Homeland Security;

**ORAL ARGUMENT
REQUESTED**

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24 Respondents.
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INTRODUCTION

Comes now, Petitioner, Maria Aide Vargas-Murillo, brings this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; Article I, Section 9, Clause 2 of the United States Constitution (“Suspension Clause”). The efforts to continually detain petitioner constitute a “severe restraint” on his individual liberty such that Petitioner is “in custody” of the Respondents in violation of the ... laws of the United States. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241. DHS asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), however, that provision does not apply to her. Instead, Petitioner’s custody is governed by 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole. By denying Petitioner an individualized bond hearing, Respondents violate the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the United States Constitution.

Petitioner, who entered the United States on January 17, 2004, and has resided here for over a decade, is not an applicant for admission. Her custody is

1 properly governed by 8 U.S.C. § 1226(a), which authorizes release on bond or
2 conditional parole.
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4 The Board of Immigration Appeals recently issued *Matter of Yajure*
5 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)(2)(A) to require
6 mandatory detention of all individuals who entered without inspection. That
7 decision represents the agency's most recent view of the detention statute, but it
8 illustrates DHS's unlawful expansion of § 235(b)(2)(A). That decision does not
9 control this Court. Petitioner entered the United States on January 1, 2013, and
10 lived in Arizona for more than twelve years before ICE arrested him. She is not an
11 "arriving alien" at the threshold seeking admission, but rather a long-term resident
12 who falls under § 236(a).
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16 Pursuant to this Court's inherent powers in habeas corpus proceedings, Ms.
17 Vargas-Murillo respectfully requests this Court order Respondents to release him
18 from detention.
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21 **I. PARTIES**

22 A. Petitioner Maria Aide Vargas-Murillo is a native of Mexico. She is currently
23 detained at Eloy Detention Center, 1705 E Hannah, AZ, 85131.
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25 B. Respondent Pamela Bondi is named in her official capacity as the Attorney
26 General of the United States. In this capacity, she is responsible for the
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1 administration of the immigration laws as exercised by the Executive Office
2 for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. §
3 1103(g). She routinely transacts business in the District of Arizona, is legally
4 responsible for administering Petitioner's removal proceedings and the
5 standards used in those proceedings, and as such, is the legal custodian of
6 Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950
7 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.
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11 C. Respondent, John Cantu, is the Phoenix Field Office Director for
12 Enforcement and Removal Operations, U.S. Immigration and Customs
13 Enforcement. He is the local ICE official who has immediate authority over
14 the Petitioner. Respondent Cantu's address is Field Office Director,
15 Enforcement and Removal Operations, U.S. Immigration and Customs
16 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,
17 85004.
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21 D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of
22 Homeland Security ("DHS"), the federal agency responsible for enforcing
23 Petitioner's arrest, detention and removal. DHS's address is U.S.
24 Department of Homeland Security, Washington, DC 20528.
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1 E. Respondent, Fred Figueroa., is the warden of the Eloy Detention Center,
2 where Petitioner is being held. He is the custodian of Petitioner and is named
3 in his official capacity.
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5 F. Todd M. Lyons is the Acting Director, Immigration and Customs
6 Enforcement, U.S. Department of Homeland Security, the federal agency
7 responsible for enforcing Petitioner's arrest, detention and removal. DHS's
8 address is U.S. Department of Homeland Security, Washington, DC 20528.
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11 **II. JURISDICTION AND VENUE**

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13 The Court has jurisdiction under the Suspension Clause. The Suspension
14 Clause provides, "The privilege of the Writ of Habeas Corpus shall not be
15 suspended, unless when in Cases of Rebellion or Invasion the public Safety may
16 require it." U.S. Const. Art. I § 9, cl. 2.
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18 This case arises under the United States Constitution; the INA, 8 U.S.C. §§
19 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth
20 Amendment and the Fourteenth Amendment. Petitioner's current detention
21 pending her removal order as enforced by Respondents constitutes a "severe
22 restraint [] on [Petitioner's] individual liberty," such that Petitioner is "in custody
23 in violation of the . . . laws . . . of the United States." *See Hensley*, 411 U.S. at 351
24 (1973); 28 U.S.C. § 2241(c)(3).
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1 No Supreme Court or Ninth Circuit precedent applicable to immigration
2 detainees, nor the habeas statute, indicate that venue is not proper in the District of
3 Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because
4 a substantial part of the events and omissions which gave rise to this action
5 occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at
6 the Eloy Detention Center in Eloy, Arizona. She is in removal proceedings before
7 the Immigration Court in Eloy, Arizona, and on July 23, 2025, her request for a
8 custody redetermination was denied on the grounds that DHS had classified him as
9 subject to mandatory detention under 8 U.S.C. § 1225(b)(2).
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13 **III. FACTS GIVING RISE TO THE HABEAS PETITION**

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15 Petitioner, Maria Aide Vargas-Murillo, is a native and citizen of Mexico.
16 She entered the United States without inspection on January 7, 2004, and has
17 resided continuously in Arizona since that date.
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19 Officers of U.S. Immigration and Customs Enforcement (“ICE”) arrested
20 Petitioner in Arizona and placed him in removal proceedings under § 240 of the
21 Immigration and Nationality Act (“INA”). He was taken into custody and
22 transported to the Eloy Detention Center in Eloy, Arizona, where he remains
23 detained today.
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1 Following her arrest, ICE determined that Petitioner was subject to
2 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). On July 23, 2025,
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4 Petitioner requested a custody redetermination before an Immigration Judge, but
5 her request was denied on the grounds that the Immigration Court lacked
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7 jurisdiction because DHS had classified him as subject to § 1225(b)(2).

8 On September 5, 2025, the Board of Immigration Appeals issued *Matter of*
9 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who
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11 entered without inspection are “applicants for admission” subject to mandatory
12 detention under INA § 235(b)(2)(A). That decision does not bind this Court.
13
14 Petitioner, who entered the United States in 2013 and has lived here for more than
15 twelve years, is not an arriving alien at the border but a long-term resident whose
16 custody falls under § 236(a). For decades, Immigration Judges conducted bond
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18 hearings for individuals in Petitioner’s position, a practice the Board itself
19 acknowledged before abruptly reversing course. DHS’s reliance on § 1225(b)(2) to
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21 justify Petitioner’s detention is contrary to the statute’s plain text, longstanding
22 administrative practice, and decades of settled interpretation. Because DHS has
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24 improperly categorized him under § 1225(b)(2), Petitioner has been deprived of the
25 opportunity for an individualized bond hearing, leaving him in prolonged and
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27 unlawful detention in violation of the INA, the APA, and the U.S. Constitution.
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1 Petitioner has no disqualifying criminal convictions that would render him
2 subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is he an applicant for
3 admission apprehended at a port of entry. Instead, he has lived in the interior of the
4 United States for more than a decade, working, raising her family, and establishing
5 significant ties to the community in Arizona.
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8 DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary
9 to the statute's plain text, longstanding administrative practice, and decades of
10 settled interpretation.
11

12 Because DHS has improperly categorized him under § 1225(b)(2), Petitioner
13 has been deprived of the opportunity for an individualized bond hearing, leaving
14 him in prolonged and unlawful detention in violation of the INA, the APA, and the
15 U.S. Constitution.
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17 **IV. APPLICABLE LAW**

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19 Respondents' power to detain and deport someone is not limitless, nor is it
20 shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950
21 (S.D.N.Y. 2018) (appeal withdrawn sub nom.).
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23 "Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S.
24 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy.
25 *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering
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1 the release of a petitioner and is to “be administered with the initiative and
2 flexibility essential to ensure that miscarriages of justices within its reach are
3 surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas
4 corpus “never has been a static, narrow, formalistic remedy; its scope has been to
5 achieve its grand purpose - the protection of individuals against erosion of their
6 right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*,
7 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a
8 means of reviewing the legality of Executive detention, and it is in that context that
9 its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004)
10 (citations omitted). These protections extend fully to noncitizens subject to an
11 order of removal. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its
12 talismanic significance in protecting individual liberty from unlawful detention,
13 habeas corpus is fundamentally governed by equity. The Supreme Court has
14 granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct.
15 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court
16 has noted the writ’s “scope and flexibility--its capacity to reach all manner of
17 illegal detention--its ability to cut through barriers of form and procedural mazes.”
18 *Harris*, 394 U.S. at 291.

1 **V. REQUEST FOR RELIEF**

2 Pending the adjudication of this Petition, Petitioner respectfully requests that
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4 the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file
5 a return within three days, unless they can show good cause for additional time.
6 See 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas
7 corpus should not be granted should be “returned within three days unless for good
8 cause additional time, not exceeding twenty days, is allowed”).
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11 Petitioner requests that this Court issue an order that Respondents must
12 notify the Court and Petitioner’s counsel five days prior to any removal of
13 Petitioner.
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15 Petitioner further asks this Court to declare that she is not subject to
16 mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner also requests that the
17 Court grant such other and further relief as it deems just and proper.
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19 Furthermore, Petitioner requests to be released from detention.
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21 **VI. EXHAUSTION OF REMEDIES**

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23 Exhaustion of remedies is not required for this habeas petition because
24 Petitioner challenges the government’s unlawful classification of her detention as
25 mandatory under 8 U.S.C. § 1225(b)(2). The Immigration Court has taken the
26 position that it lack jurisdiction to review custody where DHS asserts mandatory
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1 detention. Any further attempt to pursue administrative remedies would therefore
2 be futile.

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4 Even if exhaustion were required, Petitioner has already sought custody
5 redetermination before an Immigration Judge. On July 23, 2025, her request for
6 bond was denied on the grounds that DHS had classified her under § 1225(b)(2).
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8 Having raised the issue and been denied relief, Petitioner has satisfied or, in the
9 alternative, is excused from any exhaustion requirement.

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11 Because the BIA has now ruled in *Yajure Hurtado* that § 235(b)(2)(A)
12 mandates detention, further pursuit of administrative remedies would be futile.
13
14 Only this Court has the authority to determine whether that interpretation is lawful
15 and constitutional.

16 **PRELIMINARY INJUNCTION**

17 18 **1. Legal Standard**

19 The legal standard for granting preliminary injunction relief is well
20 established. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir.1983). This Court
21 may issue injunctive relief maintaining the status quo when the movant
22 demonstrates: (1) a likelihood of irreparable harm in the absence of the injunction;
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24 and (2) either a likelihood of success on the merits or sufficiently serious questions
25 going to the merits to make them a fair ground for litigation, with a balance of
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1 hardships tipping decidedly in the movant's favor. *Id.* While a petitioner seeking a
2 preliminary injunction has the burden of demonstrating likelihood of success on the
3 merits, they are not required to prove their case in full at the preliminary injunction
4 stage, but only such portions that enable them to obtain the injunctive relief that they
5 seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).
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8 **2. Petitioner is Entitled to Injunctive Relief**

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10 Petitioner is unlawfully detained under the government's assertion that she is
11 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is
12 contrary to the plain text of the statute, longstanding agency practice, and recent
13 federal district court rulings. As a noncitizen who entered the United States on
14 January 1, 2013 and was arrested more than a decade later inside the country,
15 Petitioner is not "seeking admission" at a port of entry and therefore cannot be held
16 under § 1225(b)(2). Her custody is properly governed by 8 U.S.C. § 1226(a), which
17 authorizes an individualized custody determination and potential release on bond.
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19 The denial of a bond hearing deprives Petitioner of liberty without due process of
20 law.
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23 Under the Due Process Clause of the Fifth Amendment, no person shall be
24 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.
25 V. Non-citizens on U.S. soil have constitutional rights, including the right to due
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1 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,
2 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing,
3 Respondents subject him to prolonged and arbitrary detention beyond what the
4 Constitution and the statute allow.
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6 In this circumstance, if the noncitizen “provides good reason to believe that
7 there is no significant likelihood of removal in the reasonably foreseeable future,
8 the Government must respond with evidence sufficient to rebut that showing.” *Id.*
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11 **a. Irreparable Harm in the Absence of an Injunction**

12 An injury is “irreparable” if it is “not accurately measurable or adequately
13 compensable by money damages.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*
14 102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v.*
15 *Textron, Inc.* 836 F.2d 6, 8 (1st Cir. 1987).
16

17 Due process cases recognize a broad liberty interest rooted in the fact of
18 deportation, not just the process of removal proceedings. *See Bridges v. Wixon*,
19 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual
20 and deprives him of the right to stay and live and work in this land of freedom.”);
21 *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018)
22 (finding a “strong liberty interest” where being deported means being separated
23 from home and family). While this liberty interest typically arises in removal
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1 proceedings, courts have found procedural due process violations for persons not
2 in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998)
3 (forms issued to noncitizens charged with civil document fraud violated due
4 process clause); *Rojas v. Johnson*, 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar.
5 29, 2018) (concluding that “Agency Defendants do not provide sufficient notice of
6 the one-year deadline to satisfy the Due Process clause” to asylum-seeker
7 subclasses both in and out of removal proceedings).

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11 Here, Petitioner suffers irreparable harm with each additional day of
12 detention without an opportunity to demonstrate that she is neither a danger to the
13 community nor a flight risk. The deprivation of liberty cannot be remedied by
14 monetary damages. Moreover, the balance of equities favors Petitioner because the
15 government has no legitimate interest in detaining him under an unlawful statutory
16 framework. The public interest also favors ensuring compliance with constitutional
17 guarantees and statutory limits on detention authority.
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21 **b. Likelihood of Success on the Merits and Serious Questions Going**
22 **to the Merits**

23 Immigrants who pursue lawful immigrant status in the United States have
24 rights under the Due Process Clause of the Fifth Amendment. Once a petitioner
25 has identified protected liberty or property interest, the Court must determine
26 whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S.
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1 at 335. In making this determination, the Court balances (1) “the private interest
2 that will be affected by the official action”; (2) “the risk of an erroneous
3 deprivation of such interest through the procedures used, and the probable value, if
4 any, of additional or substitute procedural requirement would entail;” and (3) “the
5 government’s interest, including the function involved and the fiscal and
6 administrative burdens that the additional or substitute procedural requirement
7 would entail.” *Id.* Interpreted under the Constitution, the INA and its applicable
8 regulations do not permit continual detention of Petitioner after he has been
9 granted immigration relief and surpassed the 90-day removal allotment given
10 under the INA. 8 U.S.C. § 1231.

15 Due process protects a noncitizen’s liberty interest in the adjudication of
16 discretionary applications for relief and benefits made available under the
17 immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003)
18 (recognizing protected interests in the “right to seek relief” even when there is no
19 “right to the relief itself”). Petitioner has a protected due process interest in her
20 claim of unlawful detention, and due process requires that since he cannot be
21 removed to Mexico, and he cannot stay detained, that she must be released.

25 The Government’s actions toward Petitioner violate or will violate the APA
26 and the Fifth Amendment. The APA provides that a court “shall. . . hold unlawful
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1 and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). To
3 satisfy the APA, an agency must “examine the relevant data and articulate a
4 satisfactory explanation for its action including a rational connection between the
5 facts found and the choice made.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.
6 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut.*
7 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

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11 When the Government has promulgated “[r]egulations with the force and
12 effect of law,” those regulations “supplement the bare bones” of federal statutes
13 and in areas of the law, such that agencies must follow their own “existing valid
14 regulations,” even where Government officers have broad discretion, such as in
15 immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268
16 (1954) (reversing in immigration case after review of warrant for deportation); *see*
17 *also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“[I]t is incumbent upon agencies to
18 follow their own procedures . . . even where [they] are possibly more rigorous than
19 otherwise would be required.”); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir.
20 2005) (“*Accardi* has come to stand for the proposition that agencies may not
21 violate their own rules and regulations to the prejudice of others.”). Breaches of
22 *Accardi*’s rule constitute violations of both the APA and the Fifth Amendment’s
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1 Due Process Clause. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)
2 (“*Accardi* doctrine is premised on fundamental notions of fair play underlying the
3 concept of due process”); *see also Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541,
4 545, 546 (6th Cir. 2004) (noting that an *Accardi* violation may be a due process
5 violation, and the Government’s action may be set aside pursuant to the APA);
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7 *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An
8 agency’s failure to follow its own regulations . . . may result in a violation of an
9 individual’s constitutional right to due process.”).
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12 1. *Accardi*’s “ambit” is “not limited” to “rules attaining the status of
13 formal regulation.” *Montilla*, 926 F.2d at 167. It applies to both promulgated
14 regulations and other processes and programs that guide the Government’s
15 discretion. *See Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994)
16 (holding that the Government violated the APA by ignoring its non- promulgated
17 immigration “program”); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th
18 Cir. 1983) (same, but for informal criteria). *Accardi* means that when the
19 Government sets out a process whereby relief can be pursued, a “right to *seek*
20 relief” is created, even when there is no “right to the relief itself.” *Arevalo v.*
21 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S.
22 at 268).
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1 Federal district courts have already recognized that DHS's reliance on §
2 1225(b)(2) to categorically deny bond hearings is unlawful. In *Ramon Rodriguez*
3 *Vazquez v. Bostock*, No. 3:25-cv-05240 (N.D. Cal. Apr. 24, 2025), the court issued
4 a preliminary injunction requiring ICE to provide a bond hearing to a petitioner
5 detained under § 1225(b)(2), holding that custody in such circumstances properly
6 falls under § 1226(a). Similarly, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-
7 01873 (C.D. Cal. 2025), the court granted a temporary restraining order requiring
8 bond hearings within seven days and prohibiting ICE from transferring or
9 removing petitioners without court approval. These rulings demonstrate both the
10 statutory error and constitutional infirmity of Respondents' position. Petitioner's
11 claim is therefore not novel, but squarely aligned with other federal courts that
12 have already granted the precise relief sought here.

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18 **c. There is No Substantial Injury to Other Parties and Injunctive**
19 **Relief is in the Public Interest**

20 The issuing of a temporary restraining order and a preliminary injunction is
21 warranted because the balance of equities tips in the favor of the Petitioner and the
22 injunction is squarely within the public interest. The government's equities also
23 weigh in favor of issuing a preliminary injunction here.

24
25 The Petitioner, the public, and the Government all have a vested interest in
26 fair and equitable legal proceedings for all people, citizens and non-citizens alike.
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1 *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to
2 5th Amendment due process).

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4 Further, granting injunctive relief in this case will not cause substantial injury
5 to Respondents or to the government. The government has no legally cognizable
6 interest in detaining Petitioner under an unlawful statutory framework. An injunction
7 requiring that Petitioner be provided a custody hearing under 8 U.S.C. § 1226(a)
8 merely enforces the law as written and ensures compliance with constitutional
9 protections. As courts have consistently recognized, the government cannot be
10 harmed by an order that prevents it from engaging in unlawful conduct.
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14 The Government “cannot suffer harm from an injunction that merely ends an
15 unlawful practice or reads a statute as required to avoid constitutional concerns.”
16 *R.I.L-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez*
17 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, “the public interest is
18 served when administrative agencies comply with [the requirements of U.S. law].”
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21 *Id.*

22 **d. Matter of Yajure Hurtado Is Not Binding on this Court and Should**
23 **Not Be Followed.**

24 The BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
25 (BIA 2025), extends § 235(b)(2)(A) beyond its text and purpose to bar bond for all
26 individuals who entered without inspection, no matter how long they have resided
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1 in the United States. That interpretation is deeply flawed.

2 First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs
3 “applicants for admission”, those encountered at or near the border. Petitioner, who
4 has resided in the interior of the United States for more than a decade, is not in that
5 category. Section 236(a) is the detention authority that properly applies.
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8 Second, the decision departs from decades of agency practice. The Board
9 itself acknowledged that “for years Immigration Judges conducted bond hearings for
10 aliens who entered the United States without inspection.” *Id.* at 225. This admission
11 underscores that § 236(a) has long been understood to provide custody authority in
12 such cases. The Board’s sudden reversal represents an unexplained break from
13 settled practice, rendering it arbitrary and unexplained under the APA.
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16 Although the Board later attempted to walk back this acknowledgment, stating
17 that “our acknowledgment that aliens detained under § 236 may be eligible for
18 discretionary release on bond does not mean all aliens are eligible,” *id.* at 227, this
19 disclaimer does not erase the historical fact of settled agency practice. Nor does it
20 explain why individuals like Petitioner who entered more than a decade ago,
21 established long-term residence, and were arrested in the interior should suddenly
22 be stripped of bond eligibility. The Board’s narrowing language only underscores
23 the arbitrariness of its reinterpretation. By conceding the longstanding bond practice
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1 yet declaring it “beyond the scope” to resolve, the BIA effectively confirmed that its
2 shift was policy-driven, not compelled by statutory text. That makes the decision
3 both unpersuasive and invalid.
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5 Third, the decision raises serious constitutional problems. Mandatory
6 detention without access to a bond hearing, especially for long-term residents like
7 Petitioner with strong family and community ties, violates the Due Process Clause.
8 Courts construe statutes to avoid such constitutional infirmities. This Court should
9 therefore reject *Yajure Hurtado*’s interpretation and apply § 236(a), which
10 authorizes discretionary release on bond.
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13 The Board’s interpretation in *Matter of Yajure Hurtado* is not only
14 inconsistent with statutory text and decades of settled practice but has also already
15 faced judicial correction. Federal courts considering the same issue have recognized
16 that DHS’s expansion of § 1225(b)(2) produces unlawful and unconstitutional
17 results. In recent cases from the Northern and Central Districts of California, the
18 courts required ICE to provide bond hearings to noncitizens whom DHS had
19 classified under § 1225(b)(2), making clear that custody in such cases is properly
20 governed by § 236(a). These rulings reflect a growing recognition among Article III
21 courts that DHS’s reading of § 1225(b)(2) cannot stand. This Court should follow
22 the same reasoning and hold that Petitioner’s detention without access to bond is
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1 unlawful.

2 **VII. CLAIMS FOR RELIEF**

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4 **1. PETITIONER'S CONTINUED DETENTION VIOLATES DUE**
5 **PROCESS, THE INA, AND THE APPLICABLE REGULATIONS**

6 Petitioner re-alleges and incorporates by reference each and every allegation
7 contained in the preceding paragraphs as if set forth fully herein. Due process
8 protects a noncitizen's liberty interest in freedom from arbitrary civil confinement.
9
10 Petitioner has a protected due process interest in seeking judicial review of her
11 continued detention and in obtaining a custody determination in accordance with
12 the INA. By treating Petitioner as subject to mandatory detention under §
13 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have
14 deprived her of her liberty without adequate process and in excess of their statutory
15 authority.
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18 Respondents' reliance on INA § 235(b)(2)(A), as reinforced by the BIA's
19 recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of her
20 statutory right to a bond hearing under § 236(a). Even the Board admitted that for
21 years Immigration Judges conducted such hearings for EWIs before abruptly
22 reversing course. That reversal is inconsistent with the INA, arbitrary and
23
24 capricious under the APA, and unconstitutional under the Due Process Clause of
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1 the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should
2 decline to follow it.

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4 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**
5 **ADMINISTRATIVE PROCEDURE ACT**

6 Petitioner re-alleges and incorporates by reference each and every allegation
7 contained in the preceding paragraphs as if set forth fully herein. Respondents'
8 actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in
9 accordance with law" and "in excess of statutory jurisdiction, authority, or
10 limitations." 5 U.S.C. §§ 706(2)(A), (C). For decades, DHS and EOIR interpreted
11 the INA to mean that individuals like Petitioner—those apprehended in the interior
12 long after entry—are detained under § 1226(a). The abrupt reversal of this settled
13 interpretation, without explanation or notice-and-comment, violates the APA.
14 Absent this Court's intervention, Petitioner has no adequate remedy to challenge
15 the unlawful classification of her custody.

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19 **3. PETITIONER'S CONTINUED DETENTION VIOLATES THE**
20 **SUSPENSION CLAUSE**

21 Petitioner re-alleges and incorporates by reference each and every allegation
22 contained in the preceding paragraphs as if set forth fully herein. The government's
23 assertion that § 1225(b)(2) mandates detention for individuals like Petitioner
24 effectively forecloses meaningful habeas review by depriving him of any
25 opportunity to obtain a bond hearing or individualized custody determination. Such
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1 a denial of judicial review undermines the Suspension Clause of the United States
2 Constitution, which guarantees the right to challenge unlawful detention through
3 habeas corpus.
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5 **4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED**
6 **DANGER**

7 The Due Process Clause provides that no person shall “be deprived of life,
8 liberty, or property, without due process of law.” U.S. Const. amend. V. Its
9 protections extend to “every person within the nation’s borders,” regardless of
10 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014);
11 *id.* (“Even one whose presence in this country is unlawful, involuntary, or
12 transitory is entitled to that constitutional protection.”) (quoting *Mathews v. Diaz*,
13 426 U.S. 67, 77 (1976)). The government violates an individual’s right to due
14 process when it (1) “affirmatively place[s] [the] individual in danger,” (2) by
15 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*
16 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of*
17 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,
18 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a
19 situation that [is] more dangerous than the one in which [it] found him,” the
20 government has affirmatively placed that individual in danger. *Hernandez v. City*
21 *of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).
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1 The critical inquiry is thus whether the government’s actions “create[d] or
2 expose[d] an individual to a danger which he or she would not have otherwise
3 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK
4 (SKx), 2019 WL 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government
5 “acted with deliberate indifference to a known or obvious danger” by
6 implementing the [family separation] policy with awareness of the potential harm
7 it would cause and intending to use that as a basis to deter future attempts by those
8 similarly situated to enter the United States” (alterations omitted) (quoting
9 *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner
10 was required to show deliberate indifference as civil detainees—and she is not, see
11 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—he could easily do so. The
12 government acts with deliberate indifference to a known or obvious danger when it
13 “recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]
14 to such risks without regard to the consequences to [the plaintiff].” *Hernandez*, 897
15 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974
16 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions
17 of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).

18 Here, Respondents have placed Petitioner in greater danger by misclassifying
19 him under § 1225(b)(2) and denying him the bond procedures guaranteed under §
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1 1226(a). By treating him as mandatorily detained without any individualized
2 assessment of flight risk or danger, the government has subjected him to prolonged
3 confinement in punitive conditions with no lawful basis for denying him access to
4 bond. Respondents acted with deliberate indifference to the obvious risk of harm
5 inherent in prolonged and unnecessary detention, including the physical,
6 emotional, and familial harms that flow from being confined when the statute does
7 not authorize it..
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11 **VIII. REQUEST FOR ORAL ARGUMENT**

12 Petitioner respectfully requests oral argument on this Petition
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14 **IX. PRAYER FOR RELIEF**
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16 WHEREFORE, Petitioner respectfully requests that this Court:

- 17 1. Assume jurisdiction over this matter;
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19 2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued
20 detention is unlawful and order her immediate release;
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22 3. In the alternative, issue injunctive relief ordering Respondents to provide
23 Petitioner with an individualized custody determination before an
24 Immigration Judge under 8 U.S.C. § 1226(a) within seven (7) days, or to
25 release him immediately;;
26
27 4. Order Respondents file a return within three days pursuant to 28 U.S.C. §
28 2243;

- 1 5. Declare that the process as applied to Petitioner by Respondents violates the
2 Suspension Clause, the Due Process Clause of the Fifth Amendment, the
3 INA, the APA, and federal regulations;
- 4 6. Order Respondents to provide five days of notice to the Court and Petitioner
5 of her imminent removal;
- 6 7. Order Respondents to follow the applicable rules, regulations, law, and the
7 Constitution.
- 8 8. Award Petitioner her costs and reasonable attorneys' fees in this action as
9 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other
10 statutes;
- 11 9. Grant such further relief as the Court deems just and proper.

12 Dated: September 16, 2025,
13 Tucson, AZ,

Respectfully submitted,
By: /s/ Siovhan Ayala
Siovhan Ayala

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the events described in this Petition. Based on those discussions, on information and belief, I hereby verify that the factual statements made in the attached Amended Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: September 16, 2025,

Tucson, AZ,

By: /s/ Siovhan Ayala
Siovhan Sheridan Ayala
Attorney for the Petitioner
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