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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BRENDA LILIANA MEJICANOS CUYUN,	)	
	)	Case No.
Petitioner	)	
	)	PETITION FOR WRIT
v.	)	OF HABEAS CORPUS
	)	
REBECCA ADDUCCI , Director of Detroit Field Office,	)	ORAL ARGUMENT
U.S. Immigration and Customs Enforcement;	)	REQUESTED
KRISTI NOEM , Secretary of the U.S. Department of	)	
Homeland Security; and	)	
PAMELA BONDI , Attorney General of the U.S.,	)	
in their official capacities,	)	
	)	
Respondents.	)	
	)	

INTRODUCTION

1. Petitioner, Brenda Liliana Mejicanos Cuyun, is harmed by Respondents' draconian new policy reinterpreting immigration detention statutes to preclude plaintiffs from eligibility for bond under the Immigration and Nationality Act, 8 U.S.C. § 1226(a) and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Respondents now consider Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of lengthy removal proceedings and appeals.
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2. Petitioner has lived in the United States for twenty years and is currently detained at the Corrections Center of Northwest Ohio (CCNO) in Stryker, Ohio. She was detained on June 12, 2025, and has remained detained since September 23, 2025, without any due process.
3. The Cleveland Immigration Court violated Petitioner's Due Process rights by denying her request for custody redetermination based on the Board of Immigration Appeals' ("BIA" or "Board") decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), finding her an "applicant for admission" who is seeking admission and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
4. Petitioner has not yet filed an appeal of that denial with the Board of Immigration Appeals, but this habeas petition should go forward without this Court requiring administrative exhaustion which would be futile in light of *Matter of Yajure Hurtado*, 29 I&N 216 (BIA 2025). The BIA has predetermined the issue before it in cases that are legally identical.
5. Absent an order from this Honorable Court, Petitioner will remain detained without Due Process of the law for the duration of her immigration removal proceedings- potentially months to years longer during appeals. Thus, not only is requiring administrative exhaustion futile but it condemns Respondent to many more months in detention unrelated to any criminal allegations and without any opportunity for due process regarding her detention.
6. The Government has adopted the position that noncitizens who entered the United States without admission or who were paroled into the United States but have since

had that parole expire are ineligible for immigration court bond hearings, despite federal courts throughout the country ruling that immigration laws and the U.S. Constitution provide for such hearings. The Immigration Court and BIA are relying on *Matter of Q. Li* and *Matter of Yajure Hurtado* to subject noncitizens like Petitioner to mandatory detention and refusing to exercise jurisdiction over custody redetermination proceedings and appeals of the same.

7. Petitioner asks this Court to order her release from detention where his detention without possibility of bond hearing is an unconstitutional expansion of mandatory detention.

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9. cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) and whether the BIA and Immigration Court have jurisdiction over custody redetermination cases for noncitizens who have allegedly unlawfully entered the United States without inspection.
10. This Court may grant 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.

VENUE

11. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to her claims occurred in this District, and Petitioner resides in this District when not detained and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).
13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fayv. Noia*, 372 U.S. 391,400 (1963) (emphasis added).

PARTIES

14. Petitioner is a Violence Against Women Act (VAWA) Cancellation of Removal seeker. Petitioner is currently detained at the Corrections Center of Northwest Ohio (CCNO). She is in the custody and under the direct control of Respondents and their agents.
15. Respondent Rebecca Adducci is sued in her official capacity as the Director of the Detroit Field Office of U.S. Immigration and Customs Enforcement. Respondent Adducci is a legal custodian of Petitioner and has authority to release her.
16. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (OHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.
17. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

PRUDENTIAL EXHAUSTION SHOULD BE WAIVED AND WOULD BE FUTILE

18. "Where Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1991). But when it is not mandated, the decision to require exhaustion is within the sound discretion of the court. *Id.*; see also *Shearson*

v. Holder, 725 F.3d 588, 593 (6th Cir. 2013). Exhaustion requirements not written into the text of the statute are prudential. *See Perkovic v. INS.*, 33 F.3d 615, 619 (6th Cir. 1994). "Prudential exhaustion is a judge-made doctrine that enables courts to require administrative exhaustion even when the statute or regulations do not." *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 747 (6th Cir. 2019).

19. The Sixth Circuit has not formally adopted a standard for determining when prudential exhaustion applies, so the Northern District of Ohio has looked at the Ninth Circuit in similar circumstances. *See Torrealba v. United States Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 U.S. Dist. LEXIS 164153, at *23 (N.D. Ohio Aug. 25, 2025).
20. Under the Ninth Circuit's test, courts may require prudential exhaustion when: (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. *Id.* (citing *Puga v. Chertoff*, 488 F.3d 812 (9th Cir. 2007) (hereinafter "the *Puga* factors")).
21. Here, all three *Puga* factors weigh against requiring exhaustion. First, the issues raised in the habeas petition are purely legal in nature and do not require the agency to develop the record. The Immigration Judge even held that he would have set bond for Petitioner if he had jurisdiction to do so. Second, because the habeas petition includes a due process claim, the administrative scheme (*i.e.* appeal to the BIA) is likely futile. And third, administrative review is not likely to change

Respondents' position that Section 1225(b)(2)(A) applies in this context. The Government's immigration policy makes clear that mandatory detention is the position to be taken, and this is being done in coordination with the Department of Justice.

22. Further, while the Court would ordinarily enforce the exhaustion doctrine when it serves the dual purpose of promoting judicial economy and protecting administrative agency authority, waiver is appropriate when the interests of the individual weigh heavily against requiring administrative exhaustion; or exhaustion would be futile and unable to afford the petitioner the relief he seeks.. *See McCarthy*, 503 U.S. at 145; *see also Fazzani v. NE Ohio Corr. Ctr.*, 473 F.3d 229 (6th Cir. 2006) (citing *Aron v. LaManna*, 4 F. App'x 232, 233 (6th Cir. 2001) and *Goar v. Civiletti*, 688 F.2d 27, 28-29 (6th Cir. 1982)); *Shawnee Coal Co. v. Andrus*, 661 F.2d 1083, 1093 (6th Cir. 1981). Exhaustion is also excused when delay means hardship. *See Shalala v. Illinois Council*, 529 U.S. 1, 13 (2000).
23. Bond appeals before the BIA, on average, take six months to complete. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). Requiring Petitioner to wait six months simply to be back before this Court filing a petition for habeas corpus upon the Board's predetermined denial for lack of jurisdiction would be futile. And, even if Petitioner's removal proceedings were also now before the BIA, it which would likely take even longer for the appeal. As such, exhaustion would not effectively afford Petitioner the relief she seeks. Depriving Petitioner of her liberty while awaiting a BIA appeal decision certainly equates to hardship and any

delay in results is the very harm Petitioner is trying to avoid by seeking the bond hearing-detention.

24. Courts may waive exhaustion requirements when an administrative remedy is subject to "an unreasonable or indefinite timeline." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Bond denial appeals "typically take six months or more to be resolved at the BIA." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wa. 2025). Six months of further, and potentially unnecessary, incarceration is significantly longer than the thirty days the Sixth Circuit rejected as "unreasonable" or "indefinite" in *United States v. Alam*, 960 F.3d 831, 836 (6th Cir. 2020). Plus, the "delays inherent" in the BIA's administrative process "would result in the very harm that the bond hearing was designed to prevent," that is, prolonged detention without due process. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation omitted); *see also Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (finding the "prolonged loss of liberty" from "several additional months" in possibly unlawful detention would "constitute irreparable harm"). The prevention of six months or more of unlawful detention thus outweighs the interests the BIA might have in resolving appeal of bond determination.
25. Aside from waiver, the Sixth Circuit has also previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of non-

frivolous constitutional challenges to an agency's procedures.") (citation omitted). Since Petitioner's petition includes a due process claim, an appeal to the BIA would be pointless. The fact that Petitioner has reserved her right to appeal the denial of a detention hearing to the BIA should not dissuade the Court from exercising its discretion to decide this habeas petition.

26. When the liberty of a person is at stake, every day that passes is a critical one, and the Court should not fault Petitioner for taking appropriate measures to pursue her claims through the habeas process, with the expectation that her claims would be met with a sense of urgency, and she would receive a decision in a more expedient manner.
27. Because exhaustion would be futile and unable to provide Petitioner with the relief she requests in a timely manner, the Court should waive administrative exhaustion and address the merits of the habeas petition.

STATEMENT OF FACTS

28. Petitioner is citizen of Guatemala who has been in the United States for 20 years.
29. Her VAWA Application for Cancellation of Removal is based on the fact that she was the victim of domestic violence, has United States citizen and lawful permanent resident children, has been present in the United States for 20 years, was recently denied bond by the Cleveland Immigration Court, and she has reserved her right to appeal the same to the BIA.
30. She has no criminal record.
31. Petitioner presented her case for a custody redetermination to the Cleveland Immigration Court at a hearing on December 2, 2025. On December 2, 2025, the

Court issued its decision denying the Respondent's custody redetermination request, as the Court found that it lacked jurisdiction to redetermine the Respondent's bond, as the Respondent had been detained under INA § 235(b)(2)(A), as an applicant for admission, which requires that she remain in detention until the conclusion of proceedings under INA § 240. Court Order, Jul. 25, 2025. The Respondent has until January 2, 2026, within which to appeal the denial of her custody redetermination request.

32. The Immigration Judge held as follows:

The Board of Immigration Appeals (BIA) has recently held that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025).

The BIA has further reinforced their interpretation of the statute in an unpublished decision, wherein they held, "[w]e agree with the Immigration Judge that the respondent is an applicant for admission despite having been in the United States for over 10 years since his alleged last illegal entry. All other aliens arriving in and seeking admission to the United States who are placed directly in full removal proceedings after failing to establish their admissibility pursuant to section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), are likewise subject to detention until removal proceedings have concluded. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)." F-M-, XXXX-XXX-269 (BIA May 22, 2025).

As the Respondent was an applicant for admission at the time of his detention, the Court finds that he was detained under INA § 235(b)(2)(A), which mandates the Respondent's detention until the conclusion of INA § 240 proceedings. As detention under INA § 235(b)(2)(A) requires mandatory detention until the conclusion of removal proceedings, the Court finds it does not have jurisdiction to redetermine the Respondent's bond.

Accordingly, the Respondent's motion for bond redetermination is DENIED.

Matter of Tecum Pastor (Sep. 2, 2025), attached hereto at Exh. B.

33. Petitioner is within her time to file an appeal of the denial to the BIA but maintains that such appeal is futile given the Board's holdings in *Matter of Q. Li* and *Matter of Yajure Hurtado* and the Board's recent dismissal of an appeal in another case where the Board decided that the Immigration Court and Board lacked jurisdiction for to hear custody redetermination or appeal of the same in a case where a noncitizen is in the United States without current lawful status.

LEGAL FRAMEWORK

34. Petitioner now comes before this Honorable Court for a review of her unlawful and prolonged detention and the BIA's anticipated denial of jurisdiction over appeal of the legality of that continued detention.

I. Petitioner Has Been Wrongly Found to Fall Under the Purview of INA § 235(b)

35. Contrary to Respondents' position, Petitioner is detained pursuant to Immigration and Nationality Act ("INA") § 236(a) and her detention cannot be deemed to be governed by INA § 235(b). Aliens detained under section 236(a) of the INA may be eligible for discretionary release on bond pursuant to section 236(a)(2) of the INA. But, aliens arriving in the United States who are detained under section 235(b)(1) or (b)(2) are ineligible for release on bond and their detention is mandatory until the conclusion of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018). The exception to this mandatory detention reads, under section 212(d)(5)(A) of the INA,

The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

36. The Immigration Judge stated "No Jurisdiction" for the holding that respondent is an applicant for admission even where, as here, that respondent is inside the United States and has been inside the United States for many years since an unlawful entry. So, such a respondent is always an applicant for admission and is subject to mandatory detention without the possibility of an immigration court exercising jurisdiction over a custody redetermination hearing for that respondent.
37. Thus, Petitioner, even though detained 20 years after entering the United States and far from a border, the Immigration Judge held Petitioner detained under section 235(b) and as ineligible for any subsequent release on bond under section 236(a).
38. "Statutory construction ... is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear ... or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988).

39. The heading for INA § 235(b) is "Inspection of applicants for admission" with INA § 235(b)(1) titled "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." This section describes situations that mandate placing aliens in expedited removal, and includes two general categories of such aliens. The first category involves those "arriving in the United States" and found to be "inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title ... " *See* INA § 235(b)(1)(A)(i). The second category includes "certain other aliens who have not been admitted or paroled" and applies to those who cannot show that they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility ... " *See* INA § 235(b)(1)(A)(iii)(II).
40. Looking then at INA § 235(b)(2), titled "Inspection of other aliens," and following the statutory scheme of this section, the "other aliens" refers to those not found inadmissible under sections 212(a)(6)(C) or 212(a)(7), and mandates their detention for proceedings under INA § 240 if an immigration officer determines that they are not "clearly and beyond a doubt entitled to be admitted ... ". *See* INA § 235(b)(2)(A). Moreover, in addressing the treatment of aliens arriving from contiguous territory, INA § 235(b)(2)(C) distinguishes those aliens described in subparagraph (A) who are "arriving on land," as opposed to "arriving" in any other manner, again clearly signifying that Section 235(b)(2) is intended to cover only those applicants for admission "arriving" in the United States. This provision cannot be taken in isolation from the rest of Section 235 and interpreted to mandate detention for any and all aliens, regardless of time and place.

41. Interpreting the statute in such a manner would then render INA § 236(a) superfluous for all practical purposes, as anyone can be deemed to forever be an applicant for admission. For this reason, no court has ever interpreted the mandatory detention provisions under Section 235 to apply to anyone but applicants for admission who are "arriving" in the United States. "An 'applicant for admission' is defined, in relevant part, as an alien 'who arrives in the United States whether or not at a designated port of arrival.'" *Matter of Q. Li* at 68. "§ 235(b) applies primarily to aliens seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018).
42. In *Jennings*, the Supreme Court clearly distinguishes between aliens "seeking admission" into the country at or near a port of entry, to which INA §§ 235(b)(1) and (b)(2) apply, and aliens "already in the country," who may be detained pursuant to INA § 236. *Jennings* at 298.
43. Respondent is, thus, now in the purview of INA § 236, because Respondent was already in the country when detained by immigration authorities and placed into immigration removal proceedings.
44. Furthermore, in no precedent decision has any court required that INA § 236 apply only to aliens "admitted" into the United States. In fact, the Supreme Court has held that Section 236 governs arrest and detention of aliens who may be removed, including "aliens who were inadmissible at the time of entry." *Id.* As the Supreme Court stated in *Zadvydas v. Davis*, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within

the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

45. It is therefore clear that the provisions of Section 235 of the INA can only apply to those seeking admission while "arriving" in the United States or those who trigger the statutory return to that same provision, as in *Matter of Q. Li*. The term "arriving" has been addressed previously by the BIA and has been defined in part by the Regulations.

46. The Regulations define an "arriving alien" as follows:

an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

See 8 C.F.R. § 1.2.

47. Although there is a dispute as to whether the term "arriving" as used in INA § 235 falls under the regulatory definition of "arriving alien," the BIA has also previously held that the "use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographical limit ... " *See Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020).

48. Detention under INA § 235(b) cannot apply to anyone who has entered into the United States or anyone ever paroled into the United States who is now in removal proceedings, as that would effectively do away with INA § 236(a) and any and all aliens can then be subject to mandatory detention without limit. Clearly this could not have been the intent of Congress, and the BIA's decision in *Matter of Q. Li* cannot be read to cast such a wide net.

49. The blanket application of the holding in *Matter of Q. Li* to a case like Petitioner's is a flagrant violation of the due process of law, essentially stripping Petitioner of all right to constitutional due process for review of his extended detention, challenging constitutional limits of geography and time for mandatory detention set forth in *Jennings v. Rodriguez*.
50. "An 'applicant for admission' is defined, in relevant part, as an alien 'who arrives in the United States [w]hether or not at a designated port of arrival.'" *Matter of Q. Li* at 68. "§1225(b) applies primarily to aliens seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281,299 (2018). In *Jennings*, the Supreme Court clearly distinguishes between aliens "seeking admission" into the country at or near a port of entry, to which INA §§ 235(b)(1) and (b)(2) apply, and aliens "already in the country," who may be detained pursuant to INA § 236. *Jennings* at 298.
51. As the Supreme Court stated in *Zadvydas v. Davis*, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
52. It is, therefore, clear that the provisions of Section 235 of the INA can only apply to those seeking admission while "arriving" in the United States. The term "arriving" has been addressed previously by the BIA and has been defined in part by the Regulations.
53. The Regulations define an "arriving alien" as:

an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States

at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

See 8 C.F.R. § 1.2.

54. Detention under INA § 235(b) cannot apply to anyone who has entered into the United States, as that would effectively do away with INA § 236(a) and any and all aliens can then be subject to mandatory detention without limit. It would render meaningless the Laken Riley Act, in which the second statutory provision - Section 1226 - provides for a discretionary detention framework. It states, in relevant part:

(a) ARREST, DETENTION, AND RELEASE

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General-

- (1) may continue to detain the arrested alien; and
- (2) may release the alien on-
 - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General ...

8 U.S.C. § 1226(a). Subsection (c) of the Section 1226 prohibits certain noncitizens who are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) by virtue of their presence in the country without being admitted (like Petitioner) from being released on bond, *but only if* the noncitizen has also been:

- charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

8 U.S.C. § 1226(c)(1)(E)¹

¹ This section that subjects certain noncitizens to mandatory detention was added by Congress in January 2025 with the passing of the Laken Riley Act. Pub. L. No. 119-1, 139 Stat. 3 (2025).

55. Relevant here, noncitizens arrested and detained under Section 1226 have a right to request a custody redetermination (i.e. a bond hearing) before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1). The IJ evaluates whether there is a risk of nonappearance or danger to the community. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). And the Immigration Judge in Petitioner's case found that she is neither a flight risk nor a danger to the community. She should be released from detention.
56. Thus, Petitioner asks that this Honorable Court order her release from prolonged detention which has flowed from violations of Due Process and federal law.

11. Respondents are wrongly holding Petitioner without a bond hearing in violation of binding federal District Court Precedent.

57. On November 25, 2025, the U.S. District Court for the Central District of California issued an order in *Maldonado Bautista v. Santacruz*, certifying a nationwide class of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the United States without admission or inspection (colloquially referred to as "entered without inspection" or "EWI").
58. The Court for the Central District of California granted declaratory relief to the entire class, holding that the government is unlawfully subjecting them to mandatory no-bond detention and that class members are eligible for release on bond under the immigration laws. Thus, under the Court's order, class members should be able to request a bond hearing in immigration court before an immigration judge (who must consider whether they are suitable for release on bond while their removal proceedings are pending).

59. However, the Department of Justice (DOJ) has instructed immigration judges to ignore the Court for the Central District of California's order. And, immigration judges have been following this DOJ instruction.
60. The Court for the Central District of California reiterated its decision in an Order Granting in Part and Denying in Part Petitioners' Ex Parte Application for Reconsideration or Clarification on December 18, 2025'.
61. Petitioner is entitled to a bond hearing as a member of this class.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

62. The allegations in the above paragraphs are realleged and incorporated herein.
63. Petitioner has been detained without any option to argue against the unlawful "mandatory" detention, other than this habeas petition.
64. Petitioner was subjected to mandatory detention flowing from an arbitrary and capricious overreach by the BIA in *Matter of Q. Li* and *Matter of Yajure Hurtado*. The Immigration Court denied having jurisdiction to perform a custody redetermination, rendering this current detention fundamentally unfair.
65. The Board's decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* violate Petitioner's Fifth Amendment Due Process rights. The BIA's expansion of warrantless arrest and mandatory detention without the possibility of bond to any noncitizen within the United States who initially entered the country without inspection or who was paroled into the country and whose parole has since expired, no matter how long they have been in the United States and no matter where they

are geographically located violates Due Process rights of noncitizens triggered by their presence in the United States. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (holding all persons within the territory of the United States are entitled to the protection of the Constitution). "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (holding even non-citizens who are subject to deportation proceedings or are unlawfully present still possess constitutional due process rights).

66. The Supreme Court has suggested that the Constitution may well preclude granting "an administrative body the unreviewable authority to make determinations implicating fundamental rights." *Id.* at 692 (quoting *Superintendent, Mass. Correctional Institution at Walpole v. Hill*, 472 U. S. 445, 450 (1985) (O'CONNOR, J.)) (citing *Crowell v. Benson*, 285 U.S. 62, 87 (1932) (Brandeis, J., dissenting) ("[U]nder certain circumstances, the constitutional requirement of due process is a requirement of judicial process")).
67. The serious constitutional problems arising out of a statute that, in these circumstances, permits an indefinite (perhaps lasting many years as immigration removal proceedings often do) deprivation of human liberty without any such protection is apparent.
68. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. §§ 1225(b), 1226(a), and Implementing Regulations

69. The allegations in the above paragraphs are realleged and incorporated herein.

70. Petitioner has not been detained under 8 U.S.C. 1225(b) where she has affirmatively shown that she has been in the United States for over two years prior to the date of the determination of inadmissibility under the relevant subparagraph before being detained and placed into removal proceedings.

71. For these reasons, Petitioner's detention violates 8 U.S.C. § 1225(b) and 28 C.F.R. § 68.36.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1225(b), and/or 28 C.F.R. § 68.36;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, in the alternative, directing the Immigration Court to exercise jurisdiction over bond proceedings in accordance with any findings and holdings made by this Honorable Court;
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

DATED this 23rd of December, 2025.

Respectfully submitted,

/s/ Troy A. Murphy

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Attorney for Petitioner

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

I represent Petitioner, Brenda Liliana Mejicanos Cuyun, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23rd day of December, 2025.

/s/ Troy A. Murphy
Troy A. Murphy, Esq.