

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

ZULEIMA ANDREA QUISHPI MOROCHO,

Petitioner,

v.

DORA CASTRO, in her official capacity as Warden of the Otero County Processing Center; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director, El Paso Field Office, U.S. Immigration and Customs Enforcement; TODD M. LYONS, in his official capacity as Director of Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS

INTRODUCTION

1. Petitioner Zuleima Andrea Quishpi Morocho is a national and citizen of Ecuador, who came to this country to seek asylum. After turning herself in to U.S. Customs and Border Protection officers near the Southern border on or about August 22, 2023, she was processed and released on her own recognizance. In the following two years, Petitioner applied for asylum, obtained work authorization, held gainful employment, and complied with all requirements imposed on her by immigration authorities.
2. Nevertheless, on January 6, 2026, Petitioner was arrested while driving to her home in Minneapolis, Minnesota and detained, with DHS taking the position that she was subject to mandatory detention. Since that time, Petitioner has been detained at the

Otero County Processing Center in Chaparral, New Mexico, over a thousand miles away from her family.

3. Upon information and belief, Respondents are denying Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (“ICE”) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (“BIA” or “Board”) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Respondents’ detention policy—and Petitioner’s detention under this policy—are unlawful. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond, and requires an individualized determination upon arrest. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Petitioner's confinement is unlawful—as confirmed by a cascade of decisions, including within this District, that have rejected Respondents' interpretation of Section 1225(b)(2). Accordingly, she brings this petition seeking immediate and unconditional release. She also asks this Court to enjoin her transfer outside this District. *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)). Alternatively, Petitioner respectfully asks the Court to rule that she is entitled to a prompt bond hearing at which the Government must bear the burden of demonstrating, by clear and convincing evidence, that she is a flight risk or a danger to the community.

PARTIES

7. Petitioner, Ms. Quishpi Morocho is an asylum-seeker from Ecuador who has lived in the United States since August 2023. Prior to Petitioner's detention on January 6, 2026, she was residing in Minneapolis, Minnesota. She was transferred from Minnesota and now is detained at Otero County Processing Center, 26 McGregor Range Road, Chaparral, NM 88081. This facility is within the jurisdiction of the ICE Field Office for El Paso, Texas.
8. Respondent Dora Castro is the Warden of the Otero County Processing Center located at 26 McGregor Range Road, Chaparral, NM 88081, where Petitioner is currently detained. As such, she is Petitioner's immediate custodian. She is named in her official capacity.

9. Respondent Mary De Anda-Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Ms. Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity. Respondent Anda-Ybarra's address is El Paso ICE Field Office Director, 11541 Montana Ave., Suite E, El Paso, TX 79936.
10. Respondent Todd Lyons, is the Director of Immigration and Customs Enforcement and is responsible for the custody and revocation decisions of the Agency including for the Petitioner. He is sued in his official capacity. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.
11. Respondent Kristi Noem is the Secretary of Homeland Security and is ultimately responsible for setting policy and directs the officers of all of the Department of Homeland Security including the custody and revocation decisions that includes the Petitioner's custody. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.
12. Respondent U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, D.C. and the parent agency of ICE.
13. Respondent U.S. Immigration and Customs Enforcement ("ICE") is a component agency of DHS.

JURISDICTION

14. Petitioner is in the physical custody of Respondents. Petitioner is detained at Otero County Processing Center, 26 McGregor Range Road, Chaparral, NM 88081.

15. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
16. 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).
17. 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

18. Venue is proper because at the time of filing, Petitioner was detained at Otero County Processing Center, 26 McGregor Range Road, Chaparral, NM 88081, which is within the jurisdiction of this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004) (citing *Ex Parte Endo*, 323 U.S. 283 (1944)).
19. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to her claims occurred in this District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. Exhaustion of administrative remedies is not required where “(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), *as amended* (July 24, 2003).

21. Exhaustion of administrative remedies would clearly be futile, perpetuate Petitioner's unlawful detention, and cause Petitioner irreparable injury. The BIA's unlawful policy has been challenged in hundreds of habeas actions, yet the BIA continues to adhere to it and demand such adherence from all Immigration Judges in the country.

22. Petitioner is not required to exhaust administrative remedies because she was detained pursuant to an ICE policy that is defined by its systematic denial of administrative relief. *See Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *3 n.3 (D.N.M. Sept. 17, 2025) (collecting cases recognizing futility of exhaustion in identical scenario). In addition, exhaustion is not required because Petitioner raises substantial constitutional questions that cannot properly be adjudicated administratively.

STATUTORY FRAMEWORK

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

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

25. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

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

27. This case concerns the efforts of Respondents to substitute the detention provisions at § 1225(b)(2) for those in § 1226(a) and on the basis of that substitution to claim that detention is mandatory.

28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585.

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

30. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104–

469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

31. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

32. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claimed that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

33. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

34. Since Respondents adopted their new policies, dozens of federal courts nationwide have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

35. Subsequently, court after court has adopted the same reading of the INA’s detention authorities and rejected ICE and EOIR’s new interpretation. *See, e.g., Intriago-*

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

Sedgwick v. Noem, No. 1:25-CV-01065-MIS-LF, 2025 WL 3688155, at *7 (D.N.M. Dec. 19, 2025); *Gonzalez Ramos v. Dedos*, No. 1:25-CV-00975-MLG-KRS, 2025 WL 3653928, at *4 (D.N.M. Dec. 17, 2025); *Molina Ochoa v. Noem*, No. 1:25-CV-00881-JB-LF, 2025 WL 3125846, at *7 (D.N.M. Nov. 7, 2025) *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*,

No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

36. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

38. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As one court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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

40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

STATEMENT OF FACTS

42. Petitioner is a citizen of Ecuador who came to the United States in order to apply for asylum.

43. On or around August 22, 2023, Petitioner entered the United States across the Southern border near El Paso, Texas, and later turned herself in to CBP officers.

44. On or around August 23, 2023, Petitioner was released on her own recognizance. Upon release, DHS issued Petitioner a Notice of Custody Determination that stated: “Pursuant to the authority contained in section 236 of the [INA] and [applicable regulations], I have determined that, pending a final administrative determination in your case, you will be . . . released . . . [o]n your own recognizance.” Section 236 of the INA is

8 U.S.C. § 1226(a). In order to release Petitioner pursuant to § 1226(a), Respondents necessarily determined that she was neither a danger nor a flight risk.

45. On the same day, Petitioner was also served with a Notice to Appear (“NTA”), instructing her to appear at the Chicago Immigration Court. This NTA charged her with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the United States without inspection.

46. The NTA alleged that Petitioner was “an alien present in the United States who has not been admitted or paroled.” Although the NTA provided a checkbox by which DHS could have charged Petitioner as “an arriving alien,” it did not elect to do so.

47. In early 2024, Petitioner moved to Minnesota. Accordingly, she filed a motion to change venue to the Fort Snelling Immigration Court, which was granted.

48. On information and belief, Petitioner filed an asylum application with the Fort Snelling Immigration Court after her proceedings were venued there.

49. Petitioner’s filing of her asylum application rendered her eligible for work authorization. She subsequently applied for and was granted an employment authorization document, effective September 11, 2025.

50. After she received her work authorization, she began working full-time in or around November 2026 and until DHS detained her on January 6, 2026.

51. Petitioner has not missed any court dates. She has had various court dates that were all vacated, and in early 2026, she was waiting for the Fort Snelling Immigration Court to assign her a new hearing date.

52. On January 6, 2026, DHS pulled Petitioner over while she was driving home and arrested and detained Petitioner.

53. This arrest is part of an operation in the Minneapolis area called “Operation Metro Surge.” This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians, pepper spraying and arresting citizen observers, hitting passersby with vehicles, and generally attempting to take as many immigrants as possible into custody, regardless of the constitutionality of their actions. *See, e.g., Compl., Tinch et. al. v. Noem*, No. 0:25- cv-04669 (D. Minn. 12/17/2025)

54. Petitioner was provided with no due process whatsoever during or following this detention. At no point was Petitioner provided with an opportunity to demonstrate to DHS that she was not a danger to the community or a flight risk, nor did DHS make any contrary findings itself. At no point was Petitioner provided an opportunity to provide any evidence of her personal equities, her family situation, her community ties, or any other information that would be relevant to an individualized determination of bond risk.

55. Petitioner has three children ages seven and younger. Her youngest child is a United States Citizen.

56. Following her detention, Petitioner has been scheduled for a removal hearing at the Otero Immigration Court for January 29, 2026.

57. Petitioner has no manner to receive an individualized bond hearing or determination as to whether she is a danger to the community or a flight risk in the immigration courts. Pursuant to *Matter of Yajure Hurtado*, the immigration courts will be bound to find that she is subject to mandatory detention and that they lack jurisdiction to conduct a bond hearing.

58. As a result, Petitioner remains in detention. Without relief from this Court, she faces the prospect of months, or even years, in immigration custody, separated from her family and community.

CLAIMS FOR RELIEF

COUNT ONE

**VIOLATION OF THE DUE PROCESS CLAUSE
OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION
SUBSTANTIVE DUE PROCESS**

59. The allegations in the above paragraphs are re-alleged and incorporated herein.

60. Petitioner is being detained without cause and in violation of her Constitutional right to Due Process under the Fifth Amendment.

61. The government's ongoing detention of Petitioner is unjustified and unlawful.

62. The Fifth Amendment requires that detention be "reasonabl[y] relat[ed]" to a valid governmental purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Immigration detention during the pendency of removal proceedings is authorized by statute for the purpose of mitigating flight risk and preventing danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

63. The goals of immigration detention are to "ensur[e] [his] appearance ... at future immigration proceedings," and to "[p]revent[] danger to the community." *Zadvydas*, 533 U.S. at 690. Neither goal is served by Petitioner's detention.

64. Petitioner was detained by ICE after she had filed an asylum application and complied with all of her immigration hearings. There was no need for detention to ensure her presence at any immigration proceedings.

65. Moreover, her detention jeopardizes Petitioner's ability to gather the evidence needed to pursue relief.

66. The Due Process Clause guarantees detained immigrants the right to be detained in a safe situation, free from punitive conditions of confinement. *See* U.S. Const. amend. V.

67. Respondents' failure to adequately protect Petitioner from these punitive conditions, or release her from detention altogether, violates her due process rights.

68. Petitioner has no adequate remedy at law, as she seeks immediate release and is ineligible for bond pursuant to *Matter of Yajure Hurtado*.

69. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROCEDURAL DUE PROCESS

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

71. Petitioner is being detained without cause and in violation of her Constitutional right to Due Process under the Fifth Amendment.

72. The Procedural Due Process Clause of the Fifth Amendment prohibits the government from depriving an individual of a protected interest without notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

73. Under *Mathews*, courts balance: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government’s interest, including the fiscal and administrative burdens that additional or substitute procedures would entail. 424 U.S. at 335.

74. Petitioner asserts “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

75. The risk of erroneous deprivation of Petitioner’s liberty interest is enormous. Respondents provided Petitioner with no notice or opportunity to be heard either prior to arresting and detaining her or thereafter. She has been provided with no pre-deprivation or post-deprivation process whatsoever, and Respondents have made no showing that she is a danger to the community or a flight risk. Where *no* procedures are in place to ensure that detention bears a reasonable relationship to the valid governmental purposes described in *Zadvydas*, a violation of procedural due process is inexorable.

76. By the same token, the Government has no legitimate interest in detaining Petitioner absent a valid purpose or reasonable relationship to preventing danger to the community or ensuring her appearance at future hearings.

77. Petitioner has no adequate remedy at law, as she seeks immediate release and is ineligible for bond pursuant to *Matter of Yajure Hurtado*.

78. Petitioner's detention thereby deprives her of her rights to Due Process under the Fifth Amendment of the United States Constitution.

COUNT THREE

VIOLATION OF THE INA

79. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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

81. Indeed, Respondents themselves consistently classified Petitioner as being subject to the discretionary detention provisions of 8 U.S.C. § 1226(a). When Petitioner was released on her own recognizance in May 2023, Respondents expressly invoked their authority under "section 236 of the Immigration & Nationality Act," *i.e.*, 8 U.S.C. § 1226, to do so. Under like circumstances, the fact that Respondents "consistently treated [Petitioner] as subject to § 1226" was considered to be a powerful indication that she was, in fact, subject to § 1226. *Lopez Benitez*, 2025 WL 2371588, at *5.

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

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COUNT FOUR

VIOLATION OF THE BOND REGULATIONS

83. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

84. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

85. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

86. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

- 1) Assume jurisdiction over this matter;

- 2) Order Respondents to show cause why the writ should not be granted within three days and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
- 3) Enjoin Respondents from transferring Petitioner from the jurisdiction of this District pending these proceedings;
- 4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- 5) Declare that Petitioner's detention violates the Immigration & Nationality Act and applicable regulations;
- 6) Declare that Respondents' actions violate the Administrative Procedure Act;
- 7) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- 8) In the alternative, issue a writ of Habeas Corpus ordering Respondents to provide Petitioner with a constitutionally-adequate bond hearing, at which Respondents must bear the burden by clear and convincing evidence of justifying her future detention by demonstrating that she is a flight risk or a danger to the community;
- 9) Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- 10) Grant any further relief this Court deems just and proper.

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Dated: January 23, 2026

Santa Fe, NM

Respectfully submitted,

LUBIN, ENOCH & BUSTAMANTE, P.C.

/s/ Clara S. Bustamante

Clara S. Bustamante

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Attorneys for Petitioner

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

I am submitting this verification on behalf of ZULEIMA ANDREA QUISHPI MOROCHO because her current detention makes her unable to submit one on her own behalf. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 23, 2026
Santa Fe, NM

Respectfully submitted,

LUBIN, ENOCH & BUSTAMANTE, P.C.

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