UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

DARIAN VALERIA APOLINAR MONTE,

Petitioner,

v.

MARY DE ANDA-YBARRA, *in her official capacity* as Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Warden of ERO El Paso Camp East Montana;

TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security;

DEPARTMENT OF HOMELAND SECURITY;

DAREN K. MARGOLIN, *in his official capacity* as Director, Executive Office for Immigration Review;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

and

PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States;

Respondents.

C/A No. 3:26-cv-181

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

Agency # [redacted] / [redacted]

INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner") is a citizen of Venezuela who has resided in the United States since she was nine years old.

2. She entered after inspection with a valid visa on June 28, 2015.

3. Petitioner since established her permanent residence and livelihood in this country.

4. On information and belief, Petitioner was apprehended by immigration authorities in Minnesota on January 14, 2026. She was then transferred to this jurisdiction. She remains in immigration detention. Removal proceedings have not yet been initiated.

5. On information and belief, Petitioner is currently detained at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

6. Petitioner's continued detention violates the Constitution of the United States, the plain language of the INA, the INA's implementing regulations, and the Administrative Procedure Act. Petitioner is detained pursuant to 8 U.S.C. § 1226(a), which requires a warrant of arrest and allows for release on conditional parole or bond. However, Petitioner was detained without a warrant and has been denied a bond hearing.

7. Petitioner seeks declaratory relief that she is unlawfully detained or, in the alternative, is subject to detention under § 1226(a) and its implementing

regulations and asks that this Court either order Respondents to immediately release Petitioner from custody or provide her with a bond hearing.

CUSTODY

8. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936. She is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

9. She is not detained under any lawful authority under the Immigration & Nationality Act.

10. She is not in proceedings under 8 U.S.C. § 1229a.

JURISDICTION

11. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq*.

12. 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*., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

13. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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.*

15. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was detained by Respondents.

VENUE

16. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in El Paso, at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is

unsuitable for determination in an administrative proceeding. *See Fuller v. Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir 2000).

18. Exhaustion is excused here because further administrative review would be futile. The immigration judges assert that they are compelled by the Board of Immigration Appeals' decision in *Matter of A-W-*, 25 I. & N. Dec. 45 (BIA 2009), which they interpret as holding that individuals who would otherwise be eligible for bond hearings under 8 U.S.C. § 1226(a) are not eligible unless and until the government presents evidence of issuance of the Notice to Appear to the immigration court. As a result, IJs are categorically deprived of authority to conduct bond hearings for individuals in Petitioner's position.

19. Because IJs are bound by this interpretation, any further request for bond or custody redetermination would be denied as a matter of law, rendering additional administrative exhaustion wholly ineffective and unavailable in practice. See *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999) (excusing exhaustion where administrative relief is foreclosed).

20. The Executive Office for Immigration Review cannot control if, when, and how Respondent ICE detains a person, commences proceedings, or any other act that caused Petitioner's confinement.

21. The Executive Office for Immigration Review cannot cure the unconstitutional detention of Petitioner.

22. The agency lacks jurisdiction to adjudicate Petitioner's claim that her continued detention violates the Due Process Clause. Constitutional challenges to the legality of detention fall outside the scope of the agency's authority, and exhaustion is therefore not required. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999) (exhaustion excused where the agency lacks jurisdiction to address constitutional claims).

23. Accordingly, Petitioner is not required to exhaust further administrative remedies. The administrative process has already confirmed that no bond hearing is available, and the agency is powerless to address the constitutional infirmities of Petitioner's continued detention. Because the available procedures are ineffective, unavailable in practice, and futile, exhaustion serves no practical purpose and should be excused.

PARTIES

24. Petitioner is from Venezuela and has resided in the United States since 2015. She is currently detained in the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

25. Respondent Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement and Warden of ERO El Paso Camp East Montana, is sued in her official capacity. Respondent Anda-Ybarra is a legal custodian of Petitioner.

26. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

27. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

28. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens such as Petitioners.

29. Respondent Daren K. Margolin is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings such as the one to which Petitioner is entitled. He is sued in his official capacity.

30. Respondent Executive Office for Immigration Review ("EOIR") is the adjudicative authority with jurisdiction over the removal and bond cases of

Petitioner. Its authority includes individuals detained in El Paso, Texas. This district is known as the El Paso district.

31. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

Removal Proceedings

32. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien," 8 U.S.C. § 1229a(a)(1) and that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

33. To initiate removal proceedings, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." 8 U.S.C. § 1229(a)(1).

Detention Authority

34. The "[a]pprehension and detention of aliens" is governed by a different provision of the code. *See* 8 U.S.C. § 1226.

35. Custody and bond proceedings are separate and apart from removal proceedings. *See* 8 C.F.R. § 1003.19(d).

36. Arrest and detention of noncitizens present inside the United States is governed under 8 U.S.C. § 1226, which provides that:

> **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 ... may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.**

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

37. 8 U.S.C. § 1226(a)(2)(A) contains no internal reference to 8 U.S.C. § 1229a and does not require the issuance of a Notice to Appear. *See id.*

38. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

(b) Warrant of arrest—

> (1) In general. At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into

> custody **under the authority of Form I–200, Warrant of Arrest.** A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.
>
> (2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.
>
> (c) Custody issues and release procedures—
>
> (1) In general.
>
> (i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

8 C.F.R. § 236.1(b).

39. 8 U.S.C. § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

40. The other sections governing immigration detention are 8 U.S.C. § 1225 and 8 U.S.C. § 1231.

41. 8 U.S.C. § 1225 applies to arriving aliens who have not been admitted or paroled and therefore does not apply to noncitizens who were admitted pursuant to a visa and overstayed their authorized period of stay.

42. 8 U.S.C. § 1231 applies to noncitizens who have final orders of removal.

43. "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings **at the outset of detention**." *Jennings v. Rodriguez*, 583 U.S. 281, 306, (2018) (emphasis added) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

44. The regulations provide that

> [a]fter an initial custody determination by the district director…the respondent may, ***at any time before an order under 8 CFR part 240 becomes final***, request amelioration of the conditions under which he or she may be released. Prior to such final order, and except as otherwise provided in this chapter, the immigration judge is authorized to exercise the authority in section 236 of the Act…to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released, as provided in § 1003.19 of this chapter.

8 C.F.R. § 236(d)(1) (emphasis added).

45. Immigration judges may make bond determinations based upon "*any information that is available* to the Immigration Judge *or* that is presented to him or her by the alien or the Service." 8 C.F.R. § 1003.19(d) (emphasis added).

46. In *Matter of A-W-*, 25 I. & N. Dec. 45 (BIA 2009), the Board of Immigration Appeals reviewed immigration judges' authority to grant bond to noncitizens who entered the United States under the Visa Waiver Program (VWP) and overstayed. The Board differentiated VWP entrants who were subject to 8 U.S.C. § 1187 from other noncitizens because, as a matter of law, VWP

entrants may not be placed in removal proceedings under 8 U.S.C. § 1229a. The statutory authority for VWP overstays is contained in 8 U.S.C. § 1187(c)(2)(E), *not* 8 U.S.C. § 1226. *Matter of A-W-*, 25 I. & N. at 47.

47. The Board held that immigration judges only have regulatory "authority to redetermine the conditions of custody of aliens who have been issued and served with a Notice to Appear in relation to removal proceedings pursuant to 8 C.F.R. Part 1240," which necessarily cannot apply to VWP overstays. *Id.* at 46–47.

48. *Matter of A-W-* specifically did not consider 8 U.S.C. § 1226(a).

49. Detention under 8 U.S.C. § 1187 is incapable of satisfying the requirements of 8 U.S.C. § 1226(a).

50. *Matter of A-W-* does not apply to a person admitted into the United States after inspection with a valid travel document and visa.

51. Respondent Executive Office for Immigration Review has an Immigration Practice Court Manual. It set a policy for bond proceedings in Section 9.3 of the Immigration Practice Court Manual.

52. Section 9.3(b)(1) states that the immigration court lacks jurisdiction in very specific circumstances. None of the identified circumstances identify a person admitted into the United States after inspection who is not subject to the mandatory criminal custody limits of 8 U.S.C. § 1226(c).

53. Section 9.3(b)(1) has no requirement that the Department of Homeland Security comply with 8 C.F.R. § 287 before an immigration court can consider a person's release on conditional parole or payment of a release bond.

54. The authority cited is 8 C.F.R. § 1003.19(h)(2)(i).

STATEMENT OF FACTS

55. Petitioner is a nineteen-year-old citizen of Venezuela.

56. Petitioner entered the United States at the age of nine with a tourist visa on June 28, 2015. *See* Exh. A; Exh. B.

57. Petitioner was inspected and admitted into the United States. *See* Exh. A; Exh. B.

58. Petitioner has resided in the United States ever since.

59. Respondents encountered and detained Petitioner during at-large operations in Minnesota on January 14, 2026.

60. Petitioner did not pose a flight risk at the time of her arrest.

61. Petitioner complied with Respondents' instructions at the time of arrest.

62. Respondents were not in possession of an administrative warrant at the time of Petitioner's arrest.

63. Respondents apprehended Petitioner in Minnesota without a warrant of arrest.

64. Respondents did not secure a judicial warrant by a showing of probable cause after detaining Petitioner.

65. Respondents did not comply with their custody redetermination regulations.

66. Petitioner has no criminal history.

67. Petitioner has not committed an offense that implicates 8 U.S.C. § 1226(c).

68. Respondents moved Petitioner from Minnesota to Texas after detaining her.

69. Petitioner is now detained at the ERO El Paso Camp East Montana located at 6920 Digital Road, El Paso, Texas 79936.

70. Petitioner's alien registration number is [redacted].

71. Respondents created and assigned a new alien registration number to Petitioner after detaining her. That new number is [redacted].

72. On January 16, 2026, Petitioner filed a bond redetermination request with the El Paso Immigration Court.

73. On January 22, 2026, the El Paso Immigration Court held a bond hearing for Petitioner.

74. Respondents failed to present Petitioner for the bond hearing.

75. Respondents simply told the immigration judge, without explanation, that Petitioner was not put on the bus to be taken to court that day.

76. Respondents told the immigration judge that they do not have a Notice to Appear for Petitioner.

77. Respondents told the immigration judge that they do not have a Form I-213, Record of Deportable/Inadmissible Alien, for Petitioner.

78. Respondents could not tell the immigration judge under what authority they are detaining Petitioner.

79. Respondents told the immigration judge they do not have Petitioner's file because it is located in Miami.

80. The immigration judge acknowledged the evidence Petitioner presented to the immigration court, including the copy of Petitioner's visa and I-94 confirming her lawful entry. *See* Exh. A; Exh. B.

81. Nevertheless, the immigration judge found that *Matter of A-W-*, 25 I&N Dec. 45 (BIA 2009), strips her of jurisdiction to grant bond or order release because there is no evidence that Respondents have issued a Notice to Appear for Petitioner. *See* Exh. C.

82. On January 22, 2026, Petitioner filed a second bond redetermination request with the El Paso Immigration Court.

83. The El Paso Immigration Court has not yet scheduled a new bond hearing.

84. Respondents have not yet filed a Notice to Appear for Petitioner with the immigration court.

85. Without relief from this Court, Petitioner faces continued indefinite detention.

86. Respondents have been empowered to withhold any documentation that establishes how or why Petitioner is in custody.

87. Respondents, working in concert, essentially are capable of detaining Petitioner in perpetuity and frustrating her access to a remedy under 8 U.S.C. § 1226(a).

88. Petitioner has been denied the opportunity to seek release because of Respondents' obfuscation.

REMEDY

89. Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution.

90. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.

91. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Nicaraguana*, 406 U.S. 715, 738 (1972)).

92. Petitioner seeks immediate release. Respondents have failed to demonstrate Petitioner is even subject to detention under § 1226(a), which provides that an individual may be detained on a warrant of arrest pending removal proceedings, because Respondents failed to proffer any assertion, much less any evidence, that a warrant of arrest was issued for Petitioner's arrest; that

removal proceedings have been initiated against Petitioner; or that those proceedings, if initiated, remain ongoing.

93. Respondents violated 8 U.S.C. § 1357(a)(2).

94. Respondents, as the records custodian that controls Petitioner's access to freedom, have an obligation to release Petitioner immediately in the absence of a valid warrant under 8 U.S.C. § 1357(a)(2).

95. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

96. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

97. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. *See, e.g.*, *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

98. Immediate release is the appropriate remedy to Petitioner's unlawful detention.

99. Alternatively, Petitioner requests a constitutionally adequate custody redetermination hearing in which she is treated as a detainee under 8 U.S.C. § 1226(a) within three calendar days.

CAUSE OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a)

100. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

101. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.

102. Detention under § 1226 is predicated on the issuance of a warrant and pending decision on removal. 8 U.S.C. § 1226(a).

103. Such an alien "may [be] release[d] … on bond of at least $1,500." 8 U.S.C. § 1226(a)(2)(A).

104. The detention of Petitioner absent a warrant arrest or any removal proceedings is in violation of 8 U.S.C. § 1226(a)(2)(A) and 8 U.S.C. § 1357(a)(2).

105. The denial of Petitioner's bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes her eligible for bond.

106. If Respondents do not release Petitioner without any conditions, she requests that she be afforded the opportunity to present her case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

COUNT TWO

Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d) Unlawful Arrest

107. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

108. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

109. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability; based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor,* 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.*

110. It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

111. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012).

112. The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2).

113. Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person "is likely to escape before a warrant can be obtained," *i.e.*, is a flight risk. *Id.*; *see also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

114. Petitioner's warrantless arrest occurred without probable cause that Petitioner posed a flight risk. "Courts have … made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.,* No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases).

115. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for years. Petitioner has built ties

to her community. Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.

116. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Petitioner received no such judicial determination, yet her detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

117. Regulations also provide that noncitizens arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d).

118. During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Petitioner has received no such custody determination.

COUNT THREE

Declaratory Relief

119. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

120. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that she is eligible for release from Respondents' custody as set forth at 8 U.S.C. § 1226(a)(1).

121. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner must be released unless Respondents assert authority to detain her under 8 U.S.C. § 1226(c).

COUNT FOUR

Violation of the Fifth Amendment – Substantive Due Process

122. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

123. Petitioner's continued detention violates her right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

124. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest.

125. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

126. Due process asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of her liberty. Petitioner is being held in civil immigration detention.

127. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

128. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to her community.

129. Petitioner's detention is also punitive and bears no "reasonable relation" to any legitimate purpose for detaining him. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("nature and duration" of civil confinement must "bear some

reasonable relation to the purpose for which the individuals is committed"); *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Her "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring). Respondents have not initiated removal proceedings against Petitioner.

130. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for her continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

COUNT FIVE

Violation of the Fifth Amendment – Procedural Due Process

131. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

132. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

133. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

134. Under the Due Process Clause of the Fifth Amendment, a noncitizen is entitled to a timely and meaningful opportunity to demonstrate that she should not be detained.

135. Petitioner is detained without any opportunity to even be heard on the issue of bond or release.

136. Petitioner is detained without a warrant of arrest or initiation of any removal proceedings.

137. Because Respondents are denying Petitioner release or a bond hearing to which she is entitled, her detention is unlawful.

138. Because of Petitioner's profound legal interest in her liberty, her detention violates her due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

139. Respondents violated Petitioner's Due Process rights by violating their statutes and regulations.

140. Petitioner's sudden and continuing detention, with no process at all, much less prior notice or an opportunity to respond, violates her due process rights.

COUNT SIX

Violation of 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

141. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

142. Individuals who entered the United States after being inspected and admitted are eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.

143. Nonetheless, DHS and EOIR have adopted a policy and practice of applying *Matter of A-W-*, 25 I. & N. Dec. 45 (BIA 2009), to Petitioner and others in the same position to deny bond hearings.

144. The application of *Matter of A-W-*, 25 I. & N. Dec. 45 (BIA 2009), to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

145. As such, the Court must order the Respondents afford Petitioner a bond hearing to comport with these regulatory requirements.

COUNT SEVEN

Violation of the APA – Arbitrary and Capricious & *Accardi* Doctrine

146. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

147. 5 U.S.C. § 706(2)(A) provides that a final agency action can be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," including if it fails to make a rational connection between the facts found and the decision made. 5 U.S.C. § 706(2)(A).

148. Respondents must observe the rules, regulations or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

149. Respondents detained Petitioner without a warrant of arrest as required by statute and regulation.

150. Respondent did not conduct the required custody determination.

151. By detaining Petitioner without a warrant of arrest, Respondents have violated 8 C.F.R. § 287.3(d).

152. By withholding the Notice to Appear or information about it from Petitioner and the immigration judge, Respondents have violated the APA.

153. Respondent Executive Office for Immigration Review has violated the policy set forth in Section 9.3 of the Immigration Practice Court Manuel.

154. Section 9.3(b)(1) states that the immigration court lacks jurisdiction in very specific circumstances. None of the identified circumstances identify a person admitted into the United States after inspection who is not subject to the mandatory criminal custody limits of 8 U.S.C. § 1226(c).

155. Section 9.3(b)(1) has no requirement that the Department of Homeland Security comply with 8 C.F.R. § 287 before an immigration court can consider a person's release on conditional parole or payment of a release bond.

156. The authority cited is 8 C.F.R. § 1003.19(h)(2)(i).

157. Respondents violated the policy set forth in section 9.3 and 8 C.F.R. § 1003.19(h)(2)(i).

158. By denying Petitioner release or a bond hearing in violation of statute and regulations, Respondents have violated the APA.

159. Respondents' action is therefore arbitrary and capricious.

160. Respondents' action violates the *Accardi* doctrine.

COUNT EIGHT

Ultra Vires – Application of *Matter of A-W-*

161. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

162. The holding in *Matter of A-W-*, 25 I. & N. Dec. 45 (BIA 2009), impermissibly usurps the authority given to immigration judges by Congress. The statute at

8 U.S.C. § 1226(a), which applies to Petitioner, authorizes the discretionary release of a noncitizen.

163. As Petitioner falls under 8 U.S.C. § 1226(a) as a noncitizen who was admitted to the United States after inspection, Congress requires that she be subject to an individualized determination regarding her release on bond.

164. Congress has not authorized immigration judges to deny bond hearings to Petitioner and others in the same position due to DHS withholding the Notice to Appear.

165. Congress has not authorized DHS to withhold a Notice to Appear in order to continue detaining Petitioner and others in the same position indefinitely.

166. For these reasons, the application of *Matter of A-W-*, 25 I. & N. Dec. 45 (BIA 2009), to Petitioner and others in the same position is *ultra vires*.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;
2. Order that she not be transferred outside of this District;
3. Issue an Order to Show Cause ordering Respondents to show cause why her Petition should not be granted within three days;
4. Declare that Petitioner's detention is unlawful;

5. Issue a Writ of Habeas Corpus ordering Respondents to release her from custody because Respondents did not detain Petitioner with a warrant of arrest.

6. If Respondents detained Petitioner based on a warrant of arrest, Respondents shall provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) and the Due Process Clause within three business days or immediately release Petitioner for failing to do so;

7. Award her attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

8. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ David L. Wilson January 27, 2026

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

I represent Petitioner, Darian Valeria Apolinar Monte, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this Tuesday, January 27, 2026.

/s/David L. Wilson
DAVID L. WILSON