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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Berting Marceau, Petitioner, v. Kristi NOEM, Secretary, U.S. Department of Homeland Security; Department of Homeland Security, in her official capacity; Todd M. LYONS, Acting Director of Immigration and Customs Enforcement; Immigration and Customs Enforcement, in his official capacity; Mary DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement, in her official capacity; Warden of El Paso Camp East Montana Detention Center, custodian of detainees at the El Paso Camp East Montana Detention Center, in their official capacity. Respondents.	Case No. 3:26-cv-237 **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Berting Marceau, is a non-citizen from Haiti. Petitioner entered the United States on June 8, 2023, pursuant to a grant of humanitarian parole under the Haitian Humanitarian Parole (HHP) program, a U.S. government initiative providing temporary protection to certain Haitian nationals. *See* Ex. A. I-94 Arrival and Departure Record. *See also* Ex. B. Parole Stamped Passport Page.

2. Petitioner was admitted to the United States under the HHP parole program on June 8, 2023, valid through June 6, 2025. *See* Ex. A; *see also* Ex. B.

3. Petitioner affirmatively filed Form I-589, Application for Asylum and Withholding of Removal, with USCIS on April 11, 2025. *See* Ex. C. Form I-589, Application for Asylum and Withholding of Removal Receipt Notice. Petitioner has a valid work permit and no criminal history. In short, Petitioner has done everything that the government has required of her to lawfully seek asylum.

4. For approximately the last 3 years, Petitioner has lived peaceably in Minnesota. She has strong ties to the community.

5. Nevertheless, despite fully cooperating with the adjudication of her pending Form Form I-589, Application for Asylum and Withholding of Removal at USCIS, she was taken into ICE custody on December 27, 2025. ICE officers detained Petitioner without adequate consideration of her prior case history or procedural status. Her mandatory detention appears arbitrary and inconsistent with established principles of due process and proportional immigration enforcement.

6. Petitioner was unlawfully arrested in Minnesota and without explanation or due process, transported by Respondents to the Douglas County Jail in Superior, Wisconsin,

before being transferred again to the ERO El Paso East Montana Camp in El Paso, Texas. Petitioner is currently being detained by Respondents at the ERO El Paso East Montana Camp in El Paso, Texas.

7. ICE claims the authority to indefinitely detain petitioner without a bond hearing under the Immigration and Nationality Act ("INA") § 235(b), 8 U.S.C. § 1225(b). In separate subsections, that statute provides for the detention of asylum seekers who pass a credible fear interview "for further consideration of the application for asylum," id. § 1225(b)(1)(B)(ii), as well as detention of all other noncitizens whom an immigration official believes are not "clearly and beyond a doubt entitled to admission for a proceeding under 1229a of this title [removal proceedings before an immigration judge]." id. § 1225(b)(2)(A). Collectively, the Department of Homeland Security ("DHS") refers to these noncitizens as "arriving aliens." 8 C.F.R. § 1.2.

8. The government interprets § 1225(b) to require mandatory detention without a bond hearing of all arriving aliens, for the indefinite length of time necessary to complete removal proceedings, even if that time becomes unreasonably prolonged. See Matter of X-K-, 23 I. & N. Dec. 731, 732 (BIA 2005) ("There is no question that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have been placed in . . . removal proceedings . . . ."); 8 C.F.R. § 1003.19(h)(2)(i)(B) (stating that an immigration judge may not conduct a custody determination of an "arriving alien").

9. Petitioner challenges her detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

10. Petitioner respectfully requests that this Court grant her a Writ of Habeas Corpus and order Respondents to release her from custody. Petitioner seeks habeas relief under

28 U.S.C. 2241, which is the proper vehicle for challenging civil immigration detention. *See Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas") (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

JURISDICTION AND VENUE

11. 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).

12. Federal questions in this case arise under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101-1524, and the United States Constitution. *See Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *1 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.) ("A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or federal law.").

13. This Court has already rejected Respondents' identical arguments related to 8 U.S.C. §§ 1252(g) and (b)(9). See *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 at *3 (W.D. Tex. Oct. 16, 2025) (rejecting jurisdictional arguments under Section 1252(g) and Section 1252(b)(9) based on Supreme Court precedent).

14. 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).

15. Venue is proper in this Court under 28 U.S.C. § 2241 because Petitioner is in Respondents' custody in the Western District of Texas, and this district is the district of Petitioner's current confinement. Venue is also proper in this Court pursuant to 28 U.S.C.

§ 1391(e) because Petitioner is in custody, and the Respondents named in this action are employees, officers, and agencies of the United States.

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

16. 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 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.

17. 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." Fay v. Noia, 372 U.S. 391, 400 (1963).

18. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

19. Petitioner, Berting Marceau, a 46-year-old Haitian national, resides in Minnesota. Respondents detained Petitioner on December 27, 2025. Petitioner is now detained at the East Montana Camp in El Paso, Texas. [1]

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[1] Petitioner seeks leave to proceed anonymously because public identification creates a risk of retaliatory physical harm due to Petitioner's status as an asylum seeker in the United States, and the nature of Petitioner's claim is sensitive and highly personal. *See Doe v. Stegall*, 653 F.2d 180, 185–86 (5th Cir. 1981). The Fifth Circuit has identified several different situations in which parties have been permitted to proceed under a fictitious name, including "(1) where the case concerns sensitive and highly personal information; (2) when revealing plaintiff identity may subject plaintiff to criminal prosecution; and (3) whether plaintiff is challenging government activity

20. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Petitioner.

21. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). He is sued in his official capacity. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also the legal custodian of Petitioner.

22. Respondent Mary De Anda Ybarra, is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, she is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is sued in her official capacity.

23. Respondent Warden of the El Paso Camp East Montana, is the custodian of detained non-citizens, including Petitioner, housed at the El Paso Camp East Montana. They are sued in their official capacity.

EXHAUSTION OF REMEDIES

24. No statutory requirement of administrative exhaustion applies to Petitioner's challenge to the unlawfulness of her detention. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which she could resort. *McCarthy v. Madigan*, 503 U.S. 140,

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criminal prosecution.'" *Id.* The Petitioner would provide Petitioner's identity to the Respondents and the Court under seal.

144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

25. The BIA interprets § 1225(b) as mandating detention of arriving aliens pending removal proceedings. See *Matter of X-K-*, 23 I. & N. Dec. at 732 ("There is no question that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have been placed in . . . removal proceedings . . . ."). Exhaustion before the BIA would therefore be futile.

26. Further, "the BIA [Board of Immigration Appeals] does not have jurisdiction to adjudicate constitutional issues . . . ." (quotations and citation omitted). *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). Because Petitioner raises a constitutional due process claim in her habeas petition, exhaustion of her due process claims would be futile.

27. DHS has taken the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. Further, in a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States pursuant to a discretionary grant of humanitarian parole under Section 212(d)(5)(A) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1182(d)(5)(A). Accordingly, there are no administrative remedies that Petitioner could exhaust before seeking habeas relief.

28. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. See *Matter of R-A-V-P-*, 27 I. & N. Dec. 803,

804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); see also *Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

FACTUAL BACKGROUND

29. Petitioner, Berting Marceau, is a 46-year-old Haitian national who was paroled into the United States on June 8, 2023, pursuant to a grant of humanitarian parole under the Haitian Humanitarian Parole (HHP) program, a U.S. government initiative providing temporary protection to certain Haitian nationals. *See* Ex. A; *see also* Ex. B.

30. Petitioner was granted parole on June 8, 2023, valid through June 6, 2025. She had maintained lawful presence under that program. *See* Ex. A; *see also* Ex. B.

31. Petitioner affirmatively filed Form I-589, Application for Asylum and Withholding of Removal, with USCIS on April 11, 2025. *See* Ex. C. The receipt number for her Form I-589 is MGL2534752690. She is seeking asylum in the United States and has initiated the asylum application process in accordance with applicable immigration laws and procedures.

32. Despite this, Respondents detained Petitioner on December 27, 2025, for no apparent lawful reason.

33. Petitioner is currently in removal proceedings and has complied with all requirements imposed by U.S. immigration authorities. *See* Ex. D. Notice to Appear. *See*

also Ex. E. Additional Charges of Inadmissibility/Deportability. Please note that Petitioner was improperly charged on the Notice to Appear as an alien present in the United States who has not been admitted or paroled. Additional charges of inadmissibility/deportability were filed by DHS with the Immigration Court, however, no amended Notice to Appear has been submitted and the current Notice to Appear is defective.

34. Petitioner is currently detained at the ERO El Paso East Montana Camp in El Paso, Texas.

35. Detaining Petitioner is an expensive and pointless endeavor. Petitioner respectfully seeks the opportunity to return home and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

LEGAL BACKGROUND

36. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

37. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

38. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to by US Courts 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." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

39. A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law, 28 U.S.C. § 2241(c)(3), which should be granted if the petitioner meets their burden of proof–a preponderance of evidence.

40. The Petitioner "bears the burden of proving that he[or she]is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his[or her]bur-den of proof by a preponderance of the evidence." *Villanueva v. Tate*, No. 4:25-CV-03364, 2025 WL 2774610, at *4(S.D. Tex. Sept. 26, 2025) (internal citations omitted).

41. Detained immigrants petitioning under 28 U.S.C. § 2241 face no statutory exhaustion requirements. There is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus. See 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.").

42. As relevant here, the Immigration and Nationality Act (INA), 8 U.S.C. §1101-1524, describes two means of handling the custody and potential removal of noncitizens.

43. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard removal proceedings. 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). The text of § 1226 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 the Rodriguez Vazquez

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 v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

44. In addition, while on release, the noncitizen may apply for asylum or other relief in the United States. 8 U.S.C. § 1158. While a grant of asylum is discretionary, the right to apply for asylum is not. The Refugee Act, codified in various sections of the INA, broadly affords a right to apply for asylum to any noncitizen, like Petitioner, "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1); Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

45. The INA guarantees to noncitizens in standard removal proceedings who apply for asylum and other relief valuable procedural rights that reduce the risk of an erroneous decision. These include the rights to legal counsel, 8 U.S.C. § 1229a(b)(4)(A) and § 1362; to present supporting evidence (both documentary and through lay and expert witness testimony) and to challenge through cross-examination adverse evidence during a full adversarial hearing before an immigration judge (IJ), 8 U.S.C. § 1148(b)(1)(B); to seek reconsideration or reopening of an adverse decision, 8 U.S.C. § 1229a(c)(6)-(7), to appeal an adverse decision of an IJ to the Board of Immigration Appeals based on the full evidentiary record, 8 U.S.C. § 1229a(c)(5), and to appeal an adverse decision of the Board to a federal circuit court of appeals, 8 U.S.C. § 1252(b).

46. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

47. The second relevant means of detention is governed by 8 U.S.C. § 1225, which 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 under 8 U.S.C. § 1225(b)(2). Respondents treat noncitizens subject to mandatory detention under § 1225 as ineligible for bond.

48. The mandatory detention scheme under 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at U.S. ports of entry 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) (emphasis added).

49. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) to prioritize civil immigration enforcement procedures including through the use of mass detention.

50. On July 8, 2025, without congressional authorization, the Executive Branch announced a new policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." The policy asserts that all undocumented noncitizens deemed "applicants for admission" are subject to mandatory detention under § 1225(b)(2)(A). The policy purports to apply even to those, like Petitioner, whom at the time of the policy shift, the government had already placed in standard removal proceedings, released from custody, and allowed to apply for asylum. The policy shift also violates the government's own regulations. These regulations limit the government from seeking dismissal of full removal proceedings unless it can show that the "[c]ircumstances of the case have changed". See 8 C.F.R. § 239.2(a)(7) (emphasis added). But the government's new policy purports to allow it to seek dismissal based on changed circumstances independent of the noncitizen's case.

51. Adopting this same position, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bonds. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

52. ICE and EOIR have adopted this policy even though numerous federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon

arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239; see also *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion). Accordingly, federal courts have roundly rejected Respondent's erroneous interpretation of the INA since ICE implemented its July 8, 2025 memo. *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025); *Portugues Sanchez v. Noem et al.*, 25-cv-02010 (ADA/ML) (W.D. Tex. January 20, 2026); *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ----, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi*, No. 25-cv-3726, 2025 WL 2886346, (S.D. Tex. Oct. 7, 2025).

53. Petitioner was apprehended inside the United States, not at a port of entry or while seeking admission. Nevertheless, Respondents improperly rely on 8 U.S.C. §

1225(b)(2) to justify her detention without a hearing. That provision applies only to recent arrivals seeking admission. Instead, if detention were lawful at all, it would fall under 8 U.S.C. § 1226(a), which requires a warrant and provides for a bond hearing, neither of which has occurred in this case.

CLAIMS FOR RELIEF

COUNT I
Violation of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)

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

55. To the extent that Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2), her detention under that statute is unlawful. 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. Petitioner was nowhere near the border and was not "seeking admission".

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

COUNT II

Violation of Due Process
(Arbitrary Detention)

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

58. The Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to all persons within the United States. Once a noncitizen enters this country, whether the

presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies to the noncitizen. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

59. Due process requires that government action be rational and non-arbitrary. *See United States v. Bacon*, 646 F.3d 218, 221–22 (5th Cir. 2011).

60. While the government has discretion to detain individuals under 8 U.S.C. §1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

61. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319 (1976). *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The elements of this test are: (1) the private interest that the official action affects: (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

62. First, Petitioner has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

63. Courts have long considered as-applied due process challenges to other mandatory detention provisions of the INA and found noncitizens to possess a cognizable interest in their freedom from custody. See, e.g., *Gashaj v. Garcia*, 234 F. Supp. 2d 661, 666 (W.D. Tex. 2002) (finding permanent residents subject to mandatory detention due to a criminal conviction "have a fundamental right to a determination of whether their liberty interests should be impinged during the deportation process.") Petitioner is wrongfully confined, a direct attack on Petitioner's liberty interests.

64. Second, Petitioner will continue to be deprived of this interest if the current procedure (detaining Petitioner without a legal basis) is followed. There is no rational explanation for detaining Petitioner. Respondents' purported basis for detaining Petitioner under 8 U.S.C. 1225(b)(2) has been rejected by this court. *See, e.g., Granados v. Noem*, No. SA-25-CV-1464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Pineda v. Noem*, No. SA-25-CV-1518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025).

65. Notably, this court and courts across the country have recently held that Respondents' novel interpretation regarding mandatory detention is either incorrect or likely incorrect. See *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025), 2025 WL 2886346, at *3 (noting that "almost every district court to consider this issue" has rejected the Government's new interpretation); *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions). *See also Ahmed A v. Bondi*, Case No. 25-4776 (JWB/DJF) (January 6, 2026); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142–48, 1150–52 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 968–970 (D. Minn. 2025); *Mayamu K. v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *7–8 (D. Minn. Oct. 20, 2025); *R.E.*

v. Bondi, No. 0:25-cv-3946-NEB, 2025 WL 3146312 (D. Minn. Nov. 4, 2025); *Herrera Avila v. Bondi*, No. 0:25-cv-3741 (JRT), 2025 WL 2976539 (D. Minn. Oct. 21, 2025).

66. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Petitioner poses no safety threats to the community. Releasing Petitioner, or at a minimum holding a bond hearing, would in fact *save* the government the resources and expense of continued imprisonment.

67. Petitioner has a fundamental interest in liberty and being free from official restraint. One's physical freedom is a paramount interest secured by statutes and the Constitution, and Petitioner possesses a strong liberty interest in her freedom from detention because she has established a life here – albeit without authorization. *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 at *3 (W.D. Tex. Oct. 21, 2025) (citation omitted).

68. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

69. The placement of Petitioner in detention pending the resolution of ongoing immigration proceedings violates Petitioner's constitutional rights to due process guaranteed in the Fifth Amendment.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's current detention without an individualized determination is unlawful;

3. Issue a writ of habeas corpus ordering Respondents to release Petitioner from custody, or, in the alternative, hold a prompt bond hearing to determine whether she should remain in custody;
4. Prohibit the Respondents from transferring Petitioner from the district without the court's approval;
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: January 29, 2026.

By: */s/Karen V. Bryan*
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Verification by Petitioner's Legal Counsel
Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Attorney for the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status are true and correct to the best of my knowledge.

s/ Karen V. Bryan Date: January 29, 2026
Karen V. Bryan, Esq.