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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF WESTERN DISTRICT OF TEXAS**
5 **EL PASO DIVISION**

6 **ELIZABETH CLEMENTE**
7 **CEBALLOS**

8 Petitioner,

9 v.

10 ANGEL GARITE, in his official
11 capacity as Assistant Field Office
12 Director of Enforcement and Removal
13 Operations, El Paso Field Office,
U.S. Immigration and Customs
Enforcement;

14 MARY DE ANDA-YBARRA, in her
15 official capacity as Field Office
16 Director of Enforcement and Removal
17 Operations, El Paso Field Office, U.S.
Immigration and Customs
Enforcement;

18
19 TODD LYONS, in his official capacity
20 as Acting Director and Senior Official
21 Performing the Duties of the Director
of U.S. Immigration and Customs
Enforcement;

22 KRISTI NOEM, in her official
23 capacity as Secretary of the U.S.
24 Department of Homeland Security;

Case No. 3:26-cv-312

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §
2241 OR ORDER TO SHOW
CAUSE WITHIN 3 DAYS**

1 MAJ. GEN. CURTIS TAYLOR, in his
2 official capacity as Senior Commander
3 of Fort Bliss, Texas;

4 and

5 PAMELA BONDI, in her official
6 capacity as United States Attorney
7 General

8 Respondents.
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**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 OR ORDER TO SHOW CAUSE WITHIN 3 DAYS**

INTRODUCTION

1. Petitioner, Elizabeth Clemente Garcia, is in the physical custody of Respondents at the ERO El Paso Camp East Montana. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner entered the United States over 20 years ago, in or around 2004.

3. On or about January 12, 2026, Petitioner was detained in Minnesota and later transferred to El Paso, Texas. Petitioner had resided in Lakeville, Minnesota prior to detention.

4. On January 23, 2026, Immigration Judge (IJ) Lucic found he lacked jurisdiction to hold a bond hearing for Petitioner on the grounds that there was no NTA in the record.

5. DHS and DOJ would refuse Petitioner release from immigration custody, consistent with a new DHS policy formalized by the BIA decision *Matter of Yajure Hurtado*, under which all ICE employees are to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an “applicant for

1 admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory
2 detention.

3 6. Petitioner’s detention on this basis violates the plain language of
4 the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to
5 individuals like Petitioner who previously entered and are now residing in
6 the United States. Instead, such individuals are subject to a different statute,
7 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond.
8 Individuals subject to 8 U.S.C. § 1226(a) can only be detained pursuant to a
9 warrant. That statute expressly applies to people who, like Petitioner, are
10 charged as inadmissible for having entered the United States without
11 inspection.
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13 7. Respondents’ new legal interpretation is plainly contrary to the
14 statutory framework and contrary to decades of agency practice applying §
15 1226(a) to people like Petitioner.
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17 8. Accordingly, Petitioner seeks a writ of habeas corpus requiring
18 that she be immediately released.

19 9. In the alternative, if Respondents can produce a
20 contemporaneous warrant, Petitioner seeks a writ of habeas corpus unless
21 Respondents provide a bond hearing under § 1226(a) within fourteen days.
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23 JURISDICTION

1 10. Petitioner is in the physical custody of Respondents. Petitioner is
2 detained at the ERO El Paso Camp East Montana in El Paso, Texas.

3 11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas
4 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2
5 of the United States Constitution (the Suspension Clause).

6 12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
7 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28
8 U.S.C. § 1651.
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10 VENUE

11 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*,
12 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court
13 for the Western District of Texas, the judicial district in which Petitioner
14 currently is detained.

15 14. Venue is also properly in this Court pursuant to 28 U.S.C. §
16 1391(e) because Respondents are employees, officers, and agencies of the
17 United States, and because a substantial part of the events or omissions
18 giving rise to the claims occurred in the Western District of Texas, El Paso
19 Division.
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21 REQUIREMENTS OF 28 U.S.C. § 2243 TO SHOW CAUSE

22 15. The Court must grant the petition for writ of habeas corpus or
23 order Respondents to show cause "forthwith," unless the petitioner is not
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1 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the
2 Respondents must file a return “within three days unless for good cause
3 additional time, not exceeding twenty days, is allowed.” *Id.*

4 16. Habeas corpus is “perhaps the most important writ known to the
5 constitutional law . . . affording as it does a *swift* and imperative remedy in
6 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
7 (1963) (emphasis added). “The application for the writ usurps the attention
8 and displaces the calendar of the judge or justice who entertains it and
9 receives prompt action from him within the four corners of the application.”
10 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

12 PARTIES

13 17. Petitioner Elizabeth Clemente Ceballos is a citizen of Mexico
14 who has resided in the United States for over two decades. Petitioner has
15 been in immigration detention since on or about January 12, 2026. After
16 arresting Petitioner in Minnesota, ICE did not produce a warrant and did not
17 set bond.

18 18. Respondent Angel Garite is the Assistant Field Office Director for
19 the El Paso Field Office. As such, he is the immediate physical custodian of
20 Ms. Clemente Ceballos. His address is 8915 Montana Avenue, El Paso, Texas
21 79925. He is named in his official capacity.
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1 19. Respondent Mary De Anda-Ybarra is the Director of the El Paso
2 Field Office of ICE's Enforcement and Removal Operations division. As such,
3 she is Ms. Clemente Ceballos immediate custodian and is responsible for her
4 detention and removal. Her address is ICE El Paso Field Office, 11541
5 Montana Avenue, Suite E, El Paso, Texas 79936. She is named in her official
6 capacity.
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8 20. Respondent Todd Lyons is the acting director of U.S.
9 Immigration and Customs Enforcement (ICE). He is responsible for
10 overseeing the federal agency responsible for Petitioner's detention. His
11 address is U.S. Immigration and Customs Enforcement, Office of the
12 Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C.
13 20536. Mr. Lyons has custodial authority over Petitioner and is sued in his
14 official capacity.
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16 21. Respondent Kristi Noem is the Secretary of the U.S. Department
17 of Homeland Security. In this capacity, she is responsible for the
18 administration of immigration laws pursuant to 8 U.S.C. § 1103(a) and is
19 legally responsible for pursuing any effort to confine and remove Ms.
20 Clemente Ceballos. As such, she is a custodian of Ms. Clemente Ceballos.
21 Respondent Noem's address is Office of the General Counsel, MS 0485
22 Department of Homeland Security, 2707 Martin Luther King, Jr. Ave. SE,
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1 Washington, D.C. 20528-0525. Ms. Noem has ultimate custodial authority
2 over Ms. Clemente Ceballos and is sued in her official capacity.

3 22. Respondent Pam Bondi is the Attorney General of the United
4 States and the senior official of the U.S. Department of Justice. Respondent
5 Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue,
6 NW, Washington, D.C. 20530-0001. An agency under her authority, the
7 Board of Immigration Appeals, recently declared that immigration judges
8 (IJs) do not have jurisdiction to set bond for immigrants who are not
9 admitted or paroled into the United States. *See Matter of Yajure Hurtado*, 29
10 I. & N. Dec. 216 (BIA 2025). Ms. Bondi has custodial authority over
11 Petitioner and is sued in her official capacity.

12 23. Major General Curtis Taylor is the Senior Commander of Fort
13 Bliss, Texas. He has custodial authority over detainees at the ERO El Paso
14 Camp East Montana in El Paso, Texas. His mailing address is HQ, US Army
15 Garrison, Fort Bliss, ATTN: AMIM-BLG-ZA, 1741 Marshall Road, Fort Bliss,
16 TX 79916. He is the immediate custodian of the Petitioner and is sued in his
17 official capacity.
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LEGAL FRAMEWORK

A. Discretionary Detention

24. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “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.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

25. Due Process requires that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

26. “The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is

1 due, this Court should consider (1) the private interest affected by the
2 government action; (2) the risk that current procedures will cause an
3 erroneous deprivation of that private interest, and the extent to which that
4 risk could be reduced by additional safeguards; and (3) the government's
5 interest in maintaining the current procedures, including the governmental
6 function involved and the fiscal and administrative burdens that the
7 substitute procedural requirement would entail. *Id.* at 335.

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

11 28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
12 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Detention is
13 authorized “on a warrant” issued by the Attorney General. *Id.* Individuals in
14 § 1226(a) detention are generally entitled to a bond hearing at the outset of
15 their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who
16 have been arrested, charged with, or convicted of certain crimes are subject to
17 mandatory detention, *see* 8 U.S.C. § 1226(c).

19 29. Second, the INA provides for mandatory detention of noncitizens
20 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
21 arrivals seeking admission referred to under § 1225(b)(2).
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1 30. Last, the INA also provides for detention of noncitizens who have
2 been ordered removed, including individuals in withholding-only proceedings,
3 *see* 8 U.S.C. § 1231(a)–(b).

4 31. This case concerns the detention provisions at §§ 1226(a) and
5 1225(b)(2).

6 32. The detention provisions at § 1226(a) and § 1225(b)(2) were
7 enacted as part of the Illegal Immigration Reform and Immigrant
8 Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03,
9 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
10 most recently amended earlier this year by the Laken Riley Act, Pub. L.
11 No.119-1, 139 Stat. 3 (2025).

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

18 34. Thus, in the decades that followed, most people who entered
19 without inspection and were placed in standard removal proceedings received
20 bond hearings, unless their criminal history rendered them ineligible. That
21 practice was consistent with many more decades of prior practice, in which
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1 noncitizens who were not deemed “arriving” were entitled to a custody
2 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
3 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
4 simply “restates” the detention authority previously found at § 1252(a)).

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

9 36. The new policy, entitled “Interim Guidance Regarding Detention
10 Authority for Applicants for Admission,” claims that all persons who entered
11 the United States without inspection shall now be deemed “applicants for
12 admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
13 detention provision under § 1225(b)(2)(A). The policy applies regardless of
14 when a person is apprehended and affects those who have resided in the
15 United States for months, years, and even decades.

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17 37. On September 5, 2025, the Board of Immigration Appeals (BIA)
18 parroted this same position in the case of *Matter of Yajure Hurtado*, 29 I&N
19 Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the
20 United States without admission or parole are considered applicants for
21 admission and are ineligible for immigration judge bond hearings.

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23 38. Under the Supreme Court’s recent decision in *Loper Bright v.*
24 *Raimondo*, this Court should independently interpret the statute and give

1 the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts
2 with the statute, regulations, and precedent. 603 U.S. 369 (2024).

3 39. ICE and EOIR have adopted this position even though federal
4 courts have rejected this exact conclusion. For example, after IJs in the
5 Tacoma, Washington, immigration court stopped providing bond hearings for
6 persons who entered the United States without inspection and who have
7 since resided here, the U.S. District Court in the Western District of
8 Washington found that such a reading of the INA is likely unlawful and that
9 § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon
10 arrival to the United States. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239
11 (W.D. Wash. 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, ---
12 F.Supp.3d ----, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting
13 habeas petition based on same conclusion).
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15 40. "The idea that a different detention scheme would apply to non-
16 citizens 'already in the country,' as compared to those 'seeking admission into
17 the country,' is consonant with the core logic of our immigration system."
18 *Martinez v. Hyde*, 792 F.Supp.3d 211, 222 (D. Mass. 2025) (citing *Jennings v.*
19 *Rodriguez*, 583 U.S. 281, 289 (2018)).
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21 41. The interpretation endorsed by DOJ and DHS is contrary to the
22 INA. As the *Rodriguez* court explained, the plain text of the statutory
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1 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
2 Petitioner.

3 42. Section 1226(a) applies by default to all persons “pending a
4 decision on whether the [noncitizen] is to be removed from the United
5 States.” These removal hearings are held under § 1229a, to “decid[e] the
6 inadmissibility or deportability of a[] [noncitizen].”
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8 43. Courts in the Western District have held that noncitizens
9 detained within the United States are detained pursuant to 1226(a) rather
10 than 1225(b). *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 684 (W.D. Tex.
11 2025); *Vieira v. De Anda-Ybarra*, --- F.Supp.3d ----, 2025 WL 2937880, *5
12 (W.D. Tex. Oct. 16, 2025); *Vega v. Thompson*, Case No. 5:25-cv-01439-XR
13 (W.D. Texas, Nov. 19, 2025)
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15 44. The text of § 1226 also explicitly applies to people charged as
16 being inadmissible, including those who entered without inspection. *See* 8
17 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes
18 clear that, by default, such people are afforded a bond hearing under
19 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
20 creates “specific exceptions” to a statute’s applicability, it “proves” that
21 absent those exceptions, the statute generally applies. *Rodriguez v. Bostock*,
22 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove*
23 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
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1 45. Section 1226 therefore leaves no doubt that it applies to people
2 who face charges of being inadmissible to the United States, including those
3 who are present without admission or parole.

4 46. By contrast, § 1225(b) applies to people arriving at U.S. ports of
5 entry or who recently entered the United States. The statute's entire
6 framework is premised on inspections at the border of people who are
7 "seeking admission" to the United States. 8 U.S.C.

8 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this
9 mandatory detention scheme applies "at the Nation's borders and ports of
10 entry, where the Government must determine whether a[] [noncitizen]
11 seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S.
12 281, 287 (2018).

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

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18 48. Once proceedings have been categorized under 8 U.S.C. § 1226(a),
19 they cannot be arbitrarily recategorized under 8 U.S.C. § 1225(b). *Mayamu K.*
20 *v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, *3 (D.Minn. Oct.
21 20, 2025).

FACTS

49. Petitioner has resided in the United States for over two decades and lived in Minnesota prior to her detention.

50. On or about January 12, 2026, the U.S. Department of Homeland Security arrested the Petitioner. DHS did not produce an NTA, I-213, or I-200 upon arrest.

51. On January 23, 2026, IJ Lucic found he lacked jurisdiction to hold a bond hearing for the Petitioner on the basis that there was no NTA in the record.

52. The Petitioner is now detained at Karnes County Immigration Processing Center.

53. Petitioner's criminal history contains no offenses that would subject him to mandatory detention.

54. Petitioner is neither a flight risk nor a danger to the community.

55. Petitioner is a mother of four, including two USC daughters who live with her. Petitioner is a grandmother of one USC granddaughter.

56. Currently, 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.

57. Any attempt to pursue a bond appeal before the BIA, while available, is futile for his release. Immigration judges are currently bound the

1 recent BIA decision in *Yajure Hurtado*, which would subject the Petitioner to
2 detention without discretionary bond, likely in contravention of federal law.
3 Moreover, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney
4 General were defendants, DOJ affirmed its position that individuals like
5 Petitioner are applicants for admission and subject to detention under §
6 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-
7 CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.
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9 58. Any attempt to pursue a bond hearing on the basis of *Maldonado*
10 *Bautista* class membership or appeal before the BIA, while available, would
11 be futile for his release. On January 13, 2026, Chief Immigration Judge
12 Teresa L. Riley issued nationwide guidance instructing all immigration
13 judges that: “*Maldonado Bautista* is not a nationwide injunction and does not
14 purport to vacate, stay or enjoin *Yajure Hurtado*.” Immigration judges are
15 instructed to follow the BIA’s decision in *Matter of Yajure Hurtado* as binding
16 precedent. The guidance from EOIR states that a “declaratory judgment” is
17 not binding and does not have the authority to compel specific action.
18 Immigration judges in practice are adhering to this guidance and holding
19 they lack jurisdiction under *Yajure Hurtado*.
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CLAIMS FOR RELIEF

COUNT I

**Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond**

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

60. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

61. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

62. Petitioner has not been, and will not be, provided with a bond hearing on the merits as required by law.

63. Petitioner's continuing detention is therefore unlawful.

COUNT II

Violation of 8 U.S.C. § 1226(a)

Non-Compliance With the Warrant Requirement

64. Petitioner incorporates by reference the preceding paragraphs.

65. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

66. This statute requires the arrest be made pursuant to "a warrant issued by the Attorney general." 8 U.S.C. § 1226(a).

1 67. Respondents produced no contemporaneous warrant to
2 demonstrate that the Petitioner's detention was authorized by the statutorily
3 required warrant.

4 68. Numerous courts have found that an individual properly
5 detained under § 1226(a) whose arrest was not authorized by a
6 contemporaneous warrant is entitled to immediate release. *J.A.C.P. v.*
7 *Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328, at *8 (E.D.
8 Cal. Oct. 27, 2025) ("To put it simply, Petitioner's detention is improper
9 because there is no evidence in the record that he was arrested pursuant to a
10 warrant.") (cleaned up); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-
11 00479-SDN, 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025); *Lauro M. v.*
12 *Bondi*, No. 26-CV-134 (SRN/DJF), 2026 WL 115022, at *3 (D. Minn. Jan. 15,
13 2026) ("But § 1226(a) requires, in the first instance, that Petitioner's arrest
14 and detention are authorized by the issuance of a warrant"); *Anibal A. A. v.*
15 *Bondi*, No. 26-00111 (MJD/LIB), 2026 WL 194041 (D. Minn. Jan. 23, 2026)
16 (collecting cases); *Edwin C. R. v. Bondi*, No. 26-00355 (MJD/JFD), 2026 WL
17 185068, at *2 (D. Minn. Jan. 25, 2026). As such, this Court should likewise
18 find that Petitioner's detention was unauthorized by statute and is entitled to
19 immediate release.
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COUNT III

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

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

70. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (“INS”) 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. 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.

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

COUNT IV

**Violation of the INA By Erroneously Categorizing Petitioner's
detention as being pursuant to 8 U.S.C. § 1225(b)(2)**

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

73. 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 again by Respondents. *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 684 (W.D. Tex. 2025); *Vieira v. De Anda-Ybarra*, --- F.Supp.3d ----, 2025 WL 2937880, *5 (W.D. Tex. Oct. 16, 2025) Such noncitizens are detained under § 1226(a), unless they are subject to § 1226(c) or § 1231.

74. Petitioner has resided in the U.S. for over two decades. She is therefore neither an arriving alien nor an alien who is now seeking admission to the United States.

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

COUNT V

Violation of Due Process

76. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

77. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

78. The government’s detention of Petitioner is unjustified. Respondents deprived the Petitioner of the opportunity to demonstrate he need not 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). Petitioner cannot present facts demonstrating that he can be safely released back to his community when the Respondents illegally deprive any IJ of jurisdiction to hear his case.

79. Respondents’ continued immigration detention of the Petitioner is disconnected from a “reasonable relationship” to any legitimate

1 nonpunitive purpose. *Zadvydas*, 533 U.S. at 690. Petitioner has a
2 fundamental interest in liberty and being free from official restraint.

3 80. The government's detention of Petitioner without a bond
4 redetermination hearing to determine whether she is a flight risk or danger
5 to others violates her right to due process. The court should issue a writ of
6 habeas corpus directing Respondents to release Petitioner to safeguard her
7 Fifth Amendment liberties.
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9 COUNT VI

10 **Respondents' Custody Determination is Contrary to Law**

11 81. Petitioner incorporates by reference the preceding paragraphs.

12 82. The Administrative Procedure Act (APA) provides that courts
13 "shall ... hold unlawful and set aside agency action" that is "arbitrary,
14 capricious, an abuse of discretion, or otherwise not in accordance with
15 law" or is "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A),
16 (E).
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18 83. The APA claim is properly raised in the habeas petition because
19 it concerns a regulation that impacts the fact and duration of
20 confinement. "Challenges to the validity of any confinement or to
21 particulars affecting its duration are the province of habeas corpus[.]"
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1 *Muhammad v. Close*, 540 U.S. 749, 750 (2004); *see also Otey v. Hopkins*,
2 5 F.3d 1125, 1130 (8th Cir. 1993).

3 84. Here, Petitioner's APA challenge concerns the *Yajure Hurtado*
4 and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) decisions that affected
5 the duration of Petitioner's confinement by stripping the IJ of
6 jurisdiction.

7
8 85. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369
9 (2024), the Supreme Court held that "[c]ourts must exercise their
10 independent judgment in deciding whether an agency has acted within
11 its statutory authority, as the APA requires." *Loper Bright Enters. v.*
12 *Raimondo*, 603 U.S. 369, 410 (2024).

13 86. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the
14 BIA held that all noncitizens who entered the United States without
15 admission or parole are now considered applicants for admission under
16 8 U.S.C. § 1225 and thus are ineligible for immigration judge bond
17 hearings. This precedential decision has been applied against the
18 Petitioner in her bond hearing.

19
20 87. Because the BIA's precedential decision *Matter of Yajure*
21 *Hurtado*, categorizes Petitioner as detained under § 1225(b), *a statute*
22 *which does not apply to him*, the BIA decision is arbitrary, capricious,
23 and unlawful and should be set aside. Instead, Petitioner should be
24

1 categorized as detained under § 1226(a), which allows for release on
2 conditional parole or bond for individuals who entered the United
3 States without inspection.

4 88. For this reason, this Court should enter a declaratory judgment
5 finding that Petitioner is detained under 8 U.S.C. § 1226(a) and order
6 her a bond hearing before an IJ.
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9
10 **COUNT VII**

11 **Respondents Are Enjoined From Detaining Petitioner as a**
12 ***Maldonado Bautista* Class Member**

13 89. Petitioner incorporates by reference the preceding paragraphs.

14 90. On November 25, 2025, a 9th Circuit Court granted class
15 certification for certain unlawfully detained non-citizens under Rules
16 23(a) and 23(b)(2). *Maldonado Bautista v. Santacruz*, No. 5:25-CV-
17 01873-SSS-BFM (C.D. Cal.).

18 91. *Maldonado Bautista v. Santacruz* certified the Bond Eligible
19 Class as “All noncitizens in the United States without lawful status
20 who (1) have entered or will enter the United States without inspection;
21 (2) were not or will not be apprehended upon arrival; and (3) are not or
22 will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or
23 § 1231 at the time the Department of Homeland Security makes an
24

1 initial custody determination.” *Maldonado Bautista v. Santacruz*, No.
2 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9
3 (C.D. Cal. Nov. 25, 2025).

4 92. On December 18, 2025, the *Maldonado Bautista* U.S. District
5 Court entered a final judgment as to Counts I, II, and III of the
6 Amended Class Complaint where the court held that noncitizens who
7 (1) entered without inspection, (2) were not apprehended at the border,
8 (3) have been present for several years in the U.S., and (4) are not
9 subject to §§ 236(c), 235(b)(1) or 241 are detained under INA § 236, not
10 § 235(b). *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM,
11 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

12 93. Petitioner is a non-citizen who (1) entered the United States
13 without inspection; (2) was not apprehended upon arrival; (3) was not
14 subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at
15 the time of initial custody determination according the charging
16 documents in the record.

17 94. For this reason, this Court should enter a declaratory judgment
18 finding that Petitioner cannot be lawfully detained as a Bond Eligible
19 Class member and order her immediately released.
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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Prohibit further transfer of the Petitioner during the pendency of this petition so this Court is not deprived of jurisdiction;
- c. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately;
- d. In the alternative, issue a writ of habeas corpus requiring they provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;
- e. Declare the Petitioner is member of the Bond Eligible Class certified by *Maldonado Bautista*;
- f. If Respondents disclaim jurisdiction to conduct a bond hearing, Petitioner should be immediately released;
- g. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for writ of habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241 should not be granted within three days;
- h. Issue a writ of habeas corpus requiring that Respondents immediately return Petitioner's work permit, driver's license, and

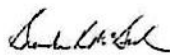
any other seized documents or property lawfully issued to him, so as not to impair his liberty upon release;

- i. Issue an order enjoining Respondents from redetaining Petitioner on any legal theories or interpretations rejected by the Court in its order on the habeas petition; and
- j. Grant any other and further relief that this Court deems just and proper.

DATED this 3rd day of February 2026.

/s/Solomon Daniel Steen /s/
Solomon Daniel Steen (SBN 0506802)
Contreras Edin Law, PA
663 University Ave. West
Suite 200
St. Paul, MN 55104
(651) 771-0019
solomon@contrerasedinlaw.com
Pro Hac Vice to be filed¹

And



Brendan K. McBride

¹ Contreras Edin Law, P.A. represents Petitioner who, prior to detention, was a resident of Minnesota. This matter involves the sudden, en masse transfer of Minnesota detainees to this District—a practice that threatens to frustrate Petitioner's right to counsel. Pursuant to the Court's order in *Calle Quitizaca v. Garite*, No. 3:26-cv-00179-DB, ECF No. 3 (W.D. Tex. Jan. 28, 2026), Mr. Steen is currently preparing his application for admission to the Bar of this Court. Given these exigent circumstances and the ongoing logistical challenges posed by the mass relocation of the firm's clients, Petitioner respectfully requests his continued involvement in this matter; counsel will promptly file any additional *pro hac vice* motions or documentation the Court deems necessary to maintain his standing while his general application for admission to the Court's bar is processed.

1 Texas State Bar No. 24008900
2 The McBride Law Firm
3 316 E. Main St., Ste. 30
4 Anoka, MN 55303
5 Phone (210) 386-7357
6 Email Mcbride.bkl@gmail.com

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Attorneys for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

The undersigned counsel submits this verification on behalf of Petitioner. Undersigned Counsel has reviewed documents supporting this Petition for Habeas Corpus and, on the basis of those documents, verifies that the statements in the Petition are true and correct to the best of his knowledge and belief.

DATED: February 3, 2026

Respectfully submitted,

/s/ Solomon Daniel Steen

Solomon Daniel Steen

MN Attorney ID: 0506802

Contreras Edin Law, P.A.

663 University Avenue W.

STE 200

Saint Paul, MN 55104

P: (651) 771-0019

F: (651) 772-4300

solomon@contrerasedinlaw.com

Pro Hac Vice Pending

Attorney for Petitioner