

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Ana Maria ARNAO LINARES,

Petitioner,

v.

WARDEN, ERO EL PASO CAMP EAST
MONTANA; MARY DE ANDA-YBARRA, in her
official capacity as Field Office Director, El Paso
Field Office, U.S. Immigration and Customs
Enforcement; TODD M. LYONS, in his official
capacity as Director of Immigration and Customs
Enforcement; KRISTI NOEM, in her official
capacity as Secretary of Homeland Security; U.S.
DEPARTMENT OF HOMELAND SECURITY; and
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondents.

Case No. 3:26-cv-00340

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Ana Maria Arnao Linares is a national and citizen of Peru, who entered the U.S. on August 30, 2023. Upon entering the country, Ana Maria turned herself in to U.S. Customs and Border Protection officers near the Southern border. She was processed and released on her own recognizance on September 2, 2023. Petitioner has resided in the U.S. since her entry in 2023.

2. Upon information and belief, Petitioner has never been arrested for, charged with, or convicted of a crime, and Petitioner complied with all requirements imposed on her by immigration authorities.

3. Nevertheless, on January 25, 2026, Petitioner was arrested and detained in or near Minneapolis as she was traveling back from a laundromat, with DHS taking the position that she was subject to mandatory detention. Within days of her arrest, Petitioner was transferred over a thousand miles away to the ERO El Paso Camp East Montana in El Paso, Texas, where she is detained without bond.

4. Upon information and belief, DHS did not present a warrant for Petitioner's arrest upon her apprehension.

5. Respondents have placed Petitioner into removal proceedings by filing a Notice to Appear ("NTA") that charges her with being present in the United States without admission or parole. See 8 U.S.C. § 1182(a)(6)(A)(i).

6. Based on this allegation, Respondents shall deny Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement ("ICE") employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

7. Similarly, on September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

8. Respondents' detention policy—and Petitioner's detention under this policy—are unlawful. Section 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. It does not apply to individuals like Petitioner, who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond, and requires an individualized determination upon arrest. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

9. Petitioner's confinement is unlawful—as confirmed by a cascade of decisions, including within this District, that have rejected Respondents' interpretation of Section 1225(b)(2). *See, e.g., Pereira-Verdi v. Lyons*, No. 5:25-cv-1187-XR (W.D. Tex. Oct. 10, 2025); *Gonzalez Guerrero v. Noem*, No. 1:25-cv-1334-RP (W.D. Tex. Oct. 27, 2025); *Rojas Vargas v. Bondi*, No. 1:25-cv-1699-DAE, 2025 WL 3251728 (W.D. Tex. Nov. 5, 2025); *Ortega Munoz v. Noem*, No. 1:25-cv-1753-RP, 2025 WL 3218241 (W.D. Tex. Nov. 7, 2025); *Becerra Vargas v. Bondi*, No. 5:25-cv-1023-FB, 2025 WL 3300446 (W.D. Tex. Nov. 12, 2025); *Cardona-Lozano v. Noem*, No. 1:25-cv-1784-RP, 2025 WL 3218244 (W.D. Tex. Nov. 14, 2025); *Navarro v. Bondi et. al*, No. 5:25CV1468-FB (W.D. Tex. Dec. 2, 2025); *Acosta-Balderas v. Bondi et al*, No.5:25CV1629-JKP (W.D. Tex. Dec. 11, 2025); *Reyes v. Thomspson et al*, No.5:25CV1590-XR (W.D. Tex. Dec. 12, 2025); *Gvedashvili v. Mooneyham et al*, 6:25CV552-ADA-DTG (W.D. Tex. Dec. 22, 2025); *Martinez Campuzano v. Noem*, No. 1:25-cv-1715-DAE, 2026 WL 90062 (W.D. Tex. Jan. 6, 2026). The reasoning of those decisions applies to Petitioner, and her detention is unlawful.

10. Even detaining Petitioner under § 1226(a) would be unlawful under the circumstances here because, on information and belief, DHS did not present a warrant for Petitioner's arrest upon her apprehension. By its express terms, § 1226(a) only authorizes detention "on a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).

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

PARTIES

12. Petitioner, Ms. Ana Maria Arnao Linares, is a citizen of Peru who has lived in the United States since August 2023. Prior to Petitioner's detention in January 2026, she was residing in or near Minneapolis, Minnesota. She was transferred from Minnesota and now is detained at ERO El Paso Camp East Montana at 6920 Digital Road, El Paso, TX 79936. This facility is within the jurisdiction of the ICE Field Office for El Paso, Texas.

13. Respondent Warden, ERO El Paso Camp East Montana is the warden of the detention center located at 6920 Digital Road, El Paso, TX 79936, where Petitioner is detained, and Petitioner's immediate custodian.

14. Respondent Mary De Anda-Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Ms. Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity. Respondent Anda-Ybarra's address is El Paso ICE Field Office Director, 11541 Montana Ave., Suite E, El Paso, TX 79936.

15. Respondent Todd Lyons, is the Director of Immigration and Customs Enforcement and is responsible for the custody and revocation decisions of the Agency including for the Petitioner. He is sued in his official capacity. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

16. Respondent Kristi Noem is the Secretary of Homeland Security and is ultimately responsible for setting policy and directs the officers of all of the Department of Homeland Security including the custody and revocation decisions that includes the Petitioner's custody. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

17. Respondent U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, D.C. and the parent agency of ICE.

18. Respondent U.S. Immigration and Customs Enforcement ("ICE") is a component agency of DHS.

JURISDICTION

19. Petitioner is in the physical custody of Respondents. Petitioner is detained at ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, TX 79936.

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

21. 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).

22. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

23. Venue is proper because at the time of filing, Petitioner was detained at ERO El Paso Camp East Montana at 6920 Digital Road, El Paso, TX 79936, which is within the jurisdiction of this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004) (citing *Ex Parte Endo*, 323 U.S. 283 (1944)).

24. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to her claims occurred in this District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

25. Exhaustion of administrative remedies is not required where “(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and

(4) in certain instances a plaintiff has raised a substantial constitutional question.”

Beharry v. Ashcroft, 329 F.3d 51, 62 (2d Cir. 2003), *as amended* (July 24, 2003).

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

27. Petitioner is not required to exhaust administrative remedies because she was detained pursuant to an ICE policy that is defined by its systematic denial of administrative relief. *See Quituizaca v. Bondi*, No. 6:25-cv-6527 (EAW), 2025 WL 3264440, at *1 n.1 (W.D.N.Y. Nov. 24, 2025) (recognizing futility of exhaustion in identical case). In addition, exhaustion is not required because Petitioner raises substantial constitutional questions that cannot properly be adjudicated administratively.

STATUTORY FRAMEWORK

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

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

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

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

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

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

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

35. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which

noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

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

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

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

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

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

40. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also*,

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

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

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

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

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

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

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

STATEMENT OF FACTS

47. Petitioner is a citizen of Peru.

48. In August 2023, Petitioner entered the United States at the Southern border. Petitioner turned herself in to U.S. Customs and Border Protection officers shortly after entry.

49. Petitioner was released into the United States on an Order of Release of Recognizance on September 2, 2023. The Order was issued pursuant to 8 U.S.C. § 1226(a); it states that Petitioner has "been arrested and placed into removal proceedings in accordance with section 236 of the [INA] and [applicable regulations], you are being released on your own recognizance provided you comply with [certain enumerated] conditions." In order to release Petitioner pursuant to § 1226(a), Respondents necessarily determined that she was neither a danger nor a flight risk.

50. On the same day of her release, Petitioner was served with a NTA requiring her appearance at immigration court in Fort Snelling, Minnesota on September 25, 2024. Respondents checked a box on the NTA alleging that Petitioner is “an alien present in the United States who has not been admitted or paroled.” Notably, Respondents left *unchecked* a box which would have categorized Petitioner as “an arriving alien.”

51. Upon information and belief, Petitioner has never been arrested for, charged with, or convicted of a crime.

52. Nevertheless, despite her compliance with all immigration-related requirements that have been placed on her, Respondents detained Petitioner on January 25, 2026, and transferred her to a detention center over a thousand miles away from her home in El Paso, Texas.

53. Upon information and belief, Respondents did not present an administrative warrant or any other warrant authorizing Petitioner’s arrest at the time of her apprehension.

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

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

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

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

58. Worse, upon information and belief, Petitioner is currently being subjected to punitive conditions of confinement at the camp where she is detained.

59. Petitioner reports that she is detained in a room containing sixty people, that hunger is widespread in the facility, and she quickly lost a significant amount of weight because she is not being provided adequate food. Petitioner further reports that detainees are searching through trash at night for pieces of food because the food portions they have been provided haven't sustained them.

60. Petitioner further reports that she was allowed only two brief calls to her partner in a nine-day period and that medical issues at the facility go unaddressed for long periods of time.

61. Petitioner's account is consistent with many others. A coalition of human rights groups recently issued a letter to immigration authorities and members of Congress outlining abusive conditions at Camp ERO East Montana, the facility where Petitioner is detained. The facility is "a massive tent camp erected only months ago, located in the middle of the desert on a military base that formerly served as a Japanese internment camp site during World War II."² According to the letter, "Detained immigrants are held for weeks at a time with no access to the outdoors in cramped, squalid soft-sided tents with 72 people per unit, where toilets and showers flood eating areas with raw sewage. Government oversight reports have already identified significant violations of detention standards at the facility: in September 2025, the Washington Post reported that ICE's own inspectors found that conditions at Camp ERO East Montana violated at least 60 federal standards within its first 50 days of operation. These violations included failure to provide basic medical care, inadequate portions of food, failure to ensure that contractors' use of force policy aligned with ICE's policy, and lack of access to counsel."³

² American Civil Liberties Union, et al., Letter to Todd Lyons, et al., *Coercive Third Country Deportations and Abusive Conditions of Confinement in Immigration Detention at Fort Bliss, TX (Camp East Montana)* at 1-2, Dec. 8, 2025 available at <https://www.aclutx.org/app/uploads/2025/12/2025-12-8-Ft-Bliss-ICE-Detention-Letter-FINAL.pdf>.

³ *Id.* at 2.

CLAIMS FOR RELIEF

COUNT ONE

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

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

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

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

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

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

67. Petitioner was detained by ICE after she attended all of her immigration proceedings. There was no need for detention to ensure her presence at any immigration proceedings.

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

69. Respondents have not provided an opportunity for Petitioner to present evidence relevant to flight risk or dangerousness that would justify her detention.

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

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

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION SUBSTANTIVE DUE PROCESS PUNITIVE CONDITIONS OF CONFINEMENT

72. The Due Process Clause also guarantees detained immigrants the right to be detained in a safe situation, free from punitive conditions of confinement. See U.S. Const. amend. V; *Bell v. Wolfish*, 441 U.S. 520, 538 (1979) (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963)) (citing *Flemming v. Nestor*, 363 U.S. 603, 617 (1960)).

73. Respondents are currently subjecting Petitioner to punitive conditions of confinement at the tent camp where she is detained. Respondents' failure to adequately protect Petitioner from these punitive conditions violates her substantive due process rights.

COUNT THREE

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

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

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

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

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

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

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

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

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

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

COUNT FOUR

VIOLATION OF THE INA

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

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

85. Indeed, Respondents themselves consistently classified Petitioner as being subject to the discretionary detention provisions of 8 U.S.C. § 1226(a). When Petitioner was released on her own recognizance in September 2023, Respondents expressly invoked their authority under "section 236 of the Immigration & Nationality Act," i.e., 8 U.S.C. § 1226, to do so. Under like circumstances, the fact that Respondents "consistently treated

[a petitioner] as subject to § 1226” was considered to be a powerful indication that she was, in fact, subject to § 1226. *Lopez Benitez*, 2025 WL 2371588, at *5.

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

COUNT FIVE

VIOLATION OF THE BOND REGULATIONS

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

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

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

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

REMEDY

91. The proper remedy for Respondents' unlawful conduct as outlined in this complaint is for Petitioner to be released.

92. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas v. Davis*, 533 U.S. 678, 687, 690 (2001) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose, there is no indication that Petitioner's detention was based on any facts that might indicate that Petitioner should be in custody for some reason.

93. Since Section 1225 does not apply to noncitizens who are in Petitioner's situation—who have been detained while residing within the United States for years, as opposed to those who are detained while in the process of physically entering the United States, the law that Respondents are using to detain Petitioner simply does not apply so as to authorize Petitioner's detention.

94. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention").

95. Respondents will no doubt argue, as they have in similar cases before this Court and others, that if the Court rules that Petitioner should have been detained pursuant to § 1226, instead of § 1225, then the remedy is a bond hearing as opposed to outright release.

96. Many courts within this District have disagreed, ordering immediate release to remedy the violations that Petitioner alleges here. *See Cervantes-Garcia v. Bondi*, No. 1:26-cv-98 (RP), 2026 WL 196519, at *7 (W.D. Tex. Jan. 23, 2026) (Pitman, J.); *Lahera Lopez v. Noem*, No. 5:26-cv-99 (JKP), 2026 WL 198237 (W.D. Tex. Jan. 22, 2026) (Pulliam, J.); *Ramirez-Morales v. Lyons*, No. 25-cv-476 (DCG), 2025 WL 3767075 (W.D. Tex. Dec. 30, 2025) (Guaderrama, J.); *Luna v. Warden*, No. 25-cv-565 (DCG), 2025 WL 3787494, at *11 (W.D. Tex. Dec. 29, 2025) (Guaderrama, J.) (“The Court will not consider whether Petitioner's detention is lawful under authorities for which Respondents themselves have not advocated. Because Respondents failed to identify a lawful authority under which to detain Petitioner, Petitioner's release is the proper remedy.”).

97. These decisions from courts within this District are further buttressed by those of many district courts in the District of Minnesota, the jurisdiction where this case and Operation Metro Surge arise. *See e.g., Ahmed A. v. Bondi*, No. 25-cv-4776, Doc. No. 10 at 6 (D. Minn. 2025)::

[A] bond hearing presupposes lawful detention authority under § 1226. Where that authority has not been invoked or established, ordering a bond hearing would treat the absence of statutory authority as a mere procedural irregularity rather than a substantive defect ... Where the record shows Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings.

Id. at Doc. No. 10 at 6.

98. These Minnesota district courts have held that § 1226(a) does not support a lawful detention in the first instance under the circumstances presented

here. In all cases, detention under § 1226(a) would require a warrant issued by the Attorney General. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn. 2025). To put this plainly: “absent a warrant a noncitizen may not be arrested and detained under section 1226(a).” *See Gilton A. v. Bondi*, No. 26-CV-558 (ECT/ECW), 2026 WL 185070, at *2 (D. Minn. Jan. 25, 2026). “The remedy for a warrantless arrest is immediate release.” *Omar E.F.G. v. Bondi*, No. 26-451 (DWF/DLM), 2026 WL 184571, at *3 (D. Minn. Jan. 23, 2026); *see also Joaquin Q.L. v. Bondi*, No. 26-cv-233 (LMP/DTS), 2026 WL 161333, at *3 (D. Minn. Jan. 21, 2026) (same); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (same); *Vedat C. v. Bondi*, No. 25-cv-4642 (JWB/DTS), ECF No. 9 (D. Minn. Dec. 19, 2025) (same); *Chogllo Chafila v. Scott*, No. 2:25-cv-00437, 2025 WL 2688541, at *11 (D. Me. Sep. 21, 2025) (““Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a).”)

99. To be sure, decisions from the District of Minnesota are not binding on this Court. But here, where Petitioner resided and worked in Minnesota, was apprehended and detained by Respondents in Minnesota, and transferred unilaterally by Respondents to a district that she has no connection to, Petitioner respectfully submits that these decisions should be considered persuasive—especially when they are concordant with numerous decisions from within this District.

100. Therefore, unless Respondents can produce such a warrant in response to an Order to Show Cause, Petitioner's detention would, in any event, be unlawful under 8 U.S.C. § 1226(a).

101. Here, where detention is unlawfully based on 8 U.S.C. 1225(b)(2), which does not apply to Petitioner, release is the appropriate remedy.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

- 1) Assume jurisdiction over this matter;
- 2) Order Respondents to show cause why the writ should not be granted within three days and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
- 3) Enjoin Respondents from transferring Petitioner from the jurisdiction of this District pending these proceedings;
- 4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- 5) Declare that Petitioner's detention violates the Immigration & Nationality Act and applicable regulations;
- 6) Declare that Respondents' actions violate the Administrative Procedure Act;
- 7) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- 8) In the alternative, issue a writ of Habeas Corpus ordering Respondents to provide Petitioner with a constitutionally-adequate bond hearing, at which Respondents must bear the burden by clear and convincing evidence of

justifying her future detention by demonstrating that she is a flight risk or a danger to the community;

- 9) Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- 10) Grant any further relief this Court deems just and proper.

Dated: *February 5, 2026*
El Paso, Texas

Respectfully submitted,

/s/ Clara S. Bustamante

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ATTORNEYS FOR PETITIONER

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

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

Dated: February 5, 2026
El Paso, Texas

Respectfully submitted,

/s/ Clara S. Bustamante

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