IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No:

KEILA DANIELA BRACHO CORTEZ,

Petitioner,

v.

PAMELA JO BONDI, in her official capacity as Attorney General of the United States,
KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,
TODD LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement,
George Valdez, in his official capacity as the Acting Field Office Director of the Denver Field Office, Enforcement and Removal Operations, Immigration and Customs Enforcement,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

Petitioner, Keila Daniela Bracho Cortez ("Petitioner" or "Bracho Cortez"), by and through her undersigned counsel seeks emergency relief on her Verified Petition for Writ of Habeas Corpus (the "Petition") and further states as follows:

On an emergency basis, Ms. Bracho Cortez requests that the Court declare that her current detention violates the United States Constitution and statutory laws and order her immediate release.

Ms. Bracho Cortez is a citizen of Venezuela. On November 30, 2023, Ms. Bracho Cortez presented herself at the El Paso, Texas Port of Entry. Upon arrival, she expressed a fear of return to her home country and indicated her intent to seek asylum. Following her initial processing, on

December 1, 2023, she was served with an Order of Release on Recognizance, which is attached as **Exhibit A**.

This order signifies that the Department of Homeland Security ("DHS") chose to release her from physical custody under section 236(a) of the Immigration and Nationality Act ("INA"), pending the outcome of her removal proceedings. By releasing her on her own recognizance, the government determined that her detention was not required to ensure public safety or her future appearance at court hearings, provided she complies with the reporting conditions set forth in the order, attached as **Exhibit A**.

From then until her abrupt and unlawful re-detention two years later, Ms. Bracho Cortez lived a quiet and law-abiding life in Colorado with her husband and their five-year old daughter. She retained counsel, applied for asylum on Aug. 30, 2024, and upon receiving work authorization on Feb. 26, 2025, worked as a Teacher Assistant as [redacted] a preschool and childcare center. She was also enrolled at the University of Denver, where she was earning a degree in nursing after receiving a scholarship from [redacted] True and accurate copies of her Form I-589 Application for Asylum and for Withholding of Removal ("Asylum Application") and her Form I-766 I-Employment Authorization Document ("EAD") are attached as **Exhibits B** and **C**. It should also be noted that she has no criminal history.

On February 12, 2026, Ms. Bracho Cortez arrived for her monthly Intensive Supervision Appearance Program ("ISAP") check-in at the Denver ICE Field Office, located at 3600 S Yosemite St, Suite 100 Denver, Colorado. After being dropped off by her husband, Ms. Bracho Cortez expected the routine reporting process to last approximately one hour. Instead, she was handcuffed, led out of the facility through a basement door into a fenced area out of public sight,

and taken by van to Denver Contract Detention Facility at 3130 North Oakland Street, Aurora, Colorado, where she has remained. Following several failed attempts to contact her, her husband entered the ICE Field Office, where he was abruptly informed that she had been taken into custody. Ms. Bracho Cortes was never presented with a judicial warrant authorizing her initial or continued detention, and there is no indication that U.S. Immigration and Customs Enforcement ("ICE") agents have ever possessed such a warrant.

Ms. Bracho Cortez's detention is unlawful for five reasons.

First, Ms. Bracho Cortez's detention violates her substantive due process rights under the Fifth Amendment. The government has no legitimate interest in detaining Ms. Bracho Cortez when she is neither a flight risk nor a danger—the only two constitutionally permissible reasons for immigration detention. Indeed, the government already determined that Ms. Bracho Cortez is neither a danger nor a flight risk when it released her on her own recognizance into the United States on December 1, 2023, and authorized her to work here.

Second, Ms. Bracho Cortez's detention violates the INA. 8 U.S.C. § 1225(b)(2)(A) does not authorize Respondents to detain Ms. Bracho Cortez. This District has ruled that § 1225(b)(2)(A) applies to applicants "seeking admission," not to individuals like Ms. Bracho Cortez who have been living in the United States for years. When Ms. Bracho Cortez was "seeking admission" at the border in December of 2023, the government declined to detain her. She cannot now, more than two years from her entry, be retroactively "detained" under § 1225(b).

Third, Ms. Bracho Cortez's warrantless detention violates the Administrative Procedure Act ("APA") because it contravenes the INA procedures for lawful arrests. Absent any change in circumstances since her entry in December 2023, Respondents' actions are arbitrary and

capricious, contrary to Ms. Bracho Cortez's Constitutional rights, and in excess of the authority of, and limitations on, the Respondent agencies.

Fourth, Ms. Bracho Cortez's detention violates her Fifth Amendment right to procedural due process. Due process has been violated because Respondents took away the liberty that Ms. Bracho Cortez had enjoyed for over two years without any process, much less due process. From the time she was released into the U.S. to her detention by ICE on February 12, 2026, Ms. Bracho Cortez accrued a significant interest in being free from the unlawful detention she has and continues to experience.

Fifth, Ms. Bracho Cortez's warrantless arrest violates her Fourth Amendment rights, as well as statute and regulation, similarly mandating her release. *See Mendoza Gutierrez v. Baltasar*, No. 1:25-cv-02720-RMR, 2025 WL 2962908, at *14 (D. Colo. Oct. 17, 2025) (granting immediate release and finding a noncitizen is not subject to mandatory detention under § 1225(b)(2) if they are not an arriving alien seeking admission). Indeed, such a noncitizen must be detained pursuant to a warrant and afforded a prompt bond determination before an immigration judge pursuant to 8 U.S.C. § 1226(a). *Id.*

FACTUAL BACKGROUND

1. Mr. Bracho Cortez is a citizen of Venezuela who has resided in the United States for approximately two years and two months. Upon information and belief, Ms. Bracho Cortez presented herself at the El Paso, Texas Port of Entry where she expressed a fear of return to her home country and indicated her intent to seek asylum. Following her initial processing, on December 1, 2023, she was served with an Order of Release on Recognizance, signifying that the DHS exercised its discretion to release her from physical custody under Section 236(a) of the INA

pending the outcome of her removal proceedings. Ms. Bracho Cortez subsequently applied for work authorization, and was granted a five-year term of work, from February 26, 2025, to February 25, 2030.

2. Ms. Bracho Cortez explained that while living in Venezuela, she and her husband were active in political protests against the regime, during which she was subjected to severe mistreatment and threats at her university. This repression, characterized by violent crackdowns by the National Guard and state-aligned groups, eventually forced the couple to flee to Colombia to seek safety. However, the threats to their safety persisted in Colombia as local violence escalated. While her husband was working as a bus driver, he was intercepted and brutally beaten by members of the Jaime Martinez Front, a FARC dissident group. He was held captive for two days, interrogated, and subjected to extortion demands. Realizing that neither the Venezuelan nor Colombian authorities could protect their family, which now included a young daughter, Ms. Bracho Cortez and her husband fled to the United States to seek refuge.

3. After relocating to Colorado, Ms. Bracho Cortez submitted her Asylum Application. The Asylum Application makes clear that Ms. Bracho Cortez had a legitimate fear for her life and safety because of the actions of Colombian and Venezuelan government and officials: "My family and I were persecuted for political difference in Venezuela and in Colombia[,] we were victims of persecution and death threats for not complying with the demands of armed groups outside the law." *See* **Exhibit B**.

4. In the Asylum Application, Ms. Bracho Cortez also checked "yes" when asked, "Do you fear harm or mistreatment if you return to your home country"? *Id.* In answering further,

she wrote, "Yes, I am afraid for me and my family, that they make an attempt on our lives, because they are armed groups outside the law, which have a high level of power in my country." *Id.*

5. Likewise, Ms. Bracho Cortez checked "yes," when asked, "Are you afraid of being subjected to torture in your home country or any other country to which you may be returned"? *Id.* In answering further, she wrote, "Yes, I fear an attempt on our lives. These are powerful groups that I have faced." *Id.*

6. Before her detention, Ms. Bracho Cortez resided in Denver, Colorado, with her husband and their five-year-old daughter. She was gainfully employed as a Teacher Assistant at [redacted] a local preschool and childcare center, where she found great fulfillment working with children. Dedicated to her professional advancement and community contribution, she was also enrolled at the University of Denver pursuing a degree in nursing. Her academic excellence was recognized by a scholarship from the [redacted] and she was on track to graduate in just a few months.

7. On February 12, 2026, at approximately 10:00 a.m., Ms. Bracho Cortez arrived for her regularly scheduled monthly check-in at the Intensive Supervision Appearance Program ("ISAP") office located at 3600 S. Yosemite St., Suite 100, Denver, Colorado 80237. She even arrived a couple of minutes earlier than usual.

8. Upon arrival, Ms. Bracho Cortez checked in at the front window and presented her identification. At that time, the facility was crowded with other individuals moving freely in and out, and Ms. Bracho Cortez believed she was attending a routine administrative appointment, which typically lasted only ten to fifteen minutes.

9. During a typical check-in, Ms. Bracho Cortez would meet briefly with an officer who would ask a standard series of administrative questions to ensure her information remained current. These inquiries generally focused on whether she still resided at the same address, confirmed her method of entry into the United States, and included offers of assistance if she required help with basic needs such as food. These interactions were routine, helpful in nature, and typically concluded within ten to fifteen minutes.

10. After several minutes, the individual at the check-in window instructed Ms. Bracho Cortez to follow her into a back office, stating that she would be asked a series of questions that day. This was a significant departure from Ms. Bracho Cortez's previous experiences, where questions regarding her address and well-being were handled at the public counter.

11. Upon entering the back office, Ms. Bracho Cortez was confronted by three ICE agents. To her left, she observed another individual who had already been detained. One of the agents, speaking in Spanish, abruptly informed her: "You are being detained for 16 infractions in this program."

12. Ms. Bracho Cortez, confused by the allegation, contested the statement, explaining that she had always complied with the program's requirements and had even previously visited the office specifically to seek assistance in maintaining her compliance.

13. In response, the agent dismissively told Ms. Bracho Cortez that while her situation "wasn't serious" under the previous administration, under the current administration, her alleged non-compliance was considered "a crime."

14. The agents then proceeded to seize Ms. Bracho Cortez's personal property, including her watch, jewelry, cell phone, purse, wallet, and the nursing textbooks she had brought with her to study for her classes at the University of Denver.

15. During the seizure of her property, an agent discovered Ms. Bracho Cortez's driver's permit in her pocket. When she explained that the permit only allowed her to drive with a licensed driver and that her husband had dropped her off, the agent issued a direct threat, stating: "If your husband was here, we would also take him."

16. The intimidation intensified when the agent questioned Ms. Bracho Cortez regarding the location of her children. He explicitly stated that if her children were present at the facility, he "would take them too."

17. The agents presented Ms. Bracho Cortez with a document that allegedly listed dates she was absent from the program. Ms. Bracho Cortez observed that the document was highly irregular; it contained handwritten notations in blue ink but lacked her name, her alien registration number, or any other formal identifying information.

18. Ms. Bracho Cortez clarified that on the date mentioned, she had not been absent but had merely arrived late for her appointment. The agent refused to investigate this discrepancy, stating simply: "Well, that's an infraction."

19. Ms. Bracho Cortez specifically recalls only one instance of a scheduling discrepancy occurring in approximately August or October of 2025, when she arrived late for her appointment due to unforeseen circumstances. Upon her arrival, she was expressly informed by the administrative staff that her late arrival was acceptable, and she was permitted to proceed with her routine check-in as usual.

20. Outside of this single, excused occurrence, Ms. Bracho Cortez and her husband diligently attended every scheduled appointment on time and strictly complied with all instructions and reporting requirements mandated by the supervision program. Despite this history of rigorous compliance, the agents arbitrarily used this prior, excused late arrival as the sole justification for her "infractions" and subsequent detention.

21. At no point during this interrogation, seizure of property, or subsequent processing was Ms. Bracho Cortez shown a judicial warrant or any legal document signed by a judge authorizing her arrest or detention.

22. Despite the aggressive nature of the interrogation and the explicit threats made against her husband and children, Ms. Bracho Cortez remained silent and compliant as the agents took her fingerprints and processed her for physical detention.

23. Ms. Bracho Cortez described the experience as deeply humiliating and terrifying, noting that the detention process was conducted entirely out of public view. While the main lobby remained crowded with people who had no indication that enforcement actions were occurring, she was led through a series of secure, hidden corridors through a basement and then into a fenced-in area hidden from public view. She observed that this "underground" method of removal ensured that no one in the facility had any clue that she was being forcibly detained.

24. Adding to the physical and emotional distress of her detention, Ms. Bracho Cortez suffers from high blood pressure, a chronic medical condition that requires consistent monitoring and management.

25. Following the trauma of her sudden and aggressive arrest, her condition deteriorated to the point that she spent the first two days of her detention under medical supervision

in the facility's infirmary. Despite her clearly compromised health, the government continued to hold her in physical custody rather than releasing her to her family, where she could receive proper care and stability.

26. Upon information and belief, Bracho Cortez has not had a bond hearing.

JURISDICTION AND VENUE

27. Petitioner is in the physical custody of Respondents. Upon information and belief, she is being held in the Denver Contract Detention Facility, which lies in the District of Colorado.

28. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and Article I, Section 9, Clause 2 of the United States Constitution ("Suspension Clause").

29. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

30. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases."). Because Ms. Bracho Cortez seeks to challenge her custody as a violation of the United States Constitution, laws, or treaties of the United States, jurisdiction is proper in this Court.

31. Venue is proper in this District because a substantial part of the events or omissions giving rise to this Petition occurred in this District, including: (1) Ms. Bracho Cortez was unlawfully arrested by one or more of DHS's agents in this District; (2) Ms. Bracho Cortez was

detained at the ISAP office in Denver, which is located in this District; (3) Ms. Bracho Cortez is currently physically detained within the jurisdiction of this District at the Denver Contract Detention Facility; and (4) the decisions regarding her continued detention and the denial of her liberty are being made by Respondents who oversee operations within this District.

32. Venue is also proper in this District because Respondents are officers or employees of the United States or a federal agency, who acted in their official capacity or under the color of legal authority during all relevant times, and: (1) at least one of the Respondents resides in this District; and (2) a substantial part of the events or omissions giving rise to this Petition occurred in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

33. Petitioner Keila Daniela Bracho Cortez is a citizen of Venezuela and resident of Colorado, who has lived in the United States for approximately two years and two months, following her release on her own recognizance under Section 236(a) of the INA on December 1, 2023, and who has been held in physical custody by Respondents in the District of Colorado since February 12, 2026.

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

35. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As head of the U.S. Department of Homeland Security, the federal agency tasked with enforcing immigration law, Secretary Noem is Ms. Bracho Cortez ultimate legal custodian.

36. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As ICE's Acting Director, Respondent Lyons is a legal custodian of Ms. Bracho Cortez.

37. Respondent Gregory Davies is sued in his official capacity as the acting Field Office Director of the Denver Field Office, Enforcement and Removal Operations, ICE. In that capacity, Field Office Director Davies has supervisory authority over the ICE agents responsible for detaining Ms. Bracho Cortez.

REQUIREMENTS OF 28 U.S.C. § 2243

38. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Ms. Bracho Cortez is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

39. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (citation omitted). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time." *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990).

40. Due to the nature of this proceeding, Ms. Bracho Cortez asks this Court to expedite proceedings in this case as necessary and practicable for justice.

EXHUASTION OF LEGAL REMEDIES

41. Detained immigrants petitioning under 28 U.S.C. § 2241 *et seq.* face no statutory exhaustion requirements. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Nor is a judicially imposed prudential exhaustion requirement appropriate where, as here, time is of the essence,

facts are largely undisputed, and the parties' disagreement is based on a legal conclusion. *Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 803 (N.D. Iowa 2025). Further administrative exhaustion is unnecessary in this case as it would be futile. *See, e.g., Eliseo A.A. v. Olson*, No. 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025).

42. It would be futile for Ms. Bracho Cortez to seek a custody redetermination hearing before an Immigration Judge because of the Board of Immigration Appeals' ("BIA") recent decision holding that anyone who has entered the United States without inspection is now considered an "application for admission" who is "seeking admission" and therefore subject to the INA's mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *see also Eliseo A.A.*, 2025 WL 2886729, at *7 ("[F]urther administrative review would be futile in light of the BIA's recent decision in Matter of Yajure Hurtado . . . . Where the agency has already adopted a definitive position, exhaustion serves no purpose." (citation omitted)).

43. Additionally, the Immigration Judge does not have jurisdiction to review Ms. Bracho Cortez's claim of unlawful custody in violation of her due process rights, and it would therefore be futile for him to pursue administrative remedies related to that claim. *See, e.g., Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020); Matter of C-, 20 I. & N. Dec. 529, 532 (BIA 1992).

LEGAL FRAMEWORK

44. The INA, 8 U.S.C. Chapter 12, prescribes essentially three forms of detention for noncitizens in removal proceedings.

45. First, noncitizens detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody-redetermination hearing—also known as a bond hearing—unless they have been arrested, charged with, or convicted of certain crimes that subject them to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (providing that Immigration Judges may review custody determinations made by DHS), 1236.1(d) (providing the same).

46. Second, the INA provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1), in addition to other recent arrivals who are deemed to be "seeking admission" to the United States under 8 U.S.C. § 1225(b)(2)(A).

47. Third, the INA authorizes detention of noncitizens who have received a final order of removal. 8 U.S.C. § 1231(a). During a period of appeal and during the pendency of the appeal, an order of removal made by an immigration judge is not considered final. 8 CFR § 1241.1.

48. The detention provisions of the INA at 8 U.S.C. §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 of the INA was most recently amended last year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

49. The Supreme Court has explained that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018). In contrast, § 1226

"authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings." *Id.* at 289 (emphasis added).

50. Further, § 1225(b)(2) specifically applies only to those "seeking admission," and the definitions provided at the implementing regulations state that an "[a]rriving alien" is one who is "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. *See Morales Lopez v. Baltazar*, 2026 U.S. Dist. LEXIS 912, 2026 WL 25161, at *4 (D. Colo. Jan. 5, 2026) (citing *Nava Hernandez v. Baltazar et al.*, 2025 U.S. Dist. LEXIS 210449, 2025 WL 2996643, at *4 (D. Colo. Oct. 24, 2025)).

51. The use of the present progressive tense would exclude noncitizens like Ms. Bracho Cortez who are initially apprehended in the interior of the country years after they had entered the country, as they cannot reasonably be considered to be actively "seeking admission" or "coming . . . into the United States" after years spent building a life here. *Id.; see Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025) (citing the use of the present and present-progressive tenses to conclude that 8 U.S.C. § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (interpreting the language "is arriving" in 8 U.S.C. § 235(b)(1)(A)(i) and concluding that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process.").

COUNT I

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution: Substantive Due Process

52. Ms. Bracho Cortez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

53. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And "[f]reedom 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*, 533 U.S. at 690.

54. Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

55. Immigration detention is civil detention and must "bear a reasonable relation to the purpose for which the individual was committed" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (stating that detention must be a proportional—not excessive—response to a legitimate state objective).

56. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas,* 533 U.S. at 690–91.

57. To satisfy substantive due process under the Fifth Amendment, a noncitizen's detention must be tied to flight risk or a danger to the community. *See id.* at 690.

58. Neither purpose is served by Ms. Bracho Cortez's detention. Respondents have not demonstrated that Ms. Bracho Cortez is a flight risk. Ms. Bracho Cortez has no documented criminal history. After Ms. Bracho Cortez was originally interviewed by authorities at the El Paso

Port of Entry in December 2023, she was released on her own recognizance into the United States. Ms. Bracho Cortez relocated to Colorado, where she has lived with her husband and five-year-old daughter for over two years without any arrest or criminal history. She is therefore and quite obviously not a danger.

59. Additionally, Ms. Bracho Cortez's roots in the United States, specifically in Colorado, have only become stronger since December 2023. Longtime residence weighs against flight risk: "Courts have also made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases); *see also Mendoza Gutierrez v. Baltasar*, No. 1:25-cv-02720-RMR, 2025 WL 2962908, at *28 (D. Colo. Oct. 17, 2025) (finding petitioner unlikely to abscond where the record showed strong community ties and a history of compliance).

60. Because the government is not detaining Ms. Bracho Cortez to serve legitimate interests in protecting against danger or flight risk, her detention violates substantive due process under the Fifth Amendment, and this Court should order her immediate release. As this Court has recently recognized, while there is a general public interest in the enforcement of immigration laws, that interest does not grant Respondents "an unfettered right to detain noncitizens in contravention of the law or in violation of the noncitizens' Fifth Amendment rights." *Mendoza Gutierrez*, 2025 WL 2962908, at *30.

COUNT II

Violation of the Immigration and Nationality Act

61. Ms. Bracho Cortez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

62. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. First, 8 U.S.C. § 1226 "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under § 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Only noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under § 1226(c). *See* 8 U.S.C. § 1226(c).

63. Second, the INA provides for brief mandatory detention of noncitizens with final removal orders. *See* 8 U.S.C. § 1231.

64. Third, the INA also provides for mandatory detention of two groups of noncitizens encountered "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 288. The first group consists, generally, of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1).

65. The second group subject to mandatory detention consists of anyone alleged to be an "applicant for admission" who is "seeking admission" who an "examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

66. Respondents will likely claim that Ms. Bracho Cortez is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But courts across the United States have overwhelmingly concluded that noncitizens like Ms. Bracho Cortez who entered the United States and are detained by ICE for removal proceedings while they are residing in the United States are not detained under § 1225(b)(2)(A). *See, e.g.*, *Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *13–14 (S.D.N.Y. Nov. 26, 2025) (tallying more than 350 cases reaching the same conclusion, and only 12 going the other way).

67. This Court has concluded the same time and again, repeatedly ruling that § 1225(b)(2)(A) applies to applicants "seeking admission," not to individuals like Ms. Bracho Cortez who have been living in the United States for years. Most recently, this Court held that 8 U.S.C. §§ 1225 and 1226, when read together, "cover (noncitizens) presenting at arrival (under § 1225) and then everybody else (under § 1226)." *See Yera v. Baltazar*, No. 1:26-cv-00476-SKC-SBP, 2026 U.S. Dist. LEXIS 34214, at *3–4 (D. Colo. Feb. 19, 2026). In *Yera*, the Court found that because the Petitioner had resided in the United States continuously since his initial entry and release, he was "unlawfully detaining him under § 1225," and could only be properly detained under the discretionary framework of § 1226. *Id.* at *4. *See also Ekenge v. Baltazar*, No. 1:26-cv-00630-SBP, 2026 U.S. Dist. LEXIS 45855, at *7 (D. Colo. Mar. 5, 2026) (the court concluded that because the petitioner was previously released on an Order of Release on Recognizance ("OREC"), a form used exclusively for discretionary release under 8 U.S.C. § 1226(a), any subsequent re-detention must necessarily be governed by that same discretionary statute rather than the mandatory detention provisions of § 1225).

68. Ms. Bracho Cortez's arrest in Colorado, thousands of miles from the border and two years after her entry, is the exact type of interior enforcement that necessitates § 1226(a) protections.

69. Accordingly, Ms. Bracho Cortez's current detention under 8 U.S.C. § 1225(b)(2)(A) violates both the INA and Ms. Bracho Cortez's procedural due process rights. As this renders Ms. Bracho Cortez's detention unlawful from its inception, she should be released.

COUNT III

Violation of the Administrative Procedure Act

70. Ms. Bracho Cortez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

71. With limited exceptions, judicial review under the APA is available for "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Judicial review is available to any "person suffering legal wrong because of [the] agency action, or adversely affected or aggrieved by [such] action." *Id.* § 702. As relevant here, the APA requires courts to "hold unlawful and set aside agency action" if they find such action to be "arbitrary [or] capricious"; "contrary to constitutional right"; or "in excess of statutory jurisdiction, authority, or limitations." *Id.* § 706(2)(A)–(C).

72. There is no other adequate remedy available to Ms. Bracho Cortez than review the actions of ICE to capture and detain her indefinitely, because of which she has plainly been adversely affected and aggrieved.

73. Respondents' warrantless seizure and detention of Ms. Bracho Cortez are arbitrary and capricious, contrary to her constitutional rights, and in excess of the authority and limitations on the Respondent agencies.

74. Specifically, Respondents violated the APA by departing from decades of established agency procedure which treats individuals apprehended in the interior, who have established lives and no criminal records, as eligible for individualized bond determinations under 8 U.S.C. § 1226(a). This sudden shift to a "no-bond" policy for established residents like Ms. Bracho Cortez constitutes an arbitrary and capricious change in agency position without reasoned justification.

75. Furthermore, as noted in *B.D.A.A. v. Bostock*, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025), ICE officers must satisfy a two-prong test to establish probable cause for a warrantless arrest: (1) unlawful presence and (2) a likelihood of flight. Respondents' failure to establish any specific flight risk or danger prior to the arrest of Ms. Bracho-Cortez who was simply complying with the conditions of her release, violates INA arrest procedures and, by extension, the APA.

76. Because Ms. Bracho Cortez has lived peaceably in Colorado for two years without being deemed an enforcement priority, her sudden, warrantless arrest and detention without a showing of "changed circumstances" or a new threat to the community is a "legal wrong" under 5 U.S.C. § 702.

COUNT IV

Violation of the Fifth Amendment to the U.S. Constitution
Procedural Due Process – Unlawful Re-detention

77. Ms. Bracho Cortez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

78. The Court should apply the balancing test set forth in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976), which applies to procedural due process claims under the Fifth Amendment. The Court balances three factors: (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 the additional or substitute procedures would entail.

79. Respondents' warrantless seizure and detention of Ms. Bracho Cortez without notice or an opportunity to be heard infringes on her most fundamental liberty interest: the right to be free from physical restraint. Ms. Bracho Cortez is currently detained at the Denver Contract Detention Facility. She is forcibly separated from her residence, her husband and five-year-old daughter, and her academic and professional life as a nursing student and teacher assistant.

80. The risk of erroneous deprivation here is extremely high. Respondents provided Ms. Bracho Cortez with no notice or ability to defend herself before a neutral decision-maker. Instead, ICE agents intercepted her during a routine administrative check-in at the ISAP office, failed to present a warrant, and summarily detained her based on alleged "infractions" that she was never given the opportunity to contest. Without a bond hearing or judicial oversight, there is no mechanism to prevent the arbitrary and erroneous imprisonment of individuals who, like Ms. Bracho Cortez, pose no threat to society and have a documented history of compliance.

81. The government has no legitimate interest in the suspicionless detention of Ms. Bracho Cortez. Because she has lived peaceably in Colorado, for over two years without a single arrest or criminal conviction, the government cannot argue that her detention is necessary to protect the public. Furthermore, her consistent residence and history of diligent compliance with her ISAP check-ins demonstrate that she is not a flight risk. Any fiscal or administrative burden of providing a bond hearing is negligible compared to the profound deprivation of her liberty.

82. Because Respondents' detention of Ms. Bracho Cortez violates the Fifth Amendment, the Court should order her immediate release.

COUNT V

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

83. Ms. Bracho Cortez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

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

85. As a general matter, the Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability' based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov.

25, 2025) (quoting *Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

86. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. *See* 8 U.S.C.§ 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws and that the person "is likely to escape before a warrant can be obtained," i.e., is a flight risk. *Id.*; s*ee also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. See 8 C.F.R. § 287.8(c)(2)(ii).

87. Ms. Bracho Cortez's warrantless arrest occurred without individualized probable cause. "Courts have . . . made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases). To the contrary, she was seized during a voluntary, regularly scheduled compliance check-in at a government facility. Ms. Bracho Cortez has resided in the United States for over two years, has built strong ties to the Denver community, is a nursing student at the University of Denver, and has a five-year-old daughter. No reasonable

officer could have concluded she was likely to escape before a warrant could be obtained while she was standing in an ICE-monitored facility for a scheduled appointment.

88. Without a statutory basis for a warrantless arrest, Respondents were required to secure a prompt judicial probable cause determination. Ms. Bracho Cortez received no such determination, yet her detention at the Denver Contract Detention Facility has continued well beyond 48 hours, rendering it presumptively unconstitutional.

89. Regulations also provide that noncitizen arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d). During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Ms. Bracho Cortez has received no such custody determination.

90. Respondents' warrantless arrest of Ms. Bracho Cortez, and their refusal to provide a prompt (or any) probable cause determination, violated the Fourth Amendment, the INA, and implementing regulations. Thus, this Court should order her immediate release, along with her personal property that was also unlawfully seized.

REMEDY

91. Ms. Bracho Cortez repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

92. The appropriate remedy for Respondents' unlawful conduct is Ms. Bracho Cortez's immediate release.

93. 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*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

94. When a 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. To the extent that Respondents may argue, as they have in similar, that the appropriate remedy here is a bond hearing as opposed to outright release, this Court has squarely rejected that argument. *See Singh v. Baltasar*, No. 26-cv-0611-WJM, 2026 U.S. Dist. LEXIS 44613, at *14 (D. Colo. Mar. 4, 2026). In *Singh*, the Court recognized that while a bond hearing is a standard procedural step under § 1226, the underlying substantive defect of a warrantless arrest without individualized probable cause, particularly for a noncitizen with deep community ties and a history of compliance, justifies a more immediate and robust form of judicial intervention to restore the Petitioner's liberty. *Id.* at *8-9.

96. Nor here would § 1226(a) have supported a lawful detention in the first instance. Detention under § 1226(a) would require a warrant issued by the Attorney General. *See, e.g., Joaquin Q. L. v. Bondi*, No. 26-cv-233 (LMP/DTS), 2026 WL 161333, at *2-3 (D. Minn. Jan. 21, 2026) (collecting cases); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 961 (D. Minn 2025). Upon information and belief, Respondents arrested Ms. Bracho Cortez without any such warrant,

rendering her current confinement at the Denver Contract Detention Facility unlawful from its inception.

97. Petitioner further requests that this Court exercise its equitable power to enjoin Respondents from transferring Ms. Bracho Cortez out of the jurisdiction of the District of Colorado during the pendency of these proceedings. As a resident of Denver with local counsel, a husband and five-year-old daughter, and ongoing nursing studies at the University of Denver, any transfer to a remote facility would cause irreparable harm by severing her access to her legal representatives and the community support necessary to challenge her detention. Such a transfer would effectively moot this Court's jurisdiction and violate Ms. Bracho Cortez's Procedural Due Process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Keila Daniela Bracho Cortez respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Immediately issue an Order to Show Cause declaring:
    a. Respondents have misclassified Ms. Bracho Cortez's detention under 8 U.S.C.§ 1225(b)(2)(A);
    b. Respondents cannot detain Ms. Bracho Cortez under 8 U.S.C. § 1226(a) because they did not have a warrant when they arrested her;
    c. Respondents have violated Ms. Bracho Cortez's rights under the APA, and the Fourth and Fifth Amendments of the United States Constitution;

d. Respondents are enjoined from removing, transferring, or otherwise facilitating the transfer of Ms. Bracho Cortez out of the District of Colorado until the Court issues a final order on this Petition;

e. Respondents must immediately and humanely return Ms. Bracho Cortez to her home in Denver.

f. Return all of Ms. Bracho Cortez's property including, but not limited to, all identification materials, documents of any kind, her phone, wallet, and books relating to her ongoing studies.

g. Respondents must show cause within three days as to why this Petition should not be granted.

3. Issue a Writ of Habeas Corpus declaring that Ms. Bracho Cortez's detention by Respondents is unlawful and ordering Respondents, and any person in concert with them, to release Ms. Bracho Cortez from custody within twenty-four hours of this Court's order;

4. Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, Local Rule 54.3(a), and on any other basis justified under law;

5. In the alternative, should the Court not order Ms. Bracho Cortez's immediate release, Petitioner requests that the Court order Respondents to provide an individualized bond hearing before an Immigration Judge within three (3) days, where the burden of proof is on the government to justify continued detention by clear and convincing evidence; and

6. Grant Ms. Bracho Cortez any further relief that this Court deems to be just and proper.

Respectfully submitted this 16th day of March, 2026.

s/ Michael G. Congiu
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Pro bono attorneys for Petitioner Keila Daniela Bracho Cortez

VERIFICATION

I am submitting this verification on behalf of Petitioner Ms. Bracho Cortez, because I am one of Ms. Bracho Cortez's attorneys. My co-workers and I have exercised reasonable diligence in investigating the factual assertions in this Petition for Writ of Habeas Corpus. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Ms. Bracho Cortez's detention status, are true and correct to the best of my knowledge.

Dated: March 16, 2026.

s/ Michael G. Congiu
Michael G. Congiu