UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-01255

PERLA ESMERALDA CASTRO PINA, [redacted]

Petitioner,

v.

GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver Field Office, Immigration and Customs Enforcement,

JUAN BALTAZAR, in his official capacity as Warden of Denver Contract Detention Facility,

MARKWAYNE MULLIN, in his official capacity as Secretary, Department of Homeland Security,

TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement,

PAMELA BONDI, in her official capacity as U.S. Attorney General,

Respondents.

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

INTRODUCTION

1. Petitioner Perla Esmeralda Castro Pina ("Ms. Castro Pina") is a native and citizen of Mexico who entered the United States approximately twenty-five years ago as a child and the government alleges[1] she entered the United States without inspection. On March 23, 2025, U.S. Immigration and Customs Enforcement ("ICE") arrested Ms. Castro Pina and placed her in immigration custody pending completion of removal proceedings. The Department of

[1] In removal proceedings, the government bears the burden of proving alienage. As of the filing of this Petition, Ms. Castro Pina has not conceded this allegation and the Immigration Court has not determined alienage. 8 C.F.R. § 1240.8(c) ("In the case of a respondent charged as being in the United States without being admitted or paroled, the Service must first establish the alienage of the respondent.").

Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that she is subject to mandatory immigration detention under 8 U.S.C. § 1225(b)(2), as an "applicant for admission" who is "seeking admission" to the United States.

2. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete reversal of the interpretation of the statute that the government has embraced since its inception three decades ago, its prior practice, Supreme Court precedent, and the plain language of the Immigration and Nationality Act ("INA").

3. This Court should therefore intervene and grant Ms. Castro Pina's petition for a writ of habeas corpus and order her release from immigration custody, or, alternatively, order EOIR to conduct a bond hearing at which 8 U.S.C. § 1225(b)(2) cannot be applied.

4. In the meantime, this Court should also order that Respondents shall not remove Ms. Castro Pina from this district while this petition is pending because her counsel principally operates from a Colorado law office, and because of the likelihood that Ms. Castro Pina will be ordered to appear at a bond hearing (due to the overwhelming jurisprudence on this issue) and then subsequently be released to reside at her fixed address in Colorado.

JURISDICTION AND VENUE

5. Ms. Castro Pina is detained at the Denver Contract Detention Facility in Aurora, Colorado, and is in physical custody of Respondents. *See* Exhibit 1, EOIR Automated Case Information.[2]

6. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Ms. Castro Pina's detention by

[2] Ms. Castro Pina did not appear in the ICE Detainee Locator system as of the filing of this Petition. She is scheduled for a hearing in her removal proceedings on April 3, 2026, at the Denver Contract Detention Facility. Counsel spoke with Ms. Castro Pina at the Facility on March 25, 2026.

Respondents is a "severe restraint" on her individual liberty. *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

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

8. Venue is proper because Ms. Castro Pina's immediate custodian at Denver Contract Detention Facility is located in this District and a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

9. The government alleges[3] that Petitioner Perla Esmeralda Castro Pina is a native and citizen of Mexico. As of the filing of this Petition, ICE is detaining her at the Denver Contract Detention Facility in Aurora, Colorado.

10. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Ms. Castro Pina's detention. Secretary Mullin has ultimate custodial authority over Ms. Castro Pina and is sued in his official capacity.

11. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

12. Respondent Todd M. Lyons is the Acting Director of ICE, responsible for ICE's detention and removal operations and all its other functions. He is sued in his official capacity.

[3] *See supra* note 1.

13. Respondent George Valdez is the Acting Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Ms. Castro Pina is held. He is sued in his official capacity.

14. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility and is the immediate custodian of Ms. Castro Pina. He is sued in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner 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.*

16. 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

17. Ms. Castro Pina requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on his liberty and clear Constitutional violations in this case.

TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT

18. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

19. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 945-56 (D. Colo. 2025) (listing cases).

20. Ms. Castro Pina requests that this Court invoke the All Writs Act to prevent any transfer out of the District of Colorado during the pendency of her habeas action, given the likelihood that she will be ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. Ms. Castro Pina lives in Colorado, and her counsel's law firm operates primarily in Colorado. She will need to participate in the preparation for and attend her bond hearing, and she will incur additional, unnecessary expenses and difficulty in returning to her residence in Colorado should she be granted a bond hearing after being transferred elsewhere. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, 785 F. Supp. 3d 128, 148 (E.D. Va. May 6, 2025).

EXHAUSTION

21. The failure to exhaust administrative remedies does not bar Ms. Castro Pina's claim unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

22. Moreover, because Ms. Castro Pina's continued detention violates her right to due process—a constitutional right—administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

23. Moreover, because detaining Ms. Castro Pina without a significant likelihood of removal in the reasonably foreseeable future violates her right to due process, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

24. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Critically, as part of a 2025 policy shift, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), concluding that noncitizens who entered the United States without inspection at any point are forever after considered to be "arriving aliens" who are "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Even though, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board—are obligated to apply published Board precedent. 8 C.F.R. § 103.10(b). Thus, waiting for the resolution of DHS's appeal to the Board with respect to a bond request would be futile because the result is foreclosed.

STATEMENT OF RELEVANT FACTS

25. The government alleges that Ms. Castro Pina entered the United States decades ago without inspection or admission. She was not encountered by immigration officers at that time.

26. Ms. Castro Pina was served with a Notice to Appear and placed in removal proceedings.

27. Before her detention, Ms. Castro Pina lived in [redacted] Colorado, with her U.S.-citizen husband and their five U.S.-citizen children.

28. Ms. Castro Pina has no criminal convictions and is neither a flight risk nor a danger to society.

29. Nonetheless, on March 23, 2026, ICE officers arrested and have since detained Ms. Castro Pina without bond in the Denver Contract Detention Facility.

30. Ms. Castro Pina now faces detention and separation from her family without relief from this Court.

LEGAL BACKGROUND

Immigration Detention Authority (8 U.S.C. §§ 1225 and 1226)

31. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, which set forth separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. §§ 1226 ("Apprehension and detention of aliens"), 1229a ("Removal proceedings"). For those individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

32. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

33. As part of IIRIRA, Congress created an expedited removal process to be implemented during inspection at the border for certain "applicants for admission" deemed to be "arriving aliens."

8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

34. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *See* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens "determined to be

inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for if so designated by DHS.").

35. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

36. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of "an applicant for admission" when "the examining immigration officer determines" that the noncitizen who "seeking admission is not clearly and beyond a doubt entitled to be admitted."

37. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g.*, *Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will

be eligible for bond and bond redetermination."). This is because these individuals are not "seeking admission." *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025).

38. Indeed, nearly 30 years of agency interpretation of the law would have provided Ms. Castro Pina with an opportunity to seek review of his custody through a hearing before an immigration judge under 8 U.S.C. § 1226(a).

39. In September 2025, the Board of Immigration Appeals adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point. *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes.[4] *Id.* at 223-25.

40. Courts that have reviewed this issue have almost universally rejected Respondents' new reading of the statute. *See, e.g., Garcia Abanil v. Baltazar*, -- F. Supp. 3d --, 2026 WL 100587, at *4 (D. Colo. Jan. 14, 2026); *Flores Marin v. Baltazar*, 2025 WL 3677019 (D. Colo. Dec. 18, 2025); *Nava Hernandez v. Baltazar*, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Hernandez Vazquez v. Baltasar*, 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Loa Caballero v.*

[4] This decision represents a complete change in statutory interpretation. In fact, just weeks prior to *Matter of Yajure Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I.&N. Dec. 166 (BIA 2025).

Baltazar, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar*, No. 1:25-cv-2966 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *see also Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Galdamez Martinez v. Noem, et al.*, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

41. Notwithstanding the resounding rejection of DHS and DOJ's policy, Respondents continue to defend the policy. Yet this policy deprives Ms. Castro Pina of any process by subjecting her—with limited criminal history and with many years' residence in the United States—to the same mandatory detention provisions as applicants at the border seeking to initially enter the United States.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Substantive Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

42. Ms. Castro Pina realleges and incorporates by reference the paragraphs above.

43. 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*, 533 U.S. at 690. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

44. Ms. Castro Pina has a fundamental interest in liberty and being free from official restraint, and the government's erroneous classification of Ms. Castro Pina as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates her substantive right to due process.

45. Respondents' insistence that Ms. Castro Pina remain in immigration custody pursuant to these policies is a violation of her due process rights.

46. Ms. Castro Pina has a fundamental interest in liberty and being free from official restraint, and the government's erroneous classification of her as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates her substantive right to due process. Immediate release is warranted. *Hotak v. Baltazar*, 1:25-cv-556 (D. Colo. Feb. 25, 2026); *Yanez Chavez v. Baltazar*, 2026 WL 516934 (D. Colo. Feb. 26, 2026); *Martinez-Orellana*, 1:26-cv-355 (D. Colo. Feb. 13, 2026); *see also Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025).

COUNT TWO
Violation of Procedural Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

47. Ms. Castro Pina realleges and incorporates by reference the paragraphs above.

48. The Supreme Court has been clear that for noncitizens "*on the threshold of initial entry . . .* [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, Ms. Castro Pina—after several years in the United States—is clearly not on the threshold of initial entry. Indeed,

it is well established that noncitizens like Ms. Castro Pina who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Because Ms. Castro Pina is not properly detained under § 1225(b)(2), her detention does not comply with due process.

49. Ms. Castro Pina has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[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. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

50. While the government has an interest in ensuring Ms. Castro Pina appearance at her removal proceedings and protecting the community, the government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Ms. Castro Pina who have established a presence in the United States after previously entering without inspection.

51. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Ms. Castro Pina without any opportunity to challenge her detention before the administrative agency. Without an order from this Court, there is a high probability that Ms. Castro Pina would be detained even though her continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure her appearance at her removal proceedings.

52. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Ms. Castro Pina may be stripped of any mechanism to require the government to justify her detention. Such a lack of *any* process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution. Immediate release is warranted. *Hotak v. Baltazar*, 1:25-cv-556 (D. Colo. Feb. 25, 2026); *Yanez Chavez v. Baltazar*, 2026 WL 516934 (D. Colo. Feb. 26, 2026); *Martinez-Orellana*, 1:26-cv-355 (D. Colo. Feb. 13, 2026); *see also Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025).

COUNT THREE
Violation of the Immigration and Nationality Act
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

53. Ms. Castro Pina realleges and incorporates by reference the paragraphs above.

54. This Court should rule that Ms. Castro Pina is subject to detention under § 1226(a). Respondents' contrary reading of the statute has been overwhelmingly rejected in more than two thousand district courts decisions that have ruled on the issue. *See* supra ¶ 40; *see also Morales Rodriguez v. Arnott*, No. 6:25-cv-836-MDH (W.D. Mo. Nov. 18, 2025); *Singh v. Lyons*, No. 1:25-cv-1606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *S.D.B.B. v. Johnson*, No. 1:25-cv-882 (M.D.N.C. Oct. 7, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-

WEF (E.D. Va. Sept. 30, 2025); *Sampiao v. Hyde*, 799 F. Supp. 3d 14, 28 (D. Mass. 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Gomes v. Hyde*, 804 F. Supp. 3d 265, 275 (D. Mass. 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

55. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are in the United States and the Government is seeking to remove through removal proceedings. *Id.* at 303. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Ms. Castro Pina cannot reasonably be described as "seeking admission" to a country she has resided in for decades years.

56. The titles of the two statutory sections make this distinction clear. *Compare* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. § 1226 ("Apprehension and detention of aliens").

57. Furthermore, equating the term "applicant for admission" with "seeking admission," as EOIR has concluded in *Matter of Yajure Hurtado*, would render the phrase "seeking admission" superfluous because it violates principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 795 F. Supp. 3d at 484; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or

insignificant."); *accord Martinez*, 792 F. Supp. 3d at 214; *Mendoza Gutierrez*, 2025 WL 2962908, at *7. Section 1225's mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be "an 'applicant for admission' (a 'term of art' in the INA that includes noncitizens who 'arrive[] in the United States,' as well as those already 'present in the United States who ha[ve] not been admitted," second, the noncitizen must be "actively 'seeking admission' to the country," and third, the noncitizen must be "one whom an examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'" *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 214).

58. In addition, "Respondents' reading of § 1225(b)(2)(A) 'negates the plain meaning of the text.'" *Id.* (quoting *Martinez*, 2025 WL 2084238, at *6). The phrase "seeking admission," is in the present tense, connoting a current action. Yet, Ms. Castro Pina was not actively seeking admission when DHS apprehended her and placed her in custody; she "ha[d] already 'entered' the country (albeit unlawfully)." *Id.*

59. Similarly, the ordinary meaning of the terms "seeking" and "admission" do not apply to noncitizens, like Ms. Castro Pina, who are not actively seeking inspection to enter the United States but instead have been residing in the country for many years. *Lopez Benitez*, 795 F. Supp. 3d at 488; *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

60. Indeed, the third "criteria" is necessarily focused on individuals who are being inspected by a border officer for entry into the United States. Ms. Castro Pina was encountered in a parking lot in Colorado and ICE arrested her in the interior of the United States. *Lopez Benitez*, 795 F. Supp. 3d at 488. She was not undergoing an examination by an immigration officer to see whether she should be allowed entry into the United States. *Pizarro Reyes v. Raycraft*, 2025

WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59 (D.N.H. 2025).

61. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E), unnecessary. *Sampiao*, 799 F. Supp. 3d at 28; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1259; *Gomes*, 804 F. Supp. 3d at 275 . Section 1225(c) requires mandatory detention for individuals who are present in the United States without being admitted or paroled and who are subject to specific criminal conduct criteria. *Sampiao*, 799 F. Supp. 3d at 28. If all noncitizens who are inadmissible are subject to mandatory detention, there would be no reason for Congress to have enumerated which inadmissible noncitizens are subject to mandatory detention under § 1226(c). *Id.* If Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be surplusage. *Sampiao*, 799 F. Supp. 3d at 28 (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

62. For these reasons, the plain language of § 1225(b)(2)(A) demonstrate that an individual, such as Ms. Castro Pina, is not an "applicant for admission" who is "seeking admission" to the United States.

63. Thus, this Court must find that to subject Ms. Castro Pina to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) would be a clear violation of the INA.

64. Accordingly, this Court should order her immediate release from custody. *Hotak v. Baltazar*, 1:25-cv-556 (D. Colo. Feb. 25, 2026); *Yanez Chavez v. Baltazar*, 2026 WL 516934 (D. Colo. Feb. 26, 2026); *Martinez-Orellana*, 1:26-cv-355 (D. Colo. Feb. 13, 2026); *see also Vargas v.*

Bondi, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025).

65. Alternatively, the Court should order a bond hearing at which the government bears the burden of proof by clear and convincing evidence. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1187 (D. Colo. 2025); *Martinez Escobar v. Baltazar*, 2026 WL 503313, at *5 (D. Colo. Feb. 24, 2026). This standard is proper because the clear and convincing standard applies to civil detention where liberty is at stake. *Id.* Moreover, "these are not normal circumstances." *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (recognizing that the case involves a continuing constitutional violation and shifting the burden to the government at a bond hearing "likely will reduce the risk of the continuing erroneous deprivation of Petitioner's liberty interests).

66. If the Court orders a bond hearing, it should also issue an order precluding Respondents from invoking the automatic stay of any bond order relating to the immigration judge's order. "In effect, the automatic stay provision renders the Immigration Judge's bail determination an empty gesture." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003). Notably, in order to invoke the automatic stay, the government would not need to provide "any 'special justification'" to outweigh Mr. Olvina's "constitutional liberties so as to justify his continued detention without bail." *Id.* at 669; *accord Leal Hernandez v. Noem*, 803 F. Supp. 3d 409. 425-26 (D. Md. 2025). This Court should similarly conclude that it "cannot characterize Petitioner's continued confinement as anything but arbitrary" and "in violation of substantive due process." *Ashley*, 288 F. Supp. 2d at 669. Indeed, there is "near unanimity" nationwide that "DHS's application of the automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2) violates a non-citizen's due process under the Fifth Amendment." *Merchan-Pacheo v. Noem*, 2026 WL 88526, at *9 (D. Colo. Jan. 12, 2026); *accord Arana-Hernandez v. Baltasar*, 2026 WL 696642, at *1 (D.

Colo. March 12, 2026). This Court should therefore preclude Respondents from invoking the automatic stay in this case if it orders a bond hearing and if the immigration judge grants release upon payment of a monetary bond. *Merchan-Pacheo*, 2026 WL 88526, at *9.

PRAYER FOR RELIEF

Based on the foregoing, Ms. Castro Pina requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Ms. Castro Pina not be removed from this District while this petition is pending;

(3) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that 8 U.S.C. § 1226(a) governs Ms. Castro Pina detention by U.S. immigration authorities;

(5) Order that Ms. Castro Pina be released from immigration custody with all of her personal belongings;

(6) Alternatively, order a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied, DHS bears the burden of proof, and the immigration judge considers Ms. Castro Pina's ability to pay bond as part of the factors in setting bond, after which DHS cannot invoke the automatic stay of the bond order pursuant to 8 C.F.R. § 1003.19(i)(2);

(7) Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), et seq.; and

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

Dated: March 25, 2026

Respectfully submitted,

/s/Andrew Brooks, Esq.
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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with Petitioner and her family the events described in this Petition. Based on those discussions and documents Petitioner's family has provided to me, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 25, 2026

Respectfully submitted,

/s/ Andrew Brooks, Esq.

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