IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DESIRRE DE OLIVEIRA-MUSSI KRUTSCH,

Petitioner–Plaintiff,

v.

JOHN DOE, in his official capacity as Warden of The ELOY FEDERAL CONTRACT FACILITY; JOHN E. CANTU, (or his successor), Field Office Director of Enforcement and Removal Operations PHOENIX Field Office, Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director U.S. Immigration and Customs Customs Enforcement; MARKWAYNE MULLIN, in his official capacity as U.S. Secretary of Homeland Security; TODD BLANCHE, in his official capacity as Acting Attorney General of the U.S. DAREN K MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents–Defendants.

Case No. 3:26-cv-

WRIT OF HABEAS CORPUS

INTRODUCTION

1. Over the last several months, the U.S. Department of Homeland Security ("DHS") and the U.S. Department of Justice ("DOJ") have abruptly and unlawfully reversed decades of settled immigration practice to deny immigration bond hearings to thousands of noncitizens, many of whom are in Texas.

2. Specifically, DHS and DOJ are systemically reclassifying noncitizens arrested inside the United States as being subject to mandatory detention under 8 U.S.C. § 1225. Historically, these noncitizens were generally subject to the detention provisions of 8 U.S.C. § 1226, which usually allow for release on bond and conditions during the pendency of immigration proceedings. It has been this way for decades. DHS and DOJ now upend years of precedent to reclassify these noncitizens as being subject to 8 U.S.C. § 1225, which does not allow for release on bond. This reclassification is contrary to almost 30 years of settled law and practice and is premised solely upon the manner in which the noncitizen initially entered the country—in some cases, decades ago. This reclassification policy has been uniformly adopted by DHS and DOJ and is being applied to all civil immigration detainees and in all immigration courts throughout the entire United States.

3. DHS memorialized this reclassification policy in its July 2025 policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." Federal courts across the country have found that DHS's policy is contrary to the Immigration and Nationality Act ("INA").

4. DOJ, through the Board of Immigration Appeals ("BIA"), memorialized this reclassification policy in a precedential administrative decision ratifying DHS's July 2025 policy. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Numerous courts have ruled that *Matter of Yajure Hurtado* is not entitled to any deference under *Loper Bright Enters. v.*

Raimondo, 603 U.S. 369, 412–13 (2024), and have rejected *Matter of Yajure Hurtado* as contrary to law.

5. As a result of DHS and DOJ's reclassification policy, DHS is currently arresting numerous noncitizens and unlawfully detaining them in Texas without any possibility of release and without any due process.

6. The unlawful actions of DHS and DOJ have resulted in an enormous proliferation of individual lawsuits to protect the rights of detained noncitizens. And many courts across the country and in the Western District of Texas have concluded that the arrest and detention without meaningful process of a noncitizen who has lived in the United States and built substantial ties in this country violates the Due Process Clause of the Fifth Amendment. Nevertheless, DHS and DOJ continue to apply the reclassification policy to detain noncitizens without due process in violation of their constitutional rights.

7. In recent months, hundreds of habeas litigants have come before courts in this District seeking relief from this reclassification policy. These numbers can only be expected to increase, intensifying the already onerous burden on the federal courts—a burden that is particularly acute in the Western District of Texas, whose jurisdiction covers more detained noncitizens than any other federal district in the country. And each new petition requires individualized analysis, consuming extensive judicial resources and impeding the ability of judges in this District to accomplish the critical task of upholding justice and the rule of law.

8. Because these habeas litigants share (and future litigants will share) common questions of law and fact, the illegality of the reclassification policy is susceptible to class-wide resolution. Such resolution will conserve scarce judicial resources and provide justice for thousands of habeas petitioners. Absent such relief, these noncitizens will remain unlawfully imprisoned, either because they lack the legal resources to present a claim or because they will

be quickly boarded onto vans and planes and removed before they have a chance to seek help.

9. Accordingly, Petitioner brings this action challenging the reclassification policy on three grounds: that it deprives them of liberty without due process of law in violation of the Fifth Amendment; that it violates the Immigration and Nationality Act ("INA") and associated regulations; and that the BIA's decision in *Matter of Yajure Hurtado* is arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act ("APA"). Petitioner additionally and individually challenges her own detentions as in violation of her substantive due process rights.[1]

PARTIES

10. Petitioner DESIRRE DE OLIVEIRA-MUSSI KRUTSCH ("Petitioner") is a 32-year-old citizen of Brazil who arrived in this country on or about August, 2019, in El Paso, Texas. At the time of her entry into the United States, Petitioner was issued a Notice to Appear advising her that she was an "alien present in the United States who has not been admitted or paroled" and setting a hearing before an immigration judge on April 28, 2020 at 9:00 a.m. Attached hereto as *Exhibit A* is a copy of Petitioner's Notice to Appear among other immigration records. Petitioner was then released on her own recognizance and permitted to enter the United States pending her hearing date before the immigration judge. Thereafter, on or about March 13, 2020, Petitioner submitted an asylum application, which was pretermitted by the Immigration Judge. Such decision was appealed and is currently pending with the Board of Immigration Appeals. Petitioner is currently imprisoned at Eloy Detention Center, 1705 E Hanna Road, Eloy, AZ, 85131. Since taking Ms. Krutsch into custody, ICE has not set bond.

[1] As discussed in greater detail within, Petitioner concedes that the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), currently forecloses any argument in this District that the reclassification policy violates the INA and its associated regulations, or is arbitrary and capricious under the APA. Petitioner presents these arguments to preserve them for future review.

An immigration judge denied Ms. Krutsch bond in on September 15, 2025, because it concluded it had no jurisdiction under the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11. Respondent JOHN DOE is sued in his official capacity as Warden of the Eloy Federal Contract Facility, where Petitioner is detained. Respondent John Doe is a legal custodian of Petitioner. Petitioner will update the Court with the name of the warden when such information becomes available.

12. Respondent JOHN E. CANTU (or his successor) is the Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division. As such, JOHN E. CANTU is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

13. Respondent MARKWAYNE MULLIN is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in her official capacity.

14. Respondent DEPARTMENT OF HOMELAND SECURITY (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

15. Respondent TODD BLANCHE is the Attorney General of the United States. He 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. He is sued in his

official capacity.

16. Respondent EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

17. Respondent TODD LYONS is sued in his official capacity as Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement. In that capacity, Respondent Lyons is a legal custodian of Petitioners.

18. Respondent MARKWAYNE MULLIN is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Respondent Mullin is Petitioners' ultimate legal custodian.

19. Respondent TODD BLANCHE is sued in his official capacity as Acting Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review ("EOIR"), Respondent Blanche is responsible for the administration of the immigration laws as exercised by EOIR and is legally responsible for the pursuit of Petitioners' detention and removal. In that capacity, Respondent Blanche is a legal custodian of Petitioners.

20. Respondent DAREN K. MARGOLIN is sued in his official capacity as Director of EOIR. In that capacity, Respondent Margolin is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(g) and is legally responsible for the pursuit of Petitioners' detention and removal. Respondent Margolin is a legal custodian of Petitioners.

21. Respondent DEPARTMENT OF HOMELAND SECURITY is the federal agency responsible for implementing and enforcing many provisions of the INA, including those involving the detention and physical removal of noncitizens.

22. Respondent IMMIGRATION AND CUSTOMS ENFORCEMENT is the agency within DHS responsible for the detention and physical removal of noncitizens.

23. Respondent EXECUTIVE OFFICE FOR IMMIGRATION REVIEW is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including in bond hearings.

JURISDICTION AND VENUE

24. 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 U.S. Constitution (Suspension Clause).

25. Venue is proper in the Western District of Arizona under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2241(d).

LEGAL FRAMEWORK

The Administration upends decades of precedent to reclassify immigrants and mandate their confinement in civil detention.

26. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

27. For decades, the immigration system has carefully implemented this constitutional maxim by striking a careful balance between individual liberty interests on the one hand and government enforcement on the other. It has done so through a network of mutually exclusive detention statutes.

28. First, at the border, noncitizens "seeking admission" were placed into expedited removal proceedings and were subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2). *See Jennings v. Rodriguez,* 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These noncitizens could have requested release

through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). The government could also opt to place them in full removal proceedings and release them on their own recognizance. Historically, in either instance, the mandatory detention provision of § 1225(b)(2) no longer applied after the noncitizen was released into the United States. *See Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418, at *1, *5 (W.D. Tex. Dec. 2, 2025).

29. Second, noncitizens arrested inside the United States were generally placed into removal proceedings under 8 U.S.C. § 1229a, during which an Immigration Judge (an "IJ")—and later potentially the Board of Immigration Appeals (the "BIA") and a U.S. Court of Appeals—would decide whether the noncitizen should be removed. During removal proceedings, those noncitizens were generally subject to the detention authority of 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to noncitizens "inside the United States" and "present in the country"). For decades, most noncitizens in removal proceedings were eligible for release on bond and conditions under § 1226(a), and were consequently entitled to a custody redetermination (colloquially called a "bond hearing") before an IJ to decide whether they should be detained or released. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d) (effectuating the bond hearing and detention process).

30. Third, under 8 U.S.C. § 1226(c), there was (and remains) a narrow category of noncitizens who may be held in mandatory detention for a brief period of time if the noncitizen has been convicted of certain crimes. *Demore v. Kim*, 538 U.S. 510, 513 (2003). Neither Petitioners nor members of the proposed class have been convicted of any such crimes.

31. Fourth, if a noncitizen is ordered removed, the noncitizen is subject to detention under 8 U.S.C. § 1231 while the government attempts to remove them. That statute provides for 90 days of mandatory detention called the "removal period," followed by discretionary detention within certain limits. *See Zadvydas v. Davis*, 533 U.S. 678, 699–700 (2001) (holding

§ 1231 detention may not continue if removal is not reasonably foreseeable).

32. This system has existed in its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587 (codified at 8 U.S.C. § 1226). However, even before IIRIRA, noncitizens arrested inside the United States were generally eligible for bond hearings and release during immigration proceedings. According to IIRIRA's legislative history, Congress intended § 1226(a) to "restate[] the [then-]current provisions… regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). It also reflected the longstanding practice in the United States of allowing noncitizens inside the country to seek release while the government decided whether to remove them. *See* 34 Stat. 898, 904–05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 889–91, §§ 19, 20 (1917) (similar); 66 Stat. 163, 204, 208–09 §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

33. This eligibility for a bond hearing and potential release has applied to noncitizens arrested in the United States regardless of whether they initially entered the country with permission. Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service and the EOIR, which houses the Immigration Courts and BIA, issued an interim rule to implement the statute that expressly stated: "Despite 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. 10312, 10323 (Mar. 6, 1997).

34. Thus, for almost 30 years after Congress enacted IIRIRA, all participants in the immigration system understood that noncitizens arrested inside the United States generally fell within § 1226(a) for detention purposes and were therefore entitled to a bond hearing upon request—even if they initially entered the country without permission. And in 2022, the United States Solicitor General represented as much to the Supreme Court during oral argument in *Biden v. Texas*, stating that, "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Transcript of Oral Argument at 44–45, No. 21-954 (S. Ct. Apr. 26, 2022); *see Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 n.9 (D. Mass. 2025).

35. Despite that shared understanding of bond eligibility, in November 2022, the immigration court in Tacoma, Washington collapsed this carefully laid out inquiry by reclassifying noncitizens arrested inside the United States as mandatory detainees under § 1225(b)(2) solely because they initially entered the country without permission. *Rodriguez*, 779 F. Supp. 3d at 1244. The U.S. District Court for the Western District of Washington ruled that this reclassification was likely illegal in April 2025. *See id.* at 1263.

36. Nevertheless, in July 2025, DHS, "in coordination" with DOJ, adopted the Tacoma Immigration Court's unlawful practice as guidance to IJs nationwide.[22] Under the July 2025 policy, DHS's representatives in the immigration courts began to ask immigration judges nationwide to reclassify bond-eligible § 1226 detainees as mandatory § 1225(b)(2) detainees and, on that basis, to refuse bond hearings for those individuals. Some immigration judges agreed.

37. As a result, many detainees were illegally denied bond hearings and sought relief

[2] *See* Interim Guidance Regarding Detention Authority for Applicants for Admission, https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

in the federal courts. An overwhelming majority of those courts have found that DHS's policy is contrary to the INA. According to that consensus, the INA's plain text instead corresponds to Respondents' previous, longstanding interpretation that § 1225(b)(2) applies to noncitizens "who are seeking entry into the United States," while § 1226(a) applies to noncitizens "who are already present in the United States." *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025); *accord, e.g.*, *Jennings*, 583 U.S. at 297, 303. Indeed, "our immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Martinez*, 792 F. Supp. 3d at 222 (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). Judges in the Western District of Texas and beyond have therefore rejected Respondents' interpretation of § 1225 and ordered bond hearings or immediate release. *See Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 697 (W.D. Tex. 2025) (collecting cases).

38. Additionally, in September 2025, the BIA issued a precedential decision ratifying DHS's July 2025 policy and purporting to require all Immigration Judges to reclassify noncitizens in accordance with that interpretation of the INA. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).[3]

39. Since then, countless courts have ruled that the BIA's decision is not entitled to any deference under *Loper Bright Enters.*, 603 U.S. at 412–13, and have rejected *Matter of Yajure Hurtado* as contrary to law. *See, e.g.*, *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 259 (D. Me. 2025) ("I find *Yajure Hurtado* to be unavailing"); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *29 n.11 (D. Mass. Sept. 9, 2025) ("[T]he Court disagrees with the BIA for the reasons given herein. The Supreme Court has made clear that '[c]ourts must exercise their

[3] As previously noted, the BIA and the Immigration Courts are entities within EOIR, which is part of the DOJ.

independent judgment in deciding whether an agency has acted within its statutory authority'" (quoting *Loper Bright Enters.*, 603 U.S. at 412)); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) ("[T]he BIA's decision to pivot from three decades of consistent statutory interpretation and call for [petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.").

40. One court to reject both DHS's policy and, eventually, *Matter of Yajure Hurtado*, is the Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). In that case, on November 20, 2025, the court issued a ruling at summary judgment holding that DHS's interpretation of 8 U.S.C. § 1225, under which Respondents have imprisoned Petitioners here, is contrary to the plain language of the INA. *Id.* Five days later, the same court certified a nationwide class of noncitizens detained under Respondents' erroneous interpretation and issued a declaratory judgment in favor of that class, making clear that class members were entitled to individualized bond hearings in front of an immigration judge. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9–10 (C.D. Cal. Nov. 25, 2025).

41. In December 2025, and in response to evidence that Respondents had instructed immigration judges "that they should disregard [the] Court's orders" and "continue[d] to deny bond hearings for" class members, the *Maldonado Bautista* court issued an additional order. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3713982, at *4–5 (C.D. Cal. Dec. 18, 2025). The new order took three important steps. First, it clarified that the court's prior orders "granted classwide vacatur of the unlawful DHS policy" under which the petitioners and class members were detained. *Id.* at *4. Second, it made clear that "the core holding of" *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which enshrined Respondents' reading of § 1225 as the official policy of the immigration courts, "cannot be squared with" the court's previous orders, and thus, "*Yajure Hurtado* is no longer controlling."

Maldonado Bautista, 2025 WL 3713982, at *3. Third, the court entered a final judgment in favor of the class. *Id.* at *7. The government appealed the district court's order in the Ninth Circuit. *Bautista v. U.S. Dep't of Homeland Sec.*, No. 25-7958 (9th Cir. Dec. 19, 2025).

42. While that appeal was pending, Respondents continued to disregard the district court's orders. Thus, approximately three months later, the *Maldonado Bautista* Court issued still another order to enforce compliance with its final judgment and vacate *Yajure Hurtado* under the APA. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026). The government again appealed and then sought a stay of the district court's orders in the Ninth Circuit. *See Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044, Dkt. 1 (9th Cir. Feb. 23, 2026); *id.*, Dkts. 3, 4.

43. On March 31, 2026, the Ninth Circuit granted the government's motion to stay both orders pending appeal. *See Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044, Dkt. 17 (9th Cir. Mar. 31, 2026). Importantly, in issuing these stays, the Ninth Circuit did not opine on the merits of DHS's policy or *Matter of Yajure Hurtado*. Instead, it focused on two likely non-merits infirmities in the district court's orders. First, it stayed the district court's certification of a *nationwide* class. The court opined that: "Petitioners' claims for relief sound in habeas" and because of that "[t]he claims therefore must be brought in habeas proceedings in the appropriate district of confinement." *Id.* at 2 (citing *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025)). Because a nationwide class would necessarily include petitioners outside of the district, the class certification order and final judgment were therefore stayed "insofar as they *extend beyond the Central District of California.*" *Id.* at 4 (emphasis added). And second, it stayed the district court's vacatur of *Matter of Yajure Hurtado* based on a procedural infirmity in how the vacatur was issued. *Id.* at 3–4. Neither of the Ninth Circuit's bases for staying the *Maldonado Bautista* court's orders should give this Court any pause.

Respondents have incorrectly applied § 1225(b) of the INA to all individuals who entered without inspection.

44. Petitioner acknowledges that the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), currently forecloses any argument in this District that § 1225(b) does not apply to people who have entered without inspection and are arrested within the United States. Petitioner nevertheless presents the following arguments regarding why Respondents' reclassification policy violates the INA and associated regulations, and why *Matter of Yajure Hurtado* is arbitrary and capricious under the APA, in order to preserve them for potential *en banc* or Supreme Court review.

45. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Such decisions are made in removal proceedings in immigration court. *See* 8 U.S.C. § 1229a(a)(1) (describing the removal proceeding process).

46. The text of § 1226 explicitly applies to people charged with being inadmissible, including those who entered without inspection. Just last year, Congress enacted 8 U.S.C. § 1226(c)(1)(E), which states that people who are "inadmissible under" 8 U.S.C. § 1182(a)(6)(A) because they entered without inspection, are subject to mandatory detention if they are charged with, arrested for, or convicted of certain crimes. *Id.*; *see* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress would not have included that provision in § 1226 unless some noncitizens who entered without inspection could otherwise be eligible for bond. Indeed, on Respondents' new reading of the INA, § 1226(c)(1)(E) does nothing at all, because everyone who enters without inspection is subject to mandatory detention notwithstanding their criminal history.

47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were placed in the expedited removal process. The

section's title refers to "inadmissible *arriving* [noncitizens]." 8 U.S.C. § 1225 (emphasis added). As several courts have noted, the word "'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes*, 2025 WL 2609425, at *5).

48. Furthermore, the text of § 1225 repeatedly refers to "inspections," and that term is generally understood to refer to determinations of admissibility made at the time of entry. *See* 8 U.S.C. § 1225(a)(1) (inspection of noncitizens who are applicants for admission); *Vieira*, 806 F. Supp. 3d. at 698–700 (discussing the well-established distinction between individuals seeking admission and those who have already effected entry); *see also* 62 Fed. Reg. at 10323.

49. Inspections, in other words, apply to people who have recently arrived in the United States.

50. The use of the present participle in the phrase "seeking admission" in § 1225(b)(2)(A) further demonstrates that its applicability does not extend to people already present in the United States. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). A present participle "denotes an ongoing process" that "necessarily implies some sort of present-tense action." *Martinez*, 792 F. Supp. 3d at 218 (internal quotations omitted). After all, "someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025).

51. The regulations enacting § 1225(b)(2) similarly use the present participle to refer to "arriving [noncitizens]." 8 C.F.R. § 235.3(c). And the regulations define an "arriving" noncitizen as "an applicant for admission coming or attempting to come into the United States

at a port-of-entry." 8 C.F.R. § 1.2. A person who was arrested after their most recent entry to the United States and released under the government's authority at 8 U.S.C. § 1226(a) or who has been living in the United States for years after entering between ports of entry is not "coming or attempting to come into the United States at" a port of entry.

52. In short, the mandatory detention provision of § 1225(b)(2)(A) does not apply to noncitizens who are already present in the United States but entered without inspection. People who are arrested inside the United States, like Petitioners, are instead detained under § 1226(a).

53. Nevertheless, DHS and DOJ have continued systemically reclassifying Petitioner and other noncitizens and denying them access to bond hearings and release on bond and conditions during the pendency of their immigration proceedings.

54. On February 6, 2026, a divided panel of the Fifth Circuit departed from the view of hundreds of other federal judges and held that noncitizens in Petitioner's position are subject to mandatory detention under 8 U.S.C. § 1225. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). The Fifth Circuit further opined that "section 1225(b)(2) does not include any exception that permits the government to release detained [noncitizens] on bond." *Id.* at 499.

55. Although it decided the statutory issue, *Buenrostro-Mendez* did not opine on the constitutionality of Respondents' administrative policy and precedent and her detention of noncitizens present in the United States for years without meaningful process. Moreover, on March 23, 2026, counsel in *Buenrostro-Mendez* filed a Petition for Rehearing En Banc. *See Buenrostro-Mendez v. Bondi*, No. 25-20496, Dkt. 233 (5th Cir. Mar. 23, 2026).

56. Petitioner maintains that *Buenrostro-Mendez* was wrongly decided and that Respondents' reclassification policy violates the INA and its associated regulations, and that the BIA's decision in *Matter of Yajure Hurtado* is arbitrary, capricious, and contrary to law in

violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706.

57. Petitioner concedes, however, that *Buenrostro-Mendez* forecloses any argument in this District that the reclassification policy violates the INA and its associated regulations, and likely any argument that the BIA's decision in *Yajure Hurtado* is arbitrary and capricious under the APA. Petitioner does not believe, however, that *Buenrostro-Mendez*—which had nothing to say about the constitutionality of the reclassification policy—bears on their APA claim that *Matter of Yajure Hurtado* is contrary to law because it violates the Fifth Amendment.

58. Petitioner thus brings her claims that Respondents' reclassification policy violates the INA and associated regulations, and their claims that the BIA's decision in *Yajure Hurtado* is arbitrary and capricious in violation of the APA, in order to preserve those claims for *en banc* or Supreme Court review.

59. However, this Court need not reach Petitioner's statutory claims to find for Petitioners, given that their detention without bond violates their Fifth Amendment due process protections.

Respondents' ongoing detention of Petitioner without meaningful process violates the Fifth Amendment.

60. The Fifth Circuit's decision in *Buenrostro-Mendez*, based on statutory interpretation of the INA, has no bearing on the constitutionality of Petitioner and putative class members' detention. *See, e.g.*, *Zamudio Sanchez v. Noem*, No. EP-25-CV-00403-DCG, 2026 WL 596133, at *8 (W.D. Tex. Mar. 2, 2026) (Guaderrama, J.); *Garcia Hernandez v. Anda-Ybarra*, No. EP-26-CV-318-KC, 2026 WL 560337, at *1–2 (W.D. Tex. Feb. 13, 2026) (Cardone, J.); *Longoria Mendoza v. Noem*, No. 5:26-cv-0728-JKP, 2026 WL 809441, at *4–6 (W.D. Tex. Feb. 26, 2026) (Pulliam, J.); *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211, at *2 n.2 (W.D. Tex. Feb. 20, 2026) (Pitman, J.); *Guillen Fernandez v. Vergara*, No. 5:26-cv-00500-XR, Dkt. 8 at 6 & n.5 (W.D. Tex. Feb. 26, 2026) (Rodriguez, J.); *Gomez-*

Gonzalez v. Vergara, No. 5:26-cv-598-DAE, 2026 WL 594364, at *3 n.3 (W.D. Tex. Feb. 27, 2026) (Ezra, J.).

61. The Fifth Amendment's Due Process Clause forbids the Government from "depriv[ing]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

62. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[Noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.").

63. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

64. The Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of individuals charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

65. Noncitizens thus have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. Because that liberty interest flows from the Constitution, it applies

no matter the statute under which a noncitizen is detained.

66. Moreover, even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

67. There is a high risk of erroneous deprivation regardless of the statute under which a noncitizen is detained. The process afforded in removal proceedings does "not ameliorate the risk that [a noncitizen] will be erroneously deprived of his liberty while his removability is assessed." *Erazo Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262, at *3–4 (W.D. Tex. Oct. 30, 2025). Bond hearings that "conduct individualized custody determinations considering flight risk and dangerousness" are the precise "type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond." *Id.* at *4.

68. Regardless of the government's purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner's "constitutional interest in his liberty exists above and apart from the INA." Erazo Rojas, 2025 WL 3038262, at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025)). Further, while the government "has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community," such interest "would be squarely addressed through a bond hearing." *Id.* (citing *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)). The

application of § 1225 to Petitioner, and her detention with no process whatsoever, violates the Due Process Clause of the Fifth Amendment.

69. Moreover, because this detention violates the Petitioner's due process rights, it can only be remedied by release or a bond hearing at which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a danger to the community or a flight risk. *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020); "This is so because the [noncitizen's] potential loss of liberty is so severe" that "he should not have to bear the risk of error equally." *Erazo Rojas*, 2025 WL 3038262, at *4 (cleaned up); *see also Hernandez-Fernandez*, 2025 WL 2976923, at *10 (noting the "overwhelming consensus" on this point) (quotation omitted); *Martinez*, 2025 WL 2965859, at *5.

PETITIONER'S FACTS

Petitioner Desirre Luana De Oliveira-Mussi Krutsch

70. Petitioner Desirre Luana De Oliveira-Mussi Krutsch has lived in Richmond, California, since coming to the U.S. in August, 2019 until end of 2020, when she moved to Orlando, Floria, where she has lived since then. She has built enduring community and familial ties in California and Florida over the course of almost seven years.

71. Ms. Krutsch has two children in Florida: a nine-year-old son and an eight-year-old daughter. Ms. Krutsch's son was born premature and with serious health problems, due to Ms. Krutsch [redacted]. Her son has needed therapy and learning accommodations from a young age. He has frequent, extreme mood swings as well as issues with hyperactivity. It is only with his father's support and advocacy that he was not held back in school and instead got the mental health and educational services he needed to make it to high school successfully. Ms. Krutsch is also very supportive of his daughter, who is currently a high school senior.

72. Ms. Krutsch is a loving and attentive mother who had daily contact with her children prior to her detention. She paid their expenses, including rent, food, clothing, and other needs. She would take her children to school every day, and she continued to take them out fishing, to the park, to church, and to eat together as a family up until her detention.

73. Ms. Krutsch is very close to her children and they have been struggling greatly in her absence. Her son has been having extreme emotional disturbances as a result of his separation from his mother, and her daughter has been frequently crying and questioning what to do about the future now that her mother is detained. Although Ms. Krutsch continues to offer all the support she can while detained, her family is suffering economically, emotionally, and mentally as a result of her detention. Ms. Krutsch is also devastated by the separation from her children and the constant stress of being unable to provide for them is causing her wellbeing to deteriorate.

74. On or around March 23, 2025, Ms. Krutsch was arrested by law enforcement in Orlando, Florida. They charged her with battery and took her to county jail, where she pay jail time. After paying her jail time, the county transferred her into ICE custody on or about August 16, 2025.

75. Ms. Krutsch has been transferred once since being taken into ICE custody in August 2025. She was initially detained for around three months at the Baker County Facility, in MacClenny, Florida, then transferred to Eloy Detention Center, in Eloy, Arizona, where she is currently detained for about five months.

76. DHS placed Ms. Krutsch in removal proceedings, alleging that she entered the United States without inspection and is inadmissible. Her removal proceedings are ongoing, and she has received a final removal order, which she Appeal, and is currently waiting for BIA's adjudication.

1. ICE did not set a bond for Ms. Krutsch, and she requested a bond hearing in front of an IJ.

2. In September 2025, an IJ denied her bond, concluding that the immigration court had no jurisdiction to redetermine Ms. Krutsch's custody under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Appeal to the BIA would be futile because it would render the same determination, applying *Matter of Yajure Hurtado* and *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026).

3. Without bond, Ms. Krutsch remains separated from her family and faces months or even years of additional detention with no determination of whether she is a flight risk or danger to the community he has lived in peacefully for over two decades.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)
(On Behalf of Petitioner)

4. Petitioner realleges and incorporates by reference each allegation of this petition.

5. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

6. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

7. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Id.* at 690.

8. The Supreme Court, thus, "repeatedly has recognized that civil commitment for any

purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington*, 441 U.S. at 425; *see also Salerno*, 481 U.S. at 755; *Foucha*, 504 U.S. at 81–83; *Hendricks*, 521 U.S. at 357.

9. Petitioner was or will be held without being provided an individualized detention hearing.

10. Petitioner's continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT TWO

Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)
(On Behalf of Petitioner)

11. Petitioner realleges and incorporates by reference each allegation of this petition.

12. Petitioner has a fundamental interest in her liberty that is protected by the Fifth Amendment's Due Process Clause. *See Zadvydas*, 533 U.S. at 692-93.

13. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *Id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

14. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *Zadvydas, 533 U.S. at 690*; *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

15. The only legitimate purpose for placing Petitioner in civil detention is if she is a flight risk or danger to the community. However, she is are neither.

16. Therefore, Petitioner's continued detention without a bond hearing violates her substantive due process rights.

COUNT THREE
Violation of Administrative Procedure Act (5 U.S.C. § 706)
(On Behalf of Petitioner)

17. Petitioner realleges and incorporates by reference each allegation of this petition.

18. Petitioners is being detained without a bond hearing pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

19. The BIA's decision in *Matter of Yajure Hurtado* is unlawful because it is arbitrary, capricious, and contrary to law, and thus violates the Administrative Procedure Act.

20. Petitioner's detention is therefore unlawful.

21. Petitioners acknowledges that the Fifth Circuit's decision in *Buenrostro-Mendez* likely forecloses this claim to the extent it challenges *Matter of Yajure Hurtado* as a violation of statute or as arbitrary and capricious, but believe that conclusion to be erroneous and thus make this claim to preserve it for potential *en banc* or Supreme Court review.

22. Petitioner maintains that *Buenrostro-Mendez* does not bear on this claim to the extent she challenges *Matter of Yajure Hurtado* as contrary to law because it is violative of the Fifth Amendment.

COUNT FOUR
Violation of 8 U.S.C. § 1226(a) and Associated Regulations
(On Behalf of Petitioner)

23. Petitioner realleges and incorporates by reference each allegation of this petition.

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

25. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)–(f).

26. Respondents have not provided Petitioner with an individualized bond hearing as required by law.

27. Any purported bond hearing conducted by Respondents where *Matter of Yajure*

Hurtado was applied to find no jurisdiction was not individualized and did not meet Respondents' legal obligations.

28. Petitioner's continuing detention is therefore unlawful.

29. Although the Fifth Circuit held in *Buenrostro-Mendez* that noncitizens in Petitioners' position are detained under 8 U.S.C. § 1225, Petitioner believes that conclusion to be erroneous and preserve the argument that she is entitled to relief on the basis that her detention violates the INA and associated regulations.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

1) Assume jurisdiction over this matter;
2) Order that Petitioner shall not be transferred or removed outside the District of Arizona during the pendency of this litigation;
3) Declare that Petitioner's detention without a post-deprivation bond hearing is unlawful as a violation of their procedural due process rights;
4) Declare that Petitioner's detention, without a post-deprivation bond hearing is unlawful as it violates the INA;
5) Order Petitioner's release on conditions the Court deems just and proper pending adjudication of this petition;
6) Declare that the Petitioner is entitled to a bond hearing upon request;
7) Set aside and vacate the July 2025 DHS memorandum entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the APA, 5 U.S.C. § 706(2);
8) Set aside and vacate *Matter of Yajure Hurtado* under the APA, 5 U.S.C. § 706(2);
9) Issue a preliminary injunction and Writ of Habeas Corpus ordering Respondents to

release Petitioner immediately, or, in the alternative, order Respondents to release Petitioner if she is not provided a bond hearing at which the Government bears the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk within seven (7) days after the Court's order;

10) Grant attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 et seq. if applicable; and

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

Dated: April 22, 2026

Respectfully submitted,

/s/ Margareth Guedes

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