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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Meilin Clarisa HERNANDEZ,
A# [redacted]

Petitioner,

v.

Todd Blanche, U.S. Attorney General;

Markwayne Mullin, Secretary, U.S. Department of Homeland Security;

Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement;

Misty Mackey, Warden of Midwest Regional Reception Center;

Executive Office for Immigration Review;

U.S. Department of Homeland Security;

in their official capacities

Respondents.

Case No. 26-3101-JWL

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Ms. Meilin Clarisa Hernandez is in the physical custody of Respondents at the Midwest Regional Reception Center in Leavenworth, Kansas. (*See*, Exhibit A, ICE Online Detainee Locator). She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that she is subject to mandatory detention.
2. On September 5, 2025, the Board of Immigration Appeals issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. See *Matter of Yajure Hurtado,* 29 I. & N. Dec 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
3. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to section 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.
4. Section 1225 governs "applicants for admission" encountered at the border or its functional equivalent, while section 1226 governs those "already in the country". *Jennings v. Rodriguez,* 583 U.S. 282, 288-89 (2018).
5. Courts across the country have consistently held that noncitizens already present in the United States are governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and cannot be

treated as arriving aliens without contravening the plain language of the Immigration & Nationality Act (INA). *See, e.g.*, *Castanon Nava v. U.S. Department of Homeland Security*, 161 F.4th 1048, 1062 (7th Cir. 2025) (appeal proceedings ongoing); *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026) (appeal pending).

6. Nonetheless, DHS, EOIR, and EOIR's subagency, the Immigration Court, and have blatantly refused to abide by the declaratory relief. Immigration judges country-wide are denying bond based on *Matter of Yajure Hurtado*, so filing a bond motion with the immigration court would be futile.

7. Only two appellate courts have ruled in the government's favor. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) and *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). Those decisions have no binding effect here.

8. Petitioner entered the United States on October 25, 2022, at El Paso, Texas, and was subsequently released as an unaccompanied minor with a Verification of Release from the Division of Unaccompanied Children Operations within the Office of Refugee Resettlement. (*See* Exhibit B, 2022 Notice to Appear; Exhibit C, Verification of Release issued by the Office of Refugee Resettlement).

9. On October 26, 2022, DHS issued a Notice to Appear to Petitioner, charging her as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien who was not admitted or paroled into the United States. (*See* Exhibit B, 2022 Notice to Appear). However, DHS never filed the 2022 Notice to Appear with the immigration court, and thus did not initiate removal proceedings against her.

10. On May 5, 2025, Petitioner presented her I-589 Application for Asylum and for Withholding of Removal to U.S. Citizenship & Immigration Services (USCIS). (*See*

Exhibit D, Receipt for Form I-589, Application for Asylum and for Withholding of Removal).

11. On March 5, 2026, Petitioner was involved in a minor traffic accident while commuting to work. Subsequently, a state trooper arrived at the scene and upon reviewing her documents, determined that she did not possess a valid driver's license or lawful status. She was then transferred into ICE custody.

12. Upon her detention, Petitioner was issued a new Notice to Appear charging her under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien who was not admitted or paroled into the United States, and 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant who at the time of application for admission was not in possession of a valid entry document. (*See* Exhibit E, Notice to Appear filed March 11, 2026).

13. Petitioner is still waiting to be scheduled for a Master Hearing before the immigration court.

14. Petitioner was detained three years after her initial entry. Therefore, she is currently detained under 8 U.S.C. § 1226(a), the discretionary detention provision that authorizes release on bond or conditional parole.

15. Petitioner is a Guatemalan national with no criminal history. Her continued confinement under these circumstances serves no lawful basis where Congress has expressly authorized bond consideration under § 1226(a).

16. Petitioner previously filed a habeas petition in the Southern District of Florida, which was denied based solely on the court's adoption of the out-of-circuit decisions in *Buenrostro-Mendez v. Bondi* and *Herrera Avila v. Bondi*. That order was not entered with prejudice and did not address Petitioner's independent claims under the Administrative Procedure

Act (APA) or her Fifth Amendment due process challenge to continued detention without a meaningful bond hearing. Nor did it meaningfully analyze the specific facts of Petitioner's case, including her lengthy residence in the United States, lack of criminal history, eligibility for relief, and ongoing denial of bond consideration. (*See* Exhibit G, Order Denying Petition for Writ of Habeas Corpus.) Because those constitutional and statutory issues were neither actually litigated nor necessarily decided, issue preclusion does not bar this Petition.

17. The Fifth amendment guarantees apply "to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001).

18. Over the years, the courts have stepped in to ensure that vulnerable classes of immigrants receive protections to which they are entitled as a matter of law, due process and fundamental notions of fairness. The case at bar is an opportunity for this Honorable Court to step in once again in the interest of justice to allow this innocent woman to be released in accordance with the law.

19. Because Respondents are detaining Petitioner in violation of the Immigration and Nationality Act and the Constitution, this Court should expeditiously grant the petition.

20. The Court should order Respondent DHS to release Petitioner within one day.

21. Alternatively, the Court should order her release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION

22. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

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

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

VENUE

25. Petitioner is in the physical custody of Respondents at the Midwest Regional Reception Center in Leavenworth, Kansas.

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

27. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Kansas.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

28. The court must grant the petition for writ of habeas corpus "forthwith" unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.

29. 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). "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).

30. Petitioner is "in custody" within the meaning of 28 U.S.C. § 2241 because she is detained by Respondents at the Midwest Regional Reception Center in Leavenworth, Kansas pursuant to immigration detention authority. Petitioner challenges that custody as unlawful under the Constitution and federal law.

PARTIES

31. Petitioner Ms. Meilin Clarisa Hernandez is a citizen of Guatemala who entered the United States as an unaccompanied minor on October 25, 2022, and has been in immigration detention since March 5, 2026.

32. 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 Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

33. Respondent Todd Blanche is the Acting 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.

34. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement. He is a legal custodian and is being sued in his official capacity.

35. Respondent Misty Mackey is the Warden of the Midwest Regional Reception Center, where Petitioner is detained. She is the immediate physical custodian and is sued in her official capacity.

36. Respondent EOIR is the administrative agency responsible for adjudicating immigration cases and oversees Petitioner's removal proceedings and related custody determinations.

37. Respondent DHS is the federal agency responsible for immigration enforcement and detention, and oversees ICE, the component agency detaining Petitioner in connection with these proceedings.

STATEMENT OF FACTS

38. Ms. Meilin Clarisa Hernandez ("Petitioner") is a 21-year-old native and citizen of Guatemala who has been in ICE custody since March 5, 2026 without a bond.

39. On or about October 16, 2022, Petitioner fled Guatemala due to persecution and sexual harassment by gangs.

40. Petitioner entered the United States on October 25, 2022, at or near El Paso, Texas, as an unaccompanied minor. She was taken into custody by the Division of Unaccompanied Children Operations within the Office of Refugee Resettlement until she was able to be released in November 2022 to the care of her sister. (*See* Exhibit B, 2022 Notice to Appear; Exhibit C, Verification of Release issued by the Office of Refugee Resettlement).

41. On October 26, 2022, DHS issued a Notice to Appear to Petitioner, charging her as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien who was not admitted or paroled into the United States (*See* Exhibit B, 2022 Notice to Appear). However, DHS never filed the 2022 Notice to Appear with the immigration court, and thus did not initiate removal proceedings against her.

42. On May 5, 2025, Petitioner applied for asylum and for withholding of removal. This application is currently pending before USCIS. (*See* Exhibit D, Receipt for Form I-589, Application for Asylum and for Withholding of Removal).

43. On March 5, 2026, Petitioner was involved in a minor traffic accident in Ocala, Florida while commuting to work and was subsequently taken into ICE custody due to her immigration status. ICE did not set bond.

44. On March 7, 2026, Petitioner was issued a new Notice to Appear charging her under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien who was not admitted or paroled into the United States, and 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant who at the time of application for admission was not in possession of a valid entry document. (*See* Exhibit E, Notice to Appear filed March 11, 2026).

45. The Petitioner has no criminal history, has consistently demonstrated compliance with all immigration requirements, and does not pose a flight risk. (*See* Exhibit E, Criminal History Check).

46. Petitioner was initially held by ICE in southern Florida. On March 27, 2026, Petitioner filed a Petition for Writ of Habeas Corpus in the Southern District of Florida, arguing she was detained in violation of the INA, the APA, and the Fifth Amendment to the U.S. Constitution. The Southern District of Florida denied the petition, solely based on the court's adoption of the out-of-circuit decisions in *Buenrostro-Mendez v. Bondi* and *Herrera Avila v. Bondi*. That order was not entered with prejudice and did not address Petitioner's independent claims under the Administrative Procedure Act or her Fifth Amendment due process challenge to continued detention without a meaningful bond hearing. Nor did it meaningfully analyze the specific facts of Petitioner's case, including her lengthy residence in the United States, lack of criminal history, eligibility for relief, and ongoing detention without a hearing. Because those constitutional and statutory issues were neither actually

litigated nor necessarily decided, issue preclusion does not bar this Petition. (*See* Exhibit G, Order Denying Petition for Writ of Habeas Corpus).

47. Since that time, Petitioner has been transferred to Leavenworth, Kansas, placing her custodian within this Court's jurisdiction. She therefore brings this petition to challenge her continued detention in violation of statute and the Constitution.

48. As of filing of this petition, Petitioner has been wrongfully detained for over two months.

EXHAUSTION

49. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. *See, e.g.*, *F-.G. v. Noem,* No. 25-cv-0243-CVE-MTS, 2025 WL 1669356, at *6 (N.D. Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana Casillas v. Sessions,* No. 17-cv-01395 (D. Colo. 2018) (explaining that when "the question presented is purely legal and has been repeatedly mishandled administratively, exhaustion serves no useful purpose").

50. In this case, the erroneous decision in *Matter of Yajure Hurtado*, coupled with ICE's mandatory detention policy, foreclosed any meaningful opportunity for relief. Under these circumstances, requiring Petitioner to pursue administrative remedies would serve no purpose and would only prolong unlawful detention.

51. Petitioner previously filed a habeas petition in the Southern District of Florida challenging her detention. That petition was denied based solely on the court's reliance on *Buenrostro-Mendez v. Bondi* and *Avila v. Bondi*, non-binding Fifth and Eighth Circuit decisions.

ISSUE PRECLUSION DOES NOT APPLY TO BAR REVIEW HERE

52. Issue preclusion is inapplicable here because the constitutional and statutory issues raised in the Petition were neither "actually litigated" nor "necessarily decided" in the prior Florida proceeding. *Montana v. United States*, 440 U.S. 147, 153 (1979).

53. Petitioner previously filed a habeas petition in the Southern District of Florida challenging the application of 8 U.S.C. § 1225 to her detention, and challenging her detention under the Administrative Procedure Act and the Fifth Amendment. That petition was denied in what appears to be a boilerplate decision, comprising less than a full page of text, with no analysis of the facts of this case. The court simply adopted the reasoning of *Buenrostro-Mendez v. Bondi* and *Avila v. Bondi*, two out-of-circuit appellate decisions holding that certain noncitizens present without formal admission could be detained under 8 U.S.C. § 1225(b)(2). Neither *Buenrostro-Mendez* nor *Avila* addressed arguments raised under the Fifth Amendment or the APA, and the Southern District of Florida likewise did not adjudicate Petitioner's Constitutional or APA claims. The petition was not denied with prejudice and did not foreclose future challenges to Petitioner's continued detention. (*See* Exhibit G, Order).

54. Issue preclusion applies only where "an issue is actually and necessarily determined by a court of competent jurisdiction." *Montana v. United States*, 440 U.S. 147, 153 (1979).

55. The prior Florida decision did not separately address Petitioner's independent claims under the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, or her Fifth Amendment due process challenge to continued detention without a meaningful bond hearing.

56. Nor did the prior decision meaningfully analyze the specific facts of Petitioner's case, including her lengthy residence in the United States, lack of criminal history, eligibility for relief, and the continuing denial of individualized custody review.

57. Because these statutory and constitutional claims were not actually litigated or necessarily decided, collateral estoppel does not bar this Petition.

STATEMENT OF LAW

Mandatory Detention Scheme

58. Immigration detention has two statutory goals (1) "to ensure the noncitizen's appearance at future immigration proceedings" and (2) "to prevent danger to the community". *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

59. Congress established two separate detention regimes. Section 1225 governs "applicants for admission" encountered at the border or its functional equivalent, while section 1226 governs those "already in the country". *Jennings v. Rodriguez,* 583 U.S. 282, 288-89 (2018). These provisions are mutually exclusive: "A noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025).

60. Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A).

61. Crucially, courts and the BIA have recognized that the phrase "seeking admission" carries an active, temporal component: it refers to individuals "coming or attempting to come into the United States," 8 C.F.R. § 1.2, i.e., those apprehended at or near the border and in the process of initial entry. *See, e.g.*, *Martinez v. Hyde,* 792 F. Supp. 3d 211 at 219-20.

62. By contrast, § 1226 governs detention of noncitizens already present in the United States and apprehended on a warrant issued by the Attorney General. 8 U.S.C § 1226(a). Unlike

§ 1225's mandatory scheme, § 1226(a) creates a discretionary framework, under which the Attorney General "may continue to detain," or "may release" a noncitizen on bond or conditional parole. *Id.*

63. Individuals detained under § 1226 are entitled to an individualized custody determination and may appeal that determination to an immigration judge. 8 C.F.R. § 1236.1(d)(1); *see Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018).

64. Narrow mandatory detention categories exist under § 1226(c) for certain criminal or security grounds, but those are not implicated here.

65. Multiple recent decisions confirm that § 1225 does not apply to noncitizens apprehended in the interior. *See Gomes v. Hyde*, 804 F. Supp. 3d 265, 272–73 (D. Mass. 2025) (holding that § 1225(b)(2)(A) did not apply to a petitioner who had been residing in the United States for over two years; emphasizing that "seeking admission" requires an active, ongoing effort to enter, not mere presence in the country, and concluding that detention was governed by § 1226(a) with access to bond); *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247-49 (W.D. Wash. 2025) (finding that a non-citizen apprehended from within the United States and charged with inadmissibility was necessarily detained under section 1226, rather than section 1225); *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1112-15 (E.D. Cal. 2025).

66. Dozens of federal district courts across the country, including this District, have held that § 1226(a), not § 1225(b)(2)(A), governs detention of interior residents who entered without inspection. *See, e.g.*, *Galdamez Orellana v. Welsh,* No. 26-cv-3019-JWL, 2026 WL 710121 (D. Kan. Mar 13, 2026); *Clavero v. Welsh*, No. 25-cv-3278-JWL, 2026 WL 717958 (D. Kan. Mar. 16, 2026); *Castro v. Bondi*, No. 26-cv-3054-JWL, 2026 WL 890245 (D. Kan.

Apr. 1, 2026). Only two appellate courts have ruled in the government's favor. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). Those decisions have no binding effect here. The Tenth Circuit has not adopted its reasoning, and the Seventh Circuit which has considered the same question, has reached the opposite conclusion. See *Castanon Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 (7th Cir. 2025) (preliminarily concluding that DHS was not likely to prevail on its argument that § 1225(b)(2)(A) covers noncitizens already unlawfully present in the interior of the United States).

67. As the vast majority of courts have recognized, interpreting § 1225 to cover all noncitizens who were never formally "admitted" would collapse the statutory distinction, render § 1226 superfluous, and contradict longstanding DHS practice. *See, e.g.*, *Martinez*, 792 F. Supp. 3d at 1188 ("This tension between sections 1225 and 1226 motivates the conclusion that they apply to different classes of aliens"); *Gomes*, 804 F. Supp. 3d at 272–73 (rejecting the government's reading because it would effectively eliminate the distinction between §§ 1225 and 1226 and make § 1226 largely superfluous for noncitizens apprehended inside the United States); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

68. Courts have distilled two central principles:

    a. Geographic/temporal limits: § 1225 applies only to noncitizens apprehended at or near the border and in the act of entry, not to those apprehended years later in the interior.

    b. Statutory structure: Reading § 1225 as covering all noncitizens who were never lawfully "admitted" would render § 1226 largely meaningless, contrary to the rule

against surplusage. *See Martinez*, 792 F. Supp. 3d at 1188; *Gomes*, 804 F. Supp. 3d at 272-73.

69. As set forth below, applying this framework compels the conclusion that Petitioner's detention cannot fall under § 1225. Having resided in the United States for a year before detention within the interior, she falls squarely within the discretionary scheme of § 1226. Respondents' reliance on § 1225 is therefore legally untenable.

70. Finally, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) is a landmark decision overruling *Chevron* deference thereby permitting this Honorable Court to come to its own conclusion on the interpretation of the relevant statutes without relying on Board precedent in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which this very court has found to have been wrongly decided. *Galdamez Orellana v. Welsh,* No. 26-cv-3019-JWL, 2026 WL 710121 (D. Kan. Mar 13, 2026); *Clavero v. Welsh*, No. 25-cv-3278-JWL, 2026 WL 717958 (D. Kan. Mar. 16, 2026); *Castro v. Bondi*, No. 26-cv-3054-JWL, 2026 WL 890245 (D. Kan. Apr. 1, 2026).

CLAIMS FOR RELIEF

COUNT I
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)

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

72. Petitioner is currently detained pursuant to 8 U.S.C. § 1226(a). Petitioner entered the United States as an unaccompanied minor on October 25, 2022, and was subsequently released with a Verification of Release from the Division of Unaccompanied Children Operations within the Office of Refugee Resettlement. DHS exercised its prosecutorial discretion by placing Petitioner in removal proceedings under 8 U.S.C. § 1229a. At the

time of her detention on March 5, 2026, she had resided in the United States for nearly three years and had immigration relief for which she is prima facie eligible. She is not subject to mandatory detention under § 1226(c), expedited removal under § 1225(b)(1), or post-order detention under § 1231.

73. As a Guatemalan national who entered the United States on October 25, 2022, and who was detained years after her entry, Petitioner squarely falls within the class of individuals detained under § 1226(a). Accordingly, detention is discretionary, not mandatory, and DHS must exercise that discretion in a manner consistent with statutory and constitutional limits.

74. Despite the discretionary detention framework set forth in 8 U.S.C. § 1226(a), Respondents have refused to meaningfully exercise that discretion. Specifically, Respondents have refused to consider Petitioner for release and have failed to provide a bond hearing. As a result, Petitioner remains subject to prolonged detention that is not reasonably related to any legitimate governmental purpose.

75. Applying § 1225(b)(2) to mandate her continued no-bond detention violates the INA.

COUNT II
Detention in Violation of Due Process

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

77. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

78. Petitioner has a fundamental interest in liberty and being free from official restraint.

79. The Due Process Clause entitles Petitioner to meaningful process assessing whether her current detention is justified. It requires an "opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The arrest and detention of Petitioner without an opportunity for her to contest her detention in front of a neutral decisionmaker after she had been living in the United States for several years equates to no process.

80. Immigration detention is civil, not criminal, and has two statutory goals (1) "to ensure the noncitizen's appearance at future immigration proceedings" and (2) "to prevent danger to the community". *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner's detention serves neither purpose.

81. There is no evidence that Petitioner poses a danger to the community or a flight risk, and under *Mathews*, the balance overwhelmingly favors release.

82. Petitioner:

    a. has continuously resided in the United States since October 25, 2022, with her older sister, her sister's husband, and her two nephews (*See* Exhibit B, 2022 Notice to Appear; Exhibit H, Letter written by Applicant's Sister's Husband and Rental Agreement);

    b. has no criminal history. (*See* Exhibit F, Criminal History Check);

    c. has complied with all immigration requirements;

    d. petitioner's employer has written a reference letter describing her as responsible, and multiple individuals who know her well have also provided reference letters attesting to her character and reliability (*See* Exhibit I, Reference Letters).

83. These factors overwhelmingly favor release under 8 U.S.C. § 1226(a). Nothing in the record demonstrates that continued detention is necessary to protect the public or to ensure Petitioner's appearance at future proceedings.

84. Because Petitioner's detention is discretionary, continued confinement without meaningful consideration of release is arbitrary and not reasonably related to any legitimate immigration purpose.

85. The Fifth Amendment's Due Process Clause requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint. *See Id.*; *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018).

86. Due process requires individualized consideration of whether continued detention is justified. Prolonged detention cannot be sustained where it is unrelated to danger or flight risk and where less restrictive alternatives, such as bond or conditions of supervision, are readily available.

87. Petitioner has now been detained for almost two months without a bond hearing – or even any immigration hearing at all.

88. Under these circumstances, continued detention no longer serves a legitimate regulatory purpose and instead imposes unnecessary physical and psychological harm to an individual with available relief.

COUNT III
Violation of the Administrative Procedure Act, 5 U.S.C §§ 702, 706

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

90. Respondents acted contrary to law and in excess of their statutory authority by detaining Petitioner under 8 U.S.C. § 1225 instead of 8 U.S.C. § 1226(a).

91. Petitioner was apprehended from within the interior of the United States after residing continuously in the country for more than three years and was not an arriving noncitizen or applicant for admission within the meaning of 8 U.S.C. § 1225.

92. Because Petitioner's detention is governed by 8 U.S.C. § 1226(a), she is entitled to an individualized custody determination and the opportunity to seek release on bond before an Immigration Judge.

93. By improperly placing Petitioner in § 1225 detention, Respondents unlawfully denied her access to bond and failed to exercise the discretion required by § 1226(a).

94. Respondents' actions are contrary to law, arbitrary and capricious, and in excess of statutory authority and must be set aside under 5 U.S.C. § 706(2)(A) and (C).

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the District of Kansas;

c. Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted within 3 days.

d. Declare that the Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

e. Declare that the Petitioner's detention violates the Administrative Procedure Act.

f. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner.

g. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within

seven days where the burden is on the government to prove that continued detention is necessary.

h. Grant any other and further relief that this Court deems just and proper.

DATED this 24th day of April, 2026.

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

I am one of the attorneys who represent Petitioner, Meilin Hernandez, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 24th day of April 2026.

/s/ Roxana Gerardo Fernandez
Counsel for Petitioner