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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELENA SAMOILOVA,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 26-cv-3101-JO-VET

Amended Petition for a Writ of Habeas Corpus

INTRODUCTION

Ms. Elena Samoilova is a citizen of Russia who came to the United States with her husband. Instead of remaining free to continue to pursue the affirmative asylum application she filed while legally present in the U.S., ICE took Ms. Samoilova into custody without a warrant or any notice, even though she had legally followed all processes for asylum. In doing so, Respondents violated Ms. Samoilova's Constitutional due process rights.

Ms. Samoilova's due process rights were further violated when she received a constitutionally inadequate bond hearing in front of an immigration judge who did not apply the standard to the facts when determining if Ms. Samoilova is a flight risk.

Alternatively, because Respondents did not "compl[y] with the express terms of section 1226 when [they] detained" her absent the "[i]ssuance of a[n administrative] warrant," this Court must order her "immediate release." *JACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *accord R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL 788263, *2 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release in the absence of a warrant). At least one judge in this district recently concluded the same. *See Cruz Pedraza v. Larose,* 26-cv-2697-LL-MSB, ECF 12 at 4 (S.D. Cal. May 27, 2026) (finding that because petitioner was "arrested by ICE without a warrant," immediate release is the "appropriate remedy").

Because the agency's actions violated the Due Process Clause and 8 U.S.C. § 1226, this Court should immediately order Ms. Samoilova's release.

STATEMENT OF FACTS

Ms. Samoilova is a citizen of Russia. Declaration of Elena Samoilova, Exhibit A at ¶ 1. In 2019, she married her husband, who is also a Russian citizen. Exh. A at ¶ 2.

On May 2, 2022, Ms. Samoilova and her husband entered the United States on a valid B1/B2 visa. Exh. A at ¶ 3. On October 25, 2022, Ms. Samoilova's husband affirmatively applied for asylum and listed her as a derivative asylee on the application. Exh. A at ¶ 4. Her husband applied for asylum because he had learned the Russian government filed criminal charges against him for his political activities. Exh. A at ¶ 4. They feared for their lives if they returned to Russia. Exh. A at ¶ 4.

The asylum application was submitted before their visas expired. Exh. A at ¶ 5. USCIS received their application on October 27, 2022. Exh. A at ¶ 5. They then received notice of receipt on November 1, 2022. Exh. A at ¶ 5.

After submitting the asylum application, Ms. Samoilova and her husband were told to wait to receive notice to appear for an interview. Exh. A at ¶ 6. They were warned this could take a long time. Exh. A at ¶ 6. In the meantime, both Ms. Samoilova and her husband completed their biometric appointment. Exh. A at ¶ 6.

While waiting for notice of an asylum interview, Ms. Samoilova applied for and received a valid work permit, a valid social security card, and a California driver's license. Exh. A at ¶ 7. She paid taxes on all wages she made. Exh. A at ¶ 7. Ms. Samoilova has lived in southern California during the entire time her asylum application has been pending. Exh. A at ¶ 7.

On February 19, 2026, Ms. Samoilova was working as a delivery driver for Instacart. Exh. A at ¶ 8. She was completing her last delivery and did not realize the delivery was to a military base. Exh. A at ¶ 8. When she arrived, the guard at the front gate made her wait in a parking lot. Exh. A at ¶ 8. She waited there for around two hours. Exh. A at ¶ 8. The guard then placed her under arrest. Exh. A at ¶ 8. He did not tell her why she was being arrested. Exh. A at ¶ 8.

After her arrest, Ms. Samoilova was brought to the weight station in San Clemente. Exh. A at ¶ 9. She was held there until ICE came and picked her up. Exh. A at ¶ 9. They brought her to San Diego, where they finally told her she was being

detained because she had overstayed her visa. Exh. A at ¶ 9. Ms. Samoilova was then taken to Otay Mesa Detention Center, where she has been detained ever since. Exh. A at ¶ 9. She has never been shown a warrant for her arrest. Exh. A at ¶ 10. She only received the Record of Deportable/Inadmissible Alien paperwork for herself a month after she was arrested. Exh. A at ¶ 10.

On March 4, 2026, a bond redetermination hearing was held in front of immigration judge Olga Attia ("IJ"). Partial Transcript of Ms. Samoilova's Bond Redetermination, Exhibit B at 00:20. At this hearing, Ms. Samoilova's attorney presented evidence of her affirmative asylum application, her sponsor, her lack of criminal record, her work and living history since coming to the United States, and letters of support. Exh. B at 02:54, 05:45, 06:42. The Department of Homeland Security ("DHS") conceded Ms. Samoilova wasn't a danger but argued she was a flight risk based on a lack of community ties. Exh. B at 10:52.

At the end of the hearing, the IJ decided Ms. Samoilova was a flight risk because she came in on a visitor visa and didn't claim asylum immediately upon arriving to the United States. Exh. B at 12:40–14-24.

CLAIMS FOR RELIEF

I. Count 1: The Due Process Clause required notice and a chance to be heard before Ms. Samoilova was detained after filing an affirmative asylum application.

Respondents' detention of Ms. Samoilova and denial of her bond redetermination request both clearly violate the Due Process Clause. Ms. Samoilova could not be detained without issuance of a notice to appear or a custody determination. *See* 8 C.F.R. 1236.1; *Ferro v. Warden*, No. 26-cv-694-SPC-DNF, 2026 WL 820563, *1 (M.D. Fl. Mar. 25, 2026) (granting release when petitioner was not issued a notice to appear, arrest warrant, or custody determination); *Matovu v. Mullin*, No. , 2026 WL 1387476 (W.D. Okla. May 18, 2026) (finding due process violations where a petitioner who initially entered the United States on a diplomatic visa was detained without issuance of a notice to appear, a warrant, or a

determination of flight risk). And when she finally received a bond redetermination, the IJ's decision relied on assumptions, rather than following the *Guerra* factors and considering the evidence affirmatively in the record, and violated her due process rights. *See Singh v. LaRose*, No. 26-cv-1425-JLS-GC, 2026 WL 1387428 (S.D. Cal. May 18, 2026); *Zheng v. Rokosky*, No. 26-cv-01689, 2026 WL 800203, at *5 (D.N.J. Mar. 23, 2026). "The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Ferro*, 2026 WL 820563, at *1 (quoting *Gonzalez v. Joyce*, No. 25-cv-8250-AT, 2025 WL 2961626, at * 5 (S.D. N.Y. Oct. 19, 2025)).

A. Respondents violated the Due Process Clause by arbitrarily detaining Ms. Samoilova with no notice, hearing, or a finding of changed circumstances.

"The Fifth Amendment guarantees that '[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.'" *Salazar*, 2025 WL 3063629, at *3 (quoting U.S. Const. amend. V). "[T]he Due Process Clause applies 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 (9th Cir. 2001).

"Generally, due process protections depend on the situation and must account for (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the Government's interest." *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also Matovu*, 2026 WL 1387476, at *4. Weighing those considerations here, Respondents violated the Due Process Clause by detaining Ms. Samoilova with no notice, hearing, or a finding of changed circumstances.

"First, Petitioner has a private interest in remaining free, which developed over the [years] [s]he resided in the United States." *Noori*, 2025 WL 2800149, at *10. "When the government grants [a noncitizen] parole into the country, it creates a liberty interest intimately tied to freedom from imprisonment." *Matovu*, 2026 WL 1387476, at *4 (quoting *Sanchez v. LaRose*, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025)). "Comparing Petitioner's release from immigration custody in this case to the liberty interest in parole discussed in *Morrissey*, Petitioner's release from immigration custody enabled '[her] to do a wide range of things,' including to live at home, work, and 'be with family and friends and to form the other enduring attachments of normal life.'" *Garcia Domingo*, 806 F. Supp. 3d at 1252 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). "[And] 'decisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody],' who are 'most decidedly entitled to *more* considerate treatment than those who are criminally detained.'" *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1048 (E.D. Cal. 2025) (quoting *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016)). Here, Ms. Samoilova has never been in custody before. Exh. A at ¶ 9. She has been in the United States for over four years, living with her husband, working, paying taxes, receiving identification documents, and waiting to be notified of her asylum interview. *See* Exh. A at ¶¶ 6–7. Ms. Samoilova is being deprived of the life she began to build when she affirmatively applied for asylum and followed all appropriate procedures to do so.

Second, the risk of erroneous deprivation of liberty is incredibly high when "Petitioner received no procedural safeguards to determine whether [her] detention were justified . . . ." *Matovu*, 2026 WL 1387476, at *4. "Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742, at *5 (S.D. Cal. Nov. 13, 2025). "Where ICE makes a unilateral decision to re-detain a noncitizen

and have not explained why," the risk of erroneous deprivation is considerable. *Garcia Domingo*, 806 F. Supp. 3d at 1252 (citation modified). Similarly, ICE detained Ms. Samoilova with no information until hours after she had been detained. *See* Exh. A at ¶¶ 8–10. And they have continued to detain her without the appropriate due process, *see infra* at I.C. Further, "[t]he risk of an erroneous deprivation of Petitioner's liberty interest is considerable where [s]he was arrested without a warrant." *Matovu*, 2026 WL 1387476, at * 4; *see infra* at II.

Third, it would take very little effort on the government's part to provide Ms. Samoilova with procedural safeguards. "Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025). It would have taken very little effort on Respondents' part to have provided Ms. Samoilova with "notice, reasoning, and a hearing." *Salazar*, 2025 WL 3063629, at *5.

Cases in other districts have addressed similar facts as those presented in Ms. Samilova's case. First, in *Ferro v. Warden*, a Middle District of Florida court granted the petitioner's habeas petition and required immediate release. 2026 WL 820563, at *1. Mr. Ferro originally entered the United States on a B1/B2 visa and applied for asylum 11 months later. *Id.* While his application remained pending, Mr. Ferro "complied with all immigration requirements, maintained lawful employment, and paid taxes." *Id.* Eight years after his affirmative asylum application, he was stopped by Border Patrol and detained without a warrant, the issuance of a notice to appear, or an initial custody determination. *Id.* The court determined "the unrefuted evidence regarding Franco Ferro's background and the complete lack of due process afforded to him" required immediate release. *Id.*

Similarly, in *Matovu v. Mullin*, a court in the Western District of Oklahoma ordered the immediate release of the petitioner because his detention without notice, a warrant, or a determination of whether he posed a flight risk violated due

process. 2026 WL 1387476. There, Mr. Matovu had initially come to the United States on an A-2 diplomatic visa. *Id.* at *1. He subsequently filed for asylum two months after arriving on that visa. *Id.* "He [had] no criminal history, a valid work permit, and has not missed a court hearing." *Id.* Four years later, he was arrested when he was stopped by Oklahoma Highway Patrol and transferred to ICE custody. *Id.*

Ms. Samoilova has been subjected to the same unconstitutional detention seen in *Matovu*. Thus, because Respondents did not provide "proper notice, reasoning, and a pre-deprivation hearing" before detaining her, Ms. Samoilova's detention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

B. Affirmative asylum applicants have a liberty interest akin to noncitizens released on parole by DHS.

The due process concerns governing Ms. Samoilova's detention can be analogized to those of a noncitizen who received parole and was later detained with no notice or explanation. *See Matovu*, 2026 WL 1387476, at *4–5 (analogizing to case law discussing release on parole and revocation of such parole). Just like those noncitizens allowed to reside in the United States pending their applications for admission, there are provisions that allow asylees to affirmatively apply for asylum.

There are two ways to apply for asylum: affirmative applications and defensive applications while subject to removal proceedings. Noncitizens "who are present in the United States . . . irrespective of such [noncitizen's] status, may apply for asylum in accordance with this section . . . ." 8 U.S.C. § 1158(a)(1). Conversely, noncitizens who are in removal proceedings "may apply for asylum as a defense against removal, known as *defensive asylum*." *Asylum Process in Immigration Courts and Selected Trends*, CONGRESSIONAL RESEARCH SERVICE, at 1 (Dec. 10, 2025), https://tracreports.org/tracker/dynadata/2026_03/R47504.4-

1.pdf. Affirmative asylum applications go through USCIS, whereas EOIR handles removal proceedings and defensive applications. *See id.*

As with someone applying for asylum who is on parole, USCIS was put on notice of Ms. Samoilova's intentions when she affirmatively applied. She submitted to all requirements for biometric and biographical information. *See* Exh. A at ¶ 6. Had there been any concerning information to come out of that, such as a criminal history, USCIS could have taken steps to detain Ms. Samoilova—but they didn't. *See* Exh. A at ¶ 9.

Per ICE regulations, a person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated "upon accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation of parole when "neither humanitarian reasons nor public benefit warrants the [noncitizen's] continued presence." 8 C.F.R. § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may only revoke parole and re-detain a noncitizen when the parole's purpose is served or no humanitarian reasons warrant it *and* the noncitizen receives notice.

None of this occurred here. Ms. Samoilova did not receive any of the protections afforded to someone who has been released and therefore has liberty interests. Because "the purpose" of Ms. Samoilova's release was to allow her to live free from unnecessary detention while affirmatively identifying herself and applying for asylum, that purpose has not yet "been served" because her asylum claim is still pending. 8 U.S.C. § 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary detention when an asylum seeker poses no danger or flight risk—remains the same. Put differently, "upon Petitioner's entry into the

United States, Respondents determined that Petitioner was suitable for [release]. Respondents have not provided a reasoned explanation or any changed circumstances that would justify their current departure from their prior decision." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1146 (D. Or. 2025).

Because Ms. Samiolova affirmatively applied for asylum while holding a valid visa and is still currently in the process of seeking asylum, her detention is akin to the re-detention of a noncitizen on parole without any process. She should therefore be released.

II. The bond redetermination held on March 4, 2026, was fundamentally unfair and violated Ms. Samoilova's right to due process.

Ms. Samoilova's bond hearing was fundamentally unfair and violated her due process rights. The IJ did not apply the correct legal standard because she used facts not in the record to attempt to satisfy one of the *Martinez* factors while ignoring all other facts available. This Court is able determine "whether the immigration judge 'applied the correct legal standard.'" *Miri v. Bondi*, No. 26-cv-00698-MEMF-MAR, 2026 WL 622302, at *8 (C.D. Cal. Mar. 5, 2026) (quoting *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024)); *see also Garcia v. Hyde*, 817 F.Supp.3d 112, 126 (D.R.I. Dec. 3, 2025) ("[T]he noncitizen can point to the IJ's opinion itself and show that the IJ simply did not apply the correct standard to the facts.") (quotations omitted). This includes ensuring that the IJ "actually consider[s] the evidence and argument that a party presents." *Zheng v. Rokosky*, No. 26-cv-01689, 2026 WL 800203, at *5 (D.N.J. Mar. 23, 2026) (quotations omitted).

At Ms. Samoilova's March 4, 2026, bond redetermination, the IJ found Ms. Samoilova to be a flight risk and denied bond, further finding that no conditions would mitigate the risk. Exh. B at 13:49. The IJ primarily relied on her own feelings that Ms. Samoilova and her husband should have presented themselves as asylees when they first arrived in the United States, coupled with the fact that Ms.

Samoilova has "very limited family ties." Exh. B at 14:11. This was not a constitutionally sufficient basis upon which to have denied Ms. Samoilova's request for release.

The Ninth Circuit has held that "[t]o determine whether an alien is a danger to the community or a risk of flight, an IJ weighs nine factors under BIA precedent." *Martinez*, 124 F.4th at 783. An IJ may consider the following factors:

> (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

Matter of Guerra, 24 I&N Dec. 37, 40 (B.I.A. 2006).

While the "manner of entry to the United States" is a factor, the IJ ignored the actual facts in the record when she assumed Ms. Samoilova and her husband came to the United States on B1/B2 visas with the intention to apply for asylum. Contrary to this, Ms. Samoilova's attorney attempted to address the IJ's interpretation but was cut off. Exh. B at 12:12–12:32. She was able to make clear, though, that Ms. Samoilova and her husband "did not plan on filing for asylum when they came." Exh. B at 13:25. And, the fact is that they *did* apply for asylum affirmatively—and did so before their visas expired.

The facts here are analogous to those in *Matter of Patel*. In *Patel*, the BIA considered whether an IJ erred in releasing a noncitizen on a $500 bond rather than releasing him on his own recognizance ("OR"). 15 I. & N. Dec. 666, 666–67 (BIA

1976). In choosing bond over OR, the IJ relied upon the noncitizen having overstayed his student visa and the fact that his visa petition was denied because he lacked a labor certification. *Id.* at 667. But the BIA found that "[t]hese factors bear little if any relevance to the issue of whether or not the [noncitizen] is likely to appear for his deportation proceeding." *Id.* According to the BIA, "[s]uch a broad interpretation of what constitutes an 'adverse factor' in this context could result in requiring a bond of almost every alien who is held in deportation proceedings." *Id.* And with affirmative asylum application numbers reaching 1.4 million currently[1], the IJ's determination in Ms. Samoilova's case would very likely apply to *many* other affirmative asylum applicants who are free and living their lives while waiting for USCIS interviews.[2] Therefore, the BIA released the noncitizen on his own recognizance. *Id.* The BIA has continued to cite *Matter of Patel* for the proposition that "factors unique to each alien must be evaluated in determining suitability for release on custody." *In re Helia de la Cruz-Palencia*, 2011 WL 2261251, at *1 (BIA May 13, 2011) (unpublished).

There is no evidence that the IJ otherwise considered the other *Guerra* factors and the significant evidence supporting a finding of release. "While an IJ's failure to cite every piece of evidence in the record does not amount to clear error, [] the IJ's failure to mention highly probative potentially dispositive evidence weighs against an assumption that the IJ considered all the evidence." *Singh*, 2026 WL 1387428, at *5 (citation modified). In ignoring this evidence, the IJ also failed to "assess the risk of flight . . . on a current basis." *Chi Thon Ngo v. Immigr. & Naturalization Serv.*, 192 F.3d 390, 398 (3rd Cir. 1999). "The process due even to

[1] *DHS Proposes Rule to Prioritize Americans' Safety by Strengthening Screening of Asylum Seekers*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Feb. 20, 2026) https://www.uscis.gov/newsroom/news-releases/dhs-proposes-rule-to-prioritize-americans-safety-by-strengthening-screening-of-asylum-seekers.

[2] In comparison, there are just over around 60,000 individuals in ICE detention as of April 4, 2026. *Immigration Detention Quick Facts*, TRAC IMMIGRATION (2026) https://tracreports.org/immigration/quickfacts/.

excludable [noncitizens] requires an opportunity for an evaluation of the individual's current . . . risk of flight." *Id.*; *see also Judulang v. Chertoff*, 562 F.Supp.2d 1119, 1127 (S.D. Cal. 2008). The IJ did not consider any of the evidence presented that showed Ms. Samoilova had been a productive, hardworking member of society since she affirmatively applied for asylum nearly four years ago. None of the evidence showing Ms. Samoilova is *not* a flight risk but is committed to applying for asylum through legal means was considered—nor was the fact that Ms. Samoilova was detained *while* working pursuant to a valid work permit. "In other words, the evidence that the IJ *did* consider could not—as a matter of law—have supported a finding of *current* flight risk, and the IJ's mere presumption that it did violated [Ms. Samoilova's] due process rights." *Garcia*, 817 F.Supp.3d at 130.

III. Alternatively, Ms. Samoilova's arrest without a warrant or a Notice to Appear requires her immediate release.

Alternatively, even if Ms. Samoilova's detention after affirmatively applying for asylum does not violate due process, she should have been afforded the process in 8 U.S.C. § 1226(a). This, in addition to being afforded a bond hearing where a neutral arbiter makes determinations about her dangerousness and risk of flight, requires that ICE have a warrant *prior* to any arrest. It also requires that ICE may only issue such a warrant at the time of or after the issuance of a notice to appear for removal proceedings. Ms. Samoilova was afforded none of the protections under § 1226(a) and should be released.

A. The proper remedy for such a warrantless arrest is immediate release and an order that Petitioner cannot be re-detained absent the procedures of § 1226(a).

Ms. Samoilova may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). But, under section 1226, "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that, *"[o]n a warrant issued by the*

Attorney General, an alien may be arrested and detained." 8 U.S.C. § 1226(a) (emphasis added). Such a warrant "must be issued *before* the alien is arrested and taken into custody." *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023 (C.D. Cal. Nov. 12, 2025); *Matovu*, 2026 WL 1387476, at *3 ("Generally, the warrant must be issued before the noncitizen's arrest."). "[I]t follows that absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)." *Chogllo Chafla*, 804 F. Supp. 3d at 264 (emphasis in original).

That is precisely what a court in this district recently held. In *Cruz Pedraza v. Larose,* the petitioner was parked at a gas station when two unmarked cars blocked his truck. 26-cv-2697-LL-MSB, ECF 12 at 1 (S.D. Cal. May 27, 2026). Several ICE officers got out of their vehicles, asked the petitioner for proof of status, and then arrested him without a warrant. *Id.* at 1–2. The Court found *Matter of Yajure Hurtado* "unpersuasive" and determined that the petitioner was detained pursuant to § 1226(a), rather than § 1225(b). *Id.* at 4.

Importantly, the Court then noted that the statutory language of § 1226(a) provides that "a noncitizen may only be arrested and detained pending a decision on removal '[o]n a warrant issued by the Attorney General.'" *Id.* (quoting 8 U.S.C. § 1226(a)). And "[w]hen the government does not comply with the plain language of section 1226(a), a petitioner's immediate release is justified." *Id.* (quotations and alterations omitted). Because Respondents did not dispute that they lacked the necessary warrant to arrest the petitioner, the Court held that "Petitioner's arrest and detention are unauthorized" and immediate release was the "appropriate remedy." *Id.*

Other courts have similarly held that when ICE makes a warrantless arrest contrary to the plain language of § 1226(a), the "arrest and detention are therefore unauthorized, and the appropriate remedy for detention that lacks a proper statutory basis under § 1226(a) is release." *Eslid. B.G. v. Bondi*, No. 26-cv-5020-RAL, 2026 WL 734992, *6 (D.S.D. Mar. 16, 2026) (collecting cases); *see also JAACP v.*

Wofford, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *Diaz v. Albarran*, No. 25-cv-9837-JSC, 2025 WL 3214972 (N.D. Cal. Nov. 18, 2025); *R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL 788263, *2 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release in the absence of a warrant); *Ferro*, 2026 WL 820563, at *1; *Matovu*, 2026 WL 1387476, at *2–3.

Here, Ms. Samoilova was arrested when she was making a delivery for her job. Exh. A at ¶ 8. She wasn't issued a notice to appear for removal proceedings until the next day. ECF 5-1. She has never been shown a warrant, and it appears she was arrested without one. *Id.* Because this arrest violated the plain language of § 1226(a), her "arrest and detention are unauthorized," and immediate release is the "appropriate remedy." *Cruz Pedraza,* 26-cv-2697-LL-MSB, ECF 12 at 4.

B. The issuance of Ms. Samoilova's Notice to Appear after her arrest violates due process.

Whether or not Ms. Samoilova was arrested pursuant to a warrant, the absence of a Notice to Appear at the time of her initial detention violates due process and requires her immediate release.

8 U.S.C. § 1129(a)(1) requires the issuance of a notice to appear to any noncitizen who is placed in removal proceedings. "'The INA further provides that DHS may arrest and detain' noncitizens who are placed in § 1226(a) deportation proceedings 'pending a decision on whether they are to be removed from the United States.'" *Matovu*, 2026 WL 1387476, at *3 (quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021)). "DHS may issue a warrant for the noncitizen's arrest at the time of issuance of the NTA, or at any time thereafter and up to the time removal proceedings are completed, . . . under the authority of Form I-200, Warrant of Arrest." *Id.* (quoting 8 C.F.R. § 1236.1(b)(1)) (citation modified).

In *Matovu*, the court found Respondents arrested the petitioner before issuing an NTA, meaning "Respondents lacked statutory authority to conduct the arrest

under § 1226, as removal proceedings were not yet pending. 2026 WL 1387476, at *3. Likewise, Ms. Samoilova was arrested before any NTA was issued to put her in removal proceedings. *See* ECF 5-1 (noting the date the NTA was issued as February 20, 2026, one day after Ms. Samoilova's arrest). Because Respondents did not follow the required procedures, they violated Ms. Samoilova's due process rights, requiring her immediate release.

IV. This Court must hold an evidentiary hearing on any disputed facts.

Resolution of a detention-based habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Ms. Samoilova hereby requests such a hearing on any material, disputed facts.

V. Prayer for relief

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Order that, prior to any re-detention of Petitioner, Petitioner is entitled to notice of the reasons for revocation of her release and a hearing before an immigration judge to determine whether detention is warranted. The government should bear the burden of establishing, by clear and convincing evidence, that circumstances have changed such that Ms. Samoilova now poses a danger to the community or is a risk of flight at that hearing;
3. Alternatively, order Petitioner's immediate release based on the absence of a warrant as required by § 1226(a) and require Respondents to hold a pre-deprivation bond hearing before a neutral arbiter pursuant to § 1226(a) at which Respondents shall demonstrate the issuance of a warrant and at which Petitioner's eligibility for bond must be considered, *see, e.g.*, *JACP*, 2025 WL 3013328 at *8; and

4. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 2, 2026

s/ Hannah Basalone

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