

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

Kenia Jackline Merlos,	)	
Petitioner	)	
	)	PETITION FOR WRIT
	)	OF HABEAS CORPUS
v.	)	
	)	CASE No: 25-2081
CAMILA WAMSLEY, Seattle Field Office	)	
Director, Immigration and Customs	)	
Enforcement and Removal Operations (ICE/	)	
ERO); U.S. Immigration and Customs	)	
Enforcement; KRISTI NOEM, Secretary of	)	
the Department of Homeland Security; U.S.	)	
Department of Homeland Security (DHS);	)	
PAMELA BONDI, Attorney General of	)	
the United States, and TODD LYONS, Director,	)	
Immigration and Customs Enforcement.	)	
	)	
Respondents	)	

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, Kenia Jackline Merlos (Ms. Merlos) is a citizen of Honduras who Respondents have detained at the Northwest Detention Center (AKA, Northwest ICE Processing Center) for three (3) months. Her removal proceedings are terminated and her detention is no longer reasonably related to its statutory purpose. Additionally, she was unlawfully denied bond because of the Respondents' failure to properly interpret and apply the Immigration and Nationality Act (INA). Because she is likely to face many additional months in detention, she seeks relief from this Court that would allow her to challenge her continuing, lengthy and unconstitutional detention.

JURISDICTION

1. Petitioner is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). She is detained at the Northwest Detention Center in Tacoma, Washington and is under the direct control of Respondents and their agents.
2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
3. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).
4. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
5. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

VENUE

6. 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 Western District of Washington, the judicial district in which the Petitioner is currently in custody.
7. Venue is also properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies in the United States, and because a

substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

PARTIES

8. Petitioner is a citizen of Honduras who most recently arrived in the United States on or about May 14, 2003. She has been in custody of the Department of Homeland Security (DHS) since July 14, 2025. Since that time, she has sought relief from removal in her immigration court case and with the United States Citizenship and Immigration Service (USCIS).
9. Respondent Camila Wamsley is the Acting Director of the Seattle District Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, Department of Homeland Security. As such, Ms. Wamsley is Petitioner's immediate custodian. She is named in her official capacity.
10. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.
11. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.
12. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

13. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.
14. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

FACTUAL ALLEGATIONS

15. Petitioner, Kenia Jackeline Merlos, is a 43-year-old native and citizen of Honduras. She has resided continuously in the United States since May 2003. She is married to Carlos Merlos, also a Honduran national, and is the mother of four U.S. citizen children: triplets Carlos Noe, Kenia Abigail, and David Samuel Merlos, and Jeffrey Carlos Merlos. Petitioner has no criminal history or arrests in the United States or abroad.
16. Petitioner first entered the United States near McAllen, Texas, in or about May 2003 without inspection. After a brief voluntary return to Mexico, she re-entered a few days later without inspection and has remained in the United States for more than twenty-two years.
17. On March 8, 2024, Petitioner filed a Form I-918 Petition for U Nonimmigrant Status, supported by a law-enforcement certification confirming her cooperation as a crime victim. On December 13, 2024, U.S. Citizenship and Immigration Services determined her petition to be bona fide, granted deferred action, and issued employment authorization. Her husband's own U-visa petition has been pending since March 2025.
18. While living in Portland, Oregon, Petitioner traveled with her mother (a B-2 visitor) and four U.S.-citizen children to Peace Arch Park, a binational park on the Washington–Canada border, to meet her sister, Flor Solis España (a Canadian permanent resident),

Flor's husband (a Canadian citizen), and their two children. The family remained entirely on the U.S. side of the park.

While saying their goodbyes, U.S. Customs and Border Protection (CBP) officers approached and accused Petitioner of attempting to smuggle her sister, niece, and nephew into the United States. Petitioner and all accompanying relatives, including six children, were taken into custody. She and her four children were held by CBP for approximately fourteen days; CBP officers repeatedly refused her requests to speak with counsel and sought to remove her and the children to Honduras.

19. On July 14, 2025, the U.S. District Court for the Western District of Washington (Hon. Tana Lin) issued a Temporary Restraining Order prohibiting Petitioner's removal and requiring that she have access to counsel. Following entry of the TRO, CBP released her children to a family friend, Mimi Lettunich, and transferred Petitioner to the Northwest Detention Center in Tacoma, Washington.
20. On the same day, CBP served Petitioner with a Notice to Appear (NTA) charging her under INA § 212(a)(6)(A)(i) as an alien present without admission or parole. No criminal charges were filed against her. The NTA was filed with the Tacoma Immigration Court.
21. During Petitioner's 14-day CBP detention, officers contacted ICE regarding her husband. ICE subsequently apprehended and detained him at the same facility. On October 2, 2025, an Immigration Judge reinstated his prior removal order to Honduras. As a result, the couple's four minor U.S.-citizen children have remained in the care of temporary guardians while both parents are detained.
22. Petitioner's children have suffered acute emotional trauma from their two-week confinement by CBP and ongoing separation from both parents. They have various

medical conditions requiring continuing treatment in Oregon, including vitiligo, eczema, and ophthalmologic issues. Petitioner herself has arthritis requiring medication. Her husband suffers from diabetes and hypertension.

23. Despite prolonged custody since June 28, 2025, neither CBP nor ICE has charged Petitioner with any crime. DHS has not revoked her deferred-action status or employment authorization. She continues to hold lawful deferred action granted by USCIS in December 2024.
24. Petitioner has been deprived of liberty since her warrantless seizure at Peace Arch Park on June 28, 2025, despite her active deferred-action status and absence of any criminal or immigration-law violation that would justify detention or removal. Her continued custody violates the TRO issued by the U.S. District Court and exceeds the government's lawful authority under 8 U.S.C. § 1231 and related provisions.
25. On October 14, 2025, the Immigration Judge (IJ) terminated removal proceedings pursuant to 8 CFR 1003.18(d)(1)(ii)(C). No appeal is currently pending.

LEGAL FRAMEWORK

Due Process Clause

26. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
27. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8

U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

28. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).
29. Since the Supreme Court's *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).
30. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).
31. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.
32. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process

requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an “individualized determination as to [a noncitizen’s] risk of flight and dangerousness” may be warranted “if the continued detention became unreasonable or unjustified”); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249- 50 (1972) (noting that “lesser safeguards may be appropriate” for “short-term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that “the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards”).

33. Courts have found that automatic detention pending appeal “after a judicial officer has determined that release [] is appropriate,” where the government has made no “showing of dangerousness or flight risk,” “renders the continued detention arbitrary” and “raises a substantial Fifth Amendment claim.” *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025). Whilst this case is in the context of the automated stay of bond on appeal, the same reasoning applies here: “... no special justification exists that outweighs the individual’s constitutionally protected interest in avoiding physical restraint . . .”

Zavala v. Ridge, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).

34. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a “good faith” challenge to removal—that is, the challenge is “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the

length of the detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; *accord Sopo*, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when the parties could “have reasonably predicted that Chavez-Alvarez’s appeal would take a substantial amount of time, making his already lengthy detention considerably longer”); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

35. Due process also requires certain minimal procedures at bond hearings. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen’s ability to pay a bond when determining the appropriate conditions of release.
36. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where the detainee was afforded a “full-blown adversary hearing,” requiring “clear and convincing evidence” before a “neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody

review procedures deficient because, *inter alia*, they placed burden on detainee); see also *Padilla v. Immigration & Customs Enf't*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been detained for more than 18 months).

37. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
38. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).
39. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because “numerous factors combine to magnify the risk of erroneous factfinding” including that “parents subject to termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he State’s attorney usually will be expert on the issues contested”). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their

ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra* ¶ 66.

40. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.
41. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).
42. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. Her interest in liberty and family unity is paramount; the Government's blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying her any opportunity to demonstrate eligibility for release; and the Government's interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).
43. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that

ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

44. Due process likewise requires consideration of a noncitizen’s ability to pay a bond.

“Detention of an indigent ‘for inability to post money bail’ is impermissible if the individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires “consideration of financial circumstances and alternative conditions of release” to prevent against detention based on poverty. *Id.*

45. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.

46. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: “the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g.,

indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

47. These conditions and obstacles only further underscore the serious due process concerns that prolonged immigration detention pose for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding continued detention.

48. Here, the Respondents can neither show that the continued detention of petitioner following her detention is reasonably related to the original purpose and the *Mathews* tests are satisfied. Similarly, no procedural safeguards are offered to those who remain in custody pending an appeal of a decision on termination of removal proceedings.

Continued detention after termination of removal proceedings

48. Ms. Merlos' continued detention violates the Immigration and Nationality Act (INA) and is therefore unlawful. The government asserts authority to detain her under INA § 236(a), which states:

“[A]n alien may be arrested and detained *pending a decision* on whether the alien is to be removed from the United States.” INA § 236(a) (emphasis added).

By its plain text, the statute authorizes detention only up until the moment a decision is made. Once a decision is rendered, detention authority ends. The adjacent statutory provision governing removal proceedings confirms what qualifies as a “decision”:

“At the *conclusion* of the proceeding the immigration judge shall *decide* whether an alien is removable from the United States.” INA § 240(c)(1) (emphasis added).

Furthermore, neighboring provisions, including INA § 240(c)(3) mandates that “[n]o decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.” And under 8 C.F.R. § 1240.12(a), “the decision shall be concluded with the order of the immigration judge.” Taken together, these provisions leave no doubt: once an Immigration Judge concludes proceedings and issues a ruling that a respondent is not to be removed, DHS’s detention authority under § 236(a) is extinguished.

14. That is exactly what happened here. On October 14, 2025, the Immigration Judge issued a written decision terminating Ms. Merlos’ proceedings under 8 C.F.R. § 1003.18(d)(ii)(C) based on her grant of deferred action through February 2029. The IJ expressly noted that removal was not feasible or authorized in light of USCIS’s deferred action determination and exercised her discretion to terminate proceedings accordingly. That decision was lawful, final, and dispositive. No statutory basis exists for DHS to continue holding Ms. Merlos in civil immigration detention especially in light of there being no pending appeal.
15. The statutory language is clear, and where “a statute’s language is plain, the sole function of the courts is to enforce it according to its terms.” *Owner–Operator Indep. Drivers v. United Van Lines*, 556 F.3d 690, 693 (8th Cir. 2009). Moreover, courts do not defer to agency interpretation when the text is unambiguous. As the Supreme Court recently confirmed, “[c]ourts, not agencies, will decide ‘all relevant questions of law’ arising on review of agency action.” *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024). Here, the statutory command is straightforward: once an IJ has decided the respondent is not to be removed, detention under § 236(a) is no longer authorized.

16. While 8 C.F.R. § 1236.1(b) suggests that the government may detain a respondent “up to the time removal proceedings are completed,” that regulation is inconsistent with the statute. It attempts to define the end of proceedings by reference to the entry of a final order of deportation under INA § 101(a)(47)(B)(i), rather than the issuance of a “decision” under INA § 240(c). But that is not how Congress drafted § 236(a). The statute references a “decision,” not a final order. When Congress includes particular language in one section of a statute and omits it in another, it is presumed to have done so intentionally. *Kucana v. Holder*, 558 U.S. 233, 249 (2010).
17. By contrast, INA § 101(a)(47)(B)(i) defines when an “order of deportation” becomes final — namely, “upon... a determination by the Board of Immigration Appeals affirming such order.” But § 236(a) does not incorporate that standard. Instead, Congress used a different, earlier marker: the decision of the immigration judge. Thus, even if the BIA were to later reverse the IJ’s termination order, that possibility does not revive DHS’s detention authority under § 236(a). Statutory authority cannot be preserved through mere speculation about a future administrative reversal. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
18. Even though DHS itself has already declared, through USCIS, that Ms. Merlos is not subject to removal during the pendency of her deferred action, petitioner’s detention continues. This intra-agency contradiction further illustrates that no removal decision remains pending. The “decision” has been made: proceedings were terminated, and removal is not authorized.
19. That removal is not merely paused, but legally barred, is critical. Even if the government were to prevail on appeal, it could not remove Ms. Merlos during the deferred action

period without first overcoming a series of legal and regulatory hurdles. This eliminates any rational tether between detention and removal. INA § 236(a) allows detention only to facilitate the removal process; it does not allow DHS to hold individuals in prolonged civil custody based solely on disagreement with a decision already rendered.

20. Similarly, courts have ruled that automatically stayed release from detention is a violation of the Fifth Amendment. *See Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025) (finding that it “does not require any showing of dangerousness or flight risk. Nor is it subject to immediate review by an immigration judge. It operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied. Cf. *Zadvydas*, 533 U.S. at 699–700, 121 S.Ct. 2491 (recognizing that removal must be reasonably foreseeable for continued post-removal detention to remain reasonable); *Bridges*, 326 U.S. 135, 152–53, 65 S.Ct. 1443 (administrative rules are designed to afford due process and to serve as “safeguards against essentially unfair procedures”). Without introducing evidence, the Government has wholly deprived Petitioner of notice and the chance to rebut its case for continued detention. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 (“The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.”).

8 USC 1225 v 1226

49. Full removal proceedings under 8 U.S.C. § 1229a are “the standard mechanism for removing inadmissible noncitizens.” *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908, at *2 (D.D.C. Aug. 29, 2025); *see also Dep't of Homeland Sec. v.*

Thuraissigiam, 591 U.S. 103, 108 (2020) (“The usual removal process involves an evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to show that he or she should not be removed.”). These proceedings are initiated by serving the noncitizen with a Form I-862 “notice to appear” in immigration court. 8 U.S.C. § 1229(a)(1).

50. Full removal proceedings “take place before an [immigration judge (“IJ”)], an employee of the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop the record in cases before them.” *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), — F.Supp.3d —, —, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8 U.S.C. § 1229a(a)(1), (b)(1)).

51. In full removal proceedings, noncitizens have rights to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). “[D]ue to the built in procedures,” full removal proceedings “typically take[] place over the course of multiple hearings,” which “allows time for noncitizens to both gather evidence in support of petitions for relief available in immigration court ... and seek collateral relief from other components of [the Department of Homeland Security (“DHS”)].” *Coal. for Humane Immigrant Rts.*, — F.Supp.3d at —, 2025 WL 2192986, at *3.

52. Accordingly, “[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). If the detainee disagrees with the officer’s determination, they “may request a bond hearing before an IJ at any time before a removal order becomes final.” *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). The

procedural posture progresses and the detainee must then “establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (quoting *In re Guerra*, 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). Appeal on an adverse decision is available with the BIA. *Id.* at 983 (citing § 236.1(d)(3)).

53. By contrast, expedited removal proceedings are a “more streamlined ... form of proceeding applicable only to certain noncitizens,” whereby removal orders are “usually issued within a few days, if not hours.” *Id.* (citation omitted). In expedited removal proceedings, the initial fact finder is an immigration officer, not an IJ. 8 C.F.R. § 235.3(b)(2)(i). The immigration officer asks the noncitizen a series of questions regarding (1) their “identity, alienage, and inadmissibility,” and (2) their “intention to apply for asylum” or potential fear of persecution, torture, or return to their country. *Id.* at § 235.3(b)(2)(i), (b)(4). During this questioning, noncitizens do not have a right to counsel. *Id.* at § 235.3(b)(2)(i). If the immigration officer determines that the noncitizen is inadmissible under § 1182(a)(6)(C) or 1182(a)(7), “the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 ... or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).

54. 8 U.S.C. § 1225 enumerates the procedures allowing the government to detain (mandatory detention) certain “applicants for admission.” Under § 1225, an “applicant for admission” is a noncitizen “present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1).

55. INA § 1225(b)(1) authorizes expedited removal for certain “applicants for admission” in two categories. First, noncitizens “arriving in the United States” that are determined by an immigration officer to be inadmissible due to misrepresentation or failure to meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); *see also id.* at § 1182(a)(6)(C), (a)(7).

56. Second, noncitizens that (a) are inadmissible because of misrepresentation or failure to meet documents requirements; (b) have not “been admitted or paroled into the United States”; (c) have not “affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”; and (d) have been designated by the Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

57. 8 U.S.C. § 1226 “provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). The provision “distinguishes between two different categories” of noncitizens. *Jennings*, 583 U.S..

58. These two categories of noncitizens subject to § 1225(b)(1) are subject to mandatory detention “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.

Individuals that fall into § 1225(b)(1) are “normally ordered removed ‘without further hearing or review’ pursuant to an expedited removal process” unless claiming asylum or a fear of persecution. *Jennings*, 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii)).

59. Noncitizens who are “seeking admission” and not covered by the expedited removal provisions in § 1225(b)(1) are subject to § 1225(b)(2). *See id.* At 287. This category

would include, for example, noncitizens who are arriving in the United States, seek admission, and are inadmissible for some reason other than misrepresentation or failure to meet documents requirements. *See* 8 U.S.C. § 1182(a)(2)–(3). Subject to limited exceptions, the § provides that such noncitizens “shall be detained” for full removal proceedings under § 1229a “if the examining immigration officer determines” that the noncitizen “is not clearly and beyond a doubt entitled to be admitted.” *Id.* at § 1225(b)(2)(A).

60. Under § 1226(a), the “default rule,” *id.*, a noncitizen “may be arrested and detained” “[o]n a warrant issued by the Attorney General” if their removal proceedings are pending, 8 U.S.C. § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the government has discretion to release them on “bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or ... conditional parole.” *Id.* at § 1226(a)(2)(A)–(B).

61. Until this year, DHS has applied § 1226(a) and its discretionary release and review of detention “to the vast majority of noncitizens allegedly in this country without valid documentation”—a practice codified by regulation. *Salcedo Aceros*, 2025 WL 2737503, at *3.

62. The Government now contends that mandatory detention under § 1225 is the appropriate detention authority for noncitizens, such as petitioner, who have not been admitted or paroled. *See Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

63. In recent weeks, several district courts have held that the Government’s new, and more expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect on the basis that this reading of the statute would render 1226(c) inoperable or moot. *See, e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

EXHAUSTION

64. Petitioner argues any appeal to the BIA would be futile considering a September 5, 2025, BIA decision where the BIA adopted DHS’ interpretation of the INA as mandating detention without bond for millions of noncitizens who reside in the U.S. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA's decision held that immigration judges lack jurisdiction to hold bond hearings or grant bond to all individuals charged with entering the country without inspection. *Id.*

65. The Court should find administrative exhaustion would be futile. *See Vasquez- Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“where the agency's position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required.”). BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like petitioner to hold a custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from preventing petitioner from having a bond hearing pursuant to the holding in *Hurtado* is necessary to enable petitioner to avail herself of her administrative remedies.

66. Therefore, the Court should consider the merits of the Petition.

CLAIM FOR RELIEF

COUNT 1: Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Bond Hearings

67. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above.

68. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

69. Nonetheless, the Tacoma Immigration Court IJs have a policy and practice of applying § 1225(b)(2) to the Petitioner and did so during her bond hearing.

70. The application of § 1225(b)(2) to Petitioner violates the Immigration and Nationality Act.

COUNT 2: Violation of the Administrative Procedure Act Unlawful Denial of Bond

71. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above.

72. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

73. Nonetheless, the Tacoma Immigration Court IJs have a policy and practice of applying § 1225(b)(2) to Petitioner.

74. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT 3: Violation of the Immigration and Nationality Act Detention After Removal

Proceedings

51. INA § 236(a) allows detention only to facilitate the removal process; it does not allow DHS to hold individuals in prolonged civil custody based solely on disagreement with a decision already rendered on the termination of removal proceedings.
52. The IJ’s decision is valid, supported by applicable regulations, and rooted in DHS’s own grant of protection. It terminates proceedings conclusively and fulfills the statutory “decision” requirement under § 236(a). With no pending removal decision, and no immediate removal authority, DHS’s continued detention of Ms. Merlos is *ultra vires* and must be ended.
53. Accordingly, under the plain language of the INA and applicable regulations, this Court should hold that DHS’s continued detention of Ms. Merlos is unlawful and order her immediate release.

COUNT 4: Unconstitutional Detention in Violation of the Fifth Amendment

54. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
55. Civil immigration detention is only permissible where it bears a “reasonable relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

56. Neither community protection nor flight risk applies to the Petitioner, and therefore, the detention no longer bears a reasonable relation to the purpose for which it was committed. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Petitioner has prevailed in proceedings. There is no removal order. Her removal is not imminent. To the contrary, Petitioner is the recipient of a *bona fide* determination under her U Visa application.

57. These cumulative actions render her detention even more constitutionally suspect, as they reflect punitive conduct rather than civil processing.

58. Accordingly, Petitioner's continued detention, in the absence of removal authority and contrary to DHS's own findings, constitutes a deprivation of liberty without due process of law. The Court should order her release.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
3. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
4. Issue a Writ of Habeas Corpus ordering the Respondents to release Petitioner from custody; hold a hearing if warranted; determine that Ms. Merlos' detention is not justified because the government has not established by clear and convincing evidence that she presents a risk of flight or a danger to the community in light of the available alternatives;

5. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
6. Declare that Ms. Merlos' continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process;
7. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;
8. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Ms. Merlos an individualized bond hearing before an impartial immigration judge within 14 days, at which the government bears the burden to justify continued detention by clear and convincing evidence;
9. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
10. Grant such other and further relief as the Court deems just and proper.

DATED: October 21, 2025.

/s/ Stacey R. Rogers
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