**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEBRASKA**

**YURENIA GENCHI PALMA**,

Plaintiff-Petitioner,

v.

**DONALD J. TRUMP,** in their official capacity as President of the United States;
**KRISTI NOEM,** in their official capacity as Secretary of the United States Department of Homeland Security;
**MARCO RUBIO,** in their official capacity as Secretary of State of the United States,
**PAMELA BONDI,** in their official capacity as Attorney General of the United States;
**TODD M. LYONS,** in their official capacity as Acting Director of the United States Immigration and Customs Enforcement;
**PETER BERG,** in their official capacity as St. Paul Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement; and,
**JEROME J. KRAMER,** in their official capacity as Lincoln County Sheriff, Official of Lincoln County Detention Center;

Defendant-Respondents.

Case No. _____

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR HABEAS CORPUS**

## INTRODUCTION

1. This lawsuit seeks the immediate release of Plaintiff-Petitioner Yurenia Genchi Palma ("Petitioner") from unlawful detention in violation of her constitutional and statutory rights.

2. Petitioner was detained out of a worksite raid at Glenn Valley Foods in Omaha, Nebraska on June 10, 2025, and remains in civil detention in the custody of the Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") at Lincoln County Detention Center in North Platte, Nebraska.

3. Petitioner has been in the United States for over 20 years and is the single mother of three U.S. citizen children, two of whom are minors. She lives with and supports her family in Omaha, Nebraska. This detention is a substantial deprivation and burden that puts Petitioner and her family at risk without her parental and financial support.

4. Petitioner has never been arrested or convicted of any crimes and has never failed to appear in any criminal or immigration proceedings.

5. Petitioner's detention became unlawful on July 15, 2025, when Petitioner was granted release on bond by an Immigration Judge ("IJ"), but was not released from custody at the Lincoln County Detention Center. Ex. 1, Order of the Immigration Judge (July 15, 2025). Her continued detention is an unlawful violation of due process, incorrect interpretation of immigration law, and is *ultra vires*.

6. Petitioner was initially detained at the ICE Field Office at 1717 Ave. H,

Omaha, Nebraska, for nearly three days and subjected to harsh conditions, without access to legal counsel or other basic needs, including medical care. On June 12, 2025, Petitioner was transported for four hours to the Lincoln County Detention Center at 302 N. Jeffers St, North Platte, Nebraska, where she remains detained.

7. In February 2025, Petitioner was diagnosed with Lupus, a complex autoimmune disease. Although she is receiving prescription medicine, she has already missed a series of medical appointments that are needed to provide ongoing assessment of efficacy of treatment, changes in prescription medicine, and laboratory monitoring to prevent serious damage to her renal and other systems. Even in the short term, lack of appropriate treatment causes significant pain and inflammation and could worsen her long-term prognosis.

8. Petitioner is represented in immigration removal proceedings by counsel.

9. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure her due process rights and her ability to provide care for her three children, who have needs that require Petitioner's presence and support. In the alternative, she respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days.

## JURISDICTION AND VENUE

10. Petitioner is detained in civil immigration custody at Lincoln County Detention Center in North Platte, Nebraska. She has been detained since, on or about, June 10, 2025. She has no criminal convictions.

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*.

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). 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.

13. Venue is proper in the District of Nebraska under 28 U.S.C. § 1391, because at least one Defendant is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

## REQUIREMENTS OF 28 U.S.C. § 2243
### Writ Of Habeas Corpus Issuance, Return, Hearing, and Decision

14. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time." *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

16. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

**PARTIES**

17. Petitioner is 39 years old. She was born in Mexico and originally came to the United States in 2003. Prior to her detention, she was living with and supporting her three U. S. citizen children in Omaha, Nebraska as a single mother. Petitioner is the subject of a removal proceeding based upon the sole charge of being present in the U.S. without being "admitted or paroled, or who arrived in the [U.S.] at any time or place other than as designated by the Attorney General" under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i). Ex. 2, Notice to Appear (July 8, 2025).

18. Respondent Donald J. Trump is named in their official capacity as President of the United States. In this capacity, they are responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security.

19. Respondent Marco Rubio is named in their official capacity as the U. S.

Secretary of State. In this capacity, among other things, they have the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States." 8 U.S.C. § 1227(a)(4)(C)(i).

20. Respondent Kristi Noem is named in their official capacity as the Secretary of U.S. Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, they are responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.

21. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

22. Respondent Pamela Bondi is named in their official capacity as the U.S. Attorney General. Attorney General Bondi is responsible for continuing a

custody case against a noncitizen under 8 C.F.R. § 1003.6(d)

23. Respondent Peter Berg is named in their official capacity as the Field Office Director for the St. Paul Field Office of ICE. Director Berg is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Berg is a legal custodian of Petitioner.

24. Respondent Jerome J. Kramer is named in their official capacity as the Sheriff of Lincoln County and the Official of the Lincoln County Detention Center. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

## FACTUAL ALLEGATIONS

25. Petitioner was detained during a worksite raid at her place of work, Glenn Valley Foods, in Omaha, Nebraska, on June 10, 2025.

26. On July 12, 2025, immigration counsel for Petitioner submitted a Motion for Bond Determination Hearing before the IJ and submitted evidence regarding her ties to the United States to demonstrate that she is neither a flight risk nor a danger to the community and is statutorily eligible to be considered for multiple reliefs from removal. Ex. 3, Motion for Bond Determination (July 7, 2025).

27. A custody and bond determination hearing was held on July 15, 2025, and counsel for ICE argued that Petitioner was not entitled to bond due to the government's assertion that she was detained pursuant to 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226. The IJ determined that Petitioner

was eligible for bond under 8 U.S.C. § 1226 and ordered that Petitioner should be released upon posting bond in the amount of $7,000.00. *See* Ex. 1. The IJ's order of July 25, 2025, explains the finding that the Immigration Court does have jurisdiction for bond redetermination and that Petitioner is not a danger to the community and the bond, as set, alleviates any flight risk concerns. *See* Ex. 4, Bond Decision of the Immigration Judge (July 25, 2025).

28. Petitioner's family members and Prairielands Freedom Funds attempted to post the entire amount of bond funds in accordance with the IJ's order three times, on July 15, 16, and 18, 2025, on behalf of Petitioner; each time they received a denial through the bond processing system "ICE CeBonds" with a different reason cited in comments. Ex. 5, ICE CeBonds Payment Request (July 15, 16, and 18, 2025). Prairielands Freedom Funds remains prepared and able to post the bond funds to secure Petitioner's release consistent with the IJ's custody order.

29. It has been widely reported that ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond; specifically, ICE is now arguing that only those *already admitted* to the U.S. (typically requiring lengthy legal efforts with representation of counsel, such as adjusting status to a legal permanent resident or refugee) are eligible to be released from custody during their removal proceedings, and that all others are treated subject to 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only

extremely limited parole options *at ICE's discretion*. Ex. 6, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025). This is a reversal of ICE's established practice of releasing from custody the vast majority of noncitizens in removal proceedings not deemed to be a flight risk or a danger to the community.

30. This novel interpretation means that millions noncitizens who entered the United States without inspection (who have not already been formally admitted or paroled) that are contacted by ICE in the interior of the U.S. will be treated as if they were an "arriving alien" at the border and subject to mandatory detention, regardless of how long they have been present in the United States or other equities (such as complete lack of criminal history or U.S. citizen family members including dependent children). ICE will now argue all of these noncitizens are not even entitled to a bond hearing by an IJ on the issue of release from custody during the pendency of removal proceedings.

31. ICE filed a Notice of ICE Intent to Appeal Custody Redetermination ("EOIR-43") of the IJ's order that Petitioner is eligible for bond and order for her release from custody on bond on July 15, 2025. Ex. 7, Notice of Intent to Appeal (July 15, 2025).

32. The filing of the EOIR-43 invoked the automatic stay provision of 8 U.S.C. § 1003.19(i)(2), which reflects its reversal of interpretation of bond eligibility.

33. ICE filed a Notice of Appeal from a Decision of an Immigration Judge

("EOIR-26") confirming that their position at the custody hearing and the basis of their appeal is ICE's reversal of interpretation and application of 8 U.S.C. § 1225. Ex. 8, Notice of Appeal (July 18, 2025).

34. Even though the IJ ordered Petitioner released on bond, she remains in detention and separated from her family and community. She is experiencing significant and deep emotional and mental trauma from this separation from all those she loves.

35. In addition, Petitioner is unable to support and provide for her family because she is detained and unable to continue as a breadwinner. Her children are only able to communicate with her mother via pre-paid phone calls. The minor children have struggled to begin the school year without their mother, relying on the oldest child to provide funds and support for back to school expenses.

36. Petitioner's continued detention separates her from her family, prohibits her from being able to provide important support for her family, and inhibits her removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harms.

37. Despite having a reasoned IJ decision ordering Petitioner's release and return to her family and community upon posting bond, she remains detained over four hours away from her family, counsel, and support system and continues to be subjected to the aforementioned harms.

## LEGAL FRAMEWORK

### Due Process Clause

38. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom 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).

39. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id*. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

40. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be

reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id*. at 335.

**Immigration and Nationality Act**

41. Title 8 of the United States Code, Section 1221 *et seq*., controls the United States Government's authority to detain noncitizens during their removal proceedings.

42. The INA authorizes detention for noncitizens under four distinct provisions:

1) **Discretionary Detention**. **8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

2) **Mandatory Detention of "Criminal" Noncitizens**. **8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

3) **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for noncitizen applicants for admissions, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the

U.S. and appear subject to removal from the U.S.

4) **Detention Following Completion of Removal Proceedings**.

**8 U.S.C. § 1231(a)** generally requires the detention for noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

43. The instant case concerns the detention provisions at §§ 1226(a) and 1225(b).

44. Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

45. Following enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)("Despite being applicants for admission, aliens who are present

without having been admitted or paroled (formerly referred to as aliens who entered without inspection) ***will be eligible for bond and bond redetermination***") (emphasis added).

46. For nearly thirty years, the practice of the government, specifically ICE and Executive Office for Immigration Review, which operate under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been present in the U.S. for more than two years (as opposed to "arriving" at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the IJ determined bond amount in full. 8 U.S.C. § 1226(a)(2)(A). *See* Ex. 9, Declaration of Kerry Doyle (August 12, 2025) (explaining the decades long practice of not filing automatic stays regarding bond determinations).

47. Recently, ICE has—without warning and without any publicly stated rationale—reversed course and adopted a policy of attempting to treat all individual noncitizens that were not previously admitted to the U.S. that are contacted in the interior of the U.S. at any time after their entry as "arriving" regardless of the particularities of their case. These particularities now being ignored— all of which have historically been highly relevant to determinations regarding custody of a noncitizen to both DHS and Immigration Courts—such

as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention is in the community's best interest. *See* Ex. 4. Though no public announcement of this sweeping new interpretation of these statutes was announced, ICE now reasons, and argued in front of the IJ at Petitioner's bond redetermination hearing, that the mandatory detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection who are alleged to be subject to grounds of inadmissibility at § 1182. *See* Ex. 8 at 4.

48. As a result of ICE's interpretation and practice change, individual noncitizens, including long-time U.S. community members and even those who have had their particular circumstances reviewed and were ordered to be released upon posting bond by an IJ, continue to be detained by ICE and subjected to automatic stay provisions. To be clear, Petitioner and other noncitizens are being held in continued ICE detention, even when IJs do not agree with ICE's interpretation of the statutes and regulations at hand.

49. "The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing

*Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Lopez Benitez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention ***only*** as a matter of discretion under § 1226(a)") (emphasis added).

50. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. The government's assertion that Petitioner is detained under § 1225—even though she was arrested and detained under § 1226—is meritless. Petitioner came to be in immigration proceedings based on a DHS filing that clearly identified her as "an alien present in the United Stated who has not been admitted or paroled" rather than "an arriving alien." *See* Ex. 2. For decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which applies to noncitizens "already in the country." *Id.* at 289. Petitioner has been in the United States for over 25 years.

51. This new interpretation is now advanced by the government after decades of consistent use to the contrary. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. See, e.g., *Martinez*, 2025 WL 2084238; *Gomes*

*v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. Apr. 24, 2025). *See also* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

52. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n 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) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

53. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.").

54. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

55. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

56. Second, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A).

Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.

57. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

58. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

59. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

60. Accordingly, the mandatory detention provision of § 1225(b)(2) does not

apply to Petitioner.

**Staying Immigration Judge's Bond Order**

61. Bond decisions issued by an IJ can be appealed by DHS or the noncitizen to the Board of Immigration Appeals ("BIA") by filing a Notice of Appeal from a Decision of an Immigration Judge (EOIR-26) within 30 days.

62. DHS can file a motion with the BIA seeking a discretionary stay of the custody decision—whether to release the noncitizen on bond consistent with the IJ's order at any time during the appeal period. 8 C.F.R. § 1003.19(i)(1) (hereinafter "discretionary stay").

63. In cases where the bond issued is greater than $10,000 or "DHS has determined" that the noncitizen should not be released, a stay of custody order is issued automatically preventing the release of the noncitizen on bond upon filing of a simple one-page form, the Notice of Service of Intent to Appeal Custody Redetermination (EOIR-43). *See* 8 C.F.R. § 1003.19(i)(2) (hereinafter "automatic stay").

64. The discretionary stay requires an individualized analysis by the BIA of the noncitizen's case to determine if staying the IJ's order is appropriate. This analysis considers the individual's criminal history, ties to the community, flight risk, dangerousness, and the likelihood of prevailing in removal proceedings. *See, e.g., Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F.Supp.2d 1071 (D. N.D. Cal. 2004); *Bezman v. Ashcroft*, 245 F.Supp.2d 446 (D. Conn. 2003).

65. In contrast, the automatic stay is a unilateral decision by ICE through a boilerplate form (EOIR-43), which does not proffer any evidence or analysis of the noncitizen's status as either a flight risk or a danger to the community. This automatic stay results in ICE, the party that lost the issue in front of the IJ, being able to unilaterally and without any particular grounds, to immediately prevent the execution of the IJ's Order of Release, which is founded on a particularized determination that the noncitizen can safely be released from custody upon posting of bond.

66. It is important to note there is no congressional authority for ICE, DHS, or any agency within DHS, to unilaterally and automatically stay an IJ's bond decision. In fact, the only congressional authority cuts the other way: Congress determined that the default for noncitizens detained under Section 1226(a) is discretionary release. *Jennings*, 583 U.S. at 289.

67. The automatic stay is not subject to review by either the IJ or the BIA.

68. "'In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.' . . . **Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm**." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)) (emphasis added).

69. Petitioner is detained today solely at the unilateral behest of ICE, pursuant to a regulation written by executive agencies, not Congress: 8 C.F.R. § 1003.19(i)(2). This regulation states, in whole:

> Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, **any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43)** with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

C.F.R. § 1003.19(i)(2) (emphasis added).

70. The regulations expand on the related procedures in 8 C.F.R. § 1003.6(c). "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 100.36(c)(4).

71. However, the regulations provide for DHS's continued power to keep a noncitizen detained even after the automatic stay lapses.

72. "DHS may seek a discretionary stay pursuant to 8 CFR § 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay." 8 C.F.R. § 1003.6(c)(5). All DHS must do is submit a motion, and "may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings." *Id.*

73. If the BIA has not resolved the custody appeal within 90 days and "[i]f the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary

stay." 8 C.F.R. § 1003.6(c)(5).

74. If the BIA rules in a noncitizen's favor, authorizing release on bond, or denying DHS's motion for a discretionary stay, "the alien's release shall be automatically stayed for five business days." 8 C.F.R. § 1003.6(d).

75. This additional five-day automatic stay in the event of the BIA authorizing a noncitizen's release is to provide DHS with another opportunity to keep the person detained despite orders to the contrary.

76. "If, within that five-day [secondary automatic stay] period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General." 8 C.F.R. § 1003.6(d).

77. "DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General. . . . The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." 8 C.F.R. § 1003.6(d).

78. Thus, even if the BIA upheld the IJ's order, granted the noncitizen's bond, and ordered them released, they would remain in detention for five more days while DHS is given the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for

discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. *Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no time limit for this stay or these decisions.

79. The scheme, plainly designed by the executive branch to give DHS the power to circumvent both IJ and BIA orders, can be summarized as follows:

- IJ orders DHS to release noncitizen on bond:
    - DHS files EOIR-43 Notice of Intent to Appeal within one business day, invoking automatic stay. 8 C.F.R. § 1003.19(i)(2).
    - DHS files EOIR-26 Notice of Appeal within ten business days. 8 C.F.R. § 1003.6(c)(1).
    - Automatic stay lapses 90 days after DHS files EOIR-26 Notice of Appeal. 8 C.F.R. § 1003.6(c)(4).
    - DHS may seek discretionary stay before 90 days lapse. 8 C.F.R. §§ 1003.6(c)(5); 1003.19(i)(1).
- BIA orders release on bond or denies discretionary stay motion:
    - Release is automatically stayed for an additional five business days. 8 C.F.R. § 1003.6(d).
    - Within that five business day automatic stay, DHS may refer the case to the Attorney General. 8 C.F.R. § 1003.6(d).
    - Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.6(d).
    - DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 C.F.R. § 1003.6(d).

80. The regulations are written in such a way that it does not matter what either the IJ or BIA orders; if the government disagrees, the government can, through its own actions and per its own regulations, keep the noncitizen

detained. And that detention could be, in reality, indefinite.

81. "Indefinite detention of a [noncitizen]" raises "a serious constitutional problem." *Zadvydas*, 533 U.S. at 690. The automatic stay provision detains individuals indefinitely, without a "discernible termination point" (*Ashley*, 288 F.Supp.2d at 672), "definite termination point" (*Zabadi v. Chertoffi*, No. C05-01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. 2005)), "finite time frame" (*Id.*), "certain time parameters for final resolution" (*Zavala*, 310 F. Supp.2d at 1075), or "ascertainable end point" (*Bezmen*, 245 F.Supp.2d at 449-50).

82. Even more troubling, the automatic stay does not provide for review by the IJ or BIA–a clear due process violation. A noncitizen subject to DHS's arrest and continued detention in spite of an IJ ordering his release has no method to challenge the automatic stay before the immigration court or BIA. *See Ashley*, 288 F.Supp.2d at 675 ("continued detention of alien without judicial review of the automatic stay of bail determination violated alien's procedural and substantive due process rights").

83. Petitioner's continued detention under the automatic stay will never be reviewed. Her only option is to wait for the BIA to take up the underlying matter.

**Board of Immigration Appeals**

84. However, the BIA's appellate process does not offer a meaningful or timely opportunity to correct Respondent's errors.

85. According to the agency's own data, during fiscal year 2024, the BIA's

average processing time for a bond appeal was 204 days, approximately seven months. For an average case where bond was granted in July 2025, it is likely that it would not be decided until February 2026. *See Rodriguez v. Bostock*, 349 F.R.D. 333 (W.D. Wash. 2025).

86. The 204 days is only for the average case. Cases can take longer or shorter, meaning that there is no definite timeline for resolution and release.

87. The months a person waits for appellate review deprives them of time with their children, spouses, family and community members, and liberty. Their family and community, who are often U.S. citizens or lawful permanent residents, are similarly deprived of the love, care, financial support, and meaningful contributions the detained person provides.

88. Detained individual noncitizens are often incarcerated in jail, or jail-like, settings. They are forced to sleep in communal spaces, receive inadequate medical care, and subjected to other degrading treatment.

89. While not all noncitizens succeed in their appeals, some do. The BIA's months-long appellate review means that for those individuals, they have spent months of unnecessary time in detention and suffered the harms outlined above.

90. Failing to provide timely appellate review of erroneous interpretations of the INA violates the Due Process Clause.

**The Automatic Stay Violates Due Process**

91. The automatic stay "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." *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1334847 at *6 (D. Minn. May 5, 2025).

92. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews*, 424 U.S. 319 at 335.

93. As to the first *Mathews* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)). Petitioner has been detained for over two months, preventing her from seeing children who are struggling without her, going to work, and participating in her community.

94. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest,

and the extent to which that risk could be reduced by additional safeguards. As explained above, the current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. Unlike the typical requests for a stay which require a demonstration of the likelihood of success on the merits, the automatic stay provision demands no such showing; in fact, it was enacted precisely to avoid the need for such an individualized determination. An IJ has already determined that Petitioner is neither a flight risk nor a danger to the community.

95. But that individualized reasoned decision by the IJ was effectively overruled by a unilateral determination by an ICE attorney which "poses a serious risk of error." *Zavala*, 310 F.Supp.2d at 1076. This allows the DHS attorney, "who has by definition failed to persuade a judge in an adversary hearing that detention is justified," to make the stay decision without oversight or review. *Ashley*, 288 F.Supp.2d at 671. This conflates the role of prosecutor and adjudicator, which is impermissible due to the high potential for error. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955).

96. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. This "policy and procedure" was never officially published by DHS and was only discovered by the press observing an intraoffice memo mere weeks ago on July 8, 2025. *See* Ex. 5. As explained above, the IJ has already made a determination that Petitioner is appropriate to be released on bond, having considered both

dangerousness and flight risk. *See* Ex. 1. Further, DHS is still able to seek a discretionary stay before the BIA under 8 C.F.R. § 1003.19(i)(1) which would require some showing of likelihood of success on the merits. *Ashley*, 288 F.Supp.2d at 670-71; *Zavala*, 310 F.Supp.2d at 1079.

97. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted without the violation." *Id.* (citation omitted) (internal quotations omitted). "To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

98. Certainly, if DHS could not invoke the automatic stay, Petitioner would have been released on bond and would be home with her children and able to support her household. This would occur pursuant to the IJ's order that she may be released upon posting of a $7,000 bond which was and is ready to be posted on Petitioner's behalf. Her continued detention through the automatic stay unilaterally invoked by ICE as a result of "interim guidance" via interoffice memo despite the IJ's order is actual prejudice.

99. Furthermore, it is entirely plausible that the more elaborate process of the discretionary stay (8 C.F.R. § 1003.19(i)(1)) would have resulted in the BIA

not granting a stay of the bond order. This is because DHS is unable to show a likelihood of success on the merits and Petitioner would be permitted to reply in opposition to the stay arguing the same grounds as the IJ's reasoning for granting release upon bond.

## CLAIMS FOR RELIEF

### FIRST CAUSE OF ACTION
### Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

100. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

101. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of her liberty.

102. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to her community and family.

103. The automatic stay provision keeping Petitioner detained today is unconstitutional as applied to her and in violation of her due process rights. An IJ ordered ICE to release Petitioner on a reasonable bond of $7,000.00, and because ICE disagrees with that order based upon a new and novel "interim

guidance," it invoked an automatic stay of the order, rendering Petitioner stuck in detention.

104. The automatic stay regulation rendered Petitioner's bond hearing a charade, because the outcome of the hearing or the validity of the IJ's reasoning did not matter. ICE wants Petitioner detained, and through the automatic stay, it can effectively ignore the IJ's order to the contrary. There is no due process when the government, who lost the argument in court, gets to do what they want anyway.

105. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

**SECOND CAUSE OF ACTION**
**Violation of Immigration and Nationality Act**

106. Petitioner repeats and incorporates by reference all allegations in paragraphs 1-99 as though set forth fully herein.

107. Petitioner was detained pursuant to "authority contained in section 236" of the INA; section 236 is codified at 8 U.S.C. § 1226. Ex. 2. Despite this, DHS now argues that she is detained subject to 8 U.S.C. § 1225(b)(2).

108. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on

bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

109. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

110. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

**THIRD CAUSE OF ACTION**
***Ultra Vires* Regulation**

111. Petitioner repeats and incorporates by reference all allegations in paragraphs 1-99 as though set forth fully herein.

112. The automatic stay regulation exceeds the authority given to the Attorney General by Congress and unlawfully eliminates IJs' discretionary authority to make custody determinations.

113. Congress gave the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings if they have not been convicted of certain criminal offenses and are not linked to terrorist activities. *See* 8 U.S.C. § 1226(a), (c). The Attorney General has delegated this authority to IJs, who have discretion to determine whether to release these noncitizens on bond. 8 C.F.R. §§ 1003.19, 1236.1; *see also* 28 U.S.C. § 510 (permitting the Attorney General to delegate her function to officers or employees within the Department of Justice).

114. Congress has not delegated this authority to DHS. There is no statutory authority for DHS to unilaterally stay an IJ's bond determination.

DHS's use of the automatic stay is an unlawful use of the discretionary power granted to the Attorney General and "has the effect of mandatory detention of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention." *Zavala*, 310 F. Supp. 2d at 1079; *see also Ashley*, 288 F. Supp. 2d at 673 ("As Congress exempted aliens like Petitioner from the mandatory detention of § 1226(c), it is unlikely that it would have condoned this back-end approach to detaining aliens like Petitioner through the combined use of § 1226(a) and § 3.19(i)(2).").

115. Here, the IJ determined that upon posting of set bond Petitioner is not a danger to the community or a t flight risk and ordered DHS release upon posting of bond.

116. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), purports to give DHS the authority to unilaterally override the IJ's decision. It is unlawful and *ultra vires*.

## PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1) Assume jurisdiction over this matter;

2) Order the immediate release of Petitioner pending these proceedings;

3) Order Respondents to accept payment of the bond consistent with the Immigration Judge's order;

4) Order Respondents not to transfer Petitioner out of the District of Nebraska during the pendency of these proceedings to preserve jurisdiction and access to counsel;

5) Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment, violates the Immigration and

Nationality Act and is *ultra vires*;

6) Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody in accordance with the bond order from the IJ, or, in the alternative, order Respondents to show cause why this Petition should not be granted within three days;

7) Award reasonable attorneys' fees and costs for this action; and

8) Grant such further relief as the Court deems just and proper.

Dated: August 25, 2025
Respectfully submitted,

Yurenia Genchi Palma,
Petitioner.

By: *<u>/s/ Grant L. Friedman</u>*
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# VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Complaint for Declaratory and Injunctive Relief; Petition for Habeas Corpus are true and correct.

Executed this 25 day of August, 2025.

Yurenia Genchi Palma