UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

YANDDIRY YANETH CONTRERAS MALDONADO, Petitioner, - against - ALEXANDER CABEZAS, in his official capacity as Acting Assistant Field Office Director for the Newark Field Office for Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States of America, Respondents.	Civil No. 25-13004 (JKS)

REPLY TO RESPONDENTS' ANSWER TO
AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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Petitioner Yanddiry Yaneth Contreras Maldonado respectfully submits this reply to Respondents' Answer to the Amended Petition for Writ of Habeas Corpus (ECF No. 26) (the "Answer" or "Ans.").[1]

INTRODUCTION

Respondents' Answer is striking in its omissions. Respondents do not meaningfully address any of the three constitutional violations alleged in the Amended Petition. Rather, they engage in misdirection and make irrelevant arguments. This is not particularly surprising as Respondents' conduct is indefensible. Accordingly, Yanddiry's request for habeas relief should be granted.

With respect to Yanddiry's claim that she was entitled to an individualized pre-detention assessment, Respondents do not dispute that (i) for noncitizens detained pursuant to Section 1226(a), the Due Process Clause requires such an assessment, and (ii) Yanddiry was not afforded one. Instead, based on a recent—and unprecedented—reinterpretation of the statutory scheme for detention, Respondents contend that Section 1225 applies to Yanddiry. Not only does Respondents' reinterpretation violate bedrock principles of statutory construction, but it has been rejected by virtually every federal court that has considered it.

[1] Capitalized terms not defined herein shall have the same meaning as in the Amended Verified Petition for Writ of Habeas Corpus (ECF No. 18) (the "Amended Petition" or "Am. Pet."). Citations to "Reply Ex. __" refer to the exhibits attached to the Declaration of Jacqueline Pearce, being filed concurrently herewith.

Moreover, Respondents' assertion that Section 1225 applies to Yanddiry is contradicted by their position before the Immigration Court, where ICE conceded that she is subject to Section 1226(a). Respondents cannot have it both ways.

With respect to Yanddiry's claim that her bond hearing was constitutionally deficient, Respondents again fail to engage on the merits, arguing that Yanddiry should be required to exhaust administrative remedies before seeking relief from this Court. However, exhaustion is excused here based on controlling law.

With respect to Yanddiry's claim that Respondents violated her First Amendment rights, Respondents summarily contend that her transfer was due to unspecified "operational needs," not retaliation. Their conclusory assertion should not be credited, particularly given the temporal connection between the filing of this case and Yanddiry's transfer out of this jurisdiction. Further, Respondents ignore the other forms of retaliatory conduct alleged in the Amended Petition.

In sum, Respondents have not rebutted any of the constitutional violations set forth in the Amended Petition and Yanddiry should be released immediately.

ARGUMENT

I. YANDDIRY'S DUE PROCESS RIGHTS WERE VIOLATED WHEN RESPONDENTS FAILED TO CONDUCT AN INDIVIDUALIZED PRE-DETENTION ASSESSMENT

Because Yanddiry's detention is governed by Section 1226(a), the Due Process Clause required that Yanddiry be afforded an individualized pre-detention

assessment. Am. Pet. ¶¶ 102, 106, 122-28. Further, because Respondents did not conduct such an assessment, the sole remedy for this due process violation is Yanddiry's immediate release from custody. *Id*. ¶¶ 106-08; *see also Bermeo Sicha v. Bernal*, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025); *E.A. T-B. v. Wamsley*, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025).[2]

In their Answer, Respondents do not address—and thus concede—that (i) due process requires that non-citizens detained pursuant to Section 1226(a) be given an individualized pre-detention assessment, and (ii) Yanddiry was not afforded such an assessment. *See generally*, Ans.; *see also United States v. Dowdell*, 70 F.4th 134, 143 (3d Cir. 2023) (government forfeited argument by not raising it in opposition briefing); *United States v. Payo*, 135 F.4th 99, 107 (3d Cir. 2025) (government waived argument by failing to raise it in its memorandum). Instead, Respondents rest on their contention that Yanddiry's detention is mandatory pursuant to Section 1225. Ans. at 10-12. For the reasons set forth below, Section 1225 does not apply to Yanddiry.

[2] Contrary to Respondents' assertion, Yanddiry does not claim that the government was required to conduct a "pre-detention bond hearing." Ans. at 9. Rather, it was ICE's failure to provide ***any*** individualized assessment of the necessity of Yanddiry's detention that forms the basis of the due process violation. *See* Am. Pet. ¶¶ 5-7, 126-27.

A. Respondents Previously Acknowledged That Yanddiry's Detention is Governed by Section 1226

Buried in a footnote, Respondents concede that they are simultaneously advancing inconsistent positions concerning their basis for detaining Yanddiry:

> ICE acknowledges that during Petitioner's August 14, 2025, bond hearing, its attorney took the position that Petitioner was eligible for a bond determination under 8 U.S.C. § 1226(a). Nonetheless, it maintains that Petitioner is legally detained under § 1225(b)(2) . . . .

Ans. at 12 n.6; *see also* Reply Ex. A (Hearing Transcript) at 7:19-8:5. Respondents cannot have it both ways. In light of ICE's position before the Immigration Court, Respondents' current contention that Yanddiry is subject to mandatory detention pursuant to Section 1225 should be rejected. *See Calderon v. Kaiser*, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025) (refusing government's "position that [petitioner] was both released under § 1226(a) yet remains 'subject to' § 1225(b)").

B. Respondents' Recent Reinterpretation of Section 1225 Violates Canons of Statutory Construction

Substantively, Respondents' argument that Yanddiry is subject to Section 1225 does not withstand scrutiny. It is contrary to decades of agency precedent, ignores the plain language of the statute, would impermissibly render statutory language mere surplusage, and is contradicted by the legislative history.

Prior to July 8, 2025, DHS routinely detained non-citizens who entered the United States without inspection, like Yanddiry, pursuant to its discretionary

authority under Section 1226(a). Ans. at 11. On July 8, 2025—the same day Yanddiry was detained—ICE "issued an internal memorandum explaining that the agency had 'revisited its legal position . . . .'" *Martinez v. Hyde*, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025) (citations omitted). Since July 8, 2025, Respondents have taken the unprecedented stance that "any noncitizen present without admission or parole remains an applicant for admission"—no matter how long they have been in the country—"and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)." Ans. at 11. As one court observed, DHS's decision to "radically alter its interpretation of the immigration statutes . . . would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States . . . ." *Romero v. Hyde*, 2025 WL 2403827 at *1 (D. Mass. Aug. 19, 2025). As another court put it, "[t]he recent shift to use the mandatory detention framework under Section 1225(b)(2)(A) is not only wrong but also fundamentally unfair." *Lopez-Campos v. Raycraft*, 2025 WL 2496379 at *10 (E.D. Mich. Aug. 29, 2025).

Since July, virtually every federal court that has reviewed Respondents' expansive reinterpretation of Section 1225 has rejected it. *See*, *e.g.*, *Tamay v. Scott*, 2025 WL 2507011, at *2 (D. Me. Sept. 2, 2025); *Lopez-Campos*, 2025 WL 2496379, at *10; *Kostak v. Trump*, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, 2025 WL 2457610, at *1 (D. Mass. Aug. 27, 2025); *Jose J.O.E.*

v. Bondi, 2025 WL 2466670, at *1 (D. Minn. Aug. 27, 2025); *Calderon*, 2025 WL 2430609 at *3; *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025); *Romero*, 2025 WL 2403827, at *1; *Arrazola Gonzalez v. Noem*, 2025 WL 2379285, *2 (C.D. Cal. Aug. 15, 2025); *dos Santos v. Noem*, 2025 WL 2370988, at *7-8 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *9 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at *11 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133, (D. Ariz. Aug. 13, 2025); *Martinez*, 2025 WL 2084238, at *1; *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256-59 (W.D. Wash. 2025) (rejecting expansive reinterpretation of Section 1225(b) and prohibiting denial of bond for noncitizens detained within the United States); Order Granting Petitioners' Temporary Restraining Order, *Maldonado Bautista v. Noem*, 5:25-cv-01873, Dkt. 14 at 8 (C.D. Cal. July 28, 2025) (nationwide class action; rejecting application of Section 1225(b) to noncitizens detained within the United States) (attached as Reply Ex. B). The reason so many courts have rejected Respondents' position is simple: it violates basic principles of statutory construction.

First, in construing a statute, a court should look to its plain language. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004). Here, the plain language of Section 1225(b) states that it applies to a noncitizen "who is an applicant for admission" ***and*** who is

"seeking admission . . . ." 8 U.S.C § 1225(b)(2)(A). The phrase "seeking admission" "necessarily implies some sort of present-tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Lopez Benitez*, 2025 WL 2371588, at *6. Where a noncitizen (like [redacted]) previously entered without inspection and was never "admitted" under the immigration laws, "it does not follow that [s]he continues to be actively 'seeking'" entry to the United States; rather she "has already 'entered' the country (albeit unlawfully)." *Lopez Benitez*, 2025 WL 2371588, at *6.

Second, Respondents' reinterpretation of Section 1225 would impermissibly render significant portions of Section 1226 superfluous. *See Marx v. Gen. Revenue Corp.,* 568 U.S. 371, 386 (2013) ("the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme"). If, as Respondents now contend, "anyone who has entered the country unlawfully, regardless of how long they have resided here, is subject to mandatory detention under § 1225(b)(2)(A) . . . then it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply." *Lopez Benitez*, 2025 WL 2371588, at *8. Additionally, a recent amendment of Section 1226(c) provides that noncitizens who have not been lawfully admitted and who have committed certain crimes are not eligible for release. 8 U.S.C. § 1226(c); Pub. L. No. 119-1, 139 Stat. 3 (2025). If all noncitizens who have not been lawfully admitted are necessarily subject to mandatory detention under Section 1225, there

would be no need to define a subset of those individuals for mandatory detention in Section 1226(c). *See Gomes v. Hyde*, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *Lopez Benitez*, 2025 WL 2371588, at *7 (citing *Martinez*, 2025 WL 2084238, at *7).

Third, as the Third Circuit has recognized, a "court's primary purpose in statutory interpretation is to discern legislative intent." *Morgan v. Gay*, 466 F.3d 276, 277 (3d Cir. 2006). Here, the relevant legislative history further supports the proposition that Section 1226—not Section 1225—governs the detention of noncitizens already physically present in the United States. *Rodriguez*, 779 F. Supp. 3d at 1260. Prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996, Section 1226(a)'s predecessor law applied to all noncitizens arrested within the United States and provided for discretionary release on bond. *Rodriguez,* 779 F. Supp. 3d at 1260; 8 U.S.C. § 1252(a)(1) (1994). Section 1226(a) "restate[d]" the provisions in the predecessor statute with respect to the arrest, detention, and release on bond of "an alien who is not lawfully in the United States." H.R. Rep. No. 104-469 pt. 1, at 229. Thus, because noncitizens arrested within the United States (like [redacted]) "were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA[,]" the legislative history confirms that

Section 1226—not Section 1225—applies to noncitizens arrested within the country. *Rodriguez*, 779 F. Supp. 3d at 1260.

Given the foregoing, the Court should reject Respondents' argument that Yanddiry is detained pursuant to Section 1225.[3]

II. YANDDIRY'S DUE PROCESS RIGHTS WERE VIOLATED BECAUSE SHE DID NOT RECEIVE CONSTITUTIONALLY SUFFICIENT POST-DETENTION REVIEW

Yanddiry's due process rights were also violated because the bond hearing she received was not constitutionally adequate. Am. Pet. ¶¶ 134-36. Among other things, the basis for denying her bond was not supported by record evidence, the immigration judge had predetermined the outcome, and Yanddiry had limited access to counsel, impairing her ability to properly prepare for the hearing. *Id.*

Respondents address the merits of Yanddiry's post-detention due process claim in a single (wholly inadequate) footnote, *see* Ans. at 17 n.7, and instead focus on their contention that Yanddiry did not adequately exhaust her administrative remedies. On both the merits of this claim and exhaustion, Respondents are wrong.

[3] While the BIA recently adopted Respondents' reinterpretation of Section 1225 in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), this Court should not accept an interpretation by an agency that does not comport with canons of statutory interpretation. *See Gomes*, 2025 WL 1869299, at *9 n.9 ("[C]ourts must exercise independent judgment in determining the meaning of statutory provisions") (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024)); *see also United States v. Rutherford*, 120 F.4th 360, 378-79 (3d Cir. 2024).

A. [redacted]'s Bond Hearing was Constitutionally Improper

Respondents attempt to defend [redacted]'s bond hearing on the basis that an immigration judge has broad discretion when evaluating the flight risk of the noncitizen. Ans. at 17 n.17. While true, such discretion is not limitless; the judge must consider only "evidence in the record . . . ." *Matter of Guerra,* 24 I&N Dec. at 40 (BIA 2006). Here, no evidence showing [redacted] was a flight risk was submitted to the Immigration Court. Reply Ex. A at 12:13-16. Thus, the immigration judge denied [redacted]'s bond application (at least in part) based on unsubstantiated information. *Id.* at 14:15-23. This is an unambiguous violation of the due process requirements applicable to immigration adjudications, as established by the Third Circuit. *See Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001).

Further, Respondents do not address—much less deny—that [redacted] had limited access to counsel to properly prepare for the bond hearing. Further, as detailed in the Amended Petition, these limitations were not merely by-products of detention facility procedures, but intentional and retaliatory actions intended to penalize [redacted]. Am. Pet. ¶¶ 54, 150-51; *see also* Section III *infra*.

Respondents also do not meaningfully dispute that [redacted] was not afforded an "individualized determination of [her] interests," *Abdulai*, 239 F.3d at 549, in light of the immigration judge's prior decision that she was not eligible to be released on bond in the first instance. *Compare* Ans. at 8-9 *with* Am. Pet. ¶¶ 136, 137.

Indeed, Respondents do not even attempt to explain how a judge who determined that he did not have jurisdiction to consider bond could—days later—conduct a fair and constitutionally adequate bond hearing. *Id.*

Finally, Respondents assert that, based on Supreme Court precedent, it is "well settled" that the government does not bear the burden of proof in Section 1226(a) bond hearings. Ans. at 17 n.7. Respondents are incorrect. In *Jennings v. Rodriguez*, the Supreme Court expressly abstained from deciding the constitutional issues (which included the allocation of the burden at bond hearings). 583 U.S. 281, 312 (2018). Further, many courts across the country have held that the burden of proof in a bond hearing is squarely on the government. *See* Am. Pet. ¶¶ 113-15. And the Third Circuit previously held that, under Section 1226(c), the government is required to prove that a noncitizen is a danger or flight risk once detention has become unreasonably prolonged. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203 (3d. Cir. 2020).[4] Thus, this Court has ample precedent to hold that, under Section 1226(a), it is a violation of due process to place the burden on a noncitizen to disprove their flight risk and danger.

[4] While Respondents attempt to distinguish *German Santos* because it concerned detention under Section 1226(c), Ans. at 17 n.7, it would be incongruous for the Third Circuit to place the burden on the government in the Section 1226(c) context and not in the Section 1226(a) context. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 34-35 (1st Cir. 2021).

B. Yanddiry Should Not Be Required to Exhaust Administrative Remedies

Unable to defend Yanddiry's constitutionally deficient bond hearing, Respondents argue that this claim is not ripe because Yanddiry did not exhaust her administrative remedies by appealing to the BIA. Ans. at 16. However, the Third Circuit excuses exhaustion where "administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury." *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (citation omitted). All of these exceptions apply here (though only one is required).

First, exhaustion should be excused as futile in light of the recent BIA decision in *Matter of Yajure Hurtado*. *See Gambino v. Morris*, 134 F.3d 156, 171 (3d Cir. 1998) (exhaustion not required where futile). Specifically, five days ago, the BIA held that noncitizens (like Yanddiry) "who are present in the United States without admission are applicants for admission as defined under Section 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Yajure Hurtado*, 29 I&N Dec. at 220. Requiring Yanddiry to exhaust her custody appeal before the same administrative body that just held she—and millions of other noncitizens—are ineligible for a bond hearing in the first place is the definition of futility. *See Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (BIA appeal futile given decision in *Yajure Hurtado*).

Second, exhaustion should be excused because Yanddiry has raised a "substantial constitutional question" and "[t]he Immigration Court and Board of Immigration Appeals are courts of limited jurisdiction that cannot consider constitutional claims." *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 667 (D.N.J. 2003); *Mudric v. Att'y Gen*., 469 F.3d 94, 98 (3d Cir. 2006) (due process claims generally exempt from exhaustion requirement because BIA does not have jurisdiction). While Respondents attempt to minimize the violation of Yanddiry's constitutional rights as a mere "procedural error correctible through the administrative process[,]" Ans. at 15-16, the Amended Petition raises a constitutional issue regarding the proper allocation of the burden of proof at a bond hearing, which is an issue the BIA cannot reach.

Third, the applicable administrative procedure—an appeal to the BIA—is inadequate to prevent irreparable injury. Recent data shows that custody appeals to the BIA can take over 200 days. *Rodriguez*, 779 F. Supp. 3d at 1253. During this time period, Yanddiry's unjustified detention would continue and, as a result, she would suffer irreparable harm. *See McCarthy v. Madigan*, 503 U.S. 140, 147 (1992) (acknowledging "impending irreparable injury flowing from delay"); *Jimenez v. Cronen,* 317 F. Supp. 3d 626, 657 (D. Mass. 2018) ("Any unjustified loss of liberty for even one more day would be a particularly painful form of irreparable harm . . . .").

Accordingly, while Yanddiry does intend to appeal the Immigration Court's denial of her bond application, for the foregoing reasons, she should not be required to do so as a condition to bring this action.

III. YANDDIRY'S FIRST AMENDMENT RIGHTS WERE VIOLATED BY RESPONDENTS' RETALIATORY ACTIONS

Additionally, Respondents violated Yanddiry's First Amendment rights by retaliating against her for filing this action—transferring her across the country, relocating her without timely notifying her counsel, and limiting her access to counsel prior to key Immigration Court hearings. Am. Pet. ¶¶ 146-50; 153-55.

Respondents' only response to this claim is the self-serving statement that Yanddiry was transferred for unspecified "operational needs . . . not in retaliation for the filing of this habeas action." Ans. at 19 (citing Cabezas Decl. ¶ 4). Respondents' bald assertion is unavailing. To constitute retaliation, the government's actions need not be "motivated solely" or even primarily by the protected activity. *Falco v. Zimmer*, 767 F. App'x 288, 311 (3d Cir. 2019). Because a governmental entity will rarely—if ever—volunteer that it acted unconstitutionally, a court must consider the timing and proximity of the adverse action, patterns of antagonism, and the record as a whole. *Conrad v. Pa. State Police*, 902 F.3d 178, 184 (3d. Cir. 2018); *see also Watson v. Rozum*, 834 F.3d 417, 422 (3d Cir. 2016) (retaliatory motive "almost never subject to proof by direct evidence"). Here, these factors strongly weigh in favor of finding that Yanddiry's transfer was retaliatory. Am. Pet. ¶¶ 146-53.

Additionally, the adverse actions against Yanddiry extend beyond her transfer. *See* Am. Pet. ¶¶ 2, 150, 153, 155. Yet Respondents have neglected to offer ***any*** non-retaliatory reason for this additional conduct.

In sum, viewed as a whole, the record shows an "unusually suggestive" temporal connection between Yanddiry's filing of this action and her subsequent relocation and restricted access to counsel, supporting her First Amendment claim. *See Watson*, 834 F.3d at 424.

CONCLUSION

In light of Respondents' violations of Yanddiry's due process and First Amendment rights, Yanddiry should be immediately released from detention. *See, e.g.*, Am. Pet. ¶ 106; *Kelly v. Almodovar*, 2025 WL 2381591, at *4 (S.D.N.Y Aug. 15, 2025); *Lopez Benitez*, 2025 WL 2371588, at *15; *Suri v. Trump*, 2025 WL 1806692, at *1 (4th Cir. July 1, 2025); *Mohammed H. v. Trump*, 2025 WL 1692739, at *8 (D. Minn. June 17, 2025).[5]

[5] Alternatively, Yanddiry has sought lesser relief, including her transfer back to New Jersey and/or a new bond hearing before this Court. Am. Pet. ¶ 117. None of the cases cited by Respondents hold that these forms of relief are improper. *See* Ans. at 20-21; *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (district courts enjoy "broad" discretion in fashioning habeas remedies); *Jago v. Van Curen*, 454 U.S. 14, 21 n.3 (1981) (discussing the "flexible nature of habeas relief"); *Tamay*, 2025 WL 2507011, at *4 (prohibiting petitioner's transfer outside of district); *Oliveros v. Kaiser*, 2025 WL 2430495, at *4 (N.D. Cal. Aug. 22, 2025) (ordering immediate release from detention and enjoining re-detention without pre-deprivation hearing).

Dated: Washington, D.C.
September 10, 2025

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