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**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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| DIANA M. RIVERA ZUMBA,<br><br>*Petitioner*,<br><br>v.<br><br>PAM BONDI, Attorney General of the United States of America, *et al.*,<br><br>*Respondents.* | HON. KATHARINE S. HAYDEN<br><br>Civil Action No. 25-14626 (KSH) |

# ANSWER TO VERIFIED HABEAS CORPUS PETITION AND ORDER TO SHOW CAUSE

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## PRELIMINARY STATEMENT

On August 8, 2025, U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner pursuant to Immigration and Nationality Act ("INA") § 235(b)(1), 8 U.S.C. § 1225(b)(2), because she is present in the United States without admission or parole. Petitioner is a "native and citizen of Ecuador who entered the United States without inspection in September of 2002." Verified Habeas Corpus Petition ("Pet.") ¶ 9, ECF No. 1. ICE detained Petitioner at Delaney Hall Detention Center, in Newark, New Jersey, from August 8 until August 14, 2025. ICE then drove Petitioner to the Baltimore/Washington International Airport ("BWI"), where she was located when Petitioner's counsel this action. ICE then transported Petitioner to the Adelanto ICE Processing Center in Adelanto, California where she is currently detained.

Petitioner brings a habeas action under 28 U.S.C. § 2241, as well as an order to show cause, seeking immediate release. However, the Court does not have jurisdiction over the Petition, because the Petition was not filed in the district of confinement and Petitioner sues the incorrect respondent. Petitioner filed the Petition in the District of New Jersey at 1:24 p.m. on August 14. At that time, she was in ICE custody in the District of Maryland. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of

confinement."). Accordingly, the Court should either dismiss the Petition or transfer it to the District of Maryland or Central District of California.[1]

Further, if the Court had jurisdiction, the claims fail on the merits. Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), which provides that an "applicant for admission" within the meaning of that statute "shall be detained" until the conclusion of removal proceedings. Petitioner is an "applicant for admission," because she is present in the United States without admission; accordingly, ICE submits that her detention is mandatory. The Court should dismiss the Petition and deny the temporary restraining order as moot.

## BACKGROUND

### I. Immigration History

Petitioner is a "native and citizen of Ecuador who entered the United States without inspection in September of 2002 and has not left" the country. Pet. ¶ 9. Petitioner and her now-deceased husband received a Notice to Appear in Removal Proceedings on May 31, 2007. *Id.* ¶ 10. Petitioner applied for cancellation of removal because her son is a U.S. citizen. *Id.* ¶ 11. Her son is now 18 years old and collegebound. *Id.*, Ex. D (Apr. 30, 2025, NJIT acceptance letter).

On October 30, 2019, an Immigration Judge denied Petitioner's application for cancellation of removal and ordered her removed to Ecuador pursuant to INA §

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[1] Petitioner can also refile the Petition in the Central District of California, the district of her current detention in San Berardino County. *See* U.S. District Court for the Central District of California, *Jurisdiction Map for the Central District of California*, https://www.cacd.uscourts.gov/jurisdiction.

section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible."). *Id.* ¶¶ 11, 12. Petitioner appealed the denial to the Board of Immigration Appeals. *Id.*, Ex. A. Petitioner also asked the Board to remand her matter to the Immigration Court to reconsider her application for cancellation of removal based upon the changed circumstance of her husband's passing in 2020. *Id.* ¶¶ 13, 14, Ex. A.

On November 13, 2023, the Board remanded Petitioner's case to the Immigration Court for consideration of new evidence and a new decision. *Id.* ¶ 15, Ex. A. Since the remand, Petitioner "has been waiting for a new court date at the Newark Immigration Court." *Id.* ¶ 16.

## II. Immigration Custody

On August 8, 2025, ICE arrested Petitioner and detained her at Delaney Hall Detention Center, in Newark, New Jersey. *Id.* ¶ 17; Guaman Decl. ¶¶ 2-3, ECF No. 16. Four days later, on August 12, Petitioner filed a bond motion with the Elizabeth Immigration Court, which scheduled the bond hearing for August 19. *Id.* ¶ 19.

The next day, August 13, Petitioner's counsel, Regis Fernandez, Esq., spoke to Petitioner's sister, who said Petitioner would be transferred out of Delaney Hall the next day. Fernandez Decl. ¶ 4, ECF No. 16. At around 7 a.m. the next morning, on August 14, Petitioner informed her counsel "that she is scheduled to be [transferred] to California today[.]". Pet. ¶ 20. *See also* Guaman Decl. ¶¶ 4-5 (detailing conversation with her son about transfer at 6:30 a.m. and son's discussion with counsel at 7 a.m.).

Mr. Fernandez filed this Petition in the District of New Jersey at 1:24 p.m. that day. Fernandez Decl. ¶ 6. He named as respondents the Director of Delaney Hall, the Secretary of Homeland Security, and others. *See generally* Pet.

At 1:24 p.m., however, Petitioner was in the District of Maryland. According to the Declaration of Supervisory Detention and Deportation Officer Diego Sinchi of ICE ERO Newark, Petitioner's travels on Thursday, August 14 are as follows on:

| Thursday, August 14, 2025 | |
|---|---|
| 7:31 a.m. | Petitioner left Delaney Hall Detention Facility by ground transport to Baltimore/Washington International Airport ("BWI") |
| 12:50 p.m. | Petitioner arrived at BWI |
| 1:00-1:30 p.m. | Petitioner boarded the aircraft at BWI |
| 2:00 p.m. | Petitioner's flight departed BWI for Alexandria International Airport ("AEX") in Louisiana |
| 4:30 p.m. (local time) | Petitioner arrived at AEX and was transported to Richwood Correction Center in Louisiana. |

*See* Sinchi Decl. ¶¶ 4-6. Petitioner arrived at Adelanto ICE Processing Center, where she is currently detained, on Saturday, August 16. *Id.* ¶¶ 7-8. Accordingly, Petitioner was in Baltimore, Maryland when her attorney filed this Petition at 1:24 p.m. on August 14.

The Declaration of John Guaman, Petitioner's son's, confirms that Petitioner "arrived in Baltimore, Maryland at around 1pm" and that her attorney filed the Petition "around 1:24 p.m." Guaman Decl. ¶¶ 4, 8, ECF No. 16.[2] The Declaration of

[2] The SDDO Sinchi Declaration does not describe Petitioner's transfers after arriving at Richwood Correction Center in Louisiana because, according to SDDO Sinchi, that information is not in the custody of ICE ERO Newark. However, the Guaman Declaration states that Petitioner arrived in Louisiana on Friday, August 15, at 12:00 a.m., arrived in Texas at 11 p.m., arrived in Arizona on Saturday, August 16 at 1 a.m., arrived in Las Vegas, Nevada at 11 a.m. on Saturday, arrived in "Washington State" at 2 p.m. on Saturday, and arrived in Adelanto, California by

Mr. Fernandez also confirms that Petitioner was in Baltimore when he filed the Petition. Fernandez Decl. ¶ 7, ECF No. 16.

## III. The Habeas Petition and OTSC

Petitioner alleges that her detention violates the Due Process Clause and the Immigration and Nationality Act. Pet. ¶¶ 27, 28. She also filed an order to show cause arguing that this Court has jurisdiction over the Petition because "Petitioner is physically in this district." OTSC at 5. She seeks a restraining order precluding her transfer from New Jersey. *Id.* at 6.

More specifically, Petitioner alleges that she has no criminal history and no final order of removal. *Id.* ¶¶ 21, 22. She argues that she should not have been arrested or moved outside of the District of New Jersey because she has no warrants or negative criminal history. *Id.* ¶ 24. She also argues that she cannot be removed in the "reasonably foreseeable future," and she filed the Petition seeking immediate release and a temporary restraining order preventing her transfer from New Jersey while her habeas action is pending before the Court. *Id.* ¶ 26, Prayer for Relief; OTSC at 2.

The Court held a teleconference on August 14, 2025. ECF 4. Pursuant to the Court's Order, the parties filed letters regarding the Court's jurisdiction over the Petition. ECF Nos. 5-7. The Court held a hearing on August 19, 2025, ECF No. 9, and at the conclusion of the hearing, directed ICE to not transfer or remove Petitioner

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Sunday, August 17 at 8 a.m. *Id.* ¶¶ 7-10. Although the only material fact—her location at the time of filing—is not in dispute, Respondents identify the chronology provided by Petitioner and do not dispute it at this time.

until further order of the Court. ECF Nos. 8, 11. The Court further directed ICE to provide a declaration detailing Petitioner's whereabouts since her arrest on August 8, 2025, including "the time spent at each interim location," and briefing providing the statutory authority for Petitioner's detention and permitting further briefing regarding subject matter jurisdiction. ECF No. 11. The Court directed counsel for Petitioner to file a declaration concerning his contact, if any, with Petitioner and permitted him to respond to Respondents' submissions.

On August 19, the Immigration Court in New Jersey determined that Petitioner's bond request was moot because she was transferred from the District of New Jersey. Aug. 19, 2025, IJ Order, ECF No. 16 at p. 11. *See also* 8 C.F.R. § 1003.19(c) (providing that bond request must be decided by immigration court having jurisdiction over place of detention).

## LEGAL ARGUMENT

### I. This Court Should Dismiss or Transfer the Petition Because it Lacks Jurisdiction Over the Petition

As a threshold matter, the Court should dismiss or transfer the Petition because it lacks jurisdiction over it for two reasons. First, the Petition filed suit in the wrong district. Second, the Petition names the wrong custodian.

There are two components to habeas jurisdiction. The Petitioner must file the Petition in the district of confinement and name her immediate custodian. *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 441 (3d Cir. 2021) (requiring petitioner to "name his warden as respondent and file the petition in the district of confinement") (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)). "The *Padilla*

district of confinement and immediate custodian rules are firmly entrenched in the law of this and other circuits." *Doe v. Garland*, 109 F.4th 1188, 1192 (9th Cir. 2024) (collecting cases).

As to the district of confinement, "jurisdiction lies in only one district: the district of confinement." *Padilla*, 542 U.S. at 443. It is "synonymous with the district court that has territorial jurisdiction over the proper respondent.'" *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 445 (3d Cir. 2021) (quoting *United States v. Poole*, 531 F.3d 263, 273 (4th Cir. 2008)). Put differently, "the only federal court that can properly entertain a habeas petition is one located in the 'district in which the applicant is held[.]'" *Doe v. Garland*, 109 F.4th 1188, 1198 (9th Cir. 2024) (quoting 28 U.S.C. § 2242).

As to the immediate custodian, "the default rule" is "that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official," *Padilla*, 542 U.S. at 435; that is, the person who has "immediate custody" of the petitioner, *id.* at 434-35 (citing *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). The proper respondent is, in other words, the "person who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge[.]" *Id.* at 435 (emphasis in original).

The Supreme Court recently reiterated these principles in the immigration context akin to the one here. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025) (per

curiam).[3] In *J.G.G.*, a group of Venezuelan nationals in immigration detention filed suit in the U.S. District Court for the District of Columbia, seeking relief against their removal. *See id.* at 1005. Because "jurisdiction lies in only one district: the district of confinement," the Supreme Court concluded that the plaintiffs were not likely to succeed on the merits of their claims in the District of Columbia because the plaintiffs in that case were "confined in Texas." *Id.* at 1005-06; *see also id.* at 1006 (holding that proper venue for core immigration habeas petition "lies in the district of confinement.").

Applying these principles here, this Court should dismiss the Petition for lack of jurisdiction.[4] Petitioner is not confined in the District of New Jersey now, and she was not confined here when her counsel filed the Petition. Instead, all parties agree that she was in the District of Maryland. *See* Sinchi Decl. ¶ 5. Moreover, Petitioner's immediate custodian is now the Warden of the Adelanto ICE Processing Center in Adelanto, California, not the Warden of the Delaney Hall Detention Facility in Newark, New Jersey. As a result, the Petition does not name the proper custodian

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[3] Although *Padilla* addressed a habeas petition in the prisoner context, the Third Circuit has applied the "district of confinement" and "immediate custodian" rules in the immigration context. *See Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444 (3d Cir. 2021) ("Whenever a § 2241 habeas petitioner seeks to challenge present physical custody within the United States, he [or she] should name his [or her] warden as respondent and file the petition in the district of confinement" (citation omitted)). So did numerous courts within this District. *See, e.g.*, *Eddine v. Chertoff*, No. 07-6117(FSH), 2008 WL 630043, at *2 (D.N.J. Mar. 5, 2008).

[4] Alternatively, the Court should transfer the Petition to the District of Maryland, where she was in transit at the time Petitioner filed, or to the Central District of California, where ICE is currently detaining Petitioner.

and was not filed in the district of confinement. This Court should dismiss the Petition for lack of habeas jurisdiction. *See, e.g., Glover v. City of Philadelphia*, No. 24-1479, 2024 WL 3272912, at *1 (3d Cir. July 2, 2024) (affirming dismissal for lack of habeas jurisdiction because the petitioner was not in custody).[5]

Petitioner relies on two main cases to establish this Court's jurisdiction: *Khalil v. Joyce*, No. 25-1963 (MEF), ECF No. 153, 2025 WL 972959 (D.N.J. Apr. 1, 2025) and *Munoz-Saucedo v. Pittman*, No. 25-2258 (CPO), --- F.Supp.3d ---- 2025 WL 1750346, (D.N.J. June 24, 2025). Respondents do not believe either case supports jurisdiction in this District. In *Khalil*, the petitioner filed in the U.S. District Court for the Southern District of New York when he was detained in the District of New Jersey. The Southern District of New York transferred the petition to the District New Jersey. Because the petitioner was in New Jersey at the time of filing, the District Court concluded, the petition could have been filed in the District of New Jersey when it was improperly filed in the Southern District of New York. *See id.* at *15-20.

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[5] Respondents understand the Court may already have ruled at the August 19 hearing that the "unknown custodian" exception applies to this case. Respondents, however, respectfully assert their argument that Petitioner did not name the proper custodian in an abundance of caution, for completeness of the record, and to preserve all arguments in the event of appeal. Moreover, "[e]ven assuming [the unknown custodian] rule applied, it might excuse Petitioner from naming the immediate custodian . . . as a respondent in the Petition," but Petitioner must still satisfy the district of confinement rule here. *Dvortsin v. Noem*, No. 25-1741, 2025 WL 1751968, at *5 (D. Colo. June 12, 2025) (finding district of confinement was location where petitioner was in transit to detention facility).

*Khalil* thus standards for the proposition that the district of confinement is the district in which the petitioner was located at the time of filing. Here, Petitioner was located in the District of Maryland at the time of filing. *See* Sinchi Decl. ¶ 5.

Similarly, in *Munoz-Saucedo*, the Court found it had jurisdiction because ICE did not demonstrate that Petitioner was located outside of the District of New Jersey at the time of filing. That is, ICE described Petitioner's whereabouts only generally when his counsel filed the petition in New Jersey at 5:40 p.m. ICE represented that at 3:55 p.m. petitioner "was on a flight to Texas," arrived in Texas at some unstated time, and was "booked into custody" in Texas the next day, April 3, 2025. *Munoz-Saucedo*, 2025 WL 1750346, at *2. No fact indicated where petitioner was located at 5:40 p.m.—e.g., he could have been waiting on the tarmac in New Jersey, in the air midflight, and so on. Absent any clear chronology and location, the Court did not find that another district confined the petitioner.

Indeed, Petitioner's transport to Baltimore and eventually to California mirrors those in *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), the main case upon which *Munoz-Saucedo* relied. In *Ozturk*, the petitioner filed her petition in Massachusetts at 10 p.m. on March 25, 2025. *Id.* at 390. Her counsel did not know petitioner's whereabouts when he filed, but ICE later disclosed during the habeas case that petitioner was "in transit" in Vermont at that time. Namely, the petitioner had arrived at an ICE field office in Vermont about 30 minutes after filing the petition. *Id.* at 390-91; *see also id.* at 391 ("It is now undisputed that at that time [*i.e.*, 10 p.m.], Öztürk was not in the District of Massachusetts—she was already in

Vermont."); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 471 (D. Vt 2025) (noting petitioner "was in Vermont en route" to field office when petition filed). Accordingly, the Court stated,

> The Supreme Court has made clear 'the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.' At the time the petition was filed, that "one district" was the District of Vermont, where Öztürk was in transit to an ICE facility for the night. Vermont is therefore the only district in which the petition could have been brought at the time it was filed[.]

*Id.* at 391 (internal citations omitted).

During this Court's August 19 hearing, the Court raised an important point about whether the District of Maryland could have jurisdiction over Petitioner when she was merely in transit through that district on her way to a final destination in another district (i.e., Central District of California). *Ozturk* is one of the only cases Respondents could find that discusses the "district of confinement" rule in the context of a Petitioner who is in transit. And *Ozturk* seems to resolve that question in Respondents' favor. As explained above, the Second Circuit held that Vermont was the only district that had jurisdiction over the petitioner because Vermont is "where Öztürk was *in transit* to an ICE facility for the night." *Id.* at 391 (emphasis added). Importantly, Ozturk was not at an ICE facility when her counsel filed the petition, her counsel did not know where she was when he filed (he learned of it the next day when she was in detention in Louisiana); and she was only in Vermont as a temporary stopover to her final destination: a correctional facility in Louisiana. *See id.* at 387-89, 391.

Recently, the District of Colorado reached the same conclusion. In *Dvortsin v. Noem*, the District of Colorado found it lacked jurisdiction over a habeas petition filed by petitioners who had left the district and "were in transit" to another facility in Texas. No. 25-1741, 2025 WL 1751968, at *4 (D. Colo. June 12, 2025) (citing *Ozturk*'s holding that petitioner "was in transit through [the District of Vermont] at the moment her counsel filed a habeas petition). The Court found that "it did not matter" that petitioners "had not been booked into [the Texas detention center] when the Petition was filed," *id.*, which seems to suggest that the petitioner's physical location is what matters for the purpose of the "district of confinement" rule, even when the detainee is in transit.

Further, the district court in *Ozturk* rejected the petitioner's argument—as Petitioner argues here—that, when a noncitizen is in transit and her counsel does not know where she is, "habeas jurisdiction would lie in the district or districts from which the detainee had been removed." *Ozturk v. Trump*, 777 F. Supp. 3d 26, 42 (D. Mass. 2025) (quoting *Padilla*, 542 U.S. at 454 (Kennedy, J, concurring)). But that court noted that the *Padilla* majority did not adopt Justice Kennedy's concurrence and that "no court has yet relied upon the *Padilla* concurrence as the basis for jurisdiction." *Id.* (citing *Khalil v. Joyce*, 771 F. Supp. 3d 268, 273 (S.D.N.Y. 2025)).

To that end, Petitioner's counsel argued at the August 19 hearing that he could not file in the District of Maryland because he did not know Petitioner was there at 1:24 p.m. *Ozturk* again seems to resolve that issue because, there, the petitioner's counsel did not know petitioner was in Vermont when counsel filed, but the parties

later learned that is where she was. *Id.* Thus, *Ozturk* supports the idea that the key for the "district of confinement" is petitioner's physical location, not whether petitioner's counsel knows that location at the moment of filing. And a recent case from the Eastern District of California supports Respondents' position here. In *Y.G.H. v. Trump*, No. 25-435, 2025 WL 1519250, at *7 (E.D. Cal. May 27, 2025), the court rejected the petitioner's "proposed 'unknown location' rule in the context of a detainee's relatively brief unknown location status during a transfer between known detention locations." Against, the cases discussing in-transit detainees is scant, but the two that we are aware of seem to militate in favor of Respondents.

## II. Petitioner is Properly Detained as an Applicant for Admission Under 8 U.S.C. § 1225(b)(2)(A)

As to the merits of the Petition, the Court should find that Petitioner's detention is lawful under the INA. "The power to admit or exclude [non-citizens] is a sovereign prerogative." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And "the Constitution gives 'the political department of the government' plenary authority to decide which [non-citizens] to admit." *Id.* (emphasis added) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). "[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted." *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

A noncitizen "who has not been admitted or who arrives in the United States" is considered an "applicant for admission" under the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1225(a)(1). All "[a]pplicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law." *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Id.* at 287. "Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens." *Id.* Immigration officials also have the discretion to permit an applicant for admission to withdraw an application and depart the United States immediately. 8 U.S.C. § 1225(a)(4).

Under § 1225(b)(1), applicants for admission who are "arriving" or fall into certain other categories are subject to expedited removal. In general, an immigration officer who finds the applicant inadmissible "shall order" removal without further hearing. § 1225(b)(1)(A)(i). If the applicant announces an intention to apply for asylum or expresses a fear of persecution, expedited removal is postponed pending further proceedings on the asylum application. *Id.* § 1225(b)(1)(B). However, the applicant "shall be detained" throughout this process. *Id.* § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.").

Subject to certain exceptions not applicable here, § 1225(b)(2)(A) applies to all other applicants for admission. Such applicants "shall be detained" pending a

standard removal proceeding unless the immigration officer determines that the applicant is "clearly and beyond a doubt entitled to be admitted." § 1225(b)(2).

Although detention under § 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum or until removal proceedings have concluded." *Id.* (internal citation omitted). "Once those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297.

Further, while section 1225(b) does not provide for bond hearings, *see id.* at 297–303, it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)).[6] "[S]uch parole," however, "shall not be regarded as an admission of the alien." 8 U.S.C. § 1182(d)(5)(A); *see* 8 C.F.R. § 1001.1(q). When the DHS Secretary determines that "the purposes of [the] parole . . . have been served[,] the alien shall . . . return or be returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A). After that, the noncitizen's "case

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[6] "That express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released." *Id.* (citing A. Scalia & B. Garner, Reading Law 107 (2012) ("Negative–Implication Canon[:] The expression of one thing implies the exclusion of others (expressio unius est exclusio alterius )"). "That negative implication precludes the sort of implicit time limit on detention that we found in *Zadvydas*." *Id.*

shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Petitioner's argument that her detention is unlawful because she is not subject to a final removal order and thus cannot be removed in the reasonably foreseeable future, Pet. ¶ 22, 23, 25, 26; OTSC at 6, is unavailing. ICE submits that it has lawfully detained Petitioner under 8 U.S.C. § 1225(b)(2)(A)., INA § 235(b)(2)(A), and it has provided Petitioner all available process. The Court should deny the Petition and request for temporary restraints.

To understand why ICE has detained Petitioner under § 1225(b), a brief discussion of the caselaw interpreting the statute is helpful. By its plain text, § 1225(b) requires ICE to detain two types of "applicants for admission"—those who have "arrived in the United States" and those "who ha[ve] not been admitted." 8 U.S.C. § 1225(a)(1). "[A]rrive[d] in the United States" means the noncitizen has just entered the country—such as at the airport or at the U.S. border—or did so very recently. *See DHS v. Thuraissigiam*, 591 U.S. 103, 139, (2020). Noncitizens "have not been admitted" if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission").

Even though § 1225(b) requires the detention of both types of applicants for admission, immigration officials did not always interpret it that way. Specifically, DHS's predecessor agency, the U.S. Immigration and Naturalization Service ("INS"), read § 1225(b) to apply only to those who have arrived in the United States. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not

been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (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."). Noncitizens who were present without admission were detained under the discretionary rules of INA § 236(a), 8 U.S.C. § 1226(a). *See id.*

As of July 8, 2025, however, ICE takes a different position. That is, all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2). ICE takes this position because it accords with the plain language of the statute and is consistent with recent caselaw from the Board of Immigration Appeals, the highest-level administrative body for interpreting immigration law. Specifically, in *Matter of Q. Li*, 29 I. & N. Dec. 66 (May 2025), the BIA held that ICE had authority under § 1225(b)(2) to re-detain the petitioner two years after she entered the United States on parole.[7] *See also Matter of M-S-*, 27 I & N Dec. 509 (A.G. 2019); *Jennings*, 583 U.S. at 299.

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[7] Since early July, several district courts have addressed ICE's interpretation of § 1225(b)(2). *Compare Mata Velasquez v. Kurzdorfer*, No. 25-493, 2025 WL 1953796, at *9 (W.D.N.Y. July 16, 2025) (holding petitioner's mandatory detention under § 1225(b)(2) unlawful because ICE revoked his parole without individualized consideration of petitioner's circumstances), *and Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (rejecting ICE's argument that § 1225(b)(2) detention applied to noncitizen arrested while residing in United States after being conditionally paroled and distinguishing *Matter of Q. Li* because it applied to an arriving alien paroled under § 1225), *with Pena v. Hyde,* No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under

ICE's position, therefore, is that it must detain Petitioner under § 1225(b)(2)(A), because she is present without being admitted. As her Notice to Appear states, Petitioner is "present in the United States without being admitted or paroled," because she entered the country without inspection in September 2002. See Sinchi Decl. ¶ 3. *See Pena v. Hyde,* No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission"). Accordingly, the Court should reject her argument that ICE cannot detain Petitioner absent a final order of removal or materially changed circumstances in her immigration case. *See* Pet., Prayer for Relief ¶ 1.

Further, because Petitioner is detained under § 1225(b), she is not entitled to a bond hearing, and her detention comports with the Immigration and Nationality Act and the Due Process Clause. Although the Due Process Clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). To that end, Petitioner's detention is presumptively reasonable if it does not exceed six months. *Zadvydas*, 533 U.S. at 701. Here, ICE detained Petitioner on August 8, 2025, just under three weeks days ago. Pet. ¶ 17. Her detention is presumptively reasonable. *See Pena,* 2025 WL 2108913, at *2–3 (holding detention of 17 days comported with

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§1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission").

The most recently collection of cases addressing ICE's interpretation is *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (collecting a dozen cases).

due process). Moreover, Petitioner can request release on parole under § 1225, 8 U.S.C. § 1182(d)(5)(A), and thus she has not exhausted her administrative remedies, *see* Pet. ¶ 25. For these reasons, the Court should dismiss Petitioner's due process challenge to her detention.

## CONCLUSION

For the foregoing reasons, the Court should deny the Petition for lack of jurisdiction and deny the request for temporary restraints as moot.

Respectfully submitted,

By: *s/Frances Bajada*
FRANCES BAJADA

*s/Alex Silagi*
ALEX SILAGI
Assistant United States Attorneys
*Attorneys for Respondents*

Dated: August 25, 2025

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**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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|---|---|
| DIANA M. RIVERA ZUMBA,<br><br>*Petitioner,*<br><br>v.<br><br>PAM BONDI, Attorney General of the United States of America, *et al.*,<br><br>*Respondents.* | HON. KATHARINE S. HAYDEN<br><br>Civil Action No. 25-14626 (KSH) |

**DECLARATION OF DIEGO SINCHI**

I, Diego Sinchi, do hereby declare and state as follows:

1. I am a Supervisory Detention and Deportation Officer with Immigration and Customs Enforcement, Enforcement and Removal Operations ("ICE-ERO") in Newark, New Jersey. I have held this position since January of 2022. I have been employed with ICE-ERO since May of 2009. As a supervisor, I am charged with overseeing ICE-ERO officers who are responsible for managing ICE Air movements from ICE-ERO detention facilities in New Jerey.

2. As part of my official duties, I have access to electronic files and databases maintained in the ordinary course of business regarding aliens detained in ICE-ERO custody. I make this declaration after reviewing the information stored in our electronic files and databases, and in my communications with other individuals employed by ICE-ERO.

3. ICE-ERO, with assistance from HSI and CBP, arrested Petitioner on August 8, 2025, as Petitioner is an alien present in the United States without admission or parole under Immigration and Nationality Act section 212(a)(6)(A)(i). ICE-ERO then transported Petitioner to Delaney Hall Detention Facility in Newark, New Jersey. ICE-ERO has provided a true copy of the Notice to Appear ("NTA")

issued to the Petitioner on May 31, 2017, and served on Petitioner in person on June 5, 2017.

4. On August 14, 2025, 7:31 a.m. (local time), Petitioner was transferred out of Delaney Hall Detention Facility and transported to Baltimore/Washington International Airport ("BWI") via ground transportation.

5. Petitioner arrived at BWI at 12:50 p.m. (local time) on August 14, 2025. Petitioner boarded the aircraft at BWI between 1:00 p.m. (local time) and 1:30 p.m. (local time). Petitioner remained at BWI until 2:00 p.m. (local time) when her flight departed for Alexandria International Airport ("AEX") in Parish, Louisiana.

6. Petitioner was scheduled to arrive at AEX at 4:30 p.m. (local time) on August 14, 2025. Following her arrival, Petitioner was then transported to Richwood Correctional Center in Monroe, Louisiana on August 14, 2025.

7. The remainder of the Petitioner's journey from Richwood Correctional Center to her final destination at Adelanto ICE Processing Center in Adelanto, California, where she remains detained to date, is unknown to ICE-ERO Newark at this time. It is my understanding that that information is in the possession of ICE-ERO Los Angeles.

8. Petitioner was ultimately transferred to the Adelanto ICE Processing Center in Adelanto, California on August 16, 2025, where she remains detained to date.

9. This is the most complete information available to ICE-ERO Newark at this time concerning Petitioner's whereabouts during the transfer from Delaney Hall Detention Facility in Newark, New Jersey to Adelanto ICE Processing Center in Adelanto, California.

DIEGO E SINCHI Digitally signed by DIEGO E SINCHI Date: 2025.08.25 11:53:13 -04'00'

Date August 25, 2025

Diego Sinchi
Supervisory Detention and Deportation Officer
U.S. Department of Homeland Security
ICE-ERO