IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

YACQUELINE GABRIELA MARTINEZ ORELLANA, PETITIONER, v. U.S. DEPT. OF HOMELAND SECURITY, KRISTI NOEM, in her capacity as Secretary of Department of Homeland Security; Sylvester M. ORTEGA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Rose THOMPSON, Warden of Karnes County Residential Center, RESPONDENTS.	Civil Case No. 25-1028 PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241, BY A PERSON SUBJECT TO INDEFINITE IMMIGRATION DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Yacqueline Gabriela Martinez Orellana is in the physical custody of Respondents at the Karnes County Residential Center located at 409 FM 1144, Karnes, Texas 78118 under A# [redacted]. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have

concluded Petitioner is subject to mandatory detention based on a recent released ICE memo directing a new interpretation of the law.[1]

2. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceeding, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. This memo admittedly stated that it "has revisited its legal position on detention and release authorities." [2]

4. Petitioner sought a bond redetermination hearing before an immigration judge (IJ), but on August 7, 2025, the IJ denied bond.[3] The IJ based this decision on the same legal analysis. Indeed, the DHS policy states it was issued "in coordination with the Department of Justice (DOJ)." The IJ concluded that notwithstanding Petitioner's 11 years of residing in the United States, she is nevertheless an "applicant for admission" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A). The IJ also concluded this despite the Government's own "warrant" stating that she was being detained under the authority of § 1226(a).[4] Any appeal

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[1] See Exhibit 1 ICE Memo "Interim Guidance Regarding Detention Authority for Applicants for Admission" dated July 8, 2025.

[2] *Id.*

[3] Exhibit 2 Immigration Judge's Order denying bond finding "Respondent is an applicant for admission and subject to mandatory detention"

[4] Exhibit 3 Form I-200 "Warrant for Arrest of Alien" served on Petitioner July 07, 2025 but not signed by officer until July 8, 2025.

to the BIA is futile. Petitioner is within the 30-day window to file appeal to the BIA but due to DHS's new policy being issued "in coordination with DOJ," which oversees the immigration courts such appeal will be futile and take months of further detention. Petitioner will be filing appeal to preserve her rights, but it will not remedy the current harm of unlawful detention.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within fourteen days.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Karnes County Residential Center in Karnes, Texas.[5]

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

[5] See Exhibit 4 ICE detainee locator

VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2241

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief.[6] If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed."[7]

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

15. Petitioner is "in custody" for the purpose of § 2241 because she is arrested and detained by Respondent.

PARTIES

[6] 28 U.S.C. § 2243.

[7] *Id.*

16. Petitioner Yacqueline Gabriela Martinez Orellana is a citizen of El Salvador who has been in immigration detention since July 7, 2025. After arresting Petitioner in Abilene, Texas, ICE did not set bond and Petitioner requested review of her custody by an IJ. On August 7, 2025, Petitioner was denied bond by an IJ at the Pearsall Immigration Court because she was deemed an "applicant for admission."[8] Petitioner has resided in the United States since 2014.

17. Respondent Sylvester M. Ortega is the Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ortega is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

19. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

20. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

[8] See Exhibit 2.

21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

22. Respondent Rose Thompson is employed by the GEO Group Inc. as Warden of the Karnes County Residential Facility, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

LEGAL FRAMEWORK

I. Introduction: Overview of Legal Framework

23. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

25. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

26. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

27. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

28. The detention provisions at § 1226(a) and § 1225(b)(2) 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).

29. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *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).

30. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

31. For decades, (i.e. since IIRIRA was passed in 1996) two indisputable facts coexisted in immigration proceedings throughout the country: (1) Immigration Judges have been granting bond to noncitizens who had entered the country without inspection, and therefore, were inadmissible under INA § 212(a)(6)(A)(i), (colloquially referred to as an "EWI" charge); and 2) All individuals who are EWI have fallen under the definition of an "applicant for admission" under INA § 235(a)(1). These two indisputable facts coexisted for nearly thirty years because the Immigration & Nationality Act (INA or Act) along with the implementing regulations taken as a whole leave no doubt that Congress intended for

Immigration Judges to have jurisdiction to grant bond to such individuals when p[laced in removal proceedings under 8 U.S.C. § 1229a. Said different, simply being an applicant for admission has never been understood to subject someone to mandatory detention. Indeed, the most trusted of immigration law treatises, *Kurzban*'s, states:

> Although a person who enters EWI is considered an applicant for admission under INA § 235(a)(1) and inadmissible under INA § 212(a)(6)(A)(i), because they are not apprehended at the border, they do not fall within the definition of "arriving aliens" under 8 C.F.R. §§ 1.2, 1001.1(q). Therefore, an IJ is not precluded from conducting a bond hearing.[9]

32. The regulations go on to make clear that Immigration Judges do not have jurisdiction to grant bond to a discrete subset of "applicants for admission" known as "arriving aliens."[10] In other words, the promulgating regulations were careful to except "arriving aliens," (ALL of whom are "applicants for admission"), from the bond jurisdiction given to Immigration Judges.[11]

33. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.[12]

34. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[13] claims that all persons who entered the United States without

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[9] Kurzban, Chapter 3, Admission and Removal, M-3, p. 235 (2018-19) 16th Ed.

[10] 8 C.F.R. § 1003.19(h)(2)(i)(B).

[11] (*Id.*)

[12] See Exhibit 1.

[13] See Exhibit 1 and also *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

35. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. Titled "Mandatory detention," INA § 235(b)(1)(B)(iii)(IV) explicitly states that noncitizens found *not* to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a)(1), demonstrates a clear intent not to subject all such individuals to mandatory detention.[14]

36. The definition of "applicant for admission" found at INA § 235(a)(1) is not new—its been there since the passage of IIRIRA in 1996. Notably, INA § 212(a)(6)(A)(i) and INA § 236(c) were also passed at the same time as part of IIRIRA. For nearly three decades, the language in INA § 235(a)(1) and (b)(2)(A) has existed in its current form without anyone claiming every EWI is subject to mandatory detention. Instead, the phrase "shall be detained for a proceeding under section 240" in § 235(b)(2)(A) has always been understood to direct the "inspecting officer" to detain the noncitizen for the purpose of initiating removal proceedings.[15] It has not, however,

[14] Furthermore, the direction "to detain for removal proceedings" in this paragraph is to the "inspecting officer" rather than a direction to the attorney general or secretary, such as the one found in other places within the statute—since the inspecting officer does not have long term detention authority no one has every claimed by merely falling within the definition of "applicants for admission" one is subject to mandatory detention

[15] *See Crane v. Johnson*, 783 F.3d 244, 252 (5th Cir. 2015) ("It is uncontested that 8 U.S.C. § 1225(b)(2)(A)—if read as Plaintiffs claim—only compels the commencement of removal proceedings.").

been understood to require detention of all EWI noncitizens throughout and to the conclusion of removal proceedings.[16]

37. Recent decisions have discussed INA § 235, the definition of "applicants for admission," and mandatory detention.[17] But not a single one of these cases has claimed to stand for the proposition that all EWI noncitizens are subject to mandatory detention. Petitioner is unaware of a single binding precedential decision holding that every alien who is inadmissible under INA § 212(a)(6)(A)(i) is subject to mandatory detention. Indeed, despite ICE advancing this plainly incorrect position after an internal memorandum from ICE Director Todd Lyons was issued, most Immigration Judges—in Texas no less—immediately shot down that unheralded position each time. And they did so after asking DHS two simple questions:

1) Is DHS claiming he was encountered at or within 100 miles of the border?

2) Is DHS claiming he was encountered within 2 years of entering the United States?

When DHS answered no to both those questions, the Immigration Judges—without asking even asking for respondent's position—quickly stated they had jurisdiction. This, after all, has never been doubted in the past. At least not until ICE started taking the nebulous position that every person who is EWI is subject to mandatory detention a few weeks ago.

38. Nonetheless, and despite Petitioner producing a document labeled "warrant for arrest of alien" which explicitly states that the Petitioner is being "taken into custody as authorized by section 236" not 235, during the bond hearing on August 7, 2025, an Immigration

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[16] *See id.* at 249 ("If the examining immigration official is not satisfied that the alien is entitled to be admitted, then the officer "shall" detain the alien for a removal proceeding. It is undisputed that Section 1225(b)(2)(A) only directs the Agents to detain an alien for the purpose of placing that alien in removal proceedings.").

[17] *See generally Jennings v. Rodriguez*, 583 U.S. 281 (2018), *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2023).

Judge accepted ICE's new position, and as a result, deprived Petitioner of the bond hearing she was entitled to pursuant to 8 U.S.C. § 1226 and 8 C.F.R. § 1003.19. As a result, Petitioner's current detention is contrary to the law in violation of the U.S. Constitution, the INA, and the Administrative Procedure Act.

39. The Immigration Judge's ruling that Petitioner is subject to mandatory detention solely by virtue of being inadmissible under INA § 212(a)(6)(A) is a radical departure from the long-standing interpretation of the INA's detention framework. This interpretation is legally untenable for several reasons, most notably because it renders key statutory provisions and regulations meaningless.

II. The Statutory and Regulatory Framework of the Entire Act Demonstrates it Distinguishes Between Arriving Aliens/Applicants for Admission and Other Noncitizens Subject to Removal.

40. The government's position hinges on a simplistic and overbroad reading of INA § 235(a)(1), which deems any unadmitted alien an "applicant for admission." From this, the government leaps to the conclusion that all such aliens are subject to mandatory detention under § 235(b). This interpretation ignores the careful distinctions drawn throughout the INA and its implementing regulations.

41. DHS's enforcement components may rely on the statutory authority granted by INA § 235, 8 U.S.C § 1225, INA § 236, 8 U.S.C. § 1226, or INA § 287, 8 U.S.C. § 1357, when arresting and detaining an alien.[18] Through the course of enforcing the immigration laws, both ICE and CBP have occasion to rely on each of these statutes for the authority to arrest and detain an alien.

[18] The authority given by these statutes has been properly delegated by the Secretary of Homeland Security pursuant to the power granted to her by 8 C.F.R. § 2.1.

Because each of these statutes grant the authority to arrest and detain in different situations, the particular statute which is relied on is dictated by the circumstances of the encounter.

A. INA § 235, 8 U.S.C § 1225: Inspection, Arrest, and Detention of Aliens at the Ports of Entry and Near the Border

42. As its title, ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearings"), suggests INA § 235, 8 U.S.C § 1225, proscribes the statutory authority by which immigration officers may inspect, arrest, and detain aliens seeking admission to the United States. INA § 235, 8 U.S.C § 1225. While not limited to the arrest of aliens made at a designated port of entry or in close proximity to the border, INA § 235, 8 U.S.C § 1225, is most often used in this setting.

43. The absence of a warrant requirement under the authority granted by INA § 235, 8 U.S.C § 1225, is among the reasons that it is primarily relied on for the arrest and detention of an alien at a designated port of entry or in close proximity to the border. *Cf.* INA § 236, 8 U.S.C § 1226, (providing the authority to issue a warrant as well as the authority to arrest and detain removable aliens pursuant to a warrant).

44. The absence of a warrant requirement in INA § 235, 8 U.S.C § 1225, is in line with the longstanding principle that the search and seizure of persons at our country's borders is not subject to the Fourth Amendment's warrant requirement, *see United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .") (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine" exempting border searches and seizures from the Fourth

Amendment's warrant requirement. "It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border.").

45. In cases where a federal warrant has not been issued and the border exception to the warrant requirement is inapplicable, INA § 287, 8 U.S.C. § 1357, grants CBP and ICE-ERO authority to arrest and briefly detain aliens in limited circumstances. *See Arizona v. United States*, 132 S. Ct. 2492, 2506 (2012) (discussing the authority granted to CBP and ICE-ERO by INA § 287, 8 U.S.C. § 1357, to arrest aliens in some circumstances where a federal warrant has not been issued). For example, "[t]hey may arrest an alien for being 'in the United States in violation of any [immigration] law or regulation ' . . . where the alien 'is likely to escape before a warrant can be obtained.'" *Id.* (second alteration in original) (quoting INA § 287, 8 U.S.C. § 1357). From this statute, one can see that the arrest without a warrant authority set forth in 8 U.S.C. § 1225 was intended to be limited geographically to near the border and intended only to apply to noncitizens potentially subject to expedited removal under 8 U.S.C. § 1225. Indeed, this is illustrated by the first two paragraphs of 8 U.S.C. §1357(a), titled "Powers without warrant" which expressly provide:

> Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—
>
> **(1)** to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;
>
> **(2)** to arrest *any alien who in his presence or view is entering or attempting to enter the United States* in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

8 U.S.C. § 1357(a)(1)-(2)(emphasis added).

46. By explicitly proscribing as an exception to the warrant requirement noncitizens who the officer sees entering or attempting to enter the United States, the statute implicitly proscribes that arrests made elsewhere that do not fall under one of the proscribed warrant exceptions require a warrant. Due to the fact that it is most often relied on at a designated port of entry or near the border, INA § 235, 8 U.S.C § 1225, is the statute primarily relied on by CBP, *see* n. 3 *supra,* for the authority to arrest and detain an alien. Though there are times in which ICE also relies on INA § 235, 8 U.S.C § 1225, for the authority to arrest and detain an alien, ICE typically relies on the authority granted by INA § 236, 8 U.S.C § 1226.

47. Unlike CBP, the majority of aliens ICE-ERO arrests are encountered in a setting that is not near a border. As a result, an arrest warrant issued pursuant to the authority granted by INA § 236(a), 8 U.S.C § 1226(a) is issued in the context of ICE arresting aliens for removal proceedings.[19] In addition to providing the authority under which a warrant for the arrest of an alien may be issued, INA § 236(a), 8 U.S.C § 1226(a), provides ICE-ERO with the authority to arrest an alien for which an arrest warrant has been issued "pending a decision on whether the alien is to be removed from the United States."[20] INA § 236, 8 U.S.C. § 1226.

48. Once placed in removal proceedings under 8 U.S.C. § 1229a, noncitizens who are not subject to mandatory detention under 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) may request a bond from an Immigration Judge.

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[19] Pursuant to 8 C.F.R. § 236.1(b), the authority to issue an arrest warrant has been properly delegated by the Attorney General to the list of persons found in 8 C.F.R. § 287.5(e)(2).

[20] Pursuant to 8 C.F.R. § 236.1(b), the authority to serve an arrest warrant and arrest an alien has been properly delegated by the Attorney General to the list of persons found in 8 C.F.R. § 287.5(e)(3).

49. One need not look any further than 8 C.F.R. § 1003.19(h)(2) (iii)(B) to see that the statutory and regulatory scheme was always intended to give Immigration Judges jurisdiction to grant bond to most noncitizens falling under the definition of "applicant for admission." This is demonstrated by the fact that the regulations governing an Immigration Judge's bond jurisdiction explicitly strip the Judge of authority over "arriving aliens" which are a subset of noncitizens who fall under the definition of "applicants for admission."[21] Specifically, 8 C.F.R. § 1.2 defines an arriving alien as:

> Arriving alien *means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry*, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.

8 C.F.R. § 1.2 (emphasis added).

50. If, as the government now contends, every noncitizen who is an "applicants for admission" is subject to mandatory detention for bond purposes, there would have been no need for a regulation stating immigration judges do not have jurisdiction to grant "arriving aliens" a bond. The regulations specific prohibition against bond for "arriving aliens" implicitly confirms that Immigration Judges *do* have jurisdiction over other categories of "applicants for admission," such as those like Petitioner, who were apprehended years after entry and deep in the nation's

[21] 8 C.F.R. § 1003.19(h)(2)(iii)(B).

interior. Peititioner is not an "arriving alien"; nor is she subject to mandatory detention under INA § 235. Rather, she is an alien arrested within the United States and detained under INA § 236.[22]

B. The Recent Enactment of the Laken Riley Act Forecloses the Immigration Judge's Interpretation and Would Be Rendered Superfluous.

51. The most compelling evidence against the government's position is the recent amendment to the INA's primary mandatory detention statute, § 236(c). In January 2025, Congress passed the Laken Riley Act, which added a new subparagraph to the mandatory detention provisions. The amended statute now provides:

> **(c) Detention of criminal aliens (1) Custody** The Attorney General shall take into custody any alien who-- ... (E)(i) *is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title;* ***and*** *(ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts* which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense...

INA § 236(c)(1)(E) (emphasis added).

52. The structure of this amendment is dispositive. By using the conjunctive "and," Congress mandated a two-part test. Mandatory detention under this new provision applies *only* to a noncitizen who meets both the status requirement of subclause (i) (inadmissibility for EWI, fraud, or lack of documents) *and* the conduct requirement of subclause (ii) (a criminal charge, arrest, or conviction for a specified offense).

53. Under the government's new theory, every person described in subclause (i) is already subject to mandatory detention. If that were true, the Laken Riley Act would be utterly meaningless. Congress would have enacted a statute that accomplished nothing. It is a foundational principle of statutory construction that courts must "give effect, if possible, to every clause and word of a statute," *Duncan v. Walker*, 533 U.S. 167, 174 (2001), and must avoid interpretations

[22] Exhibit 3

that render statutory language superfluous. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). The government's position violates this canon in the most profound way, effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted § 236(c)(1)(E) precisely because inadmissibility under § 212(a)(6)(A)(i) alone *does not* trigger mandatory detention.[23]

III. Reliance on Jennings and *Matter of Q. Li* is Misplaced.

54. The cases relied on in the Immigration Judge's decision, *Jennings v. Rodriguez*, 583 U.S. 281 (2018), *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2023), do not support the expansive new theory that every EWI noncitizen is subject to mandatory detention. Rather, each of those cases concerned the detention of noncitizens who were indisputably subject to mandatory detention or detained when arriving in the United States, and therefore, subject to the expedited removal framework of INA § 235(b)(1)—that is, individuals encountered at a port of entry or apprehended at or near the border shortly after entry. Moreover, not a single one of those cases—or any other case Petitioner is aware of—has ever held that simply being inadmissible under INA § 212(a)(6)(A)(i) strips the Immigration Judge of jurisdiction to grant bond.

55. Simply put, the issue of whether a noncitizen who is inadmissible under INA § 212(a)(6)(A)(i) and placed in removal proceedings under 8 U.S.C. § 1229a is factually and legally distinct from those at issue in *Jennings* and *Q. Li*. Petitioner was not encountered until eleven years

[23] Another (of many) applicable cannons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled "Mandatory detention," explicitly states that noncitizens found *not* to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

after her entry, was encountered hundreds of miles from the border, and was arrested pursuant to a warrant under INA § 236. She was never placed into expedited removal proceedings. These cases address the scope of detention under § 235(b) for the specific class of aliens to whom that provision was designed to apply, not long-present residents like Petitioner .

IV. Even if *Matter of Q. Li* truly did change the interpretation of who is subject to mandatory detention by expanding it to every person who is inadmissible under INA § 212(a)(6)(A), such interpretation and expansion would constitute a new rule which cannot be applied retroactively under longstanding Supreme Court precedent.

56. The United States Constitution's Ex Post Facto Clause and the judicial presumption against statutory retroactivity form a bedrock principle of American jurisprudence. This principle is animated by what the Supreme Court has termed the "familiar considerations of fair notice, reasonable reliance, and settled expectations." *Vartelas v. Holder*, 566 U.S. 257, 266 (2012) (quoting *INS v. St. Cyr*, 533 U.S. 289, 323 (2001)). In the immigration context, where the stakes of deportation are immense, the Supreme Court has been particularly vigilant in guarding against the retroactive application of laws that alter the legal consequences of past actions.

57. In *INS v. St. Cyr*, the Supreme Court held that the repeal of a form of discretionary relief from deportation could not be applied retroactively to individuals who had pleaded guilty to criminal offenses at a time when that relief was available. 533 U.S. at 325. The Court emphasized that "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Id.* at 321.

58. Similarly, in *Vartelas v. Holder*, the Court found that an amendment to the INA that broadened the definition of who is "seeking admission"—thereby subjecting certain returning lawful permanent residents to new grounds of inadmissibility—could not be applied to an individual whose conviction predated the statutory change. 566 U.S. at 272. The Court reasoned

that to do so would "attach a new disability, in respect to transactions or considerations already past." *Id.* at 266 (internal quotation marks omitted).

59. This principle against retroactivity extends not only to statutory amendments **but also to new judicial interpretations of existing law that dramatically shift the legal landscape**. The United States Court of Appeals for the Fifth Circuit, in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), addressed the retroactive application of a Board of Immigration Appeals (BIA) decision in *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) which significantly expanded the scope of what constitutes a "crime involving moral turpitude" (CIMT). The Fifth Circuit held that applying this new, broader definition to conduct that occurred before the decision was issued would be impermissibly retroactive because it would upend the "settled expectations" of individuals concerning the immigration consequences of their actions. *Id.* at 430-31. The court conducted a balancing test, weighing the "ills of retroactivity against the disadvantages of prospectivity" and found that the frustration of the parties' expectations outweighed any benefit of retroactive application. *Id.* (quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998)).

60. This consistent and robust body of case law establishes a clear rule: new statutory provisions or judicial interpretations that impose new, adverse immigration consequences for past conduct cannot be applied retroactively.

61. Even if one were to assume arguendo that *Q. Li* stand for the proposition that every noncitizen who is inadmissible under INA § 212(a)(6)(A) is subject to mandatory detention on that basis alone, the application of that new interpretation to Petitioner's past conduct violates the rule against retroactivity. Indeed, such a new interpretation would be a new rule expanding the definition far beyond the new rule announced in *Matter of Diaz-Largo*. Accordingly, applying this

new interpretation subjecting every noncitizen inadmissible under INA § 212(a)(6)(A) would result in impermissible retroactivity. It would be no different than the applying the BIA's holding that expanded the theft offenses which fell within the definition of a CIMT. Indeed, to the extent that a new interpretation was announced that subjected every EWI noncitizen to mandatory detention, that interpretation results in a new burden (i.e. mandatory detention) on noncitizen for their past conduct (manner of entry more than two decades ago). Accordingly, even if *Q. Li* do in fact announce a new rule that every noncitizen inadmissible under INA § 212(a)(6)(A)(i) is subject to mandatory detention on that basis alone, such an interpretation coming more than 11 years after Petitioner entered the United States, cannot be applied to that conduct retroactively.

V. Petitioner requests a bond hearing, is not given one despite a statutory right to it, and now continues to be detained unlawfully in ICE custody.

62. Petitioner has resided in the United States since 2014 and lives in Mesquite, Texas with her US citizen husband and two US citizen children.[24]

63. On July 8, 2025, Petitioner was arrested by Immigration Officers following her detention by DPS Officers. Petitioner was involved in a car accident on July 6, 2025, that caused her apple watch to autonomously call emergency services, but, after DPS Officers arrived on scene, they detained Petitioner due solely to her lack of legal status.[25] Petitioner is now detained at the Karnes County Residential Center.[26]

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[24] See Exhibit 5 Petitioner's Marriage Certificate and Children's USC Birth Certificates

[25] See Exhibit 6 Arrest Report by Taylor Sheriff's Office stating only hold was for "local warrant" offense "immigration"

[26] See Exhibit 4.

64. DHS placed Petitioner in removal proceedings before the Pearsall Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

65. Petitioner is the spouse of a U.S. citizen, the mother of two U.S. citizen children, and she has no criminal history. Petitioner is neither a flight risk nor a danger to the community.[27]

66. Following Petitioner's arrest and transfer to Karnes County Residential Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

67. Petitioner subsequently requested a bond redetermination hearing before an IJ.

68. On August 7, 2025, a Pearsall Immigration Court IJ issued a decision that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for admission under § 1225(b)(2)(A).[28]

69. As a result, Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years, in immigration custody, separated from her family and community.

70. Any appeal to the BIA is futile. Petitioner is within the 30 day window to file appeal to the BIA but due to DHS's new policy being issued "in coordination with DOJ," which oversees the immigration courts such appeal will be futile and take months of further detention. Petitioner will be filing appeal to preserve her rights but it will not remedy the current harm of unlawful detention. Further, as noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in

[27] See Exhibit 5.

[28] See Exhibit 2.

the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.[29]

VI. Irreparable Harm

71. Continued unlawful detention is, by its very nature, an irreparable injury.[30] The Supreme Court has affirmed that "[f]reedom from imprisonment...lies at the heart of the liberty" protected by the Due Process Clause.[31] "Where, as here, the 'alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary'."[32]

72. Everyday Petitioner is detained in ICE custody in direct contravention of the statute and U.S. constitution he suffers irreparable harm. From the physical, emotional, and mental toll the complete sudden loss of one's freedom and liberty takes on anyone in the same circumstances, to the loss of income every day he remains in custody.

73. Irreparable harm (alarmingly) is also found in the alarming number of deaths in ICE custody recently. A few weekends ago, Mr. Phan, a 55-year old man from Vietnam, died in

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[29] See Exhibit 7 Copy of Original Decision in *Rodriguez Vazquez v. Bostock* that was submitted to the Immigration Court Judge as support for Petitioner's position

[30] *Phan*, 2025 WL 1993735, at *5 ("Further, '[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

[31] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[32] *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

ICE custody.[33] According to reports on it, Mr. Phan was ordered removed more than 13-years ago and, it appears, was re-detained seven weeks prior to his death.[34]

74. On May 14, 2025, in an oversight hearing before the House Appropriations Committee, Todd Lyons, acting director of Immigration and Customs Enforcement, testified that 9 people have died in ICE custody since January 20, 2025.[35] A month after this testimony, on June 23, 2025, a 49-year old Canadian citizen died in ICE custody.[36] Reports of overcrowding, individuals being detained at facilities that are meant for processing and not set up for detention beyond a few hours are increasing, and other inhumane detention practices continue to rise. Moreover, if ever there was an agency who had demonstrated it could not be trusted to abide by the law and treat individuals humanely, it has been ICE over the past few months.[37] The risk of death, emotional trauma, and/or other irreparable harm coming to Petitioner is, tragically, all too real a possibility.

75. Meanwhile, there will be ZERO harm to Respondents if Petitioner is immediately released from ICE custody, or at a minimum, granted the bond hearing she is entitled to by statute.

76. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts as discussed supra. Finally, in the Rodriguez Vazquez litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its

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[33] See Ex. 8

[34] (*Id.*)

[35] This testimony can be found at the following link: https://www.youtube.com/watch?v=QvoURiaxBmA.

[36] The ICE press release on this death can be found at the following link: https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away

[37] (*See* Pet'r's App. Ex. 8 (documenting in detail the story of deplorable deteriorating conditions in ICE detention facilities including Karnes where the Petitioner is detained)

position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). See Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

CLAIMS FOR RELIEF

COUNT IVIOLATION OF THE INA

77. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

78. 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. As relevant here, it 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), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

79. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

COUNT II

Violation of Due Process

80. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

81. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

82. Petitioner has a fundamental interest in liberty and being free from official restraint.

83. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

PETITIONER'S THIRD CLAIM FOR RELIEF: ICE'S VIOLATION OF ITS OWN REGULATIONS & STATUTORY VIOLATION

84. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

85. Petitioner's continued detention by Respondents without a bond hearing pursuant to the process set forth by 8 U.S.C. § 1226 or 8 C.F.R. § 1003.19 is unlawful as ICE and EOIR failed to adhere to the law and mandatory process. As here, "'where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute ... and [ICE] fails to adhere to it, the challenged [action] is invalid.'"[38] Petitioner's detention is unlawful and her immediate release is appropriate.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

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[38] *Nguyen v. Hyde*, 2025 WL 1725791, at *5 (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); *see also Zadvydas*, 533 U.S. at 690 ("The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person ... of ... liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that noncitizens who are placed in removal proceedings under 8 U.S.C. § 1229a and charged as inadmissible under § 212(a)(6)(A) are not, absent one of the provisions found in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) being applicable, subject to mandatory detention, and therefore, are entitled to a bond hearing before an Immigration Judge who has jurisdiction pursuant to the INA § 236 and 8 C.F.R. § 1003.19;

e. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

I declare under penalty of perjury that we are the attorneys for the petitioner, we have read this petition, and the information in this petition is true and correct. I understand that a false statement of material fact may serve as the basis for prosecution for perjury.

RESPECTFULLY SUBMITTED,

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