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ATTORNEYS FOR PETITIONER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Silvia Elizabeth Colman-Randas Petitioner VS John Cantu, et al., Defendants-Respondents	Case No.: 25-cv-03594-MTL Judge: Hon. Liburdi **REPLY IN SUPPORT OF REQUEST FOR TEMPORARY RESTRAINING ORDER**

Petitioner Silvia Colman-Randas, by and through her attorney of record, Nicolette Glazer Esq., respectfully submits this reply to Respondent's opposition to her request for Rule 65 relief (ECF #11) and in further support of her Petition.

Respondents largely ignored the claims pleaded in the Petition and oppose relief solely on the grounds that (1) Petitioner is an "applicant for admission" who must be detained under sectionn1225, (2) seeking judicial review under the Administrative Procedure Act (APA) is not properly sought through a habeas petition, and (3) Petitioner cannot show irreparable harm and that release from detention is in the public interest.

The Court should deem that Respondents have conceded Petitioner's constitutional claims and her claim that her detention is unlawful because Respondents re-detained her without complying with the statutory and regulatory requirements for revocation of Orders of

1 Supervision. Because punitive and/or unlawful detention is addressed adequately through a
2 writ of habeas corpus, the Court should find that Petitioner has shown a substantial
3 likelihood of success on the merits of her claims as pleaded in counts 1-4 and 6.
4 Respondent will address the arguments raised in the opposition in turn.
5 **1. The operative facts are undisputed.**
6 The Response and Declaration filed in opposition (ECF # 11 and 11-1) show that the
7 operative facts are undisputed: Petitioner, a citizen of Guatemala, was originally
8 apprehended by a Border Patrol agent on 28 December 2018. (ECF # 11-1¶ 7-8; ECF # 1¶
9 23). Upon examination the agent found that Petitioner is subject to section 240 – rather than
10 section 235(b)—removal and issued an NTA. (ECF # 11-1 ¶ 9). On 31 December 2018
11 Petitioner was placed on an order of release on own recognizance (Form I-220A). *Id.* ¶ 10.;
12 *see also* Exh A to ECF # 1. On 16 April 2019 Petitioner was issued a superseding Notice to
13 Appear pursuant to section 240 of the INA. (ECF # 11-1 ¶ 11). The NTA charges Petitioner
14 as "an alien present in the United Slates who has not been admitted or parole" not as an
15 arriving alien. *See* Exhibit R-1. Petitioner filed applications for relief from removal, which
16 were denied by the immigration judge after a full section 240 hearing; the BIA dismissed her
17 timely appeal, rendering her order of removal final on 17 March 2023. ECF # 11-1 ¶ 12 -16.
18 Since ICE released Petitioner on an order of supervision in 2018, Petitioner has complied
19 with all conditions of release, including periodic check-ins with ICE. No circumstances have
20 changed that would make Petitioner a flight risk or a danger to the community. *See id.* At
21 Petitioner's regularly scheduled ICE check-in on 15 May 2025 ICE took her into custody
22 "believing" she is subject to section 1231 detention. ECF # 11-1¶ 20-22.
23 It is also undisputed that the 9th Circuit reinstated Petitioner's federal appeal and
24 granted her a stay of removal. *Id.* at ¶ 24-26. Respondent does not and cannot claim that
25 Petitioner's order of supervision was revoked as required by the regulations or that the
26 officer who "revoked" the order of supervised release had authority to revoke such an order
27
28

or that the officer provided reasons for the revocation to Petitioner or that it allowed Petitioner to contact her counsel of record, or to provide a response and rebut. (ECF # 11-1). Respondents also admit that, at this point, the Petitioner cannot and is not detained under Section 1231. (ECF # 11 at p. 5 FN2).

In sum, CBP released Petitioner on an Order of Recognizance seven years ago and thereafter filed a Notice to Appear, thus commencing removal proceedings against her under 8 U.S.C. § 1229a. For over seven years, Petitioner abided by the conditions in the Order of Recognizance and resided in the United States. After Petitioner filed this Petition for habeas corpus and requested release or a bond hearing, the government now claims for the first time that *Petitioner was released and placed in a section 240 proceeding in error* and that ICE is now detaining her under 8 U.S.C. § 1225(b)(2), making her ineligible for release or bond.

2. Respondents' claim of "error" is disingenuous.

Respondents assert in conclusory fashion that "*Although Petitioner was released on an order of recognize (sic), it is ICE's position that this was done in error and that Petitioner should have been subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A), for the reasons argued in full below.*"(ECF # 11 at FN1). Respondents would have the Court believe that the Border Patrol officer who processed Ms. Colman-Randas for section 240 removal and released her on an order of own recognizance made some outrageous but excusable legal and/or factual mistake. In fact, Officer Fernandez asserts no error in his declaration, and no error was actually ever made. The Border Patrol Officer's decision to conditionally parole Petitioner under Section 1226(a) was entirely consistent with its longstanding practice of conditionally paroling noncitizens arrested without a warrant near the border. *See* Transcript of Oral Argument, at 44:24-45:2, *Biden v. Texas,* 597 U.S. 785 (2022) (No. 21-954) (Solicitor General representing that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended."); *Matter of Cabrera-*

Fernandez, 28 I. & N. Dec. 747, 747 (BIA 2023) ("The respondents were . . . released on their own recognizance pursuant to DHS' conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)[.]"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [government] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (same).

The basis for the Respondents' *post hoc* rationalization is quite different. On 8 July 2025 DHS issued a "secret" policy guidance memorandum in which DHS announced that DHS in "coordination" with DOJ "has revisited its legal position on detention and release authorities." (Exhibit R-2 at 10.) Under this "revisited" legal position, "[e]ffective immediately, it is the position of DHS that" any "alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival," should be deemed an "applicant for admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b). (*Id.*) "For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated." (*Id.*)[1]

3. Petitioner is not an "Applicant For Admission" and thus not subject to mandatory detention under § 1225(b)(2)(A)

As the Response emphasizes the merits of their arguments implicates the construction of two statutory provisions. The first -- 8 U.S.C. § 1225(b)(2)(A) -- provides that, absent exceptions that are inapplicable here, "in the case of an alien who is an applicant for

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[1] The DOJ, in turn, implemented this 'coordinated' change in position in a published administrative decision, *Matter of Q. Li,* 29 I. & N. Dec. 66 (BIA 2025), in which the BIA held that the IJ in that case "lack[ed] jurisdiction to consider the respondent's request for release on bond" because the Respondent should be "treated as an applicant for admission" and was "detained under . . . 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for release on bond." *Id.* at 66-68 (cleaned up).

admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding." Ms. Colman-Randas was never detained nor processed under section 1225(b). *See* Exhibit R-1 showing that the 1225(b) boxes are not checked.

The second relevant provision is 8 U.S.C. § 1226(a), which provides in pertinent part that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General . . . may continue to detain the arrested alien; and . . . may release the alien on . . . bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or . . . conditional parole." *Id.* In other words, § 1226(a) contemplates that a noncitizen who is arrested and detained pending a removal decision is "generally" entitled to a bond hearing. *Nielsen v. Preap* is 586 U.S. 392, 395-98 (2019) ("Aliens who are arrested because they are believed to be deportable may generally apply for release on bond or parole while the question of their removal is being decided. These aliens may secure their release by proving to the satisfaction of a Department of Homeland Security officer or an immigration judge that they would not endanger others and would not flee if released from custody. . . . 8 U.S.C. § 1226(a) generally permits an alien to seek release in this way . . . ."). This is the "default rule." *Jennings v. Rodriguez,* 583 U.S. 281, 288 (2018) ("Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal. . . . Section 1226(a) sets out the default rule . . . ."); *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1196-97 (9th Cir. 2022) ("The provision at issue in this case, 8 U.S.C. § 1226, provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal. . . . Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final. . . . Additional provisions supplement § 1226's detention scheme. Section 1225(b) applies to an 'applicant for admission' . . . .")

(citations omitted). Thus, while Section 1225(b) "authorizes the Government to detain certain aliens seeking admission into the country," section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings* at 289.

Respondents cited no cases agreeing with their position that § 1225(b)(2)(A) applies to noncitizens in Petitioner's situation. Cf. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (observing that § 1226(a) and its implementing regulations "provide extensive procedural protections that are unavailable under other detention provisions"). In fact, there now appears to be a unanimous body of authority rejecting the Respondents' position. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) ("Rodriguez has shown that the text of Section 1226, canons of interpretation, legislative history, and longstanding agency practice indicate that he is governed under Section 1226(a)'s 'default' rule for discretionary detention. The Court is persuaded that Rodriguez is likely to succeed on the merits that he is unlawfully detained under Section 1225(b)(2)'s mandatory detention provision."); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, *7 (E.D. Mich. 2025) ("The BIA's decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation. At least a dozen federal courts concur generally with this Court's interpretation of the statutory language as applied in this context."); *Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255, at *12 (E.D. Va. Sept. 19, 2025) (same). As *Pizzaro Reyes* persuasively explains: "[T]he overall context of § 1225 limits the scope of the terms 'applicant for admission' and 'seeking admission' in § 1225(b)(2)(A). . . . The use of "arriving" to describe noncitizens strongly indicates that the statute governs the entrance of noncitizens to the United States. This reading is bolstered by the fact that § 1225 clearly establishes an inspection scheme for when to let noncitizens into the country. In fact, the

subheading for § 1225(b)(2)(A) reads "Inspection of Other Aliens," reinforcing the idea that the subsection applies to those coming in, not already present. … *Pizarro Reyes*, 2025 WL 2609425 at *5 (cleaned up); *see also Garcia v. Noem*, No. 25-cv-02180- DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-124862025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Benitez v. Noem*, No. 5:25-cv-02190- RGK-AS, Doc. 11 at 5 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428- JRR, 2025 WL 2430025, at *10 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at *13 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv- 01789-ODW, 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15, 2025).

Moreover, the recent amendment to § 1226 further bolsters the conclusion that Petitioner's detention is not governed by § 1225(b)(2)(A). As *Pizarro Reyes* explained, the Laken Riley Act added subsection § 1226(c)(1)(E), which mandates detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. § 1226(c)(1)(E) (i)–(ii). Considering that § 1182(a)(6)(A)(i) specifically refers to noncitizens "present in the United States without being admitted or paroled," and that § 1226(c)(1)(E) requires detention without bond of these individuals if they have also committed a felony, the recently created statutory exception would be superflious if § 1225(b)(2) authorized their detention from the get go. *Pizarro Reyes*, 2025 WL 2609425 at *5; *Rodriguez*, 779 F. Supp. 3d at 1258 (noting that the government's interpretation "would render significant portions of Section 1226(c) meaningless," which is an outcome that would violate "one of the most basic interpretive canons," i.e., that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant") (cleaned up); *Barajas v. Noem*, 2025 WL

2717650, *4 (S.D. Iowa 2025) ("[T]he Federal Defendants' interpretation of § 1225 would render substantial portions of § 1226 superfluous by making detention mandatory for nearly every noncitizen who has entered the United States illegally. If this is what Congress intended, it does not make sense that it would have passed a separate statute as part of the same overall scheme that specifically contemplated bond hearings except in enumerated situations. Indeed, it is especially difficult to square the Federal Defendants' interpretation of § 1225 with Congress's decision earlier this year to pass the Laken Riley Act, which expanded the scope of mandatory detention under § 1226(a). Under the Federal Defendants' interpretation of the interplay between §§ 1225 and 1226, the Laken Riley Act is meaningless. This is not how statutes are to be interpreted.") (cleaned up); *Maldonado*, 2025 WL 2374411, at *12 ("The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)."). Respondents made no mention of these cases nor did they provide arguments seeking to distinguish Petitioner's facts from these growing authorities.

4. The APA claims as pleaded in the Complaint are not "improper habeas claims"

Respondents rely on *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) and *Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th Cir. 2000) for their position that the APA count is outside of the Court's habeas corpus jurisdiction. (ECF # 11 at 11-13) Petitioner acknowledges that *Pinson* holds that "release from confinement is the only available remedy for claims at the writ's core" and that "the relevant question is whether, based on the allegations in the petition, release is legally required irrespective of the relief requested." *Id.* at 1070, 1072. This is precisely what Petitioner seeks: release from detention that is violative of constitutional and statutory commands. Petitioner submits that Respondents' expansive reading of *Pinson* is foreclosed by *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) where the 9th Circuit held that a nearly identical request for release from immigration detention fell squarely within Pinson's "core of habeas." *Id.* at 1194 ("Doe relies primarily on *Pinson* and

Nettles for the proposition that, because he did not challenge the underlying legal basis for his detention, but rather sought a process remedy in the form of a bond hearing, it follows that his petition falls within the 'core of habeas' as defined in *Pinson* . . . . We are unpersuaded that either of those cases support such a conclusion.").

Further, in *Preiser v. Rodriguez*, 411 U.S. 475 (1973) the Supreme Court held that when a prisoner is put "under additional and unconstitutional restraints during his lawful custody" habeas corpus may be available to remove the restraints "making the custody illegal. " *Id.* at 499. This is because habeas may be "available to challenge such prison conditions." *Id.* The Court also clarified that if a prisoner challenges both the conditions of their confinement and the fact or length of the confinement, the "latter claim . . . is cognizable only in federal habeas corpus." *Id.* n.14. Here, Petitioner is challenging both the legality of the confinement and the conditions of her confinement. *See Johnson v. Avery*, 393 U.S. 483 (1969) (The Court held that habeas corpus could be used to challenge unconstitutional conditions of confinement when prison regulations conflict with "federal constitutional or statutory rights."); *Wilwording v. Swenson*, 404 U.S. 249 (1971) (concluding state prisoners have a cognizable claim in habeas corpus to challenge their living conditions and disciplinary measures in prison); *In re Bonner*, 151 U.S. 242, 259 (1894) ("[The writ of habeas corpus] was intended as a protection of the citizen from encroachment upon his liberty from *any* source") (emphasis added).

5. The Remaining Factors Weight Heavily in Favor of Granting a Temporary Restraining Order

Respondents overlook the fact that the 9th Circuit has already determined that the Petitioner has met the stringent *Nken* factors and granted a stay of her removal for the duration of her Petition for Review. *See Nken v. Holder*, 556 U.S. 418 (2009) (holding that a stay is not a matter or right: a noncitizen must demonstrate a "strong showing" that they are likely to succeed on the merits of the underlying Petition for review; that they will be irreparably injured if the stay is not granted; that the issuance of the stay will not

1 substantially injure DHS; that the issuance of the stay will not harm the public interest). *A*
2 *fortiori*, Petitioner will be irreparably harmed if she is to be trapped in punitive and lengthy
3 detention while the 9th Circuit considers the merits of her claims. Regardless, the balance of
4 hardships tips strongly in the Petitioner's favor: her health and right to be free from unlawful
5 restraint are at stake. Respondents argue that the Government has a compelling interest in
6 "the enforcement of its immigration laws" but this interest cannot disturb the *status quo* that
7 existed prior to Petitioner's May 2025 arrest. Moreover, a TRO would serve the public
8 interest as her claims assert that the new policy in the DHS Guidance Notice violates federal
9 laws: Permitting continued violations of federal law would serve "neither equity nor the
10 public interest." *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). Thus, the public
11 interest weighs in favor of the Petitioner because continued detention without the legal
12 protections afforded under § 1226(a) potentially violates the Petitioner's due process and
13 statutory rights. *See Xuyue Zhang v. Barr*, 612 F.Supp.3d 1005, 1017 (C.D. Cal. 2019)
14 ("Generally, public interest concerns are implicated when a constitutional right has been
15 violated, because all citizens have a stake in upholding the Constitution.").
16
17 Under 28 U.S.C. § 2243, a court shall forthwith issue a writ or order the Respondent
18 to show cause why a writ should not issue, "unless it appears from the application that the
19 applicant or person detained is not entitled" to a writ of habeas corpus.
20 Date: 10/10/2025
21
Submitted by
22
23
_____*s/ Nicolette Glazer Esq.*________

Nicolette Glazer Esq.
LAW OFFICES OF LARRY R GLAZER
1875 Century Park East #700
Century City, CA 90067

ATTORNEY FOR PETITIONER
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EXHIBIT R-1

FAMU

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

DOB: [redacted] Event: [redacted]

In the Matter of:

Respondent: SILVIA ELIZABETH COLMAN-RANDAS currently residing at:

[redacted] [redacted]

(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☒ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

A 1. You are not a citizen or national of the United States;

A 2. You are a native of GUATEMALA and a citizen of GUATEMALA ;

A 3. You arrived in the United States at or near SAN YSIDRO, CALIFORNIA, on or about December 29, 2018;

A 4. You were not then admitted or paroled after inspection by an Immigration Officer.

EXHIBIT# 1A adm Dep

MAY 02 2019
Tara Naselow-Nahas
Immigration Judge

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

C 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

300 N LOS ANGELES ST LOS ANGELES CA 90012 Room 4330

(Complete Address of Immigration Court, Including Room Number, if any)

on To be set. *(Date)* at To be set. *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

CARRY CROOK SDDO
(Signature and Title of Issuing Officer)

Date: April 16, 2019 Los Angeles, California *(City and State)*

This Notice to Appear supersedes the Notice to Appear issued on December 29, 2018

See reverse for important information

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this preceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: ______________________ *(Signature of Respondent)*

Date: ______________

____
(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on April 16, 2019, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

[X] in person [ ] by certified mail, returned receipt requested [ ] by regular mail

[ ] Attached is a credible fear worksheet.

[X] Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the Spanish language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

[signature] (Signature of Respondent if Personally Served)

L. D08112 SERRANO LLAMAS Deportation Officer (Signature and Title of officer)

To All ICE Employees
July 8, 2025

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those [illegible] to mandatory detention under INA § 236(c).**

EXHIBIT R-2

Moving forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(*b*) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(IV), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for [illegible] immigration benefits, [illegible] employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were [illegible] on parole under INA § 212(d)(5) based on this change in legal [illegible]. ERO and HSI are not required to correct the release [illegible] 212(d)(5) parole paperwork.