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**Motion for pro hac vice admission forthcoming.*

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Marielis SANTANA-RIVAS, Petitioner-Plaintiff, v. WARDEN, in their official capacity as Warden of the Clinton County Correctional Facility; Brian McSHANE, in his official capacity as Philadelphia Field Office Director for U.S. Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; Kristi NOEM, in hER official capacity as Secretary of the U.S. Department of Homeland Security; Pamela BONDI, in her official capacity as Attorney General of the United States, Respondents.	Case No. **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Marielis Santana-Rivas is in the physical custody of Respondents at the Clinton County Correctional Facility, located in Pennsylvania. She 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 pursuant to the September 5, 2025 decision by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
2. After entering the United States without inspection on October 22, 2022, Respondent was released on her own recognizance under INA § 236(a), 8 U.S.C. § 1182(a). On August 20, 2023, she was arrested in Trenton, New Jersey; the circumstances leading up to her arrest form the basis of an application for a T nonimmigrant visa. After her release from criminal custody on August 12, 2024, Petitioner was detained in ICE custody, where she pursued her asylum and T visa applications.
3. On July 8, 2025, following a bond hearing, an Immigration Judge (IJ) granted Petitioner bond, finding that Petitioner was neither a danger to the community nor a flight risk. He set bond in the amount of $8,500. However, an attorney for Immigration and Customs Enforcement (ICE) filed a notice of intent to appeal ("EOIR-43"), which automatically stayed Petitioner's release. ICE subsequently appealed the IJ's bond grant to the BIA.

4. ICE subsequently argued – despite never raising the issue before or during the bond hearing, and asserting an inconsistent position in earlier stages of the litigation – that Petitioner was in fact subject to mandatory detention. This position was consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—*i.e.*, those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Subsequently, on September 5, 2025, the BIA issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission or inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore, ineligible to be released on bond, regardless of how long they had been living in the United States prior to their apprehension.
6. On September 19, 2025, the BIA vacated the IJ's decision granting Petitioner bond, holding that the "intervening precedent" of *Matter of Yajure Hurtado* rendered Petitioner's detention mandatory.

7. 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.
8. 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. Further, Petitioner's detention, if properly considered to be mandatory, has become unconstitutionally prolonged.
9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released from custody on the $8,500 bond that the IJ granted her nearly three months ago.

JURISDICTION AND VENUE

10. Petitioner is detained in civil immigration custody at Clinton County Correctional Facility in McElhattan, Pennsylvania. She was transferred there from Moshannon Valley Processing Center on or about April 24, 2025. She has been in ICE custody since August 12, 2024.

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

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

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

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in

all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner Marielis Santana-Rivas is thirty years old. She was born in the Dominican Republic on [redacted] and came to the United States in 2022 to escape severe abuse at the hands of her ex-partner. *See* Ex. A, Affidavit of Petitioner, Marielis Santana-Rivas. Ms. Santana-Rivas is the subject of a removal proceeding based upon the charge of being present in the United States without admission or parole. *See* INA § 212(a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i). She has been in civil immigration detention since August 12, 2024.

17. Respondent Kristi Noem is named in her official capacity as the Secretary of U.S. Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, she is responsible for the administration of the immigration laws pursuant to

Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.

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

19. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. Attorney General Bondi is responsible for continuing a custody case against a noncitizen under 8 C.F.R. § 1003.6(d).

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

21. Respondent Warden of Clinton County Correctional Facility is named in their official capacity as the warden the Clinton County Correctional Facility.

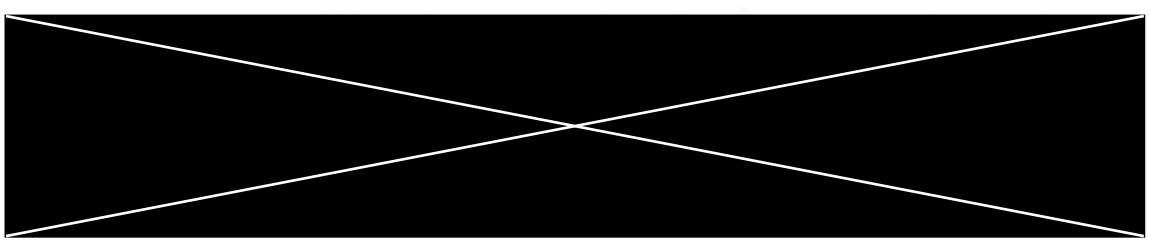
The facility has immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and its warden is a legal custodian of Petitioner.

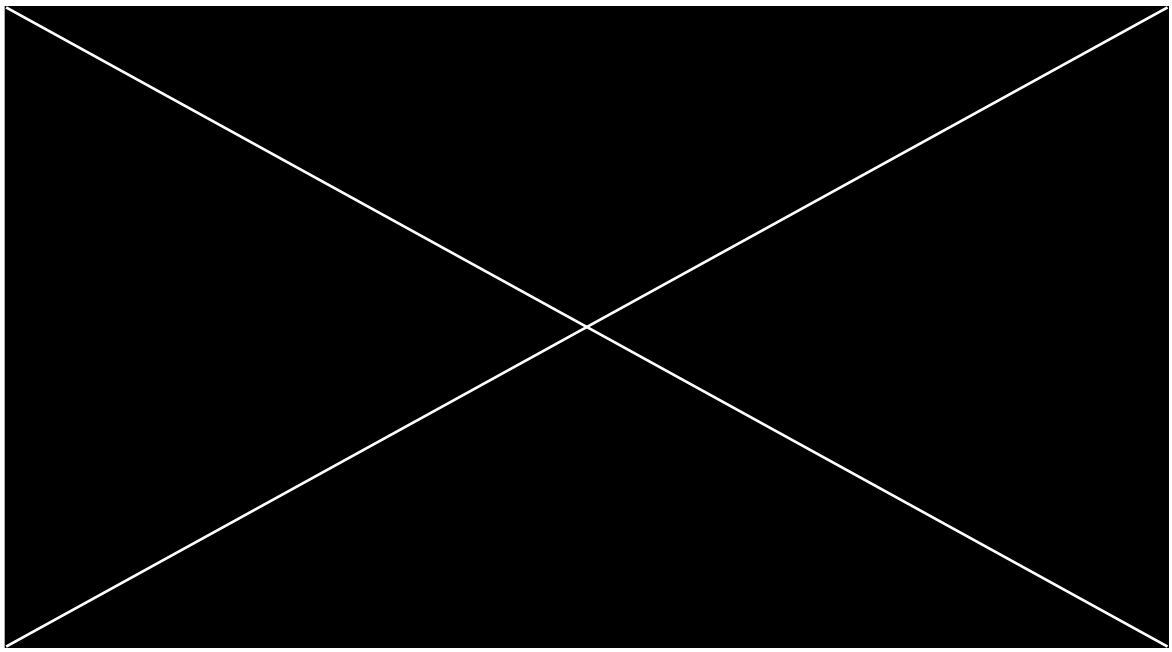
FACTS

22. Petitioner entered the United States on October 22, 2022, after fleeing severe abuse at the hands of her ex-partner in the Dominican Republic. *See Ex. A: Declaration of Marielis Santana Rivas,* ¶ 2.

23. Petitioner surrendered to immigration authorities shortly after crossing the border and was issued an Order of Release on Recognizance under 8 U.S.C. § 1226(a). *Ex. B: DHS Form I-213, dated August 12, 2024; Ex. C, Order of Release on Recognizance.* She left behind two biological children, aged fifteen and six, and a third child who is ten, whom she has raised as her own. *Ex. A* ¶ 1.

24. Petitioner eventually settled in the Bronx, where she was sexually harassed by her landlord. *Id.* ¶ 3. In August 2023, Petitioner was offered a short-term job engaging in sex work in Trenton, New Jersey, in order to pay for a surgery her brother urgently needed in the Dominican Republic. However,

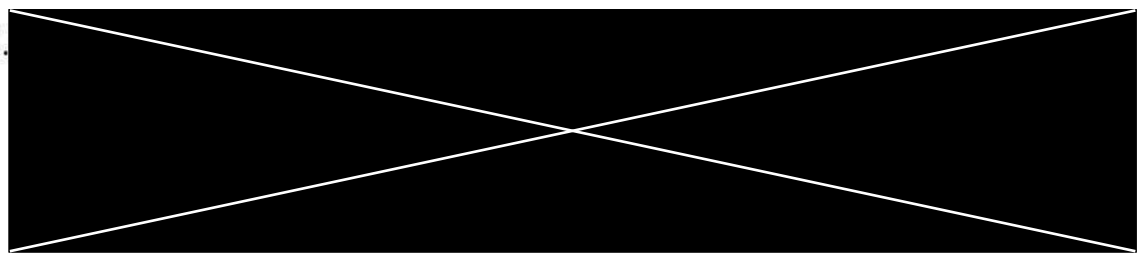




Petitioner was arrested. *Id.* ¶¶ 4-12.

25. After about one year in jail, on the advice of a private criminal defense attorney, Petitioner pled guilty to second-degree aggravated assault under New Jersey Stat. Ann. § 2C:12-1(b). The plea was part of a deal which included entry into a pretrial intervention program. Petitioner believed she would be on probation and complete community service, and upon successful completion of both, the charge would be dismissed. However, on August 12, 2024, immediately after she was sentenced, she was taken into ICE custody on a detainer. At the time of her detention, she was subject to a final *in absentia* order of removal because she had missed a hearing at the Orlando Immigration Court while she was in criminal custody, and the IJ had ordered her removed. *Id.* ¶¶ 13-14.

26. Petitioner was detained at the Moshannon Valley Processing Center in Philipsburg, Pennsylvania. There, she retained *pro bono* immigration counsel, who (inter alia) helped her vacate the *in absentia* removal order and reopen her proceedings on December 4, 2024; apply for asylum and a visa for victims of trafficking ("T visa"); and obtain new criminal defense counsel to reexamine her criminal case. *Id.* ¶ 14.

27. 

28. Petitioner's many adverse experiences – her childhood abuse, her abuse by her ex-partner in the Dominican Republic, harassment by her landlord in the Bronx, and trafficking in New Jersey – have had profound effects on her mental health. She reports intrusive memories, trouble sleeping, nightmares, flashbacks, dissociation, and inability to remember dates and details. *Ex. D, Mental Health Evaluation conducted by Metis Group, LLC ¶ 81*. A mental health expert has identified that she has symptoms of post-traumatic stress disorder and major depressive disorder. *Id.* ¶¶ 81-82.

29. Petitioner was initially detained at Moshannon Valley Processing Center, in Phillipsburg, Pennsylvania. On April 24, 2025, Petitioner was suddenly and without explanation transferred from Moshannon Valley Processing Center to

Clinton County Correctional Facility. At Clinton County Petitioner is housed with criminal and immigration detainees. Her mental health has gotten worse due to her prolonged detention and her inability to communicate with her children, whom she worries about incessantly, because Clinton does not facilitate international calls. Instead, she has to rely on indirect news about her children, over expensive phone calls that she can only afford every couple of weeks. *Ex. A*, ¶¶ 16-21.

IMMIGRATION PROCEDURAL HISTORY

30. After Petitioner's removal proceedings were reopened, she filed her asylum application on January 7, 2025. *See Ex. E, Form I-589*. That case is pending on appeal. Her T visa application was filed on March 27, 2025, and is pending before United States Citizenship and Immigration Services, *see Ex. F, T Visa Receipt*.

31. Petitioner moved for bond on April 23, 2025, pursuant to 8 C.F.R. 1003.19(e), and a bond hearing was scheduled for May 2, 2025, the same day as her then-scheduled asylum hearing. DHS counsel submitted an argument that Petitioner was subject to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c), because second-degree aggravated assault under New Jersey law amounted to a crime involving moral turpitude. *See Ex. G, DHS Statement Regarding Respondent's Ineligibility for Bond.*

32. On April 24, 2025, Petitioner was transferred to Clinton County Correctional Facility. An ICE official informed Petitioner's counsel that Petitioner would be produced for her May 2 asylum hearing. Federal regulation requires DHS to immediately notify the court of changes in custody status, *see* 8 C.F.R. § 1003.19(g), but it failed to do so.

33. Petitioner was not produced for her May 2 asylum and bond hearings. IJ Richard Bailey informed the parties that he was unable to hear cases of individuals detained at Clinton County, and as a result the hearing would have to be rescheduled. IJ Bailey also determined that Petitioner was in fact subject to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c). *See Ex. H, May 2, 2025, Order of the Immigration Judge.* A new asylum hearing was scheduled for May 28, 2025, before IJ Leo A. Finston, a former ICE attorney appointed as an IJ in 2010. However, upon Petitioner's motion, that hearing was converted into a competency hearing for the determination of appropriate safeguards given Petitioner's mental health concerns, and her asylum hearing was again rescheduled for July 16, 2025. *See Ex. I, May 15, 2025, Orders of the Immigration Judge.*

34. Meanwhile, Petitioner's new criminal defense counsel moved to withdraw her guilty plea on the basis of an insufficient allocution and deficient advice as to the immigration consequences of her plea. That motion was granted on

June 6, 2025. *See Ex. J, Order Granting Motion to Withdraw Guilty Plea.* On July 14, 2025, Petitioner pled guilty to simple assault, N.J.S.A. § 2C:12-1(a)(1), a New Jersey disorderly persons offense (akin to a misdemeanor). *See Ex. K, Judgment of the Superior Court of New Jersey, Mercer County.*

35. On June 27, 2025, Petitioner again moved for bond, arguing that she was no longer subject to mandatory detention under INA § 236(c) because of the vacatur of her improvidently entered plea. Petitioner refiled her bond motion on June 27, 2025, and a hearing took place on July 8, 2025. Both Petitioner and DHS filed extensive evidence regarding danger and flight risk.

36. At the bond hearing, DHS did not raise a challenge to the Immigration Judge's jurisdiction to set bond in the case of the Petitioner. Rather, counsel for DHS argued that she should not be released on bond because she poses a danger to persons. Following argument, IJ Finston issued a thorough bond decision, acknowledging concerns about the circumstances of Petitioner's arrest and the early stages of her T visa application, but finding that the nonprofit support arranged for her upon her release meant she is not a danger or a flight risk. The IJ set a bond of $8,500. *See Ex. L, July 8, 2025, Order of the Immigration Judge; Ex. M, Bond Memorandum.*

37. One day later, on July 9, 2025, DHS filed a Form EOIR-43, Notice of Intent to Appeal, which automatically stayed Petitioner's release for 10 business

days, with no reasoning provided. *See* 8 C.F.R. § 1003.19(i)(2); *See also Ex. N, EOIR-43.*

38. On July 15, 2025, DHS filed a motion to reconsider before the Immigration Judge. In the motion, DHS argued – for the first time in the nearly one year of Petitioner's detention and nearly three years of removal proceedings – that Petitioner was subject to mandatory detention under INA § 235(b)(2), as an "applicant for admission." *Ex. O, DHS Motion to Reconsider.* This late-breaking argument reflected ICE's "interim guidance," taking the position that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings. *Ex. P, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025).*

39. On July 16, 2025, Petitioner's asylum hearing took place as scheduled, with the IJ denying her motion for a brief continuance to litigate custody issues. The IJ denied Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture. Petitioner has appealed this decision to the BIA. *See Ex. Q, Notice of Appeal.*

40. On July 21, 2025, DHS filed a Notice of Appeal from a Decision of an Immigration Judge ("EOIR-26"). *Ex. R, Notice of Appeal.* In the Notice of Appeal, DHS indicated that the basis of the appeal was that the IJ erroneously found that Petitioner was not a danger or a flight risk; and in the alternative, it

requested remand of the bond case to the IJ for consideration of whether Petitioner was subject to mandatory detention under INA § 235. By filing Notice of Appeal, DHS deprived the IJ of jurisdiction to adjudicate its motion to reconsider.

41. In its actual appeal brief, DHS focused primarily on danger and flight risk, relegating its argument regarding mandatory jurisdiction to a footnote in recognition of the fact that it failed to raise these arguments to the IJ. *See Ex. S, DHS Bond Appeal Brief.*

42. Nonetheless, on September 19, 2025, the BIA vacated the IJ's decision, noting the "intervening precedent" of *Matter of Yajure-Hurtado. Ex. T, Order of the Board of Immigration Appeals.*

43. Behind this Kafkaesque procedural history is a victim of severe domestic abuse and human trafficking who is caught between a murderous ex-partner and a deportation machine, who has not been able to speak with her children in months because a rural Pennsylvania jail with an ICE contract does not have the ability to place international calls, and who stands convicted of the New Jersey equivalent of misdemeanor assault and is subject only to a year of probation – and yet, who retains a positive attitude, who asks her lawyers if they can help other women in her unit, who talks about writing a book, and

who dreams not only of supporting her own children but of giving a home to other children without parents.

LEGAL FRAMEWORK

DHS'S DETENTION AUTHORITY

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

45. 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).

46. 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).

47. 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).

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

49. 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).

50. 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 pursuant to 8 U.S.C. § 1226(c). 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)).

RECENT CHANGES TO DHS's DETENTION AUTHORITY AND THEIR UNLAWFUL APPLICATION TO PETITIONER

51. 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.

52. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be 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. *See Ex. P.*

53. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

54. The position that all people who entered the United States without inspection are "applicants for admission" subject to mandatory detention is contrary to the text and structure of the INA, longstanding agency practice, and the agencies' treatment of Petitioner's specific case. Almost uniformly, the federal district courts that have considered the issue, both before and after the issuance of *Matter of Yajure-Hurtado*, have disagreed that all people who entered without inspection are subject to mandatory detention.

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

55. First, reading 8 U.S.C. § 1225(b)(2)(A) to mean that all "applicants for admission" are subject to mandatory detention would render certain provisions of that subsection superfluous. *See United States ex rel. Polansky v. Exec Health Res., Inc.*, 599 U.S. 419, 432 (2023) (holding "every clause and word of a statute" should have meaning. The provision sets out several requirements: that an "examining immigration officer" determine that an individual is (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." *Id.* The use of the present participle "seeking" indicates that to be subject to mandatory detention a person must be presently seeking admission. Petitioner, having entered the United States nearly one year before her ICE detention, is not actively seeking admission.[2]

56. Second, a broad reading of 8 U.S.C. § 1225(b)(2)(A) renders other provisions of the INA superfluous, namely 8 U.S.C. § 1226. Most notably, just this year, Congress enacted the Laken Riley Act, which amended Section 1226(c) to require mandatory detention of those connected to an enumerated

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[2] *See, e.g.*, *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763, at *3 (S.D. Ind. Sept. 22, 2025) ("[T]he respondents has not explained how [the petitioner is 'seeking admission' such that § 1225(b)(2) applies."); *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) ("Respondents 'completely ignore,' or even read out, the term 'seeking' from 'seeking admission'"); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *13 (D. Nev. Sept. 17, 2025) ("[T]he Court finds that the statutory text indicates that for purposes of mandatory detention under § 1225(b)(2)(A), the phrases 'applicants for admission' and 'seeking admission,' taken together, are limited in temporal scope, and cannot be read to apply indefinitely to all noncitizens residing in the U.S. for years or decades."

list of crimes, *and* who are inadmissible. *Id.* § 1226(c)(1)(E). Reading Section 1225(b)(2)(A) to mandate detention of all applicants for admission renders a recently enacted law meaningless, because anyone who would be subject to the Laken Riley Act is instead subject to mandatory detention as an applicant for admission, regardless of any crime committed.[3]

57. Third, DHS and EOIR's interpretation runs afoul of the overall detention scheme set out by 8 U.S.C. §§ 1225 and 1226. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court recognized that Section 1225 applies to "aliens seeking admission into the country," while Section 1226 applies to "aliens already in the country pending the outcome of their removal proceedings." *Id.* at 838. Under the Supreme Court's guidance, Petitioner is subject to Section 1226 because she was already in the country with her removal proceedings pending at the time she was detained.[4]

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[3] *See, e.g.*, *Brito Barrajas v. Noem*, No. 4:25-cv-00322-SHL-HCA, at 6-7 (S.D. Iowa Sept. 23, 2025) (holding if Congress intended mandatory detention for every noncitizen who entered the U.S. illegally, "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."); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025) (holding "mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions");

[4] *See, e.g.*, *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at *4-5 (N.D. Iowa Sept. 23, 2025) (noting that Section "1225 is set up with arriving aliens in mind," while Section 1226 "realistically applies to any alien awaiting a removal decision"); *Hernandez Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) ("[E]very court to address the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extended time, like Lopez, is appropriately classified under § 1226(a) and not § 1225(b)(2)(A).").

58. Fourth, DHS and EOIR's interpretation of 8 U.S.C. § 1225(b)(2)(A) is contrary to decades of agency practice, which can "inform [a court's] determination of what the law is." *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014). Previously, EOIR regularly heard bond applications and granted bonds to people who entered without inspection or admission. *See Matter of Yajure-Hurtado*, 29 I&N Dec. at n.6 ("We acknowledge that for years Immigration Judges have conducted [section 1226(a)] bond hearings for aliens who entered the United States without inspection."). [5]

59. Finally, DHS and EOIR's interpretation runs contrary to the treatment of Petitioner's specific case (and cases like hers) over the multi-year course of her immigration proceedings. DHS treated Petitioner as if Section 1226 governed her detention and release: it released her on her own recognizance under Section 1226 shortly after she entered the country; it argued that Petitioner was mandatorily detained under Section 1226(c); and it raised *no* argument, until Petitioner was granted bond, that the IJ did not have the power to grant bond in the first place. For its part, EOIR initially *agreed* with DHS that Section 1226(c) applied to Petitioner; it acknowledged that once

[5] *See, e.g., Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *8 (E.D. Cal. Sept. 23, 2025) ("The Court finds that the government's longstanding practice, under which section 1225(b)(2)(A) would not have applied to petitioner's circumstances, is consistent with the text and statutory scheme."); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) "[T]he 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.").

her conviction was vacated she was subject to Section 1226(a); and it performed a danger and flight risk analysis under Section 1226(a). Only after the issuance of *Yajure-Hurtado*, which post-dated Petitioner's bond proceedings and upended decades of agency practice, did the BIA determine that every government official who had considered Petitioner's detention for *three years* was wrong.[6]

60. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

PETITIONER'S UNCONSTITUTIONALLY PROLONGED DETENTION

61. The Supreme Court has held that civil detention "for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Therefore, any mandated civil detention should be applied in only narrow circumstances. *Id.* Significant constitutional issues arise where physical confinement becomes unreasonably prolonged. *Zadvydas v. Davis, 533 U.S. 678, 690 (2001).* As the Third Circuit Court of Appeals has affirmed, when civil detention exceeds a reasonable

[6] *See, e.g., Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025) (holding petitioner subject to Section 1226(a) where he was released on an order of recognizance); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) (holding Section 1226(a) applied where (inter alia) petitioner was "designated for treatment under § 1226" shortly after he entered the country).

period, due process requires a bond hearing where the Government bears the burden of proving, by clear and convincing evidence, that continued detention is warranted to prevent flight or a danger to the community. *German Santos v. Warden Pike Cty. Corr. Fac.*, 965 F.3d 203, 208 (3d Cir. 2020); *Diop v. ICE/Homeland Sec.,* 656 F.3d 221, 232-33 (3d Cir. 2011)*; Chavez-Alvarez v. Warden York County Prison,* 783 F.3d 469, 478 (3d Cir. 2015). In *Santos*, the court evaluated the two-and-a-half-year mandatory detention of an LPR. Ultimately, the court held "[w]hen detention becomes unreasonable, the Due Process Clause demands a hearing" and that Mr. Santos was entitled to a bond hearing where the Government would bear the burden of proof of justifying continued detention. *Id.* at 206. Importantly, the court provided a four-factor test for evaluating prolonged detention, including duration of detention, "whether the detention is likely to continue," "reasons for the delay," and whether the non-citizen's "conditions of confinement are 'meaningfully different' from criminal punishment." *Id.*

62. Under the factors articulated in *Santos*, Petitioner's detention has become unreasonably prolonged. First, she has been detained by ICE since August 12, 2024. This amounts to over a year of civil confinement. The length of her confinement goes well beyond the six months to one-year reasonable timeframe set forth in *Zadvydas, Chavez-Alvarez* and *German Santos*..

63. Second, Petitioner's detention will inevitably continue due to her pending appeal. On July 22, 2025, Petitioner filed a Notice of Appeal with the BIA and is awaiting the briefing schedule. *Ex. Q*. Although the BIA strives to complete its appellate review within 180 days, it is very likely the appeal process will take significantly longer. In addition, courts have found that pending appeals cause additional undefined detention periods, which in turn calls for a finding of unreasonableness. *Bah v. Doll*, No. 3: 18-cv-1409, 2018 U.S. Dist. LEXIS 190558 *8 (M.D. Pa. Oct. 16, 2018); *Abioye v. Oddo,* No. 3: 23-cv-025, 2023 U.S. Dist. LEXIS 211947, *9 (W.D. Pa. Nov. 29, 2023).

64. If Petitioner's appeal is successful, her case will likely be remanded to the IJ. Even if the BIA denies the appeal, Petitioner has the right to file a petition for review. In short, absent release, Petitioner's detention is likely to be indefinitely extended if she were to avail herself of the legal process available to her, even though an IJ has determined that she is neither a danger to society nor a flight risk and should be released during the pendency of her proceedings.

65. Third, Petitioner did not cause any delay in her proceedings that would justify her prolonged detention. As the Third Circuit stated in *German Santos*, an immigrant detainee's "good-faith challenge to his removal" must not be held against him "even if his appeals or applications for relief have drawn out the proceedings." *German Santos,* 965 F.3d at 211. The court reasoned that if

filing appeals was held against a detainee it would "effectively punish [him or her] for pursuing applicable legal remedies." *Id.*

66. Since October 2024, Petitioner has been represented on a *pro bono* basis by Rutgers Immigrant Rights Clinic and her counsel has diligently litigated her case. As detailed in paras 31-40, *supra*, the delays in Petitioner's case are attributable to the Department and are completely beyond her control. *See also* Ex. I.

67. Fourth, the conditions of Petitioner's confinement mirror that of criminal punishment. At Clinton, Petitioner is subject to a multitude of punitive conditions, including being housed with criminal detainees, having limited access to medical care, phone calls, and *sunlight*, and being subjected to inedible food.

68. Being civilly detained for over a year after having met her burden to establish before an IJ that she is neither a danger nor a flight risk violates the Due Process Clause, and warrants her immediate release.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

70. 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.

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

COUNT II
Violation of the Bond Regulations

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

73. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who superflouare present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis

added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

74. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

75. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Due Process

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

77. 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 (2001).

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

79. The government's detention of Petitioner despite a neutral IJ issuing a reasoned determination that she is neither a danger nor a flight risk violates her right to due process.

COUNT IV

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

81. Even if Petitioner is properly subject to mandatory detention, her detention has become unconstitutionally prolonged, according to the factors outlined in *German Santos.*

82. Further, Petitioner does not pose a flight risk or danger to the community if released, *as an IJ already found.*

83. The standard remedy for a prolonged-detention claim is a bond hearing at which the government carries the burden; however, in this case, Petitioner has already been ordered released on bond at a hearing at which she bore the burden. Thus, the only effectual remedy here is that she be immediately released on bond.

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Middle District of Pennsylvania while this habeas petition is pending;

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

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

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.

DATED this 9th day of October, 2025, in Newark, New Jersey

Respectfully submitted,

s/ Rebecca Hufstader
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**Motion for pro hac vice admission forthcoming.*