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**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. 3:25-cv-01896

**(Wilson, J.)**

**REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

Respondents do not dispute that Petitioner has lived in the United States for years. Nor do Respondents dispute that the government itself for decades interpreted the Immigration and Nationality Act (INA) to provide for release on bond for people like Petitioner, or that dozens of courts have rejected Respondents' new "strained interpretation" of the INA. *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at \*10 (N.D. Cal. Sept. 26, 2025). Instead, Respondents throw up a smokescreen of hyper-technical arguments that have been repeatedly rejected by the courts. None of those arguments have merit.

## ARGUMENT

### **I. Section 1226(a), Not Section 1225(b)(2)(A), Applies to Petitioner.**

#### **A. Respondents Misinterpret Both Section 1226 and the INA's Structure.**

As Petitioner explains in the petition, and as hundreds of District Courts have now held, 8 U.S.C. §§ 1226(a) and 1225(b)(2)(A) work in tandem to cover different categories of noncitizens. Section 1226 provides a discretionary detention scheme for individuals who are arrested while "already in the country" and detained "pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while Section 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen]

seeking to enter the country is admissible,” *id.* at 287. Indeed, there is a “line historically drawn between these two sections” and the categories of noncitizens they respectively cover. *Martinez v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2084238, at \*8 (D. Mass. July 24, 2025).

Section 1225’s plain text shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)–(b), (d). That section sets out procedures for “inspection[s]” of people “arriving in the United States,” 8 U.S.C. § 1225(a)(3), (b)(1), (b)(2), (d); repeatedly refers to “examining immigration officer[s],” *id.* § 1225(b)(2)(A), (b)(4); and discusses “stowaways, “crewm[e]n,” and noncitizens “arriving from contiguous territory.” *Id.* § 1225(a)(2), (b)(2)(B)(i), (b)(2)(C). Even the title of § 1225 refers to the “inspection” of “inadmissible arriving” noncitizens, and the title of subsection 1225(b)(2) likewise refers to “inspection.” *See Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (“This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute . . . especially . . . [where] it reinforces what the text’s nouns and verbs independently suggest.”) (cleaned up); *Merit Mgmt. Grp., LP v. FIT Consulting, Inc.*, 583 U.S. 366, 380 (2018) (holding that section headings “supply cues as to what Congress intended” (cleaned up)). Thus, by its own text, Section 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at

or near the U.S. border. Petitioner, of course, arrived at the border years ago and has been residing in the United States since. *See* Pet. ¶ 22; ECF No. 1-4.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested “on a warrant . . . pending a decision on whether [they are] to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226(a) thus applies to those “already in the country” who are detained “pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 289. The provision plainly applies to Petitioner, who was arrested on an ICE detainer while already in the United States, and is now detained “pending a decision on [her] removal.” *Id.*; *see also* ECF No. 1-4. Thus, § 1226(a), and not § 1225(b)(2)(A), is the proper detention authority for Petitioner.

The legislative history and implementing regulations likewise make clear that Section 1226(a) was always intended to apply to people who entered without inspection and are residing in the United States. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting Congress’s intent for § 1226(a) to simply “restate” its predecessor statute, which provided “the authority of the Attorney General to arrest, detain, and release on bond a [ ] [noncitizen] who is not lawfully in the United States”); *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that “[noncitizens] who are

present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination[,]” and “[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge . . . . This procedure maintains the status quo.”).

This is not a novel interpretation of the INA. It has been Respondents’ own understanding of these provisions since they were first enacted thirty years ago, and how Respondents treated Petitioner herself from the day she arrived in this country, *see* ECF Nos. 1-4, 1-5, 1-9—a view they held until suddenly reversing course in July. Respondents’ new reading defies the plain text of Section 1226, which expressly applies to “inadmissible” noncitizens. Section 1226(a) states that noncitizens detained via a warrant while facing removal proceedings may be released on bond or parole “[e]xcept as provided in subsection (c).” 8 U.S.C. § 1226(a). Subsection (c), in turn, exempts certain “inadmissible” noncitizens from § 1226(a)’s discretionary detention scheme. These “statutory exceptions would be unnecessary” if Congress did not intend for Section 1226(a) to cover noncitizens alleged to be inadmissible, like Petitioner here. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). *See also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (discussing § 1226 and explaining that “when Congress creates ‘specific exceptions’ to a statute’s

applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” (quoting *Shady Grove*, 559 U.S. at 400)).

**B. Petitioner Is Not “Seeking Admission” to the United States.**

Assuming without conceding that Petitioner is an “applicant for admission,” § 1225(b)(2)(A) requires an independent and separate showing that Petitioner is “seeking admission” to the United States—which Petitioner very clearly is not. The term “seeking admission” is not defined anywhere in the INA, making the structure and context of Section 1225 even more instructive. Interpreting the INA properly shows that “seeking admission” describes a narrow class of recent arrivals who are presenting themselves for admission at or near the border. Petitioner clearly does not fall within that class.

Again, the structure, text, and legislative history of Section 1225 clearly show that this section deals with inspections of recent arrivals at or near the border. *See Part I, supra*. By deploying the term “seeking admission” within Section 1225’s border inspection scheme—and not Section 1226—Congress intended to limit this term to covering just the detention of noncitizens seeking admission *at or near the border*. *See Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at \*5 (E.D. Mich. Sept. 9, 2025); *Martinez*, 2025 WL 2084238, at \*8. That is why the statute’s implementing regulations, which were “promulgated mere months after passage of the statute and have remained consistent over time,” *Lopez*

*Benitez v. Francis*, --- F. Supp. 3d. ---, 2025 WL 2371588, at \*7 (S.D.N.Y. Aug. 13, 2025) (cleaned up), describe those seeking admission as “arriving aliens,” 8 C.F.R. § 235.3(c)(1), who are “*coming or attempting to come into* the United States,” 8 C.F.R. § 1.2 (emphasis added). *See Martinez*, 2025 WL 2084238 at \*6 (the regulations’ use of “arriving alien” is “roughly interchangeable with an ‘applicant . . . seeking admission’” as used in § 1225(b)(2)(A)). *See also Salcedo Aceros v. Kaiser*, No. 25-CV-06924, 2025 WL 2637503, at \*10 (N.D. Cal. Sept. 12, 2025) (same). Thus, only those who take affirmative steps to seek admission while “coming or attempting to come into the United States” can reasonably be said to be “seeking admission” under § 1225(b)(2)(A). *See Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*7 (E.D. Mich. Aug. 29, 2025) (“seeking admission” refers to “when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country”).

Petitioner is not presenting herself for admission at the border; she arrived at the border years ago and has been residing in the United States since. Petitioner simply wishes to *remain* in the country she has long called home—not to enter it. Thus, Petitioner cannot be considered to be “seeking admission” in any reasonable way, rendering § 1225(b)(2)(A) wholly inapplicable to Petitioner’s detention.

### **C. Respondents' Arguments to the Contrary Fail.**

Contrary to this clear statutory scheme, Respondents raise five arguments in support of their reading of Section 1225(b)(2). All fail.

**First**, Respondents point to 8 U.S.C. § 1225(a)(3) to argue that the phrase “seeking admission” is “synonymous” with “applicant for admission,” under the creative lexical theory that the word “or” as it appears in Section 1225(a)(3) indicates an “appositive.” Response, ECF No. 12 (“Resp”) at 22 (citing *United States v. Woods*, 571 U.S. 31, 45 (2013)). However, in *Woods*, the Supreme Court noted that while sometimes the word “or” can denote synonyms, the “ordinary use [of the word ‘or’] is almost always disjunctive, that is, the words it connects are to be given separate meanings.” 571 U.S. at 45 (citation omitted). Section 1225(a)(3) makes use of the word “or” in the ordinary sense to indicate that “applicant for admission” and “seeking admission” are different concepts – as shown by its deployment of the word “otherwise.” *Otherwise*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/otherwise> (accessed November 6, 2025) (defining “otherwise” as “in a different way or manner,” “in different circumstances,” “in other respects,” “if not,” and “NOT” (capitalization original)).

**Second**, Respondents argue that interpreting 8 U.S.C. § 1225(b)(2) to apply only to arriving noncitizens would render that provision redundant, given the presence of 8 U.S.C. § 1225(b)(1). *See* Resp. at 23. But Section 1225(b)(1) lays out

a procedure for placing arriving noncitizens in expedited removal. The subsection requires an inspecting immigration officer to determine whether a noncitizen is inadmissible under 8 U.S.C. § 1182(a)(6)(C) (procuring a benefit through misrepresentation) or (a)(7) (lacking required entry documents). *See id.* § 1225(b)(1)(A)(i). If the officer makes this determination, the noncitizen must be removed from the United States unless the noncitizen expresses a fear of return and intent to apply for asylum, in which case the noncitizen must be referred for a credible fear interview and further proceedings. *See id.* § 1225(b)(1)(A)(ii); (B). Section 1225(b)(1) is limited to those noncitizens who are determined to be inadmissible under Section 1182(a)(6)(C) or (a)(7). However, there are numerous other grounds of inadmissibility. *See* 8 U.S.C. § 1182(a). Thus, Section 1225(b)(2) continues to have effect on noncitizens seeking admission but not on those already in the country, and reading the provision in line with Section 1225's text, structure, and history does not render the provision redundant.

**Third**, Respondents argue that Section 1225(b)(2) simply defines and mandates detention for a narrow subset of individuals who would otherwise be subject to Section 1226(a), *see id.* at 24. But applicants for admission who are seeking admission are not simply a subset of noncitizens detained pending removal proceedings: they are a separate class of individuals under the dual scheme set out in 8 U.S.C. §§ 1225 and 1226. *See Florida v. United States*, 660 F. Supp. 3d 1239,

1275 (N.D. Fla. 2023) (“In fact, as the Attorney General has explained, “section [1225] (under which detention is mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens.” (quoting *Matter of M-S-*, 27 I.&N. Dec. 509, 516 (Att’y Gen. 2019)); see also *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at \*3 (W.D. Ky. Sept. 19, 2025)); *Garcia v. Noem*, No. 5:25-CV-02771-ODW (PDX), 2025 WL 2986672, at \*5 (C.D. Cal. Oct. 22, 2025).

**Fourth**, Respondents argue that the Laken Riley Act, which mandates detention under Section 1226(c) if a noncitizen entered without inspection and then committed certain crimes, was a purposeful redundancy. Resp. at 26. However, Respondents identify no statement of Congress or other legislative history, indeed no support at all, for this position. See *id.* Moreover, Respondents’ reading makes the Act “not redundant but contradictory.” *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at \*7 (D. Colo. Oct. 17, 2025). As the District Court put it in *Romero v. Hyde*:

Respondents’ reading of sections 1225 and 1226 is better conceived as a contradiction. Where “Congress has created specific exceptions” to a rule, it “proves” the general applicability of that rule, absent those exceptions. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Thus, by creating a specific exception, disallowing bond for certain applicants for admission, Congress clearly evinced its intent that bond remain available for the remainder. At the very least, the exception demonstrates that Congress expected that the detention of some applicants for admission would be governed by

section

1226.

No. CV 25-11631-BEM, 2025 WL 2403827, at \*12 (D. Mass. Aug. 19, 2025).

**Finally**, Respondents argue that this Court should find persuasive the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025). *See* Resp. at 27-28. In *Yajure Hurtado*, the BIA ruled that people who “surreptitiously cross into the United States” qualify as “applicants for admission” under § 1225(b)(2)(A), and thus Immigration Judges “have no authority to redetermine the custody conditions of a[ noncitizen] who crossed the border unlawfully without inspection,” even if that noncitizen has lived in the United States for years. *Id.* at 228. Not only is the BIA’s misguided reasoning in *Yajure Hurtado* out of step with virtually every federal court to treat the same issue, but this Court is not bound by the BIA’s interpretation of federal statutes.

First, a multitude of federal courts—including in decisions issued after *Yajure Hurtado*—have addressed the exact same question and explicitly rejected the reasoning underlying the BIA’s ruling as unpersuasive and at odds with INA’s text and structure. *See, e.g., Pizarro Reyes*, 2025 WL 2609425, at \*6-7; *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565, at \*5 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541, at \*7-8 (D. Me. Sept. 21, 2025). As the Northern District of California explained, the BIA’s “strained interpretation” “treats the phrases ‘applicant for admission’ and ‘seeking

admission’ as synonymous, which renders the phrase ‘seeking admission’ in section 1225(b)(2) superfluous.” *Valencia Zapata v. Kaiser*, No. 25-CV-07492, 2025 WL 2741654, at \*10 (N.D. Cal. Sept. 26, 2025). *See also Beltran Barrera*, 2025 WL 2690565, at \*5 (“it [is] difficult to find that an individual is ‘seeking admission’ when that noncitizen never attempted to do so.”).

Second, federal courts are “not bound by the BIA’s interpretation of § 1225(b)(2)(A).” *Pizarro Reyes*, 2025 WL 2609425 at \*6. To the contrary, federal courts “must exercise independent judgment in determining the meaning of statutory provisions.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). A court’s decision of whether to find an agency interpretation persuasive depends on “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). And here, the BIA’s reasoning in *Yajure Hurtado* fails to explain why or how dozens of federal courts have gotten the answer wrong. And it fails to explain why the agency itself held the contrary position for decades. “Realistically speaking, if Congress’s intention was so clear, why did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at \*12.

Thus, like almost every federal court<sup>1</sup> to consider the persuasiveness of *Yajure Hurtado*, this Court should decline to follow the superficial reasoning of the BIA and instead exercise its “independent judgment in determining the meaning of statutory provisions.” *Loper Bright*, 603 U.S. at 394.

## **II. Petitioner’s Detention Violates Her Constitutional Rights.**

Contrary to Respondents’ argument, *see* Resp. at 28-29, Petitioner’s detention without bond, purportedly under Section 1225, violates her due process rights. At the “heart” of the Fifth Amendment’s due process clause is “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Depriving a person of their liberty is only permissible as punishment for crimes, or in “certain special and narrow nonpunitive circumstances.” *Id.* (quotation omitted). That due process guarantee extends to noncitizens regardless of “whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

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<sup>1</sup> This Court is not bound by *Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), and – like many other District Courts – should not find them persuasive. *See, e.g., Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763, at \*5 (W.D. Ky. Oct. 27, 2025) (declining to follow the reasoning of *Chavez* and *Vargas Lopez* because “they are contrary to . . . the overwhelming majority of cases across the country,” they create a split within their own districts, they “did not analyze the entirety of the statutes,” and they did not “thoroughly analyze[] the context of . . . Section 1225”).

Civil immigration detention is not punishment for a crime. Thus, it can only be justified “where a special justification . . . outweighs the individual’s constitutionally protected interest” in liberty—usually only by a finding that such detention is necessary to prevent their flight or protect against dangers to the community. *Zadvydas*, 533 U.S. at 690 (cleaned up). A hearing on whether such a special justification necessitates civil detention is the most basic protection required by the Fifth Amendment. *See Foucha v. Louisiana*, 504 U.S. 71, 79(1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Addington v. Texas*, 441 U.S. 418, 428 (1979). And the nature of that hearing is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). That test weighs (1) the nature of “the private interest” being deprived; (2) “the risk of an erroneous deprivation of such interest” and (3) the “the Government’s interest” posed by providing additional process. *Id.* All three *Mathews* factors favor Petitioner.

As to the private interest, Petitioner invokes “the most elemental of liberty interests—the interest in being free from physical detention by one’s own government.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Meanwhile, the government’s interest in detaining Petitioner is limited to ensuring her appearance at their future immigration proceedings (i.e., “flight risk”) and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690. But because Respondents denied

Petitioner the effect of a bond hearing at which danger and flight risk were carefully considered, “there is nothing in the record demonstrating that [Petitioner] is a flight risk or a danger to the community.” *Lopez Benitez*, 2025 WL 2371588, at \*12. Therefore, the risk of erroneously depriving Petitioner of physical freedom is unbearably high. Without the bond that she is entitled to under Section 1226(a), the fact that Petitioner *already* carried her burden to present compelling reasons that she is neither a flight risk nor a danger will be without effect. *See* ECF No. 1-15. Nor can the government complain about the administrative burden of providing hearings that it has provided for decades, and in fact already provided in this case.

**III. If Petitioner Is Subject to Mandatory Detention, That Detention Is Unconstitutionally Prolonged.**

Petitioner’s detention has become prolonged in violation of her Fifth Amendment right to due process. Respondents misunderstand the nature of the constitutional violation here. *See* Resp. at 29-30. It does not matter whether Petitioner is detained under Section 1225, 1226(a), or 1226(c). “A statute permitting indefinite detention of an alien would raise a serious constitutional problem.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (emphasis added). While many prolonged-detention habeas petitions are filed by those detained under Section 1226(c), due process is implicated whenever a person is subject to prolonged detention without a bond hearing – or, as here, when a bond hearing took place but the government unilaterally denied a bond grant from taking effect.

*See Zadvydas*, 533 U.S. (considering 8 U.S.C. § 1231(a)(2), mandating detention of individuals with final removal orders); *Idiev v. Warden*, No. 1:25-CV-01030-SKO (HC), 2025 WL 3089349 (E.D. Cal. Nov. 5, 2025) (considering prolonged detention claim of individual detained under 8 U.S.C. § 1225(b)(1), which mandates detention for those placed in expedited removal proceedings).

Whatever the authority governing Petitioner’s detention, that detention has become unconstitutionally prolonged. *See German Santos*, 965 F.3d 203, 210-211 (3d Cir. 2020). Her detention has lasted fifteen months, on top of a year of criminal custody, and three months *after* being granted bond by an Immigration Judge. *See* Pet. ¶¶ 25, 36. Her detention will continue as she appeals the decision denying her asylum application and pursues her application for a T nonimmigrant visa; contrary to Respondents’ arguments, *see* Resp. at 30 n. 8, it is unknown when Respondent’s appeal will be decided, much less how long it will take to petition for review to the Third Circuit *or* litigate a remand to the Immigration Judge. And Petitioner has caused no delay in her case that would justify her continued detention. *See* Pet. ¶ 65.

#### **IV. This Court Has Jurisdiction to Adjudicate This Petition.**

The jurisdiction-stripping provisions of the Immigration and Nationality Act do not apply here. 8 U.S.C. § 1252(g) prohibits courts from hearing a “claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney

General to commence proceedings, adjudicate cases, or execute removal orders against any” noncitizen. 8 U.S.C. § 1252(b)(9), in turn, provides that “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove a [noncitizen] from the United States under this subchapter shall be available only in judicial review of a final order.”

Neither provision constrains the Court’s jurisdiction here. The Supreme Court has rejected the notion that Section 1252(g) covers all aspects of a deportation case. Rather, “[t]he provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘*commence* proceedings, *adjudicate* cases, or *execute* removal orders.’ (Emphasis added.)” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Likewise, the Supreme Court made clear in *Jennings v. Rodriguez* that Section 1252(b)(9) does not apply to bar habeas petitions by noncitizens who, like Petitioner, are challenging the basis of their detention rather than review of “an order of removal . . . the decision to detain them in the first place or to seek removal . . . [or] any part of the process by which their removability will be determined.” 583 U.S. at 294.

Petitioner does not challenge the commencement of her removal proceedings or the execution of a (nonexistent) final removal order, nor does she raise any factual or legal challenge to the proceedings brought to remove her. Respondent,

engaging in its own “creative framing,” baldly asserts that Petitioner is challenging “DHS’s decision to detain her pending his *[sic]* removal proceedings in the first instance.” Resp. at 20. However, Respondents point to no part of the Petition or supporting evidence to show that Petitioner is challenging anything other than the authority governing her detention, nor do Respondents point to any challenge to DHS’s decision to detain Petitioner in August 2023. In fact, Petitioner could not challenge her detention in a petition for review even if she tried to. *See Nnadika v. Att’y Gen.*, 484 F.3d 626, 632 (3d Cir. 2007) (holding habeas petitions challenging detention “must be retained in and decided by the district court”); *Alvarez Prieto v. Att’y Gen.*, 813 F. App’x 804, 807 n.4 (dismissing petition for review of denial of parole for lack of jurisdiction). Thus, the Court has jurisdiction to decide Petitioner’s habeas petition.<sup>2</sup>

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<sup>2</sup> Every single case government cites in support of its contrary position is either wholly inapposite or directly supports the Court taking jurisdiction in this case. *See Tazu v. Att’y Gen.*, 975 F.3d 292 (3d Cir. 2020) (holding Section 1252(g) barred review of potential 3.5-week detention in order to *execute a final removal order* upon obtaining appellant’s valid passport); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008 WL 11336833 (C.D. Cal. Sept. 11, 2008) (holding Section 1252(g) barred review of custody determination upon issuance of a Notice to Appear, commencing proceedings); *Reno*, 525 U.S. (holding that Section 1252(g) bars review of decision to targeted certain noncitizens for deportation); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016) (holding Section 1252(b)(9) barred District Court review of minor noncitizens’ challenge to denial of counsel in removal proceedings and distinguishing habeas petitions that are “collateral to, or independent of, the removal process,” including prolonged detention); *Ruiz v. Mukasey*, 552 F.3d 269 (2d Cir. 2009) (holding District Court had jurisdiction to review the denial of a visa petition); *Xiao Ji Chen v. U.S. Dep’t*

**V. There Are Multiple Proper Respondents.**

The parties agree that the Warden of Clinton County Correctional Facility is a proper respondent as Petitioner’s “immediate custodian.” But it does not necessarily follow, as Respondents assert, that because the director is *a* proper respondent, she is the *only* proper respondent.

First, Petitioner is not just seeking a writ of habeas corpus, but also declaratory relief, an injunction on transfer, fees and any other just and proper relief. Second, Petitioner is detained under a new ICE directive issued in coordination with DOJ. If Respondents Noem, Bondi and McShane rescinded the directive, Petitioner could be released, either based on ICE setting bond, 8 C.F.R. § 236.1(8), or through bond hearings. Bond hearings are held in immigration courts, which are under the Executive Office of Immigration Review (EOIR), itself a component agency of DOJ.

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*of Just.*, 434 F.3d 144, 151 (2d Cir.) (holding “a primary effect of the REAL ID Act . . . is to convert habeas corpus petitions filed by criminal aliens *seeking review of their removal orders* into petitions for review” (emphasis added)); *Aguilar v. U.S. Immigr. & Customs Enf’t Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 10–11 (1st Cir. 2007) (quoting legislative history to hold that Section 1252(b)(9) does not apply to “habeas review over challenges to detention”); *Ajlani v. Chertoff*, 545 F.3d 229, 234-35 (2d Cir. 2008) (holding no jurisdiction to review a challenge to the commencement of removal proceedings); *Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (ruling, *in a petition for review*, on a different aspect of federal court jurisdiction over removal orders, regarding a *non-detained* petitioner); *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (holding no jurisdiction over a *non-detained* noncitizen’s denial of a waiver under 8 U.S.C. § 1182(c)).

Respondents EOIR and Bondi can—but have failed to—ensure that Petitioner is released on bond.

Third, Secretary Noem and Field Office Director McShane are proper Respondents with respect to the requested injunction on transfer, over which they have ultimate authority.

Nonetheless, if Respondents concede and stipulate that this Court can order all relief requested in the Petition against Respondent Warden (Angela Hoover), Petitioner will not object to the dismissal of the other Respondents.

### **CONCLUSION**

For the foregoing reasons, Petitioner respectfully urges this Court to grant Petitioner's habeas corpus petition and order Respondents to immediately release her from custody.

Respectfully submitted,

/s/ Emily McConville

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**CERTIFICATE OF WORD COUNT**

Counsel certifies that this brief complies with Middle District of Pennsylvania Local Rule 7.8(b)(2). Excluding Exhibit 1, unpublished opinions, this entire filing comprises 22 pages and 4,878 words.

Dated: November 10, 2025  
Newark, New Jersey

Respectfully Submitted,

/s/ Emily McConville

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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that on this date, I filed this Reply using the PACER system. Local Rule 5.7.

Dated: November 10, 2025  
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