UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARIELIS SANTANA-RIVAS,	:	**No. 3:25-cv-01896**
Petitioner,	:	
	:	
v.	:	**(Wilson, J.)**
	:	
WARDEN, in their official	:	
Capacity as Warden of the	:	
Clinton County Correctional	:	
Facility, et al.,	:	
Respondents.	:	**Filed Electronically**

RESPONDENT'S BRIEF IN SUPPORT OF OBJECTIONS TO THE NOVEMBER 13, 2025 REPORT AND RECOMMENDATION

Respectfully submitted,

BRIAN D. MILLER
United States Attorney

s/Gerard T. Donahue
Gerard T. Donahue
Assistant United States Attorney
235 N. Washington Ave, Ste. 311
Scranton, PA 18503
Phone: (570) 348-2800
Fax: (570) 348-2830
Gerard.Donahue@usdoj.gov

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Respondent Angela Hoover, by her counsel, hereby objects to the November 13, 2025 Report and Recommendation (Doc. 15) on the grounds that the Magistrate Judge erred in finding that: (A) this Court has jurisdiction over Petitioner's claims; (B) 8 U.S.C. § 1225 has no application to the Petitioner; (C) Petitioner's detention has been unconstitutionally prolonged; and (D) Petitioner is entitled to attorney's fees pursuant to the Equal Access to Justice Act in an immigration habeas action prior to the issuance of a final decision.

I. Procedural History

The petition was filed on October 9, 2025. (Doc. 1.) The Court's order to show cause was served on the U.S. Attorney's Office on October 14, 2025. (Docs. 4, 6.) The response to the petition was filed on November 2, 2025. (Doc. 12.) Petitioner filed a traverse on November 10, 2025. (Doc. 14.)

The Magistrate Judge issued a Report and Recommendation on November 13, 2025, wherein he recommends granting the petition and immediately releasing Petitioner from detention. (Doc. 15.) Additionally, the report recommends that attorney's fees, costs, and expenses be awarded pursuant to Equal Access to Justice Act (EAJA) after Petitioner

submits a request detailing those amounts 30 days after final judgment. (*Id.*) Finally, the report set a due date for objections to be filed within 5 days of the date of the report – or November 18, 2025. (*Id.*) This brief is filed in accordance with the due date in support of the concurrently filed objections.

II. Objections

Initially, the Court makes a *de novo* determination of those portions of the Magistrate Judge's report to which a party has objected. 28 U.S.C. § 636(b)(1)(C); *see Carpet Group Int'l v. Oriental Rug Importers Assoc., Inc.*, 227 F.3d 62, 71 n.6 (3d Cir. 2000); *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989).

A. The report is in error by concluding the Court has jurisdiction over Petitioner's claims.

Contrary to the report's conclusion, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. The report reads the jurisdiction stripping provision in Section 1252(g) narrowly to exclude the decision to detain Petitioner. (Doc. 15 at 9-20.) First, the report identifies the three areas expressly covered by the statute: to (1) commence proceedings, (2) adjudicate cases, or (3) execute removal orders against any alien. (*Id.* at 10.) The report states that the response ignored the limited reading of

Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999). (*Id.* at 11 n.3.) However, Respondent relied on the United States Court of Appeals for the Third Circuit's decision in *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020), and the United States Court of Appeals for the Eleventh Circuit's decision in *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016), to demonstrate that its decision to detain Petitioner was necessarily intertwined with its decision to commence removal proceedings and execute removal orders. (Doc. 12 at 14-16.) Therefore, Respondent's position is in accord with *Reno*'s recognition of those decisions precluded from review by Section 1252(g).

Second, to the extent that a challenge to Petitioner's detention may be brought, the Court of Appeals through a petition for review is the appropriate forum. Section 1252(b)(9) channels all claims arising from immigration proceedings to the courts of appeals. The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031-32 (9th Cir. 2016) (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to

obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" Board of Immigration Appeals' determinations and "all constitutional claims or questions of law."); *accord Papageorgiou v. Gonzales*, 413 F.3d 356, 358 (3d Cir. 2005) (observing that the REAL ID Act of 2005 evidenced the intent of Congress to "restore judicial review of constitutional claims and questions of law presented in petitions for review of final removal orders."). Thus, Congress provided an alternate forum other than the district courts for all claim arising from removal proceedings.

Further, the specific and dynamic basis for the commencement of removal proceedings and detention during the pendency of those proceedings demonstrate the inseparable nature of Petitioner's detention from the scope of Section 1252(g) and Section 1252(b)(9). Initially, Petitioner was subject to detention pursuant to Section 1226(c) when removal proceedings were commenced as she was charged with aggravated assault in violation of New Jersey Stat. Ann. § 2C:12-1(b) - a felony – to which she later pled guilty. (Doc. 1 at 9, ¶ 25.)

After Petitioner was transferred to ICE custody for removal proceedings, she withdrew her guilty plea in state court and pled guilty

to simple assault in violation of New Jersey Stat. Ann. § 2C:12-1(a)(1) – a misdemeanor. (*Id.* at 12-13, ¶ 34.) Petitioner sought and was granted release on bond arguing that she was no longer subject to mandatory detention pursuant to Section 1226(c) because her initial guilty plea to felony aggravated assault in state court was vacated and she had pled guilty to misdemeanor simple assault to which Section 1226(c) did not apply. (*Id.* at 13, ¶¶ 35-36.)

Subsequently, DHS appealed which resulted in an automatic stay of the bond decision. (*Id.* at 14, ¶ 40.) The Board of Immigration Appeals (BIA) vacated the Immigration Judge's bond decision and recognized that Petitioner was then subject to mandatory detention pursuant to Section 1225(b)(2(A) and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025). (Doc. 12, Ex. 11 at 3, BIA Decision dated September 19, 2025.) Thus, since the initial decision to commence removal proceedings under Section 1226(c), the basis to commence removal proceedings and the execution thereof have shifted to Section 1225(b)(2)(A) based on factual developments during those proceedings.

The decision to commence removal proceedings – which necessarily includes mandatory detention under either provision, first under Section

1226(c) and then under Section 1225(b)(2)(A) – demonstrates the inseparable nature of detention from the decisions to commence proceedings. It follows that Petitioner's claims are barred by section 1252(g). Regardless, any claim arising from those decisions is subject to the channeling provision of Section 1252(b)(9). Therefore, for the reasons above and those stated in the response (Doc. 12), the Court lacks jurisdiction over Petitioner's claims.

To the extent that the Court was to find the claims presented were not barred, Congress has limited review of challenges to implementation of policies such as mandatory detention pursuant to Section 1225(b)(2) to the jurisdiction of the United States District Court for the District of Columbia (District of Columbia). 8 U.S.C. § 1252(e)(3)(A). The report impermissibly relies on policy changes that may only be considered by the District of Columbia. (Doc. 15 at 24, 38.) Therefore, even if the Petitioner's claim were not barred, the claims could only be brought in the District of Columbia.

B. The report is in error by concluding that Petitioner is not subject to Section 1225(b)(2)(A) and is subject to 1226(a).

The report impermissibly usurps the statutory basis for the commencement of removal proceedings. That is, the report encourages

the Court to treat Petitioner as being held pursuant to Section 1226(a), even though ICE relied on Section 1225(b)2)(A). (Doc. 15 at 20-34.) This is precisely the type of collateral litigation that Congress barred when it enacted the petition-for-review channeling process and Section 1252(b)(9). In this way, the report's conclusion would result in a collateral judicial decision that directly contradicts and unilaterally reframes the statutory justification of the underlying removal proceedings.

Additionally, the report's conclusion that the Supreme Court limited Section 1225(b) to the Nation's borders and ports of entry ignores and is incompatible with critical language in the Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281, 286-87 (2018). The full text is:

> To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.
>
> That process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible. Under § 302, 110 Stat. 3009-579, 8 U.S.C. § 1225, an alien who "arrives in the United States," ***or "is present" in this country but "has not been admitted," is treated as "an applicant for admission***." § 1225(a)(1).

Id. (emphasis added).

Because Section 1225(b)(2) "serves as a catchall provision[,]" *id.* at 287, the Supreme Court recognized that 1225(b)(2) applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under Section 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). While Section 1225 does not provide for aliens to be released on bond, DHS has the sole discretion to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

The Ninth Circuit Court of Appeals recognized that "[t]he phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (*en banc*). Section 1225(a)(1) defines that term of art:

> (1) Aliens treated as applicants for admission.— 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 ...) shall be deemed for the purposes of this Act an applicant for admission.

8 U.S.C. § 1225(a)(1).[1] Section 1225(a)(1) was added to the Immigration and Nationality Act (INA) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The report errs when dissecting the meaning of the phrase "applicant for admission" by resorting to common usage at the expense of Congress' statutory definition. (Doc. 15 at 28-32).

IIRIRA added Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d at 927; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which illegal aliens who entered the United States without inspection gained

[1] Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

equities and privileges in immigration proceedings unavailable to aliens who presented themselves for inspection at a port of entry). The provision "places some physically-but not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

Similar to the Ninth Circuit, a panel of the Third Circuit rejected an analogous argument that a noncitizen who entered without inspection should not be treated as an applicant for admission. *Alvarenga de Rodriguez v. Attorney General, United States*, 784 Fed. Appx. 852, 853 (3d Cir. 2019). The court observed that "[w]hen [the noncitizen] arrived in the United States without being admitted, she was an 'applicant for admission.'" *Id.*

In the face of this authority, the report errs in relying on the fact that Petitioner has resided in the United States for more than three years while acknowledging that she entered without inspection. (Doc. 15 at 33.) As argued in the response, a court in Massachusetts recently confirmed that a noncitizen, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28,

2025). The court explained this resulted in the "continued detention" of a noncitizen during removal proceedings as commanded by statute. *Id.* And the BIA has long recognized that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

The report errs in construing the language of "seeking admission" with the requirement of doing something. (Doc. 15 at 29-34.) This interpretation reads "applicant for admission" out of 1225(b)(2)(A). "[O]ne of the most basic interpretive canons" instructs that a "statute should be construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009).

Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of "applicant for admission" in § 1225(a)(1). Applicants for admission include arriving aliens and *aliens present without admission*. *See* 8 U.S.C. § 1225(a)(1)

(emphasis added). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made clear that all aliens "who are applicants for admission or otherwise seeking admission" shall be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

The report further errs by relying on the canon against surplusage. (Doc. 15 at 30.) "The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013); *see also Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 299 n.1 (2006) ("While it is generally presumed that statutes do not contain surplusage, instances of surplusage are not unknown"). "Sometimes drafters do repeat themselves and do include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach." *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017) (quoting Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 176–77 (2012) (emphasis in original)). "This is why the

surplusage canon of statutory interpretation must be applied with statutory context in mind." *Id.* (citing Scalia & Garner, READING LAW 179); *see also Doe v. Boland*, 698 F.3d 877, 881 (6th Cir. 2012) (recognizing that the U.S. Code is "replete with meaning-reinforcing redundancies" including "null and void," "arbitrary and capricious," "cease and desist," and "free and clear").

"[A]n alien who is an applicant for admission" and "an alien seeking admission" are functional synonyms. *Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("That principle [that drafters do repeat themselves] carries extra weight where, as already explained, the arguably redundant words that the drafters employed—'rental' and 'lease'—are functional synonyms."). In *Doe v. Boland*, the Sixth Circuit determined that Congress did not intend for the phrases "any person who, while a minor, was a victim of a variety of sex crimes and who suffers personal injury as a result" and a "victim by definition is someone who suffers an injury" to have separate meanings. *Doe*, 698 F.3d at 882. "If one possible interpretation of a statute would cause some redundancy and another interpretation would avoid redundancy, that difference in the two interpretations can supply a clue as to the better interpretation

of a statute. But only a clue. Sometimes the better overall reading of the statute contains some redundancy." *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334 (2019). In Section 1225(b)(2), "an alien who is an applicant for admission" is by definition "an alien seeking admission."

Most critical, Congress set forth the operative definition of the statute. As such, analogies to homebuyers or theatergoers miss the point. (Doc. 15 at 30.) "'When a statute includes an explicit definition, we must follow that definition,' even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149 (2018) (quoting *Burgess v. United States*, 553 U.S. 124, 130 (2008)). If the legislature passed a statute stating that "someone who enters a movie theater without purchasing a ticket" shall be deemed as a person trying to purchase a ticket, then that person would, at least statutorily, be "seeking admission to the theater." The movie theatre and homebuyer analogies, therefore, rest on the faulty premise that Congress never bothered to define the term at the center of this dispute.

"As the U.S. Supreme Court instructed . . . , 'interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are

available.' " *Vooys v. Bently*, 901 F.3d 172, 192 (3d Cir. 2018). As stated above, the report errs by concluding that "seeking admission" requires "doing something" in the context of Section 1225(b)(2)(A). (Doc. 15 at 29-34.) Presumably once in removal proceedings, petitioners will seek relief from removal and therefore will be seeking admission. *See, e.g., Ocampo-Duran v. Ashcroft*, 254 F.3d 1133, 1134–35 (9th Cir. 2001) (concluding that a post-entry adjustment of status is an admission).[2] The report's reading would create an absurd result where an alien in removal proceedings would not be subject to mandatory detention as not "seeking admission" but would later be subject to mandatory detention when they filed for relief in immigration court. Further, if the report is correct that Section 1225(b)(2)(A) only applies at post of entries and the border, then

[2] "Section 1255(b) treats adjustment itself as an 'admission' by directing the Attorney General to record 'admission' as the date the alien adjusts his status." *Roberts v. Holder*, 745 F.3d 928, 933 (8th Cir. 2014) (emphasis omitted). Similarly, the BIA has interpreted immigration statutes as treating post-entry adjustment as a substitute for port-of-entry inspection. *See Matter of Koljenovic*, 25 I. & N. Dec. 219, 221 (BIA 2010) ("Adjustment of status is essentially a proxy for inspection and permission to enter at the border, which is given as a matter of administrative grace."); *Matter of Alyazji*, 25 I. & N. Dec. 397, 399 (BIA 2011) (treating adjustment of status as admission under immigration laws). Thus, admission can occur subsequent to actual entry into the United States.

there would be no category of alien Section 1225(b)(2) would apply to. Interpreting the statute as one where Congress drafted a detention section that applies to no one is also an absurd result.

Likewise, if the report is adopted, then Section 1225(b)(2)(A) would apply to "arriving" aliens. But Congress did not refer to arriving aliens in § 1225(b)(2), while several sections of the INA use the term "arriving alien." *E.g.*, 8 U.S.C. § 1182(a)(9), 1229c, and 1231. "[W]e generally presume that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178 (2020) (quoting *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 537 (1994)). Congress further limited expedited removal in § 1225(b)(1) to arriving aliens, both in the text of 1225(b)(1)(A) and in the heading of 1225(b)(1) ("Inspection of aliens arriving"). *See Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("'[T]he 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." (quoting *Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528–529 (1947)). By including arriving aliens in § 1225(b)(1), as well as other sections of the INA, but not in § 1225(b)(2)(A), Congress did not

intend to use "seeking admission" as meaning "arriving." *See Hurtado*, 21 I. & N. Dec. at 228 (explaining that a noncitizen is an applicant for admission regardless of the amount of time the person has been present in the United States).

Nor does the Government's reading render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible aliens who were admitted in error, as well as those never admitted. That means there is no surplusage, as Section 1225(b)(2) has no application to aliens who were admitted in error.

To be sure, the Laken Riley Act's application to aliens who are inadmissible under §1182(a)(6)(A)—for being "present ... without being admitted or paroled"—overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. But again, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or

eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 223. And "even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)." *Mejia Olalde v. Noem*, 2025 WL 3131942, at *4 (E.D. Mo. Nov. 10, 2025). That is particularly true here, where this portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A), which recognizes that applicants for admission who are "seeking admission" must be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute").

Besides, Sections 1225(b)(2) and 1226(c) use different language that reflects the distinct obligations each section imposes. Section 1226(c), which applies "when [a criminal] alien is released" from another entity's custody, specifies that the "Attorney General shall take into custody" the alien. That provision therefore directs the Executive to take affirmative steps to apprehend covered aliens when they are released from state or federal custody. *Id.*; *see Nielson v. Preap*, 586 U.S. 392, 414 (2019) (explaining that "the duty to arrest is triggered[] upon release from criminal custody"). Section 1225(b)(2), by contrast, applies "if an

examining officer determines" that the alien "is not clearly and beyond a doubt entitled to be admitted," and directs that the alien "shall be detained." That distinct language does not itself impose an obligation on the Executive to apprehend such an alien; it applies once an examining officer has encountered an applicant for admission. *Id.* Each provision thus has independent application—one states that the Executive "shall take into custody" certain aliens in specified circumstances, insisting that the Executive prioritize certain criminal aliens for apprehension; the other states that an alien "shall be detained" once encountered by immigration officials.

Moreover, Section 1226(c) does additional independent work, despite any overlap, by narrowing the circumstances under which aliens may be *released* from mandatory detention. Recall that, for aliens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for aliens who have also committed the offenses or engaged in the conduct specified in Section 1226(c)(1)(A)-(E). As to those aliens, Section 1226(c) *prohibits*

their parole and authorizes their release only if "necessary to provide protection to" a witness or similar person "and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4). So even as to aliens who are already subject to mandatory detention under Section 1225(b)(2), Section 1226(c) is not superfluous: It significantly narrows the Executive's parole power with respect to those aliens.

The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about Section 1225(b)(2)(A)'s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

Here, DHS/ICE is applying binding precedent by the BIA to Petitioner by lawfully detaining her pursuant to Section 1225(b)(2)(A). The report errs by seeking to set aside that precedent as "wrongly decided" (Doc. 15 at 33) despite a lack of jurisdiction to reverse the BIA

through these collateral habeas proceedings. *See Hurtado*, 21 I. & N. Dec. at 228; *see also* 8 U.S.C. §§ 1252(b)(9), 1252(g). The Court must reject the premise of the report that it may recast the Government's decision for commencing removal under Section 1225(b)(2)(A) as arising under Section 1226(a). This is a statutorily prohibited encroachment into discretionary decision that Congress sought to avoid when it enacted Sections 1252(b)(9) and (g).

C. Petitioner's detention has not been unconstitutionally prolonged.

The report errs in concluding that Petitioner's detention of 15 months has exceeding constitutionally permissible limits. (Doc. 15 at 34-42.) As stated in the response, detention pursuant to Section 1225(b)(2)(A) is not indefinite. It necessarily terminates upon the conclusion of removal proceedings. Here, due to factual developments during removal proceedings, Petitioner's detention has shifted between Sections 1226(a),[3] 1226(c), and 1225(b)(2)(A). It is oversimplistic to gauge

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[3] DHS/ICE having released Petitioner initially under Section 1226(a) does not bar the United States from revisiting or commencing within its statutorily vested discretion removal proceedings under another applicable provision or more appropriate provision. As stated above, such decisions are not subject to review pursuant Section 1252(g). The BIA's recent precedential decision in *Matter of Yajure Hurtado* includes

the constitutional bona fides of 15 months' detention without accounting for how Petitioner's status shifted over the course of that time. Besides, the totality of 15 months detention has been found by other courts do not exceed constitutional limits. See *Appiah v. Lowe*, No. 3:24-cv-2222, 2025 WL 510974 (M.D. Pa. (Feb. 14, 2025) (Mariani, J.) (finding petitioner's 18 months of detention did not require individualized bond hearing); *White v. Lowe*, No. 1:23-CV-1045, 2023 WL 6305790 (M.D. Pa. September 27, 2023) (Conner, J.) (finding that petitioner's continued detention for approximately 15 months did not require an individualized bond hearing), *abrogated by White v. Warden Pike County Correctional Facility*, No. 23-2872, 2024 WL 4164269 (3d Cir. Sept. 12, 2024) (finding White's detainment, which had reached 25 months at the time of his appeal, violated due process); *McDougall v. Warden, Pike County Correctional Facility*, No. 3:23-cv-00759, 2023 WL 6161038 (M.D. Pa.

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thorough reasoning. 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory text and legislative history. *Id.* at 223-225. It highlighted congressional intent that aliens present without inspection be considered "seeking admission." *Id.* at 224. The BIA concluded that rewarding aliens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.* at 228.

September 21, 2023) (Mariani, J.) (finding petitioner's detention for a little over 13 months did not weigh in favor of relief); *Flores-Lopez v. Lowe*, No. 1:21-CV-1839, 2021 WL 6134453, at *2 (M.D. Pa. December 29, 2021) (Conner, J.) (denying habeas corpus relief where petitioner had been detained for approximately 19 months after his first bond hearing); *Gabriel v. Barr*, No. 1-20-CV-1054, 2021 WL 268996 (M.D. Pa. January 27, 2021) (Jones III, J.) (finding that petitioner was not entitled to an individualized bond hearing after 18 months in custody); *Crooks v. Lowe,* 1:18-CV-0047, 2018 WL 6649945 at *2 (M.D.Pa. Dec. 19, 2018)(denying a bond hearing to a petitioner who had been detained for 18 months). Therefore, the Court should reject the report and find that Petitioner's detention pursuant to Section 1225(b)(2)(A) is lawful.

D. The report errs by prematurely recommending fees, costs, and expenses be awarded pursuant to the Equal Access to Justice Act (EAJA).

Neither party briefed the issue of EAJA fees before the Magistrate Judge. Further, to do so at this particular stage in proceedings is premature. Initially, whether EAJA fees can be obtained at all in immigration habeas petitions is presently before the Third Circuit in *Adewumi Abioye v. Warden Moshannon Valley Correctional Center, et al,*

Appeal No. 24-3198 (3d Cir.). Moreover, assuming the applicability of EAJA to habeas cases, 28 U.S.C. 2412(d)(1)(B) sets forth the timing and process to consider an award of fees under the statute. That provision states:

> A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

28 U.S.C. § 2412(d)(1)(B). Thus, the statute requires the Court to consider total record of the case after a final judgment and the filing of an application by the prevailing party.

The Third Circuit has recognized as follows concerning the finality and timing for a motion for fees:

> Under the EAJA, a motion for attorneys' fees must be filed "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). In this context, " 'final judgment' means a

> judgment that is final and not appealable...." 28 U.S.C. § 2412(d)(2)(B). We have held that "the thirty day cut-off for EAJA petitions ***begins*** when the government's right to appeal the order has lapsed." *Taylor v. United States*, 749 F.2d 171, 174 (3d Cir.1984) (per curiam).

Johnson v. Gonzalez, 416 F.3d 205, 208 (3d Cir. 2005) (emphasis added). Therefore, the determination of the merits of any EAJA award requires a motion or application to be filed 30 days after final judgment. Here, the United States has objected to the report. The Court will render a decision on the objections in due course.

After final judgment, if Petitioner is a prevailing party, she may seek fees and expenses under EAJA, and the Court may consider the merits of the applicability and/or amount of any award subject to a more fulsome record with the benefit of briefing by the parties. Likewise, the issue may be moot if the Petitioner does not prevail, if Petitioner does not seek an award, if the Third Circuit holds that EAJA does not apply to habeas cases, or the parties reach a stipulated resolution of the issue after final judgment. Therefore, the Court should not address the merits as to whether an EAJA award is appropriate at this stage in proceedings.

III. Conclusion

Based on the above and the response (Doc. 12), the Court should reject the report and dismiss or deny the petition.

Respectfully submitted,

BRIAN D. MILLER
United States Attorney

s/Gerard T. Donahue
Gerard T. Donahue
Assistant United States Attorney
235 N. Washington Ave, Ste. 311
Scranton, PA 18503
Phone: (570) 348-2800
Fax: (570) 348-2830
Gerard.Donahue@usdoj.gov

Dated: November 18, 2025

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARIELIS SANTANA-RIVAS,	:	**No. 3:25-cv-01896**
Petitioner,	:	
	:	
v.	:	**(Wilson, J.)**
	:	
WARDEN, in their official	:	
Capacity as Warden of the	:	
Clinton County Correctional	:	
Facility, et al.,	:	
Respondents.	:	**Filed Electronically**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on November 18, 2025, she served a copy of the attached

RESPONDENT'S BRIEF IN SUPPORT OF OBJECTIONS TO THE NOVEMBER 13, 2025 REPORT AND RECOMMENDATION

via Electronic Filing:

Leena Khandwala, Esq.
Emily McConville, Esq.

/s/ Maureen Yeager
MAUREEN YEAGER
Paralegal Specialist