Krishna J. Mahadevan 0099016,

Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Marlen Jamileth Ortiz Soto, Petitioner, v. **Richard K. Jones**, Sheriff, Butler County Jail; **Sam Saxson,** Director of Cincinnati Field Office, U.S. Immigration and Customs Enforcement; **Todd Lyons,** Acting Director of U.S Immigration And Customs Enforcement (ICE) **Kristi Noem,** Secretary of the U.S. Department of Homeland Security; and **Pam Bondi,** Attorney General of the United States, in their official capacities, Respondents.	Case No. 25-768 **PETITION FOR WRIT OF HABEAS CORPUS** **ORAL ARGUMENT REQUESTED**

INTRODUCTION

1. Marlen Jamileth Ortiz Soto is an applicant for asylum and also the spouse of a US citizen. Mrs. Ortiz Soto entered the United States at the age of eighteen in January 2019 with her mother and siblings. Her mother then timely filed an asylum application in January 2020, of which Marlen was a derivative child. Mrs. Ortiz Soto then obtained work authorization and has otherwise continued with all requirements given to her by immigration authorities.

2. Mrs. Ortiz Soto was a passenger in her now husband's car on August 17, 2025, when Fairfield police detained them for a traffic violation. ATF and HSI agents

then forcibly removed Mrs. Ortiz Soto from the passenger side of the vehicle and processed her at the Blue Ash ICE Field Office. Officials then transferred her to ICE custody at the Butler County Jail. Mrs. Ortiz Soto, through counsel, sought bond from the Cleveland Immigration Court, which denied her bond under the spurious legal argument that immigration judges do not have jurisdiction to hear bond cases for individuals that have entered at the southern US border and were released, even if released under INA 236. The Department of Homeland Security made no other arguments about her risk to the safety of the community or her risk of flight.

3. Mrs. Ortiz Soto's arrest and subsequent detention are wholly unjustified and unrelated to any individualized consideration of her circumstances. In the time she has lived in the United States she has learned some English, started her own house cleaning business, and has married her now US citizen husband.

4. Absent an order from this Court, Petitioner will remain detained at the Butler County Jail. Mrs. Ortiz Soto asks the Court to find that Mrs. Ortiz Soto's continued detention is unlawful and order her release from custody. Mrs. Ortiz Soto also respectfully asks this Court order respondents not to transfer her outside of the district for the duration of this proceeding.

5. Everyday Mrs. Ortiz Soto spends in detention subjects her to further irreparable harm. Immediate relief is necessary to ensure that Mrs. Ortiz Soto is no longer subjected to continued violations of his substantive and procedural rights.

PARTIES

7. Petitioner Marlen Jamileth Ortiz Soto is a twenty-four-year-old Honduran national seeking asylum in the United States and relief through her US citizen husband's pending petition.

8. Respondent Richard K. Jones is sued in his official capacity as the Sheriff of the Butler County Jail. Respondent Jones is a legal custodian of Mrs. Ortiz Soto.

9. Respondent Sam Saxson is sued in his official capacity as the Acting Field Office Director, Blue Ash Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. Respondent Saxson is a legal custodian of Mrs. Ortiz Soto.

10. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. As the Acting Director of ICE< Respondent Lyons is a legal custodian of Mrs. Ortiz Soto.

11. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency is tasked with enforcing immigration laws. Secretary Noem is Mrs. Ortiz Soto's ultimate legal custodian.

11. Respondent Pam Bondi is sued in her official capacity as Attorney General, and as such has authority over the Department of Justice.

JURISDICTION

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

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

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651.

VENUE

15.. Venue is proper because Petitioner is detained at Butler County Jail in Hamilton, Ohio, which is within the jurisdiction of this District.

16. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and Respondent Sheriff Richard Jones resides in this District and Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391,

400 (1963) (emphasis added).

LEGAL FRAMEWORK

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

20. 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).

21. 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).

22. 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).

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

24. 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).

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

Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

26. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible 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)).

27. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days… then they are under 1226(a) and not 1226(c)" and further clarified, in response to a question concerning "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border," the Government responded, "The answer is they are held under 1226(a) and that they get a bond hearing…" Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (No. 15-1204). DHS reiterated that such individuals "would be held under 1226(a)" and cited the administrative record to support that position. *Id.* These statements

reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

28. 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.

29. 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.

30. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held 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.

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

31. Since Respondents adopted their new policies, several federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
32. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).
33. A growing number of federal courts have rejected ICE and EOIR's expanded interpretation of the Immigration and Nationality Act's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

34. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

35. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

36. Indeed, according to the I-220A, Release on Recognizance document issued to Respondent upon her encounter with Government officials, as well as the DHS's own factual allegations contained in the Notice to Appear, the DHS themselves determined that Petitioner had entered the U.S. under the INA and thus falls under § 1226(a), not § 1225(b).

37. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

38. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

39. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

41. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at the border and released after a quasi-judicial determination by an immigration official on a form I-220A that Respondent falls under the discretionary arrest provision of § 1226(a) as an uninspected entrant. The Government's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is

ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

It has been the settled practice for decades for immigration officials to issue an I-220A, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an I-220A under § 236 is not a ministerial act but a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b). The Supreme Court has "long favored application of the common law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). As the Court explained in *Utah Construction*, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." 384 U.S. at 422. This presumption applies because "Congress is understood to legislate against a background of common-law adjudicatory principles." *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, DHS's prior § 236 determination—memorialized in the I-220A—constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

1.. The allegations in the above paragraphs are realleged and incorporated herein.

2. That the Petitioner's detention violates her right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT TWO
Violation of the Immigration and Nationality Act

1. The allegations in the above paragraphs are realleged and incorporated herein.

2. The petitioner's continued detention violates the Immigration and Nationality Act.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

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

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Respondent from custody, as the Immigration Judge made no finding of risk to the community or flight risk in her denial of bond.

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Krishna J Mahadevan 0099016
Jorge H Martinez Attorney at Law

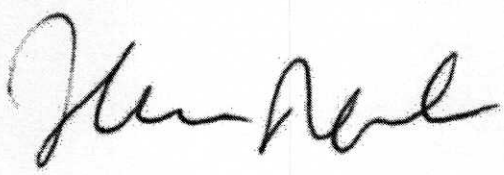
Counsel for Petitioner

Dated: 010/23/2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Marlen Jamileth Ortiz Soto, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23rd day of October 2025.



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