UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

M.C.H.L.,	)	
	)	
Petitioner,	)	
	)	CASE NO.:
vs.	)	4:25-CV-00329-WMR
	)	
DARREN PIERCE, *in his official capacity as Sheriff of Whitfield County Jail*; and LADEON FRANCIS, *ICE Atlanta Field Office Director*; and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*) And PAMELA BONDI, *U.S. Attorney General.*	)	
	)	
Respondents.	)	
	)	

PETITIONER'S RESPONSE TO RESPONDENTS' RETURN (ECF No. 12) OF ORDER TO SHOW CAUSE (ECF No. 5) ON WRIT OF HABEAS CORPUS[1]

This Court has jurisdiction to review Petitioner's challenge to her wrongful detention by U.S. Immigration and Customs Enforcement (ICE), which is independent from Petitioner's removal proceedings. As laid out below, the Immigration and Nationality Act (INA) and the relevant caselaw all held that Petitioner is not "seeking admission" into the United States and cannot

[1] Although Respondents title ECF 12 as "Federal Respondents' Response in Opposition to Petition for Habeas Corpus," the proper name based on the case at hand is "Return of Order to Show Cause" or simply "Return".

be detained under 8 U.S.C. § 1225(b)(2)(A). Rather, Petitioner is an interior arrestee whose detention should be governed by the discretionary provisions of 8 U.S.C. § 1226(a), and she was previously released on an Order of Release on Recognizance (OREC).

As numerous courts have found, including all judges in the Northern District of Georgia who have decided the issue (Cohen, Grimberg, Ross, Story, as well as MDGA (Land) and SDGA (Cheesbro & Wood) in landmark decisions argued by undersigned counsel and dozens of similar habeas grants thereafter), the application of § 1225(b) to an individual like Petitioner who entered the U.S. years ago without inspection and has lived in the interior ever since, is wrong. This Court should order her outright release from detention as her OREC was either not cancelled (therefore she is improperly detained) or in the alternative, if it was cancelled, it was improperly cancelled. Since Respondents have not produced a proper notice of OREC cancellation, they have failed to show legitimate cause for her detention and proper release is warranted in her case (note that the other cases decided in NDGA cited above did not involve an OREC cancellation, just a standard 1225 vs. 1226 interpretation, however the same statutory conclusion as to Petitioner's detention that she is not an "applicant for admission" and therefore 8 U.S.C. § 1225 does not govern her detention should apply here).

I. FACTUAL BACKGROUND

Petitioner is a mother of three children, with no criminal record. She was apprehended at the border when she arrived to the United States and after passing a Credible Fear Interview (CFI), was released on an OREC into the U.S. to seek asylum. Petitioner's OREC permitted her to remain in the U.S. without the requirement of posting bond. She has complied with all reporting requirements and conditions of her OREC since her entry and was recently detained years after her entry. She has a pending asylum application and approved Employment Authorization Document (EAD).

On November 8, 2025, Petitioner was arrested in Floyd County, Georgia for a traffic violation. That same day ICE issued a detainer and on November 10, 2025, ICE assumed custody of the Petitioner at the Floyd County Jail and took her to the Atlanta field office. She was later transferred to the Stewart Detention Center (SDC).

ICE is unlawfully detaining Petitioner based solely on ICE's erroneous classification of her as an "arriving alien" or "applicant for admission", subject to mandatory detention under 8 U.S.C. § 1225(b). Further, ICE arrested Petitioner based on a deficient and unsupported immigration detainer and without a warrant. Petitioner has no criminal history, no record of violence, and was arrested in the interior solely for a minor traffic violation. The egregious unlawfulness of Petitioner's detention warrants outright release in

lieu of the standard bond hearing within 3 days that other judges in this Court have granted.

II. THE COURT HAS JURISDICTION OVER HABEAS PETITIONS UNDER 28 U.S.C. § 2241

A. The Northern District of Georgia is the proper venue for the habeas petition because Petitioner was in the custody and control of the Atlanta Field Office Director, within this district, at the time she filed her habeas petition.

Respondents put forth a collection of legally untenable arguments in an effort to secure a dismissal, delay the proceedings, or obtain a transfer to a different venue. Their attempt to defeat jurisdiction by transferring Petitioner after the petition was filed, coupled with their recent and erroneous reclassification of a long-term resident as an "applicant for admission" subject to mandatory detention, are post-hoc justifications for unlawful conduct, not good-faith interpretations of the law.

"The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is 'the person who has custody over the petitioner.'" *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242) (cleaned up). Generally, under the immediate custodian rule, "in habeas challenges to present physical confinement ... the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Id.*

at 435.[2] The logic of this rule rests in an understanding that "the warden ... has day-to-day control over the prisoner and who can produce the actual body." *Yi v. Maugans*, 24 F.3d 500, 507 (3d Cir. 1994); *see Wales v. Whitney*, 114 U.S. 564, 574 (1885) (recognizing that governing body of habeas law "contemplate[s] a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge").

Related, in habeas challenges to *present* physical confinement, the district of confinement is *synonymous* with the district court that has territorial jurisdiction over the proper respondent notwithstanding subsequent transfer. *Padilla*, 542 U.S. at 444. Although, indisputably, "[w]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal

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[2] However, the *Padilla* Court declined to decide whether the immediate custodian rule applies to habeas petitions filed by aliens challenging their detention. 542 U.S. at 435 n.8. Courts within the Eleventh Circuit similarly has not reached this question. *See Singh v. Wolf*, No. 1:20-CV-02212-AT-LTW, 2020 WL 13544296, at *1 (N.D. Ga. July 30, 2020), citing *Masingene v. Martin*, No. 19-CV-24693, 424 F.Supp.3d 1298, 2020 WL 465587, at *1 (S.D. Fla. Jan. 27, 2020) (Federal immigration detainees are detained "pursuant to the power and authority of the federal government" and not the warden of the non-federal facility where they are detained.); *see e.g., Khodr v. Adduci*, 697 F.Supp.2d 774, 776 (E.D. Mich. 2010) (proper respondent was the ICE District Director, not the warden of county jail); *Abner v. Sec'y of Dep't of Homeland Security*, No. 06CV308(JBA), 2006 WL 1699607, at *3–4 (D. Conn. June 19, 2006) (ICE field office director, not warden of county facility, was the correct respondent); *Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 WL 1514122, at *3 (N.D. Cal. June 17, 2005) (ICE district director, also known as the field office director, who could direct the county warden to release the petitioner was the proper respondent); *see also Suri v. Trump*, 785 F. Supp. 3d 128, 140 (E.D. Va. 2025) (questioning whether an inquiry into an immigration detainee's permanent place of confinement is prudent because, as evidenced by the facts of this case and others like it, non-citizen detainees may be moved more frequently than those who are criminally incarcerated).

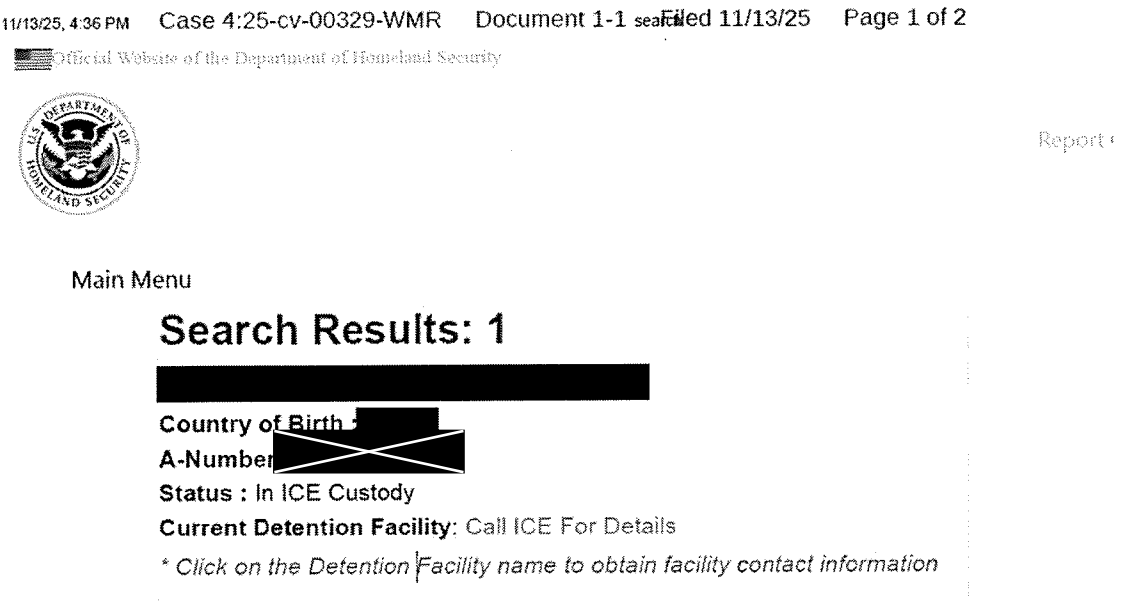
authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 441 (reaffirming its holding in *Ex parte Endo*, 323 U.S. 283, 306-07 (1944) (the objective of habeas relief may be in no way impaired or defeated by the removal of the prisoner from the territorial jurisdiction of the District Court); *see Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444–45 (3d Cir. 2021).

Importantly however, when the default rules of habeas jurisdiction have proved untenable, the Supreme Court and other Circuit Courts have recognized exceptions to these default rules. *See Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 499 (1973) (allowing petitioner confined in Alabama to file habeas petition challenging Kentucky indictment in Kentucky); *Strait v. Laird*, 406 U.S. 341, 344-346 (1972) (allowing conscientious objector petitioner to name his ultimate custodian in habeas petition); *U.S. v. Moussaoui*, 382 F.3d 453, 465 (4th Cir. 2004) (adopting exception to immediate custodian rule allowing petitioner to name ultimate custodian). That is because "the very nature of the writ [of habeas corpus] demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291-92 (1969) (The "language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary.") (citations omitted). The Supreme Court has made clear that a district court "has a wide-range of powers in administering the writ and

ensuring that the proceeding does not 'founder in a procedural morass.'" *Ainsworth v. Vasquez*, 759 F. Supp. 1467, 1475 (E.D. Cal. 1991) (quoting *Harris*, 394 U.S. at 292). In the U.S., "there is no gap in the fabric of habeas – — no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it." *Khalil v. Joyce et al.*, 777 F.Supp.3d 369, 410 (D.N.J. Apr. 1, 2025) ("*Khalil II*"), *mot. to certify appeal granted*, 777 F.Supp.3d 411 (D.N.J. Apr. 4, 2025).

In the instant case, Petitioner was in ICE custody and located within the Northern District of Georgia when she filed her habeas petition, notwithstanding the fact that by the time of filing the instant habeas she was already moved out of Floyd County Detention Center and into the ICE Atlanta Field Office. Specifically, because Petitioner's counsel understood Petitioner's last known location to be the Floyd County Detention Center in Rome, Georgia, under the custody of the Department of Homeland Security (DHS), Petitioner named as Respondents both Dave Roberson, as Sheriff of Floyd County Detention Center, and Ladeon Francis, the Field Office Director for ICE's Atlanta Field Office, as well as Kristi Noem, DHS Secretary, who was Petitioner's ultimate custodian. ECF No. 1 at Paragraph 1 (Petitioner's detention at the Floyd County Detention Center has been confirmed through her relatives); *see also* ECF No. 1-1 (ICE Detainee locator system indicating Petitioner was in ICE custody without further information). The following is a

screenshot of ECF 1-1, printed approximately 17 minutes prior to filing of the instant Petition at 4:36 p.m.:


11/13/25, 4:36 PM Case 4:25-cv-00329-WMR Document 1-1 Filed 11/13/25 Page 1 of 2

Official Website of the Department of Homeland Security

Main Menu

Search Results: 1

[redacted]

Country of Birth [redacted]

A-Number [redacted]

Status : In ICE Custody

Current Detention Facility: Call ICE For Details

** Click on the Detention Facility name to obtain facility contact information*

It is clear that Respondents purposefully did not reveal Petitioner's whereabouts in their system so there is no way it was known to counsel at the time of filing.

Petitioner's counsel filed her habeas petition on November 13, 2025, and received confirmation via the Court's electronic case filing management system (ECF) that the filing was completed at 4:53 PM (last line of the filing receipt, Date/Time: 11/13/2025 04:53:42 ET). Exhibit 1.

According to Respondents, on November 13, 2025, Respondents checked Petitioner out of the Floyd County Jail at 1229/12:29 PM and transferred her to the Atlanta ICE Field office (located at 180 Ted Turner SW, Atlanta, GA),

which is still located within the Northen District of Georgia. Dkt. 11-1. Petitioner was transferred to the Atlanta ICE office for transport to SDC.

That same day, at approximately 1653/4:53 PM, Petitioner departed the Atlanta ICE office to begin her transfer to the SDC. *Id.* Finally, Respondents admit that Petitioner did not arrive at SDC until 19:30/7:30 PM on November 13, 2025 (her arrival at SDC was recorded in an ICE database which reflects a "Book In Date/Time" of November 13, 2025 at 1930/7:30 PM). *Id.*

Despite Respondents' various movements of Petitioner throughout the day, clearly, at the time of filing her petition, Petitioner either was still physically located in the Atlanta ICE Field Office itself, located at 180 Ted Turner Drive, SW, Atlanta, GA, or was in the custody of the Atlanta ICE Field Office Director, Ladeon Francis, having control over ICE agents within the Atlanta region and all of Georgia, who were transporting Petitioner to SDC, which is located approximately two hours away. Even if she was booked out at 4:53 p.m., there is no way she could have boarded the bus to transport her (and dozens of other ICE detainees) in less than a minute. Either way, at the time of filing, Petitioner remained physically located within the Norther District of Georgia under the legal custody of Ladeon Francis, the ICE Field Office Director for Atlanta, and under the ultimate custodian of DHS Secretary Kristi Noem and this Court has clear jurisdiction over the petition notwithstanding her subsequent transfer to the Middle District of Georgia.

Inexplicably, Respondent claims that because the habeas petition filing notification from ECF shows it was filed at 4:54 PM, "one minute after Petitioner left the ICE Atlanta Field Office," then somehow, "when the Petition was filed, the Director of the ICE Atlanta Field Office was no longer Petitioner's immediate custodian." ECF No. 12 at 9. Yet in the following paragraph, Respondents admit that Petitioner was released from the Atlanta Field Office at approximately 4:53 PM (the same timing of filing of her writ of habeas petition) and "was in transit" for the next two and half hours "and was not booked into SDC until 7:30 p.m. (Docket No. 11, ¶ 7), leaving the question of habeas jurisdiction in something of a limbo." *Id.* Given Respondents' admission of a "limbo" jurisdictional posture, this Court should also look to the reasoning of the district court in the Eastern district of Virginia in *Suri v. Trump*, where a habeas Petitioner did not have a permanent place of detention at the time of filing, and the court found that in accordance with the unknown custodian exception and ultimate custodian rule, the petitioner properly named the Secretary of Homeland Security as a respondent in his petition and the court had jurisdiction to review the petition. 785 F. Supp. 3d 128, 142 (E.D. Va. 2025).[3]

[3] Notably, the *Suri* court also highlighted that the government had not identified who Petitioner's immediate custodian was while he was in transit and found it "logical to assume that if Respondents could identify the individual Petitioner should have named as his immediate custodian, they would have." Here, like in *Suri*, the government has not identified who they believe the proper respondent

"The unknown-custodian exception is critical because a detainee must always have an available forum for a habeas petition, even if the government doesn't disclose their location." *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *5 (4th Cir. July 1, 2025); *accord Ozturk v. Trump*, 136 F.4th 382, 392 (2d Cir. 2025). Thus, when "the government moves a detainee from a district and their attorney cannot discover their location with reasonable inquiry, that attorney must be able to file a habeas petition in the detainee's **last-known location** against their ultimate custodian." *Suri*, 2025 WL 1806692, at *6. Without this critical exception, detainees such as Petitioner "would lack the ability to seek habeas relief as long as the government kept their location and custodian a secret, thus granting the political branches the power to switch the Constitution on or off at will, leading to a regime in which the President, not the Supreme Court, says what the law is." *Id.* (cleaned up) (quoting *Boumediene v. Bush*, 553 U.S. 723, 765 (2008)). See also *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2476524, at *6-7 (D.N.J. Aug. 28, 2025) (holding exception applied when "the information on where [the petitioner] was certainly was not available to either petitioner or her attorney until after the fact").

Finally, in a concurring opinion in *Padilla*, Justice Kennedy, joined by Justice O'Connor, outlined another situation warranting an exception: where

would have been in this case. *See* ECF No. 12 at 9 ("Petitioner was in transit" "leaving the question of habeas jurisdiction in something of a limbo.").

"there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention," jurisdiction would lie with "the district court from whose territory the petitioner had been removed." *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring). Accordingly, this Court may exercise habeas jurisdiction over this matter because Petitioner's last-know location at the time of filing was in this district. *Suri,* at *6. Additionally, the petition names as a Respondent Petitioner's **ultimate** custodian, DHS Secretary. *See Ozturk*, 136 F.4th at 392; *Suri*, 785 F. Supp. 3d at 141.

In either event, Petitioner was clearly still located at the ICE Atlanta Field Office at 180 Ted Turner Drive SW, at 4:53 p.m. on November 13, 2025, the time of filing of her writ of habeas petition. Even though the first Respondent (Floyd county Sherriff) did not have physical custody over Petitioner, the legal custodian were the second, third and fourth Respondents, Francis, Lyons and Noem and therefore the writ was properly filed in NDGA. All the other cases that were brought in ECF 12-2, 12-3, 12-4 and 12-5 (with the exception of the Trinh case who was transferred to SDC prior to filing of the writ of habeas with NDGA and thus the court correctly transferred the case to MDGA), all remained within the jurisdiction and venue of NDGA and received favorable TRO's and final orders that the detention is not properly governed by

8 U.S.C. § 1225(b).

B. Exhaustion of administrative remedies is not required here.

As specified in the Complaint (ECF No. 1), exhaustion of administrative remedies is not required in this habeas context because there is no statutory mandate for exhaustion under 28 U.S.C. § 2241, and the doctrine is prudential, not jurisdictional, in immigration detention cases like this one. Courts have consistently recognized that where Congress has not expressly required exhaustion, it is within the court's discretion to excuse it, particularly when administrative remedies are inadequate, futile, or incapable of providing effective relief. Here, exhaustion should be excused for several reasons: (1) the agency's current policy—embodied in the July 2025 ICE memorandum and *Matter of Yajure Hurtado*—categorically forecloses bond hearings for noncitizens classified as "arriving aliens," making any further administrative process futile, as immigration judges lack jurisdiction to grant bond in these circumstances; (2) administrative remedies cannot address the core statutory and constitutional claims raised in the habeas petition, including the legality of detention under the wrong statutory provision and the facial deficiency of the ICE detainer; and (3) requiring exhaustion would only prolong Petitioner's unlawful detention and risk irreparable harm, contrary to the interests of justice and judicial economy. Federal courts have repeatedly excused

exhaustion in analogous cases where administrative remedies are unavailable, futile, or incapable of providing prompt and adequate relief, especially where the agency has predetermined the issue or lacks authority to grant the relief sought. In this case, the issue is even more severe as the agency did not revoke Petitioner's OREC which makes her detention unlawful. Alternatively, even if they revoked it (they have not produced any evidence of revocation), such revocation was unlawful.

C. 8 U.S.C. § 1252(g) does not bar the Court's jurisdiction.

The Government asserts that this Court lacks jurisdiction under 8 U.S.C. § 1252(g), arguing that Petitioner's detention arises from the commencement of removal proceedings. ECF No. 12 at 11-12. This argument relies on an overly broad interpretation of § 1252(g) that has been consistently rejected by the Supreme Court and numerous circuit and district courts, including all decisions known to undersigned counsel from the Northern District of Georgia.

Section 1252 is "Congress's comprehensive scheme for judicial review of removal orders." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1256–57 (11th Cir. 2020). Section 1252(g) bars judicial review over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien[.]" 28 U.S.C. § 1252(g). The Supreme Court,

in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) (AADC), clarified that § 1252(g) 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.'"

8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful *discretion*** to in only three distinct actions: (1) commence removal proceedings, (2) adjudicate those cases, and (3) execute orders of removal." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025) (emphasis added). "1252(g) is not to be construed broadly as a 'zipper' clause applying to the full universe of deportation-related claims, but instead as applying narrowly to only the three 'discrete' governmental actions enumerated in that subsection." *Wallace v. Sec'y, U.S. Dep't of Homeland Sec.*, 616 F. App'x 958, 960 (11th Cir. 2015) (citing *A.A.D.C.*, 525 U.S. at 472–73). "And although many other decisions or actions may be part of the deportation process, only claims that arise from one of the covered actions are excluded from [a court's] review...." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (internal citations and quotations omitted).

The statute's opening phrase—"Except as provided in this section"—is critical. It means that the jurisdictional bar is not absolute; rather, it is subject to the exceptions and carve-outs that are expressly set forth elsewhere in

§ 1252. The enumeration of 28 U.S.C. § 2241, as well as other habeas and mandamus provisions, is intended to clarify that, except as otherwise provided in § 1252, these statutes do not independently confer jurisdiction over claims that fall within the specific actions listed: the Attorney General's decisions to commence proceedings, adjudicate cases, or execute removal orders.

Petitioner's habeas claims do not challenge the decisions to commence removal proceedings, adjudicate her case, or execute a removal order. She is separately seeking relief from removal before the immigration court in form of asylum. Instead, she challenges the legality and constitutionality of her detention without a bond hearing; a matter distinct from the enumerated actions in § 1252(g). Such claim is reviewable. *See Canal A Media Holding*, LLC, 964 F.3d at 1257–58 (claim was not barred by § 1252(g) where action did not fall into one of three categories as "[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged."); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (petitioner's due process challenge was not barred by § 1252(g) as it did not "challenge the actions of commencing proceedings, adjudicating cases, or executing removal orders."); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025) (challenges to the lawfulness of detention during the pendency of removal proceedings is not a challenge to one of the 'three discrete events along the road to deportation' to which § 1252(g)

applies); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL 2430025, at *5 (D. Md. Aug. 24, 2025) (same); *Sanchez v. LaRose*, No. 25-cv-2396, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) ("Petitioner seeks only review of the legality of her detention, which does not require judicial intervention into the Attorney General's decisions to commence proceedings, adjudicate cases, and execute removal orders.... Adopting [the government's] interpretation of 8 U.S.C. § 1252(g)...would eliminate judicial review of immigration detainee's claims of unlawful detention[.]").

Several Circuit courts have reiterated the same. *See e.g., Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at 8–9 (6th Cir. Aug. 13, 2025) (Section 1252(g) does not clearly state a jurisdictional bar on review of detention claims, and thus, does not preclude district court jurisdiction over habeas petitions that challenge the legality or constitutionality of immigration detention, as such claims are independent of, or collateral to, the removal process); *Kong v. United States*, 62 F.4th 608, 612 (1st Cir. 2023) ("construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause"); *Mahdawi v. Trump*, 136 F.4th 443, 450 (2nd Cir. 2025) (§ 1252(g) does not strip district courts of jurisdiction over habeas petitions challenging immigration detention); *Ozturk v. Hyde*, 136 F.4th 382, 397 (2nd Cir. 2025) (§ 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," and does not reach claims

that are independent of, or collateral to, the removal process). Conversely, the Government's reliance on *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016)[4] and *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013)[5] is misplaced because those cases involved direct challenges to the underlying removal proceedings or decisions, not to the legality of detention itself.

Moreover, the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and subsequent case law confirm that, while Congress sought to streamline and limit judicial review of removal orders, it did not intend to eliminate habeas review for claims that fall outside the three discrete actions listed in § 1252(g). Courts across the country have recognized that habeas review remains available for challenges to the legality of detention that does not directly arise from the commencement, adjudication, or execution of removal orders. Section 1252(g) does not bar habeas review of constitutional challenges to the procedures used to determine detention, or the duration of detention itself.

Petitioner's claims are not merely about the fact of Petitioner's detention during removal proceedings, but about the unlawful nature of that detention.

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[4] Section 1252(g) bars jurisdiction over claims arising from the decision to commence removal proceedings or detain an alien pending removal, but does not bar jurisdiction over claims that challenge the legality of continued detention after the statutory removal period, where removal is not reasonably foreseeable and the claim is not directly tied to the execution of a removal order.

[5] Gupta alleged that ICE agents violated his Fourth and Fifth Amendment rights by wrongfully procuring an arrest warrant, arresting and detaining him, and searching and seizing his property. Bivens and other claims alleging wrongful arrest, detention, and search and seizure are barred, but habeas claim regarding the legality and constitutionality of the detention are not barred.

The government's classification of Petitioner who has resided in the U.S. for over two years as an "applicant for admission" and "seeking admission" subject to § 1225(b)'s mandatory detention based on the BIA's erroneous reasoning in *Yajure Hurtado* also raises serious due process concerns that are squarely within this Court's habeas jurisdiction. To hold otherwise would effectively insulate all immigration detention decisions from judicial review, a result inconsistent with the fundamental role of habeas corpus in safeguarding individual liberty. In summary, Supreme Court and lower courts have consistently interpreted § 1252(g) narrowly, ensuring that habeas relief remains available for claims like those presented here, which challenge the lawfulness of ongoing detention. Accordingly, section 1252(g) does not prevent this Court from exercising jurisdiction over the Petition.

D. 8 U.S.C. § 1252(b)(9) does not bar the Court's jurisdiction.

Respondents erroneously contend that section 1252(b)(9) bars this Court's review of Petitioner's challenge to the basis of her detention by claiming it "arise[s] from [an] action taken...to remove an alien from the United States." ECF No. 12 at 11-12. This position was squarely addressed in *Jennings v. Rodriguez*, where the Supreme Court held that "questions of law" regarding whether "certain statutory provisions require detention without a bond hearing" do not "arise from" the decision to remove an alien from the country as set forth in section 1252(b)(9). *Jennings*, 583 U.S. at 292–294. The Supreme

Court rejected an "expansive interpretation of § 1252(b)(9)," explaining that even if "[t]he 'questions of law and fact' ...could be said to 'aris[e] from' actions taken to remove the aliens in the sense that the aliens' injuries would never have occurred if they had not been placed in detention," this "expansive interpretation of § 1252(b)(9) would lead to staggering results." *Id.*

Here, Petitioner is challenging her mandatory detention under section 1225(b)(2), arguing that the government is applying the incorrect statute to detain her specifically since she was paroled into the country with an OREC, which under binding precedent from the Board of Immigration Appeals (BIA) and ICE regulations, constitute a parole under 8 U.S.C. § 1226(a). Section 1252(b)(9) clearly does not encompass challenges to the legality of detention itself which is separate and distinct from the removal process. Such detention challenges are not "questions of law or fact arising from" removal proceedings and thus are not barred or channeled by § 1252(b)(9) or § 1252(g). District courts retain habeas jurisdiction over such claims.

Related, § 1252(b)(9) does not eliminate habeas jurisdiction over challenges to detention that are "independent of challenges to removal orders" *Ozturk v. Hyde*, 136 F.4th at 399. The legislative history of the REAL ID Act of 2005, which amended § 1252(b)(9), explicitly states that "nothing in the amendment would preclude habeas review over challenges to detention that are independent of challenges to removal orders" *Kong*, 62 F.4th at 614.

Petitioner's claims regarding the lawfulness of her detention and her right to a bond hearing are distinct from the merits of her removability and they can be resolved "without affecting pending removal proceedings" *Ozturk*, 136 F.4th at 399). Therefore, § 1252(b)(9) does not strip this Court of jurisdiction.

E. Suspension Clause supersedes jurisdiction-stripping statutes.

A broad interpretation of these jurisdiction-stripping provisions would raise grave constitutional concerns under the Suspension Clause of the U.S. Constitution, which protects the writ of habeas corpus (U.S. Const. art. I, § 9, cl. 2). Courts are obligated to construe statutes to avoid constitutional questions where possible. *Ozturk*, at 394; *Kong*, 62 F.4th at 612 ("construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause"). The writ of habeas corpus is a constitutional minimum that cannot be abrogated by statute, even if Congress were to attempt to do so expressly. The Supreme Court has repeatedly affirmed that habeas review must remain available to challenge unlawful detention, regardless of statutory limitations. See *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008) ("the Suspension Clause remains applicable and the writ must be available to test the legality of executive detention"); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("the writ of habeas corpus is available to all persons detained within the United States who claim to be held in custody in violation of the Constitution, laws, or treaties of the United States"). Thus, even if the

government's jurisdictional arguments under 8 U.S.C. § 1252 were accepted, they could not constitutionally foreclose habeas review of Petitioner's core liberty interest in freedom from unlawful detention. For these reasons, the Court has jurisdiction to consider the Petition.

III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2)(A) BECAUSE SHE IS NOT "SEEKING ADMISSION"

At the outset, an individual who enters the United States without inspection like Petitioner and is subsequently released on an OREC after being apprehended at the border should not be classified as an "arriving alien" under immigration law. The term "arriving alien" is specifically defined to include those who are seeking admission at a port of entry or are interdicted in international waters and brought to the U.S. In contrast, individuals who enter without inspection are already present in the United States without having been admitted or paroled, and thus do not fit the definition of an "arriving alien".

The Board of Immigration Appeals has confirmed that release on recognizance or bond is an exercise of § 1226 discretion pending proceedings. See *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (This decision reiterates that individuals released on their own recognizance under section 236 of the INA are not considered to be paroled under section 212(d)(5)); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 260 n.2 (BIA 2010) (This case

clarifies that release on conditional parole under section 236(a)(2)(B) of the INA is legally distinct from release on humanitarian parole under section 212(d)(5)(A) of the INA). These are Respondents' own binding decisions that they are not following as to Petitioner.

The statutory framework governing immigration detention draws a clear and deliberate distinction between the authority to detain "applicants for admission" at the border or port of entry under 8 U.S.C. § 1225(b), and the discretionary detention of noncitizens already present in the United States under 8 U.S.C. § 1226(a). Section 1225(b) mandates detention for those "seeking admission" who are not "clearly and beyond a doubt entitled to be admitted," while § 1226(a) authorizes the Attorney General to arrest and detain, on a warrant, any noncitizen pending a decision on removability, with the possibility of release on bond except as provided in § 1226(c) (mandatory detention for certain criminal aliens). Nothing in the plain language of § 1226(a) prevents it from applying to noncitizens who unlawfully entered the country, like Petitioner. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) (§ 1225 governs "arriving aliens" and those "seeking admission," while § 1226 applies to "an alien present in the country" and that it "generally governs the process of arresting and detaining that group of aliens pending their removal."). The government's recent policy—set forth in the July 2025 ICE memorandum and the Board of Immigration Appeals' *Matter of Yajure*

Hurtado, 29 I. & N. Dec. 216 (BIA 2025)—purports to reclassify all noncitizens who entered without inspection, regardless of their years-long residence in the U.S., as "applicants for admission" subject to mandatory detention under § 1225(b)(2). This interpretation is a significant and abrupt departure from decades of agency practice, regulatory guidance, and legal precedent that have consistently recognized that interior arrestees are subject to § 1226(a) and entitled to individualized custody determinations and bond hearings (assuming they are arrested pursuant to a warrant, which was not the case for Petitioner). The government's attempt to collapse this distinction by reclassifying all noncitizens present without admission as "applicants for admission" ignores both the statutory structure and decades of agency practice.

Further, the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), abrogated *Chevron* deference and requires courts to interpret statutes de novo, giving due respect to agency views but not deferring to them—especially where, as here, the agency's position is inconsistent with statutory text, legislative history, and the overwhelming consensus of federal courts. This Court must therefore independently construe §§ 1225 and 1226, and the record and authorities demonstrate that Petitioner's detention is governed by § 1226(a), not § 1225(b).

The overwhelming consensus among federal district courts—including numerous decisions from this district and Circuit—has rejected the

government's reclassification policy, instead holding that § 1226(a) governs the detention of noncitizens apprehended in the interior, including those who entered without inspection years ago and have established significant ties to the United States. *See e.g.*, *Miguel Hernandez v. Udzinski*, No. 2:25-CV-373-RWS (N.D. Ga. Nov. 24, 2025) (holding that § 1225 applies to noncitizens who are encountered attempting to enter the country, or shortly thereafter but does not refer to noncitizens already living here. In contrast, § 1226 applies to aliens already in the country); *Rojano Gonzalez v. Sterling*, No. 1:25-CV-6080-MHC, 2025 WL 3145764, at *6 (N.D. Ga. Nov. 3, 2025) (Noncitizens who are just "present" in the country, who have been here for years upon years, are not "seeking" admission); *Jimenez v. Warden*, No. 1:25-cv-05650-SDG (N.D. Ga. Nov. 6, 2025) (Doc. 24); *Lima v. Warden*, No. 1:25-CV-6304-ELR (N.D. Ga. Nov. 18, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342, 2025 WL 3050094 at *5 (M.D. Ga. Nov. 1, 2025) ("[U]nder no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'"); *Antonio Aguirre Villa v. Warden Tony Normand*, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025).

But as Respondents continue to assert the same argument, Petitioner reiterates why Respondents' government's reliance on the phrase "seeking admission" in 8 U.S.C. § 1225(b) is misplaced as applied to Petitioner's circumstances. Respondents' interpretation ignores the plain meaning of the

phrase "seeking admission." *See J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *2 (M.D. Ga. Nov. 1, 2025) (The interpretation of the applicable statutes by respondents and the BIA in *Yajure Hurtado* overlooks part of the language in § 1225(b)(2)(A), it gives little consideration to the overall statutory scheme, and it ignores § 1226).

The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer" (8 U.S.C. § 1101(a)(13)(A)). "And 'entry' has long been understood to mean 'a crossing into the territorial limits of the United States.'" *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025).

The phrase 'seeking admission' is undefined in the statute but necessarily implies some sort of present-tense action or effort to obtain something——in this context, to gain lawful entry into the United States. *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). "Seek" is an active verb, not a type of status. *J.A.M.*, 2025 WL 3050094, at *3. "Seeking" means "asking for" or "trying to acquire or gain" and implies some kind of affirmative action on the part of the actor. *Lepe*, 2025 WL 2716910, at *5 (citing Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking). "To piece this together, the phrase 'seeking admission' means that one must be actively 'seeking' 'lawful entry.'" *Id.*

(quoting *Lopez Benitez*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025)). Again, the phrase "implies action –something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

As Judge Story recently reiterated in *Miguel Hernandez v. Udzinski*, No. 2:25-CV-373-RWS (N.D. Ga. Nov. 24, 2025), Respondents' interpretation also violates several canons of statutory construction including the cannon against surplusage. *J.A.M.*, 2025 WL 3050094, at *3 ("[i]f possible, every word and every provision is to be given effect."). It makes no sense that Congress would use two different phrases in the same statutory sentence to mean the exact same thing. *See id.* ("The second phrase, 'seeking admission,' modifies and narrows the first, "an alien present in the United States who has not been admitted." It does not simply restate it."). It further violates the canon of noscitur a sociis, which requires courts to consider statutory language in reference to "the specific context in which that language is used, and the broader context of the statute as a whole." *Dawson*, 64 F.4th at 1237.

Considering the statutory framework of the INA, it is clear that § 1225 applies to noncitizens who are encountered attempting to enter the country or

shortly thereafter.[6] Section 1225 repeatedly refers to noncitizens actively entering the country's border and does not refer to noncitizens already living here. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(A)(i) (screenings for aliens "arriving in the United States"); *id.* § 1225(b)(2)(C) (noting that aliens "arriving on land ... from a foreign territory contiguous to the United States" may be returned to that territory pending removal proceedings). Section 1226, in contrast, applies to "aliens already in the country." *Jennings*, 138 S. Ct. at 838.

Thus, based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to aliens in the U.S. who have not been admitted ("applicants for admission" definition) **AND** who are "seeking" or "attempting to obtain" lawful admission to the United States. *J.A.M.*, 2025 WL 3050094, at *3.

In the instant case, clearly Petitioner is not currently "seeking admission" and thus does not fall with an "applicant for admission" subject to mandatory detention under § 1225(b)(2) in the statutory sense. Petitioner was not taking affirmative action to be admitted into the country; she was apprehended within the interior of the United States, years after her initial entry. Thus, any detention of Petitioner necessitates an individualized process

[6] The regulatory definition of "arriving alien" under 8 C.F.R. § 1.2 further supports this distinction, limiting the term to those "coming or attempting to come into the United States at a port-of-entry" or interdicted at sea—not to individuals apprehended in the interior long after entry. The present-progressive language—"arriving," "coming," "attempting"—confirms that § 1225(b) applies only to those in the process of seeking admission, not to long-term residents like Petitioner.

and bond eligibility under § 1226(a). To interpret "seeking admission" to encompass long-term residents apprehended in the interior would not only disregard the statutory definition of "admission," but also collapse the deliberate distinction Congress drew between border and interior cases, rendering § 1226(a) superfluous and contrary to decades of agency and judicial practice.

IV. THE UNLAWFULNESS OF PETITIONER'S DETENTION REQUIRES HER IMMEDIATE RELEASE

Despite the government's previous finding that she is neither a danger nor a flight risk and ordering her release on an Order of Recognizance (OREC) (ECF No. 1-3), Petitioner is now unlawfully detained in violation of statute, regulation, policy, and the 5th Amendment's due process clause.

A. Respondents' failure to provide proof of an immigration detainer or arrest warrant render Petitioner's continued detention unlawful.

Petitioner's arrest and continued detention are unlawful because they were executed in the interior of the United States years after her entry, without a valid warrant supported by probable cause, and without any individualized finding of dangerousness, flight risk, or national security concern. The record is clear: Petitioner has no criminal history, no record of violence, and was arrested solely for a minor traffic violation (driving without a license). Specifically, on November 8, 2025, while traveling to visit her sick father, Petitioner's vehicle was stopped during a traffic operation for driving

without a license and speeding, and ICE subsequently took Petitioner into custody. Petitioner was detained without notice or the opportunity to be heard, in violation of agency rules. Her detention was conducted under false pretenses and was a violation of both procedural and substantive due process rights, as no findings were made regarding her compliance with the OREC or any danger she posed.

In their response to the OSC, Respondents have failed to provide a copy of the alleged immigration detainer. Respondents provided a declaration from Deportation Officer David Bush (ECF 12-1), which references Exhibits A-E within, but no such exhibits were attached to the as-filed declaration or otherwise provided to Petitioner or the Court. This legal deficiency and omission of the alleged immigration detainer or any evidence or individualized assessment of Petitioner's danger or flight risk underscores the unlawfulness of her arrest and detention.

Moreover, federal law and DHS policy require that immigration detainers and interior arrests be supported by probable cause and, where public safety or national security is invoked, by specific, articulable facts. The absence of any such facts here renders the alleged detainer facially deficient and unlawful. As numerous courts have recognized, the use of a detainer to hold a noncitizen in the interior based on a boilerplate assertion of risk—without any criminal predicate or individualized finding—violates both

statutory and constitutional requirements. *See, e.g.*, *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at 10 (D. Ariz. Aug. 11, 2025) (granting immediate release where detention was based on an unlawful arrest and unsupported detainer); *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (immediate release ordered for unlawful detention under § 1225(b)); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (immediate release as the only effective remedy for egregious constitutional violations).

Next, under 8 U.S.C. § 1357(a)(2), ICE officers may only arrest without a warrant if they have probable cause to believe the individual is unlawfully present *and* is likely to escape before a warrant can be obtained. This is not a mere formality; it requires a particularized, individualized inquiry into flight risk, considering factors such as family, employment, and community ties. The "reason to believe" language is interpreted as equivalent to the constitutional probable cause standard. Arrests based solely on unlawful presence, without individualized flight risk assessment, do not meet this standard. Furthermore, the Fourth Amendment requires a prompt judicial determination of probable cause following a warrantless arrest. Extended detention without such a determination is unconstitutional (*Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

Where a person is arrested without a warrant and without probable cause, and no prompt judicial review is provided, the

remedy is immediate release. Issuing a post hoc warrant after the arrest does not cure the initial violation. ICE's practice of issuing administrative warrants after the fact does not retroactively legitimize an unlawful arrest. The statutory requirement is for probable cause of flight risk *before* arrest. *Id.*

Related, 8 U.S.C. § 1357(a)(2) authorizes ICE to arrest and detain noncitizens believed to be in violation of immigration laws but expressly limits such detention to "not more than 48 hours" (excluding weekends and holidays), unless a warrant is issued or removal proceedings are commenced. Here, Petitioner was taken into custody on October 14, 2025. Thus, as of today, December 1, 2025, Petitioner has been detained for a month and a half without the issuance of a warrant— far exceeding the statutory forty-eight (48)-hour limit for warrantless detention set forth in 8 U.S.C. § 1357(a)(2). Notably, Respondents have not even alleged the existence of a warrant or suggested any emergency or extraordinary circumstance to justify continued detention beyond the statutory limit. Respondents' brief utterly fails to address Petitioner's unlawful and prolonged deprivation of liberty. *See generally*, ECF 12.

Therefore, this Court should order Petitioner' s immediate release or other appropriate relief. The Supreme Court and lower courts have repeatedly held that, where the government's actions have already frustrated judicial

review and threaten to permanently deprive a petitioner of liberty, immediate release is the only adequate remedy. E.g., *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at 10 (D. Ariz. Aug. 11, 2025). Immediate and unconditional release is the only adequate remedy where detention is unlawful and constitutional violations are ongoing, as recognized in *Ex parte Endo*, 323 U.S. 283 (1944) (ordering immediate release for unlawful detention).

The U.S. District Court for the District of Colorado just issued a decision on a class action for noncitizens detained by ICE in the District of Colorado. *See* Exhibit 2, ECF 49 in Case No. 1:25-cv-03183-RBJ and arguments listed therein. There, the plaintiffs, noncitizens with deep community ties, were arrested by ICE in Colorado, without a warrant and without individualized flight-risk determinations, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii). Similarly, other courts also granted immediate release in similar circumstances to Petitioner's. The U.S. District Court for the District of Idaho recently granted 15 habeas cases ordering immediate release. *See* Case No. 1:25-cv-00593-BLW as Exhibit 3 hereto. The other dozen or so cases are practically similar.[7] *See also* Exhibit 4 habeas grant decision for case 3:25-

[7] Additional case numbers are: 1:25-cv-00594-BLW; 1:25-cv-00596-BLW; 1:25-cv-00597-BLW; 1:25-cv-00599-BLW; 1:25-cv-00600-BLW; 1:25-cv-00601-BLW; 1:25-cv-00602-BLW; 1:25-cv-00603-BLW; 1:25-cv-00604-BLW; 1:25-cv-00605-BLW; 1:25-cv-00607-BLW; 1:25-cv-00609-BLW; 1:25-cv-00610-BLW; 1:25-cv-00621-BLW

cv-00898-DRL-SJF in the Northen District of Indiana granted to a client of undersigned counsel's ordering his immediate release. Judge Leichty goes into the 1225-1226 analysis, statutory interpretation and other arguments in detail, rejecting similar arguments Respondents are making here. **Therefore, immediate release is warranted for any noncitizen arrested in the interior such as Petitioner without a warrant and without individualized probable cause of flight risk.**

B. Respondents' failure to revoke Petitioner's OREC render her continued detention unlawful.

The statutory, regulatory, and delegation framework requires that any deprivation of liberty for a noncitizen in Petitioner's position—released on an OREC and in pre-final order proceedings—must be justified by individualized findings, executed only by officials with proper authority as specified in 8 C.F.R. § 236.1(c)(9) and 8 C.F.R. § 1236.1, and accompanied by the procedural protections required by law. 8 C.F.R. § 236.1(c)(8)-(9) strictly limits the authority to revoke an Order of Release on Recognizance (OREC) to a narrow group of high-level officials. Section 236.1(c)(9) provides: "When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for

investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled." Similarly, DHS Delegation Order 7030.2 expressly prohibits redelegation of OREC revocation authority beyond those high-level officials named in the regulation, and any attempt to expand this authority by internal order or general delegation is legally ineffective.

These requirements are not mere formalities—they are substantive safeguards designed to ensure that any deprivation of liberty is based on accurate, individualized information and is subject to fair and reliable adjudication. Failure to comply with these procedures—including providing contemporaneous notice, individualized assessment, and an opportunity to be heard before a neutral and lawfully authorized decisionmaker—renders any revocation of OREC by an unauthorized official ultra vires and invalid.

Courts have consistently held that such actions violate both the regulatory scheme and due process, and have ordered immediate restoration of release in OREC-specific contexts. *See, e.g.*, *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025) (holding that "Respondent's ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his

due process rights"); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at 5 (N.D. Cal. July 24, 2025) (emphasizing the importance of a pre-detention hearing to ensure "that any future detention has a lawful basis"); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (finding due process violation where petitioner's re-detention occurred without prior notice, a showing of changed circumstances, or any opportunity to respond.

These procedural requirements are not optional; they are essential to prevent arbitrary deprivation of liberty. Actions by unauthorized officials, such as SDDOs, are ultra vires and invalid under the *Accardi* doctrine, as confirmed by recent OREC-specific case law. Immediate release is the only adequate remedy to restore Petitioner's liberty and prevent further irreparable harm.

Here, the government has not followed the proper procedures and has not presented any proof that Petitioner's OREC has been revoked under the proper procedures. Respondent's declaration from DO Bush claims that "On November 20, 2025, Acting Supervisory Detention and Deportation Officer Courtney Jackson executed the cancellation of Petitioner's OREC paperwork. Exhibit D." ECF No. 12-1 at 4. Yet, Respondents have not provided Exhibit D or any other proof of this alleged revocation. The government's failure to provide the basic procedural protections before re-detaining Petitioner—who had been lawfully released on OREC and complied with all conditions—

renders her re-detention unlawful under the Due Process Clause and the controlling regulations. Immediate release is the only adequate remedy to restore Petitioner's liberty and prevent further irreparable harm.

Furthermore, Petitioner maintains that even if Respondents provided Exhibit D, an after-the-fact revocation, which occurred on November 20, 2025, 12 days after she was arrested and already detained contrary to law since her OREC was not cancelled during those 12 days, is unlawful. The controlling regulations pertaining to OREC revocation require notice to the noncitizen upon an OREC revocation AND upon revocation, a hearing and a meaningful opportunity to respond to the revocation by the appropriate official outlined in the regulations, the District Director or Assistant District Director. None of this was done in this case in contravention of DHS's own regulations and therefore the OREC revocation is unlawful and this court should order full restoration of the OREC.

V. CONCLUSION

Respondents' arguments fail to overcome the fundamental defect in this case: Petitioner's arrest and detention were unlawful from the outset because they were executed in the interior of the United States years after her entry, without a valid detainer or warrant supported by probable cause, and without any individualized finding of dangerousness, flight risk, or national security

concern. Petitioner's established residence, deep family and community ties, and lack of criminal history further underscore the absence of any lawful basis for her initial or continued detention. The government has not demonstrated that Petitioner is a flight risk or danger to the community, and her continued detention based on a deficient arrest warrant is unsupported by any legitimate purpose.[8]

Further, the government's contrary position—relying on the July 2025 ICE memo and *Matter of Yajure Hurtado* to subject Petitioner to mandatory detention as an "arriving alien"—is unlawful, arbitrary, and capricious as applied to her circumstances. The statutory and regulatory framework, as well as controlling precedent, require that her detention be governed by § 1226(a), entitling her to individualized process and bond eligibility, had she been properly arrested by ICE pursuant to a warrant. However, since the government has not provide proof of a detainer or a warrant in her case, let

[8] The government's assertion that a bond hearing is the only appropriate remedy is unavailing in this context, where further administrative process would be futile and continued detention would perpetuate ongoing statutory and constitutional violations. Courts have repeatedly recognized that when a petitioner's detention is based on an unlawful arrest, a facially deficient detainer, or where agency policy categorically forecloses meaningful review—as is the case under the current ICE and BIA policy classifying interior arrestees as "arriving aliens"—the only adequate remedy is immediate and unconditional release, not a bond hearing or further process. For example, in *Rosado v. Figueroa*, the court granted habeas relief and ordered immediate release where detention was based on an unlawful arrest and unsupported detainer, finding that a bond hearing would not cure the underlying violation or provide effective relief. Under these circumstances, and given the agency's current policy foreclosing meaningful review, only immediate and unconditional release can remedy the ongoing statutory and constitutional violations and prevent further irreparable harm.

alone proof that they were executed properly, she must be granted full and unconditional release.

Based on all the above, this Court should therefore enter the following judgement:

1. DECLARE that Petitioner's detention under § 1225(b)(2) is unauthorized and unconstitutional;
2. ORDER Petitioner's unconditional and immediate release;
3. ENJOIN Respondents from re-detaining Petitioner under 8 U.S.C. § 1225(b) or any other statute absent a valid, individualized finding of flight risk or danger to the community, supported by clear and convincing evidence and a lawfully issued warrant;
4. ENJOIN Respondents from rearresting Petitioner unless she has committed a new violation of any federal, state or local law, or has failed to attend a properly notice immigration or court hearing, or is subject to detention pursuant to a final order of removal;
5. ORDER Respondents to fully restore Petitioner's OREC unlawfully revoked and release her pursuant to the OREC conditions; and
6. Grant such other and further relief as the Court deems just and proper, including attorneys' fees and costs.

If the Court still cannot grant Petitioner the relief she is requesting based on all these overwhelming authorities, Petitioner requests the Court to

set a hearing for oral arguments for as soon as practicable during the week of December 1, 2025.

Respectfully Submitted,

This 1st day of December, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Century Schoolbook, 13 point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2025, this document was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

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