

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

DANIELA GERALDINE SANCHEZ
DUQUE

Petitioner,

v.

JASON STREEVAL, Warden,
Stewart Detention Center; GEORGE
STERLING, Deputy Field Office
Director of the Atlanta Field Office,
Immigration and Customs
Enforcement; TODD M. LYONS,
Acting Director of Immigration and
Customs Enforcement; and KRISTI
NOEM, Secretary of Department of
Homeland Security, in their official
capacities.

Respondents.

Civil Action No.:

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

1. This case challenges the unlawful and indefinite detention of Daniela Geraldine Sánchez Duque, a twenty-year-old Venezuelan woman, former unaccompanied child, and long-time Georgia resident who has worked lawfully, complied with immigration supervision, and poses no flight risk or

danger. Despite these facts, the government denies her any opportunity to seek release from custody.

2. Petitioner entered the United States as a minor in 2022, was released to her mother's care under the Trafficking Victims Protection Reauthorization Act, and has lived continuously in Georgia ever since. She was detained again on October 27, 2025, during a routine Immigration and Customs Enforcement ("ICE") check-in in Savannah, Georgia.

3. When Department of Homeland Security ("DHS") first detained Petitioner in July 2022, its Warrant for Arrest of Alien expressly invoked "section 236 of the Immigration and Nationality Act" (8 U.S.C. § 1226) as the legal authority for custody—confirming that DHS treated her as an interior arrest subject to bond review. No reference was made to § 1225(b).

4. Under established practice and longstanding interpretation of Section 1226(a), Petitioner would be entitled to request a bond redetermination hearing before an immigration judge. However, Petitioner has not filed such a request because it would be futile under current DHS policy and recent precedent from the Board of Immigration Appeals ("BIA").

5. Respondents assert that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), despite Congress's separate detention framework in 8

U.S.C. § 1226(a), which governs interior arrests and provides bond hearings before an Immigration Judge (“IJ”) review.

6. DHS’s novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025)—contradicts the text of the Immigration and Nationality Act (“INA”), the canon against surplusage, longstanding administrative practice, established legal precedent, and Due Process. It effectively erases Section 1226(a), collapses Congress’s dual-track detention scheme, and imposes categorical detention on long-time residents like Petitioner Daniela Geraldine Sánchez Duque, who presents no danger and is not a flight risk.

7. Petitioner’s detention is based on Respondents’ assertion that, because she entered the United States without inspection, she falls under mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). In light of *Matter of Yajure-Hurtado*, Respondents will not afford Petitioner a bond hearing under 8 U.S.C. § 1226(a). Accordingly, any request by Petitioner for a bond hearing would be immediately denied on jurisdictional grounds without any individualized determination of whether she poses a danger or flight risk.

8. Section 1225(b)(2)(A) states that an applicant for admission *seeking admission* shall be detained during standard removal proceedings. It is the position of the Executive Office for Immigration Review (“EOIR”), which

encompasses both the BIA and the Immigration Courts, that 8 U.S.C. § 1225(b)(2)(A) applies to all individuals who arrived in the United States without inspection, regardless of how long they have lived in the United States and regardless of where they were apprehended.

9. However, Section 1225(b)(2)(A) does not apply to individuals, like Petitioner, who are present in the United States. Instead, such individuals are subject to detention under a different statute, Section 1226(a), and eligible for release on bond.

10. This case presents a pure question of law regarding which statutory authority governs Petitioner's detention.

11. By applying the incorrect detention authority to Petitioner, Respondents violate the INA and Petitioner's constitutional rights. As such, Petitioner seeks an order of declaratory and injunctive relief that she is subject to discretionary detention under Section 1226(a) and asks this Court to grant her a Writ of Habeas Corpus ordering Respondents to release her from custody or provide her with an immediate bond hearing before an IJ.

CUSTODY

12. Petitioner is in the physical custody of Respondents at the Stewart Detention Center in Lumpkin, Georgia. She is detained in Georgia and under the direct control of Respondents.

JURISDICTION AND VENUE

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). 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.*, and the All Writs Act, 28 U.S.C. § 1651.

14. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(a)(5), 1252(b)(9), 1225(g), or 1226(e). District courts have jurisdiction under 28 U.S.C. § 2241 to decide habeas claims by individuals challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

15. Venue properly lies within the Middle District of Georgia, Columbus Division, under 28 U.S.C. § 1391(e), because this is a civil action in which

Respondents are officers, employees, or agencies of the United States acting in their official capacities, Petitioner is detained in this District, and a substantial part of the events or omissions giving rise to this action occurred in the District.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to Respondents “forthwith,” unless 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.*

17. Petitioner is “in custody under or by color of the authority of the United States” because ICE arrested and detained Petitioner at Stewart Detention Center. 28 U.S.C. § 2241.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. There is no statutory exhaustion requirement for habeas challenges under 28 U.S.C. § 2241. In the absence of a statutory exhaustion requirement, “sound judicial discretion governs.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

19. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because the BIA recently issued a precedential decision holding

that anyone who has entered the United States without inspection is considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under Section 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Ncem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that the BIA’s decision in *Yajure Hurtado* renders exhaustion futile).

PARTIES

20. Petitioner Daniela Geraldine Sánchez Duque is currently detained at the Stewart Detention Center in Lumpkin, Georgia.

21. Respondent Jason Streeval is sued in his official capacity as the Warden of Stewart Detention Center. He is the immediate custodian of Petitioner and has the authority to release her.

22. Respondent George Sterling is sued in his official capacity as the Deputy Field Office Director responsible for the Atlanta Field Office of ICE. He is the legal custodian of Petitioner and has the authority to release her.

23. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of ICE, a component agency of DHS. Respondent Lyons has authority over the operations of ICE and broad authority over the enforcement of immigration laws. He is the legal custodian of Petitioner and has the authority to release her.

24. Respondent: Kristi Noem is sued in her official capacity as the Secretary of DHS. Respondent Noem is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a). She is the legal custodian of Petitioner and has authority to release her.

LEGAL BACKGROUND

25. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).

27. 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).

28. Last, the INA provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

29. This case presents a legal question regarding whether Petitioner's detention is governed by §§ 1226(a) or 1225(b)(2).

30. 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).

31. Soon after 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) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

32. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with 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)).

33. Despite the long-established statutory construction of §§ 1225 and 1226, and Respondents’ own historical practice of providing bond hearings to noncitizens like Petitioner, ICE reversed course in July 2025 and began asserting that all individuals present in the United States without inspection should be considered “seeking admission” and subject to mandatory detention under Section 1225(b)(2)(A) without a bond hearing. On September 5, 2025, the BIA issued a binding decision adopting ICE’s interpretation. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Matter of Yajure Hurtaão* strips Immigration Courts of jurisdiction to hold bond hearings for any noncitizen present in the United States without inspection, regardless of how long they have resided in the United States or where ICE encountered them within the country. *Id.* at 216, 229.

34. Respondents’ and the BIA’s overly broad interpretation of Section 1225(b)(2)(A) departs from the INA’s text, federal precedent, existing regulations, and longstanding agency practice. Respondents’ new policy is

contrary to law and arbitrary and capricious in violation of the Administrative Procedure Act (“APA”). Respondents’ interpretation was also adopted without complying with formal rulemaking procedures under the APA. *See* 5 U.S.C. § 553; *see also FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 537 (2009) (agencies “cannot simply disregard contrary or inconvenient factual determinations that it made in the past.”).

35. Consistent with more than 200 district court decisions, this Court has properly rejected Respondents’ interpretation and instead found that Section 1226—not Section 1225—authorizes detention of individuals who entered without inspection and were later apprehended in the interior of the United States. *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025).

36. This Court must “exercise independent judgment in determining the meaning of statutory provisions,” and give no weight or deference to Respondents’ expansive interpretation of Section 1225(b)(2) because it conflicts with statute, regulation, and precedent. *Loper Bright v. Raimondo*, 603 U.S. 369, 394 (2024). However, longstanding determinations by “agenc[ies] charged with enforcing [the detention statutes]” are “powerful evidence that interpreting the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting).

Thus, consistent prior agency practice and interpretations on this issue can inform the Court's determination on the proper construction of the law. *See Loper Bright*, 603 U.S. at 386.

37. Longstanding agency regulations confirm that individuals encountered inside the country without admission were treated under § 1226(a) and were “eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). DHS itself historically limited the “applicant for admission” designation to encounters within a short time and distance from the border. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 130 n.2 (2020) (describing DHS's 2004 14-day/100-mile policy for expedited removal).

38. Respondents' new policy turns this well-established understanding on its head and violates the statutory scheme.

39. Federal courts addressing Respondents novel position and *Matter of Yajure Hurtado* have rejected both and ordered the relief Petitioner seeks here, concluding § 1226(a), governs noncitizens “already in the country”

40. Respondents' interpretation defies the plain text of the INA. The text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to individuals like Petitioner.

41. 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, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

42. The text of § 1226(c) also explicitly applies to individuals 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 individuals makes clear that, by default, they are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to noncitizens who face charges of being inadmissible to the United States, including those who are present without admission or parole.

43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. 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).

44. This interpretation aligns with the statutory framework governing immigration detention and ensures no provision is rendered meaningless. *Corley v. United States*, 556 U.S. 303, 314 (2009) (reiterating rule that statutes should be construed as a whole so that effect is given to all its provisions). If inadmissible individuals present in the United States are already subject to

mandatory detention under Section 1225(b)(2)(A), as Respondents contend, then Section 1226(c) and amendments to the Laken Riley Act would be superfluous. *Rodríguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257–58 (W.D. Wash. 2025) (explaining that Section 1226(c)(1)(E) which mandates detention for inadmissible noncitizens who are implicated in an enumerated crime, including those present without admission, would be meaningless since Section 1225 mandatory detention would already govern detention of all noncitizens present without admission). There would be no need for Section 1226(c) or Congress’s recent amendments to that provision.

45. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who entered the United States without admission or parole and has resided in the country for years.

FACTS

46. Petitioner Daniela Geraldine Sanchez Duque is a twenty-year-old native and citizen of Venezuela, born 

47. Petitioner entered the United States as an unaccompanied alien child at or near Eagle Pass, Texas on July 28, 2022.

48. Petitioner was apprehended by U.S. Border Patrol on July 29, 2022 in Uvalde, Texas.

49. On July 29, 2022, DHS issued a Warrant for Arrest of Alien (Form I-200). The warrant expressly stated that Petitioner was "liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act." Section 236 of the INA is codified at 8 U.S.C. § 1226—the statute governing detention of aliens present in the United States, which provides for bond hearings. The warrant made no reference to section 235 of the INA (8 U.S.C. § 1225), which governs arriving aliens and applicants for admission.

50. Also on July 29, 2022, DHS issued Petitioner a Notice to Appear charging her as removable under INA § 212(a)(6)(A)(i) for being present in the United States without being admitted or paroled. That initial Notice to Appear directed her to appear before an immigration judge in El Paso, Texas at a date and time to be set, but was never filed with the immigration court.

51. Petitioner was transferred to Office of Refugee Resettlement (ORR) custody pursuant to the Trafficking Victims Protection Reauthorization Act and placed at Pecos Children's Center (PCC) - ICF in Pecos, Texas.

52. On August 7, 2022, ORR released Petitioner from federal custody pursuant to the ORR Verification of Release to the care and custody of her mother, Charli Doriana Duque Urrego, at [REDACTED],

[REDACTED].

53. Following her release from ORR custody, Petitioner has continuously resided in Georgia for over three years.

54. Petitioner was included as a dependent on her mother's pending affirmative asylum application with U.S. Citizenship and Immigration Services.

55. As a dependent asylum applicant, Petitioner obtained employment authorization from USCIS.

56. Petitioner has been gainfully employed in Georgia, including working at Hyundai Motor Manufacturing in Bryan County, Georgia, and has established significant ties to her community.

57. Petitioner has no criminal history and has complied with all immigration requirements since her release from ORR custody in 2022, including appearing for all required ICE check-ins.

58. On September 4, 2025, ICE issued a second Notice to Appear (Form I-862) to Petitioner in Savannah, Georgia.

59. The September 4, 2025, NTA again charged Petitioner under INA § 212(a)(6)(A)(i) for being "an alien present in the United States who has not been admitted or paroled."

60. The NTA directed Petitioner to appear before the Atlanta Immigration for a Master Calendar Hearing ("MCH") on April 9, 2027, at 8:30 a.m.

61. On September 4, 2025, Petitioner was briefly taken into ICE custody and released the same day after being served with the new NTA.

62. Following her release, Petitioner continued to reside in Georgia, maintain her employment, and comply with ICE's supervision requirements.

63. On October 27, 2025, Petitioner appeared for a scheduled ICE check-in at 49 Park of Commerce Blvd, Savannah GA, 31405 as required. Without warning, ICE took Petitioner into custody during this routine check-in.

64. ICE alleged that Petitioner had failed to respond to telephone calls from an assigned ICE officer. Petitioner was unable to receive such calls during her work hours at Hyundai.

65. Since October 27, 2025, Petitioner has been continuously detained at Stewart Detention Center.

66. Petitioner is entitled under 8 U.S.C. § 1226(a) to request a bond redetermination hearing before an immigration judge to determine whether she poses a danger to the community or a flight risk.

67. However, Petitioner has not filed a request for a bond hearing because such a request would be futile under current EOIR policy and Respondents' broad construction of mandatory detention. Under *Matter of Yajure-Hurtado*, IJs are bound to decline jurisdiction over bond hearings for any noncitizen who entered the United States without inspection, regardless of the

individual's circumstances, length of residence in the United States, or where the individual was apprehended. The IJ would be required to deny the request without conducting any individualized hearing on danger or flight risk.

68. The BIA's binding precedent leaves IJs with no discretion. Any bond request filed by Petitioner would be summarily denied on jurisdictional grounds, rendering any bond redetermination request futile and only increasing the time Petitioner remains detained.

69. Moreover, even if Petitioner were to file a futile bond request and receive the inevitable jurisdictional denial, any appeal to the Board of Immigration Appeals would likewise be futile, as the BIA has already adopted this position as binding precedent in *Matter of Yajure-Hurtado*.

70. Petitioner therefore brings this habeas petition directly to this Court, as administrative remedies are unavailable and futile.

71. Petitioner is neither a danger to others nor a flight risk. She has resided continuously in Georgia for over three years since her release from ORR custody, has maintained lawful employment with valid work authorization, has strong family ties in the community through her mother and sponsor, has no criminal history, and has appeared for all required ICE check-ins including the check-in at which she was detained.

72. Significantly, when DHS first detained Petitioner in July 2022, DHS's own Warrant for Arrest of Alien expressly invoked "section 236 of the Immigration and Nationality Act" (8 U.S.C. § 1226) as the authority for her custody. This contemporaneous determination by DHS confirms that Petitioner was—and remains—detained under § 1226, which provides for bond hearings. Yet under the current agency policy, she is being denied the bond hearing that both the statute and DHS's own warrant contemplate. USCIS granted her employment authorization as a dependent asylum applicant. DHS permitted her to reside in the community, work, and maintain family ties for nearly three years. These actions are entirely consistent with § 1226(a) detention authority and release on recognizance, not with mandatory detention under § 1225(b)(2). Yet now, despite no change in Petitioner's circumstances or status, DHS claims she is subject to mandatory detention as an individual "seeking admission" and ineligible for bond. This unexplained reversal of position—contradicting the government's own three-year course of conduct—is arbitrary, capricious, and violates Petitioner's significant liberty interests.

CLAIMS FOR RELIEF

COUNT ONE **FIFTH AMENDMENT DUE PROCESS VIOLATION** **(Substantive and Procedural Due Process)**

73. Petitioner repeats and incorporates by reference all preceding paragraphs as if fully set forth herein.

74. The Fifth Amendment to the United States Constitution provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. This protection extends to all persons within the United States, regardless of immigration status. *Zadvydas*, 533 U.S. at 693.

75. Petitioner has a fundamental liberty interest in freedom from physical restraint. That interest cannot be deprived without adequate procedural safeguards and a sufficiently strong justification. *Id.* at 690.

76. Respondents have deprived Petitioner of her liberty interest by detaining her under the wrong detention authority, and in doing so deprive Petitioner of an individualized custody hearing to determine whether she presents a danger or flight risk, as required by law.

77. Because *Matter of Yajure-Hurtado*, 29 I&N Dec. 220 (BIA 2025), bars IJs from exercising bond jurisdiction over individuals who entered without inspection, Petitioner has been categorically denied any meaningful process to challenge his detention.

78. Detaining Petitioner under an erroneous interpretation of the INA, without any access to a bond hearing that Petitioner would otherwise have access to, violates both substantive and procedural due process.

79. There is no significant governmental interest in keeping Petitioner detained. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. To the extent that the government has an interest in ensuring Petitioner is not a danger or a flight risk, the “fiscal and administrative burdens” of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

80. The government’s interest in detention cannot outweigh the fundamental right to liberty, particularly where, as here, Petitioner has lived in the United States for years, has no criminal history, and poses no danger.

81. Respondents’ actions therefore violate the Due Process Clause of the Fifth Amendment.

COUNT TWO
VIOLATION OF 8 U.S.C § 1226(a)
(Unlawful Denial of Bond Hearing)

82. Petitioner repeats and incorporates by reference all preceding paragraphs.

83. Respondents initially detained Petitioner under the authority of “section 236 of the Immigration and Nationality Act,” codified at 8 U.S.C. § 1226.

84. Section 1226 governs detention of noncitizens present in the United States pending a decision on removal and provides, along with implementing

regulations, that such individuals are eligible for release on bond unless subject to mandatory detention under § 1226(c). *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1236.1(d), 1003.19(a)-(f).

85. By contrast, § 1225(b)(2) applies only to “applicants for admission” who are seeking admission. Respondents never applied Section 1225(b)(2) mandatory detention to Petitioner and cannot arbitrarily do so now, as that provision was never intended to apply to individuals who have resided in the United States for years and are encountered in the interior of the country.

86. Respondents’ application of § 1225(b)(2) to Petitioner—despite DHS’s own classification of her under § 1226—is contrary to the plain language and structure of the INA and violates congressional intent.

87. Accordingly, Petitioner’s continued detention under § 1225(b)(2) is unlawful and violates the INA.

COUNT THREE
VIOLATION OF 8 U.S.C. § 1225(b)(2)
(Misclassification Without Opportunity to Contest)

88. Petitioner repeats and incorporates by reference all preceding paragraphs.

89. 8 U.S.C. § 1225(b) is concerned primarily with those seeking entry to the United States and is generally imposed at the Nation’s borders and ports of entry, where the Government must determine whether a noncitizen seeking to enter the country is admissible.

90. Petitioner has resided in the United States since July 2022. She is neither an arriving alien, nor an alien who is now seeking admission to the United States.

91. Yet, Petitioner has been misclassified as an individual “seeking admission” under 8 U.S.C. § 1225(b)(2), without any opportunity to challenge or correct that determination.

92. By barring Petitioner from contesting Respondents’ misclassification, Respondents have deprived her of a meaningful opportunity to be heard—a core element of procedural due process. *Mathews*, 424 U.S. at 333.

93. Respondents’ refusal to allow Petitioner to demonstrate that she falls under § 1226(a), and not § 1225(b), constitutes an arbitrary and unlawful deprivation of liberty in violation of the Due Process Clause.

94. Because 8 U.S.C. § 1225(b) does not apply to Petitioner, Respondents’ detention of her under this provision is unlawful.

COUNT FOUR
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(Agency Action in Access of Statutory Authority)

95. Petitioner repeats and incorporates by reference all preceding paragraphs.

96. The APA requires courts to hold unlawful and set aside agency action found to be “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

97. Respondents continue to unlawfully detain Petitioner without a bond hearing based on an incorrect interpretation of the mandatory detention provision at 8 U.S.C. § 1225(b)(2).

98. Section 1225(b)(2)(A) applies only when three conditions are met: (1) the individual is an “applicant for admission”; (2) the individual is “seeking admission”; and (3) an “examining immigration officer” determines the individual is “not clearly and beyond a doubt entitled to be admitted.”

99. The phrase “seeking admission” requires present-tense action and cannot be interpreted to apply to individuals who entered the country years ago and are seeking to remain here. *See Martinez v. Hyde*, No. CV 25-11613-BEM, -- F. Supp.3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that Section 1225(b)(2) does not apply to individuals apprehended in the interior).

100. Petitioner is not “seeking admission” within the meaning of 8 U.S.C. § 1225(b)(2)(A) because he has resided in the United States since July 2022 and was only recently apprehended by ICE in Georgia. Furthermore, Respondents treatment of Petitioner in 2022 confirms that her detention is governed by Section 1226(a).

101. Respondents’ interpretation of Section 1225(b)(2)(A) exceeds statutory authority by applying mandatory detention provisions designed for border and

port-of-entry encounters to long-term interior residents. Respondents' interpretation effectually eliminates the discretionary detention framework that Congress established in Section 1226(a) for individuals already present in the United States.

102. The INA and applicable regulations unambiguously grant IJs jurisdiction to redetermine custody under § 1226(a). By applying Section 1225(b)(2)(A) to Petitioner, Respondents effectively eliminate that jurisdiction for entire classes of noncitizens. Respondents have acted ultra vires and exceeded their statutory authority and deprive Petitioner of the custody determination procedures that Section 1226(a) and 8 C.F.R. § 1236.1(d)(1) mandate for individuals like Petitioner.

103. Respondents' interpretation and policy substantively alters longstanding rules governing custody jurisdiction, was adopted without notice-and-comment rulemaking as required by 5 U.S.C. § 553, and is arbitrary, capricious, and contrary to law under 5 U.S.C. § 706(2)(A) and (C).

104. As a direct result of Respondents' violation of section 1226(a), Petitioner has been unlawfully denied the rights to which she is statutorily entitled.

105. Accordingly, Respondents' actions violate the APA and must be declared unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause within three days why this Petition should not be granted;
3. Order that Petitioner not be transferred outside the jurisdiction of this District pending the resolution of this case;
4. Declare that Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful, and instead is properly governed by 8 U.S.C. § 1226(a), which entitles her to immediate release or a bond hearing;
5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on her own recognizance, parole, or reasonable conditions of supervision;
6. In the alternative, order Respondents to provide Petitioner an individualized custody redetermination hearing before an impartial immigration judge within seven (7) days, applying the correct statutory authority under 8 U.S.C. § 1226(a)
7. Award reasonable attorneys' fees and costs under the Equal Access to Justice Act and on any other basis justified under the law; and
8. Grant any further relief this Court deems just and proper.

Dated: November 19, 2025

Respectfully Submitted,

/s/Danielle M. Claffey

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Counsel for Petitioner

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

I hereby submit this verification on behalf of Petitioner, Daniela Geraldine Sánchez Duque as her attorney. I have discussed with Ms. Sánchez Duque the events described in this Petitioner On the basis of those discussions and upon my review of those documents, on information and belief, 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.

Date: 11/19/2025 /s/Jorge E Munoz Leguizamo
Jorge E. Munoz Leguizamo