Jose M. Perez, Esquire
The Law Office of Jose M. Perez, LLC
P.O. Box 336
Frederick, Maryland 21705
Email: JoseMPerezEsq@gmail.com
Maryland State Bar ID: 1412180014
(T): (301) 980-1787
Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ariana Monserrat Quintanilla-Simons,

Petitioner,

v.

Chris Howard, Acting Warden, Eloy Detention Center (CoreCivic); Christopher McGregor, Acting Field Office Director, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Phoenix Field Office; Pamela Bondi, U.S. Attorney General

Respondents.

Case No.: 2:25-cv-04440-DJH--ASB

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR IMMEDIATE RELEASE

Petitioner Ariana Monserrat Quintanilla-Simons, by and through undersigned counsel, hereby files this Reply in Support of her Petition for Writ of Habeas Corpus, following the government's Response filed on December 9, 2025.

INTRODUCTION

In their December 9, 2025, Response, Respondents recast §1225(b)(2) as a universal detention mandate for every non-admitted noncitizen—no matter how long in the interior, no matter the posture of §240 proceedings. That reading misfires on text, structure, and fairness. For the reasons explained below, the government's reading is irreconcilable with large swaths of the INA. In sum, Petitioner correctly argues that §1225(b) addresses the admissions context and expedited removal proceedings, while §1226(a) governs routine interior arrests and pending §240 proceedings. *See also, Capote v. Secretary of U.S. Dep't of Homeland Sec.,* 2025 WL 3089756, *5 nn.3-4 (E.D. Mich. 2025) (noting that "[o]nly two of at least 36 district courts to have addressed this issue have held that § 1225(b)(2) applies to those in the same circumstances as Petitioner" and canvassing the relevant cases).

We therefore ask the Court to order Petitioner's immediate release, or at a minimum, order a custody redetermination hearing within 7 days with procedural safeguards and a release-if-no-hearing backstop, preferably before a different IJ if practicable.

I. §1225(b)(2) Does Not Swallow §1226(a).

Respondents' core premise is that an "alien present in the United States who has not been admitted" is always an "applicant for admission" and therefore must be detained under §1225(b)(2) until §240 proceedings conclude. That collapses Congress's two-track scheme and reads "seeking admission" as a perpetual status for anyone who ever entered

without inspection. It is also irreconcilable with numerous other portions of the INA. Nothing in §1225(b)(2) suggests Congress meant to convert all interior §240 detainees into admission-queue detainees. Their reliance on legislative history about eliminating "preferential treatment" cannot overcome the actual verbs Congress chose: "seeking admission" is present-tense and context-bound to the inspection/admissions setting. Thus, §1226(a) remains the default authority for arrests in the interior pending §240 proceedings. *See also* the government's own admission that §1225(b)(1) and §1225(b)(2) are the two admissions tracks, with §1225(b)(2) being a catchall for applicants not covered by (b)(1)—**not** a catchall for all EWIs in §240.

Congress enacted two detention schemes for two different stages of the process. Section 1225 governs the admissions/inspection stage—"Inspection of applicants for admission"—with (b)(1) and (b)(2) addressing expedited and non-expedited admissions outcomes. Section 1226, by contrast, opens with a scope clause keyed to removal proceedings: it applies **"pending a decision on whether the alien is to be removed from the United States," i.e., while §240 proceedings are being adjudicated. 8 U.S.C. §1226(a).**

The government's theory collapses that design by treating every noncitizen who has never been formally "admitted" as perpetually "seeking admission," no matter that DHS has already issued an NTA and chosen the §240 merits track. If §1225(b)(2) were truly a universal "catch-all," §1226 becomes a dead letter in precisely the circumstance for which Congress wrote it: custody during §240 proceedings. Courts avoid readings that "render superfluous" a statute Congress clearly meant to do work. Petitioner's reading preserves

both provisions: §1225 for front-end inspection/admissions custody/expedited removal; §1226 for interior custody during §240 proceedings.

The NTA is the pivot. Once DHS serves and files a Notice to Appear, the government itself has chosen the §240 track—"a proceeding on whether the alien is to be removed." At that point, §1226 governs custody. Congress did not draft §1226 as a superfluous appendix; it is the default authority for custody while an IJ decides removability and relief. *See* §1226(a) (IJ "may continue to detain or release on bond" pending decision). Treating a long-after-entry interior arrest as if the person were still at the threshold of admission years later converts "seeking admission" into a timeless label and erases §1226's operative field.

The statute's headings matter too. Section 1225's heading—"Inspection by Immigration Officers; Expedited Removal of inadmissible arriving aliens; referral for hearing"—is not dispositive but confirms the context Congress had in mind: admissions processing at the border. By contrast, §1226 is titled "Apprehension and detention of aliens," and textually targets the interim detention question during the adjudication of removability—exactly Petitioner's posture now. **To wit, Petitioner is still actively pursuing relief in the form of asylum, and her next scheduled §240 removal hearing before the Eloy Immigration Court is scheduled for December 22, 2025.**[1]

[1] At that master calendar hearing, it is expected that Petitioner will file another application for relief from removal, wherein the court will likely set a final merits hearing. However, her prompt release is critical to preserving her due process rights, as it will allow her to fight her case free from detention, especially when she never expected to be re-detained following her release into the interior of the United States upon her entry in August of 2022.

Avoiding absurd results. The government's reading yields untenable outcomes. It would mean that a person whom DHS released years ago into the interior, later arrested during §240, is still "seeking admission" for custody purposes—but not for adjudication, which is proceeding under §240. That split is incoherent: §1225 is about admissions triage; §240/§1226 is about merits adjudication. The sensible—and faithful—reading is that once DHS commits the case to §240 by issuing an NTA, §1226 governs custody unless and until a different statute expressly applies.

In sum, the government's attempt to make §1225(b)(2) the permanent default for anyone never "admitted" reads §1226 out of the U.S. Code. The Court should reject that surplusage-creating construction and hold that §1226(a) governs Ms. Quintanilla's custody during her §240 proceedings.

II. Statutory Coherence: Congress Built §240A(b) Cancellation of Removal for Long-Resident EWIs Into the §240 Merits Track— Another Reason §1226, Not §1225(b)(2), Governs Custody Here.

Congress enacted INA §240A(b) (8 U.S.C. §1229b(b)) to allow certain non-LPR EWIs to seek cancellation of removal if they satisfy the statute's demanding criteria (including 10 years' continuous physical presence, good moral character, and exceptional and extremely unusual hardship to a USC/LPR spouse, parent, or child). That relief is adjudicated in §240 proceedings, not at the admissions/inspection stage.

In addition, if Petitioner is not immediately granted asylum by the Immigration Court, she plans on pursuing her right to appeal that decision before the BIA, and eventually the Ninth Circuit. All of this she would have to do while detained absent relief being granted by this Court.

If Respondents were right that every never-admitted noncitizen is perpetually "seeking admission" and thus must be detained under §1225(b)(2), then long-present EWIs whom Congress expressly made eligible for §240A(b) relief would be categorically swept into mandatory, no-bond detention—often for months—solely because DHS chose to pursue §240 rather than summary inspection. That reading defeats Congress's design: it makes a merits remedy built for long-term interior residents practically illusory by grafting admissions-stage mandatory detention onto interior §240 adjudication.

Further, Congress expressly designed INA §240A(b) relief for long-resident EWIs whose 10-year presence accrues before service of the NTA—undercutting the claim that IIRIRA eliminated any "benefit" tied to evading admission.

Stop-time coherence. Congress also wrote § 240A(b) with the stop-time rule (8 U.S.C. § 1229b(d)(1)), which halts accrual of presence upon service of the NTA. The stop-time rule proves Congress contemplated long-term interior presence for EWIs in §240. Under INA §240A(b) (8 U.S.C. §1229b(b)), a non-LPR may seek cancellation only if, among other things, they have "been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application." Congress then enacted the stop-time rule—8 U.S.C. §1229b(d)(1)—which halts accrual of that presence "when the alien is served a notice to appear under section 1229(a)." By definition, eligibility for INA §240A(b) relief in many EWI cases turns on having accrued 10 years before DHS serves the NTA. That is, Congress knew and accepted that some never-admitted noncitizens would reside in the interior for a decade or more

before formal initiation of §240 proceedings—then drafted custody and relief statutes accordingly.

That design is irreconcilable with the government's perpetual-§1225(b)(2) theory. If every never-admitted noncitizen is always "seeking admission" and must be detained under §1225(b)(2), then Congress simultaneously (1) created a merits remedy predicated on a decade of interior presence before the NTA, yet (2) condemned such respondents to mandatory, no-bond admissions-stage detention the moment §240 begins. That collapses the very scheme Congress wrote: §240A(b) is part of the §240 merits track, and custody during §240 is governed by §1226, not by §1225's inspection-triage regime.

IIRIRA's policy rhetoric cannot rewrite the text Congress enacted. Respondents invoke an IIRIRA aim of not "rewarding" unlawful entrants. But Congress implemented that aim via tightened eligibility (e.g., the stop-time rule, GMC screens, the "exceptional and extremely unusual hardship" standard) and by targeted mandatory detention where it said so (§1226(c)). It did not convert §1225(b)(2) into a universal custody rule that erases §1226 for never-admitted respondents in §240. The government's reading thus produces surplusage twice: it nullifies §1226(a)'s default during §240 and blunts §1226(c)'s specifically enumerated mandatory-detention carveout.

The Court should reject an interpretation of §1225(b)(2) that would make that relief practically illusory and read §1226(a) as the operative custody authority in Petitioner's posture. Respondents' theory would make that remedy practically illusory by importing admissions-stage mandatory detention into interior § 240 adjudication—again erasing § 1226(a) and even blunting § 1226(c)'s narrow, enumerated mandatory-detention carve-out.

Congress knows how to mandate detention—and where. Where Congress intended mandatory detention during §240, it said so expressly (see §1226(c) for specified criminal categories). If §1225(b)(2) already compelled no-bond detention for all never-admitted respondents in §240, §1226(c) would be largely redundant for that population. The better reading preserves coherence: §1225 governs admissions/inspection and expedited removal custody; §1226(a) governs custody during §240, where Congress placed §240A(b) and other merits relief.

III. *Echevarria's* Reading of §1225 and §1226 Is Persuasive; the Government's Distinctions Fail

The government tries to attack the reasoning in *Echevarria* that "seeking admission" is temporally tied to inspection, positing that §1225(a)(3)'s "applicants for admission or otherwise seeking admission" are synonyms. *Echevarria* correctly anchors § 1225(b) in the admissions setting and reads "seeking admission" in the present tense—tethered to inspection—rather than as a timeless label attached to anyone never admitted. That construction preserves Congress's two-track design: § 1225 governs admissions-stage custody (with its two pathways in (b)(1) and (b)(2)), while § 1226(a) governs custody during § 240—"pending a decision on whether the alien is to be removed." 8 U.S.C. § 1226(a).

The government tries to collapse § 1226 by treating § 1225(a)(3)'s phrase "applicants for admission or otherwise seeking admission" as if it were a synonym meaning "anyone never admitted." But "or otherwise" broadens modes of seeking in the admissions context (e.g., parole, transit, reentry)—it does not transform every never-admitted person

anywhere in the interior into a perpetual admissions applicant for custody purposes. That interpretation would make § 1226(a) surplusage in precisely the circumstance for which Congress wrote it—custody during § 240—and yield the incoherent result that respondents litigating merits in § 240 are treated for custody only as if they were still at the border.

On these facts, *Echevarria's* demarcation is especially appropriate. Petitioner is still in classic § 240 posture with an upcoming Master Calendar Hearing scheduled for December 22, 2025, an eventual individual merits hearing down the road, and the possibility of a lengthy appeal should relief not be granted right away. Nothing about Petitioner's current situation resembles inspection or expedited-removal triage. Thus, § 1226 governs.

IV. *Yajure-Hurtado* and *Li* Are Not Binding and, in Any Event, Do Not Control This Case.

BIA precedent does not bind this Court in habeas. The two decisions Respondents cite—*Yajure-Hurtado* and *Li*—are policy-driven extensions of § 1225(b) that emphasize avoiding "incongruous" outcomes rather than the statute's grammar and structure. Even on their own terms, those cases treat custody authority as if the admissions posture persists regardless of § 240 developments. Reading § 1225(b)(2) to govern custody throughout § 240 would again render § 1226(a) superfluous and would blunt § 1226(c)'s targeted mandatory-detention carve-out for specified criminal categories—another structural reason to reject Respondents' construction.

V. *Maldonado-Bautista* Supports This Relief Even If It Does Not Compel It

Respondents argue *Maldonado's* partial summary judgment and class certification are not "final" and thus lack preclusive effect. Preclusion is beside the point. The decisions are persuasive authority that DHS's overbroad detention guidance is unlawful, and they underscore a national recognition that the government's "everything is §1225(b)(2)" stance is untenable. In addition, a certified (b)(2) class seeking broad declaratory relief does not bar an individual §2241 habeas challenging a specific custody decision and seeking immediate release or a prompt individualized hearing.

VI. The 2025 amendment to § 1226(c) (Laken Riley Act) also confirms Congress did not view § 1225(b)(2) as a universal detention rule for EWIs.

Respondents themselves point to Congress's 2025 amendment to § 1226(c) (the Laken Riley Act), which newly requires detention of certain inadmissible noncitizens, including those "physically present in the United States without admission or parole" (e.g., 8 U.S.C. § 1182(a)(6)(A)(i)). That change is powerful structural evidence against Respondents' theory.

If § 1225(b)(2) already mandated no-bond detention for all EWIs in every posture, Congress would not have needed to add EWIs to the § 1226(c) mandatory-detention categories in 2025. The amendment would be largely redundant. Instead, Congress acted within § 1226, the statute that governs custody during § 240, to specify who is mandatorily detained in that stage. That move makes sense only if § 1226—not § 1225—controls custody in § 240. The canon against surplusage thus cuts directly against the government's "§ 1225(b)(2) swallows all" reading and confirms Petitioner's interpretation: § 1225 for

admissions/inspection; § 1226 for interior custody during § 240, with § 1226(c) providing targeted mandatory-detention carve-outs.

VII. Why Immediate Release Is Warranted (and Not Just a Hearing)

This is not a garden-variety "provide a hearing" case. The record in this case shows (i) two prior custody denials premised on a legal mistake about IJ jurisdiction, (ii) a government that is determined to keep the Petitioner detained despite having no criminal record and stable employment/ties to Frederick, Maryland, and (iii) an illegal clerical/venue hand-off that deprived Petitioner of a timely, neutral review of her case in Baltimore, Maryland, where the case was originally filed. It has now forced undersigned counsel to litigate her removal case in a different circuit, while the Petitioner is detained on the other side of the country.

In addition, the IJ currently assigned to Petitioner's removal proceedings, and who denied her bond requests, recently issued an order on December 5, 2025, attempting to deny Petitioner an opportunity to respond to a motion to pretermit filed by DHS, and claiming that Petitioner had not "filed a timely response." However the IJ (on the record during a hearing on November 24, 2025) had previously given Petitioner until December 8, 2025, to respond. It took the filing of an emergency motion to vacate the December 5, 2025 order, and copies of audio recordings from the prior November 24, 2025, to vacate said order. This action by the IJ shows that Petitioner likely will not be afforded due process in a custody redetermination proceeding if this Court forces the government to provide her a bond hearing.

Habeas is an equitable remedy whose "traditional function" is to secure release from unlawful custody; a habeas court must have the power to order (conditional) release when detention rests on legal error or when agency procedures are inadequate or futile. *See Preiser*, 411 U.S. at 484; *Schlup*, 513 U.S. at 319; *Boumediene*, 553 U.S. at 779; *Zadvydas*, 533 U.S. at 696–702; *Nadarajah*, 443 F.3d at 1080–81.

Here, the history of error, the risk of a non-neutral or perfunctory bond proceeding, and the practical reality that Petitioner has been litigating in § 240 (not at inspection) justify immediate release. In the alternative, any hearing must carry safeguards: a different IJ if practicable, clear-and-convincing government burden, consideration of alternatives, individualized findings, and a release-if-no-hearing-by-Day-7 alternative.

VIII. Remedy and Relief Requested

Petitioner respectfully requests immediate release[2] on reasonable conditions. In the alternative, the Court should order a custody redetermination within 7 days, before an IJ other than the IJ who previously adjudicated custody, if practicable, with the following safeguards: (i) the Government bears the burden by clear and convincing evidence to justify continued detention; (ii) the IJ must consider less-restrictive alternatives; (iii) the decision must contain individualized, reasoned findings on the record; and (iv) if no hearing occurs by Day 7, ICE must release Petitioner forthwith.

[2] An additional proposed order is being filed simultaneously with this reply should the Court grant Petitioner's immediate release.

Respondents and those in active concert with them should be enjoined from transferring Petitioner outside this District prior to compliance, and re-detention on the same facts should be prohibited absent a material change.

CONCLUSION

In light of the foregoing, Petitioner humbly asks this Court to GRANT the petition and order Petitioner's immediate release. Because detention here persists after serial legal errors, in a stage where § 1226(a) governs and a hearing remedy risks being illusory, the Court should order immediate release. In the alternative, it should impose a 7-day safeguarded hearing with the protections above and a release-if-no-hearing backstop.

Service Status

Undersigned counsel would also like to inform the Court, that consistent with the Court's December 3, 2025 Order, all Respondents have been served by Petitioner (USAO D. Ariz., Warden/Eloy, ICE ERO Phoenix; the Attorney General by certified mail). Executed summons/affidavits of service will be filed promptly upon receipt from the process server. *See* Fed. R. Civ. P. 4(l)(3).

/s/ Jose M. Perez

Jose M. Perez, Esq.
The Law Office of Jose M. Perez, LLC
P.O. Box 336
Frederick, MD 21705
(T): (301) 980-1787
Email: JoseMPerezEsq@gmail.com
Attorney for Petitioner