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DETAINED – ELIZABETH, NJ

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ALYSON ADRIANA BARRIENTOS ARGUETA,

A 

Petitioner,

v.

PAMELA BONDI,
Attorney General of the United States, and

KRISTI NOEM,
Secretary of the U.S. Department of Homeland
Security, (DHS) and,

TODD LYONS,
Acting Director of Immigration & Customs
Enforcement, (ICE), and

RUBEN PEREZ,
Acting Newark ICE Field Office Director, (ICE
FOD), and

YOLANDO PITMAN, Warden of Elizabeth
Detention Center

Respondents.

Case No.

**ORAL ARGUMENT
REQUESTED**

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner, Alyson Adriana Barrientos Argueta ("Alyson"), is a 19-year-old female, native and citizen of El Salvador, who has been detained by ICE as of December 31, 2025, and is currently detained at the Elizabeth Detention Center ("EDC" or the "Facility").
2. Respondents have unlawfully detained her and seek to unlawfully remove her from the U.S. Thus, Petitioner petitions this Court declare her detention unlawful and order her immediate release.
3. Alyson has been present in the U.S. since 2021, is a recent graduate of   in June 2025, has an approved I-360 Immigrant Petition and Deferred Action from United States Citizenship and Immigration Services ("USCIS"), and she is not a priority for removal. She lives at home with her mother and two younger siblings and works as a nanny to save money for college tuition and to help her mother with living expenses.
4. The Board of Immigration Appeals ("BIA") recently issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) precluding Petitioner from succeeding on a request for bond before the Executive Office of Immigration Review ("EOIR"). Dozens of district courts across the nation have found this decision unlawful and contrary to the plain reading of 8 U.S.C. § 1225.
5. Absent an order from this Court, Alyson will continue to remain in detention unlawfully for the foreseeable future, and, if a bond hearing is ordered instead of her immediate release, she will undoubtedly be denied due process and fundamental fairness by EOIR.

6. Petitioner therefore asks the Court to find that Defendants have unlawfully detained her and order her immediate release from custody. Her family desperately awaits her return.

7. Ordering the EOIR to hold a bond hearing will not be sufficient relief for Alyson, as the ability to obtain a decision from an impartial immigration judge is not viable under this administration and will cause additional litigation before this Court.

CUSTODY

8. Petitioner is in the physical custody of Respondents DHS and ICE. Petitioner is currently at EDC in Elizabeth, New Jersey. ICE has contracted with the Core Civic to detain individuals in the immigration custody of ICE such as Petitioner. The Petitioner is under the direct control of the Respondents and their agents, and the immediate custodian is the Director of EDC, Yolanda Pittman, who is a named party in this action.

PARTIES

9. Petitioner is a 19-year-old female, native and citizen of El Salvador, currently detained by Respondents pending removal proceedings. She seeks a writ of habeas corpus due to her unlawful detention.

10. Respondent, Pamela Bondi, is sued in her official capacity as the Attorney General of the United States. In this capacity she is responsible for administering and enforcing the immigration laws pursuant to 8 U.S.C. § 1103 and is the Petitioner's legal custodian. Respondent Bondi's office is located at U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

11. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of DHS, the agency in charge of administering and enforcing the immigration laws in New Jersey and is the Petitioner's legal custodian. Respondent Noem's office is located at U.S. Department of Homeland Security, Washington, D.C. 20528.

12. Respondent, Todd Lyons, is sued in his official capacity as the Acting Director of ICE, the department within DHS. In this capacity, he is responsible for administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a legal custodian of Petitioner. Respondent Lyons's office is located at 500 12th Street, S.W., Washington, D.C. 20536.

13. Respondent Ruben Perez is named in his official capacity as the Acting Newark Field Office Director for ICE. In this capacity, Respondent Perez is responsible for administration and management of ICE Enforcement Removal Operations in New Jersey and exercises control over Petitioner's custody at EDC. Respondent Perez's office is located at 970 Broad Street, 11th Floor, Newark, New Jersey, 07102.

14. Respondent Yolanda Pittman is the Warden of EDC. She is an employee of CoreCivic, the private company that contracts with ICE to run EDC. In her capacity as Warden, she oversees the administration and management of EDC. Accordingly, Respondent Pittman is the immediate custodian of Petitioner. She is sued in her official capacity.

JURISDICTION AND VENUE

15. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution, the Immigration & Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"), 28 U.S.C. § 1331, and 28 U.S.C. § 1361.

17. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

18. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

19. Venue is proper and lies in this United States District Court for the District of New Jersey because a substantial parts of the events or omissions giving rise to the claim arose in this judicial district. *See* 28 U.S.C. §§ 1392(e), 2241, *et seq.* Venue lies in the United States District Court for the District of New Jersey, which is the judicial district in which Petitioner resides and is currently in immigration custody. *See* 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004). The Petitioner is detained at Elizabeth Detention Center in Elizabeth, New Jersey.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of her detention. *See Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. *See Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. Aug. 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by immigration detainees is a prudential benchmark which is not compelled by statute.”).

21. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *See*

Boumediene v. Bush, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

22. Moreover, the exhaustion “doctrine is not without exception.” *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *See id.* at 666-67.

23. Petitioner is precluded from prevailing on any EOIR bond appeal following the BIA’s decision in *Matter of Yajure Hurtado* upending decades of precedent. That decision prevents Petitioner from obtaining bond before EOIR pursuant to 8 U.S.C. § 1225(b)(2)(A), improperly finding immigration judges lack jurisdiction to issue bonds because Petitioner entered the United States without being inspected and admitted or paroled. Immigration judges and the BIA are bound by this decision. *See* 8 C.F.R. § 1003.1(g)(1). Exhaustion before the BIA would therefore be futile.

24. Further, the BIA does not have jurisdiction to adjudicate constitutional issues. *See Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be futile because petitioner raises a constitutional due process claim. *See Qatanani, supra* 144 F.4th at 500.

STATEMENT OF FACTS

25. Alyson was born in El Salvador on  to her mother, Suylema Argueta Escobar, and father, Ricardo Arturo Barrientos Cortes.

26. Alyson entered the United States without inspection on July 31, 2021 on her fifteenth birthday. She was detained by U.S. Customs and Border Protection (“CBP”) and held

for roughly six weeks in the custody of the U.S. Department of Health and Human Services (“HHS”), Office of Refugee Resettlement, Division of Unaccompanied Children Operations.

27. On August 1, 2021, DHS Acting Patrol Agent in Charge, Tommy Vitocruz, issued Alyson a Notice to Appear (“NTA”), DHS Form I-862, selecting the box stating that “You are an alien present in the United States who has not been admitted or paroled.” *See* a true and accurate copy of the Notice to Appear, ICE Form I-862, dated August 1, 2021 attached hereto as **Exhibit “A”**. Notably, DHS selected this box instead of selecting the box asserting, “You are an arriving alien.” *See id.* Critically, the NTA notes that Alyson is charged under section 212(a)(6)(A)(i) of the INA [8 U.S.C. § 1182(a)(6)(A)(i)] as an “alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.”

28. Although the NTA intended to place Alyson into “removal proceedings under section 240 of the INA [8 U.S.C. § 1229a],” *see id.*, the NTA was not filed with EOIR as required by regulation¹ to initiate removal proceedings under 8 U.S.C. § 1229a, as demonstrated by the “No case found for this A-Number” message on the Executive Office of Immigration Review’s Automated Case Information Website. *See* a true and accurate Printout of EOIR Automated Case Information Website for A- showing “No case found” attached hereto as **Exhibit “B”**.

29. On September 8, 2021, Alyson was released on her own recognizance (“ROR” from federal custody to her mother Suleyma, “pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization

¹ *See* 8 C.F.R. § 1239.1(a) (Every removal proceeding conducted under section 240 of the Act ... is commenced by the filing of a notice to appear with the immigration court.); 8 C.F.R. § 1003.14(a) (Jurisdiction vests, and proceedings ... commence, when a charging document is filed with the Immigration Court)

Act of 2008.” *See* a true and accurate copy of HHS Verification of Release Form, dated September 8, 2021, noting release of Alyson Barrientos Argueta to her mother Suleyma De Los Angeles Argueta Escobar, attached hereto as **Exhibit “C”**.

30. Upon her release, Alyson established her life with her mother and siblings in New Jersey. She high school at Red Bank Regional, quickly learned English, and was dedicated to her education and part-time work to help her mother.

31. Alyson and her mother also pursued legal options available to her to begin the process of becoming a Lawful Permanent Resident (“LPR”) of the U.S. They retained immigration counsel and obtained a predicate order seeking custody and special findings from the New Jersey Superior Court, Family Part.

32. On June 7, 2024, Scott C. Arnette, J.S.C., issued an order finding that Alyson had been abandoned and neglected by her biological father, granting sole legal custody to her mother, and determining that it was not in Alyson’s best interest to return to El Salvador where she had no biological parent to care for her. *See* a true and accurate copy of Judge Arnette’s Order of Custody and Findings, dated June 7, 2024, attached here as **Exhibit “D”**.

33. Thereafter, due to the legal basis of obtaining Superior Court order, Alyson filed an Form I-360, Immigrant Petition, which is the next step in her process to obtain LPR status.

34. On October 30, 2024, U.S. Citizenship and Immigration Services (“USCIS”) granted Alyson’s Form I-360, Immigrant Petition for Special Immigrant Juvenile Status, which provides her with a pathway to seek LPR status in the U.S. and grants her Deferred Action, while she waits for a visa to become available. *See* a true and accurate copy Form I-797 Notice of Action, I-360 Approval Notice and “Grant of Deferred Action” attached hereto as **Exhibit “E”**.

35. Deferred Action recognizes that Alyson warrants a favorable exercise of discretion and indicates she has protection from removal from the U.S. for four years (until October 29, 2028), unless her Deferred Action is terminated earlier by USCIS. *See id.* The reason that Alyson cannot file to become an LPR at this time is because of the retrogression of priority dates for this category of immigrant visa, which results in a significant delay of about 4-5 years and is the reason that USCIS provides Deferred Action to this category of juveniles.

36. Alyson will be able to seek permanent residency in the coming years when her priority date of August 5, 2024 becomes current on the U.S. Department of State's Visa Bulletin in the Employment-Based, Fourth Preference Visa Category.

37. At the time of filing, USCIS has not provided Alyson with any written notice that her grant of Deferred Action has been terminated.

38. On October 30, 2025, Alyson was arrested by Red Bank Police Department for an altercation between her and her mother's boyfriend when he was found in their apartment with a prostitute.

39. All charges against Alyson were dismissed, and she was released from state custody on December 31, 2025. *See* a true and accurate copy of the Judgment of Dismissal, attached hereto as **Exhibit "F"**.

40. In those proceedings, five community members, including several of her former teachers from  High School, submitted letters attesting to Alyson's character, honesty, diligence, work ethic, maturity, and dedication to her family. *See* true and accurate copies of Letters of Support, attached hereto as **Exhibit "G"**.

41. On that same date, Alyson was arrested by ICE, and at the time of filing of this petition, she is detained at EDC in Elizabeth, New Jersey. *See* a true and accurate Screenshot of

ICE Detainee Locator showing location of Alyson Adriana Barrientos Argueta's location as "unknown," attached hereto as **Exhibit "H"**.

42. Alyson graduated from [REDACTED] High School in June 2025, and she has been working for a family as a nanny to a three-, five-, and seven-year-old since graduation. See a true and accurate copy [REDACTED] High School Diploma of Alyson A. Barrientos Argueta, attached hereto as **Exhibit "I"**. She is the oldest child of three siblings and was an outstanding student in high school. She has been working to save money for college tuition, and to help her mother pay bills. She is neither a flight risk, nor a danger to the community in any way. To the contrary, she is both well established in and an asset to her community.

43. The BIA recently issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), precluding Petitioner from succeeding on a request for bond before the EOIR. Absent an order from this Court, Alyson will continue to remain in detention unlawfully for the foreseeable future.

44. *Yajure Hurtado* is unlawful because it classifies Alyson as an "applicant for admission" who is "seeking admission" pursuant to 8 U.S.C. § 1225(b)(2). It incorrectly holds that noncitizens, like Alyson, are "arriving aliens" and subject to mandatory detention without a bond hearing, despite having been previously detained and released by ICE on her own recognizance and living in the interior of the U.S. for years.

45. The BIA's interpretation conflicts with the plain language and structure of the statute, as well as decades of uncontroverted agency practice. 8 U.S.C. § 1225 (INA § 235) is for inspection at the border, and 8 U.S.C. § 1226 (INA § 236) governs detention during section 8 U.S.C. § 1229a (INA § 240) removal proceedings and allows bond hearings before an immigration

judge in cases such as Alyson's. Therefore, the application of 8 U.S.C. § 1225(b)(2) to Alyson is contrary to law and violates the INA and the Administrative Procedure Act ("APA").

46. Over 200 district court decisions across the nation have ruled that the plain meaning of 8 U.S.C. § 1225 applies to "arriving aliens" who are "affirmatively 'seeking admission' at or near the border or a port of entry," as opposed to § 1226, governing "the process of arresting and detaining . . . aliens already in the country pending the outcome of removal proceedings." See *Bethancourt Soto v. Soto*, No. 25-16200, 2025 WL 2976572, at *13 (D.N.J. Oct. 22, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 288-289 (2018)); *Patel v. Almodovar*, 2025 WL 3012323, at *7-8 (D.N.J. Oct. 28, 2025) (collecting cases across numerous jurisdictions).

47. Alyson's detention under 8 U.S.C. § 1225(b)(2) is therefore patently unlawful from the outset, and deprives Alyson of her liberty as a nineteen-year-old who wishes to spend the Christmas holidays with her mother and siblings.

48. Respondents' continued disregard for the rule of law demands immediate release, a commensurate and appropriate corrective action to restore Alyson's liberty interests.

49. In the alternative, Petitioner requests that the Respondents order the immigration judge to immediately hold a bond hearing for Alyson to impartially adjudicate if she is a flight risk or danger to the community.

50. Petitioner asserts, however, that any such order of a bond hearing before EOIR may be futile and require further litigation, because any such request for a bond before an immigration judge cannot be adjudicated impartially or fairly as demonstrated by the actions of Respondents and by immigration judges adjudicating cases in fear of the repercussions of granting bond and/or applications for relief by an administration and Department of Justice untethered to Due Process guaranteed by the Constitution or the ethical practice of law.

51. By way of example, one week ago, Respondent Kristi Noem, referred to immigrants as “killers, leeches, and entitlement junkies,”² clearly showing her xenophobia and strong bias against immigrants as head of DHS.

52. Next, on the Department of Justice’s website purporting to recruit for immigration judges, the agency has redefined “immigration judges” as “deportation judges,”³ preordaining outcomes and eroding neutrality by the agency under which immigration judges serve.

53. Finally, immigration judges are under daily threat of termination⁴ and accused of bias against the Government,⁵ compromising their ability to remain impartial. These actions and statements made by both the head of ICE attorneys and by the DOJ, who employs immigration judges, belie the supposition that Alyson could receive a fair bond hearing by an impartial immigration judge.

54. Alyson therefore respectfully requests that this Court issue a writ of habeas corpus and order her immediate release from custody due to the Government’s unlawful actions depriving her of her liberty interest and due process rights and her inability to receive a bond hearing by an impartial adjudicator.

² See a true and accurate copy of Secretary Kristi Noem, (@Sec_Noem), X, (Dec. 1, 2025, at 6:52 P.M. EST) https://x.com/Sec_Noem/status/1995642101779124476, attached hereto as **Exhibit “J”** (last visited December 24, 2025).

³ See a true and accurate copy of Dep’t. of Justice, YOU BE THE JUDGE “Help write the next chapter of America. Apply today to become a deportation judge[.]”(accessed Dec. 4, 2025) (<https://join.justice.gov/>), attached hereto as **Exhibit “K”** (last visited December 24, 2025).

⁴ On December 1, 2025, eight immigration judges in New York City were terminated, which comprised of over a third of those serving at that office of the Executive Office for Immigration Review, and dozens have been fired this year. See a true and accurate copy of N. Y. TIMES, Trump Administration Fires 8 immigration judges in New York (Dec. 1, 2025), <https://www.nytimes.com/2025/12/01/nyregion/immigration-judges-fired-trump.html>, attached hereto as **Exhibit “L”** (last visited December 24, 2025).

⁵ “[N]othing in the applicable ethics regulations or the Guide provides an exception for bias directed against DHS.” See a true and accurate copy of Executive Office of Imm. Review, Acting Director Sirce E. Owen, Policy Mem. 25-33, Neutrality and Impartiality in Immigration Court Proceedings, (June 27, 2025), Dep’t of Justice, (<https://www.justice.gov/eoir/media/1404956/dl?inline>), attached hereto as **Exhibit “M”**.

55. In the alternative, Petitioner requests that this Court conduct a bond hearing⁶ or order an immigration judge to conduct a bond hearing at which (i) the government bears the burden of proving flight risk and/or dangerousness by clear and convincing evidence, and (ii) the reviewing court considers alternatives to detention that could mitigate risk of flight. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

FIRST CLAIM FOR RELIEF
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

56. Petitioner re-alleges and incorporates by reference the above paragraphs.

57. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. Specifically, it does not apply to Alyson, who was apprehended at the border in 2021, held in federal custody, and released on her own recognizance to her mother, thereafter, receiving Special Immigrant Juvenile Status and being granted Deferred Action by USCIS before being re-detained on December 31, 2025.

58. The fact that Alyson was previously detained and released in 2021 does not undermine this conclusion. First, Alyson was released on her own recognizance at the border pursuant to 8 U.S.C. § 1226, not paroled pursuant to 8 U.S.C. § 212(d)(5). *See Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023) (describing this distinction). Therefore, she was never treated as an “arriving alien” or subject to the “entry fiction” that comes with parole, “whereby noncitizens are physically permitted to enter the country but are nonetheless treated for

⁶ *See Akinola v. Weber*, No. 09-3415, 2010 WL 376603, at *5 (D.N.J. Jan. 26, 2010) (bond hearing by a district court, rather than an immigration judge, was appropriate given immigration judge’s pattern of decisions); *see also L.G.M. v. LaRocco*, No. 2:25-CV-2631, 2025 WL 2092027, at *5 (E.D.N.Y. June 25, 2025) (“[t]o spare all parties potential additional dissatisfaction and grievance in a process that has already proved protracted, the Court chooses to cut to the chase and hold the bail hearing, so it can assess the witnesses and other evidence for itself”); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ, --- F.Supp. ----, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) (court used its inherent authority to hold a bond hearing and ordered release).

legal purposes as if stopped at the border.” See *Diaz Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, -- F. Supp. 3d --, at *3 (D. Mass. July 24, 2025) (quoting *Dep’t of Homeland Sec. v. Thuraissigam*, 591 U.S. 103, 139 (2020)). The procedural history of Alyson’s case shows that it is distinguishable from *Matter of Q. Li*, which is inapplicable here, and falls squarely within the scope of 8 U.S.C. § 1226(a). See *Bethancourt*, *supra*, 2025 WL 2976572, at *14; see also *Diaz Martinez*, 2025 WL 2084238, at *4; *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); accord *Rosado v. Figueroa*, No. 25-2157, 2025 WL 2337099, at *6 (D. Ariz. Aug. 11, 2025).

59. In any event, that initial arrest is not what is at issue in this case, rather it is her 2025 arrest and detention. See *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, -- F. Supp. 3d --, at *9 (S.D.N.Y. Aug. 13, 2025). Even if Alyson was “seeking admission” within the meaning of § 1225(b)(2)(A) at the time of her entry and initial apprehension, she was no longer engaged in that “present-tense action” when she was arrested on October 30, 2025 in Freehold, New Jersey, and therefore no longer meets the requirements of § 1252(b)(2)(A) discussed above. See *Diaz Martinez*, 2025 WL 2084238, at *6.

60. Alyson is detained under § 1226(a) and is eligible for release on bond. Respondents’ unlawful application of § 1225(b)(2) to Petitioner violates the INA, among other statutes.

SECOND CLAIM FOR RELIEF
Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19
Unlawful Denial of Release on Bond

61. Petitioner re-alleges and incorporates by reference the above paragraphs.

62. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.

Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” *See* 62 Fed. Reg. at 10323 (emphasis added).

63. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration judges under 8 U.S.C. § 1226, and its implementing regulations.

64. The regulation at 8 C.F.R. § 1003.19 lays out bond procedures, and § 1003.19(h)(2) delineates categories of noncitizens who are subject to mandatory detention and not entitled to a bond hearing. The fact that noncitizens within the United States who are subject to inadmissibility grounds are not included on this list shows that the agencies did not intend them to be subject to mandatory detention.

65. The BIA’s interpretation thus violates the regulations and unlawfully denies Petitioner a bond hearing.

THIRD CLAIM FOR RELIEF
Violation of the Administrative Procedure Act
Contrary to Law and Arbitrary and Capricious Agency Policy

66. Petitioner re-alleges and incorporates by reference the above paragraphs.

67. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

68. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) clearly does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility.

Specifically, it does not apply to Alyson, who was issued an NTA and released from federal custody in September 2021, and has been living in the interior of the United States in Red Bank, New Jersey with her immediate family since that time, prior to being to being detained by Respondents in Freehold, New Jersey.

69. For these reasons, Alyson is detained under § 1226(a) and is eligible for release on bond.

70. In taking a contrary position, the BIA has reversed decades of prior practice, and “would expand § 1225(b) face beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application.” *See Lopez Benitez*, 2025 2371588, at *8. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions, have considered factors that Congress did not intend to be considered, and have offered explanations for their decisions that run counter to the evidence before the agencies.

71. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

FOURTH CLAIM FOR RELIEF
Violation of the Fifth Amendment Due Process Clause
Substantive Due Process

72. Petitioner re-alleges and incorporates by reference the above paragraphs.

73. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” *See* U.S. Const. Amend. V. Substantive due process requires that immigration detention without a bond hearing be reasonably

related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

74. The BIA's application of mandatory detention under § 1225(b)(2) is not reasonably related to ensuring she appears at proceedings or to protecting the public, and thus violates substantive due process. Moreover, Alyson has no criminal convictions, is not a danger to the community, and has been a nanny to several elementary school-aged children. She will be a LPR in a few years.

FIFTH CLAIM FOR RELIEF
Violation of the Fifth Amendment Due Process Clause
Procedural Due Process

75. Petitioner re-alleges and incorporates by reference the above paragraphs.

76. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." *See* U.S. Const. Amend. V. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *See Gayle v. Warden Monmouth C'ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021).

77. The first factor considered is the private interest that will be affected by the official action. *See id.* Here, the deprivation of Alyson's liberty would cause significant harm to her and to the many others who rely on her. She is nineteen, works full-time as a nanny, and is relied upon as a loving member of her family.

78. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *See id.* In the instant matter, there is great risk of unnecessary detention because the BIA's interpretation of the statute

does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 670 (D.N.J. 2003).

79. At a hearing, Petitioner could show that her detention is not necessary because she has Deferred Action, an approved Immigrant Petition, and is not a danger to her community or a flight risk. A hearing at which the government bears the burden of proof by clear and convincing evidence would protect the substantial liberty interest at stake. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

80. The final factor to be analyzed is the Government's interest. *See Gayle, supra*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 32-33 (1st Cir. 2021); *see also Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at *4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). Therefore, the government does not have an interest in detaining Petitioner without a bond hearing that outweighs her substantial liberty interest in such an individualized determination.

81. Respondents' detention of Petitioner without any hearing to determine whether that detention is necessary violates her procedural due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 3) Issue a Writ of Habeas Corpus directed to Respondents requiring them to immediately release Petitioner from custody;
- 4) Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
- 5) Award Petitioner her costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 6) Grant such further relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Justin M English

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Attorney for Petitioner

Dated: January 1, 2026

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 1, 2026

Respectfully submitted,

/s/ Justin M. English