UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.Q.A.,

Petitioner,

v.

Raul MALDONADO JR., in his official capacity as Warden of Metropolitan Detention Center; Judith ALMODOVAR, in her official capacity as Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Markwayne MULLIN, in his official capacity as Secretary, U.S. Department of Homeland Security; Pamela BONDI, in her official capacity as U.S. Attorney General; Daren K. MARGOLIN, in his official capacity as Director, Executive Office for Immigration Review,

Respondents.

Case No. 2:26-cv-1873

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner J.Q.A.[1] is a 47-year-old national of El Salvador who fled her home country after enduring extensive discrimination, abuse, and violence on account of her gender and sexual identity. She has lived in the United States since 2004. For more than two decades, J.Q.A. resided in New York State, where she was able to live true to her gender and sexual identity and to receive lifesaving treatment

[1] Following this petition is a motion by Petitioner to proceed by initials and to redact her alien registration number ("A number") and other personally identifying information.

[redacted] Today, J.Q.A. continues to fear her possible removal to El Salvador, where she would be subject to horrific abuse as a transgender woman [redacted] and deprived of essential medical treatment.

2. Since she arrived in the United States more than two decades ago, J.Q.A. has lived mostly without incident. Her encounters with law enforcement are minimal, including two charges for quality-of-life infractions, both dating over 10 years ago, and a 2023 conditional discharge for disorderly conduct. The latter incident resulted only in a fine, with no custodial sentence needing to be served.

3. Nonetheless, for the past 7 months, immigration authorities have imprisoned J.Q.A. in a correctional facility in Brooklyn, New York. Since August of 2025, she has been confined indefinitely in an all-male detention unit without the possibility of even seeking her release on bond.

4. Despite her minimal arrest record, and her longtime residency in New York State, the Respondents have subjected J.Q.A. to mandatory detention based on a novel and erroneous interpretation of the government's detention authority under 8 U.S.C. § 1225(b) that classifies J.Q.A.—who has resided in the United States for more than 20 years, and was apprehended in the national interior—as though she were attempting an initial entry at the border.

5. J.Q.A.'s detention is unlawful as it has continued for 7 months without individualized review and results from a misclassification by the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR"), which have erroneously determined that J.Q.A. is subject to mandatory

detention based on an abrupt departure from decades of settled agency precedent and an incorrect interpretation of the applicable statutes and regulations in the Immigration and Nationality Act ("I.N.A."). Indeed, the Respondents' novel interpretation of the government's statutory authority has been rejected by the overwhelming majority of courts to consider this issue.

6. Accordingly, J.Q.A. seeks a writ of habeas corpus ordering that she be released from detention immediately based on her detention without a lawful basis and in violation of her constitutional right to due process. In the alternative, J.Q.A. requests an individualized bond hearing within seven days under 8 U.S.C. § 1226(a), at which the government bears the burden of proof by clear and convincing evidence to justify her continued incarceration.

JURISDICTION

7. J.Q.A. is in the physical custody of the Respondents, detained by ICE at the Metropolitan Detention Center in Brooklyn, New York.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. §§ 2241, 2243, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.

484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of New York, the judicial district in which J.Q.A. currently is detained.

11. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York.

REQUIREMENTS OF 28 U.S.C. § 2243

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

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

14. Petitioner, J.Q.A., is national of El Salvador who has been detained by the Respondents since on or about August 28, 2025. She is currently held at the

Metropolitan Detention Center in Brooklyn, New York. She lived in Hempstead, New York prior to her detention.

15. Respondent Raul Maldonado, Jr. is employed by the Bureau of Prisons ("BOP") as Warden of the Metropolitan Detention Center, where Petitioner J.Q.A. is detained. He has immediate physical custody of J.Q.A. He is sued in his official capacity.

16. Respondent Judith Almodovar is the Director of the New York Field Office of ICE's Enforcement and Removal Operations Division. As such, Field Office Director Judith Almodovar is Petitioner's immediate custodian and is responsible for J.Q.A.'s detention and removal. She is named in her official capacity.

17. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the I.N.A., and oversees ICE, which is responsible for Petitioner's detention. Secretary Mullin has ultimate custodial authority over J.Q.A. and is sued in his official capacity.

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. She is sued in her official capacity.

19. Respondent Daren K. Margolin is the Director of EOIR. He is responsible for ensuring the implementation and adherence to the I.N.A. in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

STATEMENT OF FACTS

20. J.Q.A. has resided in the United States since her arrival in or around 2004. *See* Declaration of Nusrat Hussain ("Hussain Decl.") ¶ 4. Prior to arriving in the United States, she lived in El Salvador. *See id.* ¶ 3.

21. J.Q.A. fled El Salvador after enduring extensive abuse, harassment, and physical violence on account of her sexual identity. *See id.* J.Q.A. moved to Virginia before settling in New York State in or around 2007. *See id.* ¶ 4. While living in New York, J.Q.A. lived freely according to her sexual identity and also began to explore her gender identity. *See id.* ¶ 5. J.Q.A. identifies as a transgender woman. *See id.*

22. J.Q.A. was diagnosed with [redacted] about 10 years ago. *See id.* ¶ 6. She requires medication and medical treatment [redacted] *See id.*

23. Since arriving in the United States, J.Q.A. has had a minimal record of encounters with law enforcement. Her record includes two citations for open container violations under § 10-125(b) of the New York Administrative Code ("AC"), from 2010 and 2015 respectively, and one conviction in 2023 of disorderly conduct under § 240.20(7) of the New York Penal Code ("NYPL"). *See id.* ¶ 7. None of these incidents resulted in a jail sentence. *See id.*

Apprehension by Immigration Authorities and Removal Proceedings

24. On or about August 28, 2025, J.Q.A. was apprehended by ICE officers in Hempstead, New York. *See id.* ¶ 8. While recycling bottles at a supermarket with other individuals, J.Q.A. was apprehended by local police officers, who ordered J.Q.A.

and the other individuals to remain in place before ICE officers arrived and took J.Q.A. into their custody. *See id.*

25. Subsequently, J.Q.A. was detained in the custody of ICE at the Metropolitan Detention Center in Brooklyn, New York. *See* Hussain Decl. ¶ 9. She remains there to this day. *See id.* ¶¶ 1, 9.

26. On or about September 15, 2025, the Department of Homeland Security initiated the removal proceedings of J.Q.A. by issuing a notice to appear ("NTA"), charging J.Q.A. as removable under 8 U.S.C. § 1182(a)(6)(A), as a noncitizen "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." *See id.* ¶ 9; Exh. A, Notice to Appear.

27. On or about October 27, 2025, J.Q.A. filed an application for asylum, withholding of removal, and protection under the U.N. Convention Against Torture with the immigration court. *See* Hussain Decl. ¶ 12.

28. On or about December 4, 2025, the immigration court held an individual hearing to consider J.Q.A.'s applications for relief. *See id.* ¶ 13. On that date, the immigration judge denied J.Q.A.'s applications and ordered her removed. *See id.*. Shortly thereafter, J.Q.A. appealed the immigration judge's decision to the Board of Immigration Appeals. *See id.* ¶ 14. J.Q.A.'s appeal remains pending. *See id.*

29. At the time of this filing, J.Q.A. has been detained in the custody of ICE for nearly 7 months without individualized review. *See id.* ¶ 11. She has been detained in an all-male unit of the Metropolitan Detention Center. *See id.* ¶ 10. She

reports experiencing frequent lapses in timely receipt of [redacted] medications due to the facility's medical processes. *See id.* Without relief from this Court, J.Q.A. will remain in ICE custody for possibly several more months, if not years, while her immigration matters remain pending. *See id.* ¶¶ 15-16.

LEGAL FRAMEWORK

Petitioner Is Not Subject to Mandatory Detention Because She Is Detained Under 8 U.S.C. § 1226(a).

30. Under existing BIA precedent, Respondents claim authority to detain J.Q.A. without individualized review under 8 U.S.C. § 1225(b). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025) (holding that noncitizens who enter the United States without inspection or admission are ineligible for bond hearings).

31. Yet Respondents' detention of J.Q.A. violates the plain language of the I.N.A., whose mandatory detention provision applies only to individuals "seeking admission"—not individuals such as J.Q.A., who entered the country many years ago and have resided here for over two decades.

32. Because Respondents lack authority to detain J.Q.A. pursuant to 8 U.S.C. § 1225(b), this Court should order her immediate release—or, at the minimum, an immediate bond hearing.

33. Individuals like J.Q.A.—who were present within the country at the time of ICE arrest and detention—have consistently been processed under 8 U.S.C. § 1226(a), which permits release on bond or parole. ICE, however, considers J.Q.A. ineligible for release from custody, relying on a new ICE policy, "Interim Guidance Regarding Detention Authority for Applications for Admission," *see* Exh. B,

instructing ICE officers to treat all individuals deemed inadmissible as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), rendering them ineligible for bond consideration. Likewise, the BIA in *Yajure Hurtado* reversed decades of agency practice and precedent and erroneously concluded that all individuals who entered the United States fall under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A), rather than § 1226(a), and are ineligible to be released on bond. *See* 29 I&N Dec. at 228.

34. The I.N.A. prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

35. *First*, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226 detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 U.S.C. § 1226(a); *see also* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes that render them subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

36. *Second*, the I.N.A. provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals considered to be seeking admission at or near the border referred to under § 1225(b)(2). Unlike § 1226, § 1225(b)(2) is limited to individuals who are detained while actively "arriving" in the United States and "seeking admission."

37. *Lastly*, the I.N.A. provides for detention of noncitizens who have already received an order of removal, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

38. J.Q.A.'s case concerns the detention provisions under the first two categories: (1) § 1226(a) and (2) § 1225(b)(2).

39. Sections 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 by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025), to provide for detention of those previously convicted of certain crimes.

40. Section 1226 provides the general process for arresting and detaining noncitizens who are present in the United States and eligible for removal. *See Vasquez-Lopez v. Bondi*, 26-cv-1369 (OEM), 2026 WL 710088 at *2 (E.D.N.Y. Mar. 13, 2026). It prescribes that "[t]he Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen][2] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). Except as provided in § 1226(c), "the Attorney General 'may release' a[] [noncitizen] detained under § 1226(a) 'on . . . bond' or 'conditional parole.'" *Id.* (quoting § 1226(a)(1)–(2)).

[2] This petition uses the term "noncitizen" as equivalent to the statutory term "alien." *See*, e.g., *Santos-Zacaria v. Garland*, 598 U.S. 411, 414 n.1 (2023) (*citing Nasrallah v. Barr*, 590 U. S. 573, 578 n. 2 (2020)) (slip op., at 4, n.2).

41. Under this default rule, when a noncitizen is apprehended under § 1226(a), an ICE officer makes the initial custody determination. *See Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 484 (S.D.N.Y. Aug. 13, 2025). If the noncitizen objects to the initial determination, they may request a bond hearing before an immigration judge. *See id.* (citing 8 C.F.R. § 1236.1(d)(1)). Custody decisions by an immigration judge may be appealed to the BIA. *See J.M.P. v. Arteta*, 807 F.Supp.3d 265, 279 (S.D.N.Y. Oct. 23, 2025); *Hernandez v. Sessions*, 872 F.3d 976, 982-83 (9th Cir. 2017) (citing 8 C.F.R. § 236.1(d)(3)).

42. Section 1225(b), in contrast, "supplement[s] § 1226's detention scheme." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022). It applies to noncitizens seeking entry into the United States and, "in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title." § 1225(b)(2)(A).

43. For decades following the enactment of the I.N.A., individuals who entered the United States without inspection and were placed in standard removal proceedings were routinely afforded bond hearings unless their criminal history rendered them subject to mandatory detention under 8 U.S.C. § 1226(c). This practice was consistent with longstanding agency interpretation, which distinguished between "arriving" noncitizens and those already present in the interior of the country. Noncitizens not classified as "arriving" were entitled to custody hearings

before an immigration judge. *See* 8 U.S.C. § 1252(a) (1996); *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)).

44. On July 8, 2025, ICE, in coordination with the DOJ, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice. *See* Exh. B.[3] The new policy, titled "Interim Guidance Regarding Detention Authority for Applications for Admission," claims that all noncitizens who entered the country without inspection shall now be subject to the mandatory detention provision of § 1225(b)(2)(A). *Id.*

45. On September 5, 2025, the BIA endorsed this policy shift in a published decision, *Matter of Yajure Hurtado*. There, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A). *See* 29 I&N Dec. at 228. Immigration judges are now unable to conduct individualized bond hearings for hundreds, if not thousands, of detainees, many of whom have been living peacefully in the United States for years.

46. Respondents' position contradicts decades of settled precedent. Until recently, Respondents consistently adhered to the distinction between § 1226(a) and § 1225(b)(2). *See, e.g.*, *Matter of Garcia-Garcia*, 25 I&N, Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N., Dec. 572 (A.G. 2003); *see also* Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's

[3] Also accessible at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last accessed 3/27/26).

long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

47. Respondents' interpretation not only reverses decades of agency practice but also defies the plain language of the I.N.A. Because "[a]pplicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law," *Jennings*, 583 U.S. at 287 (quoting § 1225(a)(3)), "[t]he idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system." *Martinez v. Hyde*, 792 F.Supp.3d 211, 222 (D. Mass. Jul. 24, 2025); *see also Lopez Benitez*, 795 F.Supp.3d at 491 ("[T]he Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' [petitioner] may be subject to detention only as a matter of discretion under § 1226(a).") (internal citation omitted).

48. Section 1226 leaves no doubt that it applies to people who face charges, in removal proceedings, of being inadmissible to the United States, including those who are present without admission or parole. *See* 8 U.S.C. § 1226(c)(1)(E) (discussing noncitizens who are subject to the statute when deemed inadmissible under paragraph (6)(A), (6)(C), or (7) of § 1182(a)). "Put simply, § 1226 'generally governs the process of arresting and detaining' [noncitizens] 'once inside the United States'

'pending their removal.'" *J.G.O. v. Francis*, 25-cv-7233 (AS), 2025 WL 3040142, at *4 (quoting *Jennings*, 583 U.S. at 288).

49. Section 1225(b), by contrast, applies to people arriving at ports of entry or who are apprehended while arriving near the border. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. *See* 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

50. Section 1225(b)'s "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 791 F.Supp.3d at 218; *see also Matter of M-D-C-V-*, 28 I. & N., Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit[.]"); *US v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."); *but see, Ferreira Candido v. Bondi*, 25-cv-867 (JLS), 2025 WL 3484932, at *2-*3 (W.D.N.Y., Dec. 4, 2025) (concluding that "applicant for admission" and "seeking admission" are synonymous). The word "seeking" is a present participle, which "is used to signal present and continuing action." *See Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022); *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019); *J.G.O.*, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (quoting *Progressive Tense*, MERRIAM WEBSTER ONLINE, https://www.merriam-webster.com/dictionary/

progressive%20tense (last visited March 27, 2026) ("[S]eeking' is written in the present-progressive tense, which 'is used to refer to an action or a state that is continuing to happen.") The plain language of § 1225 thus applies only to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "*already* present in the United States"—only § 1226 applies in such cases. *See Jennings*, 583 U.S. at 303 (emphasis added).

51. Respondents' interpretation of § 1225(b)(2)(A) would also impermissibly render superfluous part of Congress's recent amendment to § 1226(c) in the LRA. "When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014) (quoting *Stone v. INS*, 514 U.S. 386, 397 (1995)). The L.R.A. created a new category of noncitizens subject to mandatory detention under § 1226(c), namely any noncitizen who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of [8 U.S.C. § 1182(a)]" and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing" certain crimes. L.R.A., Pub. L. No. 199-1, § 2(1)(C), 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). One of these inadmissibility grounds—8 U.S.C. § 1182(a)(6)(A)(i)—covers noncitizens "present in the United States without being admitted or paroled." Yet if all noncitizens present without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) regardless of criminal history, "there would have been no need for Congress to specify in [the L.R.A.] that such noncitizens are subject to mandatory detention" under §

1226(c) when they met certain criminal conduct criteria. *See Guerrero Orellana v. Moniz*, 802 F.Supp.3d 297, 310 (D. Mass. Oct. 3, 2025); *City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.") (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)); *J.G.O*, 2025 WL 3040142, at *4 ("In early 2025, Congress amended the statute . . . . That portion of the amendment would have had no legal effect under the government's reading . . . ."); *Rodriguez Vazquez v. Bostock*, 779 F.Supp.3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) ("[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

52. Courts in the Eastern District of New York have followed the overwhelming nationwide majority in holding that a proper statutory interpretation results in the application of § 1226(a) to Petitioner's detention. *See, e.g., Vasquez-Lopez*, 2026 WL 710088 at *2 ("The Court is bound by a long line of U.S. Supreme Court precedent" recognizing the distinction between noncitizens "who have come to our shores seeking admission" and those who "are within the United States after an entry . . . . [T]his Court joins the majority of courts in finding that detention of the nature at issue here cannot be upheld under § 1225.") (internal citations omitted); *Molina Lara v. Genalo*, 2:26-cv-1424 (PKC), 2026 WL 764539 at *2 (E.D.N.Y. Mar. 18, 2026) ("The overwhelming majority of courts in this District and across the country have found that noncitizens like Petitioner—who were detained by ICE after

living in the United States for years—are not 'seeking admission' and therefore cannot be detained pursuant to Section 1225(b)(2)(A)."); *J.R.R. v. Genalo*, 26-cv-1245 (PKC), 2026 WL 691803 at *3 (E.D.N.Y. Mar. 11, 2026) (same); *Hyppolite v. Noem*, 808 F.Supp.3d 474, 484, 490 (E.D.N.Y. Oct. 6, 2025) ("Insofar as this Court and the parties are aware, to date, every single Article III court that has examined how the relevant provisions of the INA apply to persons such as [petitioner] has reached the exact same answer to the first question—uniformly finding that their detention is subject to the discretionary provisions of § 1226(a), not the 'mandatory' provisions of § 1225(b) as Respondents claim. . . . [T]he Court now joins the broad consensus among Article III courts to date, and finds that § 1225(b)(2)(A) does *not* apply to a noncitizen like [the petitioner], who has been living in the United States for years, and that his detention can only be authorized if the procedures followed comply with 8 U.S.C. § 1226(a).") (emphasis in original); *see also J.U. v. Maldonado*, 805 F.Supp.3d 482, 494 (E.D.N.Y. Sep. 29, 2025) ("Respondent's novel and expansive construction of § 1225(b)(2)(A) fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226 and a recent amendment to it superfluous, and is inconsistent with Supreme Court's prior statutory interpretations."); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *7-*8 (E.D.N.Y. Oct. 5, 2025) (finding that the petitioner "effected entry" by being released from custody for several years and therefore was "already in the country" and subject to discretionary detention under § 1226(a)) ("Respondents' construction of § 1225(b)(2)(A) disregards the plain meaning of that provision, would render § 1226 and a recent amendment to

it superfluous, and is inconsistent with Supreme Court's prior statutory interpretations.").

53. Even district courts that have ruled otherwise, accepting the Respondents' novel construction of § 1225(b), acknowledge that their interpretation contradicts the weight of judicial rulings on this question in this Circuit and others. *See, e.g., Chen v. Almodovar*, 25 Civ. 9670 (JPC), 2026 WL 100761 at *1 (S.D.N.Y. Jan. 14, 2026) ("It is not lost on the undersigned that the overwhelming majority of judges in this District and around the country to consider the issue have reached a contrary conclusion" as to the applicability of § 1225(b) to noncitizens who are apprehended in the United States after entering without inspection).

54. Notably, the facts of the present case, as relevant to detention, are nearly identical to the recent decision arising in this District in *Molina Lara v. Genalo*, where the District Court granted habeas relief and released the petitioner immediately from custody. *See* 2026 WL 764539 at *1, *3. In *Molina Lara*, the petitioner was a citizen from El Salvador who entered the United States without inspection in 2022. *See id.* at *1. After living in the United States for several years, the petitioner was apprehended by ICE in Brentwood, New York and held without individualized review in the Metropolitan Detention Center. *See id.* Based on this, the court found that "Respondents detained Petitioner pursuant to the wrong statute, without any individualized custody determination, prior notice, or opportunity to be heard." *Id.* at *3. The court further noted the petitioner's minimal criminal record and held that immediate release was the proper remedy. *See id.* at *4.

55. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to J.Q.A., who already entered and had been residing in the United States for decades at the time she was detained by ICE.[4] The applicable statute of detention is 8 U.S.C. § 1226(a).

Respondents' Detention of Petitioner Without Individualized Review or the Opportunity for a Bond Hearing Violates Due Process.

56. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prevents the government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

57. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

58. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690–91.

59. Here, the Respondents' erroneous incarceration of J.Q.A. under an inapplicable statute of detention violated her right to due process as guaranteed by the U.S. Constitution. Indeed, by subjecting J.Q.A. to an inapplicable statute of mandatory detention, Respondents failed to provide her any of the procedural safeguards required under law.

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[4] This Court can also consider that Respondents lacks authority to detain M.G.P. under the mandatory detention provision of § 1225(b)(2)(A) because M.G.P. is a member of the class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), and his continued detention under the mandatory detention provision of § 1225(b)(2)(A) is contrary to the Order granting class wide relief issued in that case.

60. Importantly, detention of noncitizens pursuant to 8 U.S.C. § 1226(a) is *discretionary*. As recognized by courts in this District, "the discretionary authority in § 1226(a) requires an individualized bond determination before a noncitizen may be taken into custody." *Hyppolite*, 808 F.Supp.3d at 485 (citing *Velesaca v. Decker*, 458 F.Supp.3d 224, 241 (S.D.N.Y. 2020) (noting that the government "do[es] not dispute that 8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination")); *see also Lopez Benitez*, 795 F.Supp.3d at 494 ("[I]t is clear that § 1226(a) requires some exercise of discretion when determining whether or not to detain a noncitizen in the first instance.")

61. By subjecting J.Q.A. to detention under an inapplicable mandatory detention statute, Respondents failed to exercise discretion altogether. *See Lopez Benitez*, 795 F.Supp.3d at 495 (noting that an assertion that detention is mandatory is "precisely the *opposite* of an exercise of discretion") (emphasis in original); *Barco Mercado v. Francis*, 811 F.Supp.3d 487, 504 (S.D.N.Y. 2025) ("Acting automatically is the opposite of exercising discretion.").

62. As courts in this District and others have recognized, such actions by Respondents, in detaining J.Q.A. "pursuant to the wrong statute, without any individualized custody determination, prior notice, or opportunity to be heard . . . [violate] Petitioner's procedural due process rights." *Molina Lara*, 2026 WL 764539 at *3; *see also Barco Mercado*, 811 F.Supp.3d at 504 (holding that a petitioner's detention "pursuant to the wrong statute violated due process"); *Yao v. Almodovar*, No. 25-cv-9982 (PAE), 2025 WL 3653433, at *11 (S.D.N.Y. Dec. 17, 2025) ("ICE's

discretion-free detention of [the petitioner] abridged his rights under § 1226 and violated due process.").

63. Despite these baseline requirements, Respondents detained J.Q.A. without notice or opportunity to respond, and without any individualized review prior to detention or at any time afterward. Because J.Q.A. has been detained unlawfully and deprived of liberty without due process of law, her immediate release must be ordered.

64. Although civil immigration detention is authorized by statute, the detention may only serve two legitimate purposes: (1) mitigating flight risk; and (2) preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

65. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *See Velasco Lopez*, 978 F.3d at 851 (applying *Mathews* factors), *see also, J.U.*, 805 F.Supp.3d at 497 (same); *Artiga*, 2025 WL 2829434, at *8 (same). This test requires sufficient process to mitigate the risk of erroneous deprivation of a liberty interest. *Id.*; *see also Mata Velasquez v. Kurzdorfer*, 794 F.Supp.3d 128 (W.D.N.Y. 2025) (applying *Mathews* test to find that re-detention without notice likely violated due process) (*citing Mathews v. Eldridge*, 424 U.S. 319 (1976)); *Kiareldeen v. Reno*, 71 F. Supp. 2d 402, 414 (D.N.J. 1999) ("The [legacy Immigration and Naturalization Service ("INS")] procedures patently failed the *Mathews* test of constitutional sufficiency. And the court finds this failure to be

sufficient basis to grant the petitioner's writ of habeas corpus and direct his release from custody.").

66. As set forth in *Mathews*, this Court must consider three factors to determine what procedural protections the Constitution requires: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335 (1976).

67. *First*, the "importance and fundamental nature" of an individual's liberty interest is well-established. *See Salerno*, 481 U.S. at 750; *see also Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 475 (3d Cir. 2015) ("[T]he burden to [a noncitizen's] liberty outweighs a mere presumption that the [noncitizen] will flee and/or is dangerous."). Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be "on any calculus, substantial." 978 F.3d at 851–52. This is because "[f]reedom from imprisonment . . . lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *see also Foucha*, 504 U.S. at 80.

68. *Second*, there is a high risk of an "erroneous deprivation" of liberty through the current procedures. Indeed, as set forth *supra*, Respondents failed to exercise *any* discretion or conduct any individualized review prior to detaining J.Q.A.

Rather, Respondents have incarcerated J.Q.A. *solely* on the basis of their mistaken application of an inapplicable statute that erroneously subjects J.Q.A. to mandatory detention. And on that mistaken premise, Respondents continue to deprive J.Q.A. of liberty without the opportunity for review.

69. *Third*, the proposed procedures—namely, that ICE exercise discretion prior to detaining a noncitizen on an individualized basis, as required by the applicable statute—do not prejudice the government's interest in mitigating danger and risk of flight during removal proceedings. *See Zadvydas*, 533 U.S. at 690. Indeed, the government's interest supports such procedures, because the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"); *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *5 (S.D.N.Y. Nov. 14, 2025) ("The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as . . . there is no evidence in the record suggesting that [the petitioner] is a flight risk or a danger to his community.") (internal citations omitted). Additionally, "unnecessary detention imposes substantial societal costs . . . . The needless detention of those individuals thus separates families and removes from the community breadwinners,

caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted); *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. 2024) ("Where the noncitizen poses no danger and is not a flight risk, all the government does in requiring detention is 'separate[ ] families and remove[ ] from the community breadwinners, caregivers, parents, siblings and employees.'" (internal citations omitted). In this case, Respondents would not have been prejudiced by having to conduct such individualized review before detaining J.Q.A., an individual with a minimal arrest record who had been living peacefully in the United States for more than two decades.[5]

70. Respondents violated J.Q.A.'s right to due process and immediate release is the appropriate remedy, with an order preventing re-detention until and

[5] As set forth at ¶ 70, the appropriate remedy to Respondents' unconstitutional deprivation of J.Q.A.'s liberty is for J.Q.A. to be immediately released, as courts in this District have confirmed. In the alternative, should this Court find that ordering a bond hearing is more appropriate—which Petition does not concede—Second Circuit precedent instructs that where continued detention is unreasonable or unjustified, greater procedural protections are required. *See Velasco Lopez*, 978 F.3d at 853; *Black*, 103 F.4th at 155-56. This is especially pertinent where, as here, (1) the deprivation is statutorily unlawful to begin with, *see supra*, and (2) the length of detention has become prolonged at nearly 7 months. *See Black*, 103 F.4th at 137, 151 (finding the detention of one named petitioner to be unreasonably prolonged at 7 months). Thus, if this Court should order a bond hearing, the burden should be placed on the government to prove, by clear and convincing evidence, that J.Q.A.'s continued detention is justified, and the adjudicator must consider alternatives to detention and J.Q.A.'s ability to pay when setting a monetary bond. *See Velasco Lopez*, 978 F.3d at 857 (ordering a burden-shifted bond hearing); *Black*, 103 F.4th at 155 (ordering a burden-shifted bond hearing along with consideration of alternatives of detention and the petitioners' ability to pay a bond).

unless Respondents provide notice and the opportunity to respond to any intent to re-detain. *See Molina Lara*, 2026 WL 764539 at *4 (ordering the immediate release of a petitioner who had been erroneously detained in the first instance under § 1225(b), and rejecting the Respondents' contention that a bond hearing is an appropriate remedy); *Colindres v. Tellez*, 26-cv-0663 (PKC), 2026 WL 509493, at *3 (E.D.N.Y. Feb. 23, 2026) ("Given that Petitioner was not afforded due process prior to his re-detention, the appropriate remedy is release, not an order directing Respondents to give Petitioner a bond hearing."); *Yao*, 2025 WL 3653433, at *11 ("A bond hearing after the fact, by definition, would not and cannot cure [the] constitutional violation. Although [the petitioner's] release today cannot cure his loss of liberty . . . this remedy, relative to the procedural one of ordering a bond hearing, is the one that comes closest to doing so."); *Y-C- v. Genalo*, No. 25-cv-6558 (NCM), 2025 WL 3653496, at *7 (E.D.N.Y. Dec. 17, 2025) ("To remedy petitioner's deprivation of due process . . . no relief short of petitioner's immediate release would be appropriate or sufficient in this case.").

CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act

71. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

72. The mandatory detention provision of § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of

inadmissibility. As relevant here, it does not apply to Petitioner, who previously entered the country and has been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

73. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the I.N.A.

74. The applicable statute of detention is 8 U.S.C. § 1226(a) and Petitioner is entitled to immediate release.

COUNT II

Violation of Due Process

75. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

76. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

77. Petitioner has a fundamental interest in liberty and being free from official restraint.

78. Respondents' detention of Petitioner without individualized consideration of whether she is a flight risk or danger to others and without notice or opportunity to respond and without individualized review, violates her right to due

process of law. Due to these violations of her constitutional right to due process, Petitioner is entitled to immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Eastern District of New York while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, 28 U.S.C. § 2243;

d. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner;

e. In the alternative, issue an order for Petitioner to receive a bond hearing, before this Court or before an Immigration Judge, pursuant to 8 U.S.C. § 1226(a), within seven days with the burden of proof on the government by clear and convincing evidence and consideration of alternatives to detention and ability to pay bond;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

Dated: March 30, 2026

Respectfully submitted by:

/s/ Jordan C. Manalastas
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of J.Q.A. because I am one of her attorneys at the Legal Aid Society and have reviewed her case materials and communicated with the other attorneys on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

Dated: March 30, 2026

Respectfully submitted by:

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