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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

FRANCISCA HERNANDEZ HERNANDEZ, Petitioner, v. **ROBERT LYNCH,** Director of Detroit Field Office, U.S. Immigration and Customs Enforcement; **MARKWAYNE MULLIN,** Secretary of the U.S. Department of Homeland Security; and **TODD BLANCHE,** Attorney General of the U.S., in their official capacities, Respondents.	Case No. 3:26-cv-907 [redacted] **PETITION FOR WRIT OF HABEAS CORPUS** **ORAL ARGUMENT REQUESTED**

INTRODUCTION

1. Petitioner, Francisca Hernandez Hernandez, is a Guatemalan national of indigenous Mayan descent who entered the United States in 2006 when she was a teenager. She has remained in the United States since that time.

2. She is the recipient of a pending Form I-914A Application for Family Member of a T-1 Recipient—a victim of a severe form of trafficking—filed with the U.S. Citizenship and Immigration Service (USCIS). She provided biometrics

information, including fingerprints, to USCIS on September 3, 2025, in relation to this application which remains pending.

3. Petitioner was detained by U.S. Immigration and Customs Enforcement (ICE) about two weeks ago and is in custody on behalf of federal immigration officials at the Seneca County Jail in Tiffin, Ohio.

4. She brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, and seeks immediate release from custody or, in the alternative, a prompt custody redetermination hearing before an immigration judge in which the U.S. Department of Homeland Security (DHS) bears the burden of proof by clear and convincing evidence.

5. She is harmed by Respondents' draconian new policy reinterpreting immigration detention statutes to preclude plaintiffs from eligibility for bond under the Immigration and Nationality Act, 8 U.S.C. § 1226(a) and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Respondents now consider Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of lengthy removal proceedings and appeals.

6. Petitioner's detention is unlawful where the Immigration Court has denied and the Board of Immigration Appeals ("BIA") will deny jurisdiction to hear bond requests for any noncitizens who entered the United States without inspection regardless of how long ago and where the individual is located geographically. *See Matter of Yajure Hurtado*, 29 I&N 216 (BIA 2025).

7. This habeas petition should go forward without this Court requiring administrative exhaustion which would be futile in light of *Matter of Yajure Hurtado*. The BIA has predetermined the issue in cases that are legally identical to Petitioner's.

8. Unless granted a writ of habeas corpus, Petitioner will remain detained without a bond hearing in violation of her Due Process rights under the United States Constitution without the possibility of bond from the Immigration Court or review of that denial of jurisdiction by the BIA. Thus, Petitioner is being held without the opportunity to be heard regarding the lawfulness of her detention.

9. Absent an order from this Honorable Court, Petitioner will remain detained without Due Process of the law for the duration of her immigration removal proceedings, including possible appeals—potentially months to years longer.

10. Respondents have adopted the position that noncitizens who entered the United States without admission are ineligible for immigration court bond hearings, despite this District's mounting rulings that immigration laws and the Constitution provide for such hearings. *See e.g.*, *Kaur v. Raycraft*, No. 4:25-CV-02679, 2026 LX 191819 (N.D. Ohio Mar. 13, 2026); *Lopez v. Raycraft*, No. 4:25CV2449, 2025 LX 570889 (N.D. Ohio Nov. 25, 2025); *Chavez v. Dir. of Detroit Field Office*, No. 4:25-cv-2061, 2025 LX 552281 (N.D. Ohio Nov. 14, 2025).

11. The BIA has relied on *Matter of Yajure Hurtado* in subjecting those in the same position as Petitioner to mandatory detention and refusing jurisdiction over appeals related thereto.

12. Petitioner asks this Court to order her release from detention where her detention without possibility of review is an unconstitutional expansion of mandatory detention.

JURISDICTION

13. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) and whether the BIA and Immigration Court have jurisdiction over custody redetermination cases for noncitizens who have allegedly unlawfully entered the United States without inspection.

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

VENUE

16. Venue is proper because Petitioner is detained at the Seneca County Jail in Tiffin, Ohio, which is within the jurisdiction of this District.

17. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving

rise to Petitioner's claims occurred in this District, Petitioner currently resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

19. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

20. Petitioner is a beneficiary of a pending application for a family member of a victim of a severe form of trafficking and is currently detained at the Seneca County Jail. She is in the custody, and under the direct control, of Respondents and their agents.

21. Respondent Robert Lynch is sued in his official capacity as the Director of the Detroit Field Office of U.S. Immigration and Customs Enforcement. Respondent Lynch is a legal custodian of Petitioner and has authority to release Petitioner.

22. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Mullin is a legal custodian of Petitioner.

23. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Blanche is a legal custodian of Petitioner.

PRUDENTIAL EXHAUSTION SHOULD BE WAIVED AND WOULD BE FUTILE

24. "Where Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1991). But when it is not mandated, the decision to require exhaustion is within the sound discretion of the court. *Id.; see also Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). Exhaustion requirements not written into the text of the statute are prudential. *See Perkovic v. I.N.S.*, 33 F.3d 615, 619 (6th Cir. 1994). "Prudential exhaustion is a judge-made doctrine that enables courts to require administrative exhaustion even when the statute or regulations do not." *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 747 (6th Cir. 2019).

25. The Sixth Circuit has not formally adopted a standard for determining when prudential exhaustion applies, so the Northern District of Ohio has looked at the

Ninth Circuit in similar circumstances. *See Torrealba v. United States Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 U.S. Dist. LEXIS 164153, at *23 (N.D. Ohio Aug. 25, 2025).

26. Under the Ninth Circuit's test, courts may require prudential exhaustion when: (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. *Id.* (citing *Puga v. Chertoff*, 488 F.3d 812 (9th Cir. 2007) (hereinafter "the *Puga* factors").

27. Here, all three *Puga* factors weigh against requiring exhaustion. First, the issues raised in the habeas petition are purely legal in nature and do not require the agency to develop the record. The Immigration Judge even held that he would have set bond for Petitioner if he had jurisdiction to do so. Second, because the habeas petition includes a due process claim, the administrative scheme (*i.e.* appeal to the BIA) is likely futile. And third, administrative review is not likely to change Respondents' position that Section 1225(b)(2)(A) applies in this context. The Government's immigration policy makes clear that mandatory detention is the position to be taken, and this is being done in coordination with the Department of Justice.

28. Further, while the Court would ordinarily enforce the exhaustion doctrine when it serves the dual purpose of promoting judicial economy and protecting administrative agency authority, waiver is appropriate when the interests of the

individual weigh heavily against requiring administrative exhaustion, or exhaustion would be futile and unable to afford the petitioner the relief he seeks. *See McCarthy*, 503 U.S. at 145; *see also Fazzani v. NE Ohio Corr. Ctr.*, 473 F.3d 229 (6th Cir. 2006) (citing *Aron v. LaManna*, 4 F. App'x 232, 233 (6th Cir. 2001) and *Goar v. Civiletti*, 688 F.2d 27, 28–29 (6th Cir. 1982)); *Shawnee Coal Co. v. Andrus*, 661 F.2d 1083, 1093 (6th Cir. 1981). Exhaustion is also excused when delay means hardship. *See Shalala v. Illinois Council*, 529 U.S. 1, 13 (2000).

29. Bond appeals before the BIA, on average, take six months to complete. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). Requiring Petitioner to wait six months simply to be back before this Court filing a petition for habeas corpus upon the Board's predetermined denial for lack of jurisdiction would be futile. And, Petitioner's removal proceedings are also now before the BIA, which would likely take even longer for the appeal. As such, exhaustion would not effectively afford Petitioner the relief she seeks. Depriving Petitioner of her liberty while awaiting a BIA appeal certainly equates to hardship. And any delay results in the very harm Petitioner is trying to avoid by seeking the bond hearing—prolonged detention without an opportunity to be heard on the validity of the same.

30. Courts may waive exhaustion requirements when an administrative remedy is subject to "an unreasonable or indefinite timeline." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Bond denial appeals "typically take six months or more to be resolved at the BIA." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wa. 2025). Six months of further, and potentially unnecessary, incarceration is significantly longer than the thirty days the Sixth Circuit rejected as "unreasonable"

or "indefinite" in *United States v. Alam*, 960 F.3d 831, 836 (6th Cir. 2020). Plus, the "delays inherent" in the BIA's administrative process "would result in the very harm that the bond hearing was designed to prevent," that is, prolonged detention without due process. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation omitted); *see also Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (finding the "prolonged loss of liberty" from "several additional months" in possibly unlawful detention would "constitute irreparable harm"). The prevention of six months or more of unlawful detention thus outweighs the interests the BIA might have in resolving appeal of bond determination.

31. Aside from waiver, the Sixth Circuit has also previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.") (citation omitted). Since Petitioner's petition includes a due process claim, an appeal to the BIA would be pointless. The fact that Petitioner has reserved the right to appeal the denial of a detention hearing to the BIA should not dissuade the Court from exercising its discretion to decide this habeas petition.

32. When the liberty of a person is at stake, every day that passes is a critical one, and the Court should fault Petitioner for taking appropriate measures to pursue his claims through the habeas process, with the expectation that his claims would be

met with a sense of urgency, and he would receive a decision in a more expedient manner.

33. Because exhaustion would be futile and unable to provide Petitioner with the relief she requests in a timely manner, the Court should waive administrative exhaustion and address the merits of the habeas petition.

STATEMENT OF FACTS

34. Petitioner is a 38-year-old citizen of Guatemala of indigenous Mayan descent and a native Quiche speaker.

35. Since 2006 when she was a teenager, she has lived in the United States.

36. She is the recipient of a pending Form I-914A Application for Family Member of a T-1 Recipient—a victim of a severe form of trafficking—filed with the U.S. Citizenship and Immigration Service (USCIS). She provided biometrics information, including fingerprints, to USCIS on September 3, 2025, in relation to this application which remains pending.

37. Petitioner was detained by U.S. Immigration and Customs Enforcement (ICE) about two weeks ago and is in custody on behalf of federal immigration officials at the Seneca County Jail in Tiffin, Ohio.

38. Petitioner has no criminal record and is a hardworking part of the community with close friends and family. Prior to this detention, she lived with her husband in Dover, Ohio.

39. Petitioner fears persecution should she be returned to India where she was beaten and threatened with honor killing by family members for being in a relationship crossing religious and caste lines.

40. On April 14, 2026, the Cleveland Immigration Court found it had no jurisdiction to hear Petitioner's request for a bond to be set so that she could be released pending the outcome of her immigration removal proceedings.

41. Appeal of the denial to the BIA is futile given the Board's holdings in *Matter of Q. Li* and *Matter of Yajure Hurtado* and the Board's recent dismissals of appeals in comparable cases where a noncitizen entered the United States without inspection and is in the United States without current lawful status.

LEGAL FRAMEWORK

42. Petitioner now comes before this Honorable Court for a review of her unlawful and prolonged detention and the Immigration Court's denial of jurisdiction over her custody redetermination proceedings.

I. Petitioner Has Been Wrongly Found to Fall Under the Purview of INA § 235(b)

43. Contrary to Respondents' position, Petitioner is detained pursuant to Immigration and Nationality Act ("INA") § 236(a) and this detention cannot be deemed to be governed by INA § 235(b). Aliens detained under section 236(a) of the INA may be eligible for discretionary release on bond pursuant to section 236(a)(2) of the INA. But, aliens arriving in the United States who are detained under section 235(b)(1) or (b)(2) are ineligible for release on bond and their detention is

mandatory until the conclusion of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018). The exception to this mandatory detention reads, under section 212(d)(5)(A) of the INA,

> The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

44. Respondents contend that *Matter of Q. Li*, 29 I&N Dec. 66, 66 (BIA 2025), holds that a noncitizen is an applicant for admission even where, as here, that respondent is inside the United States and has been inside the United States for years after an unlawful entry. So, according to Respondents, such a noncitizen is always an applicant for admission and is subject to mandatory detention without the possibility of an immigration court exercising jurisdiction over a custody redetermination hearing for that respondent.

45. Thus, Petitioner—even though detained about two decades after entering the United States and far from a United States foreign border—is, the Immigration Judge held, outside of the Judge's authority to redetermine bond.

46. "Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear . . . or because only one of the permissible meanings produces a substantive

effect that is compatible with the rest of the law." *See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988).

47. The heading for INA § 235(b) is "Inspection of applicants for admission" with INA § 235(b)(1) titled "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." This section describes situations that mandate placing aliens in expedited removal, and includes two general categories of such aliens. The first category involves those "arriving in the United States" and found to be "inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title . . ." *See* INA § 235(b)(1)(A)(i). The second category includes "certain other aliens who have not been admitted or paroled" and applies to those who cannot show that they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility . . ." *See* INA § 235(b)(1)(A)(iii)(II).

48. Looking then at INA § 235(b)(2), titled "Inspection of other aliens," and following the statutory scheme of this section, the "other aliens" refers to those not found inadmissible under sections 212(a)(6)(C) or 212(a)(7), and mandates their detention for proceedings under INA § 240 if an immigration officer determines that they are not "clearly and beyond a doubt entitled to be admitted . . .". *See* INA § 235(b)(2)(A). Moreover, in addressing the treatment of aliens arriving from contiguous territory, INA § 235(b)(2)(C) distinguishes those aliens described in subparagraph (A) who are "arriving on land," as opposed to "arriving" in any other manner, again clearly signifying that Section 235(b)(2) is intended to cover only

those applicants for admission "arriving" in the United States. This provision cannot be taken in isolation from the rest of Section 235 and interpreted to mandate detention for any and all aliens, regardless of time and place.

49. Interpreting the statute in such a manner would then render INA § 236(a) superfluous for all practical purposes, as anyone can be deemed to forever be an applicant for admission. For this reason, no court has ever interpreted the mandatory detention provisions under Section 235 to apply to anyone but applicants for admission who are "arriving" in the United States. "An 'applicant for admission' is defined, in relevant part, as an alien 'who arrives in the United States []whether or not at a designated port of arrival.'" *Matter of Q. Li* at 68. "§1225(b) applies primarily to aliens seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018).

50. In *Jennings*, the Supreme Court clearly distinguishes between aliens "seeking admission" into the country at or near a port of entry, to which INA §§ 235(b)(1) and (b)(2) apply, and aliens "already in the country," who may be detained pursuant to INA § 236. *Jennings* at 298.

51. Respondent is, thus, now in the purview of INA § 236, because Respondent was already in the country when detained by immigration authorities and placed into immigration removal proceedings.

52. Furthermore, in no precedent decision has any court required that INA § 236 apply only to aliens "admitted" into the United States. In fact, the Supreme Court has held that Section 236 governs arrest and detention of aliens who may be removed, including "aliens who were inadmissible at the time of entry." *Id.* As the Supreme

Court stated in *Zadvydas v. Davis*, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

53. It is therefore clear that the provisions of Section 235 of the INA can only apply to those seeking admission while "arriving" in the United States or those who trigger the statutory return to that same provision, as in *Matter of Q. Li*. The term "arriving" has been addressed previously by the BIA and has been defined in part by the Regulations.

54. The Regulations define an "arriving alien" as follows:

> an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

See 8 C.F.R. § 1.2.

55. Although there is a dispute as to whether the term "arriving" as used in INA § 235 falls under the regulatory definition of "arriving alien," the BIA has also previously held that the "use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographical limit . . ." *See Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020).

56. Detention under INA § 235(b) cannot apply to anyone who has entered into the United States or anyone ever paroled into the United States who is now in removal proceedings, as that would effectively do away with INA § 236(a) and any and all aliens can then be subject to mandatory detention without limit. Clearly this could

not have been the intent of Congress, and the BIA's decision in *Matter of Q. Li* cannot be read to cast such a wide net.

57. The blanket application of the holding in *Matter of Q. Li* to a case like Petitioner's is a flagrant violation of the due process of law, essentially stripping Petitioner of all right to constitutional due process for review of his extended detention, challenging constitutional limits of geography and time for mandatory detention set forth in *Jennings v. Rodriguez*.

58. "An 'applicant for admission' is defined, in relevant part, as an alien 'who arrives in the United States []whether or not at a designated port of arrival.'" *Matter of Q. Li* at 68. "§1225(b) applies primarily to aliens seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). In *Jennings*, the Supreme Court clearly distinguishes between aliens "seeking admission" into the country at or near a port of entry, to which INA §§ 235(b)(1) and (b)(2) apply, and aliens "already in the country," who may be detained pursuant to INA § 236. *Jennings* at 298.

59. As the Supreme Court stated in *Zadvydas v. Davis*, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

60. It is, therefore, clear that the provisions of Section 235 of the INA can only apply to those seeking admission while "arriving" in the United States. The term "arriving" has been addressed previously by the BIA and has been defined in part by the Regulations.

61. The Regulations define an "arriving alien" as:

> an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.
>
> *See* 8 C.F.R. § 1.2.

62. Detention under INA § 235(b) cannot apply to anyone who has entered into the United States, as that would effectively do away with INA § 236(a) and any and all aliens can then be subject to mandatory detention without limit. It would render meaningless the Laken Riley Act, in which the second statutory provision – Section 1226 – provides for a discretionary detention framework. It states, in relevant part:

> **(a) ARREST, DETENTION, AND RELEASE**
>
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on—
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General …
> 8 U.S.C. § 1226(a). Subsection (c) of the Section 1226 prohibits certain noncitizens who are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) by virtue of their presence in the country without being admitted (like Petitioner) from being released on bond, *but only if* the noncitizen has also been:
> charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

8 U.S.C. § 1226(c)(1)(E)[1].

63. Relevant here, noncitizens arrested and detained under Section 1226 have a right to request a custody redetermination (i.e. a bond hearing) before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1). The IJ evaluates whether there is a risk of nonappearance or danger to the community. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Petitioner is neither a flight risk nor a danger to the community and should be released from detention.

64. Thus, Petitioner asks that this Honorable Court order her release from prolonged detention which has flowed from violations of Due Process and federal law.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

65. The allegations in the above paragraphs are realleged and incorporated herein.

66. Petitioner has been detained without any option to argue against the unlawful "mandatory" detention, other than this habeas petition.

67. Petitioner was subjected to mandatory detention flowing from an arbitrary and capricious overreach by the Immigration Court. The BIA has decided it lacks jurisdiction to review a custody redetermination by the Immigration Court in legally identical cases.

68. The Board's decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* violate Petitioner's Fifth Amendment Due Process rights. The BIA's expansion of

[1] This section that subjects certain noncitizens to mandatory detention was added by Congress in January 2025 with the passing of the Laken Riley Act. Pub. L. No. 119-1, 139 Stat. 3 (2025).

warrantless arrest and mandatory detention without the possibility of bond to any noncitizen within the United States who initially entered the country without inspection, no matter how long ago and no matter where they are geographically violates Due Process rights of noncitizens triggered by their presence in the United States. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (holding all persons within the territory of the United States are entitled to the protection of the Constitution). "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (holding even non-citizens who are subject to deportation proceedings or are unlawfully present still possess constitutional due process rights).

69. The Supreme Court has suggested that the Constitution may well preclude granting "an administrative body the unreviewable authority to make determinations implicating fundamental rights." *Id.* at 692 (quoting *Superintendent, Mass. Correctional Institution at Walpole* v. *Hill,* 472 U. S. 445, 450 (1985) (O'CONNOR, J.)) (citing *Crowell v. Benson,* 285 U. S. 62, 87 (1932) (Brandeis, J., dissenting) ("[U]nder certain circumstances, the constitutional requirement of due process is a requirement of judicial process")).

70. The serious constitutional problem arising out of a statute that, in these circumstances, permits an indefinite (perhaps lasting many years as immigration removal proceedings often do) deprivation of human liberty without any such protection is obvious.

71. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. §§ 1225(b), 1226(a), and Implementing Regulations

72. The allegations in the above paragraphs are realleged and incorporated herein.

73. Petitioner has not been detained under 8 U.S.C. 1225(b) where she has not been placed into expedited removal proceedings and was detained on September 15, 2025, in Cleveland, Ohio, after living in the United States since her date of entry.

74. For these reasons, Petitioner's detention violates 8 U.S.C. § 1225(b) and 28 C.F.R. § 68.36.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1225(b), and/or 28 C.F.R. § 68.36;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, in the alternative, directing the Immigration Court to exercise jurisdiction over bond proceedings in which the DHS bears the burden of proof by clear and convincing evidence in accordance with any findings and holdings made by this Honorable Court;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Margaret W. Wong

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Counsel for Petitioner

Dated: April 16, 2026

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

I represent Petitioner and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 16th day of April, 2026.

/s/ Margaret W. Wong
Margaret W. Wong, Esq.

TABLE OF EXHIBITS

1. Form I-914A Fingerprint Appointment Notice with Stamp
2. Notice to Appear
3. Order of the Immigration Judge Denying Bond Jurisdiction