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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WENDY CAROLINA TAVERAS HERNANDEZ,  Petitioner, v. **TODD BLANCHE,** in his official capacity as Deputy Attorney General of the United States; **MARCOS CHARLES,** in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, ICE; **TODD M. LYONS,** in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** in her official capacity as Secretary of Homeland Security; **LUIS SOTO,** in his official capacity as Colonel, Corrections Division, Delaney Hall Detention Facility, Respondents.	Civil Action No.: 26-4552 **PETITION FOR WRIT OF HABEAS CORPUS** **28 U.S.C. § 2241** **DETAINED** **Delaney Hall Detention Facility** **Newark, New Jersey**

INTRODUCTION

1. Petitioner Wendy Carolina Taveras Hernandez is a Lawful Permanent Resident who has lived lawfully in the United States for seventeen years. She is the primary caregiver of a sixteen-year-old United States citizen daughter and the adult child of a United States citizen mother. Since April 14, 2026, she has been confined at the Elizabeth Detention Facility in civil immigration custody — without a bond hearing, without any individualized determination of risk, and on the basis of a charge that fails as a matter of law.

2. Petitioner seeks, first and foremost, her immediate release from custody. The government has no lawful basis to detain her under any provision of the Immigration and Nationality Act. The sole charge in the Notice to Appear — inadmissibility under INA § 212(a)(2)(A)(i)(II) — is legally defective on its face. Under the categorical approach mandated by the Supreme Court in Mellouli v. Lynch, 575 U.S. 798 (2015), the New Jersey statute underlying Petitioner's 2014 conviction, N.J.S.A. § 2C:35-10, is broader than the federal Controlled Substances Act and is not a categorical match for INA § 212(a)(2). Without a valid § 212(a)(2) conviction, the exception in INA § 101(a)(13)(C)(v) — the sole provision that could classify her as an "arriving alien" — never triggers. She is not an "arriving alien." She is a Lawful Permanent Resident returning to her home, and there is no lawful predicate for her detention.

3. Each of the detention authorities the government might invoke fails independently. First, § 1225(b) mandatory detention requires valid "arriving alien" status, which collapses once

the § 212(a)(2) predicate is exposed as legally defective. Second, the Laken Riley Act, Pub. L. 119-1 (Jan. 29, 2025), does not apply: that statute targets noncitizens charged with or convicted of burglary, theft, larceny, shoplifting, crimes of violence, or crimes resulting in death or serious bodily injury. Petitioner's sole conviction is for simple drug possession — a non-violent, victimless, possessory offense that falls outside every Laken Riley Act category by its plain text. Third, § 236(c) mandatory detention is barred by binding Third Circuit precedent because Petitioner was not taken into immigration custody "when released" from criminal custody — she completed her probationary sentence in 2015 and lived freely for over eleven years before this arrest. Sylvain v. Attorney General, 714 F.3d 150 (3d Cir. 2013).

4. If this Court declines to order immediate release, Petitioner requests in the alternative that Respondents be ordered to provide an individualized bond hearing before an immigration judge within seventy-two (72) hours of this Court's Order, at which the government bears the burden of establishing by clear and convincing evidence that continued detention is justified.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3), authorizing federal courts to grant writs of habeas corpus to persons "in custody in violation of the Constitution or laws or treaties of the United States." Zadvydas v. Davis, 533 U.S. 678 (2001); INS v. St. Cyr, 533 U.S. 289 (2001). Jurisdiction also lies under 28 U.S.C. §§ 1331 and 1651. The REAL ID Act does not strip this Court of jurisdiction over legal and constitutional challenges to detention. 8 U.S.C. § 1252(a)(2)(D); St. Cyr, 533 U.S. at 314.

6. Venue is proper in the District of New Jersey under 28 U.S.C. § 2241(d). Petitioner is detained at the Elizabeth Detention Facility, 625 Evans Street, Elizabeth, New Jersey 07201, which lies within this judicial district.

PARTIES

7. Petitioner Wendy Carolina Taveras Hernandez (A-Number [redacted]) was born on [redacted], in the Dominican Republic. She has been a Lawful Permanent Resident of the United States since on or about June 27, 2009. She is currently detained at the Elizabeth Detention Facility, 625 Evans Street, Elizabeth, New Jersey 07201.

8. **Respondent Todd Blanche** is the Deputy Attorney General of the United States, responsible for overseeing the operations of the Department of Justice, including the Executive Office for Immigration Review and ICE enforcement policies. Sued in his official capacity.

14. **Respondent Marcos Charles** is the Acting Executive Associate Director for Enforcement and Removal Operations of ICE, responsible for the enforcement and removal operations that led to Petitioner's detention. Sued in his official capacity.

15. **Respondent Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement. Sued in his official capacity.

16. **Respondent Kristi Noem** is the Secretary of the Department of Homeland Security. Sued in her official capacity.

17. **Respondent Luis Soto** is the Colonel of the Corrections Division at the Delaney Hall Detention Facility, Newark, New Jersey, and is the immediate physical custodian of Petitioner. Sued in his official capacity.

12. Respondent Pamela Bondi is the Attorney General of the United States, with supervisory authority over the Executive Office for Immigration Review. She is sued in her official capacity.

STATEMENT OF FACTS

A. Petitioner's Lawful Permanent Residence, U.S. Citizen Family, and Community

13. Petitioner is a native and citizen of the Dominican Republic who was accorded Lawful Permanent Resident status on or about June 27, 2009. She has resided continuously and lawfully in the Bronx, New York, for approximately seventeen years.

14. Petitioner is the primary parent and caregiver of a sixteen-year-old United States citizen daughter who has lived her entire life in the United States. Petitioner's removal would cause direct, devastating, and irreparable harm to this minor U.S. citizen child — forcing upon her the unconscionable choice of permanent separation from her mother or relocation to a country she has never known.

15. Petitioner's mother, Ramona Hernandez, is a United States citizen residing in the Bronx, New York. Petitioner is her mother's primary source of support and assistance.

B. The 2014 New Jersey Conviction — Simple Drug Possession, Probation Only, No Violence, No Victim, Fully Completed

16. On November 13, 2012, Petitioner was arrested and charged in the Superior Court of New Jersey, Passaic County, under Case No. 13-07-00126-S, along with multiple co-defendants. The original charges included racketeering, conspiracy, and various narcotics-related counts.

17. Following a non-jury trial, Petitioner was convicted solely on Count 14 (Amended) for third-degree Possession of a Controlled Dangerous Substance under N.J.S.A. § 2C:35-10. All other charges — including every racketeering and conspiracy count — were dismissed. The only surviving conviction is for simple drug possession.

18. This conviction is for a non-violent, victimless, possessory drug offense. It involved no burglary, no theft, no larceny, no shoplifting, no use or threatened use of force, no death, no serious bodily injury, and no conduct directed at any identifiable person or law enforcement officer.

19. On June 6, 2014, Petitioner was sentenced to eighteen (18) months of probation. She was not sentenced to imprisonment and served no jail time. The Judgment of Conviction reflects no victim, no restitution, and no aggravating findings involving harm to any person.

20. Petitioner successfully completed her entire sentence no later than approximately December 2015. She has incurred no arrests or convictions of any kind in the more than ten years since. She returned to her home and family in the Bronx and has lived lawfully and peacefully as a Lawful Permanent Resident ever since.

21. At no point after the completion of Petitioner's probationary sentence did the government attempt to take her into immigration custody. For more than eleven years, she lived openly, freely, and lawfully as an LPR.

C. April 2026 Arrest, Detention, and Removal Proceedings

22. On or about April 14, 2026 — more than eleven years after Petitioner completed her sentence — CBP Officers stopped Petitioner at a port of entry upon her return to the United States and classified her as an "arriving alien" based solely on her 2014 conviction.

23. On April 14, 2026, CBP Officer Weeks issued a Notice to Appear (NTA) charging Petitioner as inadmissible solely under INA § 212(a)(2)(A)(i)(II). This is the only charge. The NTA was filed with the Elizabeth Immigration Court on April 17, 2026. Petitioner's A-Number is [redacted] and her alien file number is A-[redacted].

24. Petitioner has been detained at the Elizabeth Detention Facility in civil immigration custody since April 14, 2026, without any bond hearing, without any individualized custody determination, and without any opportunity to demonstrate to a neutral adjudicator that she is not a flight risk or danger to the community.

25. Petitioner's first Master Calendar hearing is scheduled before Immigration Judge Leila Mcneill Mullican via WebEx on April 30, 2026 at 1:30 P.M. (WebEx: https://eoir.webex.com/meet/IJ.Mullican; Court Address: 625 Evans Street, Room 148A, Elizabeth, NJ 07201).

ARGUMENT

GROUND ONE: PETITIONER MUST BE IMMEDIATELY RELEASED — THE SOLE CHARGE IS LEGALLY DEFECTIVE AND NO LAWFUL DETENTION AUTHORITY EXISTS

A. Detention Predicated on a Legally Invalid Charge Is Unlawful in Its Entirety

26. It is a foundational principle of constitutional law that civil immigration detention requires a lawful predicate. Where the charge undergirding detention fails as a matter of statutory construction, the detention itself is unlawful and immediate release is the correct remedy. INS v. St. Cyr, 533 U.S. 289, 300 (2001); Zadvydas v. Davis, 533 U.S. 678, 699 (2001). The government cannot lawfully imprison a person on a charge that does not legally exist.

27. Here, the government's entire authority to detain Petitioner flows through one determination: that her 2014 New Jersey conviction constitutes an "offense identified in section 1182(a)(2)" of the INA. That determination is legally wrong. Once it falls — and it must — so does every detention authority the government might invoke: § 1225(b), the Laken Riley Act, and § 236(c) alike.

B. The § 101(a)(13)(C)(v) "Arriving Alien" Classification Requires a Valid § 212(a)(2) Conviction — and There Is None

28. A returning LPR "shall not be regarded as seeking an admission into the United States" unless one of six enumerated exceptions under INA § 101(a)(13)(C) applies. 8 U.S.C. § 1101(a)(13)(C). The government has invoked § 101(a)(13)(C)(v), which requires that the returning LPR "has been convicted of an offense identified in section 1182(a)(2)." This is a threshold legal question, not a factual one. If the predicate conviction is not a § 212(a)(2) offense as a matter of law, the exception does not apply, Petitioner is not an "arriving alien," and she is an LPR present in the United States entitled to a bond hearing — or immediate release.

C. N.J.S.A. § 2C:35-10 Is Categorically Overbroad and Is Not a § 212(a)(2) Offense Under Mellouli

29. INA § 212(a)(2)(A)(i)(II) applies to convictions relating to a "controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802))." The parenthetical reference to the federal CSA definition is the operative limiting clause — the conviction must involve a substance that is federally scheduled. Mellouli v. Lynch, 575 U.S. 798, 806-08 (2015).

30. Under the categorical approach, courts examine the elements of the state statute and determine whether every substance it criminalizes is federally scheduled. If the state schedule is broader — reaching substances not on the federal schedule — the conviction is not a categorical match, regardless of the facts of the case. Taylor v. United States, 495 U.S. 575 (1990); Descamps v. United States, 570 U.S. 254 (2013); Mathis v. United States, 579 U.S. 500 (2016). In Mellouli, the Supreme Court applied this framework directly to the INA's controlled substance inadmissibility ground and required a specific nexus between the offense and a federally scheduled substance at the level of the statute's elements. 575 U.S. at 810-11.

31. N.J.S.A. § 2C:35-10 criminalizes the possession of any substance scheduled under New Jersey's own CDS schedules, N.J.S.A. §§ 24:21-5 through 24:21-8.1, which include substances not listed in the federal CSA. Because the New Jersey statute is categorically broader than the federal definition, Petitioner's conviction under that statute is not a categorical match for INA § 212(a)(2)(A)(i)(II). The predicate for the § 101(a)(13)(C)(v) classification is therefore legally absent. Petitioner is not an "arriving alien" and must be released.

32. Even under the modified categorical approach — which requires that N.J.S.A. § 2C:35-10 be divisible and limits the Court to Shepard documents — the government bears the burden of proving inadmissibility by clear and convincing evidence. INA § 240(c)(3)(A); 8 C.F.R. § 1240.8(d); Shepard v. United States, 544 U.S. 13 (2005). The government cannot satisfy that burden on this record, and cannot use a disputed legal or factual question to justify continued detention pending its resolution.

GROUND TWO: THE LAKEN RILEY ACT DOES NOT APPLY TO PETITIONER AND PROVIDES NO BASIS FOR MANDATORY DETENTION

A. The Laken Riley Act — Text, Scope, and Congressional Intent

33. The Laken Riley Act, Pub. L. 119-1, signed January 29, 2025, amended INA § 236(c) to require mandatory detention of certain noncitizens who commit specific categories of offenses. The Act directs the Attorney General to take into custody a noncitizen who is inadmissible or deportable under specified grounds and who:

> *"is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of — (i) any burglary offense . . . theft offense . . . or shoplifting offense . . . (ii) any crime of violence . . . (iii) any crime that resulted in the death of, or serious bodily injury to, any person . . . [or] (iv) any crime against a law enforcement officer."*

34. Congress enacted the Laken Riley Act in direct response to violent and property crimes committed against the public. The four enumerated categories share a clear and unmistakable common thread: each involves direct, harmful conduct directed at an

identifiable victim — through violence, force, property theft, or death or serious injury. Simple drug possession appears nowhere in the statute. It was not mentioned in the legislative history. It does not belong in any of the four enumerated categories.

35. The government cannot invoke the Laken Riley Act against Petitioner. Her sole conviction — for simple drug possession under N.J.S.A. § 2C:35-10 — is a non-violent, victimless, possessory offense that falls categorically outside every provision of the Act.

B. Simple Drug Possession Is Not Within Any Laken Riley Act Category — Category-by-Category Analysis

36. First, Petitioner's conviction is not "any burglary offense, theft offense, or shoplifting offense." Possession of a controlled substance involves no taking of property from any person, no entry into a building with criminal intent, no larceny, and no shoplifting. A drug possession conviction criminalizes only the act of having a substance — it is not a property crime. The plain and ordinary meaning of "burglary," "theft," and "shoplifting" has never encompassed simple drug possession.

37. Second, Petitioner's conviction is not "any crime of violence." Under INA § 101(a)(43)(F) and 18 U.S.C. § 16, a crime of violence requires either the use, attempted use, or threatened use of physical force against a person or property, or a felony that by its nature involves a substantial risk of physical force. Possession of heroin involves no use of force, no threat of force, no risk of physical force against any person, and no direct contact with any individual. Courts uniformly hold that simple drug possession is not a crime of violence.

38. Third, Petitioner's conviction is not "any crime that resulted in the death of, or serious bodily injury to, any person." A conviction for simple drug possession — which

criminalizes only the act of having a substance in one's possession — does not result in death or serious bodily injury to any identifiable person. The Judgment of Conviction in this case reflects no victim, no restitution order, and no finding that any person was harmed, injured, or killed. Petitioner received an eighteen-month probationary sentence with no aggravating findings involving harm to any person.

39. Fourth, Petitioner's conviction is not "any crime against a law enforcement officer." This category plainly encompasses offenses such as assault on a police officer, aggravated resistance, or similar conduct directed at law enforcement as such. Possessing a controlled substance has no element involving conduct directed at any officer and cannot, by any reasonable statutory construction, constitute a "crime against a law enforcement officer."

C. Mandatory Detention Under the Laken Riley Act Must Be Established With Clarity — the Government Cannot Meet That Standard

40. Mandatory detention statutes are strictly construed. Where, as under the Laken Riley Act, detention can be triggered by a charge or arrest alone — before any conviction — the government "must at the very least establish the statutory predicate with clarity." See Nosirov v. Rife, 2:26-cv-01534 (E.D. Pa. Apr. 1, 2026, Perez, J.); see also Demore v. Kim, 538 U.S. 510, 531 (2003) (Kennedy, J., concurring) (acknowledging constitutional limits on mandatory detention authority). The rule of lenity and the canon of constitutional avoidance reinforce the need for strict construction of any statute that overrides normal bond authority.

41. The government cannot establish with any clarity — let alone clarity sufficient to justify mandatory civil detention — that a conviction for simple drug possession falls within any

Laken Riley Act category. The Act does not reach this conviction. Any attempt to invoke the Act against Petitioner must be rejected.

D. Dismissed Charges Cannot Resurrect the Laken Riley Act

42. The government may be tempted to rely on the dismissed counts from Petitioner's 2012 indictment — which included racketeering and conspiracy charges — to argue Laken Riley Act applicability. That argument fails as a matter of law. Dismissed charges, acquitted conduct, and nolle prossed counts cannot be used to establish the statutory predicate for mandatory detention. The only conviction that legally exists is for simple drug possession on Count 14 (Amended). That is the only offense that may be considered. Descamps v. United States, 570 U.S. 254, 269 (2013). The Laken Riley Act has no application to this case.

GROUND THREE: § 236(c) MANDATORY DETENTION IS INDEPENDENTLY BARRED — PETITIONER WAS NOT TAKEN INTO CUSTODY "WHEN RELEASED" FROM CRIMINAL CUSTODY — SYLVAIN v. ATTORNEY GENERAL

43. In the alternative, even if this Court were to find that § 236(c) rather than § 1225(b) is the operative detention provision, mandatory detention is still barred by binding Third Circuit authority. INA § 236(c)(1) provides that the Attorney General "shall take into custody any alien who . . . is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) . . . when the alien is released." 8 U.S.C. § 1226(c)(1) (emphasis added).

44. The Third Circuit held in Sylvain v. Attorney General, 714 F.3d 150, 157-58 (3d Cir. 2013), that the "when released" language is a temporal and jurisdictional requirement — not merely procedural guidance. Where the government fails to take the alien into immigration custody at or near the time of release from criminal custody, and instead allows the alien to live freely in the community for a period of years before re-detaining her, § 236(c) mandatory detention is categorically unavailable. The alien then falls under the discretionary detention authority of § 236(a), which entitles her to an individualized bond hearing.

45. Petitioner completed her entire probationary sentence no later than approximately December 2015. The government never sought to detain her in immigration custody at that time. For more than eleven years, she lived openly and lawfully in the Bronx as a Lawful Permanent Resident. When CBP apprehended her at the port of entry in April 2026, it was not acting "when released" — it was acting more than a decade after that moment had passed. Sylvain directly and squarely forecloses any invocation of § 236(c) mandatory detention against Petitioner.

GROUND FOUR: IN THE ALTERNATIVE — PETITIONER IS ENTITLED TO AN INDIVIDUALIZED BOND HEARING UNDER § 1226(a) AND THE WEIGHT OF JUDICIAL AUTHORITY COMPELS ONE

46. If this Court does not order immediate release, it should order Respondents to provide Petitioner with an individualized bond hearing before an immigration judge within seventy-two (72) hours of this Court's Order. Once the "arriving alien" classification fails — as it must, because the § 212(a)(2) predicate is legally defective, the Laken Riley Act does not

apply, and § 236(c) is barred by Sylvain — Petitioner's detention is governed by INA § 1226(a). That provision is discretionary and expressly contemplates individualized release on bond. 8 U.S.C. § 1226(a)(2); 8 C.F.R. §§ 236.1, 1003.19.

47. Federal courts in this district and across the Third Circuit have overwhelmingly ordered bond hearings where the government attempts to deny bond to long-term residents through invocation of § 1225(b) mandatory detention. See A-J-R v. Rokosky, No. 25-17279 (RMB), 2026 WL 25056, at *4 (D.N.J. Jan. 5, 2026) (District of New Jersey rejecting the government's § 1225(b) mandatory detention argument for a resident of the United States); Aguero Venegas v. McShane, 26-cv-01870 (E.D. Pa. Mar. 25, 2026); Ramirez v. Bondi, No. 26-0522, 2026 WL 321442 (E.D. Pa. Feb. 6, 2026); Kourouma v. Jamison, No. CV 26-182, 2026 WL 120208 (E.D. Pa. Jan. 15, 2026); Giyosov v. Jamison, No. CV 26-298, 2026 WL 209839 (E.D. Pa. Jan. 27, 2026). More than three hundred courts have now rejected the government's position.

48. Petitioner's case is stronger than most in this growing line of decisions. She is a Lawful Permanent Resident of seventeen years' standing — not an undocumented entrant. The basis for the government's mandatory detention classification is not a credible legal argument but a factually defective § 212(a)(2) determination that fails under the categorical approach as a matter of federal statutory law. Respondents cannot bootstrap a legally defective inadmissibility charge into authority to deny a seventeen-year LPR her bond rights.

GROUND FIVE: THE DUE PROCESS CLAUSE INDEPENDENTLY REQUIRES IMMEDIATE RELEASE OR, AT MINIMUM, A BOND HEARING

49. The Due Process Clause of the Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. This protection applies to all persons within the United States, including noncitizens in immigration proceedings. Zadvydas v. Davis, 533 U.S. 678, 693 (2001). A returning LPR "has a right to due process" that is substantial and encompasses her liberty interest in remaining in the country with her family. Landon v. Plasencia, 459 U.S. 21, 32-34 (1982).

50. Where, as here, detention is predicated on a legally defective charge, due process is violated independent of any statutory analysis. The government cannot, consistent with the Fifth Amendment, confine a person whose detention rests on a charge that fails as a matter of law and a statute — the Laken Riley Act — that does not reach her offense by any reasonable construction. The appropriate remedy is immediate release.

51. Under the Mathews v. Eldridge, 424 U.S. 319 (1976), balancing test, the constitutional calculus overwhelmingly favors relief: (1) Petitioner has an immense liberty interest as a seventeen-year LPR and sole parent of a minor U.S. citizen child; (2) the risk of erroneous deprivation is not merely high — it is certain, because the predicate charge fails under the categorical approach, the Laken Riley Act plainly does not apply, and § 236(c) is barred by Sylvain; and (3) the government has no legitimate interest in detaining a person on a legally defective charge under statutes that do not reach her conduct.

52. The BIA's decisions in Matter of Li, 29 I&N Dec. 66 (BIA 2025), and Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), which seek to eliminate bond hearings categorically for all persons classified as "arriving aliens," have been rejected by more than 300 federal courts as an unconstitutional and statutorily indefensible legal fiction. They cannot be applied to a Lawful Permanent Resident of seventeen years detained on a legally invalid charge.

GROUND SIX: PETITIONER'S PRIMA FACIE ELIGIBILITY FOR CANCELLATION OF REMOVAL CONFIRMS THAT CONTINUED DETENTION IS UNJUSTIFIABLE

53. Petitioner is prima facie eligible for Cancellation of Removal for LPRs under INA § 240A(a), which requires: (1) at least five years as an LPR — Petitioner has been an LPR for nearly seventeen years; (2) at least seven years of continuous residence after admission in any status — Petitioner's residence in the United States predates the November 2012 stop-time date by more than seven years, as her entry history confirms; and (3) no aggravated felony conviction — Petitioner's conviction for simple possession is not an aggravated felony because first-offense possession under 21 U.S.C. § 844(a) is a federal misdemeanor, not a felony, and cannot constitute drug trafficking under INA § 101(a)(43)(B). Lopez v. Gonzales, 549 U.S. 47 (2006).

54. If granted, Cancellation of Removal under § 240A(a) would permanently terminate Petitioner's removal proceedings and preserve her LPR status in full. Her sixteen-year-old U.S. citizen daughter and U.S. citizen mother would suffer exceptional and extremely unusual hardship from her removal — the precise hardship standard applicable to the § 240A(a) inquiry. The government has no legitimate interest in detaining a person who is prima facie eligible for complete statutory relief from removal, whose underlying charge is legally defective, and whose release would serve the interests of her U.S. citizen family members.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Wendy Carolina Taveras Hernandez respectfully prays that this Court grant the following relief:

PRIMARY RELIEF:

A. **Issue a Writ of Habeas Corpus finding that: (i) the charge of inadmissibility under INA § 212(a)(2)(A)(i)(II) is legally defective under the categorical approach; (ii) N.J.S.A. § 2C:35-10 is not a categorical match for the federal controlled substance definition; (iii) INA § 101(a)(13)(C)(v) does not apply and Petitioner is not an "arriving alien"; (iv) the Laken Riley Act does not apply to Petitioner's simple drug possession conviction; (v) § 236(c) mandatory detention is barred by Sylvain v. Attorney General; and (vi) there is no lawful basis for Petitioner's civil immigration detention — and ORDERING RESPONDENTS TO IMMEDIATELY RELEASE PETITIONER FROM CUSTODY;**

B. **Issue a Temporary Restraining Order and Preliminary Injunction immediately staying Petitioner's removal from the United States pending the final resolution of this Petition and all related proceedings, including any appeal;**

ALTERNATIVE RELIEF (if the Court does not order immediate release):

C. Order Respondents to provide Petitioner with an individualized bond hearing before an immigration judge within seventy-two (72) hours of this Court's Order, at which the

government bears the burden of establishing by clear and convincing evidence that continued detention is necessary;

D. Order that at the bond hearing the immigration judge apply the discretionary § 1226(a) standard — not any mandatory detention provision — and release Petitioner unless the government proves she presents a flight risk or danger to the community that cannot be addressed through conditions of release;

DECLARATORY RELIEF:

E. Declare that N.J.S.A. § 2C:35-10 is not categorically an "offense identified in section 1182(a)(2)" within the meaning of INA § 101(a)(13)(C)(v), and that the NTA's charge of inadmissibility under INA § 212(a)(2)(A)(i)(II) is legally defective as a matter of federal statutory law;

F. Declare that Petitioner is not an "arriving alien" under INA § 101(a)(13)(C)(v) and is not subject to § 1225(b) mandatory detention;

G. Declare that the Laken Riley Act, Pub. L. 119-1, does not apply to Petitioner because her sole conviction for simple drug possession under N.J.S.A. § 2C:35-10 does not constitute any offense enumerated in that statute — not burglary, theft, larceny, shoplifting, a crime of violence, a crime resulting in death or serious bodily injury to any person, or a crime against a law enforcement officer;

H. Declare that INA § 236(c) mandatory detention does not apply because Petitioner was not taken into immigration custody "when released" from criminal custody, as required by Sylvain v. Attorney General, 714 F.3d 150 (3d Cir. 2013);

I. Award Petitioner her reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

J. Grant such other and further relief as this Court deems just, equitable, and proper.

Respectfully submitted,
s/ Franklin S. Montero
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Dated: April 24, 2026

VERIFICATION BY COUNSEL

I, Franklin S. Montero, Esq., declare under penalty of perjury in accordance with 28 U.S.C. § 1746 as follows:

48. I am the attorney for Petitioner in this matter and am personally familiar with the facts of this case;

49. I have read the allegations contained in the foregoing Petition and to the best of my knowledge, those allegations are true based upon my personal knowledge, information and belief;

50. Due to Petitioner's detention and the lack of availability of certain information, certain facts are stated upon information and belief. Respondents have the burden of providing accurate information regarding Petitioner's location and the basis for their detention.

Respectfully submitted,
s/ Franklin S. Montero
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Dated: April 24, 2026

CERTIFICATE OF SERVICE

I, Franklin S. Montero, Esq., hereby certify that on this 24th Day of April, 2026, I electronically filed the foregoing **PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY MOTION FOR IMMEDIATE RELEASE** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

Respectfully submitted,
s/ Franklin S. Montero
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Dated: April 24, 2026