THE HONORABLE JAMES L. ROBART
THE HONORABLE MARY ALICE THEILER

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E[redacted] D[redacted] R[redacted],

Petitioner,

v.

CHAD WOLF, Acting Secretary of the Department of Homeland Security, *et al.*,

Respondents

CASE NO. 2:20-cv-00377-JLR-MAT

RESPONDENTS' RETURN MEMORANDUM AND MOTION TO DISMISS

NOTE ON MOTION CALENDAR:

MAY 8, 2020

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CIVIL DIVISION, OIL
P.O. BOX 878 BEN FRANKLIN STATION
WASHINGTON, DC 20044
TELEPHONE: (202) 616-5573

INTRODUCTION

Federal Respondents, by and through their undersigned counsel, respectfully move to dismiss the petition for a writ of habeas corpus filed by Petitioner [redacted] ("Petitioner"). Respondents assert that dismissal is appropriate without a hearing on the petition.

On the basis of a criminal conviction, Petitioner has been properly mandatorily detained in the custody of the Department of Homeland Security ("DHS") under 8 U.S.C. § 1226(c) since July 2018. Since April 2019, Petitioner has been subject to an administratively final order of removal, which she has petitioned the Ninth Circuit to review.

Section 1226(c) mandates Petitioner's continued detention until the conclusion of her removal proceedings, which will occur when the Ninth Circuit issues a decision on her petition for review. Petitioner's continued mandatory detention until such time is in accordance with due process. Specifically, Petitioner's continued mandatory detention is reasonable here where her proceedings are likely to ultimately conclude with an affirmance of her removal order; where the government has not been responsible for any delay in Petitioner's proceedings; and where Petitioner has asked the Ninth Circuit to hold her proceedings in abeyance, with said abeyance prolonging Petitioner's proceedings and therefore her detention. The government cannot be found to have deprived Petitioner of due process for continuing her mandatory detention in such circumstances, particularly where the government opposed the abeyance on the basis that it would unnecessarily prolong Petitioner's proceedings. Alternatively, should the Court find that Petitioner's continued mandatory detention has become unreasonable, and therefore unconstitutional, the appropriate remedy is an order than an Immigration Judge conduct an individualized bond hearing in Petitioner's case, where Petitioner bears the burden of proving that she is neither a flight risk or dangerous.

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PROCEDURAL HISTORY

Petitioner is a native and citizen of El Salvador. Ex. A, Form I-213 – Record of Deportable/Inadmissible Alien (July 18, 2018), at 1-2.[1] She illegally entered the United States in May 2010. Ex. A at 2-3; Ex. B, United States District Court for the Southern District of Texas – Criminal Complaint No. 7:10-po-02582. In August 2011, Petitioner was convicted in the United States District Court for the Northern District of California for "Conspiracy to Possess with Intent to Distribute and to Distribute One Kilogram or More of Heroin," in violation of 21 U.S.C. § 846. Ex. C, United States District Court for the Northern District of California – Judgment and Sentencing in Case No. CR-1-00423-002 JSW, at 1. She was sentenced to 120 months' imprisonment, *id.* at 2, and upon her July 2018 release, transferred into DHS custody, Ex. A at 3.

On August 23, 2018, the DHS personally issued Petitioner a Notice to Appear ("NTA") charging her as removable from the United States and ordering her to appear before an Immigration Judge. Ex. D, Notice to Appear, at 1-2. On August 31, 2018, Petitioner, who remained in DHS custody, filed a motion asking the Immigration Judge to consider releasing her under bond. Ex. E, Motion Requesting Hearing for Bond Redetermination. Following an October 1, 2018 custody redetermination hearing, the Immigration Judge issued an order finding that Petitioner was mandatorily detained under 8 U.S.C. § 1226(c), and therefore statutorily ineligible for release under bond. Ex. F, Custody Order of the Immigration Judge (Oct. 1, 2018); *see* Ex. G, Declaration of Elizabeth Burgus, at 2 ¶ 5. Petitioner waived her right to appeal this decision to the Board of Immigration Appeals ("Board"). Ex. F.

On November 8, 2018, Petitioner appeared before an Immigration Judge and presented the merits of her applications for relief and protection from removal. *See* Ex. G at 2 ¶ 6. The

[1] All exhibits are attached to a declaration prepared by undersigned counsel.

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Immigration Judge denied her applications and ordered her removed. *Id.* On November 26, 2018, Petitioner appealed the Immigration Judge's decision to the Board of Immigration Appeals. *Id.* at 2 ¶ 7. On April 16, 2019, the Board issued a decision dismissing Petitioner's administrative appeal. *Id.* at 2 ¶ 8. On April 19, 2019, Petitioner filed a petition for review in the Ninth Circuit and a motion to stay her removal pending the Ninth Circuit's decision in the case. *See* Ninth Cir. Case No. 19-70955, ECF No. 1. On May 7, 2019, Petitioner filed a motion asking the Ninth Circuit to hold her proceedings in abeyance while an application for a T visa, which she filed with United States Citizenship and Immigration Services ("USCIS") on March 27, 2019, was pending with the agency. *See* Ninth Cir. Case No. 19-70955, ECF No. 8. Over the government's objection, on August 29, 2019, the Ninth Circuit held Petitioner's proceedings in abeyance pending the adjudication of her T Visa application. *See* Ninth Cir. Case No. 19-70955, ECF Nos. 9, 13.

On March 9, 2020, with her T Visa application pending and Ninth Circuit proceedings stayed, Petitioner filed the instant habeas petition challenging her continued detention in DHS custody. *See generally* Pet'r's Habeas Pet. USCIS denied Petitioner's T Visa application on April 8, 2020. Ex. H, T Visa Denial Letter.[2] Petitioner's Ninth Circuit proceedings remain in abeyance, with Petitioner scheduled to file a status report concerning her T Visa proceedings on May 18, 2020. *See* Ninth Cir. Case No. 19-70955, ECF No. 15.

ARGUMENT

I. Petitioner is Lawfully Mandatorily Detained Under 8 U.S.C. § 1226(c)

Petitioner does not dispute that she was initially mandatorily detained under 8 U.S.C. § 1226(c). *See* Ex. F; *see also, generally*, Pet'r's Habeas Pet. As an alien who has filed a petition for review from an administratively final order of removal and obtained a stay of removal from the

[2] This exhibit is substantially redacted because, pursuant to 8 U.S.C. § 1367, further details about Petitioner's T visa application and its denial may not be disclosed.

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TELEPHONE: (202) 616-5573

Ninth Circuit, Petitioner is also currently mandatorily detained under 8 U.S.C. § 1226(c). *See* Pet'r's Habeas Pet. at 8; *see also Djelassi v. ICE Field Office Director*, -- F.Supp.3d --, 2020 WL 263670, at *8 (W.D. Wash. Jan. 17, 2020) ("Thus under *Jennings*, noncitizens initially detained under § 1226(c) remain detained under that statute pending a decision on whether they are to be removed, not pending the conclusion of administrative proceedings.")

II. Mandatory Detention Under 8 U.S.C. § 1226(c) Must Continue for the Duration of Removal Proceedings

The Supreme Court has recognized that "§ 1226(c) does not on its face limit the length of the detention it authorizes," and further, "that detention of aliens within [§ 1226(c)'s] scope *must* continue pending a decision on whether the alien is to be removed from the United States." *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018) (emphasis in original) (internal quotations omitted). The Supreme Court criticized the Ninth Circuit's interpretation of 8 U.S.C. § 1226(c) as including an implicit six-month time limit on the length of mandatory detention as "fall[ing] far short of a plausible statutory construction." *Id.* (internal quotations omitted). Accordingly, Petitioner's continued detention while her petition for review remains pending in the Ninth Circuit is authorized by statute and recent, interpretive Supreme Court precedent.

III. Petitioner's Continued Detention Under 8 U.S.C. § 1226(c) is in Accordance with Due Process

Following *Jennings*, unable to argue that her continued detention is precluded by statute, Petitioner instead argues that her detention for a period or longer than six months violates her due process rights. *See* Pet'r's Habeas Pet. at 12 ¶ 52. But this Court has explicitly rejected the proposition that mandatory detention necessarily becomes unconstitutional when it exceeds six months. *See Banda v. McAleenan*, 385 F.Supp.3d 1099, 1117 (W.D. Wash. 2019). The Court found such a rule "inconsistent with the fact-dependent nature of the constitutional question before the Court, namely whether a petitioner's prolonged [mandatory] detention has become unreasonable."

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Id. To answer this fact-dependent constitutional question in a case such as Petitioner's, where a criminal alien is mandatorily detained under 8 U.S.C. § 1226(c), this Court has used these factors:

> (1) the total length of detention to date; (2) the likely duration of future detention; (3) whether the detention will exceed the time the petitioner spent in prison for the crime that made [her] removable; (4) the nature of the crimes the petitioner committed; (5) the conditions of detention; (6) delays in the removal proceedings caused by the detainee; (7) delays in the removal proceedings caused by the government; and (8) the likelihood that removal proceedings will result in a final order of removal.

Martinez v. Clark, 2019 WL 5968089, at *7 (W.D. Wash. May 23, 2019) (citing, *inter alia*, *Cabral v. Decker*, 331 F.Supp.3d 255, 261 (S.D.N.Y. 2018); *see Banda*, 385 F.Supp.3d at 1118 (applying all factors except (3) and (4) in the case of an arriving alien mandatorily detained under 8 U.S.C. § 1225(b)); *Djelassi*, 2020 WL 263670, at *2 (same).

Before addressing each of these factors in Petitioner's case, it is notable that recently, the Court has favored the analysis of these factors over applying an alternate test outlined in *Mathews v. Eldridge*, 424 U.S. 319 (1976), when addressing the constitutionality of continued mandatory detention. *See Banda*, 385 F.Supp.3d at 1106-07, 1118. The Court reasoned that while the *Mathews* factors – (1) the private interest affected by the government action; (2) the risk of an erroneous deprivation of the private interest through the procedures used, and the probable value, if any, of additional or alternative procedures; and (3) the government's interest, including the function involved and the burden that additional or alternative procedures would entail – were "well-suited to determining whether due process requires a second bond hearing," they were "not particularly probative" of whether due process required the provision of an initial bond hearing to a mandatory detainee not statutorily entitled to one. *Id.* at 1118. *Banda* indicates that the Court may not find the *Mathews* factors "particularly probative" here, where an Immigration Judge has never analyzed the merits of Petitioner's request for release. *See* Ex. F. However, the *Mathews* factors, particularly the

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government's burden in providing such a hearing – a factor absent from the eight reasonableness factors outlined above – should not be entirely discounted.

In brief, Petitioner's interest in release from detention is minimized where she stands convicted of a very serious crime, *see* Ex. B, one for which she served almost seven years in prison before being immediately transferred into the custody of the DHS for mandatory detention throughout her removal proceedings, *see* Ex. A. And the burden on the government in providing a bond hearing is considerable where the government is statutorily mandated to detain Petitioner until the conclusion of her removal proceedings; unnecessary delay in Petitioner's proceedings is attributable to Petitioner's litigation choices, choices the government has opposed; and Petitioner has pursued other avenues for release. *See Jennings*, 138 S. Ct. at 846 ("detention of aliens within [§ 1226(c)'s] scope *must* continue pending a decision on whether the alien is to be removed from the United States"); Ninth Cir. Case No. 19-70955, ECF No. 9 (government's opposition to Petitioner's request that her Ninth Circuit proceedings be held in abeyance); Pet'r's Habeas Pet. at 9 ¶¶ 41-42 (discussing Petitioner's request for humanitarian parole submitted to ICE in July 2019 and denied in November 2019). Accordingly, should the Court afford any weight to the *Mathews* factors in this case, they support a determination that Petitioner's detention is in accordance with due process.

The *Mathews* analysis aside, however, the eight reasonableness factors applied by the Court also support the determination that Petitioner's continued mandatory detention is reasonable and constitutionally permissible. Considering each of these factors in turn, first, Petitioner has been mandatorily detained under 8 U.S.C. § 1226(c) for approximately twenty months, from July 2018 until today. *See* Ex. A at 3; *see also* Ex. F. Second, the conclusion of Petitioner's detention is reasonably foreseeable. Since August 29, 2019, pursuant to Petitioner's request, her proceedings have been held in abeyance in the Ninth Circuit pending the adjudication of her T visa application by USCIS. Ninth Cir. Case No. 19-70955, ECF Nos. 8, 13. In a decision dated April 8, 2020, USCIS

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denied Petitioner's T visa application. Ex. H. While Petitioner has a right to administratively appeal the T visa denial within thirty-three days of its issuance, USCIS's initial adjudication of the application renders it far less speculative as to how long Petitioner's Ninth Circuit proceedings will remain in abeyance, and accordingly, far less speculative as to how long Petitioner's mandatory detention will continue. *See* Ex. H at 4 (discussing administrative appeal rights).

Third, Petitioner was convicted of a heroin trafficking offense in August 2011, sentenced to 120 months' imprisonment, and released in July 2018. *See* Ex. A at 3; Ex. C. Petitioner's mandatory detention in DHS custody – currently, for a duration of less than two years – is highly unlikely to persist for over five years to match the time she spent in prison for the crime rendering her subject to mandatory detention. This is particularly so where, as discussed above, Petitioner's Ninth Circuit proceedings are unlikely to remain in abeyance for much longer following USCIS's April 8, 2020 adjudication of Petitioner's T visa application. *See* Ex. H. Fourth, as stated and supported by the 120-month mandatory minimum sentence Petitioner received, Petitioner's heroin trafficking conviction is serious and dangerous. *See, e.g.*, *Guerrero v. Whitaker*, 908 F.3d 541, 543 (9th Cir. 2018) ("[T]he Attorney General has specified, in a published decision, that all drug-trafficking offenses are particularly serious, except in 'very rare' instances.") (citing *Matter of Y-L-*, 23 I&N Dec. 270, 276 (A.G. 2002)). Petitioner's attempts to link her conviction to her own alleged victimization, *see* Pet'r's Habeas Pet. at 4-5 ¶¶ 14-20, do not minimize the serious and dangerous nature of her crime. All factors considered, Petitioner cannot deny that she stands convicted of a serious and dangerous offense.

Fifth, Petitioner notes generally that DHS detention facilities can be "prison-like," allegedly hampering the ability of detained aliens to retain counsel. *See* Pet'r's Habeas Pet. at 14-15 ¶¶ 60, 66. However, Petitioner does not argue specifically that her detention, as opposed to some other factor

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or a combination of factors, deprived her of an ability to obtain counsel. *See generally* Pet'r's Habeas Pet. Nor does she offer any other criticisms of her conditions of detention. *See generally id.*

Regarding the six and seventh reasonableness factors – delays in the removal proceedings caused by the detainee and delays in the removal proceedings caused by the government, the government cannot be faulted for any delay in Petitioner's case. Petitioner came into DHS custody as a mandatory detainee in July 2018, *see* Ex. A at 3, and was placed into removal proceedings in late August 2018, *see* Ex. D. She was ordered removed by an Immigration Judge following a full hearing on the merits of her claims for relief from removal in November 2018. *See* Ex. G at 2 ¶ 6. The Board issued a decision dismissing Petitioner's administrative appeal in April 2019. *Id.* at 2 ¶¶ 7-8. Petitioner's removal proceedings before the agency, beginning in late August 2018 and concluding with the dismissal of her administrative appeal in April 2019, were not unreasonably lengthy, nor did they include any action by the government that resulted in delay.

Contrarily, Petitioner lengthened her removal proceedings, and consequently her mandatory detention, by petitioning the Ninth Circuit to review her removal order and asking that her removal be stayed pending this review. *See* Ninth Cir. Case No. 19-70955, ECF No. 1. The Supreme Court has found added detention time justified when it is the result of an alien pursuing further legal process, as Petitioner is here. *See Demore v. Kim*, 538 U.S. 510, 530 n.14 (2003) ("As we have explained before, the legal system . . . is replete with situations requiring the making of difficult judgments as to which course to follow, and, even in the criminal context, there is no constitutional prohibition against requiring parties to make such choices.") (internal quotations omitted).

Furthermore, Petitioner not only sought Ninth Circuit review; in May 2019, having been mandatorily detained for approximately nine months, Petitioner asked the Ninth Circuit to hold her proceeding in abeyance while she pursued a different form of relief before another agency. Ninth Cir. Case No. 19-70955, ECF No. 8. The government opposed this request, noting in its opposition

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that the filing of a T visa application affects neither the administrative finality of a removal order nor the Ninth Circuit's jurisdiction over that order, Ex. I, Resp't's Opp. to Abeyance, at 6, and indicating that an abeyance would lengthen Petitioner's proceedings, which is particularly problematic where Petitioner is mandatorily detained, *id.* at 6-7. Yet, over the government's objection, the Ninth Circuit granted Petitioner's abeyance request in August 2019. Ninth Cir. Case No. 19-70955, ECF No. 13. The unnecessary delay in Petitioner's proceedings caused by the abeyance is attributable to Petitioner. Moreover, to the extent Petitioner pursues further review with regard to her T visa application, and this serves to keep her Ninth Circuit proceedings in abeyance, the resultant additional delay will be attributable to her as well.[3] Analyzing Petitioner's removal proceedings from their inception in August 2018 until today, it is clear that any delay is attributable to Petitioner's legal choices, and that the government, for its part, has attempted – unfortunately unsuccessfully – to prevent such delay. *See* Ninth Cir. Case No. 19-70955, ECF No. 9. In such circumstances, where Petitioner has created the delay that has resulted in her continued mandatory detention, the government cannot be faulted for failing to provide her with due process.

Finally, concerning the last reasonableness factor the Court considers, it is likely that Petitioner's removal proceedings will result in a final order of removal. At the outset, the prospect that Petitioner may now pursue further review of her T visa application denial has no bearing on the administrative finality of her removal order, nor does it deprive the Ninth Circuit of jurisdiction over that order. *See* Ex. I at 6. With regard to the merits of her petition for review, Petitioner is also unlikely to be successful. Before the Immigration Judge, Petitioner applied for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Pet'r's Habeas Pet. at 1. Petitioner is unlikely to prevail in her challenges to the agency's denial of these forms of relief and

[3] Petitioner has thirty-three days to appeal the denial of her T visa application. *See* Ex. H at 4.

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protection because such denials are reviewed deferentially, and only subject to reversal only if Petitioner establishes that the record compels a contrary conclusion. *See Guo v. Sessions*, 897 F.3d 1208, 1212 (9th Cir. 2018) ("We review denials of asylum, withholding, and CAT relief for substantial evidence . . . . We may reverse the decision of the [Board] only if the applicant shows that the evidence *compels* the conclusion that the . . . decision was incorrect.") (emphasis in original) (internal quotations and citations omitted). Before this Court, Petitioner does not argue that she is likely to prevail before the Ninth Circuit, much less does she criticize any particular aspect of the agency's removal order. *See* Pet'r's Habeas Pet. at 6-7 ¶ 26 (generally criticizing the agency's determination that Petitioner failed to meet her burden of proof).[4] Ultimately, Petitioner is unlikely to prevail before the Ninth Circuit, and her proceedings are likely to conclude with the Ninth Circuit dismissing her petition and affirming the agency's final order of removal.

Considering the eight reasonableness factors the Court has analyzed in other cases when determining whether mandatory detention has become unconstitutionally prolonged, it is clear in this case that Petitioner's mandatory detention continues to comport with due process. *See Martinez*, 2019 WL 5968089, at *7 (listing factors). Of particular relevance to the reasonableness analysis in this case is the fact that any delay in Petitioner's proceedings is attributable to her choice to ask the Ninth Circuit to hold her proceedings in abeyance, with the resulting abeyance prolonging her proceedings and detention. Ninth Cir. Case No. 19-70955, ECF Nos. 8, 13; *see Demore*, 538 U.S. at 530 n.14. The government cannot be found to have deprived Petitioner of due process for continuing her mandatory detention in such circumstances, particularly where the government opposed the abeyance on the basis that it would unnecessarily prolong Petitioner's proceedings. *See* Ex. Ex. I at 6-7. The Court should find that Petitioner's continued mandatory detention under

[4] Pursuant to 8 C.F.R. § 208.6, further details about Petitioner's claims for relief and protection and the agency's denials of her applications may not be disclosed without Petitioner's consent.

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8 U.S.C. § 1226(c) has been reasonable and in accordance with due process, and should accordingly dismiss Petitioner's habeas petition.

IV. Alternatively, Petitioner's Appropriate Remedy is a Bond Hearing Conducted under 8 U.S.C. § 1226(a)

Should the Court determine that Petitioner's continued mandatory detention has become unreasonable, the appropriate remedy is a bond hearing conducted by an Immigration Judge in accordance with the standards set forth for such hearings under 8 U.S.C. § 1226(a). At such a bond hearing, Petitioner should bear the burden of proving that she poses neither a danger nor a flight risk. *See* 8 U.S.C. § 1226(a); *see also Matter of Siniaukas*, 27 I&N Dec. 207, 207 (BIA 2018) ("An alien in a custody determination under [8 U.S.C. § 1226(a)] must establish to the satisfaction of the Immigration Judge and Board that he or she does not present a danger to persons or property, is not a threat to national security, and does not pose a flight risk.").

Arguments that the government should bear the burden at such a bond hearing, *see* Pet'r's Habeas Pet. at 13-15 ¶¶ 56-62, are foreclosed by *Jennings*, *see* 138 S. Ct. at 843, 847-48. There, the majority found "no justification for any of the procedural requirements the [Ninth Circuit] layered into [8 U.S.C. § 1226(a)]" – such as periodic bond hearings every six months where the government bears the burden of proof by clear and convincing evidence – "without any arguable statutory foundation." Even Justice Breyer, writing that he would find bond hearings constitutionally required for aliens detained longer than six months, stated, "I believe that those [bond] proceedings should take place in accordance with customary rules of procedure and burdens of proof rather than the special rules that the Ninth Circuit imposed." *See id.* at 882 (Breyer, J., dissenting).

This Court has recently recognized that placing the burden on the government at a bond hearing "is clearly irreconcilable with *Jennings*." *See Djelassi*, 2020 WL 263670, at *8. Specifically, the Court held that *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942 (9th

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WASHINGTON, DC 20044
TELEPHONE: (202) 616-5573

Cir. 2008) – where the Ninth Circuit concluded that the government should bear the burden at a bond hearing ordered when 8 U.S.C. § 1226(c) detention has become unreasonably prolonged – was "no longer binding authority following *Jennings*." *See Djelassi*, 2020 WL 263670, at *8. Yet, without explanation, the Court has continued to rely on *Casas-Castrillon* in placing the bond hearing burden on the government when it finds that mandatory detention has become unreasonably prolonged. *See id.* at *11 (ordering the government to provide an alien with an individualized bond hearing "that complies with the requirements of *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)"); *see also Singh*, 638 F.3d at 1203 (quoting *Casas-Castrillon*, 535 F.3d at 951, as stating that, "An alien is entitled to release on bond unless the government establishes that he is a flight risk or will be a danger to the community.") (internal emphasis and quotations omitted). The Court should decline to do so here.

Furthermore, placing the bond hearing burden on the government when mandatory detention has become prolonged is not only inconsistent with *Jennings*, it is illogical in that it entitles a mandatory detainee – who is not statutorily eligible for a bond hearing, in some cases because the alien's criminal history makes her *per se* dangerous – to more process than an alien discretionarily detained, including for a prolonged period, under 8 U.S.C. § 1226(a) and statutorily entitled to a bond hearing. Accordingly, based on precedent and practicality, should the Court determine that Petitioner's detention has become unreasonably prolonged in violation of her due process rights, the Court should order the government to provide her a bond hearing under 8 U.S.C. § 1226(a), where she bears the burden of proving that she is neither a flight risk nor a danger to the community.[5]

[5] Even in the event Petitioner's habeas petition is not dismissed, her request for the award of attorneys' fees under the Equal Access to Justice Act ("EAJA") should be declined. *See* Pet'r's Habeas Pet. at 18. Requests for EAJA fees are generally not countenanced in habeas proceedings. *See In Re Hill*, 775 F.2d 1037, 1040 (9th Cir. 1985). And furthermore, Petitioner's fee request, made prior to the Court's decision in the case, is premature.

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WASHINGTON, DC 20044
TELEPHONE: (202) 616-5573

CONCLUSION

For the foregoing reasons, the Court should find that Petitioner's mandatory detention under 8 U.S.C. § 1226(c) is reasonable and in accordance with due process, and should accordingly dismiss Petitioner's petition for a writ of habeas corpus. Alternatively, should the Court determine that Petitioner's detention has become unreasonably prolonged such that it violates her due process rights, the Court should order than an Immigration Judge conduct an individualized bond hearing in her case, where Petitioner shall bear the burden of proving that she is neither a flight risk nor a danger to the community.

DATED this 15th day of April, 2020.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General
Civil Division
U.S. Department of Justice

CINDY S. FERRIER
Assistant Director
Office of Immigration Litigation

/s/ *Victoria M. Braga*
VICTORIA M. BRAGA
Trial Attorney
Office of Immigration Litigation

U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION, OIL
P.O. BOX 878 BEN FRANKLIN STATION
WASHINGTON, DC 20044
TELEPHONE: (202) 616-5573

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Victoria M. Braga
VICTORIA M. BRAGA, NYS# 5324306
Trial Attorney
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20037
Phone: (202) 616-5573
Email: Victoria.M.Braga@usdoj.gov