No. 16-1723

IN THE

United States Court of Appeals for the Ames Circuit

GREGORIOS V. LASH, WARDEN,

Respondent-Appellant,

v.

JACQUELINE PERALTA,

Petitioner-Appellee.

On Appeal from the
United States District Court
for the District of Ames

JOINT APPENDIX

TABLE OF CONTENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE AMES CIRCUIT

Gregorios V. Lash, Warden v. Jacqueline Peralta	Docket Nos. 16-1723

The parties shall address only the following two issues in their submissions to this Court:

1. Whether third-degree assault under Ames law, *see* Ames Rev. Stat. § 603-42(1), is an "aggravated felony" under the Immigration and Nationality Act, *see* 8 U.S.C. § 1101(a)(43)(F).

2. Whether an alien is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), where the alien is detained two years after her release from state custody.

As in other circuits, the Ames Circuit reviews the District Court's findings of fact for clear error and reviews *de novo* the District Court's ultimate legal conclusions drawn from the facts. *United States v. Rodriguez-Ortiz*, 999 F. 1, 5 (Ames Cir. 1985).

So ordered January 20, 2016.

Eric Lincoln
Clerk, Court of Appeals

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF AMES

Jacqueline Peralta, v. Gregorios V. Lash, Warden	Docket No. 15-CV-2347-JD

ORDER AND REASONS

Before the court is petitioner Jacqueline Peralta's petition for a writ of *habeas corpus*. For the following reasons, the court finds that the petitioner is entitled to relief and accordingly grants the writ.

I.

Petitioner Jacqueline Peralta came to the United States at age 14 in 2008, when she and her mother left their native El Salvador. Both Peralta and her mother are legal permanent residents. Peralta lived in Ames City without major incident[1] for four years, attending Ames Central High School and working at Grand Buffet, a (beloved) restaurant in Ames City.

The events giving rise to this petition began in 2013, when Peralta had an altercation with her neighbor. She ultimately pled guilty to third-degree assault, *see* Ames Rev. Stat. § 603-42, and was sentenced to a term of imprisonment of one year, the maximum permitted under the statute; most of

[1] Peralta was arrested for being a minor in possession of alcohol and disorderly conduct at age 17. The minor in possession charge was dismissed, but she ultimately pled guilty to the disorderly conduct charge.

her sentence was suspended. Peralta admitted during her plea colloquy that she intentionally slapped and kicked her neighbor when the two became involved in an argument over a sum of money that the neighbor owed to Peralta.

She was released from Ames custody on September 19, 2013. By all accounts, petitioner has been a model citizen since her release. She is engaged to Jack Holder, a man she met working at Grand Buffet, and the two have opened a successful restaurant of their own in Ames City. She takes night classes towards a veterinary degree at Ames State University and cares for her mother, who suffered serious injuries in a car accident.

On December 23, 2015, Peralta was arrested by Immigration and Customs Enforcement (ICE) officers and detained. A Notice to Appear charged her with removability under 8 U.S.C. § 1227(a)(2)(A)(iii), on the ground that her conviction for third-degree assault was an aggravated felony. Events have unfolded rapidly since then. Almost immediately, Peralta asked for a bond hearing pursuant to 8 U.S.C. § 1226(a). Peralta made two arguments to the immigration judge (IJ). First, she claimed that her conviction for third-degree assault under Ames law is not a predicate for § 1226(c) because third-degree assault is not a "crime of violence" and hence not an "aggravated felony." Second, she argued that she was not taken into immigration custody "when . . . released" from state criminal custody, as the statute requires. The IJ rejected both arguments and refused to grant

Peralta a bond hearing, and the Board of Immigration Appeals (BIA) affirmed.[2]

II.

Peralta now petitions this court for a writ of *habeas corpus*,[3] pressing the same arguments that she advanced before the BIA. Although either argument alone would be dispositive, the court concludes that both have merit.

A.

Peralta first contends that she did not commit an aggravated felony and thus did not commit a predicate crime for mandatory detention. An "aggravated felony" includes "a crime of violence (as defined in [18 U.S.C. § 16], but not including a purely political offense) for which the term of imprisonment is at least one year." 8 U.S.C. § 1101(a)(43)(F). 18 U.S.C. § 16, in turn, defines the term "crime of violence" as follows:

> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person

[2] Neither the IJ nor the BIA applied "substantially unlikely to establish" standard from *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999); instead, they held, on the merits, that petitioner was subject to § 1226(c). As before the BIA, respondent has expressly declined to rely on the nominally weaker *Joseph* standard in this litigation and simply requests review of the agency's decision with respect to both of petitioner's arguments on the merits. The court will oblige.

[3] An alien may bring a *habeas* petition in federal district court in these circumstances. *See Roni v. Zolikoffer*, 32 F.4th 211, 219 (Ames. Cir. 2013) (*Joseph* hearings do not result in a "final order" subject to a petition for review) (dismissed on other grounds).

> or property of another may be used in the course of committing the offense.

Peralta was convicted under Ames Rev. Stat. § 603-42, which provides:

> A person is guilty of third-degree assault when: (1) with intent to cause bodily harm to another, he or she causes bodily harm to that person or to another person; or (2) he or she recklessly or negligently causes serious bodily harm to another person. Any person convicted of third-degree assault is guilty of a misdemeanor and may be sentenced to not more than one year in prison.

Peralta admitted in her plea colloquy in Ames state court that she intentionally assaulted her neighbor, so the relevant inquiry is whether subsection (1) of the Ames statute "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." The court concludes that it does not. "[A] crime may result in [bodily harm] without involving use of physical force." *United States v. Torres-Miguel,* 701 F.3d 165, 168 (4th Cir. 2012). The Ames statute focuses on the effect of the defendant's act, not whether the act itself involved physical force. So, too, do the few decisions of the Ames Supreme Court that construe § 603-42. In *State v. James*, 231 Am. 432 (Ames 2010), for example, the jury heard evidence that the defendant had angrily thrown a baseball at the victim, breaking one of the victim's ribs. The court held that the evidence was sufficient to support a conviction for intentional third-degree assault:

> The statute requires that the defendant have the intent to cause bodily harm and that the bodily harm actually be caused. Here, the jury heard evidence that defendant became angry with the victim and threw a baseball at the victim with high velocity, breaking one of the victim's ribs. Obviously, the victim was

> harmed, and the jury could reasonably infer that defendant intended to cause such harm.

Id. at 436. The court did not say that the assault statute required the use of physical force.

In reaching the contrary conclusion, the BIA relied on its decision in *Matter of Martin*, 23 I&N Dec. 491 (BIA 2002), which held that intentional third-degree assault under Connecticut law is an aggravated felony. *Martin* is not persuasive. The BIA erroneously focused on the legislative history of 18 U.S.C. § 16, *see Flores v. Ashcroft*, 350 F.3d 666, 671 (7th Cir. 2003), and ignored the statute's plain text, which requires that the predicate crime have as an element the use of physical force. The Ames statute does not satisfy that requirement. There are myriad ways to intentionally injure someone without applying physical force—a term which the Supreme Court has interpreted to mean *violent* force, *see Johnson v. United States*, 559 U.S. 133, 140 (2010)—such as, for example, administering poison. *See, e.g.*, *Chrzanoski v. Ashcroft*, 327 F.3d 188, 195 (2d Cir. 2003).

The court therefore holds that intentional third-degree assault under Ames law is not an "aggravated felony" that can serve as a predicate for the mandatory detention provision.

B.

Peralta also asserts that she is not subject to mandatory detention under 8 U.S.C. § 1226(c) because she was not taken into immigration custody "when . . . released." She claims that the two-year gap between her release

from Ames custody and her immigration detention render the mandatory detention provision inapplicable. The court again agrees with Peralta.

Although the general norm under the INA is for a bond hearing prior to deportation proceedings, 8 U.S.C. § 1226(a), Congress made detention pending removal proceedings mandatory for certain criminal aliens, *see* 8 U.S.C. § 1226(c). Section 1226 provides:

> (c) **Detention of criminal aliens**
>
> (1) **Custody**
>
> The Attorney General shall take into custody any alien who—
>
> > (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,
> >
> > (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,
> >
> > (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[d] to a term of imprisonment of at least 1 year, or
> > (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,
>
> when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.
>
> (2) **Release**
>
> The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a

> potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

Much ink has been spilled on the meaning of this provision, with thoughtful jurists weighing in on both sides. The court readily acknowledges that the courts of appeals to have considered this issue are unanimous that § 1226(c) applies regardless of whether there is a gap in custody. The BIA too has concluded that a gap in custody does not defeat the government's authority to detain under § 1226(c). *Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001). But at the same time, it appears that the majority of district courts, especially those within this district, have come to the opposition conclusion. *See, e.g.*, *Wilton v. Zolikoffer*, 567 F. Supp. 3d 300, 306–07 (D. Ames. 2014) (collecting cases).

Given the BIA's decision in *Rojas*, "*Chevron* deference" does more than just "lurk[] in the background of this case." *Sylvain v. Att'y Gen.*, 714 F.3d 150 (3d Cir. 2013). Under *Chevron*, this Court must defer to an agency's reasonable construction of an ambiguous statutory provision in a statute the agency administers. *See Chevron, U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837 (1984). *Chevron* thus sets forth a two-step framework. At step one, the Court asks "whether Congress has directly spoken to the precise question

at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id*. at 842–43. At step two, if the statute is in fact ambiguous, "the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id*. at 843. Applying the "traditional tools of statutory construction," *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446 (1987), the court finds that the statute unambiguously forecloses application of § 1226(c) where there is a two-year gap in custody.

The mandatory detention aspect of the statute derives from § 1226(c), which allows the Attorney General to release "an alien described in paragraph (1)" under narrow circumstances not applicable here. Respondent contends that the statute is ambiguous as to whether an "alien described in paragraph (1)" is an alien whom the Attorney General must detain "when the alien is released." *See Rojas*, 23 I&N Dec. at 117. But the statute is not ambiguous. The "when . . . released" clause is contained in the single sentence comprising the entirety of "paragraph (1)." If, as the government argues, Congress intended § 1226(c)(2) to apply only to the aliens listed in subparagraphs (A) through (D), it certainly knew how to say so. The government responds that the timing of an alien's detention is not "a part of the *description* of an alien who is subject to detention," *Rojas*, 23 I&N Dec. at 121, but this Court can discern no reason why the timing of an alien's

detention is any less a description of an alien than the crimes the alien has committed.

Indeed, principally because respondent's reading of § 1226(c)(2) renders the "when . . . released" clause surplusage, the court rejects its construction. *See, e.g.*, *Preap v. Johnson*, 303 F.R.D. 566, 581 (N.D. Cal. 2014). For § 1226(c) to apply, "an alien described in paragraph (1)" must be detained "when . . . released," and an alien detained two years after her release from custody is not detained "when . . . released."[4]

That is not the end of the inquiry, though, because respondent contends that it is not stripped of authority under § 1226(c) by a failure to detain an alien when the alien is released. The Court acknowledges that respondent draws strong support from the so-called "loss of authority" cases which, boiled down to a pithy maxim, stand for the proposition: "better late than never." More precisely, the Supreme Court has held on numerous occasions that, "if a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction." *United States v. James Daniel*

[4] The court notes that respondent has left no stone unturned in this and other cases in attempting to demonstrate that § 1226(c) is ambiguous. Taken at face value, respondent's arguments are self-defeating because, when considered alongside petitioner's array of arguments, respondent demonstrates at best that the ambiguity is grievous. *See Muscarello v. United States*, 524 U.S. 125, 139 (1998). Accordingly, the rule of lenity would compel a ruling in petitioner's favor. *See Sanchez-Penunuri v. Longshore*, 7 F. Supp. 3d 1136, 1157 (D. Colo. 2013), *overruled by Olmos v. Holder*, 780 F.3d 1313 (10th Cir. 2015).

Good Real Prop., 510 U.S. 43, 63 (1993); *see also Lora*, *v. Shanahan*, 804 F.3d 601, 612 (2d Cir. 2015); *Hosh v. Lucero*, 680 F.3d 375, 382 (4th Cir. 2012).

Respondent relies principally on *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990), which construed similar provisions in the Bail Reform Act, requiring the government to provide a bond hearing "immediately upon a [defendant's] first appearance before [a] judicial officer." 18 U.S.C. § 3142(e)-(f). Montalvo-Murillo asserted that he was not subject to the statute's detention provision because he did not receive a bond hearing at his first appearance. *Montalvo-Murillo*, 495 U.S. at 716. The Supreme Court rejected his position, reasoning that "[t]here is no presumption or general rule that for every duty imposed upon the court or the Government and its prosecutors there must exist some corollary punitive sanction for departures or omissions, even if negligent." *Id.* "[T]he word 'shall' in the Act's hearing time requirement does not operate to bar all authority to seek pretrial detention once the time limit has passed. Although the duty is mandatory, the sanction for breach is not loss of all later powers to act." *Id.* at 718. The Court was primarily concerned that the government's inevitable failure to ensure strict compliance with the Act's timing requirement would bestow a "windfall" on defendants. *Id.* at 720. Accordingly, the Court held that Montalvo-Murillo was not "entitled to release as a sanction for the delay." *Id.* at 722.

This Court concludes that *Montalvo-Murillo* is distinguishable. Unlike in *Montalvo-Murillo*, the relief requested by petitioner—a bond hearing—is

contemplated by the statute. *See* 8 U.S.C. § 1226(a). Granting petitioner's *habeas* petition is consistent with *Montalvo-Murillo* and Congress's intent in passing § 1226(c). None of the many arguments raised by respondent persuade this court otherwise.

III.

For the foregoing reasons, petitioner's petition for a writ of *habeas corpus* is hereby GRANTED.[5]

Ames City, Ames, this 12th day of January, 2016.

Julius DeGraafenreed
JULIUS DEGRAAFENREED
UNITED STATES DISTRICT JUDGE

[5] The Court grants respondent's motion for a stay pending appeal.

Oral Decision of the Immigration Judge

This is a removal case involving a 22 year-old female lawful permanent resident, native and citizen of El Salvador. She was served with a Notice to Appear, dated December 23, 2015. The Notice to Appear alleges that respondent is removable under 8 U.S.C. § 1227(a)(2)(A)(iii), which provides that any alien convicted of an aggravated felony is subject to removal.

The United States has detained respondent under 8 U.S.C. § 1226(c), which provides, in relevant part, that "[t]he Attorney General shall take into custody any alien who . . . is deportable by reason of having committed any offense covered in [8 U.S.C. § 1227(a)(2)(A)(iii)] . . . when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." Section 1227(a)(2)(A)(iii), in turn, provides that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable." An "aggravated felony" is defined by the INA to include "a crime of violence (as defined in [18 U.S.C. § 16], but not including a purely political offense) for which the term of imprisonment is at least one year." 8 U.S.C. § 1101(a)(43)(F).

Respondent, wishing to challenge the government's conclusion that she was subject to the mandatory detention provision, requested a hearing from this court to determine the applicability of the mandatory detention provision. *See Matter of Joseph*, 22 I&N Dec. 799, 800 (BIA 1999); *see also Demore v. Kim*, 538 U.S. 510, 514 n.3 (2003). At the hearing, she contended that she is not "properly included in a mandatory detention category" because her conviction under Ames Rev. Stat § 603-42 was not for an aggravated felony and thus she was not "deportable by reason of having committed an[] offense covered in section 1227(c)(2)(A)(ii)," 8 U.S.C. § 1226(c)(1)(B). Separately, she contended that § 1226(c) is inapplicable because she was not taken into immigration custody "when . . . released" from state criminal custody. Neither of respondent's arguments has merit.

With regard to the first argument, respondent concedes that she was convicted of intentional third-degree assault in violation of Ames law. But, she argues, this crime is not an "aggravated felony" within the meaning of the Immigration and Nationality Act (INA). The United States, relying on the BIA's decision in *Matter of Martin*, 23 I&N Dec. 491 (BIA 2002), argues that intentional third-degree assault as defined by Ames law is a "crime of violence" under 18 U.S.C. § 16(a) and hence an "aggravated felony" under the INA.

Martin is dispositive of this case. There, the BIA held that intentional third-degree assault under Connecticut law, which is defined virtually identically to intentional third-degree assault under Ames law, *compare* Conn. Gen. Stat. § 53a-61(a)(1), *with* Ames Rev. Stat. § 603-42, is an aggravated felony.

The undersigned recognizes that some federal courts of appeals have disapproved of the reasoning in *Martin*. *See, e.g.*, *United States v. Villegas-Hernandez*, 468 F.3d 874, 878 (5th Cir. 2006); *Chrzanoski v. Ashcroft*, 327 F.3d 188 (2d Cir. 2003). But the Court of Appeals for the Ames Circuit has not issued a decision on the issue, and unless and until it does, the BIA's decision is binding on immigration judges in the Ames Circuit. *See* 8 C.F.R. § 1003.1.

Respondent's second argument is similarly foreclosed. In *Matter of Rojas*, the BIA held *en banc* that an alien is subject to mandatory detention under § 1226(c) regardless of any gap between the alien's release and detention. 23 I&N Dec. 117 (BIA 2001) (en banc). Every court of appeals to have considered the issue has agreed. *See Lora v. Shanahan*, 804 F.3d 601, 609 (2d Cir. 2015); *Olmos v. Holder*, 780 F.3d 1313 (10th Cir. 2015); *Sylvain v. Att'y Gen.*, 714 F.3d 150 (3d Cir. 2013); *Hosh v. Lucero*, 680 F.3d 375 (4th Cir. 2012). *But see Castaneda v. Souza*, 769 F.3d 32 (1st Cir. 2014), *reh'g en banc granted*, *opinion withdrawn*, Jan. 23, 2015. The Ames Circuit has not addressed respondent's argument about § 1226(c), and while the majority of district courts within the Ames Circuit have disagreed with *Rojas*, that decision is still binding here.

Respondent may ask the BIA revisit its precedents and, if it refuses, she may ask a federal *habeas* court for relief, *see Roni v. Zolikoffer*, 32 F.4th 211, 219 (Ames. Cir. 2013), but *Martin* and *Rojas* remain good law and they dispose of the issues here.

ORDER

IT IS ORDERED that respondent's request for a bond hearing pursuant to 8 U.S.C. § 1226(a) be DENIED.

Immigration Judge Anderson, Ames City, Ames, December 29, 2015.

File: A076 526 087 – Ames City, Ames

In re Jacqueline Peralta

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Donna L. Turner

CHARGE: Removable by reason of having committed an aggravated felony
8 U.S.C. § 1227(a)(2)(A)(iii)

APPLICATION: Application for bond hearing

Respondent Jacqueline Peralta appeals from an Immigration Judge's December 29, 2015 decision concluding that respondent is subject to mandatory detention under 8 U.S.C. § 1226(c). Because we conclude the Immigration Judge's ruling was correct in all respects, the appeal will be dismissed.

Respondent pled guilty to third-degree assault in 2013. She admitted during the plea colloquy that she had intentionally assaulted her neighbor after the two became involved in an argument. Approximately two years later, she was arrested and detained by Immigration and Customs Enforcement officials and charged with removability for having been convicted of an aggravated felony.

Respondent argues that the mandatory detention provision does not apply for two reasons: (1) third-degree assault under Ames law is not a predicate for § 1226(c) because third-degree assault is not an "aggravated felony" and (2) she was not taken into immigration custody "when . . . released" from state criminal custody as is required by the statute.

We agree with the Immigration Judge that respondent's arguments are foreclosed under our precedents and respondent has offered no convincing reason why we should revisit them. *See Matter of Martin*, 23 I & N Dec. 491 (B.I.A. 2002);[6] *Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001).

[6] We find no need to consider the "substantially unlikely to establish" standard that generally applies in *Joseph* proceedings because *Martin* definitively answers the question here. *See Matter of Joseph*, 22 I&N Dec. 799, 800 (BIA 1999). Moreover, the government affirmatively and unequivocally waived any reliance on that standard, asking us to "determine on the merits whether Respondent committed an aggravated felony."

ORDER: The Immigration Judge's decision denying respondent's request for a bond hearing is affirmed, and respondent's appeal is dismissed.

Michael Underwood
FOR THE BOARD

8 U.S.C. § 1226—APPREHENSION AND DETENTION OF ALIENS

(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) of this section 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; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) **Revocation of bond or parole**

The Attorney General at any time may revoke a bond or parole authorized under subsection (a) of this section, rearrest the alien under the original warrant, and detain the alien.

(c) **Detention of criminal aliens**

(1) **Custody**

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence [1] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) **Release**

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) **Identification of criminal aliens**

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any

alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) **Judicial review**

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

Ames Rev. Stat. § 603—Definitions.

For purposes of this chapter, the following definitions apply unless otherwise indicated:

. . . .

(17) "Bodily harm" means any significant bodily impairment.

. . . .

(32) An "intentional" act is one done with the purpose of accomplishing a certain result or knowledge to a substantial certainty that the act will have that result.

. . . .

(54) "Negligence" means acting with the failure to observe the care that a reasonable person would observe in order to prevent the action from causing harm.

. . . .

(88) "Serious bodily harm" means any bodily impairment that results in severe pain or decreased bodily function over an extended period of time.

. . . .

(94) "Recklessness" means acting with conscious disregard of a risk that the action will cause harm.

Ames Rev. Stat. § 603-42—Third degree assault.

A person is guilty of third-degree assault when: (1) with intent to cause bodily harm to another, he or she causes bodily harm to that person or to another person; or (2) he or she recklessly or negligently causes serious bodily harm to another person. Any person convicted of third-degree assault is guilty of a misdemeanor and may be sentenced to not more than one year in prison.

Ames Daily Tribune

Local Restauranteur Swept Up In Immigration Dragnet

By: Trevor Adams
December 25, 2015

Residents were surprised and saddened to find out that a local favorite, The Sprouting Potato, was closed indefinitely on December 24, after part-owner Jacqueline Peralta was detained by Immigration and Customs Enforcement officers. Peralta and her fiancé, Jack Holder, cut their teeth at another local establishment, Grand Buffet, before successfully opening The Sprouting Potato. Holder told the Tribune that he would not reopen the restaurant until Peralta's immigration proceedings were resolved.

Peralta is a lawful permanent resident and native of Tejutla, El Salvador. She came to the United States in 2008 with her mother, and was immediately received into the Ames community. As one resident reflected: "Jacqueline was one of the most honest, hardworking, and caring people we have here. It's just a travesty that Uncle Sam wants to throw her out of the country."

Peralta's immigration problems began in 2013, when, according to Holder, she began arguing with a neighbor about a loan that had not been repaid. The argument escalated, and Peralta ended up pleading guilty to assault and serving several months in jail. "It was totally ridiculous that they charged her with a crime," Holder said. "The other woman was just as guilty. Jacqueline makes one mistake, and now it could affect the rest of her life—and mine."

Officials from Immigrations and Customs Enforcement (ICE) say that they are required to detain individuals convicted of certain state law crimes, like assault, after they are released from state custody. But the two-year gap between Peralta's release from state prison and her detainment by the federal immigration officials have left some residents wondering, "why now?" "She's not a threat to anybody," said Luke Kornet, an Ames City resident and frequent patron of the Sprouting Potato. "Since she had that little run-in with law enforcement she's started a business and gotten engaged. That's the American dream, man!"

ICE's decision to detain Peralta also leaves another question unanswered. Peralta's mother, Eve, was badly injured in a car accident nearly a year ago. Peralta is currently Eve's sole caretaker, a task she will not be able to fulfill while detained. As beloved as Peralta is here in the community, one hopes that her neighbors will chip in to help should the worst come to pass.

IN THE AMES DISTRICT COURT
FOR THE FIRST JUDICIAL DIVISION OF THE STATE OF AMES

Criminal Action No. 2:13-CR-310

PEOPLE of the State of Ames,
Plaintiff,

vs.

Jacqueline PERALTA,
Defendant.

REPORTER'S TRANSCRIPT
(Change-of-Plea Hearing)

Proceedings before the HONORABLE DEREK T. MASON, Judge, Ames District Court for the First Division, commencing at 2:00 p.m., on the 27th day of August, 2013, in Courtroom B-205, Ames State Courthouse, Ames City, Ames.

PROCEEDINGS
(In open court at 2:00 p.m.)

THE COURT: Everyone please be seated. This is criminal case 13-CR-310, People v. Jacqueline Peralta. I understand that Ms. Peralta wishes to enter a guilty plea. Counsel, please make your appearances for the record.

MS. MILLER: Diane Miller for the People, Your Honor.

MS. CASTILLO: Maria Castillo for Ms. Peralta, Your Honor.

THE COURT: Okay. Again, I understand that the purpose of today's hearing is to allow the defendant to plead guilty; is my understanding correct? Defense counsel?

MS. CASTILLO: Yes, Your Honor, that is correct.

THE COURT: Ms. Peralta?

MS. PERALTA: Yes.

THE COURT: Is there a plea agreement?

MS. MILLER: No, Your Honor.

MS. CASTILLO: No.

THE COURT: Was there an offer for one?

MS. MILLER: No, Your Honor, the State did not offer a plea agreement.

THE COURT: All right. Will the Clerk please swear in the defendant?

[The defendant is duly sworn.]

THE COURT: Do you understand that you are now under oath and if you answer any of my questions falsely, your answers may later be used against you in another prosecution for perjury or making a false statement?

MS. PERALTA: Yes.

THE COURT: What is your full name?

MS. PERALTA: Jacqueline Peralta.

THE COURT: Where were you born?

MS. PERALTA: Tejutla, El Salvador.

THE COURT: Are you a U.S. citizen?

MS. PERALTA: No.

MS. CASTILLO: My client is a lawful permanent resident.

THE COURT: Is that correct, Ms. Peralta?

MS. PERALTA: Yes.

THE COURT: Do you fully understand English?

MS. PERALTA: Yes, I am fluent. I completed high school here in the U.S.

THE COURT: How old are you?

MS. PERALTA: Nineteen.

THE COURT: How far did you go in school? Any further than high school?

MS. PERALTA: No, but maybe some day.

THE COURT: Have you been treated recently for any mental illness or addiction to narcotic drugs of any kind?

MS. PERALTA: No.

THE COURT: Are you currently under the influence of any drug, medication, or alcoholic beverage of any kind?

MS. PERALTA: No.

THE COURT: Have you received a copy of the criminal complaint pending against you -- that is, the written charges made against you in this case -- and have you fully discussed those charges, and the case in general, with Ms. Castillo as your counsel?

MS. PERALTA: Yes, I have.

THE COURT: Are you fully satisfied with the counsel, representation, and advice given to you in this case by your attorney, Ms. Castillo?

MS. PERALTA: Yes, I am.

THE COURT: Has anyone attempted in any way to force you to plead guilty or otherwise threatened you?

MS. PERALTA: No.

THE COURT: Has anyone made any promises or assurances of any kind to get you to plead guilty?

MS. PERALTA: No.

THE COURT: Are you pleading guilty of your own free will because you are guilty?

MS. PERALTA: Yes, I am.

THE COURT: Have you discussed the possible immigration consequences of a guilty plea with your attorney?

MS. PERALTA: Yes.

THE COURT: Do you understand that if you are not a citizen of the United States, in addition to the other possible penalties you are facing, a plea of guilty may subject you to deportation, exclusion, or voluntary departure, and prevent you from obtaining U.S. citizenship?

MS. PERALTA: Yes, she explained that to me.

THE COURT: Ms. Peralta, you are charged with third-degree assault. That's a misdemeanor under Ames law, and if I accept your plea of guilty, you will be facing a maximum of one year in prison. I can also impose a term of probation in addition to that. Do you understand that?

MS. PERALTA: Yes, my lawyer explained that to me.

THE COURT: Under some circumstances, you or the government may have the right to appeal whatever sentence I impose. Do you understand that?

MS. PERALTA: Yes, I understand.

THE COURT: And do you further understand that you have a right to plead not guilty, and that if you do plead not guilty, you have a right to a trial by jury where the government would have to prove your guilt beyond a reasonable doubt? By pleading guilty you are waiving your right to a trial.

MS. PERALTA: Yes, I understand.

THE COURT: And you know you would have a right to an attorney at a trial.

MS. PERALTA: Yes.

THE COURT: Again, you are charged with third-degree assault under Ames law. In order to convict you of that crime, the government would have to prove beyond a reasonable doubt one of the following two things: either, one, with intent to cause bodily harm to another person, you caused bodily harm to that person or to another person; or, two, you recklessly or negligently caused serious bodily harm to another person. Do you understand the elements of this crime as I have described them to you?

MS PERALTA: Yes.

THE COURT: Ok, can you explain to me what happened? What did you do that makes you guilty of third-degree assault?

MS. PERALTA: I was over at my neighbor Annie's house. I had loaned her money a few weeks back because she was behind on her car payment. I had been asking her for the money for a few days and she wouldn't give it to me. I told her I needed it, and she told me to leave her alone or she would call the police. I just snapped. I went over to her and she started to push me, and I just started to slap her. I kicked her too. She got hurt pretty bad, because she fell and hit her head on the corner of a table, but that wasn't my fault. Her roommate pulled me back and Annie called the police, and they came and they arrested me.

THE COURT: How badly hurt?

MS. PERALTA: I'm not sure. I think she spent a couple days in the hospital.

THE COURT: Counsel, is that your understanding of what happened as well?

MS. CASTILLO: Yes, Your Honor.

THE COURT: OK, then I find that that the defendant, Jacqueline Peralta, is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

The plea is therefore accepted, and the defendant is now adjudged guilty of that offense. The Clerk of Court will set a date for sentencing within the next couple of weeks. If there's nothing further, the Court is now in recess.

Court is in recess.
(Recess at 2:27 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF AMES

Jacqueline PERALTA, Petitioner v. Gregorios V. LASH, Warden	Docket No. 15-CV-2347-JD

NOTICE OF APPEAL

Respondent Gregorios V. Lash, Warden, hereby gives notice that he is appealing the District Court's order in the above-captioned matter granting petitioner Jacqueline Peralta's petition for a writ of *habeas corpus*, entered on January 12, 2016, to the United States Court of Appeals for the Ames Circuit.

Respectfully submitted,

/s/ *Carson A. Roberts*

Carson A. Roberts
District Attorney
1200 Centre Street
Ames City, Ames 40201

Attorney for Respondent

Dated: January 14, 2016