

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Jose Luis Alvarez Martinez

Petitioner,

Kristi Noem, Secretary of Homeland
Security; Todd M. Lyons, Acting Director
of Immigration and Customs Enforcement;
Miguel Vergara San Antonio Field Office
Director and acting Harlingen Field Office
Director; Norval Vazquez, Warden of Rio
Grande Processing Center

Civil Case No. 5:25-cv-01007

Respondents.

**PETITIONER'S REPLY TO THE RESPONDENTS' RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Although the Petitioner was ordered released by an Immigration Judge (IJ) upon posting bond and is on a clear path to receiving his lawful permanent resident status (LPR) status based on the approval of his petition for benefits under the Violence Against Women's Act (VAWA), the Respondents continue to detain him based on their wrong interpretation of 8 U.S.C. §§ 1225(b)(2) and 1226(a). In their response, the Respondents failed to provide a valid basis to continue the Petitioner's unlawful detention. The Court should therefore follow the avalanche of other district court opinions made on this issue and grant the Petitioner's writ of habeas corpus. *See, e.g., Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and

recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 1:25-cv-06373-DEH, 2025 WL 2398831 (S.D.N.Y. Aug. 12, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-ECT-DJF, --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 3:25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Jimenez v. Berlin*, ---F. Supp. 3d---, 2025 WL 2639390, at *10 (D. Mass. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. Aug. 4, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-CV-00094-RGE-WPK, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025); *Silva v. Larose*, No. 25-cv-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sep.

29, 2025); *Chang Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579 (D. Me. Sep. 29, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Cerritos Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).

II. FACTUAL STATEMENT

The facts presented in the Petitioner's Amended Habeas Petition were not meaningfully disputed by the Respondents in their response. The Petitioner fully adopts those facts here and additionally adds these new facts which emerged after the Amended Habeas Petition was filed.

Over two years after the Petitioner filed for benefits under the Violence Against Women Act (VAWA), United States Citizenship and Immigration Services (USCIS) approved his petition and granted him employment authorization. *See* Exh. A. The approval allows for the IJ or USCIS (upon an IJ order terminating the removal proceedings) to adjudicate the Petitioner's application for adjustment of status under 8 U.S.C. § 1255(a), which, when granted, will provide him with LPR status. Upon receiving the USCIS approval, the Petitioner filed a motion to recalendar and terminate his removal proceedings. *See* Exh. B. To date, the Respondents have failed to join in this motion despite their repeated unreasonable statements that the Petitioner impeded having his case expedited before the IJ by not agreeing to their prior untimely motions for recalendaring.¹ *See* Resp'ts' Response to Pet'r's Am. Pet. at 17, ECF No. 25.

¹ The Respondents unreasonably moved to recalendar the proceedings before the VAWA petition was decided even though the IJ specifically administratively closed the case to await adjudication of that petition. Now, that the VAWA petition has been approved, the case is ripe for recalendaring before the IJ and, thus, the Petitioner moved for recalendaring. The Petitioner includes this information to fully reply to the Respondents' baseless claims that he was "delaying his own detention;" however, the status of the ongoing removal proceeding has nothing to do with the Respondents' decision to unlawfully detain the Petitioner. *See* Resp'ts' at 17.

Throughout its filing, the Respondents incorrectly claim that the Petitioner can expedite his case by allowing his case before the IJ to move forward. USCIS is a sister agency of Immigration and Customs Enforcement (ICE), both falling under the supervision of the Respondent Kristi Noem and the Department of Homeland Security (DHS). Thus, during the two years while the parties in the immigration court proceeding waited for USCIS to decide the VAWA petition, the delay was *always* attributable to Respondent DHS's failure to decide the VAWA petition. The DHS cannot lawfully use its USCIS branch to delay benefits that the IJ is waiting on to continue the removal case while using the same delay as a basis for its ICE branch to detain the Petitioner. In other words, the Respondents' failure to competently administer the benefits they are required by law to provide is not a justification for them to detain the individual they are withholding benefits from. The Court should reject the Respondents' arguments to the contrary.

III. ARGUMENT

The sole issue in this case is whether the Petitioner's continued immigration detention is lawful. The Court should (A) reject the Respondents clearly wrong argument that it lacks jurisdiction, (B) find that the Petitioner's detention violates the statutes and is unconstitutional and (C) order the Petitioner's release.

A. This Court has jurisdiction over the Petitioner's habeas petition.

This Court has jurisdiction over the legal claims brought in this habeas corpus proceeding under 28 U.S.C. § 2241(c)(3), which authorizes federal courts to grant habeas relief to individuals held "in custody in violation of the Constitution or laws or treaties of the United States." Petitioner challenges the legality of his detention under federal immigration law—specifically, whether 8 U.S.C. § 1226 or § 1225 governs his custody. That question falls squarely within the jurisdiction conferred by § 2241. Contrary to the Respondents' assertions, the jurisdictional bars in 8 U.S.C.

§§ 1252(a)(5), 1252(b)(9), and 1252(g) do not apply. Those provisions preclude review of removal orders or claims arising from the removal process—but they do not strip district courts of jurisdiction to consider the legality of detention. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”). Courts across the country have repeatedly held that habeas petitions contesting the statutory basis of immigration detention remain reviewable under § 2241. Accordingly, the Court should find that it has jurisdiction over this habeas petition and determine that Petitioner is detained under § 1226, not § 1225.

1. Section 1252(g) does not bar jurisdiction over Petitioner’s habeas claim.

8 U.S.C. § 1252(g) provides,

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, ... no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

The Supreme Court has made clear that 1252(g) is a “narrow” jurisdictional bar that “applies only to three discrete actions that the Attorney General make take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). Indeed, the Supreme Court has “rejected as ‘implausible’ the Respondents’ argument that § 1252(g) covers ‘all claims arising from deportation proceedings’ or imposes ‘a general jurisdictional limitation.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (citing *Reno*, 525 U.S. at 42)); *see also Maldonado*, 2025 WL 2374411, at * 5. Here, Petitioner’s claims fall outside of § 1252(g)’s narrow jurisdictional bar. He does not challenge the Respondents’ decision to commence

proceedings, adjudicate his case, or execute a removal order. Rather, he challenges his continued detention without bond in violation of the federal immigration laws and the Fifth Amendment's right to due process. As numerous courts have held, detention pending removal does not "arise from" the Attorney General's decision to commence removal proceedings. *See, e.g., Hernandez Marcelo*, 2025 WL 2741230, at *5; *Guerrero Orellana*, 2025 WL 2809996. Thus, because Petitioner is not challenging any of the three "discrete actions" identified in *Reno*, § 1252(g) poses no bar to this Court's jurisdiction.

The Respondents' argument that 8 U.S.C. § 1252(g) "bars district courts from hearing challenges to the method by which the DHS Secretary chooses to commence removal proceedings, including the decision to detain an alien pending removal," *see* Resp'ts' at 12, was squarely rejected by the majority in *Jennings*. As the Southern District of Iowa recently explained, the majority declined to adopt Justice Thomas's concurrence, which mirrored the argument raised by Respondents here: "The concurrence contends that 'detention is an 'action taken ... to remove' an alien' and that therefore 'even the narrowest reading of 'arising from' must cover' the claims raised by respondents. We do not follow this logic." *Hernandez Marcelo*, 2025 WL 2741230, at *5 (quoting *Jennings*, 583 U.S. at 295 n.3); *see also Maldonado*, 2025 WL 2374411, at *4–5.

The Respondents' argument is also based on the factually incorrect claim that "Petitioner's detention in 2025 arises from the decision to move to recalendar and continue adjudicating the removal proceedings pending against him since 2011." Resp'ts' at 12. This was not their basis for unlawfully redetaining the Petitioner, which occurred absent any material changed circumstances from the prior custody order entered in 2017. Contrary to the Respondents' claim, the I-213, Record of Deportable/Inadmissible Alien, which provides a narrative of the apprehension, makes no reference to the recalendering of proceedings. *See* Exh. C (ICE's EARM Record). Instead, ICE

detained the Petitioner without regard to the existing custody order and despite the fact that his case had been administratively closed to await adjudication of his VAWA petition. This action reflects ICE's nationwide policy of categorically detaining noncitizens who entered the country unlawfully without bond. *See* Pet'r's Am. Pet. at 8, ECF No. 22 (citing "Interim Guidance Regarding Detention Authority for Applicants for Admission" (July 8, 2025)).

2. Section 1252(b)(9) and (a)(5) also do not preclude jurisdiction over the Petitioner's claims.

Section 1252(b)(9) provides that:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) states that "a petition for review . . . shall be the sole and exclusive means for judicial review of an order of removal" These provisions channel challenges to **removal proceedings and final orders of removal** into the courts of appeals. *See INS*, 533 U.S. at 313. They have absolutely no application to challenges to detention that are entirely separate from the challenge to a final removal order. As the court explained in *D.V.D. v. U.S. Dep't of Homeland Sec.*, "[a]ctions that do not challenge final orders of removal are not subject to this channeling scheme." 778 F. Supp. 3d 355, 370 (D. Mass. 2025) (citing *J.D.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). Likewise, the district court in *Maldonado* emphasized that "§ 1252(b)(9) is aimed at challenges to removal proceedings," and "is a judicial channeling provision, not a claim-barring one." 2025 WL 2374411, at *7 (D. Minn. Aug. 15, 2025) (citing *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007)).

The Supreme Court confirmed this narrow reading in *Jennings*, explaining that the phrase "arising from" in § 1252(b)(9) does not cover all claims merely related to or resulting from the

fact of removal. 583 U.S. at 293–94. Interpreting it otherwise, the Court cautioned, would lead to “staggering results.” *Id.* at 293. It “would also make claims of prolonged detention effectively unreviewable. By the time a final order of removal was eventually entered, the alleged excessive detention would have already taken place.” *Id.* Because the respondents in *Jennings* did not seek review “of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined,” the Court held that § 1252(b)(9) did not apply. *Id.* at 294. Similarly, the Petitioner is not challenging a final order of removal, the removal process, or his initial custody determination, therefore, the case falls outside the scope of §§ 1252(a)(5) and (b)(9). Numerous courts have reached the same conclusion. *See, e.g., Santiago Santiago, v. Kristi Noem, et al.*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *4–5 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3–4 (W.D. Tex. Sept. 22, 2025)²; *Hernandez Marcelo*, 2025 WL 2741230, at *6; *Guerrero Orellana*, 2025 WL 2809996, at *3; *Cerritos Echevarria*, 2025 WL 2821282, at *3; *Vazquez*, 2025 WL 2676082, at *7.

B. Petitioner’s detention violates the Immigration and Nationality Act, implementing regulations, and the Fifth Amendment’s Due Process Clause.

1. Petitioner is eligible for a bond under § 1226(a) and is not subject to mandatory detention under § 1225(b)(2).

The Petitioner has a clear right to a custody hearing before an IJ under 8 U.S.C. § 1226(a)(2), which authorizes the IJ to grant bond to noncitizens who are detained pending the outcome of removal proceedings. The plain language of § 1226(a) and its legislative history all support the Petitioner’s position. 8 U.S.C. § 1226(a) provides, in pertinent part, as follows:

² The Respondents’ assertion that the court in *Lopez-Arevalo* would have ruled differently had the merits been fully briefed is both speculative and unsupported. *See Resp’ts’* at 17–18. In finding that Lopez-Arevalo’s re-detention without a bond hearing violated due process, the court relied on a range of persuasive authorities and conducted a reasoned constitutional analysis.

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole . . .

This statute clearly applies to the Petitioner's case. As the IJ found, he was arrested on a warrant and ordered to be released upon posting a bond. *See* Pet'r's Am. Pet., Exh. B, ECF No. 22-1; *see also* Exh. C.

Critically, the Respondents do not disagree that § 1226(a) provides authority to release the Petitioner. Rather, they argue that § 1226(a) only provides “general authority” to release noncitizens while § 1225(b)(2) provides specific authority for mandatory decision. *See* Resp'ts' at 10. However, § 1226(a) is far from a “general authority,” but instead specifically applies to “an alien” arrested “on a warrant” who is “detained pending a decision on whether the alien is to be removed from the United States.” This is a specific statute that is separate and apart from § 1225(b)(2)(A), which only applies to noncitizens arriving at the border or a port of entry. As the Supreme Court has stated § 1226(a) “authorizes the Government to detain certain aliens *already in the country* pending outcome of removal proceedings . . .” *Jennings*, 583 U.S. at 289 (emphasis added). The Petitioner was already in the country when he was detained in 2011 pending the outcome of his removal proceedings. He was issued an NTA before an IJ and placed in removal proceedings. *See* Pet'r's Am. Pet., Exh. A. The NTA charged him as being present in the United States without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* Moreover, ICE's initial custody determination paperwork states that the Petitioner's detention is pursuant to 8 U.S.C. § 1226(a). *Id.* The logical conclusion, therefore, is that he is in custody under § 1226(a).

The plain language of § 1225(b)(2)(A) indicates that it applies only to individuals who are “seeking admission into the United States,” a phrase that implies a present, affirmative act. *See Belsai D.S.*, 2025 WL 2802947, at *6 (“One who is ‘seeking admission’ is presently attempting to gain admission into the United States.”). The Respondents’ attempt to equate “seeking admission” with being an “applicant for admission” is unavailing. *See Resp’ts’* at 8. As multiple courts have explained, this interpretation contravenes basic canons of statutory construction—namely, that different terms within a statute are presumed to have different meanings, and that no word should be rendered superfluous. Section 1225(b)(2)(A) expressly requires that a noncitizen be both an “applicant for admission” and “seeking admission.” Reading these terms as synonymous would nullify the latter phrase entirely. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *6; *Jimenez*, 2025 WL 2639390, at *10; *Guerrero Orellana*, 2025 WL 2809996, at *7 (“After all, § 1225(b)(2)(A) requires that the noncitizen be both an ‘applicant for admission’ and ‘seeking admission.’ If the provision ‘were intended to apply to all ‘applicant[s] for admission,’ there would be no need to include the phrase ‘seeking admission’ in the statute.’”) (alterations in original)). As such, the plain text of statute supports the Petitioner’s position that he is detained under § 1226(a) and is entitled to release on bond. That is the end of the inquiry.

Tellingly, the Respondents have no response to the Petitioner’s point that the passage of the Laken Riley Act (LRA) demonstrates that Congress did not intend for § 1225(b)(2)(A) to apply to all noncitizens who entered without inspection. Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D). In January 2025, Congress enacted the LRA, which

expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Pub. L. No. 119-1, 139 Stat. 3. The LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2). Thus, the Respondents’ construction runs contrary to the statutes’ plain language and Congressional intent as manifested in the recent passage of the LRA.

The Respondents nonetheless argue that the “legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation’s interior without inspection.” Resp’ts’ at 10 (citing *Yajure Hurtado*, 29 I&N Dec. at 222–25). Relying on *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020), they contend that Congress enacted IIRIRA to “correct an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Id.* Yet, there is no anomaly in treating a recent arrival differently from one who, like the Petitioner, has resided in the United States for over a decade, has substantial family ties in this country, and holds a clear path toward legalization. Congress did not act unreasonably by allowing IJs to consider these very different classes of nonimmigrants differently—allowing bond for those with demonstrable equities but not for new arrivals.³

The critical distinction is between individuals who are inside the United States and those who are not. *See Romero*, 2025 WL 2403827, at *12. As the Supreme Court explained, “once an

³ Furthermore, neither the congressional intent underlying IIRIRA nor the Ninth Circuit’s decision in *Torres* control the legal standards governing a noncitizen’s detention pending the outcome of proceedings. *See Hernandez Marcelo*, 2025 WL 2741230, at *8. In fact, *Torres* itself acknowledged that Congress would be expected to “make it plain” if it intended such a sweeping change to long-standing detention authority. *Id.*

alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. It is therefore appropriate to interpret the detention statutes with that constitutional backdrop in mind. *See Romero*, 2025 WL 2403827, at *12 (quoting *Hewitt v. United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025)). Under that framework, Respondents’ interpretation not only conflicts with statutory text, it violates due process of law.

Before IIRIRA’s passage, noncitizens who entered the country without inspection were subject to discretionary release from detention. *See Guerrero Orellana*, 2025 WL 2809996, at *9. A congressional report issued during IIRIRA’s passage confirms that the revised § 1226(a) “restates the current provisions ... regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” *Id.* (citing H.R. Rep. No. 104-828, at 210 (1996) and H.R. Rep. No. 104-469, pt. I, at 229 (1996)). Thus, rather than eliminating bond eligibility for individuals who entered without inspection, Congress reaffirmed the Attorney General’s longstanding authority to arrest and release such individuals under § 1226(a). *Id.*

Although the BIA reached a contrary conclusion in *Yajure Hurtado*, that decision conflicts with the unambiguous language of § 1226(a) and § 1225(b)(2)(A), which plainly allow for Petitioner’s bond eligibility. 29 I&N Dec. at 216. Even if the statute were ambiguous, the BIA’s interpretation in *Yajure Hurtado* is not entitled to *Chevron* deference pursuant to the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). In *Loper Bright*, the Supreme Court held that “Courts must exercise their independent judgment in deciding whether

an agency has acted within its statutory authority” while according only “due respect” to an agency’s interpretation. *Id.* at 413, 370. The amount of “respect” owed to an agency’s interpretation depends on “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Skidmore v. Swift*, 323 U.S. 134, 140 (1944). The BIA’s current position is inconsistent with earlier pronouncements, decades of prior practice, and the reasoning adopted by multiple federal district courts. For nearly thirty years, immigration judges, noncitizens’ counsel, and attorneys for DHS uniformly understood § 1226(a) to confer bond eligibility on noncitizens who entered without inspection. Even the Executive Branch has recognized this. During oral argument in *Biden v. Texas*, the Solicitor General explained that “DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.” *Chogillo Chafila v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *8 (D. Me. Sep. 21, 2025) (quoting Tr. of Oral Argument at 44:24–45:20, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)); *see also* *Martinez*, 2025 WL 2084238, at *4 n.9. Likewise, the Supreme Court in *Jennings* stated that “§ 1226 applies to aliens already present in the United States” and “permits the Attorney General to release those aliens on bond.” 583 U.S. at 303. Accordingly, the BIA’s interpretation should not be granted any deference and given little respect.

2. The Respondents waived their response to the Petitioner’s claim that *Yajure* is a new rule that has an impermissible retroactive effect by failing to brief the issue.

Even if the Court determines that the Respondents’ construction of the statutes is correct, it is a new administrative rule, which cannot apply retroactively. Notably, the Respondents made no response to this claim raised by the Petitioner in his Amended Habeas Petition. In *Monteon-*

Camargo v. Barr, the Fifth Circuit found that where the BIA announces a “new rule of general applicability” which “drastically change[s] the landscape,” retroactive application would “contravene[] basic presumptions about our legislative system” and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)). Applying *Yajure Hurtado* to individuals like Petitioner, who entered the United States without inspection years before the BIA’s decision, would be impermissibly retroactive. The BIA’s decision contradicts decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing. Retroactively applying *Yajure Hurtado* would strip these long-established rights and impose a new disability by rendering them ineligible for bond, contrary to settled expectations. See *Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) (“As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.”).

3. The Respondents waived filing a response to the Petitioner’s claim that they failed to follow their own regulations by failing to brief the issue.

The Respondents also have no response to the Petitioner’s claim that their refusal to follow their own regulations constitutes a violation of the *Accardi* doctrine. In his amended petition, the Petitioner alleged that in 1997, following the enactment of IIRIRA, EOIR and the then-INS jointly issued interim regulations stating that individuals who entered without inspection—although applicants for admission—would nonetheless be eligible for bond and bond redetermination. See 62 Fed. Reg. 10312, 10323. These regulations, which remain binding, have long been implemented through 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Such protection is not a mere regulatory grace

but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 514 (2003). Yet, in this case, Respondents are detaining Petitioner under § 1225(b)(2) without bond, based on *Matter of Yajure Hurtado*, which directly contradicts the agency's own published interpretation. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down."). A violation of this doctrine can also rise to the level of a constitutional due process violation, particularly when liberty is at stake. *See, e.g., Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

4. Petitioner's detention violates his right to due process under the Fifth Amendment.

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "[T]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Id.* at 690. The Petitioner has a weighty liberty interest as his freedom even if the "government wields significant discretion." *Rosado*, 2025 WL 2337099, at *11. When the government, as here, is detaining a noncitizen in violation of the plain language of a statute, the detention violates procedural and substantive due process.

The Respondents attempt to evade a finding that their detention of the Petitioner is unconstitutional by erroneously claiming that he is delaying his own case by opposing the recalendaring of his removal case. *See* Resp'ts' at 17. They are erroneous because it was the Respondents, through USCIS, that was causing the delay, not the Petitioner. As stated above, the IJ administratively closed the case to await an outcome on the VAWA petition, which the Respondent Noem, through USCIS, failed to decide timely. Far from, "delaying his own detention," the Petitioner was actively pursuing his LPR status. But even if he was not, the Respondents are not justified in detaining the Petitioner, which is a clear violation of due process. Although ICE has discretion to initially detain or release a noncitizen pending immigration proceedings, once released, the individual gains a protected liberty interest in remaining free from custody, and ICE must show material changed circumstances to justify re-detention. *See, e.g., See Matter of Sugay*, 17 I. & N. 637, 640 (BIA 1981); *Lopez-Arevalo*, 2025 WL 2691828, at *11 ("[O]nce released from immigration custody, noncitizens acquire 'a protectable liberty interest in remaining out of custody on bond.'"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal.").

Perhaps the most remarkable argument made by the Respondents to avoid the inexorable conclusion that they are violating the Petitioner's due process rights is this whammy:

In any event, even under § 1226(a), Petitioner is not entitled to release on bond. The most that § 1226(a) entitles him to is a bond hearing, which he received. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a).

Resp'ts' at 25. The bond hearing was indeed held and then the Respondents actively thwarted—and continue to thwart—the IJ's ruling. First, they filed an auto-stay, which this Court determined violated the Petitioner's procedural due process rights. Now, they are making the argument that all noncitizens are subject to mandatory detention even when the statutes involved, their legislative history, and decades of established practice demonstrate that the opposite is true. That the Respondent's believe this was sufficient "due process" under the Fifth Amendment speaks volumes about their regard for fundamental principles of justice and fairness.

IV. CONCLUSION

The Respondents have unlawfully detained the Petitioner for approximately 4 months. That may not seem "prolonged" to the Respondents, *see* Resp'ts' at 16, but it is wreaking havoc on the Petitioner, and his minor U.S. citizen child. It has gone on for long enough and should end now.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on today's date, October 15, 2025, I electronically filed the above reply by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Respondents' counsel.

/s/ Alejandra Martinez
Alejandra Martinez

United States District Court
Western District of Texas
San Antonio Division

Jose Luis Alvarez Martinez,
Petitioner,

v.

Kristi Noem, Secretary of United States
Department of Homeland Security et. al.,
Respondents.

No. 5:25-cv-01007-JKP-ESC

Joint Status Report

1. The parties conferred and having filed their responses respectfully request this Court consider and issue a decision on Petitioner's amended petition.
2. On August 21, 2025, the Petitioner filed a motion for temporary restraining order arguing that his detention pursuant to the automatic stay under 8 C.F.R. § 1003.19(i)(2) was unlawful and would result in immediate and irreparable harm.
3. On September 8, 2025, the Court granted the Petitioner's motion but stayed the vacation of the automatic stay until September 22, 2025. The Court's order was stayed, in part, to allow the Respondents to seek a discretionary stay. The Court also ordered the parties to submit a joint status report every Friday, beginning September 12, 2025.
4. On September 4, 2025, Respondents filed a second motion to recalendar Petitioner's removal proceedings. On September 5, 2025, Petitioner filed an opposition to Respondents' motion. On September 19, 2025, the Immigration Judge denied the Respondent's second motion to recalendar. Thus, removal proceedings remain administratively closed at this time.
5. On September 19, 2025, Respondents filed an emergency motion for discretionary stay under 8 C.F.R. § 1003.19(i)(1) before the Board of Immigration Appeals (BIA).

Petitioner filed an opposition on the same date.

6. That same afternoon, the Respondents withdrew their automatic stay under 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43).
7. On September 22, 2025, the BIA granted the Respondents' discretionary stay.
8. On September 26, 2025, Petitioner filed an Amended Complaint. The Respondents answered on October 8, 2025. Petitioner replied on October 15, 2025.
9. On September 30, 2025, the U.S. Citizenship & Immigration Services (USCIS) approved the Petitioner's VAWA I-360 petition.
10. On October 8, 2025, the BIA sustained DHS's bond appeal and vacated the immigration judge's July 15, 2025, and August 4, 2025, bond memorandum and order granted Petitioner release on bond.
11. On October 8, 2025, Petitioner moved to recalendar and terminate his removal proceedings so that he may pursue adjustment of status before USCIS based on his approved VAWA I-360. The motions remain pending.
12. As of the time of this filing, Petitioner remains detained at the Rio Grande Processing Center in Laredo, Texas.

Respectfully submitted,

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