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

AYDELYS DEL SOCORRO PONCE-PINEDA, **Plaintiff-Petitioner,** **v.** **PAMELA JO BONDI,** **United States Attorney General;** **KRISTI LYNN NOEM,** **Secretary of Homeland Security;** **TODD M. LYONS,** **Acting Director, United States Immigration and Customs Enforcement;** **MIGUEL VERGARA,** **Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; and,** **ROSE THOMPSON,** **Facility Administrator, Karnes County Immigration Processing Center;** **in their official capacities;** **Defendants-Respondents.**	**Civ. No. 5:25-cv-1021**

COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF AND PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

This is a complaint for injunctive relief and a petition for a writ of habeas corpus filed on behalf of Aydelys del Socorro Ponce-Pineda. She seeks relief from this Court to remedy her unlawful detention. Respondents are unlawfully detaining Ms. Ponce-Pineda pending her asylum hearing on the merits.

Since her original arrest on December 2, 2021 and subsequent release, Ms. Ponce-Pineda has fully cooperated with Respondents. Nonetheless, when she attended an appointment with Immigration and Customs Enforcement (ICE) on June 11, 2025, she was detained without explanation. There is no evidence that Ms. Ponce-Pineda is a flight risk or a danger to the community. One the contrary, she is an upstanding member of her church and her community. Prior to her recent detention, Ms. Ponce-Pineda was gainfully employed and supported her family. She has committed no crimes. As she awaits her asylum hearing on the merits, her detention is not justified under the Constitution or the Immigration and Nationality Act (INA). As a practical matter, her detention also significantly hinders her ability to prepare for her asylum hearing with the assistance of counsel.

Ms. Ponce-Pineda now respectfully requests that this Court order Defendants-Respondents to release her, or, in the alternative, order that Respondent Bondi provide Ms. Ponce-Pineda with a bond hearing pursuant to 8 U.S.C. § 1226(a).

CUSTODY

1. Petitioner is in the physical custody of Defendant-Respondent MIGUEL VERGARA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent ROSE THOMPSON, Facility Administrator of Karnes County Immigration Processing Center in Karnes City, Texas. At the time of the filing of

this petition, Plaintiff-Petitioner is detained at the Karnes County Immigration Processing Center in Karnes City, Texas. The Geo Group contracts with the DHS to detain noncitizens such as Plaintiff-Petitioner. Plaintiff-Petitioner is under the direct control of Defendants-Respondents and their agents.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1331 and 5 U.S.C. § 702 as Plaintiff-Petitioner suffered a legal wrong from agency action. The Court also has jurisdiction over this petition under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, C1. 2 of the United States Constitution ("Suspension Clause"). This Court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*

3. Venue properly lies within the Western District of Texas because all of the events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(b).

4. No petition for habeas corpus has previously been filed in any court to review Plaintiff-Petitioner's case.

PARTIES

5. Ms. Ponce-Pineda is a national and citizen of Nicaragua. She is currently detained at the Karnes County Immigration Processing Center located at 409 FM 1144. Karnes City, TX 78118.

6. Defendat-Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice ("DOJ"). She has the authority to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board of Immigration Appeals

("BIA" or "Board"). Defendant-Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

7. Defendant-Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Defendant-Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Defendant-Respondent is named in her official capacity. Her address is Department of Homeland Security, Washington, D.C. 20528.

8. Defendant-Respondent TODD M. LYONS is the acting Director of the ICE within DHS, a sub-agency of the DHS. He is responsible for the administration and enforcement of immigration laws. He is named in his official capacity and his address is 500 12th Street SW, Mail Stop 5900 Washington, D.C. 20536.

9. Defendant-Respondent MIGUEL VERGARA is the Field Office Director for Detention and Removal, ICE, DHS. He is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas. Pursuant to Defendant-Respondent's orders, Plaintiff-Petitioner remains detained. Defendant-Respondent is sued in his official capacity. Hiss address is 1777 NE Loop 410 Floor 15, San Antonio, Texas, 78217.

10. Defendant-Respondent ROSE THOMPSON is the Facility Administrator of the Karnes County Immigration Processing Center in Karnes City, Texas. She is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas, San Antonio Division. Respondent is named in her official capacity. Respondent's address is 409 FM 1144. Karnes City, TX 78118.

FACTS

11. On or about December 2, 2021, Ms. Ponce-Pineda, a citizen of Nicaragua, arrived in the United States without being admitted or paroled. Exh. A (Form I-213/EARM Encounter Report). She was accompanied by her daughter, N M-P. Ms. Ponce-Pineda also has a son, OM B-P, who was born in the United States and is a U.S. citizen.

12. Following Ms. Ponce-Pineda's entry to the United States, the DHS arrested and detained her near Newfield, Arizona. The immigration officer executed the arrest under 8 U.S.C. § 1226(a).

13. On December 6, 2021, the DHS issued Ms. Ponce-Pineda a Notice to Appear requiring her appearance at an immigration court hearing set for June 21, 2022 in San Antonio, Texas. Exh. B. According to the Notice to Appear, Ms. Ponce-Pineda was placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229a.

14. That same day, on December 6, the DHS released Ms. Ponce-Pineda and her child on their own recognizance. The order of release states that ***"[i]n accordance with section 236 of the Immigration and Nationality Act*** and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being release on your own recognizance provided you comply with the following conditions...." Exh. C (emphasis added).

15. On November 12, 2023, Ms. Ponce-Pineda filed her application for asylum, based on her belief that she faced persecution or torture if she were to return to her home country. Later, Ms. Ponce-Pineda applied for and received an employment authorization document so she could work to support herself and her family. Her work permit is valid from 6/12/2024 to 6/11/2029.

16. Shortly after receiving work permit, Ms. Ponce-Pineda began her employment with Alsco Uniforms in San Antonio, Texas. Through her employment at Alsco Uniforms, she was able to provide financial support for her two children.

17. As per the conditions of her release, Ms. Ponce-Pineda was required to attend check-in appointments with ICE. She called ICE on June 10, 2025 to confirm her check-in date and was told to report on June 11, 2025.

18. When Ms. Ponce-Pineda reported to her appointment on June 11, ICE detained her. No explanation was given beyond citing the Border Patrol encounter from December 2021.

19. Through her immigration counsel, Ms. Ponce-Pineda requested a bond hearing before the immigration judge. The request included a variety of documents and letters of support from her community. One letter was from her manager at Alsco Uniforms, stating that Ms. Ponce-Pineda she has been a *"model employee...dependable and reliable."* The letter also stated that the company looks forward to her return if she is released. A letter from Oscar R. Guajardo, the pastor at Casa del Rey Church, where Ms. Ponce-Pineda attends services, states that "...she is a woman of honesty and good moral character...always ready to work and serve in our church projects and activities."

20. On June 25, 2025, an immigration judge denied Ms. Ponce-Pineda's request for bond. Exh. D. The immigration judge concluded that he lacked jurisdiction under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) because Ms. Ponce-Pineda is an applicant for admission subject to mandatory detention.

21. Ms. Ponce-Pineda remains detained and separated from her children. There continues to be no evidence in the record to indicate that Ms. Ponce-Pineda is a flight risk, or that allowing her to be released pending her asylum hearing would present a danger to public safety.

22. Ms. Ponce-Pineda maintains that the immigration judge erred in concluding that *Matter of Q. Li* bars the court from granting her bond pending her removal proceedings.

23. Ms. Ponce-Pineda has no other remedy at law but to seek relief from this Court.

LEGAL FRAMEWORK

DHS'S DISCRETIONARY AUTHORITY AND PROCEDURAL ELECTIONS

24. The Immigration and Nationality Act (INA) broadly empowers the DHS to detain and initiate removal proceedings against noncitizens. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in regular removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Persons detained under § 1226(a) are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

26. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals "seeking admission" referred to under § 1225(b)(2).

27. Last, the INA also provides for detention of noncitizens who have a final order of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

28. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

29. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was

most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

30. Following the enactment of the IIRIRA, the Department of Justice drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

31. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond or their own recognizance. They also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

32. At the time of detention, DHS elects whether to exercise its arrest authority under § 1226(a) or § 1225(b). This procedural election constrains the noncitizen's subsequent relief options and creates binding legal consequences. When DHS chooses to detain and release someone under § 1226(a), the agency must follow that statute's detention and release procedures.

33. The procedural safeguards for persons detained under § 1225(b)(2) are much more limited. The person is subject to mandatory detention and can only be released under the DHS's parole authority in 8 U.S.C. § 1182(d)(5)(A). The limited procedural safeguards for persons detained under § 1225(b)(2) are found in 8 C.F.R. § 235.3. Violations of these safeguards invalidate expedited removal determinations and preclude application of mandatory detention provisions.

34. In recent weeks, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the Board of Immigration Appeals (BIA), issued a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for a bond hearing before an immigration judge under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

35. *Matter of Q. Li* establishes mandatory detention only after an alien has been validly placed in expedited proceedings under 8 U.S.C. § 1225(b). The decision, however, creates no authority for applying mandatory detention where: (a) DHS elected alternative processing under 8 U.S.C. § 1226(a), or (b) DHS failed to complete formal requirements necessary to invoke 8 U.S.C. § 1225(b).

36. On July 8, 2025, ICE, "in coordination with the Department of Justice (DOJ)," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. *See* Exh. E (Interim Guidance Regarding Detention Authority for Applicants for Admission"). The new policy claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.*

37. The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades. Further, the policy applies even to those noncitizens to whom DHS elected to arrest under § 1226(a) and released them pursuant to that provision.

38. Here, Ms. Ponce-Pineda entered the United States without inspection on or about December 2, 2021. DHS detained Petitioner and elected to process and release her under 8 U.S.C. § 1226(a) upon her entry at or near Newfield, Arizona. Exh. B. This election is conclusively established by three irrefutable facts: (a) DHS released her on her own recognizance on December 21, 2021, by issuing her an order of release expressly relying upon § 1226(a); (b) DHS served a Notice to Appear for proceedings under 8 U.S.C. § 1229a; and (c) DHS never completed the required forms pursuant to 8 C.F.R. § 235.3(b)(2), Forms I-867AB or I-860, for expedited removal.

39. Notably, DHS did not initiate nor comply with mandatory procedural requirements set forth in 8 C.F.R. § 235.3(b)(2) necessary to invoke expedited removal, including: (a) completion of sworn Form I-867AB statement; (b) service of Form I-860 with supervisory approval; and (c) adequate interpreter assistance. These procedural failures independently preclude application of 8 U.S.C. § 1225(b).

CAUSES OF ACTION

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

40. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As

relevant here, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, § 1225(b)(2) does not justify cancellation of a bond or release order issued under § 1226(a).

42. Nonetheless, Defendants-Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.

43. The unlawful application of § 1225(b)(2) to Plaintiff-Petitioner unlawfully mandates her continued detention and violates the INA.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1232.1 and 1003.19
Unlawful Denial of Release on Bond

44. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

45. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

46. Nonetheless, Defendants-Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Plaintiff-Petitioner whom Defendants-Respondents previously determined should be detained and released pursuant to § 1226(a).

47. The unlawful application of § 1225(b)(2) to Plaintiff-Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

COUNT III
Violation of the APA
Contrary to Law and Arbitrary and Capricious Agency Policy

48. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

49. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

50. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those whom Defendants-Respondents previously determined should be detained and released under § 1226(a). Such noncitizens are detained (and released) under § 1226(a) and are eligible for release on bond, unless they were initially placed in expedited removal proceedings pursuant to § 1225(b)(1) or (b), or were detained under § 1226(c) or § 1231.

51. Nonetheless, Defendants-Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Plaintiff-Petitioner whom Defendant-Respondents previously determined should be detained and released pursuant to § 1226(a).

52. Defendants-Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

53. The application of § 1225(b)(2) to Plaintiff-Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT IV
Violation of the APA and Due Process Clause
Impermissibly Retroactive Application of New Legal Interpretation

54. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

55. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

56. Defendants-Respondents adopted a new interpretation of the INA and its regulations due to the BIA's May 15, 2025 decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Prior to *Matter of Q. Li*, Defendants-Respondents interpreted and applied the INA detention and release scheme to empower Defendants-Respondents to detain and release or afford a bond hearing before an immigration judge to most people who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

57. As recently as 2023, the BIA interpreted the INA to empower the DHS to choose whether to detain and release persons who entered without inspection either under § 1226(a) or § 1226(b)(2). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023). There, the noncitizens entered without inspection or admission and were detained shortly after entering the United States. The DHS detained and released them under § 1226(a). The noncitizens argued that their release constituted a parole because their detention (and release) could only have been accomplished through § 1225(b). The BIA firmly rejected that reading of the statute.

58. "For applicants for admission charged as inadmissible, DHS has authority to determine whether to initiate expedited removal proceedings under…8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a."). The BIA explained:

> This authority is illustrated in the Attorney General's decision in *Matter of D-J-*, 23 I&N Dec. 572, 572–76 (A.G. 2003), which involved a similar fact pattern. In that case, DHS apprehended a respondent shortly after he entered the United States without admission or parole and charged him with the same ground of inadmissibility at issue here [having entered without inspection or admission]. The Attorney General reviewed his eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). *Cf. Matter of M-S-*, 27 I&N Dec. 509, 510–13 (A.G. 2019) (addressing the detention and release of respondents whom DHS initially elects to place in expedited removal proceedings, but who are later transferred to section 240 removal proceedings after establishing a credible fear of persecution or torture).

Id. at 748-49.

59. And the BIA reiterated this reading of the INA's detention and release statutory scheme again in *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025). There, the noncitizen entered without inspection or admission and then was released. He argued that he had been paroled because DHS could only detain him under § 1225(b). The BIA rejected the argument concluding that DHS detained him under § 1226(a) and released him conditionally under § 1226(a)(2)(B). The BIA concluded that the noncitizen had "not meaningfully distinguished his release from DHS' custody from the conditional parole at issue in *Matter of Cabrera-Fernandez*, 28 I&N Dec. at 747, 750." *Matter of Roque-Izada*, 29 I&N Dec. at 109.

60. Ms. Ponce-Pineda was detained and released under § 1226(a). This is confirmed factually and legally by the documentation concerning her release and the state law of the law in effect at that time. *Matter of Cabrera-Fernandez* buttresses this point.

61. *Matter of Q. Li*, as interpreted by the immigration judge and Respondents, is a sea change in immigration law. Retroactive application of this new interpretation of the law to Petitioner's case however is unfair and unlawful.

62. Retroactivity is greatly disfavored in the law. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The Supreme Court has been emphatic that this aversion to retroactive rulemaking

> is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary 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. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.

Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994) (internal quotation and citations omitted).

63. The Fifth Circuit too has instructed the BIA and immigration courts that it is patently unfair to subject noncitizens to new interpretations of immigration laws. This is a matter of due process and fair notice. The Court explained:

> "The leading case on administrative retroactivity' instructs that any disadvantages from the 'retroactive effects' of deciding a 'case of first impression . . . must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.' To apply that instruction, this court 'balances the ills of retroactivity against the disadvantages of prospectivity.' 'If that mischief of prospectivity is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.'

Monteon-Camargo v. Barr, 918 F.3d 423, 430 (5th Cir. 2019) (internal citations omitted).

64. Thus, if application of the new rule is significant and changes the legal landscape by updating an agency's earlier position, then retroactive application of the new rule alters basic presumptions of this administrative system. *Id.* at 431. "A 'presumption of prospectivity attaches

to Congress's own work,' and it should generally attach when an agency 'exercises delegated legislative....authority.'" *Id.* (internal citation omitted).

65. The change here is significant. Ms. Ponce-Pineda's right to be free from detention is eliminated and she is now subject to mandatory detention.

66. The retroactive application of *Matter of Q. Li* is unfair, unreasonable and unlawful.

67. Further, the application of § 1225(b)(2) to Ms. Ponce-Pineda is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2). Retroactive application of *Matter of Q. Li* to Ms. Ponce-Pineda also violates her due process rights.

COUNT IV
Violation of the Administrative Procedure Act
Contrary to Law and Arbitrary and Capricious Agency Policy
Failure to Adhere to Prior Published Precedent

68. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

69. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

70. The Executive Office for Immigration Review (EOIR) is an adjudicatory body that functions much like the federal court system. The immigration court renders decisions on legal issues concerning a noncitizens removability, eligibility for relief and fitness for bond. The BIA reviews decisions and from time-to-time issues precedential decisions.

71. The parties expect the BIA and the immigration courts to apply faithfully Supreme Court, circuit court, and BIA precedent as well as decision-making principles that ensure consistency and predictability in deciding cases. The rule of orderliness is one such principle that circuit courts and district courts apply. Under the rule of orderliness, "one panel of [the circuit]

court may not overturn another panel's decision, absent an intervening change in law, such as by a statutory amendment, or the Supreme Court, or [the] en banc court." *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016). This rule is also applied by the district courts. *See Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 575-76 (W.D. Tex. 2019).

72. The EOIR has acknowledged that it does not abide by the rule of orderliness. The EOIR calls it the "prior-panel-precedent" rule. *See* EOIR Policy Memoranda (PM) 25-34 (July 3, 2025) found at https://www.justice.gov/eoir/media/1406956/dl?inline. The EOIR acknowledges that the functional equivalent of the rule of orderliness exists in its regulations and in narrow circumstances, one panel can overrule an earlier panel if a majority of the permanent Board members vote to reject the earlier decision. 8 C.F.R. § 1003.1(g)(3). Nevertheless, there is no rule or guidance for immigration courts for resolving conflicts between prior BIA precedents or which BIA precedent to follow. EOIR PM 25-34 at 2.

73. Instead, EOIR instructs immigration judges to essentially "try their best." *Id.* at 4. "Until the Board or the Attorney General resolves any conflicts in Board precedent… or adopts a clear rule regarding which precedent should control when there is a conflict, Immigration Judges will have to apply their best judgment and traditional legal tools or methods of analysis in order to adjudicate cases before them where Board precedent is in conflict." *Id.* The rule of orderliness thus does not control.

74. Prior BIA precedent requires application of *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023). If the facts demonstrate that DHS exercised its authority to detain and release a noncitizen under § 1226(a), then that election controls and the noncitizen is eligible for bond under that provision.

75. The disregard of the rule of orderliness and application of § 1225(b)(2) to Plaintiff-Petitioner are agency actions that are arbitrary, capricious, and not in accordance with law, and as such, they violate the APA. *See* 5 U.S.C. § 706(2).

COUNT VI
Violation of the Due Process Clause

76. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

77. Substantive due process protects against arbitrary and unjustified deprivations of liberty. In the immigration context, every detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute's purpose. *See Zadvydas v. Davis*, 533 U.S.690; *Demore v. Kim*, 538 U.S. 523. When the government misapplies the statutory basis for detention, no legitimate justification exists, and due process is infringed. *Id.*

78. DHS affirmatively chose to process Plaintiff-Petitioner under section 1226(a), as demonstrated by her release on recognizance (§ 1226(a)(2)(B)), issuance of a Notice to Appear, and absence of expedited removal forms (I-867AB, I-860). By subsequently detaining her under section 1225(b), DHS did not provide her with the bond protections specified under § 1226(a), resulting in a statutory mismatch that affected the legal basis for her continued detention.

79. Defendants-Respondents' actions violate Plaintiff-Petitioner's substantive due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Issue an Order declaring that Ms. Ponce-Pineda is detained under 8 U.S.C. § 1226(a);

2. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Ms. Ponce-Pineda is unlawful, arbitrary, capricious and contrary to law;
3. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Ms. Ponce-Pineda violates her due process rights;
4. Issue an Order for Preliminary Injunctive Relief ordering Defendants- Respondents to release Petitioner or, alternatively, grant her a bond hearing before an immigration judge.
5. Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412.; and,
6. Grant any other relief which this Court deems just and proper.

Dated: August 18, 2025

Respectfully submitted,

/s/ Javier N. Maldonado
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VERIFICATION OF COUNSEL

I, Javier N. Maldonado, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Javier N. Maldonado
Javier N. Maldonado