UNITED STATES DISTRICT COURT FOR 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.

Civil Action No.: 5:25-cv-01021

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff-Petitioner Aydelys del Socorro Ponce-Pineda (Plaintiff or Ms. Ponce-Pineda) files this motion for partial summary judgment. Plaintiff contends that the facts are undisputed and the law plainly entitles her to judgment as a matter of law. In support of her motion, Ms. Ponce-Pineda would show as follows:

I. PLAINTIFF'S UNDISPUTED FACTS

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. *Id.* at 2 (indicating daughter was with Plaintiff) .

Following Ms. Ponce-Pineda's entry to the United States, the Department of Homeland Security (DHS) arrested and detained her near Newfield, Arizona. *Id.* The arrest report (Form I-213) indicates that she was arrested with a warrant of arrest and issued a Notice to Appear. *Id.* In fact, 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. Exh. B.

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).

As per the conditions of her release, Ms. Ponce-Pineda was required to attend check-in appointments with ICE. Exh. C. Her first check-in appointment was on December 21, 2021. *Id.* 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.

Through her immigration counsel, Ms. Ponce-Pineda requested a bond hearing before the immigration judge. 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. *Id.*

Ms. Ponce-Pineda remains detained and separated from her children. She has a daughter who is a young adult and a 9-year-old. Both depend on her for financial support. Every day that passes, her children are without her financial and emotional support. Further, 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.

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.

II. ARGUMENT

Defendants are denying a bond hearing to Ms. Ponce-Pineda based on an unfair, unreasonable and unlawful interpretation of the Immigration and Nationality Act. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Detention under § 1226(a) permits the arrest and release of noncitizens in removal proceedings. The DHS can release the noncitizens, or the noncitizens can request a bond hearing before an immigration judge. Persons arrested and detained under § 1225(b)(2) are subject to mandatory detention. Their only hope for release is based on a parole for humanitarian reasons.

For almost 30 years, Defendants-Respondents have interpreted § 1226(a) to apply to noncitizens who entered the United States without inspect or admission. But this changed after the Board of Immigration Appeals' (BIA or the Board) decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are subject to mandatory detention without a right to a bond hearing before an immigration judge. *Id.* This interpretation however is

factually and legally incorrect as it concerns Ms. Ponce-Pineda. Further, the application of *Matter of Q. Li* is impermissibly retroactive and as well as arbitrary and capricious as it violates the rule of orderliness. For these reasons, Plaintiff is entitled to summary judgment on these claims.

A. Summary Judgment Standard of Review

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the nonmovant." *Piazza's Seafood World, LLC v. Odom*, 448 F.3d 744, 752 (5th Cir. 2006) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). In assessing a motion under Rule 56, the Court must view all evidence in the light most favorable to the nonmoving party. *Piazza's Seafood World*, 448 F.3d at 752; *Lockett v. Wal-Mart Stores, Inc.*, 337 F. Supp. 2d 887, 891 (E.D. Tex. 2004). Factual controversies must be resolved in favor of the non-movant, "but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). "When assessing whether a dispute to any material fact exists, [courts] consider all of the evidence in the record but refrain from making credibility determinations or weighing the evidence." *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 398-99 (5th Cir. 2008).

"Once the moving party has initially shown 'that there is an absence of evidence to support the non-moving party's cause,' the non-movant must come forward with 'specific facts' showing a genuine factual issue for trial." *TIG Ins. Co. v. Sedgwick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). The Court will not, "in the absence of proof, assume that the

nonmoving party could or would prove the necessary facts." *Id.* (emphasis deleted) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990)). Further, the court is not required to search the record on the non-movant's behalf for evidence that may raise a fact issue. *Nissho-Iwai American Corp. v. Kline*, 845 F.2d 1300, 1307 (5th Cir. 1988). Rather, the non-movant must demonstrate specific facts identifying a genuine issue to be tried in order to avoid summary judgment. *Piazza's Seafood World*, 448 F.3d at 752; *Lockett*, 337 F. Supp. 2d at 891; *see also* Fed. R. Civ. P. 56(e).

B. Retroactive Application of *Matter of Q.* Li to Ms. Ponce-Pineda's Case is Impermissibly Retroactive, Prejudicial and Unlawful

The main issue before this Court is a legal one: whether application of *Matter of Q. Li* to Ms. Ponce-Pineda is unconstitutional and unlawful.

The facts are undisputed that the DHS detained and released Ms. Ponce-Pineda under 8 U.S.C. § 1226(a). At the time of her release, the DHS interpreted the Immigration and Nationality Act (INA) to authorize the agency to detain and release noncitizens who entered without inspection (EWI). *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"). This was confirmed by the Board of Immigration Appeals (BIA) in *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003) where the DHS exercised its authority under § 1226(a) to detain a noncitizen who entered without inspection and was granted bond after a hearing before an immigration judge. More recently, the BIA sanctioned release under § 1226(a) in *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023) even though the noncitizen entered without inspection.

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.

On May 15, 2025, the BIA published its decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). There, the BIA held 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).

On July 8, 2025, the Immigration and Customs Enforcement (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.*

Matter of Q. Li and ICE's new policy apply 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. The DHS detained and released Ms. Ponce-Pineda 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 of her arrest and release. And the denial of bond rested solely on *Matter of Q. Li*.

Matter of Q. Li, as interpreted by the immigration judge and Defendants, is a sea change in immigration law. Retroactive application of this new interpretation of the law to Ms. Ponce-Pineda's case however "compromises [her] 'due process interests in fair notice, reasonable reliance, and settled expectations.'" *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015) (Gorsuch, J.)).

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).

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 at 430 (5th Cir. 2019) (internal citations omitted).

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 the 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).

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. The retroactive application of *Matter of Q. Li* violates Ms. Ponce-Pineda's due process rights and is unfair, unreasonable and unlawful. The Court should grant summary judgment to Plaintiff on this claim.

C. Defendant Bondi's Failure to Abide by the Rule of Orderliness and Apply Past BIA Precedent is Arbitrary, Capricious and Abuse of Discretion

The Court should also grant summary judgment in favor of Plaintiff because Defendant Bondi acted arbitrarily and capriciously in allowing immigration judges to disregard the rule of orderliness to resolve conflicts between BIA precedent.

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).

Recently, the EOIR announced that immigration judges do not have to abide by the rule of orderliness. The EOIR recognizes the rule of orderliness as 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.

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.

Prior BIA precedent requires application of *Matter of D-J-* and *Matter of Cabrera-Fernandez*. Had the immigration judge in Ms. Ponce-Pineda's case applied prior BIA precedent, the immigration judge would have concluded that he has jurisdiction over Plaintiff's bond

application and likely would have granted bond. The application of *Matter of Q. Li* to Ms. Ponce-Pineda however deprived her of a bond hearing and the opportunity to be released on bond.

This Court should grant summary judgment against Defendant Bondi and conclude that application of *Matter of Q. Li* to Plaintiff is arbitrary, capricious and an abuse of discretion.

III. CONCLUSION

For the foregoing reasons, this Court should find summary judgment in favor of Plaintiff and order Defendants to provide a bond hearing to Ms. Ponce-Pineda.

Dated: August 29, 2025

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF-PETITIONER

CERTIFICATE OF SERVICE

On August 29, 2025, undersigned counsel filed the instant pleading using the Court's electronic filing system which will give notice to all counsel of record.

Respectfully submitted,

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ATTORNEY FOR PLAINTIFF

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

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ORDER

Pending before the Court is Plaintiff's Motion Summary Judgment. After having reviewed the motion and the evidence in support of the motion, the parties' arguments and the applicable law, the Court is of the opinion that the motion should be GRANTED.

The Court concludes that the denial of a bond hearing to Plaintiff violates her due process rights and violates the Administrative Procedure Act.

It is ORDERED that Defendants provide Ms. Ponce-Pineda with a bond hearing before an immigration judge within 10 days of this Order.

Signed this ___ day of August, 2025.

UNITED STATES DISTRICT JUDGE