UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

Benita Barrera Martinez Petitioner, Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara, Acting ICE Harlingen Field Office Director; Perry Garcia, Warden of La Salle County Regional Detention Center; Respondents.	**Civil Case No. 5:25-cv-164**

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

On October 16, 2025, this Court held that a noncitizen who, like the Petitioner Benita Barrera Martinez, had lived in the United States for decades following an unlawful entry was detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A). *See Fuentes v. Lyons*, 5:25-cv-00153 (S.D. Tex. Oct. 16, 2025). Despite that clear ruling, Respondents again assert that noncitizens in these circumstances fall under § 1225(b)(2)(A), urging the Court to reconsider its prior decision. Yet the arguments Respondents advance here are the very same ones this Court carefully considered and rejected in its earlier decision. *See id.* Moreover, numerous other district courts have reached the same conclusion as this Court. *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); *Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566 (D. Neb. Sept. 3, 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); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sep. 21, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923 (N.D. Cal. Sep. 25, 2025); *Savane v. Francis*, No. 1:25-CV-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 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); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubias v. Vergara, et al.*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Sanchez-Alvarez v. Noem et al.*,, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Betancourt Soto v. Soto et al.*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025). Accordingly, the Court should again reject the Respondents' position and grant the Petitioner's writ of habeas corpus.

I. FACTUAL STATEMENT

The facts presented in the Petitioner's habeas petition were not disputed by the Respondents in their response. The Petitioner fully adopts those facts here and adds the following new facts which emerged after the petition was filed.

On October 9, 2025, the Immigration Judge (IJ) issued a scheduling order establishing deadlines for the filing of written pleadings and applications for relief. Resp'ts' Exh. 1, ECF No. 8-2. The Petitioner has fully complied with that order, filing her written pleadings on October 23, 2025, and her application for Cancellation of Removal for Nonpermanent Residents on October 28, 2025. If her application is granted, the Petitioner will obtain lawful permanent resident status

pursuant to 8 U.S.C. § 1229b(b)(1). Despite a clear avenue for relief, Petitioner remains unlawfully detained.

II. ARGUMENT

The sole issue in this case is whether the Petitioner's continued immigration detention is lawful. The Court should (A) reject Respondents' erroneous contention that the Court lacks jurisdiction; (B) find that exhaustion of administrative remedies is not required or would be futile; (C) determine that Petitioner's detention violates the governing statutes and the U.S. Constitution; and (D) order the Petitioner's immediate release.

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

The Respondents' argument that this Court lacks jurisdiction because the Petitioner is not in expedited removal proceedings or does not bring a *Zadvydas* claim is unavailing. *See* Resp'ts' Resp. to Pet'r's Habeas and Mot. to Dismiss at 10, ECF No. 8. This Court has jurisdiction over the legal claims raised 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 her detention under federal immigration law—specifically, whether 8 U.S.C. § 1226 or § 1225 governs her custody. That question falls squarely within the jurisdiction conferred by § 2241. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention.").

The provisions amended by the REAL ID Act, including 8 U.S.C. §§ 1252(a)(5), (b)(2), and (g), preclude district courts from reviewing removal orders or claims arising directly from the removal process, but they do not divest courts of jurisdiction to review the legality of detention itself. *See, e.g.*, *Moreira v. Mukasey*, 509 F.3d 709, 712 (5th Cir. 2007) (explaining that the REAL

ID Act "divested district courts of jurisdiction over removal orders and designated the courts of appeals as the sole forums for such challenges via petitions for review.") (citing 8 U.S.C. § 1252(a)(5)). Courts across the country have repeatedly held that habeas petitions contesting the statutory basis of immigration detention remain reviewable under § 2241. *See, e.g.*, *Covarrubias*, 2025 WL 2950096, at *4; *Lopez Santos*, 2025 WL 2642278, at *2. Accordingly, this Court has jurisdiction over the petition and should determine that Petitioner is detained under § 1226, not § 1225.

1. Section 1252(b)(9) and (a)(5) 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 . . . ." As such, 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 a challenge to a final removal order or removal proceedings. 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 (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. *Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018). 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 [were] not challenging the decision to detain them in the first place or to seek removal; and they [were] not even challenging any part of the process by which their removability will be determined," the Supreme Court held that § 1252(b)(9) did not apply. *Id.* at 294. Similarly, the Petitioner in this case is not challenging a final order of removal, the removal process, or her 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-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3–4 (W.D. Tex. Sept. 22, 2025); *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.

2. Section 1252(g) also 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 arguments 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; *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (recognizing that "section 1252(g) does not bar courts from reviewing an alien detention order, because such an order, 'while intimately related to efforts to deport, is not itself a decision to "execute removal orders" and thus does not implicate section 1252(g).'"). Here, Petitioner's claims fall well outside § 1252(g)'s narrow jurisdictional bar. She does not challenge the Respondents' decision to commence proceedings, adjudicate her case, or execute a removal order. Rather, she challenges her continued detention without a bond hearing, in violation of federal immigration law and her Fifth Amendment right to due process. Contrary to the Respondents' assertion, *see* Resp'ts' at 9, her detention is independent of her removal proceeding, and she does not challenge any part of the proceeding itself. 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, at *4. 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.

B. Exhaustion of administrative remedies would be futile because Immigration Judges are bound by *Yajure-Hurtado*.

"Although 'there is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus,' courts generally do require such exhaustion 'as a prudential matter.'" *Quintanilla v. Decker*, No. 21 CIV. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021). However, exhaustion may be excused "where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (quoting *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994); *see also Buenrostro-Mendez*, 2025 WL 2886346, at *3.

Respondents' argue that exhaustion is required yet simultaneously maintain that Immigration Judges (IJs) lack jurisdiction under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) to grant the relief Petitioner seeks. *See* Resp'ts' at 4–8. This argument fails. First, as stated above, there is no statutory requirement for administrative exhaustion under these circumstances. *See Buenrostro-Mendez*, 2025 WL 2886346, at *3. Indeed, as this Court and other judges in this district have determined, exhaustion of administrative remedies is statutorily required only on appeals from final orders of removal. *See, e.g.*, *Fuentes*, slip op. at 5–6 (citing 8 U.S.C. § 1252(d)(1)); *Covarrubias*, 2025 WL 2950096, at *6. Because Petitioner does not seek review of a final order of removal, statutory exhaustion requirement does not apply.

Even if exhaustion were otherwise required, it would be futile. As Respondents acknowledge, that the BIA's decision in *Yajure-Hurtado* deprives IJs of jurisdiction to issue bonds to individuals detained under 8 U.S.C. § 1225(b)(2)(A). Thus, if Petitioner were to request a bond hearing, the IJ would be compelled to deny that request pursuant to *Yajure-Hurtado*, as BIA published decisions "serve as precedents in all proceedings involving the same issue or issues." 8

C.F.R. § 1003.1(g)(2). Requiring Petitioner to pursue an administrative remedy that the agency would be bound to deny under binding precedent, would be an exercise in futility. Accordingly, exhaustion does not bar this Court's review.

C. 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)(A).

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:

> (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 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 she was detained in 2025 pending the outcome of her removal proceedings. She was issued an NTA before an IJ and placed in removal proceedings. *See* Resp'ts' Exh. 1, ECF No. 8-1. The NTA charged her as being present in the United States without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* The logical conclusion, therefore, is that she 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."); *see also Fuentes*, slip op. at 11 ("[Petitioner] cannot be described as 'seeking admission'—and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)—because he was not actively seeking to be admitted to the United States when he was apprehended . . . ."). Section 1225(b)(2)(A) expressly requires that a noncitizen be both an "applicant for admission" and "seeking admission." As multiple courts have explained, these terms are not interchangeable. *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 she is detained under § 1226(a) and is entitled to release on bond. As this Court has already determined, "the default provision for noncitizens already physically present in the United States," is § 1226(a). *Fuentes*, slip op. at 11. Respondents have provided no persuasive reason for the Court to revisit its decision in *Fuentes*.

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.

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." *Chogllo Chafla*, 2025 WL 2688541, at *8 (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 her 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 her 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 her 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. The critical distinction between individuals who are inside the United States and those who are not is that "once an 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 v. Davis*, 533 U.S. 678, 693 (2001); *see also Romero*, 2025 WL 2403827, at *12. Precedent and logic confirm that those individuals who have developed ties in the country are protected by constitutional procedural protections, which include the fundamental liberty interest in freedom from physical restraint. As the Supreme Court explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty

[the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. The Respondent's decision to hold the Petitioner without a bond hearing violates the Petitioner's right to procedural due process.

"To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319." *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

The private "interest in being free from physical detention is 'the most elemental of liberty interests.'" *Martinez*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Petitioner has been residing in the U.S. since 2008, is married to a U.S. citizen, and has a 16-year-old U.S. citizen stepchild. Petitioner is now detained and is certainly "experiencing the deprivations of incarceration, including loss of contact with friends and family, loss of income . . . . lack of privacy, and most fundamentally, the lack of freedom of movement." *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025).

The second *Mathews* factor considers whether the "challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Martinez*, 2025 WL 2598379, at *3 (quoting *Günaydin*, 784 F. Supp. 3d at 1187). "An individualized bond hearing ensures that an IJ can assess whether the Petitioner poses a flight risk or a danger to the community." *Sanchez Alvarez*, 2025 WL 2942648, at *8. Detaining the Petitioner without a bond hearing creates a high risk that her liberty is being

erroneously deprived as it cannot be determined whether detention is warranted in her case. *See Gonzalez Martinez v. Noem et al.*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025).

On the third *Mathews* factor concerning the Government's interests, the Respondents have identified no legitimate interest in detaining the Petitioner without a bond hearing. While the Government certainly has an interest in ensuring that noncitizens appear for removal proceedings and do not pose a danger to the community, those concerns can be fully addressed through an individualized bond hearing. Moreover, the Government's interest in mandatory detention runs contrary to Congressional intent which plainly allows for bond eligibility under 8 U.S.C. § 1226(a). The *Mathews* factors all weigh in favor of the Petitioner. The Court should order the Respondents to cease detaining the Petitioner without an individualized bond hearing.

III. CONCLUSION

For the foregoing reasons, the Court should deny the Respondents' motion to dismiss and grant the Petitioner's writ of habeas corpus and order her immediate release from custody.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on today's date, October 28, 2025, I electronically filed the above opposition by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Respondents' counsel.

/s/ Alejandra Martinez
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