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I. INTRODUCTION AND BACKGROUND

1. Petitioner Brayan Navarrete Perdomo (“Mr. Navarrete Perdomo”), 22, is detained at the South Texas Detention Facility and has been since May 19, 2025, following an ICE arrest arising from a traffic incident. Ex. 1 (ICE Locator Results). He has no criminal history. DHS now contends he is subject to mandatory detention under its novel position that 8 U.S.C. § 1225—not § 1226—governs, thereby foreclosing bond.
2. Mr. Navarrete Perdomo entered the United States on or about 2018, at age 15, with his father Manuel Navarrete Garcia. Shortly after arrival, his father returned to Honduras, abandoning him. His mother, Yaquelin Perdomo Juarez, who is in Honduras did the same. The Travis County, Texas district juvenile court for the 53rd District found, inter alia that Mr. Navarrete Perdomo had been subjected to parental abandonment and neglect, and that return to Honduras was not in his best interests because his life would be at risk. Petitioner then applied for a Special Immigrant Juvenile (SIJ) classification, which the U.S. Citizenship and Immigration Services (USCIS) approved on October 7, 2021. Exh. 2 (I-360 Special Immigrant Juvenile Approval Notice).
3. SIJ is a congressionally created humanitarian protection, codified at INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J), and implemented at 8 C.F.R. § 204.11. It protects children who suffered abuse, neglect, or abandonment and makes them eligible to adjust status to lawful permanent residence when a visa is available. *See* INA § 245(h). Once granted, SIJ classification remains effective; the beneficiary remains eligible to seek adjustment upon visa availability.
4. Because of the Employment Based 4th preference category (EB-4) SIJ visa backlog, many SIJ youth must wait years before applying for residence. The November 2025 Department

of State (DOS) Visa Bulletin lists an EB-4 cutoff of February 15, 2021. Exh. 3 (DOS November Visa Bulletin). Petitioner's priority date is March 3, 2021—mere weeks after the current cutoff. Exh. 2.

5. On April 15, 2019, when he was 16, the court entered an in absentia removal order. He was unaware of the scheduled hearing. He diligently pursued SIJ relief, and on July 21, 2025, Immigration Judge Gonzalez reopened proceedings sua sponte. He moved to terminate his removal proceedings on September 29, 2025, based on his approved SIJ and imminent visa availability. On October 14, 2025, Immigration Judge Veronica Segovia denied termination because he had not yet adjusted status. Exh. 4 (Immigration Judge Order Denying Termination). His individual removal hearing (final hearing) is set for December 2, 2025, at 8:30 a.m. Exh. 5 (Automated Case Information Results).
6. Petitioner has made a life here in the United States, he has a U.S. citizen partner, Elida Rojero, steady job, and many family members and friends who speak of his good moral character.
7. In the interim, DHS has refused release by invoking a July 8, 2025 directive treating noncitizens charged under 8 U.S.C. § 1182(a)(6)(A)(i) as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). On September 5, 2025, the BIA's *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A 2025), adopted the same jurisdictional view for immigration judges, effectively eliminating bond hearings for those who entered without admission.
8. That interpretation is unlawful. Section 1225(b)(2)(A) regulates inspection-stage applicants for admission, not longtime residents apprehended in the interior who are litigating removal. The governing statute is 8 U.S.C. § 1226(a), which authorizes release

on bond or conditional parole—including for those charged as inadmissible under § 1182(a)(6)(A)(i). DHS’s position contradicts the statutory text, structure, and decades of agency practice under § 1226(a).

9. The SIJ framework makes the error here especially acute. Detaining and potentially deporting an approved SIJ beneficiary weeks before his visa becomes current would eviscerate Congress’s design. SIJ exists to allow abused and abandoned children to remain safely in the United States and adjust to permanence when eligible. Mandatory detention in this posture subverts that purpose.
10. Petitioner’s detention rests on a misreading of the statute. Section 1225(b)(2)(A) governs inspection-stage applicants for admission, not noncitizens like Petitioner who previously entered and now reside in the United States. The governing provision is 8 U.S.C. § 1226(a), which covers arrest and detention pending a decision on removal and expressly authorizes release on bond or conditional parole—including for charges under 8 U.S.C. § 1182(a)(6)(A)(i).
11. Extending § 1225(b)(2)(A) to interior arrests would collapse Congress’s two-track detention scheme and nullify § 1226(a). The Supreme Court has recognized these are distinct detention authorities. *See Jennings v. Rodriguez*, 583 U.S. 281, 297–291 (2018).
12. Respondents’ new interpretation contradicts the statutory text, structure, and decades of agency practice applying § 1226(a) to interior arrests like Petitioner’s. Congress reserved § 1225 for arrival/inspection situations and § 1226 for post-entry custody. Respondents’ theory erases that line and upends the settled framework.
13. The Government’s about-face also triggers judicial estoppel. Having previously—and successfully—maintained that interior arrests of noncitizens charged under §

1182(a)(6)(A)(i) fall under § 1226(a), Respondents cannot now adopt the opposite view to foreclose bond. Judicial estoppel bars a party from prevailing on one position and later taking a contrary position to gain an unfair advantage. *See New Hampshire v. Maine*, 532 U.S. 742 (2001).

14. Due process independently forbids prolonged civil detention without constitutionally adequate procedures and an individualized assessment of flight risk or danger. *See Zadvydas v. Davis*, 533 U.S. 678, 695 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Hernandez v. Sessions*, 872 F.3d 973, 976, 990 n.17 (9th Cir. 2017). The essence of due process is notice and a meaningful opportunity to be heard at a meaningful time. *See Mathews v. Eldridge*, 424 U.S. 319, 348 (1976); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (citing *Young v. Harper*, 520 U.S. 143, 150 (1997)). By foreclosing § 1226(a) bond hearings, Respondents deny that process.

15. Petitioner therefore seeks a writ of habeas corpus ordering his immediate release, or, at minimum, requiring Respondents to provide a § 1226(a) bond hearing within three days, with the Government bearing the burden by clear and convincing evidence.

II. JURISDICTION

16. Petitioner is in the physical custody of Respondents. Petitioner is detained at the South Texas Detention Facility in Pearsall, Texas.

17. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

18. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

19. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

20. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

21. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

22. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. PARTIES

23. Petitioner Brayan Ariel Navarrete Perdomo is a citizen of Honduras detained at the South Texas Detention Complex in Pearsall, Texas since May 19, 2025, following an ICE arrest

after a traffic incident. ICE did not set bond, and under *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), he cannot obtain IJ custody review.

24. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity. She oversees the Department of Justice, including EOIR.

25. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and is sued in her official capacity. DHS oversees ICE and has ultimate custodial authority over Petitioner.

26. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. ICE manages immigration detention and he is a legal custodian of Petitioner.

27. Respondent Sylvester Ortega is the Field Office Director for ICE's San Antonio Field Office and is sued in his official capacity. He is responsible for enforcement within this district and is a legal custodian of Petitioner.

28. Respondent Bobby Thompson is the Warden of the South Texas Detention Complex in Pearsall, Texas, and is sued in his official capacity. He has Petitioner's immediate physical custody.

29. All Respondents are sued in their official capacities as custodians and/or policymakers responsible for Petitioner's continued detention.

VI. FACTS

30. Petitioner is 22 years old and has lived in the United States since August 2018. He was 15 when he arrived. He is currently held at the South Texas Detention Complex in Pearsall, Texas.

31. On May 19, 2025, he was involved in a traffic incident in Austin, Texas. The drivers called the police for assistance. The officers learned Petitioner lacked immigration status and called ICE on the spot and they arrested him. He was taken to Pearsall, Texas, where he remains.
32. Immigration Judge Gonzalez reopened his removal proceedings sua sponte on July 21, 2025. The case is now pending in the Pearsall Immigration Court under 8 U.S.C. § 1229a. DHS charges him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) based on entry without inspection.
33. ICE is holding him without bond based on the assertion that 8 U.S.C. § 1225(b)(2)(A) requires mandatory detention.
34. On October 28, 2025, immigration counsel of record filed a motion for a bond hearing. The motion presents evidence of his long residence, his community ties, and the absence of dangerousness. The motion remains pending before Immigration Judge Segovia. In light of *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A 2025), a jurisdictional denial is anticipated. Petitioner will notify this Court of any ruling.
35. ICE relies on “interim guidance” dated July 8, 2025, which reinterprets detention authority to treat most noncitizens present without admission as applicants for admission who are ineligible for bond.
36. For many years DHS and EOIR applied 8 U.S.C. § 1226(a) to interior arrests of noncitizens present without admission. Under that practice immigration judges considered bond unless 8 U.S.C. §§ 1225(b)(1), 1226(c), or 1231 applied.
37. Petitioner holds approved Special Immigrant Juvenile classification. USCIS granted SIJ on October 7, 2021 after a Texas juvenile court found abandonment and neglect and

determined that return to Honduras was not in his best interests. His EB-4 priority date is March 3, 2021. Exh. 2. The November 2025 Visa Bulletin lists an EB-4 cutoff of February 15, 2021. Exh. 3. He has waited patiently through the SIJ backlog and he is now only weeks from visa availability and eligibility to adjust under INA § 245(h). Detention under the wrong statute deprives him of a bond under § 1226(a) and puts that long-awaited relief at risk.

38. He filed a Form I-589 on September 29, 2025. The immigration court set his individual hearing for December 2, 2025. Exh. 4.

39. His ties to the United States are strong. He has lived here continuously since 2018. He has worked in construction for the past three years. He has a U.S. citizen partner and they have been together for about four years. He also has meaningful connections to his community.

40. Detention makes it difficult to gather records, reach witnesses, and work with counsel.

41. His continued custody stems solely from DHS's decision to classify his detention under § 1225(b) rather than § 1226(a). That position conflicts with the statutory text, long-standing practice, and constitutional principles.

42. Administrative bond review is unavailable or futile in this posture. *Matter of Yajure-Hurtado* removes immigration judge bond jurisdiction for those charged under § 1182(a)(6)(A)(i). BIA custody appeals usually take months. Continued detention during that time threatens his imminent chance to adjust status.

43. Without judicial intervention he faces prolonged detention and even removal despite standing on the verge of visa availability and lawful permanent residence as an approved SIJ. That outcome is inconsistent with Congress's design for SIJ protections.

44. He remains detained. Each day of custody separates him from his family, his partner, and his community.

V. LEGAL FRAMEWORK

45. The Fifth Amendment’s Due Process Clause applies to “all persons” within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Id.* at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

46. The Laken Riley Act confirms Congress preserved § 236(a)’s discretionary bond regime for most inadmissible entrants arrested in the interior by adding a narrow new mandatory-detention category under § 236(c)(1)(E) (pairing inadmissibility under 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7) with specified crimes). If § 235(b) already mandated detention for all inadmissible entrants, § 236(c)(1)(E) would be redundant—an outcome courts must avoid. *See Corley v. United States*, 556 U.S. 303, 314 (2009); *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress legislated against decades of agency practice applying § 236(a) to interior arrests, and courts presume amendments harmonize with that practice. *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025).

47. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

48. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention 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, *see* 8 U.S.C. § 1226(c).

49. 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).

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

VI. ARGUMENT

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

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

53. Following the enactment of the IIRIRA, EOIR 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).

54. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not

deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *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)).

55. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, Justice Sotomayor asked “[f]or an alien who is found in the United States illegally, has not been admitted, are they held under 1225(b) or are they held under 1226(a), then—Solicitor General Ian Gershengorn stated: “If they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not 1226(c)” and further clarified, in response to a question concerning “an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border,” the Government responded, “The answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204). DHS reiterated that such individuals “would be held under 1226(a)” and cited the administrative record to support that position. *Id.* These statements reflect DHS’s prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency’s current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability

inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

56. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

57. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). 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. (“Todd M. Lyons memo”).

58. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. 29 I&N Dec. 216 (BIA 2025).

59. Since Respondents adopted their new policies, a wave of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same new reading of the statute as ICE.²

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

² See, e.g., *Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Luna Quispe v. Crawford, et al.*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025); *Vazquez v. Bostock*, No. 25-cv-05240, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427, at *5 (N.D. Iowa, Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 2025); *Alvarez-Chavez v. Kaiser*,

60. Most recently, on October 10, 2025, this Court rejected the Respondents argument that § 1225 applied as opposed to § 1226, and granted a temporary restraining order ordering the release of the Petitioner on bond and enjoining them from re-detaining the Petitioner without notice and a pre-deprivation hearing. *Pereira-Verdi v. Lyons*, No. 5:25-CV-01187-XR (W.D. Tex. Oct. 10, 2025); *see also Hernandez-Ramiro v. Bondi*, No. 5:25-CV-01207-XR (W.D. Tex. Oct. 15, 2025).
61. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).
62. A growing number of federal courts have rejected ICE and EOIR’s expanded interpretation of the Immigration and Nationality Act’s detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. For example, courts in Arizona, California, Iowa, Kentucky, Louisiana, Michigan, Minnesota, New York, New Jersey, Nebraska, Texas, and

25-cv-06984-LB 2025 WL 2909526 (N.D. Cal., Oct. 9, 2025); *Cerritos-Echevarria v Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Padron-Covarrubias v. Vergara*, 5:25-cv-00112, (S.D. Tex. Oct. 8, 2025); *Santiago-Santiago v. Bondi*, EP-25-CV-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Hernandez Lucero v. Bondi*, No. 4:25-cv-03981 (S.D. Tex. Oct. 23, 2025); *Ortiz-Ortiz v. Bondi*, No. 5:25-cv-00132 (W.D. Tex. Oct. 15, 2025). *But see Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025 (“by the plain language of § 1225(a)(1) the petitioners are “applicants for admission” and thus subject to the mandatory detention provisions of “applicants for admission” under § 1225(b)(2)[.]”); *Vargas-Lopez v. Trump, et al.*, 8:25CV526 2025 WL 2780351 (D. Neb. Sept. 29, 2025) (the petitioner is an alien within the “catchall” scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a, per 8 U.S.C. § 1225(b)(2)).

Washington have reached this conclusion. *See e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX 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, *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Padron-Covarrubias v. Vergara*, 5:25-cv-00112, (S.D. Tex. October 8, 2025); *Santiago-Santiago v. Bondi*, EP-25-CV-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Hernandez Lucero v. Bondi*, No. 4:25-cv-03981 (S.D. Tex Oct. 23, 2025).

63. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

64. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

65. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
66. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.
67. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.
68. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

69. Section 1226(a) is the default custody authority “pending a decision on whether the alien is to be removed from the United States,” which describes § 240 proceedings like Petitioner’s. 8 U.S.C. § 1226(a). Section 1226(c) then carves out specific mandatory categories, including some tied to inadmissibility grounds. 8 U.S.C. § 1226(c). Reading § 1225(b)(2) to control here would render § 1226(a)’s bond framework and § 1226(c)’s tailored carveouts superfluous, which the Court should avoid. *See Jennings*, 138 S. Ct. at 837–39.
70. Section 1225(b)(2)(A) uses present-tense inspection language. It applies when an officer determines a person “is seeking admission” and “is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has described § 1225’s mandatory detention scheme as operating “at the Nation’s borders and ports of entry.” *Jennings*, 138 S. Ct. at 846; *see id.* at 837. That is not this case.
71. Deference does not rescue Respondents’ new theory. After *Loper Bright Enterprises v. Raimondo*, courts do not defer to an agency interpretation simply because a statute is complex; they construe the statute using traditional tools. *See* 144 S. Ct. 2244, 2262–63 (2024). *Matter of Yajure-Hurtado* is unpersuasive because it treats anyone never “admitted” as forever “seeking admission,” a reading that conflicts with § 1225’s present-tense inspection text and § 1226’s architecture. *See* 29 I. & N. Dec. 216, 221 (B.I.A. 2025).
72. The constitutional backdrop points the same direction. Civil immigration detention is constrained by the Fifth Amendment. Persons facing significant restraints on liberty retain a protected interest and are entitled to meaningful process. At minimum, detention under § 1226 requires a prompt, individualized bond hearing with the Government bearing the burden by clear and convincing evidence. *See Zadvydas v. Davis*, 533 U.S. 678, 690–96

(2001); *Demore v. Kim*, 538 U.S. 510, 528–31 (2003); *Mathews v. Eldridge*, 424 U.S. 319, 333–35, 343–49 (1976).

73. The Court should hold that § 1226(a) governs Petitioner’s custody and order his immediate release, or at minimum require a prompt § 1226(a) bond hearing with the Government bearing the clear-and-convincing burden. *See* 8 U.S.C. § 1226(a); *Jennings*, 138 S. Ct. at 837–39; *Zadvydas*, 533 U.S. at 690–96.

VII. CLAIMS FOR RELIEF

COUNT I Violation of the INA

50. Petitioner re-alleges and incorporates by reference the paragraphs above.

51. Petitioner was detained pursuant to “authority contained in section 236” of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, DHS finds that he is detained subject to 8 U.S.C. § 1225(b)(2) and the IJ lacks jurisdiction under *Matter of Yajure Hurtado* on the same basis.

52. 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. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

53. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

54. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

COUNT II Violation of the Bond Regulations

55. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.
56. 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.
57. Nonetheless, pursuant to *Matter of Yajure Hurtado*, both EOIR as well as ICE have a policy and practice of applying § 1225(b)(2) to individual like Petitioner.
58. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Due Process

59. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
60. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

61. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (B.I.A 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom.

62. At a minimum, in order to lawfully arrest Mr. Navarrete, the government must first establish, by clear and convincing evidence and before a neutral decision-maker that he is a danger to the community or a flight risk, such that his re-incarceration is necessary.

63. Petitioner has a fundamental interest in liberty and being free from official restraint.

64. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

Judicial Estoppel

65. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

66. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under §

1225(b)(2)(A). *See Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government’s reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

VIII. PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days;
- (5) Declare that Petitioner’s detention is unlawful;
- (6) Grant the writ of habeas corpus ordering Respondents to release Mr. Navarrete Perdomo on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies her as subject to mandatory detention.

(7) Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed with *Barco*. See *Vacchio v. Ashcroft*, 404 F.3d 663, 670-72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024); *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

(8) Grant any other and further relief that this Court deems just and proper.

DATED this 29th day of October, 2025.

/s/ **Maria Nereida Jaimes**
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Brayan Ariel Navarrete Perdomo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 29th day of October, 2025.

Maria Nereida Jaimes

s/Maria Nereida Jaimes