

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Maria Berenice Melendez Cortez,

Petitioner,

Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Mary De Anda-Ybarra, El Paso Field Office Director; Warden of El Paso Processing Center

Respondents.

Civil Case No. 3:25-cv-553

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001). The government’s recent misconstruction of 8 U.S.C. § 1225 to provide for mandatory detention of *all* noncitizens who enter the country illegally is akin to finding an elephant in a mousehole. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The plainly wrong construction of the statute has caused the Petitioner—and many others like her—to be unlawfully detained without bond.

2. For nearly thirty years immigration judges (IJ), immigration lawyers for noncitizens, and attorneys from the Department of Homeland Security (DHS) construed 8 U.S.C. § 1226(a) to allow for bond eligibility for noncitizens who entered the country without inspection. This was well-settled law. Indeed, just this year when Congress passed the Laken Riley Act (LRA) it revealed its understanding that noncitizens who entered the country without inspection are eligible for a bond.

The LRA's amendments to 8 U.S.C. § 1226(c) add provisions providing that noncitizens who entered the country illegally and commit certain enumerated offenses are not eligible for a bond. Congress would not have passed the LRA if it understood that noncitizens who entered the country unlawfully were already subject to mandatory detention under 8 U.S.C. § 1225.

3. Notwithstanding the plain language of §§ 1226 and 1225, on September 5, 2025, the Board of Immigration Appeals (BIA) decided *Yajure Hurtado*, in which it determined that any person who entered the United States without admission is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). 29 I&N Dec. at 216. By disregarding the statutes' plain meaning, the Respondents dramatically changed the practice of immigration resulting in the illegal detention of noncitizens across the country. *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); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Chogollo Chafila 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); *Barrera v. Tindall*, No. 3:25-CV-541, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 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); *Padron 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); *Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Betancourt Soto v. Soto et al.*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Arce-Cervera V. Kristi Noem, et al.*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025) (due process violation);

4. The Petitioner entered the United States without inspection over thirty years ago as a child. She has resided here ever since. She is married to a citizen of the United States and has four United States citizen children ranging from 12 to 19 years old. On or around September 12, 2025, she was detained by immigration officials and was issued a NTA in immigration court. *See* Exh. A.

5. The erroneous BIA decision in *Yajure Hurtado* dictates that IJs lack jurisdiction to consider bond requests for noncitizens who are present in the United States without admission or parole. As the Petitioner entered the United States without inspection, she falls within the category of noncitizens that *Yajure Hurtado* has rendered ineligible for bond.

6. The Petitioner accordingly files this petition seeking a writ of habeas corpus ordering her release from custody immediately, or alternatively, ordering Respondents to provide her a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify detention by demonstrating, by clear and convincing evidence of dangerousness or flight risk. *See Erazo Rojas*, 2025 WL 3038262, at *4 (holding that "when ordering a bond hearing as a habeas remedy" the burden shifts to the Government).

II. PARTIES

7. Petitioner Maria Berenice Melendez Cortez is a noncitizen who is currently detained in immigration detention at the El Paso Processing Center in El Paso, Texas.

8. Respondent Kristi Noem is the Secretary of the DHS and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

9. Respondent Pamela Bondi is the Attorney General for the United States and is charged with overseeing the Executive Office of Immigration Review (EOIR). General Bondi is being sued in her official capacity.

10. Respondent Todd M. Lyons is the Acting Director of the Immigration and Customs Enforcement (ICE), a sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

11. Respondent Mary De Anda-Ybarra is the Field Office Director for the El Paso ICE Field Office. It is under Respondent De Anda-Ybarra's order that the Petitioner is in immigration custody. Respondent De Anda-Ybarra is being sued in her official capacity.

12. Respondent is the warden and/or immediate custodian at the El Paso Processing Center in El Paso, Texas. The warden/immediate custodian is being sued in his or her official capacity.

III. JURISDICTION

13. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

14. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(1), (a)(5), (b), District Courts have

jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

15. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e)(1).

IV. LEGAL FRAMEWORK REGARDING MANDATORY IMMIGRATION DETENTION AND BOND ELIGIBILITY

A. Congress deliberately provided for immigration detention in two different statutes, 8 U.S.C. § 1226 and 8 U.S.C. § 1225, to address two very different groups of noncitizens in different circumstances.

16. This case involves the interplay between 8 U.S.C. § 1226 (general custody for individuals in traditional removal proceedings before an IJ) and the mandatory custody provisions of 8 U.S.C. § 1225(b)(2) that apply to those noncitizens seeking admission at the port of entry or the border. The Respondents' authority to detain noncitizens under §§ 1226 or 1225 depends on the individualized circumstances of the noncitizen and the procedural posture of the removal case.

17. Both §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to provide detention for different subsets of noncitizens. Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

18. According to the IIRIRA's legislative history, § 1226(a) was intended to "restate[] the [then-] current provisions of section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release *on bond* an alien who is not lawfully in the United States." *See Rodriguez*

v Bostock, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. Sep. 30, 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996) (emphasis added)).

19. In 1997, following the enactment of the IIRIRA, the Executive Office for Immigration Review (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) “and eligible for bond and bond redetermination.” *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).

20. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings under § 1226(a). 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. Rept. No. 104-469, Part 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

i. The Petitioner is in custody under 8 U.S.C. § 1226 and the IJ can order her release on bond.

21. Since the Petitioner was found inside the interior of the United States years after her unlawful entry, she is obviously *not* seeking admission into the country and § 1225(b)(2)(A) is inapplicable.

22. Section 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 for years and is in custody pending the outcome of her removal proceedings. She was issued an NTA and placed in removal proceedings. *See* Exh. A. The logical conclusion, therefore, is that she is in custody under § 1226(a).

23. Section 1226(a) establishes the discretionary framework for noncitizens arrested and detained “[o]n warrant issued by the Attorney General.” For such individuals, the Attorney General (1) “may continue to detain the arrested alien,” (2) “may release the alien on . . . bond of at least \$1,500,” or (3) “may release the alien on . . . conditional parole.” 8 U.S.C. §§ 1226(a)(1)-(2). DHS makes an initial custody determination on whether to allow the noncitizen to be released pending the posting of a bond. 8 C.F.R. § 1236. However, such determinations “may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236.” 8 C.F.R. § 1003.19(a).

24. Under 8 U.S.C. § 1226, an IJ may grant bond if the noncitizen demonstrates that he or she is not a danger to the community or pose a significant risk of flight. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Once a bond has been granted by the IJ, DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen’s return to custody. *See, e.g., Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (finding a change in circumstances, in part, when it was determined that the noncitizen was “wanted for murder in the Philippines . . .”).

25. 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).

26. 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. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

27. The enactment of the LRA confirms that Congress did not intend for all noncitizens who entered the country unlawfully and are found within the interior of the United States to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Indeed, the LRA explicitly provides for mandatory detention for noncitizens who both entered the country unlawfully *and* committed one of the above enumerated offenses within the United States. The LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2)(A). *Yajure Hurtado* effectively provides that LRA was an unnecessary, needless bill.

28. Section 1226(a) leaves no doubt that it applies to people who confront removal for being inadmissible to the United States, including those who are present without admission or parole.

ii. The Petitioner is not subject to mandatory detention under § 1225(b)(2)(A).

29. Section 1225(b)(2)(A), the provision invoked by the Respondents, is plainly not applicable here since it only applies to those noncitizens seeking admission. The statute states:

In the case of an who is an applicant for admission, if the examining immigration officer determines *that an alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(Emphasis added). For § 1225(b)(2)(A) to apply, “several conditions must be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez v. Hyde*, CV No. 25-11613-BEM, at *6-7. “One who is ‘seeking admission’ is presently attempting to gain admission into the United States.” *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025).

30. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287; *see also Lopez-Campos*, 2025 WL 2496379, at *18 (“1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country.”). “Noncitizens who are just ‘present’ in the country—those like [Petitioner], who have been here for years upon years and never proceeded to obtain any form of citizenship (*e.g.* asylum, permanent residency, refugee status, visas, etc.)—are not ‘seeking’ admission.” *Lopez-Campos*, 2025 WL 2496379, at *16–17.

31. As stated above, the Petitioner has been in the United States for decades subsequent to an unlawful entry. She was arrested in the interior of the United States and, as such, is not in custody under § 1225(b)(2)(A).

B. The Respondents’ misconstruction of § 1225(b)(2)(A) as encompassing all noncitizens who entered the country illegally is contrary to decades of established practice and has resulted in the unlawful detention of the Petitioner.

32. The Respondents’ misconstruction of the statutes is part of their scheme to greatly expand immigration detention in general by using the mandatory detention provisions of 8 U.S.C. § 1225.

33. On July 8, 2025, ICE announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

34. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” 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, greatly affecting those who have resided in the United States for months, years, and even decades.

35. On September 5, 2025, the BIA—reversing decades of practice—adopted this same position in *Yajure Hurtado*. 29 I&N Dec. at 216. There, the BIA 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. *Id.*

36. As demonstrated in the string cite above, the Respondents efforts to expand 8 U.S.C. § 1225 to provide for more mandatory detention has been rejected by courts across the nation. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

V. FACTS

37. The Petitioner, a citizen of Mexico, entered the United States without inspection over 30 years ago. She is married to a U.S. citizen, and they have four U.S. citizen children ranging in age from 12 to 19 years old. The Petitioner's U.S. citizen family members are suffering substantial emotional, psychological, and financial hardship because of the Petitioner's unlawful detention.

38. On or around June 18, 1994, the Petitioner was placed into deportation proceedings after having entered the United States without inspection. On January 19, 2011, the IJ terminated the removal proceedings ending the Petitioner's removal proceeding. *See* Exh. B. This termination order, moreover, was not opposed by the Respondents. *Id.*

39. The Petitioner's U.S. citizen husband filed a visa-petition for the Petitioner, which was approved. This approved visa petition, in conjunction with a prior petition filed by her father prior to April 30, 2001, statutorily qualifies the Petitioner to seek adjustment of status to a lawful permanent resident under 8 U.S.C. §1255(i). *See* Exh. C.

40. Despite a clear pathway to LPR status, the Petitioner was detained on September 12, 2025. *See* Exh. A. The NTA alleges, in part, that the Petitioner entered the country without admission or parole subjecting her to removal under 8 U.S.C. §1182(a)(6)(A)(i). The re-initiation of her removal proceedings was not based on any materially changed circumstances.

41. On September 5, 2025, the BIA issued its clearly erroneous precedential decision in *Yajure Hurtado*. The Respondents are detaining the Petitioner with no bond at the El Paso Processing Center in El Paso, Texas. *Yajure Hurtado* renders the Petitioner ineligible for bond.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

42. The Petitioner has exhausted her administrative remedies to the extent required by law. It would be futile to require the Petitioner to file a bond redetermination request with the Immigration Court given that the BIA has already announced its decision on the issue of bond jurisdiction in *Yajure Hurtado*. In fact, *Yajure Hurtado* states that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.” *Yajure Hurtado*, 29 I&N Dec. at. 225 (emphasis added).

VII. CLAIMS FOR RELIEF

Count I. Statutory claim: The Petitioner is eligible for bond under § 1226(a) and is not subject to mandatory detention under § 1225(b)(2).

43. The Petitioner has a clear right to a custody hearing by an IJ under 8 U.S.C. § 1226(a)(2). The Respondents are detaining the Petitioner in direct violation of this statute which authorizes the IJ to grant release on bond.

44. The statute cannot be clearer and requires that the Petitioner be provided with the opportunity to present her custody redetermination case before the IJ. While the BIA reached the opposite conclusion in *Yajure Hurtado*, this interpretation is erroneous and even if it were plausible, it 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)).

45. Moreover, 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, is 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* strips these long-established rights and imposes a new disability on past actions 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.”).

Count II. Fifth Amendment Due Process Violation

46. The Respondents may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Petitioner has a weighty liberty interest as his freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.

47. 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 (1976). *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.

48. These factors all favor a determination that the Petitioner is being held without due process of law. The deprivation of her liberty interest based on *Yajure Hurtado* carries a high risk that the Petitioner's liberty is being erroneously deprived.

Count III. *Accardi* Violation

49. In 1997, after Congress amended the INA through the 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 Aliens," the agencies explained that "[d]espite 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." 62 Fed. Reg. 10312, 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.

50. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

51. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates her continued detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which for decades have recognized that noncitizens present without admission are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288–29 (describing § 1226 detention as relating to people “inside the United States” and “present in the country.”). 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, 512 (2003).

52. 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 the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause, 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)).

VIII. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court enter an order to show cause and thereafter enter an order:

- a. Ordering the Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within five days why the Petitioner’s writ of habeas corpus should not be granted.

- b. Granting a writ of habeas corpus finding that the Petitioner's detention is unlawful and unconstitutional;
- c. Providing declaratory relief that the Petitioner's detention is unlawful;
- d. Ordering the Petitioner's immediate release from custody, or alternatively, ordering Respondents to provide her a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify detention by demonstrating, by clear and convincing evidence of dangerousness or flight risk.
- e. Ordering that Respondents not transfer the Petitioner to any facility outside of the boundaries of the Western District of Texas while this writ is pending.
- f. Awarding Petitioner reasonable attorney's fees, expenses and costs; and
- g. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

VERIFICATION UNDER 28 U.S.C. § 2242

I represent the Petitioner and submit this verification on her behalf. Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct to the best of my knowledge as required by 28 U.S.C. § 2242.

/s/ Lance Curtright
Lance Curtright