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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF TEXAS

10 YOHARYS CAROLINA NIEVES
11 BRIZUELA,

12 Petitioner,

Case No.: 1:25-cv-00263

13 vs.

14 Joshua Johnson, Dallas Field Office Director,
15 Enforcement and Removal Operations, United
16 States Immigration and Customs Enforcement
17 (ICE); Marcelo Villegas, Warden, Bluebonnet
18 Detention Facility; Kristi NOEM, Secretary,
19 United States Department of Homeland
20 Security; UNITED STATES DEPARTMENT
21 OF HOMELAND SECURITY; Pamela
22 BONDI, Attorney General of the United States;
23 EXECUTIVE OFFICE FOR IMMIGRATION
24 REVIEW (EOIR); Daren K. Margolin,
25 Director, EOIR; DALLAS IMMIGRATION
26 COURT,

27 Respondents.
28

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
ADMINISTRATIVE PROCEDURE ACT
RELIEF
[IMMEDIATE BOND HEARING
REQUESTED]**

1 Petitioner, Yoharys Carolina Nieves Brizuela, by and through undersigned counsel,
2 hereby petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, and
3 alleges as follows:
4

5
6 **INTRODUCTION**

7 1. Petitioner Yoharys Carolina Nieves Brizuela, born on [REDACTED], respectfully
8 petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the unlawful
9 detention imposed by Respondents.
10

11 2. Petitioner is a native and citizen of Venezuela who entered the United States without
12 inspection (EWI) in November 2023 and later applied for asylum, which remains pending. She
13 had never been placed in removal proceedings before her arrest.

14 3. On November 18, 2025, Petitioner appeared for her regularly scheduled ICE check-in in
15 Dallas, Texas. Despite full compliance with her immigration obligations, ICE officers arrested
16 her on the spot and placed her into detention without an individualized custody determination and
17 without any prior removal proceedings having been initiated.
18

19 4. Up to the date of the filing on this Writ of Habeas Corpus, Petitioner has never missed
20 any immigration appointment or obligation. She appeared voluntarily at ICE when she was
21 detained. Petitioner is now languishing in detention without meaningful access to counsel,
22 without any individualized bond determination, and without due process protections as required
23 by the Constitution and federal statute.
24

25 5. Respondents have relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and
26 *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), to argue that Petitioner is categorically ineligible
27 for a bond hearing under 8 U.S.C. § 1226(a). That reliance is legally and constitutionally flawed:
28

1 Yajure Hurtado improperly strips Immigration Judges of jurisdiction to review detention,
2 constitutionally infirm, inconsistent with federal habeas jurisprudence, and contrary to controlling
3 authority holding that noncitizens such as Petitioner are entitled to individualized review of
4 detention.
5

6 6. Petitioner's detention is therefore governed by 8 U.S.C. § 1226(a), which entitles her to a
7 prompt, individualized bond hearing. Respondents' continued detention without due process
8 violates the Fifth Amendment and the Suspension Clause.

9 7. Petitioner accordingly seeks a writ of habeas corpus under 28 U.S.C. § 2241; Declaratory
10 relief confirming that she was not paroled into the United States and thus falls under the
11 jurisdiction of the immigration court; Injunctive relief requiring Respondents to recognize his
12 procedural and statutory rights; and Any other appropriate relief under the Administrative
13 Procedure Act, as the reclassification or denial of jurisdiction constitutes final agency action that
14 is arbitrary, capricious, an abuse of discretion, and contrary to law under 5 U.S.C. § 706(2).
15

16 8. Petitioner respectfully requests that this Court order her immediate release, or
17 alternatively, require Respondents to provide a bond hearing within ten days, consistent with
18 statutory and constitutional requirements.
19

20 JURISDICTION AND VENUE

21 9. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–
22 1538, and its implementing regulations; the Administrative Procedure Act (APA), 5 U.S.C. §§
23 500–596, 701–706; and the U.S. Constitution.
24

25 10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus). 28
26 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution
27 (Suspension Clause).
28

1 11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*,
2 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651;
3 Federal Rule of Civil Procedure 65; and the Court’s inherent equitable powers.
4

5 12. Petitioner does not seek to interfere with, delay, or overturn her removal proceedings.
6 Rather, she seeks only to compel the government to honor the statutory and constitutional limits
7 on detention, both in its imposition of mandatory detention and in the prolonged duration of that
8 detention without meaningful review. Courts have consistently recognized that such challenges
9 fall within the core of the writ of habeas corpus, which exists precisely to test the legality of
10 executive confinement. Courts have consistently permitted such claims under § 2241. *See Demore*
11 *v. Kim*, 538 U.S. 510, 517 (2003) (entertaining § 2241 habeas petition challenging mandatory
12 detention under § 1226(c)); *Malik v. Warden*, 843 F. App’x 574, 575–76 (5th Cir. 2021) (requiring
13 lawful basis for detention).
14

15 13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because
16 Respondents are U.S. agencies and officers of the United States acting in their official capacities
17 or because they reside in this district. In addition, a substantial part of the events or omissions
18 giving rise to the claims occurred in this District, Petitioner is detained in this District, and no real
19 property is involved in this action.
20

21 **REQUIREMENTS OF 28 U.S.C. § 2243**

22 14. The Court must grant the petition for writ of habeas corpus or issue an order to show
23 cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
24 § 2243. If an order to show cause is issued, the Court must require respondents to file a return
25 “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.”
26 *Id.* (emphasis added).
27
28

1 15. Courts have long recognized the significance of the habeas statute in protecting
2 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
3 important writ known to the constitutional law of England, affording as it does a *swift* and
4 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
5 400 (1963) (emphasis added).
6

7 **PARTIES**

8 16. Petitioner Yoharys Carolina Nieves Brizuela is a native and citizen of Venezuela who
9 entered the United States without inspection in November 2023, filed for asylum, and resides with
10 her family. She was arrested by ICE on November 18, 2025, at her routine Dallas check-in and
11 remains in ICE custody within the Northern District of Texas.
12

13 17. Respondent Joshua Johnson is the Field Office Director for ICE Enforcement and
14 Removal Operations (ERO) in Dallas, Texas. As the ERO Dallas Field Office Director, he is
15 Petitioner’s immediate custodian, responsible for her detention at Bluebonnet Detention Facility,
16 and the person with the authority to authorize her detention or release. Respondent Johnson is
17 sued in his official capacity.
18

19 18. Respondent Marcelo Villegas is the Warden of the Bluebonnet Detention Facility,
20 oversees the day-to-day functioning of Bluebonnet Detention Facility, and has immediate
21 physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Mr. Villegas
22 is sued in his official capacity as the Warden of a federal detention facility.
23

24 19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. As
25 Secretary, she oversees the federal agency responsible for implementing and enforcing the INA,
26 including the detention of noncitizens. She is sued in her official capacity.
27

28 20. Respondent Department of Homeland Security (DHS) is the federal agency responsible

1 for implementing and enforcing the INA, including the detention of noncitizens.

2 21. Respondent Pamela Bondi is the Attorney General of the United States and head of the
3 U.S. Department of Justice. In that capacity, she oversees EOIR and the immigration court system
4 the agency administers. She is ultimately responsible for the agency's operation. She is sued in
5 her official capacity.
6

7 22. Respondent EOIR is a component agency of the Department of Justice responsible for
8 conducting removal and bond hearings of noncitizens. EOIR is comprised of a lower adjudicatory
9 body administered by IJs and an appellate body known as the Board of Immigration Appeals. IJs
10 issue initial decisions in bond hearings, which are then subject to appeal to the BIA.
11

12 23. Respondent Daren K. Margolin is the Director of EOIR and has ultimate responsibility
13 for overseeing the operation of the immigration courts and the Board of Immigration Appeals,
14 including bond hearings. He is sued in his official capacity.
15

16 24. The Dallas Immigration Court is the adjudicatory body within EOIR with jurisdiction
17 over the removal and bond cases of all individuals detained at the Bluebonnet Detention Facility.
18

18 STATEMENT OF FACTS

19 25. Petitioner Yoharys Carolina Nieves Brizuela entered the United States without inspection
20 in November 2023, fleeing severe persecution in Venezuela.
21

22 26. She was not detained, nor was she granted parole under INA § 212(d)(5).
23

24 27. Petitioner has no criminal history, poses no danger to the community, and has not been
25 charged with any offenses.
26

27 28. Petitioner filed an asylum application, which remains pending, and is thus eligible for
28 work authorization and INA protections.

29. Petitioner is engaged to a U.S. citizen, through whom she will be eligible for family-based

1 immigration relief, including consular processing.

2 30. On November 18, 2025, Petitioner voluntarily attended her routine ICE check-in in Dallas,
3 where ICE unexpectedly arrested and detained her without explanation. At the time of arrest,
4 Petitioner had never been placed in removal proceedings.
5

6 31. She received no Notice to Appear (NTA) at the time of her arrest, no initial custody
7 determination under § 1226(a), and no advisal of her right to seek bond or parole.

8 32. Petitioner currently remains detained in the Northern District of Texas. She has not
9 received a bond hearing, custody redetermination, or any form of individualized assessment.
10

11 33. Petitioner's detention prevents her from meaningfully pursuing her pending asylum claim
12 or her marriage-based relief.

13 34. Petitioner has strong family and community ties to the United States. She has made her
14 life here, and her continued detention prevents her from participating in their ongoing immigration
15 proceedings and any connection with her counsel.
16

17 35. Petitioner's next scheduled immigration hearing is a Master Hearing on April 27, 2026 at
18 8:30 AM before Judge Nugent, more than five months away, leaving her in prolonged,
19 unnecessary detention until that date unless this Court intervenes.

20 36. Petitioner's detention severely impairs her ability to communicate with counsel and
21 participate in her immigration case, creating a substantial risk of prejudice to her legal rights.
22

23 37. Petitioner has been detained despite posing no flight risk and despite having complied
24 with every immigration requirement. She has been denied any meaningful opportunity to
25 challenge her detention, in violation of due process.

26 38. ICE has refused to provide an individualized custody determination, relying on legally
27 flawed BIA decisions (Matter of Q. Li and Matter of Yajure Hurtado), which strip Immigration
28

1 Judges of jurisdiction and contradict federal habeas authority.

2 39. Petitioner is effectively languishing in detention without judicial or administrative
3 oversight, with no active removal proceedings reflected in the EOIR system, no opportunity to
4 present her fear of return, and no meaningful access to counsel or the courts.
5

6 40. Conditions at Bluebonnet Detention Facility have further exacerbated her distress,
7 including lack of adequate medical care, restricted communication with her family and counsel,
8 and intimidation by certain facility staff. This mistreatment shows the urgent need for judicial
9 intervention in her ongoing detention.
10

11 41. These conditions of confinement further show the urgency of Petitioner's release, as her
12 continued detention not only subjects her to an unreasonable risk of harm but also serves no
13 legitimate governmental purpose given her lack of dangerousness or flight risk.

14 42. Petitioner poses no danger or flight risk, and there has been no individualized
15 determination of necessity for her continued detention. Under the current misapplication of
16 *Matter of Q. Li* and *Matter of Yahure Hurtado*, Petitioner is effectively denied any meaningful
17 opportunity to challenge her detention, in violation of the Fifth Amendment's Due Process Clause
18 and the Administrative Procedure Act.
19

20 43. Petitioner remains in ICE custody with no available administrative mechanism to seek
21 release. She seeks relief from this Court through a writ of habeas corpus under 28 U.S.C. § 2241
22 and declaratory relief under the Administrative Procedure Act, to remedy this ongoing unlawful
23 detention.
24

25 LEGAL FRAMEWORK

26 Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)

27 44. The Immigration and Nationality Act ("INA") authorizes the detention of noncitizens in
28

1 removal proceedings under three primary provisions: INA § 236(a) (8 U.S.C. § 1226(a)), INA §
2 235(b) (8 U.S.C. § 1225(b)), and 8 U.S.C. § 1231(a)–(b).

3 45. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited
4 removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
5 entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d),
6 while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject
7 to mandatory detention, see 8 U.S.C. § 1226(c).

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

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

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

17 49. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
18 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208,
19 Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
20 most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
21 (2025).

22 50. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in
23 general, people who entered the country without inspection were not considered detained under
24 § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
25 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
26 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

1 51. Thus, in the decades that followed, most people who entered without inspection—unless
2 they were subject to some other detention authority—received bond hearings. That practice was
3 consistent with many more decades of prior practice, in which noncitizens who were not deemed
4 “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. §
5 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
6 “restates” the detention authority previously found at § 1252(a)).
7

8 52. The text of § 1226 also explicitly applies to people charged as being inadmissible,
9 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
10 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
11 hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who
12 face charges of being inadmissible to the United States, including those who are present without
13 admission or parole.
14

15 53. 8 U.S.C. § 1225(b), by contrast, mandates detention of certain arriving aliens and
16 applicants for admission during the pendency of expedited or full removal proceedings. However,
17 this provision only applies to individuals who are “seeking admission” and who are either subject
18 to expedited removal or placed into § 240 proceedings as applicants for admission.
19

20 54. A key distinction in this framework is “parole” under INA § 212(d)(5), which permits the
21 Secretary of Homeland Security, in his discretion, to parole an individual into the United States
22 temporarily for urgent humanitarian reasons or significant public benefit. Parole is an express
23 legal status that must be granted affirmatively and documented by the issuance of Form I-94 or
24 other evidence of parole.
25

26 55. The Board of Immigration Appeals’ decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA
27 2025), held that individuals who have been formally “paroled” into the United States under §
28

1 212(d)(5) are not eligible for a bond hearing under INA § 236(a), because they are considered
2 “arriving aliens” subject to § 235.

3 56. However, *Q. Li* does not apply to individuals who, like Petitioner, were never formally
4 granted parole but were instead released on their own recognizance after being processed and
5 issued an NTA. DHS cannot unilaterally designate an individual as “paroled” absent a formal
6 parole determination under § 212(d)(5) and issuance of appropriate documentation.
7

8 57. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA extended this
9 reasoning, holding that noncitizens who entered without inspection and were later apprehended
10 in the interior are categorically ineligible for bond hearings under § 236(a), effectively stripping
11 IJs of jurisdiction.
12

13 58. These decisions are recent, agency-specific interpretations. They are binding within EOIR
14 but not controlling in federal courts. Following the Supreme Court’s decision in *Loper Bright*
15 *Enterprises v. Raimondo*, courts now review statutes de novo without deference to agency
16 interpretations.
17

18 59. Federal courts have increasingly recognized that reliance on *Q. Li* and *Yajure Hurtado* to
19 deny bond hearings violates statutory and constitutional principles, particularly when the
20 detainee:

- 21 • Entered without inspection but was never formally paroled;
- 22 • Has strong family or community ties;
- 23 • Poses no danger or flight risk; and
- 24 • Faces prolonged detention without an individualized custody determination
- 25

26 60. As courts in multiple circuits have found, including *Ponte-Guanare v. Archambeault*, No.
27 3:25-cv-02081 (S.D. Cal. Sep. 25, 2025), and *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK (D. Mass.
28

1 Sept. 9, 2025), administrative exhaustion is futile when detention is based solely on these BIA
2 precedents, making habeas review appropriate and ordering that: “*Respondents SHALL NOT deny*
3 *Petitioner's bond on the basis that 8 U.S.C. § 1225(b)(2) requires mandatory detention*”.

4
5 61. The Fifth Amendment guarantees that no person shall be deprived of liberty without due
6 process of law. Prolonged detention without an individualized custody determination by a neutral
7 arbiter violates due process. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538
8 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

9
10 62. Where DHS has misclassified a person as paroled to avoid judicial review of custody
11 under § 236(a), courts retain habeas jurisdiction to correct such errors and order a bond hearing.
12 See *Padilla v. ICE*, 354 F. Supp. 3d 1218, 1228 (W.D. Wash. 2018); *Sajous v. Decker*, No. 18-
13 CV-2447 (AJN), 2018 WL 2357266, at *7 (S.D.N.Y. May 23, 2018).

14
15 63. The Administrative Procedure Act, 5 U.S.C. §§ 701–706, provides a cause of action for
16 individuals aggrieved by final agency action that is arbitrary, capricious, contrary to law, or in
17 excess of statutory authority. DHS’s and the Immigration Judge’s reliance on *Q. Li* under the
18 mistaken belief that Petitioner had been “paroled” constitutes final agency action that is contrary
19 to law and subject to review under the APA.

20 **The BIA’s Practice of Delayed Decisions in Bond Proceedings**

21
22 64. According to the agency’s own data, during FY 2024, the agency’s average processing
23 time for a bond appeal was 204 days, or nearly seven months.

24
25 65. The lengthy delays in bond appeal determinations do not affect only Petitioner and
26 similarly situated individuals subject to the Board of Immigration Appeals’ decision in *Matter of*
27 *Q. Li*, 29 I&N Dec. 66 (BIA 2025) described above. It also affects all noncitizens who are detained,
28 who have a right to a bond hearing, and who have their request for a bond denied or cannot afford

1 the bond they are provided.

2 66. This average of 204 days tells only part of the story. The data released by EOIR shows
3 that in many cases, the BIA review takes far longer—in some cases, a year or more—to decide a
4 person’s bond appeal.

5 67. These processing times defy the Due Process Clause.

6 68. The Supreme Court and the Ninth Circuit have explained that appellate review is a critical
7 component of a constitutional civil detention scheme, including in immigration cases. *See, e.g.,*
8 *Schall v. Martin*, 467 U.S. 253, 280 (1984); *Singh v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011);
9 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065–66 (9th Cir. 2008).

10 69. The Supreme Court has also made clear that *timely* appellate review is a key feature of
11 any civil detention scheme. As the Court has explained, “[r]elief [when seeking review of
12 detention] must be speedy if it is to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

13 70. Most notably, the Court upheld the federal pretrial detention under the Bail Reform Act
14 in part because the statute “provide[s] for immediate appellate review of the detention decision.”
15 *United States v. Salerno*, 481 U.S. 739, 752 (1987). As the Ninth Circuit later elaborated,
16 “[e]ffective review of pretrial detention orders necessarily entails a speedy review in order to
17 prevent unnecessary and lengthy periods of incarceration on the basis of an incorrect magistrate’s
18 decision.” *United States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (9th Cir. 1987).

19 71. These principles derive from the federal pretrial context, where, by definition, individuals
20 are subject to federal criminal proceedings. Yet here, where only civil proceedings are at issue,
21 the BIA provides nothing like the speedy review federal district and appellate courts provide of
22 magistrate judge detention decisions.

23 72. Without timely review, appellate review is meaningless. Indeed, the Supreme Court has
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25
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27
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1 explained that the opportunity to obtain “freedom before conviction permits the unhampered
2 preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.”
3 Stack, 342 U.S. at 4. Additionally, such detention “may imperil the [detained person’s] job,
4 interrupt his source of income, and impair his family relationships.” *Gerstein v. Pugh*, 420 U.S.
5 103, 114 (1975).
6

7 73. During the many months the BIA takes to review a bond appeal, a detained noncitizen
8 will be forced to defend themselves against their removal on the merits, depriving them of a
9 meaningful chance to assemble evidence outside detention, coordinate with family, or
10 communicate with potential witnesses in other countries.
11

12 74. Indeed, their very detention significantly reduces their likelihood of obtaining legal
13 representation. In removal proceedings, noncitizens have the right to be represented by legal
14 counsel but “at no expense to the government.” 8 U.S.C. § 1362. Those detained while in removal
15 proceedings face significant challenges to accessing and communicating with counsel or other
16 forms of legal assistance. *See, e.g.,* ACLU, No Fighting Chance: ICE’s Denial of Access to
17 Counsel in U.S. Immigration Detention Centers 6 (June 9, 2022).¹
18

19 75. The lack of legal representation in turn dramatically reduces the potential for successful
20 outcomes in their underlying removal proceedings. *Id.* at 12.
21

22 76. The months a noncitizen waits for appellate review also deprives them of time with their
23 spouses, children, parents, and other family members. These individuals—who are often U.S.
24 citizens or lawful permanent residents—are similarly deprived of the love, care, and financial
25 support that the detained person provides.
26

27 ¹ [https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-](https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers)
28 centers.

1 77. Time in detention is also difficult in other ways. Detained persons are often incarcerated
2 in jail-like settings, forced to sleep in communal spaces, receive inadequate medical care, and
3 subjected to other degrading treatment.

4 78. While not all noncitizens succeed in their appeals, some do. The BIA's months-long
5 appellate review means that for those individuals, they have spent months of unnecessary time in
6 detention and suffered the many harms outlined above.

7 79. Such review processing times violate the Due Process Clause and do not constitute a
8 reasonable time as required by the APA.
9

10
11 **Bia's Precedent in *Matter of Q.Li* and *Matter of Hurtado* Should Not Be Applied in This**
12 **Matter**

13 80. The Board of Immigration Appeals (BIA) decision in *Matter of Q. Li* and *Matter of*
14 *Hurtado* should be viewed as an agency interpretation of a statute. The Supreme Court's decision
15 in *Loper Bright Enterprises v. Raimondo*, which overturned the *Chevron deference*,
16 fundamentally alters how courts should review such agency interpretations.

17 81. The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* (U.S. June 28,
18 2024) represents a significant shift in administrative law. The Court expressly abrogated the
19 Chevron framework, which previously instructed courts to defer to an agency's reasonable
20 interpretation of an ambiguous statute. The Court concluded that the Chevron doctrine was a
21 misapplication of judicial power and that it improperly shifted the judicial function of
22 interpreting the law to the executive branch. The judiciary's role is to say, "what the law is," as
23 established in *Marbury v. Madison*. This means that courts must now interpret statutes *de novo*,
24 or as if for the first time, without any special deference to an agency's interpretation.
25

26 82. The BIA, as part of the Department of Justice, is an administrative body charged with
27
28

1 interpreting and applying the Immigration and Nationality Act (INA). Its decisions, such as
2 *Matter of Q. Li* and *Yajure Hurtado*, are classic examples of agency interpretations of a statute.
3 In this case, the BIA interpreted a specific provision of the INA to determine eligibility for a
4 particular form of relief. Under the old *Chevron* framework, a court would have likely deferred
5 to the BIA's interpretation as long as it was a reasonable construction of an ambiguous statute.
6

7 83. With *Loper Bright*, the legal landscape has changed. When a court now reviews BIA's
8 decision in *Matter of Q. Li* and *Yajure Hurtado*, it cannot simply accept the BIA's interpretation.
9 Instead, the court must undertake its own independent analysis of the statute. The court must use
10 all traditional tools of statutory interpretation, such as the plain language of the statute, legislative
11 history, and statutory context, to determine the correct meaning of the law. The BIA's
12 interpretation is no longer entitled to deference. It is simply one possible reading of the statute,
13 which the court can consider but is not bound by. This new approach restores the judiciary's
14 power to serve as the ultimate arbiter of statutory meaning, ensuring a more uniform and
15 consistent application of the law.
16
17

18 84. *Matter of Q. Li* (29 I&N Dec. 66 (BIA 2025)) and *Matter of Yajure Hurtado* (29 I&N
19 Dec. 216 (BIA 2025)) contradict the plain language of the statute by expanding the scope of
20 "arriving aliens" beyond the clear meaning of the law. The decision's interpretation effectively
21 erases the distinction between individuals apprehended at the border and those who have already
22 entered the United States, which is a critical distinction in the Immigration and Nationality Act
23 (INA). By doing so, it subjects a broader category of individuals to mandatory detention under
24 § 235(b) of the INA, despite the fact that they would otherwise be eligible for a bond hearing
25 under § 236(a).
26

27 85. The legal principle of statutory interpretation, specifically the "plain meaning" rule
28

1 dictates that if the language of a statute is clear and unambiguous, a court must apply it as written.
2 without looking at outside sources to interpret its meaning.

3 86. INA § 235(b) governs the processing of "arriving aliens" and those seeking admission to
4 the United States. It mandates the detention of individuals who are "applicants for admission"
5 and are found to be inadmissible. The plain language of this statute applies to individuals who
6 are physically presenting themselves at a port of entry or are otherwise in the process of seeking
7 admission.
8

9 87. INA § 236(a), in contrast, applies to a broader class of non-citizens who are in the United
10 States and have been arrested for a removable offense. It explicitly allows for the release of these
11 individuals on bond while their removal proceedings are pending.
12

13 88. The key legal distinction between these two sections is whether a non-citizen is an
14 "arriving alien" or has already "entered" the United States. Traditionally, an individual
15 apprehended miles away from a port of entry has been considered to have already entered and,
16 therefore, is eligible for a bond hearing under § 236(a).
17

18 89. The Board of Immigration Appeals (BIA) in *Matter of Q. Li* contradicts this established
19 understanding by reclassifying a person apprehended several miles from the border as an
20 "arriving alien." This classification is a direct expansion of the statutory language. The BIA's
21 decision essentially holds that an individual is an "arriving alien" so long as they were
22 apprehended "while arriving in the United States," regardless of their physical location or
23 distance from a port of entry.
24

25 90. The BIA's ruling effectively renders the geographic distinction between "at a port of
26 entry" and "in the United States" meaningless. The statute's structure, with its two separate
27 detention provisions, clearly intended for these to be different categories.
28

1 91. By defining "arriving" so broadly, the BIA's decision expands the scope of mandatory
2 detention under § 235(b) to encompass individuals who would have previously been subject to
3 the bond-eligible detention provisions of § 236(a).

4 92. The purpose of § 236(a) is to provide a mechanism for releasing certain non-citizens on
5 bond. By moving these individuals into a mandatory detention category, *Matter of Q. Li* and
6 *Yajure Hurtado* bypasses the discretionary authority of immigration judges and thwarts the
7 legislative intent to allow for bond hearings in these cases.

8 93. Here, the petitioner was apprehended already in the United States, released on her own
9 recognizance, and later re-apprehended even though she was complying with mandatory
10 inspection appointments before the Immigration and Customs Enforcement – ICE and
11 Immigration Court. This fact pattern differs entirely from the Congressional intent at the time §
12 235(b) was written.

13 94. Federal district courts across multiple circuits have consistently rejected the government's
14 position that noncitizens who previously entered without inspection and were later apprehended
15 in the interior are subject to mandatory detention under INA § 235(b)(2). These courts instead
16 hold that INA § 236 governs detention for such individuals and preserves access to bond hearings
17 before an Immigration Judge. The following decisions, grouped by circuit, illustrate the growing
18 consensus against *Matter of Yajure Hurtado*.

19 **A. First Circuit**

20 95. District courts within the First Circuit have been particularly active in issuing habeas relief
21 and rejecting the government's new interpretation of INA § 235(b)(2).

- 22 • *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- 23 • *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)

- 1 • *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- 2 • *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- 3 • *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- 4 • *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- 5 • *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025)
- 6 • *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)
- 7 • *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025)

9 96. These cases uniformly hold that individuals arrested in the interior after living in the
10 United States are detained under § 236(a) and are entitled to a bond hearing. In particular,
11 *Sampiao* directly disagreed with the BIA's reasoning in *Yajure Hurtado*, finding that INA §
12 235(b)(2) does not apply in these circumstances.

14 **B. Second Circuit**

15 97. Courts within the Second Circuit have also struck down the government's expansive
16 reading of § 235(b)(2).

- 17 • *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- 18 • *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

20 **C. Fourth Circuit**

- 21 • *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

23 **D. Fifth Circuit**

- 24 • *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

25 **E. Sixth Circuit**

- 26 • *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

27 **F. Eighth Circuit**

1 98. The District of Nebraska and District of Minnesota have issued numerous decisions
2 rejecting *Yajure Hurtado*'s interpretation:

- 3 • *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- 4 • *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- 5 • *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)
- 6 • *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- 7 • *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- 8 • *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- 9 • *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- 10 • *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
- 11 • *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025)

14 **G. Ninth Circuit**

15 99. Courts within the Ninth Circuit have not only rejected *Yajure Hurtado* but have also
16 explicitly noted that its issuance makes BIA administrative exhaustion futile.

- 17 • *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)
- 18 • *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- 19 • *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- 20 • *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- 21 • *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- 22 • *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

25 **H. Key Ninth Circuit Trend:**

26 100. In *Zaragoza Mosqueda*, the court expressly held that requiring prudential
27 exhaustion of administrative remedies was **futile** given the binding nature of *Matter of Yajure*
28

1 *Hurtado*. This supports our position that habeas review in district court is appropriate and
2 necessary without first appealing to the BIA or even requesting a bond hearing from the
3 Immigration Judge.

4 I. Summary

5 101. Across **seven circuits**, federal district courts have consistently:

- 6 • Rejected DHS's interpretation of INA § 235(b)(2) as applying to noncitizens apprehended
7 in the interior after an unlawful entry.
- 8 • Affirmed that § 236(a) provides the statutory framework for discretionary detention and
9 bond hearings.
- 10 • Found that *Matter of Yajure Hurtado* improperly strips immigration judges of jurisdiction
11 and is contrary to the statutory scheme, Supreme Court precedent (*Jennings v. Rodriguez*),
12 and decades of practice.

13 102. These decisions create a strong foundation for arguing that petitioner's detention
14 is unlawful and that immediate habeas relief is warranted without exhausting BIA administrative
15 remedies.
16
17
18

19 CAUSES OF ACTION

20 **COUNT I**

21 **Violation of 8 U.S.C. § 1226(a) – Unlawful Denial of Bond Hearings**

22 103. Petitioner realleges and incorporates by reference all preceding paragraphs as if
23 fully set forth herein.

24 104. Under 8 U.S.C. § 1226(a), the Attorney General may detain an alien pending a decision
25 on removal proceedings, but the statute expressly authorizes release on bond or conditional parole
26
27
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1 after a custody redetermination.

2 105. Despite being detained, Petitioner has not been afforded any opportunity for a bond
3 hearing under § 1226(a).

4 106. Even if Petitioner were to be scheduled for a custody redetermination, the Immigration
5 Judge would likely deny jurisdiction based on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and
6 *Matter of Hurtado* (BIA 2025), two recent BIA decisions that erroneously interpret § 236(a) as
7 inapplicable to certain noncitizens who were not paroled but released after entry.
8

9 107. Under the clear language of the INA, § 235(b) governs the treatment of “applicants for
10 admission” who present themselves at a port of entry or are intercepted while seeking entry.
11 Section 236(a) applies to noncitizens who have already entered the country and are awaiting
12 removal proceedings.
13

14 108. The Immigration Judge’s denial of bond without consideration of the statutory factors in
15 § 1226(a) and applicable regulations deprived Petitioner of the individualized custody
16 determination guaranteed by law.
17

18 109. Petitioner falls squarely within the latter category and is thus entitled to an individualized
19 bond hearing under § 236(a). The IJ’s denial of jurisdiction under *Matter of Q. Li* and *Matter of*
20 *Hurtado* constitutes an error of law and a violation of the INA.

21 110. Following the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo* (U.S.
22 June 28, 2024), agency interpretations of ambiguous statutes are no longer entitled to Chevron
23 deference. Courts must interpret statutory provisions *de novo*, using the traditional tools of
24 statutory construction.
25

26 111. Because *Matter of Q. Li* and *Matter of Hurtado* constitute agency interpretations
27 inconsistent with the INA’s plain text, they are not entitled to deference and cannot lawfully strip
28

1 Immigration Judges of jurisdiction to conduct bond hearings for individuals like Petitioner.

2 112. Respondents' assertion that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A) as an
3 "applicant for admission" is both factually unsustainable and legally indefensible. The
4 administrative record and governing precedent make clear that Petitioner's custody falls squarely
5 within 8 U.S.C. § 1226(a).
6

7 113. Petitioner entered the United States without inspection in November 2023, over two years
8 ago, and has since resided here continuously. She was not apprehended at or near a port of entry,
9 nor was she seeking admission or parole when taken into ICE custody on November 18, 2025.
10 DHS issued her NTA long after her entry. The timing and circumstances of her arrest confirm
11 that she was treated as a noncitizen already present in the United States, not an "arriving alien"
12 under § 1225(b).
13

14 114. Federal courts within the Fifth Circuit have recognized that noncitizens who entered the
15 U.S. years ago and were arrested in the interior are detained under § 1226(a). See, e.g., *Kostak v.*
16 *Trump*, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (granting injunction and ordering
17 bond hearing under § 1226(a) where petitioner entered without inspection and lived in the U.S.
18 for years). This distinction flows directly from the structure of the INA, which divides custody
19 authority based on whether the individual is seeking admission at the border (§ 1225) or has
20 already entered the country (§ 1226).
21

22 115. The Supreme Court in *Jennings v. Rodriguez*, reinforced that § 1225(b) applies to
23 "arriving aliens" who are stopped at or near a port of entry and are still in the process of being
24 "admitted" to the United States. By contrast, § 1226(a) "generally governs the detention of aliens
25 who are already in the country pending the outcome of their removal proceedings." *Id.* at 296.
26 Nothing in the record supports DHS's attempt to reclassify Petitioner, who has lived in the United
27
28

1 States since 2023, as a recent “applicant for admission.”

2 116. Petitioner was never paroled under § 1182(d)(5), never treated as an “arriving alien” in
3 DHS custody, and was not detained at the border or while seeking entry. Instead, DHS’s own
4 conduct confirms its view that Petitioner was subject to the removal procedures for individuals
5 already inside the United States, consistent with § 1226(a). The belated issuance of an NTA,
6 coupled with ICE’s initial determination that she would be “held without bond,” demonstrates
7 that DHS proceeded under the § 1226 framework from the outset.
8

9 117. This constitutes an unlawful application of § 1226(a), warranting habeas relief.
10

11 **COUNT II**

12 **Violation of the Administrative Procedure Act – Unlawful Denial of Bond**

13 118. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set
14 forth herein.
15

16 119. The APA, 5 U.S.C. §§ 701–706, prohibits agency action that is arbitrary, capricious, an
17 abuse of discretion, or otherwise not in accordance with law.

18 120. Respondents’ failure to afford Petitioner any opportunity for a custody redetermination
19 under 8 U.S.C. § 1226(a) constitutes arbitrary and capricious agency action. Despite more than
20 two months in ICE detention, Petitioner has not received a bond hearing or any individualized
21 assessment of flight risk or danger, in violation of statutory and constitutional requirements.
22

23 121. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens
24 residing in the United States who are subject to the grounds of inadmissibility because they
25 originally entered the United States without inspection. Such noncitizens are detained under §
26 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c)
27
28

1 or § 1231.

2 122. The BIA's holdings in *Matter of Q. Li* and *Matter of Hurtado* are agency actions that
3 reinterpret the INA to eliminate jurisdiction for Immigration Judges to hold bond hearings in cases
4 governed by § 236(a).

6 123. These decisions are contrary to the plain text, structure, and legislative history of the INA
7 and thus not in accordance with law.

8 124. Moreover, under *Loper Bright Enterprises v. Raimondo*, courts may not defer to such
9 interpretations. Instead, the judiciary must independently construe the INA's statutory scheme.
10 Upon such review, *Matter of Q. Li* and *Matter of Hurtado* constitute unlawful, ultra vires agency
11 actions.

13 125. Respondents' bond determination was not in accordance with the INA, the APA, or due
14 process, and therefore must be set aside under 5 U.S.C. § 706(2).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 17
- 18 1) Assume jurisdiction and proper venue over this matter;
 - 19 2) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to
20 immediately release Petitioner from immigration detention or, in the alternative, order the
21 immigration court to schedule a custody determination hearing without considering *Matter*
22 *of Q. Li* and *Matter of Hurtado* within 10 days or any time this court deems reasonable.
 - 24 3) Declare that Respondents' denial of bond under *Matter of Q-Li* and *Matter of Hurtado*
25 was or would have been unlawful under 8 U.S.C. § 1226(a), the Administrative Procedure
26 Act, and the Due Process Clause of the Fifth Amendment;
 - 27 4) Enjoin Respondents from further detaining Petitioner without providing a lawful and
28

1 individualized custody determination;

2 5) Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice
3 Act, 28 U.S.C. § 2412; and

4
5 6) Grant such other and further relief as this Court deems just and proper.

6
7 /s/ Marcelo Gondim

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

29 I represent Petitioner, Yoharys Carolina Nieves Brizuela, and submit this verification on
30 her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of
31 Habeas Corpus are true and correct to the best of my knowledge.

32 November 25, 2025.

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/s/ Marcelo Gondim

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