



## I. INTRODUCTION

1. Petitioner, Sandra Nohemy Cruz De Cuadra, is in the physical custody of Respondents at the Karnes County Detention Facility. Immigration and Customs Enforcement (ICE) arrested her at her semi-annual regular check-in with them on November 25, 2025. They did not offer a reason for their decision to arrest her, and have maintained she is ineligible for bond. She now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner was born in El Salvador and entered the United States on or about March 29, 2012, where she surrendered to border patrol. ICE initially detained her in McAllen, Texas, and issued her a “Notice of Custody Determination” Form I-286 which indicates “Pursuant to the authority contained in section 236 of the Immigration and Nationality Act ...I have determined that pending a final determination by the immigration judge ...you shall be – detained by the Department of Homeland Security.” Exh. 2 (I-286 Notice of Custody Determination). The next day, March 30, 2012, ICE issued her Form I-220A, Release on Recognizance. The form indicates on the second page that she is released “OREC” and that she is traveling as a family unit, namely her two daughters, Andrea and Ariana. *Id.* The family were released on recognizance and moved to the Austin, Texas area.
3. ICE the same day issued her a Notice to Appear (“NTA”), which designated her as “an alien present in the United States who has not been admitted or paroled” and charged her with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as an “alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the

Attorney General.” Exhibit 3, Notice to Appear. The Notice to Appear does not contain a time or a date for a future hearing, but rather says the hearing will be “a time to be set” and “a date to be set.” *Id.*

4. Following Petitioner’s release, she hired an attorney, Luz Martinez Bernal. The Executive Office for Immigration Review (EOIR) repeatedly rescheduled her San Antonio immigration court removal hearings. She finally appeared with her attorney at the San Antonio immigration court in 2025, and the IJ reset the matter for a further hearing to be held April 28, 2027. Exh. 4. The family meanwhile also appeared as part of their recognizance for semi-annual check-ins with ICE at the San Antonio Field Office from 2012 until her arrest by ICE at her check-in on November 25, 2025. She is now detained by ICE at the Karnes County Detention Facility. ICE has filed her new location with the Immigration Court, and it is expected that her 2027 nondetained court date will soon be advanced to a detained court date in Karnes.
5. Petitioner is subject to “pre-final order of removal” detention under 8 U.S.C. § 1226(a). Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a change in custody redetermination (i.e. bond hearing) with an Immigration Judge (“IJ”).
6. However, on July 8, 2025, DHS issued an internal Interim Guidance (“Policy”) that took the baseless position that—contrary to statutory principles and governing case law—noncitizens like Petitioner who entered the United States without permission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b) instead of discretionary detention under section 1226(a). On September 5, 2025, the Board of Immigration Appeals (“BIA”)

issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) that sided with DHS' position.

7. DHS's contention that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is without merit. DHS's policy has upended decades of DHS's own interpretation of bond eligibility under sections 1226(a) and 1225(b). The vast majority of district courts across the country that have addressed this issue have rejected DHS's arguments and found that it violates the INA and noncitizens' due process rights.
8. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner.

## **II. JURISDICTION**

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Karnes County Detention Facility, in Karnes City, Texas.
10. 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).
11. 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**

12. 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.
13. 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

14. 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.*

15. 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

16. Petitioner Sandra Cruz De Cuadra is a citizen of El Salvador who has been in immigration detention since the 25th of November, 2025. After arresting her at her regular check-in in San Antonio, Texas and transferring her to Karnes County Detention Center, ICE did not set bond and Petitioner is unable to obtain review of her custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Due to this erroneous decision, it would be futile for Petitioner to apply to EOIR without the intervention of this honorable Court.

17. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and

the immigration court system it operates is a component agency. She is sued in her official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
19. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.
20. Respondent Sylvester Ortega is named in their official capacity as the Field Office Director for the San Antonio Field Office of ICE. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Ortega is a legal custodian of Petitioner.
21. Respondent Rose Thompson is named in their official capacity as the warden of the Karnes County Detention Center (KCDF). The Warden is an employee of the Geo Group, Inc. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

## **VI. FACTS**

22. Petitioner has resided in the United States since March 29, 2012 and currently resides physically in Karnes City, Texas, where she is detained.

23. Upon her entry into the United States, the DHS released her into the country with an I-220A form *Order of Release on Recognizance*, or “OREC,” which found that she was detained and released under INA 236, formally documenting that she was arrested, placed in removal proceedings, and released pursuant to INA § 236. See Exh. 2, Form I-220A Order of Release on Recognizance (OREC). The OREC expressly states that her release was conditioned on compliance with § 236 and related regulations. *Id.*
24. The DHS filed a Notice to Appear (NTA) with EOIR alleging that Petitioner entered the United States without inspection. See Exh. 3, Form I-862, Notice to Appear.
25. Petitioner appears eligible for Form I-589, application for asylum with the Immigration Court. Currently she is scheduled for a non-detained master hearing for April 2027, but with her new detention her hearing will be advanced to an imminent court date on the Pearsall Immigration Court detained docket, which handles Karnes cases.
26. Sandra Cruz De Cuadra’s detention has inflicted profound harm on her family, particularly her husband, Jorge Cuadra, age 49. The couple married in El Salvador on July 3, 1999 in El Salvador. Jorge is experiencing emotional and functional hardship in Sandra’s absence. Sandra is a devoted wife who raises their two children, Andrea and Ariana, with him, and whose presence is essential to her relatives’ well-being and stability. Her deportation would cause lasting trauma and grief, not only within her household but also across the broader community in Austin that values her contributions. Her case exemplifies the urgent need to consider family unity in detention decisions.
27. Pursuant to *Matter of Yajure Hurtado*, no immigration judge is able to consider Petitioner’s bond request, see 29 I&N Dec. 216, and her unlawful detention cannot be litigated before that BIA, who--as the Lyons memorandum implies--was involved with the DHS’s July 8,

2025 decision to make its reading an agency policy – and who is a party to these contested proceedings – to adopt the DHS’s position wholesale, because such efforts would be futile. See Lyons ICE Memorandum, *available at* <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last checked December 9, 2025).

28. As a result, Petitioner remains in detention. Without relief from this court, she face the prospect of months, or even years, in immigration custody, separated from her family and community.

## VII. LEGAL FRAMEWORK

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

30. 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).

31. 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).

32. 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).

33. The detention provisions at section 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(c) was most recently amended earlier this year by the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025).

34. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 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). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA, 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 section 1226(a) simply “restates” the detention authority previously found at section 1252(a)).
35. As a result of the Lyons ICE July 8, 2025 Memorandum cited above, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, to be subject to mandatory detention under section 1225(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

36. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

### VIII. ARGUMENT

37. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
38. 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).
39. 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).
40. 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)).

41. 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, 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. \_\_\_\_ (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.
42. 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.

43. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>1</sup> 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”).
44. 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).
45. 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.<sup>2</sup>

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

<sup>2</sup> 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 Cruz 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 Cruz 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 Cruz 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*, 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. Az. Oct. 3, 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. October 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Az. October 7, 2025). *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025). *But see Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. September 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. September 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)).

46. Recently, on October 10, 2025—and since after—judges in this district have rejected the Respondents argument that § 1225 applied as opposed to § 1226, and have granted relief or 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. See e.g., *Pereira-Verdi v. Lyons*, No. 5:25-CV-01187 (W.D. Tex. Oct. 10, 2025).
47. 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).
48. 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 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 De Cuadra 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. Az. Oct. 7, 2025).

49. 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).
50. 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.
51. Indeed, according to the I-220A, Release on Recognizance document issued to Respondent upon her encounter with Government officials, as well as the DHS's own factual allegations contained in the Notice to Appear, the DHS themselves determined that Petitioner had entered the U.S. under the INA and thus falls under § 1226(a), not § 1225(b). Exh. 2, O-rec; Exh. 3, NTA..
52. 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]."

53. 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.
54. 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.
55. 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).
56. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at the border and released after a quasi-judicial determination by an immigration official on a form I-220A that Respondent falls under the discretionary arrest provision of § 1226(a) as an uninspected entrant. The

Government's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

57. It has been the settled practice for decades for immigration officials to issue an I-220A, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an I-220A under § 236 is not a ministerial act but a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b). The Supreme Court has "long favored application of the common law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). As the Court explained in *Utah Construction*, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed

issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.” 384 U.S. at 422. This presumption applies because “Congress is understood to legislate against a background of common-law adjudicatory principles.” *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, DHS’s prior § 236 determination—memorialized in the I-220A—constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

#### **PETITIONER’S POSITION ON MALDONADO-BAUTISTA CLASS ACTION**

58. Nor does Petitioner believe the impact of *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) affects this Court’s ability to grant the immediate relief she seeks of an order of release from detention.
59. If that litigation did affect it, Petitioner urges this Court to find that she is a class member and to defer to the district court’s statutory analysis in that case—but further submits that the declaratory judgement there does not moot her claims nor necessitate that she administratively exhaust her remedies before the immigration court. Despite the *Maldonado Bautista* decision, exhaustion remains futile. Since the decision there was issued, Respondents have instructed immigration judges not to apply the decision to class members, since the nationwide relief was only declaratory. As a result, immigration judges are continuing to deny bond to individuals like Petitioner around the country and in the San Antonio area. Moreover, even were the *Maldonado Bautista* being implemented in practice, which it is not, *Maldonado Bautista* does not dispose of Petitioner’s due-process claims nor settle the question of appropriate remedy.

60. For those reasons, Petitioner urges the Court to order her immediate release.

**Maldonado Bautista**

61. *Maldonado Bautista v. Santacruz* is a class-action case brought pursuant to the bond statute and regulations and the Administrative Procedure Act, not the federal habeas statute.<sup>3</sup> On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs in the case and, on November 25, 2025, certified a nationwide class and extended declaratory relief to the certified class. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV- 01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista*, 2025 WL 3288403, at \*9 (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, and adding "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole"). The bond class certified is defined as: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista*, 2025 WL 3288403, at \*1. The second prong of this definition is subject to some dispute: class counsel believes that the relevant apprehension is the most *recent* apprehension (which for Petitioner Ms. Cruz would mean

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<sup>3</sup> The case originally had individual petitioners who brought habeas claims in their own right—but the class allegations in the case were not pled under the habeas statute. *See Amended Petition, Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) (ECF No. 15).

her apprehension in November 2025), but Respondents have argued that the definition excludes entrants without inspection *initially* apprehended shortly after crossing the border. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11. Respondents are bound by the judgment in *Maldonado Bautista* as to class members nationwide, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).<sup>4</sup>

62. But since that declaratory judgment, Respondents have instructed Immigration Judges *not* to comply with the ruling and not to find entrants without inspection are eligible for bond. This appears to stem from their interpretation of the decision as non-final and improper.
63. Petitioner submits that she is a member of the *Maldonado Bautista* bond class. But she also does not think the questions of her class membership nor even the binding nature of *Maldonado Bautista* is necessary to the resolution of this case. To the extent the Court disagrees that she is a class member, or concurs with Respondents’ erroneous contention that the *Maldonado Bautista* decision does not in fact order nationwide declaratory relief, she nonetheless urges the Court to follow the reasoning in *Maldonado Bautista*—and hundreds of other courts nationwide—as to the authority for her detention.

## IX. CLAIMS FOR RELIEF

### COUNT I Violation of the INA

64. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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<sup>4</sup> While she does not think it is necessary to resolve the issue in this case, Petitioner believes that the *Maldonado Bautista* decision is final as to both its certification of a nationwide class and issuance of a declaratory judgement. *See Ramos v. Town of Vernon*, 208 F.3d 203 (2d Cir. 2000).

65. 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. As relevant here, it does not apply to those who received an I-220A and who were subsequently accused by DHS of having “entered” the United States. Those actions by DHS, followed by the Petitioner’s concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.
66. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

**COUNT II**  
**Violation of the Bond Regulations**

67. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.
68. 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.

69. 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.

70. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**COUNT III**  
**Violation of Due Process**

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

72. 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).

73. 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 (BIA 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.

74. At a minimum, in order to lawfully re-arrest Ms. Cruz De Cuadra, the government must first establish, by clear and convincing evidence and before a neutral decision-maker, that she is a danger to the community or a flight risk, such that her re-incarceration is necessary.

ICE's re-arrest of Ms. Cruz De Cuadra on November 25, 2025, violated these regulations, laws, and due process.

75. Petitioner has a fundamental interest in liberty and being free from official restraint.
76. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.
77. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The *Mathews* factors are as follows: First, the private interest that will be affected by the official action; [S]econd, 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; [Third], the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.
78. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private interest known to personkind short of life itself: bodily freedom." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at \*34 (D. Md. Aug. 24, 2025).
79. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims.
80. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody.

#### **Judicial Estoppel**

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

82. 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.

**X. 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 within three days;
- (5) Declare that Petitioner’s detention is unlawful;
- (6) Grant the writ of habeas corpus ordering Respondents to release Ms. Cruz De Cuadra on her own recognizance, parole, or reasonable conditions of supervision;

(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 12th day of December, 2025.

**/s/ Stephen O'Connor**  
Stephen O'Connor, Esq.

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

I represent Petitioner, Sandra Cruz De Cuadra, and submit this verification on her 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 12th day of December, 2025.

s/ Stephen O'Connor  
Stephen O'Connor