



jurisdiction over immigrants, the Executive Office of Immigration Review (“EOIR”), has concluded that Petitioner is subject to mandatory detention.

2. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* Exhibit 2—Notice to Appear (“NTA”). Based on this allegation, the DHS denied Petitioner’s release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (“ICE”) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), i.e., those who entered the United States without admission or inspection, to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and therefore ineligible to be released on bond.

3. Following the lead of the DHS, on September 5, 2025, the Board of Immigration Appeals (“BIA” or “Board”) issued a precedential decision, binding on all immigration judges, that held that an immigration judge (“IJ”) has no authority to consider bond requests for any person who entered the United States without admission, because those persons are subject to mandatory detention under § 1225(b)(2)(A), and therefore ineligible to be released on bond. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

4. Petitioner’s detention violates the plain language of the Immigration and Nationality Act (“INA”), because § 1225(b)(2)(A) does not apply to individuals like Petitioner, who previously entered the United States and are now residing in the

country. Instead, such individuals are subject to a different statute—8 U.S.C. § 1226(a)—which allows for individuals, like Petitioner, who entered the United States without admission, to be released on conditional parole or bond.

5. Respondents’ new legal interpretation is plainly contrary to the statutory framework of the INA and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

6. More importantly, the government itself has made a sudden complete reversal of opinion on this issue, and so, Respondents should be judicially estopped from asserting their current interpretation of § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation.

7. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents have now reversed course and assert that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process and imposes an unfair detriment on individuals who have relied

on the prior interpretation. Additionally, Respondents have created a liberty interest to Petitioner when they released her, on or about December 14, 2021, after an ICE officer's custody determination. Accordingly, Respondents should be estopped from asserting the inconsistent position that Petitioner is now subject to mandatory detention.

8. Furthermore, the government's own issuance of an I-220A, Order of Release on Recognizance ("OREC"), placing Petitioner in custody under § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). *See* Exhibit 3—OREC. This quasi-judicial decision was made by the DHS at the outset of removal proceedings, based on the facts available to both parties and Petitioner's own admissions. *Id.* Critically, the DHS itself alleged in the NTA 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 BIA—that Petitioner is ineligible to apply for bond before an IJ. *See* Exhibit 2, *supra*. 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 requires courts to respect agency determinations when the ordinary elements of preclusion are met.

9. Under § 1226(b) and 8 C.F.R. § 242.2(c), the DHS has authority to revoke a noncitizen’s bond or parole “at any time,” even if that individual has previously been released. However, there is no statutory authority or regulatory authority for the DHS to revoke a noncitizen’s bond or parole under a different statute, i.e, one that is not under § 1226.

10. “[It] is well-established that the due process clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority” over which noncitizens may be allowed to remain in the United States, or who may be detained in the United States. *Hernandez v. Sessions*, 872 F.3d 976, 990 n.17 (9th Cir. 2017) (citing *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001)).

11. The Due Process Clause protects Petitioner, a person within the United States, from unlawful detention resulting from the denial of adequate procedural protections. *See Zadvydas*, 533 U.S. at 693 (citing *Hernandez v. Wofford*, No. 25-CV-00986, 2025 WL 2420390, at \*3 (E.D. Cal. Aug. 21, 2025)).

12. Even those who face significant constraints on their liberty, or those over whose liberty the government wields significant discretion, retain a protected interest in their liberty. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (citing *Young v. Harper*, 520 U.S. 143, 150 (1997)). And the “essence” of procedural due process is that a person who is at risk of losing their liberty be given

notice and an opportunity to be heard in a meaningful manner and at a meaningful time. *See Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

13. Accordingly, Petitioner seeks a writ of habeas corpus ordering her immediate release from Respondents' custody, or alternatively, an order that Respondents provide Petitioner with a bond hearing under § 1226(a) within three days.

## II. JURISDICTION

14. Petitioner is in the physical custody of Respondents, as she is detained at the Montgomery Processing Center, in Conroe, Texas. *See Exhibit 1, supra*.

15. This Court has jurisdiction over this action under 28 U.S.C. § 2241(c)(1) and (3), Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause), and 28 U.S.C. § 1331, as Petitioner is presently in custody “under or by color of the authority of the United States,” and such custody is in violation of “the Constitution or laws or treaties of the United States.” *See also Demore v. Kim*, 538 U.S. 510 (2003) (stating that federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas corpus claims by individuals challenging the lawfulness of their detention).

16. This Court may grant the relief that Petitioner is requesting, pursuant to 28 U.S.C. § 2241, and 28 U.S.C. § 1651 (the “All Writs Act”).

### III. VENUE

17. Pursuant to 28 U.S.C. § 1391(b)(1)-(2), venue is proper in this district, because it is where Petitioner resides and is currently being unconstitutionally and unlawfully detained. *See* Exhibit 1, *supra*.

### IV. REQUIREMENTS OF 18 U.S.C. § 2243

18. 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. *See* 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.*

19. 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).

20. “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 comers of the application.” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

21. On or about December 10, 2025, Petitioner attempted to secure her release from ICE detention by filing a Motion for Bond Redetermination with the IJ. *See* Exhibit 4—Motion for Bond Redetermination. However, on December 12, 2025, the

IJ denied Petitioner’s request for release on bond, stating that the immigration court lacked jurisdiction to redetermine bond, pursuant to the BIA’s decision in *Yajure Hurtado*. See Exhibit 5—IJ Denial of Motion for Bond Redetermination.

22. Given that Petitioner has no avenues left to secure her release from her unconstitutional and unlawful detention, the only remedy Petitioner has available to her now is through the filing of this writ.

## V. PARTIES

23. Petitioner, Stephanie Carolina Kenny-Velasquez, is a native and citizen of Venezuela, who has been in immigration detention since December 5, 2025. See Exhibit 1, *supra*. After arresting Petitioner at her check-in in Houston, Texas and transferring her to the Montgomery Processing Center, ICE did not set bond and Petitioner is unable to obtain review of her custody by an IJ, due to *Yajure Hurtado*. See Exhibit 5, *supra*.

24. Respondent, Pamela Bondi, is the Attorney General of the United States. She is responsible for the Department of Justice (“DOJ”), of which the EOIR and the immigration court system it operates is a component agency. She is sued in her official capacity.

25. Respondent, Kristi Noem, is the Secretary of the DHS. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is

responsible for Petitioner's detention. She has ultimate custodial authority over Petitioner and is sued in her official capacity.

26. Respondent, Todd M. Lyons, is the Acting Director of ICE, the agency within the 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. He is sued in his official capacity.

27. Respondent, Marcos Charles, is the Acting Executive Associate Director of ICE Enforcement and Removal Operations ("ERO"). He, and his agents, have actual and physical custody of Petitioner. He is sued in his official capacity.

28. Respondent, Randy Tate, is the Warden of the Montgomery Processing Center, in Conroe, Texas, where Petitioner is currently being unconstitutionally and unlawfully detained. *See Exhibit 1, supra.* He has physical custody of Petitioner. He is sued in his official capacity.


## VI. FACTS

29. Petitioner has resided in the United States since December 12, 2021, and currently resides physically in Conroe, Texas, where she is detained. *See Exhibit 1, supra.*

30. Upon her entry into the United States, the DHS released respondent into the country on an OREC, which found that Respondent was detained and released under § 1226, formally documenting that she was arrested, placed in removal proceedings, and released pursuant to § 1226. *See* Exhibit 3, *supra*. The OREC expressly states that Petitioner’s release was conditioned on compliance with § 1226 and related regulations. *Id.*

31. On December 12, 2022, the Petitioner submitted her Form I-589, Application for Asylum and Withholding of Removal (“Form I-589”), to the Immigration Court.

32. On December 15, 2022, the Court rejected the filing because the DHS had not yet filed an NTA, preventing the removal proceedings to begin. *See* Exhibit 6—Petitioner’s Form I-589 Rejected Filing.

33. On March 28, 2023, Petitioner submitted her Form I-589 with the U.S. Citizenship and Immigration Services (“USCIS”). *See* Exhibit 7—Form I-589 Receipt Notice from USCIS. That application was assigned case number . *Id.*

34. On September 1, 2023, the DHS filed an NTA with the Immigration Court, alleging that Petitioner entered the United States without inspection. *See* Exhibit 2, *supra*.

35. After the commencement of Petitioner’s removal proceedings, Petitioner filed her Form I-589 with the Immigration Court. *See* Exhibit 8—Petitioner’s Form I-589

Filed with the Court. She was then scheduled for an individual hearing on November 3, 2025. Petitioner then filed a motion to change venue to San Antonio, Texas, which was granted by the IJ. *See* Exhibit 9—IJ Order Granting Change of Venue.

36. On December 3, 2025, Petitioner married her U.S. citizen husband, Christopher Lynn Busby, in Travis County, Texas.

37. On or around December 5, 2025, Respondent was detained by ICE at her ICE check-in. Petitioner is now detained at the Montgomery Processing Center. *See* Exhibit 1, *supra*.

38. On December 7, 2025, Respondent's husband filed an I-130, Application for Alien Relative (Form I-130), on Petitioner's behalf to the USCIS. *See* Exhibit 10—Form I-130 Receipt Notice from USCIS. That application was assigned case number [REDACTED]. *Id.*

39. The DHS placed Petitioner in removal proceedings before the Conroe Immigration Court, pursuant to 8 U.S.C. § 1229a. The DHS has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection. *See* Exhibit 2, *supra*.

40. Petitioner's detention has inflicted profound harm on her family, particularly her U.S. citizen husband. [REDACTED]

[REDACTED]

[REDACTED] and he is extremely sad because his wife is in custody. *See* Exhibit

11—Mr. Busby’s Affidavit to the IJ. He is experiencing emotional and developmental hardship in her absence. *Id.*

41. Petitioner is a devoted wife 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.

42. Petitioner does not have a criminal history in the United States.

43. Following Petitioner’s arrest and transfer to the Montgomery Processing Center on December 5, 2025, ICE issued a custody determination to continue Petitioner’s detention without an opportunity to post bond or be released on other conditions.

44. Pursuant to *Yajure Hurtado*, no IJ can consider Petitioner’s bond request, and her unlawful detention cannot be litigated before the BIA. 29 I. & N. Dec. at 216. As a result, Petitioner remains in detention. Without relief from this court, she faces the prospect of months, or even years in immigration custody, separated from her family and community.

## VII. LEGAL FRAMEWORK

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

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

47. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

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

## VIII. ARGUMENT

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

50. 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).

51. Following the enactment of the IIRIRA, EOIR drafted 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).

52. In the decades that followed IIRIRA and the EOIR's guidance, 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 § 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)).

53. In *Jennings v. Rodriguez*, the 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 § 1226(a), not mandatory detention under § 1225(b). 583 U.S. 281 (2018). In fact, 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 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,” that those aliens “are held under 1226(a) and that they get a bond hearing...” See Transcript of Oral Argument at 7-8, *Jennings*, *supra*. The 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.

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

55. 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). *See* Exhibit 12—Memo from Todd Lyons. 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. *Id.*

56. On September 5, 2025, the BIA adopted the DHS’s position in a published decision—*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. at 216.

57. 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 *Yajure Hurtado*, which adopts the same new reading of the statute as the DHS.<sup>1</sup>

58. Even before ICE or the BIA introduced these nationwide policies, an immigration court in Tacoma, Washington stopped providing bond hearings for

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

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. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

59. A growing number of federal courts have rejected ICE's and EOIR's expanded interpretation of the INA's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases; courts in Massachusetts, Arizona, California, Minnesota, Nebraska, New York, and Texas, have reached this conclusion. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*9 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom, Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025); *Padron-Covarrubias v. Vergara*, 5:25-cv-

00112, (S.D. Tex. October 8, 2025); *Santiago-Santiago v. Bondi*, EP-25-CV-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Az. Oct. 7, 2025).

60. 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).

61. Courts have uniformly rejected the 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. Indeed, according to the OREC document issued to Petitioner upon her encounter with immigration officials, as well as the DHS’s own factual allegations contained in the NTA, the DHS themselves determined that Petitioner had entered the United States without inspection and falls under § 1226(a), not § 1225(b). *See* Exhibits 2—3, *supra*.

62. 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].”

63. 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.” 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.

64. 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.

65. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. 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*, 583 U.S. at 287.

66. 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 an OREC that

states that Respondent falls under the discretionary arrest provision of § 1226(a) as an uninspected entrant.

67. The government’s own issuance of an OREC 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, the DHS itself alleged in the NTA 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 BIA—that Petitioner is ineligible to apply for bond before the EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *Hargis Indus., Inc.*, which require courts to respect agency determinations when the ordinary elements of preclusion are met.

68. It has been the settled practice for decades for immigration officials to issue an OREC to those who encounter immigration officials at or near the border. The issuance of an OREC under § 1226 is not a ministerial act but a formal adjudication of custody status, reflecting the DHS’s determination that the individual falls under the discretionary detention framework of § 1226 rather than the mandatory detention provisions of § 1225(b).

69. 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)).

70. As the Supreme 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 § 1226 determination, memorialized in the OREC, constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

## **IX. CLAIMS FOR RELIEF**

### **COUNT 1—Violation of the INA**

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

72. The mandatory detention provision at § 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 OREC 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 the 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.

73. In sum, the application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA.

### **COUNT 2—Violation of the bond regulations**

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

75. 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 [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.” *See* 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 § 1226 and its implementing regulations.

74. Nonetheless, pursuant to *Yajure Hurtado*, both EOIR and the DHS have a drastically new policy and practice of applying § 1225(b)(2) to individuals like Petitioner. 29 I. & N. Dec. at 216.

75. 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 3—Violation of due process**

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

77. The government may not deprive a person of life, liberty, or property without due process of law. *See* 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*, 533 U.S. at 690.

78. By statute and regulation, as interpreted by the BIA, the DHS 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. *See* 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). 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.

79. At a minimum, to lawfully re-arrest Petitioner, 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 Petitioner on December 5, 2025, violated these regulations, laws, and Petitioner’s due process rights.

80. Petitioner has a fundamental interest in liberty and being free from official restraint. Respondents’ 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.

#### **Count 4—Judicial estoppel**

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

82. The government is judicially estopped from asserting that Petitioner is subject to mandatory detention under § 1225(b)(2)(A). In prior litigation, including in *Jennings*, 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). Tr. of Oral Arg. at 7-8, *Jennings, supra*. Courts accepted that position. Now, the government reverses course and asserts the opposite interpretation to deny bond hearings.

83. Under *New Hampshire, supra*, 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) Accept jurisdiction and venue as proper;
- (2) Order that Petitioner shall not be transferred outside the Southern District of Texas while this habeas petition is pending;
- (3) Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted within three days;
- (4) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner on her own recognizance, on parole, or other reasonable conditions of supervisions, or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days;

(5) Declare that Petitioner's detention is unconstitutional and otherwise unlawful;

(6) Award the Petitioner reasonable costs and attorney's 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), which held that that fees are not available to be awarded under 28 U.S.C. § 2241. However, this 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.

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

DATED this 16th day of December 2025.

Respectfully Submitted,

/s/ Francisco Fernandez

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Exhibit 8—Petitioner’s Form I-589 Filed with the Court

Exhibit 9— IJ Order Granting Change of Venue

Exhibit 10—Form I-130 Receipt Notice from USCIS

Exhibit 11—Mr. Busby’s Affidavit to the IJ

Exhibit 12—Memo from Todd Lyons

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

I represent Petitioner, Stephanie Carolina Kenny Velasquez, 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 16th day of December 2025.

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