UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RUBEN DARIO CAAL-CHOCOJ,	)	
Petitioner,	)	
v.	)	**Civ. No. 5:25-cv-1798**
PAMELA JO BONDI, **United States Attorney General;**	)	
KRISTI LYNN NOEM, **Secretary of Homeland Security;**	)	
SYLVESTER M. ORTEGA, **San Antonio Acting Field Office Director For Detention and Removal, U.S. Immigration and Customs Enforcement; and,**	)	
BOBBY THOMPSON, **Warden, South Texas ICE Processing Center;**	)	
in their official capacities;	)	
Respondents.	)	

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Ruben Dario Caal-Chocoj files the instant petition for a writ of habeas corpus urging the Court to order Respondents to release him, or in the alternative, provide him with a bond hearing where the Department of Homeland Security (DHS) bears the burden by clear and convincing evidence to demonstrate that he is a flight risk or a danger to the public.

Briefly, at issue in this habeas petition is Respondents' authority to detain Petitioner without the opportunity to be released on bond pending his removal proceedings. More than 2 years ago, Petitioner entered the United States without being inspected and admitted as an unaccompanied alien child (UAC or unaccompanied minor). As required by federal law and a settlement agreement that constrains federal authority to detain UACs, the DHS detained Petitioner under 8 U.S.C. § 1226(a), initiated removal proceedings under 8 U.S.C. § 1229a, and transferred his custody to the Department of Health and Human Services (HHS). The HHS is charged with the care of UACs and is required to place UACs in the least restrictive setting by prioritizing release to a parent or responsible adult. Later, Mr. Petitioner petitioned for special immigrant juvenile status (SIJ), a pathway to lawful permanent residence for undocumented children in the United States who have been abused, neglected or abandoned by one or both parents. The SIJ petition remains pending.

On November 11, 2025, the DHS took Petitioner into custody when he attended a check-in appointment with the Immigration and Customs Enforcement (ICE). In February 2025, Petitioner had been arrested for driving under the influence in Buffalo, New York. At that time, ICE took him into custody and then released him.

After detaining Petitioner last month, Respondents determined that he was "arriving" to the United States and therefore he is an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b)(2). That determination is factually and legally wrong. Petitioner has been in this country for over 2 years; he is not arriving. When he first entered the United States, the DHS exercised its authority to detain him under § 1226(a) and thus, he remained eligible for bond. Indeed, the DHS was barred from exercising its detention authority under § 1225(b) because Petitioner at that time as an UAC. Respondents now cannot re-write the historical record.

Petitioner cannot be released on bond or obtain a bond hearing because immigration judges have been instructed that pursuant to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the immigration courts lack jurisdiction hear bond requests or grant bond to noncitizens like Petitioner who entered without inspection. In *Matter of Yajure-Hurtado*, the Board of Immigration Appeals (BIA) held that all persons who enter without being inspected or admitted are "applicants for admission" and are subject to mandatory detention. Respondents maintain that Petitioner is arriving in the United States and applying for admission. This is so even though he entered the United States more than 2 years ago and made no application for admission.

This reading of the Immigration and Nationality Act (INA) is incorrect and unsupported by the text of the statute, caselaw, and historical practice. Petitioner also contends that § 1225(b) does not apply to him because at the time Petitioner entered, Respondents could only detain him under § 1226(a) since he was as an unaccompanied minor. Indeed, that is what the historical record establishes.

Respondent's interpretation and application of 8 U.S.C. § 1225(b)(2) is wrong and violates Petitioner's rights under the Due Process Clause, the INA, Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, and the Administrative Procedure Act (APA). Petitioner seeks a writ from this Court ordering Respondents to release him or in the alternative, that Respondents afford him a bond hearing in accordance with the U.S. Constitution.

CUSTODY

1. Petitioner is in the physical custody of Respondent SYLVESTER M. ORTEGA, Acting Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent BOBBY THOMPSON, warden of the South Texas ICE Processing Center in Pearsall, Texas. At the time of the filing of this petition, Petitioner is

detained at the South Texas ICE Processing Center. The Geo Group Inc. operates the South Texas ICE Processing Center and contracts with the DHS to detain noncitizens, such as Petitioner, pending their removal proceedings. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this petition under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, C1. 2 of the United States Constitution ("Suspension Clause").

3. Venue properly lies within the Western District of Texas because all of the events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(e)(1)(B).

4. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

REQUIREMENTS OF 28 U.S.C. § 2243

5. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issue has already been resolved by over 100 district courts.

6. 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).

PARTIES

7. Ruben Dario Caal-Chocoj is a national and citizen of Mexico. He is currently detained at the South Texas ICE Processing Center located at 566 Veterans Drive, Pearsall, Texas 78061.

8. Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice ("DOJ"). She has the authority to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"). Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

9. Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Respondent is named in her official capacity. Her address is Department of Homeland Security, Washington, D.C. 20528.

10. Respondent SYLVESTER M. ORTEGA is the Acting Field Office Director for Detention and Removal (ERO), ICE, DHS, for the San Antonio ERO Office. He is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas. Pursuant to Respondent's orders, Petitioner remains detained. Respondent is sued in his official capacity. Respondent can be served with process at U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisory, 500 12th St., SW, Mail Stop 5900, Washington, DC 20536-5900.

11. Respondent BOBBY THOMPSON is the Warden of the South Texas ICE Processing Center in Pearsall, Texas. He is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas. Respondent is named in his official capacity. Respondent Thompson can be served with process at Corporate Creations Network, Inc., 2595 N. Dallas Pkwy., Ste. 350, Dallas, Texas 75201.

FACTS

12. Petitioner entered the United States in February 2003 without being admitted or paroled. He was 16 years old at that time.

13. Following his entry, Petitioner approached an immigration officer. The officer detained Petitioner and then transported him to an immigration station for further investigation.

14. After determining that Petitioner was not authorized to be in the United States, the immigration officer arrested Petitioner under 8 U.S.C. § 1226(a) and, upon information and belief, issued him a Notice to Appear. Exh. A (Notice of Appear).

15. While investigating Petitioner's immigration status in the United States, the DHS determined that he was an unaccompanied alien child as defined in 6 U.S.C. § 279(g). *Id.* Thus, as required by 8 U.S.C. § 1232(b)(1), the DHS transferred Petitioner to the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services (HHS).

16. At a later date, HHS released Petitioner into the custody of a responsible adult. Exh. B (Verification of Release). Petitioner's release documentation states that he was released "pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008..." *Id.*

17. In July 2025, Petitioner petitioned for Special Immigrant Juvenile Status (SIJS). Exh. C (I-360 Receipt).

18. On November 11, 2025, Petitioner reported to ICE. At that time, ICE detained Petitioner and took him into custody. ICE later delivered Petitioner to Respondent Thompson..

19. Prior to May 2015, Petitioner would have been eligible to be released on bond.

20. In fact, the DHS initiated removal proceedings against Petitioner in 2023 and released him.

21. Now, due to decisions from the Board of Immigration Appeals (BIA) and a novel interpretation of the INA by Respondents, Petitioner is no longer eligible for bond and thus requesting bond from the immigration court is futile.

22. Petitioner remains detained although there is no evidence in the record that suggests that Petitioner is a flight risk, or that releasing him would present a danger to the public. On February 3, 2014, he pleaded guilty to driving under the influence, a misdemeanor. He has not re-offended again.

23. Petitioner has no other remedy at law but to seek relief from this Court.

LEGAL FRAMEWORK

DHS'S DISCRETIONARY AUTHORITY AND PROCEDURAL ELECTIONS

24. The Immigration and Nationality Act (INA) broadly empowers the DHS to detain and initiate removal proceedings against noncitizens. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in regular removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Persons detained 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 until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

26. 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).

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

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

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

30. Following the enactment of the IIRIRA, the Department of Justice 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

31. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond

or their own recognizance. They also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *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)).

32. When a noncitizen is detained upon arrival in the United States, DHS elects whether to exercise its arrest authority under § 1226(a) or § 1225(b). This procedural election constrains the noncitizen's subsequent relief options and creates binding legal consequences. When DHS chooses to detain and release someone under § 1226(a), the agency must follow that statute's detention and release procedures.

33. The procedural safeguards for persons detained under § 1225(b)(2) are much more limited. The person is subject to mandatory detention and can only be released under the DHS's parole authority in 8 U.S.C. § 1182(d)(5)(A). The limited procedural safeguards for persons detained under § 1225(b)(2) are found in 8 C.F.R. § 235.3.

34. In recent months, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the Board of Immigration Appeals (BIA) issued a published decision holding that noncitizens detained upon arrival in the United States are applicants for admission and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). According to *Matter of Q. Li*, the DHS does not have authority to exercise its detention and release power under § 1226(a). Release is only available through the grant of parole under § 1182(d)(5)(A).

35. *Matter of Q. Li* requires mandatory detention only if the DHS elects to detain under § 1225(b) persons arriving in the U.S. for expedited removal proceedings or regular removal proceedings. The decision, however, creates no authority for applying mandatory detention where: (a) DHS elected alternative processing under 8 U.S.C. § 1226(a), (b) DHS failed to complete formal requirements necessary to invoke 8 U.S.C. § 1225(b), or (c) the noncitizen is not arriving in the United States.

36. On July 8, 2025, ICE, "in coordination with the Department of Justice (DOJ)," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. The new policy claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.*

37. 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. Further, the policy applies even to those noncitizens to whom DHS elected to arrest under § 1226(a) and released them pursuant to that provision.

38. Subsequently the BIA decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA formally adopted the ICE and DOJ's unreasonable interpretation of § 1225(b). The noncitizen in *Matter of Yajure Hurtado* entered in November 2022 without being inspected or paroled. He obtained Temporary Protected Status (TPS) but that status terminated. In April 2025, the DHS arrested him in the interior of the United States and initiated removal proceedings. He requested a bond hearing from an immigration judge but the judge concluded that they lacked jurisdiction because the noncitizen was an applicant for admission subject to mandatory detention under § 1225(b)(2). This was so even though the noncitizen was not arriving

in the country, had made no application to be admitted, and had resided in the United States for more than two years.

39. The BIA held that all persons who are not inspected or admitted, whether arriving in the United States or not and regardless of the length of residence in this country, remained "applicants for admission" and subject to § 1225(b)'s mandatory detention provision if placed in removal proceedings. As a result, immigration judges all over the country are now denying bond to all noncitizens who entered without inspection and admission.

40. The government's novel position would mandate the detention, without a bond hearing, of millions of longtime residents of the United States. It is contrary to the plain language of the statute; Congress's intent and understanding of the detention statutes, expressed most recently in January 2025; and long-standing agency practice. It is no surprise that, to the best of counsel's knowledge, this new interpretation has been squarely rejected by nearly every federal court to address this issue, including in *Gutierrez v. Thompson*, No. 4:25-4695, 2025 LX 573072 (S.D. Tex. Nov. 14, 2025); *Ortega-Aguirre v. Kristinoem*, No. 4:25-CV-04332, 2025 LX 513385 (S.D. Tex. Oct. 10, 2025); *Andres v. Noem*, No. H-25-5128, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025)*Peñuela Carlos v. Bondi*, 2025 WL 325561 (E.D. Tex. Nov. 21, 2025); *Orellana Cantarero v. Bondi*, 2025 WL 3252402 (E.D. Tex. Nov. 20, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sep. 21, 2025); *Cardona-Lozano v. Noem*, No. 1:25-CV-1784-RP, 2025 WL 3218244 (W.D. Tex. Nov. 14, 2025); *Santos v. Noem*, No. 3:25-CV-01193 SEC P, 2025 WL 2642278 (W.D. La. Sep. 11, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025).

41. In *Demirel v. Federal Detention Center*, the court compiled a list of 288 decisions addressing the same issue present in this case. 25-5488, Appendix, ECF 11-1 (E.D. Pa. Nov. 18,

2025). 282 decisions found that § 1226, not § 1225, applies in situations similar to the Petitioners, and only six found otherwise. The *Demirel* Court's Appendix is attached at Exhibit D.

42. Respondents' interpretation and application of §§ 1225(b)(2) and 1226(a) is the subject of a nationwide class action. On November 20, 2025, a federal district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *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 v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). The declaratory judgment held that the Bond Eligible 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.

43. Respondent refuse to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista*. Respondents Bondi and Noem, through their agents, have instructed immigration judges that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead immigration judges remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

Unaccompanied Children and Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008

44. The Trafficking Victims Protection Reauthorization Act ("TVPRA") mandates that "any unaccompanied child sought to be removed by the Department of Homeland Security . . .

shall be (i) placed in removal proceedings under section 240 of the Immigration and Nationality Act; (ii) eligible for relief under section under section 240B of [the INA]; and (iii) provided with access to counsel in accordance with subsection (c)(5);" and (iii) placed in the least restrictive setting that is in the child's best interests including in an Unaccompanied Refugee Minor program if the child cannot be released to suitable family member. 8 U.S.C. § 1232(a)(5)(D) (emphasis added) and (c)(2)(A). Release therefore is the preferred option.

45. The TVPRA also sets forth procedural requirements that "[w]ithin 48 hours of the apprehension of [an unaccompanied minor] . . . the child shall immediately be transferred to the Secretary of Health and Human Services." 8 U.S.C. §1232(a)(4). "[E]xcept in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services ("HHS") not later than 72 hours after determining that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3).

46. Once transferred to HHS, "[c]onsistent with section 279 of Title 6, and except as otherwise provided under subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1).

47. The Fifth Circuit has enforced these procedural requirements of the TVPRA as mandatory. *See Velasquez-Castillo v. Garland*, 91 F.4th 358, 363 (5th Cir. 2024) (alterations in original) (finding that "[t]he TVPRA provides that '[a]ny unaccompanied [noncitizen] child sought to be removed by the Department of Homeland Security ... shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act.' Indeed, this Court has referred to TVPRA proceedings as 'mandatory.'"); *accord Susan Kettlewell, et al. v. Kristi Noem, et al.*, 2025

WL 2733309, at *5 (D. Ariz. Sept. 25, 2025) (collecting cases and finding that "[i]n other district courts, there is also agreement that the procedural protections provided to unaccompanied alien children by the TVPRA are mandatory.").

48. Federal regulations require that "[a]ll UACs apprehended by DHS, except those who are [from contiguous countries], will be transferred to ORR [the Office of Refugee Resettlement] for care, custody, and placement in accordance with 6 U.S.C. § 279 and 8 U.S.C. 1232." 8 C.F.R. § 236.3(f).

49. Thus, because the TVPRA requires DHS to transfer unaccompanied children to HHS, the DHS *never* exercises its detention authority under § 1225(b)(1) or (b)(2) over unaccompanied minor but rather detains and transfers unaccompanied children under § 1226(a).

CAUSES OF ACTION

COUNT I
REQUEST FOR RELIEF PURSUANT TO *MALDONADO BAUTISTA*

50. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

51. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

52. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

53. The order granting class certification in *Maldonado Bautista* further orders that "[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."

54. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

55. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

COUNT II
PROCEDURAL DUE PROCESS VIOLATION – DENIAL OF A BOND HEARING

56. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

57. 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. That provision applies to noncitizens who "arrive" in the United States. Application of the new interpretation of § 1225(a)(1) and (b)(2) to persons who are not "arriving" contradicts the plain language of the statute.

58. By denying her a bond hearing as required by § 1226(a), Respondents denied her procedural rights guaranteed by the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

COUNT III
PROCEDURAL DUE PROCESS – IMPERMISSIBLE RETROACTIVE APPLICATION OF *MATTER OF YAJURE HURTADO*

59. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

60. The Due Process Clause prohibits the Federal Government and its agents from depriving persons of life, liberty and property without observing certain procedures. The right to

fair notice is essential to procedural due process. Retroactive application of administrative decisions implicates "due process interests in fair notice, reasonable reliance, and settled expectations." *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015)).

61. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado*, *supra*. Prior to *Matter of Yajure Hurtado*, Respondents interpreted and applied the INA detention and release scheme to empower Respondents to detain and release or afford a bond hearing before an immigration judge to most people who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

62. As recently as 2023, the BIA interpreted the INA to empower the DHS to choose whether to detain and release persons who entered without inspection either under § 1226(a) or § 1225(b). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023). There, the noncitizens entered without inspection or admission and were detained shortly after entering the United States. The DHS detained and released them under § 1226(a). The noncitizens argued that their release constituted a parole because their detention (and release) could only have been accomplished through § 1225(b). The BIA firmly rejected that reading of the statute.

63. "For applicants for admission charged as inadmissible, DHS has authority to determine whether to initiate expedited removal proceedings under...8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a."). The BIA explained:

> This authority is illustrated in the Attorney General's decision in *Matter of D-J-*, 23 I&N Dec. 572, 572–76 (A.G. 2003), which involved a similar fact pattern. In that case, DHS apprehended a respondent shortly after he entered the United States without admission or parole and charged him with the same ground of inadmissibility at issue here [having entered without inspection or admission]. The Attorney General reviewed his eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). *Cf. Matter of M-S-*, 27 I&N Dec. 509, 510–13 (A.G.

> 2019) (addressing the detention and release of respondents whom DHS initially elects to place in expedited removal proceedings, but who are later transferred to section 240 removal proceedings after establishing a credible fear of persecution or torture).

Id. at 748-49.

64. And the BIA reiterated this reading of the INA's detention and release statutory scheme again in *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025). There, the noncitizen entered without inspection or admission in January 2022 and was subsequently detained in the interior of the United States in January 2025. The immigration judge granted the noncitizen's request for bond. In reviewing the DHS's appeal of the bond decision, the BIA made the uncontroversial observation that the noncitizen's bond request was "governed by the provision of section [§ 1226(a)] of the Immigration and Nationality Act." *Matter of Akhmedov*, 29 I&N Dec. at 166.

65. Almost 20 years ago, Petitioner entered the United States without being inspected and admitted or paroled. Respondents took custody of Petitioner and detained her on October 30, 2025. Respondents now claim that Petitioner is "arriving" in the United States and is "making an application" although she has never filed an application for an immigration benefit.

66. Respondents seek to turn back the clock and impose a different legal regime, one where Petitioner is subject to mandatory detention and has no right to be released.

67. *Matter of Yajure Hurtado*, as interpreted by the immigration judge and Respondents, is a sea change in immigration law. Retroactive application of this new interpretation of the law to Petitioner however is unfair and unlawful.

68. Retroactivity is greatly disfavored in the law. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The Supreme Court has been emphatic that this aversion to retroactive rulemaking

> is deeply rooted in our jurisprudence, and embodies a legal doctrine

> centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.

Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994) (internal quotation and citations omitted).

69. The Fifth Circuit too has instructed the BIA and immigration courts that it is patently unfair to subject noncitizens to new interpretations of immigration laws. This is a matter of due process and fair notice. The Court explained:

> "The leading case on administrative retroactivity' instructs that any disadvantages from the 'retroactive effects' of deciding a 'case of first impression . . . must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.' To apply that instruction, this court 'balances the ills of retroactivity against the disadvantages of prospectivity.' 'If that mischief of prospectivity is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.'

Monteon-Camargo v. Barr, 918 F.3d 423, 430 (5th Cir. 2019) (internal citations omitted).

70. Thus, if application of the new rule is significant and changes the legal landscape by updating an agency's earlier position, then retroactive application of the new rule alters basic presumptions of this administrative system. *Id.* at 431. "A 'presumption of prospectivity attaches to Congress's own work,' and it should generally attach when an agency 'exercises delegated legislative....authority.'" *Id.* (internal citation omitted).

71. The change here is significant. Petitioner's right to be free from detention is eliminated and she is now subject to mandatory detention.

72. The retroactive application of *Matter of Yajure Hurtado* is unfair and unreasonable and violates Petitioner's due process rights.

COUNT IV
Immigration and Nationality Act –TVPRA

73. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

74. The TVPRA requires Respondents to transfer promptly all unaccompanied children to HHS. 8 U.S.C. § 1232(a)(4) and (b)(3). When effecting such transfer, the DHS surrenders the custody and care to HHS.

75. Because the custody transfer is mandatory, the DHS *never* exercises its detention authority under § 1225(b)(1) or (b)(2) to detain unaccompanied children.

76. DHS, HHS, and ORR processed Petitioner as a UAC. DHS first encountered Petitioner on February 23, 2023 and determined that he was an "Unaccompanied Juvenile." Exh. A.

77. On May 9, 2016, DHS transferred Petitioner to the Southwest Key Casa Tucson facility. The detention facility contracts with the HHS to detain unaccompanied children.

78. A few days later, the HHS released Petitioner pursuant to "§ 462 of Homeland Security Act of 2022" (codified at 6 U.S.C. § 279) and "§ 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act" (codified at 8 U.S.C. § 1232).

79. Under federal regulations, the TVPRA, and the Homeland Security Act of 2022, unaccompanied minors are not subject to mandatory detention under § 1225(b), and nor was Petitioner when he was apprehended and identified as an unaccompanied minor. *See generally Flores v. Rosen*, 984 F.3d 720, 737 (9th Cir. 2020) (upholding final regulation regarding detention and transfer of unaccompanied and accompanied minors by the DHS where minors are never subject to mandatory detention); *C.M. v. United States*, 672 F. Supp. 3d 288, 310 (W.D. Tex. 2023)

(examining *Flores v. Reno* settlement agreement and noting that the agreement requires DHS to transfer after detention and that there is a presumption of release for unaccompanied minors).

80. Because the TVPRA barred Respondents from applying § 1225(b) to Petitioner, he was never subject to mandatory detention. For this reason, the DHS released and transferred Petitioner under § 1226(a).

81. Respondents' revised interpretation of § 1225(b) is inconsistent with the TVPRA.

COUNT V
Violation of the APA
Contrary to Law and Arbitrary and Capricious Agency Policy

82. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

83. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

84. 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 noncitizens who are not arriving in the United States, who are not making an application for admission, and are detained far from the international border. Noncitizens are detained (and released) under § 1226(a) and are eligible for release on bond, unless they were initially detained pursuant to § 1225(b)(1) or (b), or were detained under § 1226(c) or § 1231.

85. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Petitioner who is not arriving in the United States, was not arrested near the international border, and has made no application for admission.

86. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

87. The application of § 1225(b)(2) and *Matter of Yajure Hurtado* to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2). Further, their refusal to provide her with a bond hearing violates § 706(1) of the APA.

COUNT VI
Violation of the APA --
Impermissible Retroactive Application of New Legal Interpretation

88. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

89. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

90. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Prior to these BIA decisions, Respondents interpreted and applied the INA detention and release scheme to empower Respondents to detain and release or afford a bond hearing before an immigration judge to most people who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

91. The retroactive application of *Matter of Yajure Hurtado* is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT VII
Violation of the Administrative Procedure Act
Contrary to Law and Arbitrary and Capricious Agency Policy
Failure to Adhere to Prior Published Precedent

92. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

93. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

94. The Executive Office for Immigration Review (EOIR) is an adjudicatory body that functions much like the federal court system. The immigration court renders decisions on legal issues concerning a noncitizens removability, eligibility for relief and fitness for bond. The BIA reviews decisions and from time-to-time issues precedential decisions.

95. The parties expect the BIA and the immigration courts to apply faithfully Supreme Court, circuit court, and BIA precedent as well as decision-making principles that ensure consistency and predictability in deciding cases. The rule of orderliness is one such principle that circuit courts and district courts apply. Under the rule of orderliness, "one panel of [the circuit] court may not overturn another panel's decision, absent an intervening change in law, such as by a statutory amendment, or the Supreme Court, or [the] en banc court." *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016). This rule is also applied by the district courts. *See Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 575-76 (W.D. Tex. 2019).

96. The EOIR has acknowledged that it does not abide by the rule of orderliness. The EOIR calls it the "prior-panel-precedent" rule. *See* EOIR Policy Memoranda (PM) 25-34 (July 3, 2025) found at https://www.justice.gov/eoir/media/1406956/dl?inline. The EOIR acknowledges that the functional equivalent of the rule of orderliness exists in its regulations and in narrow

circumstances, one panel can overrule an earlier panel if a majority of the permanent Board members vote to reject the earlier decision. 8 C.F.R. § 1003.1(g)(3). Nevertheless, there is no rule or guidance for immigration courts for resolving conflicts between prior BIA precedents or which BIA precedent to follow. EOIR PM 25-34 at 2.

97. Instead, EOIR instructs immigration judges to essentially "try their best." *Id.* at 4. "Until the Board or the Attorney General resolves any conflicts in Board precedent... or adopts a clear rule regarding which precedent should control when there is a conflict, Immigration Judges will have to apply their best judgment and traditional legal tools or methods of analysis in order to adjudicate cases before them where Board precedent is in conflict." *Id.* The rule of orderliness thus does not control.

98. Prior BIA precedent requires application of *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023) and *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

99. The disregard of the rule of orderliness and application of § 1225(b)(2) to Petitioner is agency action that are arbitrary, capricious, and not in accordance with law, and as such, Respondents are violating the APA. *See* 5 U.S.C. § 706(1) and (2).

PRAYER FOR RELIEF

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

1. Assume jurisdiction over the instant petition for writ of habeas corpus;
2. Issue a writ of habeas corpus requiring that within 3 days, Respondents release Petitioner;
3. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless within 7 days, Respondents provide a bond hearing under 8 U.S.C.

§ 1226(a) where Respondent Noem bears the burden of demonstrating by clear and convincing evidence that Petitioner is a flight risk or a danger to the public;

4. Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412; and,

5. Grant any other relief which this Court deems just and proper.

Dated: December 18, 2025

Respectfully submitted,

/s/ Javier N. Maldonado
Javier N. Maldonado
Texas Bar No. 00794216
Law Office of Javier N. Maldonado, PC
8620 N. New Braunfels, Ste. 605
San Antonio, TX 78217
(210) 277-1603 (phone)
(210) 587-4001 (fax(
jmaldonado.law@gmail.com

ATTORNEY PETITIONER

VERIFICATION OF COUNSEL

I, Javier N. Maldonado, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Javier N. Maldonado
Javier N. Maldonado