UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Luz Greisy Sanchez-Zapata, Petitioner, v. Pamela BONDI, Attorney General; Kristi NOEM, Secretary, Department of Homeland Security; Bret BRADFORD, Houston Field Office Director, Immigration and Customs Enforcement; Randy TATE, Warden – Montgomery Processing Center. Respondents.	)	No. _____ [redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW, Luz Greisy Sanchez-Zapata, Petitioner, by and through her counsel, ROBERT K. HOFFMAN, in the above-styled and numbered cause, and petitions this Honorable Court for a writ of habeas corpus and injunctive relief to remedy her indefinite detention, in violation of the laws and regulations of the United States. In support of this petition and complaint for injunctive relief, Petitioner would show unto the court the following:

Petitioner, Luz Greisy Sanchez-Zapata, is in the physical custody of the Department of Homeland Security (DHS) - Immigration and Customs Enforcement (ICE) by order of Field Office Director BRET BRADFORD, detained at the Montgomery Processing Center, 806 Hilbig Road Conroe, Texas, a facility contracted by ICE to hold immigration detainees. *See* ICE Online Detainee Locator Printout**,** Exh. 1. She has been detained at that facility by Respondents since December 2, 2025, approximately.

PARTIES

Petitioner, Luz Greisy SANCHEZ-ZAPATA, is a twenty-eight (28) year old native and citizen of Venezuela. The Petitioner's legal name is denoted as Luz Greisy Sanchez-Zapata on all Department of Justice and Department of Homeland Security documents and correspondence.

Respondent Randy TATE is employed by Geo Group as Warden of the Montgomery Processing Center where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity only.

Respondent Bret BRADFORD is the Field Office Director for Enforcement and Removal Operations (ERO) with Immigration and Customs Enforcement (ICE) and administers the immigration laws on behalf of the Secretary of the Department of Homeland Security (DHS) and the Attorney General, and as such has immediate control and custody of the Petitioner. He is sued in his official capacity only.

Respondent, Kristi NOEM, is the Secretary of the Department of Homeland Security (DHS). She is responsible for the administration, implementation and enforcement of the immigration laws and is a legal custodian of the Petitioner. 8 USC § 1103(a). She is sued in her official capacity only.

Respondent, Pamela BONDI, is the Attorney General of the United States, and is authorized by law to administer and enforce the immigration laws pursuant to 8 USC § 1103(g). She is sued in her official capacity only.

JURISDICTION AND VENUE

This action arises under Article 1, Section 9, Clause 2 of the Constitution of the United States, 28 U.S.C. § 2241(c) (the codification of the Great Writ), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 1331 (federal question jurisdiction), the Immigration and Nationality Act (I.N.A.), 8 U.S.C. § 1101 et seq., and the Administrative Procedures Act (A.P.A.), 5 U.S.C. § 701 et seq.

This Court has jurisdiction to consider this petition pursuant to 28 U.S.C. §2241, Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331, as the Petitioner is presently in the physical custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws or treaties of the United States. *See INS v. St. Cyr*, 533 US 289 (2001); *Zadvydas v. Davis, et. Al.*, 533 US 678; *Heikkila v. Barber*, 345 US 229 (1953); *Felker v. Turpin*, 518 US 651 (1996). This Court may grant relief pursuant to 28 U.S.C. § 2241, the A.P.A., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. § 1651.

Venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Respondents, Bret BRADFORD, Field Office Director, ICE, and Warden Randy TATE is located, and it is the District in which a substantial part of the events or omissions giving rise to the claim occurred, including the facility in which the Petitioner is currently detained. 28 U.S.C. § 1391(e).

CASE AND PROCEDURAL HISTORY

Petitioner, Luz Greisy Sanchez-Zapata, entered the United States without inspection on or about September 25, 2021, when she was 23 years old with the intention of seeking political asylum. She was released on her own recognizance pursuant to 8 U.S.C. § 1226 and was issued a Notice to Appear initiating removal proceedings against her.

She timely filed her application for political asylum within one year of her arrival in the United States and obtained work authorization incident to the pending asylum application. On December 10, 2022, she married her United States Citizen husband, Alex Sickler. On February 16, 2024, Mr. Sickler filed Form I-130, Petition for Alien Relative with U.S. Citizenship and Immigration Services (USCIS). That Petition remains pending. She obtained Temporary Protected Status (TPS) under the 2023 TPS Designation for Venezuela on July 17, 2024. On February 5, 2025, the Department of Homeland Security terminated the 2023 TPS designation for Venezuela[1]. On April 11, 2025, the Executive Office for Immigration Review (EOIR) set the Petitioner for a Hearing on the Merits of her asylum claim for December 4, 2025.

On or about December 1, 2025, the Petitioner was requested to present to the Houston Field Office of Immigration and Custom Enforcement pursuant to her Order of Release on Recognizance. Despite having valid work authorization, valid ID, a pending hearing date on the merits of her application, a U.S. citizen spouse, a petition filed by that U.S. citizen spouse pending, and no known criminal record, the

[1] While the termination was initially subject to a nationwide injunction, the Supreme Court allowed the termination of the 2023 TPS Designation to proceed on October 3, 2025.

Petitioner was detained. She was subsequently transported to the Montgomery Processing Center in Conroe, Texas.

On November 25, 2025, the United States District Court for the Central District of California certified a nationwide class of individuals who are being subject to the government's new bond policy—the Bond Eligible Class—and expressly extended the same declaratory relief granted to petitioners who were being wrongfully detained under 8 U.S.C. § 1225(b)(2) to the Bond Eligible Class as a whole. *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) (emphasis added). Such class members, consisting of individuals who entered the United States without inspection, are eligible for a bond hearing in Immigration Court under 8 U.S.C. § 1226(a). *Id.*

On December 16, 2025, an Immigration Judge found that he lacked jurisdiction to determine bond in the Petitioner's case under *Matter of Q. Li,* 29 I&N Dec. 66 (BIA 2025). *See* Order of the Immigration Judge Denying Bond, Exh. 2. The Immigration Judge made an alternative finding that if he did have jurisdiction, he would grant the Petitioner bond in the amount of $5,000. The Petitioner reserved appeal, while the Department of Homeland Security waived appeal.

The Petitioner is being held contrary to law in violation of her constitutionally protected liberty interest.

EXHAUSTION OF REMEDIES

Exhaustion does not bar this Court's review because it is not a statutory requirement in these circumstances. *See Lopez Benitez v. Francis*, 25 Civ. 5937, 2025 WL 2371588 at *13 (S.D.N.Y. Aug. 13, 2025). When a "'legal question is fit for resolution and delay means hardship,' a court may choose to decide the issues

itself." *Pizzaro Reyes*, 2025 WL 2609425, at *3 (quoting *Shalala v. Ill. Council on Long Term Care, Inc.,* 529 U.S. 1, 13 (2000)).

Assuming arguendo that the case does not pose a legal question fit for resolution, then, a person seeking habeas relief must first exhaust available administrative remedies. *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). "The exhaustion of administrative remedies doctrine requires not that only administrative remedies selected by the complainant be first exhausted, but instead that all those prescribed administrative remedies which might provide appropriate relief be pursued prior to seeking relief in the federal courts." *Id.* at 314 (quoting *Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir. 1985), *abrogated on other grounds by McCarthy v. Madigan*, 503 U.S. 140, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992), *superseded by statute on other grounds*, *Woodford v. Ngo*, 548 U.S. 81, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006); *see* also *Lee v. Gonzales*, 410 F.3d 778, 786 (5th Cir. 2005) ("[A] petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists.").

Conversely, "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam) (quoting *Hessbrook*, 777 F.2d at 1003); *Hinojosa*, 896 F.3d at 315 (finding that procedures provided a basis for the Plaintiffs to rectify the wrongful determination that they are not citizens, so they could not show that pursuing such remedies would be futile); *Fuller* F.3d at 62 (finding that the Plaintiff could not show his appeal would be futile as Plaintiff did not file an appeal even though it was untimely).

There is no administrative remedy to compel the Immigration Judge to consider the Petitioner's eligibility for an immigration bond, as he has asserted that

he has no jurisdiction to adjudicate the matter. The Immigration Judge relied on the binding precedential decision of the Board of Immigration Appeals in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and any attempt by the Petitioner to appeal to the authority that issued the precedential decision, i.e., the Board of Immigration Appeals, would be patently futile.

The Petitioner has, therefore, exhausted her administrative remedies to the extent required by law, and this Petition is her only remedy. She has sought release through the administrative procedures established by the regulations. The Petitioner challenges the constitutionality of the Respondent's actions, and the Immigration Judge's interpretation of the relevant statutes. The Petitioner is being detained indefinitely, at the whim of the agency.

Assuming arguendo that the Petitioner has failed to exhaust her administrative remedies, the Petitioner should be exempt from complying with the exhaustion of administrative remedies doctrine as her continued detention, in spite of her vested liberty interest, will result in irreparable harm, i.e. loss of liberty), such administrative remedies would be ineffective, as well as the existence of constitutional questions that cannot be resolved through the administrative process. *Doherty v. Barr*, 503 US 901 (1992) (finding that even aliens unlawfully present in the US have a "substantive due process right to liberty during deportation proceedings.").

A FEDERAL DISTRICT COURT HAS GRANTED SUMMARY JUDGMENT ON THE PETITIONER'S CONTINUED DETENTION UNDER 8 U.S.C. § 1225(b)(2)

The Petitioner brings this petition for a writ of habeas corpus to seek enforcement of her right as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). On November 20, 2025, the United States District Court for the Central District of California 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 district court certified the following Bond Eligible Class: 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 *9. Under this class definition, there are two groups of people who have claims to relief. First, there are those who entered the United States, were not apprehended at or near the border or close in time to their entry, and who were later arrested by immigration authorities. Second, there are those who were apprehended at or near the border and close in time to their entry, were released on recognizance, and then were re-detained by immigration authorities after residing in the United States.

The Petitioner is a class member because she entered the United States without inspection. She was not detained upon arrival, and she was not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security made an initial custody determination by evidence of her release on recognizance.

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.

Nonetheless, the Executive Office for Immigration Review and the Department of Homeland Security (DHS) have refused to abide by the declaratory relief and have unlawfully ordered that those in the Petitioner's position be denied the opportunity to be released on bond.

Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to defy the judgment in that case and continue to subject Petitioner to unlawful detention despite the Petitioner's clear entitlement to consideration for release on bond as a Bond Eligible Class member.

Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior precedent.

As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the Immigration and Nationality Act (INA) in applying the mandatory detention statute at § 1225(b)(2) to class members. 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." 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). By denying Petitioner a bond hearing under § 1226(a) and asserting that she 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*.

Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent must permit the Petitioner to post the bond ordered in the alternative by the Immigration Judge and release Petitioner. Alternatively, the Court should order Petitioner's release on recognizance.

JURISDICTION OF THE IMMIGRATION JUDGE AND MANDATORY DETENTION

Assuming arguendo that the Petitioner is not entitled to relief pursuant to *Maldonado Bautista*, the Petitioner individually asserts that her detention is unlawful. The issue here largely involves a question of statutory interpretation, which is historically within the province of the courts. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (citing *Marbury v. Madison*, 5 U.S. 137 (1803)). The plain language and structure of 8 U.S.C. § 1225(b)(2) and the history of the Immigration and Nationality Act indicate that the Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), but rather eligible for bond under 8 U.S.C. § 1226(a). Moreover, *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA

2025) should be given little deference and persuasive decisions from this district, and districts nationwide support the Petitioner's position.

I. The Plain Language and Structure of the INA

When a statute is ambiguous or internally contradictory, courts must "use every tool at their disposal to determine the best reading of the statute." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The Court begins its analysis with the statute's plain text. *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017) ("Our analysis begins with the language of the statute.") (citation omitted). 8 U.S.C. § 1225(a) defines and applicant for admission as:

> [a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)…

8 U.S.C. §1225(a)(1).

Meanwhile, the statute which the Respondent asserts the Petitioner is rightfully detained under reads:

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

8 U.S.C. § 1225(b)(2).

The Respondents conflate the terms "applying for admission" and "seeking admission" by treating them as synonymous. However, such a reading would render the phrase "seeking admission" in §1225(b) superfluous. To qualify for §1225(b)(2), the Petitioner must (1) be an applicant for admission, (2) be "seeking admission", and (3) be "not clearly and beyond a doubt entitled to be admitted. If, as the Respondents argue that "applying for admission" and "seeking admission" are the same, then the phrase "seeking admission", would add nothing to the provision, which would violate the rule against surplusage. *See United States, ex rel. Polansky v. Exec. Health Res., Inc.,* 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."); TRW Inc. v. *Andrews,* 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

The Respondents' position conflicts with the implementing regulation for § 1225(b). *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024) (implementing regulations may provide a "useful reference point for understanding a statutory scheme" when issued "contemporaneously"). 8 C.F.R. § 235.3 describes Section 1225(b)(2) as applying to "any *arriving alien* who appears to the inspecting officer to be inadmissible." (Emphasis added.) The regulation thus contemplates that "applicants *seeking admission*" are a subset of applicants "roughly interchangeable" with "arriving aliens." "Arriving aliens" are specifically defined by regulation as applicants for admission "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. This certainly does not describe the Petitioner. In fact, the Petitioner's Notice to Appear similarly distinguishes between "arriving alien" and "alien present in the United States who has not been admitted or paroled." *See* NTA, Exh. 4. The regulations and forms presume that the term "seeking admission" does not have unlimited application the Respondent proposes.

The Respondent attempts to employ another provision of section 1225 which requires noncitizens "who are *applicants for admission* or otherwise *seeking admission* or readmission" to be inspected by immigration officers to prove that those terms are synonymous. 8 U.S.C. § 1225(a)(3) (emphasis added). However, the Respondents' example in this provision, like its argument concerning section 1225(b)(2), conflates distinct categories of noncitizens. Section 1225(a)(3)'s inspection protocol applies to two different categories of noncitizens: (1) those already present or arriving in the United States, in other words "applicant[s] for admission"; and (2) those who may "seek admission from anywhere in the world. *See*, *e.g.,* 8 U.S.C. 1225a(a) (requiring preinspection at certain foreign airports before such noncitizen "passengers . . . arrive from abroad"); 19 U.S.C. § 1629(a) (authorizing inspection of persons in foreign countries "prior to their arrival in . . . the United States").

Furthermore, the phrases "an alien who is an applicant for admission" and "an alien seeking admission" are not synonymous as the first term can describe a noncitizen who for weeks, months, or years is an applicant for admission, whether present in the country or not, while the latter term describes a current activity, namely standing at the border and asking to be allowed in the United States. This foregoing interpretation of the words "an alien seeking admission" is consistent with § 1225(b)'s role in governing the process that "begins at the Nation's borders and ports of entry." *See Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). According to the *Jennings* court, § 1225(b)(2) serves as a "catchall" for aliens seeking admission who are "not clearly and beyond a doubt" entitled to admission, but not for one of the reasons set forth in §1225(b)(1), i.e., fraud, misrepresentation, or lack of valid documentation. *Id.,; see* 8 U.S.C. § 1225(b)(1). Aliens to whom § 1225(b)(2) applies and who are detained may be temporarily released on parole for "urgent humanitarian reason or

significant public benefit," but they must return to custody when the Secretary of Homeland Security concludes that the purposes of the parole have been served. *See* 8 U.S.C. § 1182(d)(5)(A).

In *Jennings*, the Supreme Court recognized that a different provision of the INA, namely 8 U.S.C. § 1226, applies to aliens who are *already present* in the United States, but might be removable because they either were inadmissible at the time of entry or have been convicted of one or more statutorily-enumerated criminal offenses. *See* 583 U.S. at 288. (emphasis added). Section 1226(a) reads as follows:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General-
>
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on--
> (A) bond of at least $1,500 with security approved by,
> and containing conditions prescribed by,
> prescribed by the Attorney General; or
> (B) conditional parole . . . .

Here, 8 U.S.C. § 1226 applies to the Petitioner because she was already present in the United States when she was detained years after entering the United States.

The Agency's overly broad interpretation of the statutory/regulatory scheme entails holding that every non-citizen who entered the United States without inspection is subject to mandatory detention with no opportunity to be released on bond. Such interpretation is contrary to precedent issued by the Board of Immigration Appeals, such as *Matter of Akhmedov,* 29 I&N Dec. 166 (BIA 2025), as well as Congressional intent and decades of interpretation. *See generally* Public Law 119-1; The Laken-Riley Act. The Petitioner should be allowed to pay the

Immigration Bond entered in the alternative by the Immigration Judge so as to avail herself of her constitutional right to liberty during Deportation Proceedings. *Doherty v. Barr*, 503 US 901 (1992) (finding that even aliens unlawfully present in the US have a "substantive due process right to liberty during deportation proceedings.")

In *Matter of Akhmedov*, the position of the Board of Immigration Appeals is that those who entered unlawfully are necessarily detained under 8 U.S.C. § 1226, which gives an Immigration Judge discretion to grant bond to a detainee. The Department of Justice, however, paints with a broad brush, holding that anyone who enters without inspection is subject to 8 U.S.C. § 1225, a much more stringent provision under which Immigration Judges lack jurisdiction to grant bond.

The Agency's finding that all non-citizens who enter without inspection are subject to mandatory detention and, thus, ineligible for bond would run contrary to Congressional intent, as it would make the Laken-Riley Act unnecessary and superfluous. Congress would have had no need to carve out an exception that excludes non-citizens who entered without inspection *and* have been charged with offenses, such as theft or assault, from requesting bond if *everyone* who entered unlawfully was ineligible for bond, thus demonstrating congressional intent that those who entered without inspection are eligible for bond under 8 U.S.C. § 1226.

A plain reading of the regulatory/statutory scheme clearly demonstrates that the Petitioner is unlawfully detained and that the Respondents have failed to meet their burden of proof.

II. The History of the Immigration and Nationality Act

Assuming arguendo that the statutory/regulatory scheme is ambiguous or vague, then a historical analysis of the origins of the statute, nonetheless, shows that the Petitioner's interpretation is correct. Prior to 1996, the INA primarily distinguished individuals on the basis of "entry" and not "admission." See §

1101(a)(13) (1994) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise"). "Entry" dictated what type of enforcement proceeding applied to determine whether a non-citizen could be removed or barred from the country. Non-citizens who had effected an "entry" into the United States were subject to deportation proceedings, while those who had not made an "entry" were subject to exclusion proceedings. Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, 1-1 Immigration Law and Procedure § 1.03(2)(b) (2010).

This so-called "entry doctrine" resulted in an anomaly. Under this regime, non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings. IIRIRA addressed this anomaly by substituting "admission" for "entry" and by replacing deportation and exclusion proceedings with a general "removal" proceeding. Under the new regime, "admission" now determines whether a non-citizen is subject to grounds of deportability or inadmissibility within the context of a removal proceeding. See IIRIRA, Pub. L. No. 104-208, div. C, § 220, 110 Stat. 3009 (amending 8 U.S.C. § 1101(a)(13); id. div. C, § 240, 110 Stat. 3009 (enacting 8 U.S.C. § 1229a); see also H.R. Rep. No. 104-469, at 225-26 (Conf. Rep.) (1996) (explaining reasons for the amendment).

In making these changes, Congress did not fully disrupt the old system, including the system of detention and release. In fact, according to the legislative record, "Section 236(a) [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. REP. 104-469, 229. Congress' concern about adjusting the law in some respects to reduce inequities in

the removal process did not mean Congress intended to entirely up-end the existing detention regime by subjecting all inadmissible noncitizens to mandatory detention, a seismic shift in the established policy and practice of allowing discretionary release under Section 1226(a) - the scope of which Congress did not alter.

Until the government adopted its new interpretation of § 1225(b)(2) this year, the longstanding (almost three decades) practice of the agencies charged with interpreting and enforcing the INA since IIRIRA was enacted was to apply § 1226(a) to noncitizens who entered the U.S. without inspection and were apprehended while present in the U.S. By contrast, those apprehended at or near a port of entry were designated as "arriving alien(s)." The Executive Office for Immigration Review's (EOIR) regulations drafted to implement the IIRIRA amendments explained this distinction. See Inspection and Expedited Removal of Aliens, 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 . . . . The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not. This procedure maintains the status quo . . ."") (emphasis added). This distinction is consistent with the definition of "arriving alien". 8 C.F.R. § 1.2.

III. The BIA's decision in *Matter of Q. Li* is not binding.

Matter of Q. Li, 29 I. & N. Dec. 66 (BIA 2025) is entitled to little deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do"). Under Skidmore, the "weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its

reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944).

The Respondent asserts that its position is correct as it is supported by the BIA precedent of *Matter of Q. Li*. However, the BIA's current position is inconsistent with its earlier pronouncements. Prior to *Matter of Q. Li*, the BIA issued three non-precedential decisions taking the opposite position. In September 2023, the BIA remanded a case for the IJ to determine conditions of custody after the IJ erroneously found they had no jurisdiction over the matter because the applicant entered the U.S. without being admitted or paroled. *See Matter of XXX XXX XXX* , AILA Doc. No. 23101604 (BIA Sept. 1, 2023), Exh. 5. In that same case, the Board even stated that it was "unaware of any precedent" that would support the Government's position. *Id.* In October 2025, the BIA remanded a case finding that because the Respondent's NTA marked them as a noncitizen "present without admission or parole," they were not subject to the detention provisions under INA § 235(b), 8 U.S.C. § 1225(b). *See* Appeal ID 5449981 (BIA Oct. 17, 2023), Exh. 6; In December 2023, the BIA reiterated their position for a third time, finding that a noncitizen who was placed directly into removal proceedings under §1229(a) was thus not subject to mandatory detention under §1225(b)(1) or (b)(2) because DHS had elected to placed them directly into removal proceedings without placing them in expedited removal first. *See* Appeal ID 5454441 (BIA Dec. 14, 2023), Exh. 7. Under *Loper*, the Court has no obligation to defer to the BIA's view, particularly when that view has not "remained consistent over time." *Loper*, 603 U.S. at 386; see also *Skidmore*, 323 U.S. at 140.

IV. Persuasive decisions from courts in this district and others support the Petitioner's position.

In the absence of controlling authority, the Court should follow those district courts that have applied the plain language of the INA and held that Petitioners such as Ms. Sanchez-Zapata are not subject to mandatory detention under § 1225(b)(2).

Although there is no doubt that other district court rulings are not binding on this Court, the reality is that an overwhelming number of Courts, including Courts in this district, have found that the Respondents' statutory interpretation is incorrect.[2]

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[2] *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025; *Sandoval v. Acuna*, No. 625-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); Vargas Lopez v. Trump, No. 8:25-CV-00526, 2025 L.
[2] *See, e.g., Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, --- F. Supp. 3d ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Gimenez Gonzalez v. Raycraft*, No. 25-CV-13094, 2025 WL 3006185 (E.D. Mich. Oct. 27, 2025) (Kumar, J.); *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Noem*, No. 25-CV-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-CV-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 Civ. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 25-CV-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, No. 25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); *Doe v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Jimenez v. FCI Berlin, Warden*, --- F. Supp. 3d ---, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*, No. 25-CV-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Guzman v. Andrews*, No. 25-CV-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-5624, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Garcia Cortes, v. Noem*, No. 25-CV-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Pablo Sequen v. Kaiser*, --- F. Supp. 3d ---, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025); *Maldonado Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Velasquez Salazar v. Dedos*, No. 25-CV-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Singh v. Lewis*, No. 25-CV-96, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Giron Reyes v. Lyons*, --- F. Supp. 3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito Barrajas v. Noem*, No. 25-CV-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, --- F. Supp. 3d ---, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez v. Hardin*, No. 25-CV-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-CV-07802, 2025 WL 2732923 (N.D. Cal. Sept.

See Buenrostro-Mendez v. Bondi, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025)(Rosenthal, J.); *see also Nery Ortiz-Ortiz v. Bondi*, Civil Action 5:25-cv-132 Dkt. 17 (S.D. Tex. Oct. 15, 2025)(Kazen, J.); *See also Baltazar v. Vasquez*, 5:25-cv-160 Dkt. 10 (S.D. Tex. Oct . 14, 2025)(Marmolejo, J.); *Fuentes v. Lyons*, Civil Action 5:25-cv-00153 Dkt. 15 (S.D. Tex. Oct. 16, 2025)(Saldana, J.).

The foregoing cases also indicate that the claim in question is ripe for review as the pendency of removal proceedings has not prevented numerous other courts from finding jurisdiction, nor has it prevented them from granting a Temporary Restraining Order in similar situations.

STATUTORY AND CONSTITUTIONAL FRAMEWORK

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be...deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. "Freedom from bodily restraint has always been at the core of the

25, 2025); *Rivera Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, --- F. Supp. 3d ---, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Alves da Silva v. U.S. Immigr. & Customs Enf't*, No. 25-CV-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Chang Barrios v. Shepley*, No. 25-CV-00406, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Inlago Tocagon v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2778023 (D. Mass. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Romero-Nolasco v. McDonald*, --- F. Supp. 3d ---, 2025 WL 2778036 (D. Mass. Sept. 29, 2025); *Quispe v. Crawford*, No. 25-CV-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Quispe-Ardiles v. Noem*, No. 25-CV-01382, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *D.S. v. Bondi*, No. 25-CV-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Ayala Casun v. Hyde*, No. 25-CV-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Chanaguano Caiza v. Scott*, No. 25-CV-00500, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, No. 25-CV-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Rocha v. Hyde*, No. 25-CV-12584, 2025 WL 2807692 (D. Mass. Oct. 2, 2025); *Alvarenga Matute v. Wofford*, No. 25-CV-01206, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025); *Escobar v. Hyde*, No. 25-CV-12620, 2025 WL 2823324 (D. Mass. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, No. 25-CV-07286, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Echevarria v. Bondi*, No. 25-CV-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Guerrero Orellana v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Hyppolite v. Noem*, No. 25-CV-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025).[3]

liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 US 71, 80 (1992). See also *St. John v. McElroy*, 917 F. Supp. 243, 250 (S.D.N.Y. 1996)("[T]the private interest affected is St. John's liberty interest, which is of the highest constitutional import."); *Doherty v. Barr*, 503 US 901 (1992)(finding that even aliens unlawfully present in the US have a "substantive due process right to liberty during deportation proceedings.")

Substantive due process requires that detention authorized for non-punitive purposes not be "excessive in relation to the regulatory goal Congress sought to achieve." *United States v. Salerno*, 481 US 739, 747 (1987). Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances "where a special justification…outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Kansas v. Hendricks*, 521 US 346, 356 (1997).

Even if the Petitioner's continued detention did not violate her constitutional right to substantive due process, her continued detention violates her constitutional right to procedural due process. The Petitioner has been indefinitely deprived of her liberty by the unilateral decision of an ICE official without being heard at a meaningful time and in a meaningful manner. *Matthews v. Eldridge*, 424 US 319, 334 (1976).

This Honorable Court must consider three factors when analyzing a claim that involves the violation of procedural due process: 1) the nature of the private interest affected by the government action; 2) the risk of an erroneous deprivation of the interest as a result of the procedures used and the probable value of additional or substitute safeguards; and, 3) the government's interest in using its own procedures and the fiscal and administrative burdens by additional or substitute safeguards. *Matthews, supra* at 335.

In the instant case, the private interest is the right to be considered for immigration bond under the provisions of 8 U.S.C. § 1226. Freedom from government custody or detention "lies at the heart of the liberty" that due process protects. *Zadvyas, supra* at 690. The Respondents have failed to demonstrate that the Petitioner presents an identified and articulable threat to the community, nor have they demonstrated that the Petitioner is a flight risk, so as to justify her continued detention.

The risk of an erroneous deprivation of the Petitioner's liberty interest is substantive and grave considering that he has been in custody of Immigration and Customs Enforcement for several weeks as well as the fact that the Agency erroneously held that it has no jurisdiction to adjudicate the Petitioner's application for immigration bond. The value of additional and substitute safeguards is nil, as the Petitioner remains detained indefinitely.

The government's interest in using its own procedures, as well as the fiscal and administrative burdens by additional or substitute safeguards is not particularly relevant. The government's fiscal and administrative burdens while the Petitioner remains detained are actually higher than they would otherwise be if the Petitioner were released.

REQUEST FOR INJUNCTIVE RELIEF

For all the reasons outlined, *supra*, which are incorporated and re-urged herein as if fully set forth verbatim, the Petitioner respectfully requests injunctive relief in the form of the entry of an order enjoining the Respondents from further and continued detention of the Petitioner, absent a new basis for such detention arising subsequent to this action and independent of her manner of entry to the United States.

This injunction is necessary as Respondents have shown themselves unwilling to hold any administrative hearing to adjudicate the Petitioner's application for an immigration bond under their own administrative framework.

REQUEST FOR DECLARATORY RELIEF

For all the reasons outlined, *supra,* which are incorporated and re-urged herein as if fully set forth verbatim, the Petitioner respectfully requests declaratory relief in the form of the entry of a decree which specifies the rights and liabilities of the parties to the instant litigation. The Petitioner also requests that this Honorable Court retain continuing jurisdiction over this civil action and that, after reasonable notice of hearing and hearing had, it enter any further declaratory, mandatory, or other injunctive order that is necessary to enforce any declaratory judgment. 28 U.S.C. § 22.02.

REQUEST FOR ATTORNEY FEES AND COSTS

The Petitioner is entitled to recover reasonable attorney's fees and costs of court, both of which he respectfully requests under the Equal Access to Justice Act. 28 U.S.C. § 2412. The position of the Respondents herein is not substantially justified, and no circumstances exist which would render an award of fees and costs unjust. 28 U.S.C. § 2412(d)(1)(A).

PRAYER

WHEREFORE, PREMISES CONSIDERED, in view of the arguments and authority noted herein, Petitioner respectfully prays that the Respondents be cited to appear and answer herein and that, upon due consideration, this Honorable Court:

(a) grant Petitioner's petition for writ of habeas corpus and issue a declaratory judgment stating that Respondents' continuing detention of the Petitioner is arbitrary and capricious, clearly contrary to law, and in excess of statutory jurisdiction, and that Petitioner be released on recognizance, or in the alternative, permitted to post the Immigration Bond of $5,000 entered in the alternative by the Immigration Judge;

(b) issue an order enjoining Respondents from further, continuing detention of the Petitioner absent new cause arising subsequent to this action and not dependent upon her status at entry to the United States;

(c) retain jurisdiction over this civil action to the extent necessary to ensure the entry of any declaratory, injunctive, or mandatory order that may be necessary or proper to enforce any declaratory judgment;

(d) award Petitioner reasonable attorney's fees and costs; and

(e) grant such other relief at law and in equity as justice may require.

Respectfully submitted,

/s/Robert K. Hoffman

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