

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

Yuliana Del Carmen Alvarenga and G.A.P.A.,  
a minor child,

Petitioners,

Kristi Noem, Secretary of Homeland Security;  
Pamela Bondi, U.S. Attorney General, Todd  
M. Lyons, Acting Director of Immigration and  
Customs Enforcement; Miguel Vergara San  
Antonio Field Office Director; Jose Rodriguez  
Jr., Warden of Dilley Processing Center

Respondents.

Civil Case No. 5:25-cv-1835

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. For nearly thirty years immigration judges (IJ), immigration lawyers for noncitizens, and attorneys from the Department of Homeland Security (DHS) construed 8 U.S.C. § 1226(a) to allow for bond eligibility for noncitizens who entered the country without inspection. This was well-settled law. Indeed, just this year when Congress passed the Laken Riley Act (LRA) it revealed its understanding that noncitizens who entered the country without inspection are eligible for a bond. The LRA's amendments to 8 U.S.C. § 1226(c) add provisions providing that noncitizens who entered the country illegally and commit certain enumerated offenses are not eligible for a bond. Congress would not have passed the LRA if it understood that *all* noncitizens who entered the country unlawfully were already subject to mandatory detention under 8 U.S.C. § 1225.

2. Despite the clear text of §§ 1226 and 1225, Respondents are construing the detention statutes to impose mandatory detention under § 1225(b) on individuals who entered the United States without inspection, even when apprehended within the interior of the United States years

after their completed entry. *See, e.g., Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The majority of district courts across the nation have rejected the Respondents' erroneous interpretation of the detention statutes. *See, e.g., Chogllo Chafila v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at \*5 (D. Me. Sep. 21, 2025) (“[N]early all district courts that have considered this issue have, after conducting persuasive, well-reasoned analyses of the statutory language and legislative history, rejected the Government’s broad interpretation of section 1225(b)(2).”) (collecting cases); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025) (joining the “chorus” of courts concluding that § 1226 applies) (collecting cases); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (“As almost every district court to consider this issue has concluded, “the statutory text, the statute’s history, Congressional intent, and § 1226(a)’s application for the past three decades” support finding that § 1226 applies to these circumstances.”); *J.E.H.G., v. Chesnut et al*, No. 1:25-CV-01673-JLT SKO, 2025 WL 3523108 (E.D. Cal. Dec. 9, 2025) (“Thus, because Petitioner has been present in the United States for approximately three years and was released on her own recognizance by ICE before Respondents adopted the new interpretation of the governing statutes, the Court concludes that the government’s recent interpretation of the relationship between § 1225 and § 1226 . . . does not apply here such that detention is not “mandatory” in this case.”).

3. The Petitioners are a mother and her three-year-old child. They entered the United States on or around June 28, 2023, without inspection. They were apprehended by U.S. immigration officials after their entry and ordered to appear before an Immigration Judge (IJ). *See* Exh. A. (Notices to Appear). Shortly after, the U.S. Department of Homeland Security (DHS) released the Petitioners from custody on their own recognizance. In doing so, DHS determined that the Petitioners posed no danger or flight risk and that pursuing their removal was not a priority. *Saravia*

*v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”). Petitioners have been residing in the United States since their release from immigration custody.

4. On or around November 13, 2025, Petitioners were re-detained by U.S. immigration officials while reporting on a routine U.S. Immigration and Customs Enforcement (ICE) check-in. This sudden deprivation of liberty was done without a material change in circumstances that would render the Petitioners a danger or a flight risk. Petitioners are now held without bond, in flagrant violation of statutory and constitutional due process protections.

5. The Petitioners accordingly file this petition seeking a writ of habeas corpus ordering their release from custody immediately. *See, e.g., Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025) (ordering the Petitioner’s immediate release); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782 (W.D. Wash. Nov. 6, 2025) (same); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629 (S.D. Cal. Sept. 26, 2025) (same). In the alternative, Petitioners request that the Court order the Respondents to provide them a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court’s order, at which the U.S. Department of Homeland Security (DHS) bears the burden to justify their redetention by demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioner a danger to the community or a flight risk. *See, e.g., Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at \*7 (D.N.M. Sept. 17, 2025); *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262, at \*4 (W.D. Tex. Oct. 30, 2025) (same) (holding that “when ordering a bond hearing as a habeas remedy” the burden shifts to the Government); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185 (E.D. Cal. Sept. 5, 2025)

(“Since it is the government that initiated redetention, it follows that the government should be required to bear the burden of providing a justification for the redetention.”).

## II. PARTIES

6. Petitioner Yuliana del Carmen Alvarenga, a citizen of Venezuela, is currently in immigration detention at Dilley Immigration Processing Center in Dilley, Texas.

7. Her minor son, Petitioner G-A-P-A, a citizen of Panama, is also currently detained at Dilley Immigration Processing Center in Dilley, Texas.

8. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

9. Respondent Pamela Bondi is the Attorney General for the United States and is charged with overseeing the Executive Office of Immigration Review (EOIR). General Bondi is being sued in her official capacity.

10. Respondent Todd M. Lyons is the Acting Director of the Immigration and Customs Enforcement (ICE), a sub-agency of Homeland Security. It is under ICE’s authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

11. Respondent Miguel Vergara is the Field Office Director for the ICE Enforcement and Removal Operations (ERO) San Antonio Field Office. It is under Respondent Vergara’s order that the Petitioner is in immigration custody. Respondent Vergara is being sued in his official capacity.

12. Respondent, Jose Rodriguez, Jr. is the warden and/or immediate custodian at the Dilley Immigration Processing Center in Dilley, Texas. Respondent Rodriguez Jr. is being sued in his official capacity.

### III. JURISDICTION

13. This Court has subject matter jurisdiction over Petitioners' petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

14. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(1), (a)(5), (b), District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

15. Venue is proper in this district because the Petitioners are detained within this district, and a substantial amount of events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e)(1).

### IV. LEGAL FRAMEWORK REGARDING MANDATORY IMMIGRATION DETENTION AND BOND ELIGIBILITY

#### **A. Congress deliberately provided for immigration detention in two different statutes, 8 U.S.C. § 1226 and 8 U.S.C. § 1225, to address two very different groups of noncitizens in different circumstances.**

16. This case involves the interplay between 8 U.S.C. § 1226 (general custody for individuals in traditional removal proceedings before an IJ) and the mandatory custody provisions of 8 U.S.C. § 1225(b) that apply to those noncitizens seeking admission at the port of entry or the border. Detention under § 1225(b) may be pursuant to subsection (b)(1) or (b)(2). The Respondents' authority to detain noncitizens under §§ 1226 or 1225 depends on the individualized circumstances of the noncitizen and the procedural posture of the removal case.

17. Both §§ 1226(a) and 1225(b) were enacted and substantially amended, respectively, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to provide detention for different subsets of noncitizens. Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

18. Prior to IIRIRA, deportation proceedings were governed by 8 U.S.C. § 1252(a)(1) (1994), which provided that “Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody.” Like 1226(a), this provision authorized discretionary release on bond pending a determination of deportability. *See* § 1252(a)(1) (1994). According to the IIRIRA’s legislative history, § 1226(a) was intended to “restate[] the [then-] current provisions of section [1252](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.” *See Rodriguez v Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. Sep. 30, 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996) (emphasis added)).

19. In 1997, following the enactment of the IIRIRA, the Executive Office for Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a) “and eligible for bond and bond redetermination.” *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).

20. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings under § 1226(a). 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. Rept. No. 104-469, Part 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

**i. The Petitioners are in custody under 8 U.S.C. § 1226, and the IJ can order their release on bond.**

21. Section 1226(a) “authorizes the Government to detain certain aliens *already in the country* pending outcome of removal proceedings.” *Jennings*, 583 U.S. at 289 (emphasis added). In November 2023, Petitioners were arrested pursuant to 8 U.S.C. § 1226(a), released on an Order of Recognizance pursuant to that same authority, and served with an NTA to commence removal proceedings under §1229a. *See* Exh. A. Two years later, while residing in the United States, ICE redetained the Petitioners. The logical conclusion, therefore, is that their detention continues to be governed under § 1226(a).

22. Section 1226(a) establishes the discretionary framework for noncitizens arrested and detained “[o]n warrant issued by the Attorney General.” For such individuals, the Attorney General (1) “may continue to detain the arrested alien,” (2) “may release the alien on . . . (A) bond of at least \$1,500,” or (B) “may release the alien on . . . conditional parole.” 8 U.S.C. §§ 1226(a)(1)-(2). Release on an order of recognizance is a form of conditional parole under § 1226(a)(2)(B). *See Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at \*2 (D. Mass. Sept. 9, 2025).

23. DHS makes an initial custody determination on whether to allow the noncitizen to be released under § 1226(a). 8 C.F.R. §§ 1236(c)(8), (d)(1). However, such determinations “may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236.” 8 C.F.R. § 1003.19(a).

24. Under 8 U.S.C. § 1226, an IJ may grant bond if the noncitizen demonstrates that he or she is not a danger to the community or pose a significant risk of flight. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

25. Once an individual has been released from custody, DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen's return to custody. *See, e.g., Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal."); *see also Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (finding a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines . . .").

26. Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D).

27. In January 2025, Congress enacted the LRA, which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

28. The enactment of the LRA confirms that Congress did not intend for all noncitizens who entered the country unlawfully and are found within the interior of the United States to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Indeed, the LRA explicitly provides for mandatory detention for noncitizens who both entered the country unlawfully *and* committed one

of the above enumerated offenses within the United States. The LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2)(A). *Yajure Hurtado* effectively provides that the LRA was an unnecessary, needless bill.

29. Section 1226(a) leaves no doubt that it applies to people who confront removal for being inadmissible to the United States, including those who are present without admission or parole.

**ii. The Petitioners are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2).**

30. Section 1225(b)(2) applies to those noncitizens seeking admission. The statute states:

In the case of an *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.

(Emphasis added). For § 1225(b)(2)(A) to apply, “several conditions must be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at \*6–7 (D. Mass. July 24, 2025). “One who is ‘seeking admission’ is *presently* attempting to gain admission into the United States.” *Belsai D.S.*, 2025 WL 2802947, at \*6 (emphasis added). “Admission” refers to “lawful entry . . . into the United States after inspection and authorization by an immigration officer.” *Id.* § 1101(a)(13)(A). When Respondents detained Petitioners years after they entered the United States, they were not seeking entry, much less “lawful entry . . . after inspection and authorization by an immigration officer.” *See Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), *as amended* (June 5, 2008) (“Under th[e] statutory definition, ‘admission’ is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status.” (Emphasis in original)).

31. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287; *see also Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379, at \*18 (E.D. Mich. Aug. 29, 2025) (“1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country.”).

32. As stated above, the Petitioners were previously released under § 1226(a), which allows for a noncitizen to be released on their own recognizance, i.e., on “conditional parole”, pending removal proceedings. Moreover, they have been in the United States for over two years subsequent to an unlawful entry and was most recently arrested in the interior of the United States. As such, they are not in custody under § 1225(b)(2)(A).

**B. The Respondents’ misconception of the detention statutes is contrary to decades of established practice and has resulted in the unlawful detention of the Petitioners.**

33. The Respondents’ misconception of the statutes is part of their scheme to greatly expand immigration detention in general by using the mandatory detention provisions of 8 U.S.C. § 1225.

34. On July 8, 2025, ICE, “in coordination with” Department of Justice (DOJ), announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. 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). The policy applies regardless of when a person is apprehended, greatly affecting those who have resided in the United States for months, years, and even decades.

35. On September 5, 2025, the BIA—reversing decades of practice—adopted this same position in *Yajure Hurtado*. 29 I&N Dec. at 216. There, the BIA 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. *Id.*

36. The Respondents efforts to expand 8 U.S.C. § 1225 to provide for more mandatory detention has been rejected by courts across the nation. Accordingly, the mandatory detention provision of § 1225(b) does not apply to people like Petitioners, who have already entered and were residing in the United States at the time they were apprehended.

**C. Respondents’ detention of a minor child for over 20 days in an unlicensed facility violates the *Flores* settlement.**

37. In 1997, in the *Flores* Settlement, the government entered into a settlement agreement which “sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS [DHS].” *Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016).

38. The *Flores* settlement states that if DHS does not release the minor child, it must place the child in a licensed program that meets the standards set forth in the settlement. “Those standards include food, clothing, grooming items, medical and dental care, individualized needs assessments, educational services, recreation and leisure time, counseling, access to religious services, contact with family members, and a reasonable right to privacy.” *Id.* at 903.

39. It “creates a presumption in favor of releasing minors and requires placement of those not released in licensed, non-secure facilities that meet certain standards.” *Flores v. Rosen*, 984 F.3d 720, 727 (9th Cir. 2020).

40. The Settlement provides that whenever DHS has a minor in custody, it requires that DHS “release class members [‘]without unnecessary delay[’] to certain adults, or place them in a

licensed program within five days of apprehension.” *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1070 (C.D. Cal. 2017).

41. Only under extenuating circumstances, DHS can detain a child in a non-licensed care facility for up to 20 days. *Id.* at 1070.

## V. FACTS

42. The Petitioner, a citizen of Venezuela, and her three-year-old child, a citizen of Panama, entered the United States without inspection on or about June 29, 2023. They were apprehended after their entry and served with Notices to Appear (“NTA”) charging them as inadmissible for being present in the United States without having been admitted or paroled under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exh. A. Thereafter, DHS ordered the Petitioners’ release on their own recognizance, thereby determining that they posed neither a danger to the community nor a flight risk. *See Saravia*, 280 F. Supp. 3d at 1176. The Petitioners have no criminal history and have fully complied with all conditions of their release.

43. Following their release from custody, the Petitioners resided in the United States for two years.

44. The adult Petitioner was granted Temporary Protected Status available for Venezuelans valid from November 3, 2024, through April 2, 2025.

45. On or about November 13, 2025, the Petitioners were re-detained by DHS within the interior of the United States while reporting at a routine ICE check-in. The re-detention was not based on any materially changed circumstances that would now render them a flight risk or danger to the community. Critically, “[t]he law requires a change in relevant facts, not just a change in [the government’s] attitude.” *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL

1918679, at \*7 (E.D. Cal. July 11, 2025) (quoting *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at \*3 n.6 (S.D.N.Y. June 18, 2025)).

46. The Respondents are detaining the Petitioners with no bond at Dilley Immigration Processing Center in Dilley, Texas. *Yajure Hurtado* renders the Petitioners ineligible for bond.

#### VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

47. The Petitioners have exhausted their administrative remedies to the extent required by law. The Petitioners requested bond before the IJ. On December 11, 2025, the IJ denied the bond request based on his *Yajure Hurtado*. See Exh. B. It would be futile to require the Petitioners to file an appeal given that the BIA has already announced its decision on the issue of bond jurisdiction in *Yajure Hurtado*.

#### VII. CLAIMS FOR RELIEF

**Count I. Statutory claim: The Petitioners are detained under § 1226(a) and are not subject to mandatory detention under § 1225(b).**

48. The Petitioners have a clear right to a custody hearing by an IJ under 8 U.S.C. § 1226(a)(2). The Respondents are detaining the Petitioners in direct violation of this statute which authorizes the IJ to grant release from custody.

49. The statute cannot be clearer and requires that the Petitioners be provided with the opportunity to present their custody redetermination case before the IJ. While the BIA reached the opposite conclusion in *Yajure Hurtado*, this interpretation is erroneous and even if it were plausible, it is not entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

50. Moreover, in *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a "new rule of general applicability" which "drastically change[s] the landscape,"

retroactive application would “contravene basic presumptions about our legislative system” and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)). Applying DHS’s expanded mandatory-detention policies and the BIA’s decision in *Yajure Hurtado* to individuals like Petitioners—who entered the United States without inspection years before these changes—is impermissibly retroactive. The government’s current interpretation conflicts with decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to bond hearings. Retroactive application of this interpretation deprives Petitioners of these long-established rights and imposes a new burden based on past conduct, rendering them ineligible for bond in contravention of settled expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) (“As Justice Scalia has demonstrated, . . . [e]lementary 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.”).

### **Count II. Fifth Amendment Due Process Violation**

51. The Respondents may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Petitioners have a weighty liberty interest as their freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.

52. Individuals who have been released from custody gain a protected liberty interest in remaining free from custody, and ICE must show materially changed circumstances to justify redetention. *See, e.g., Matter of Sugay*, 17 I. & N. at 640; *Ortega v. Bonnar*, 415 F. Supp. 3d 963,

969 (N.D. Cal. 2019); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at \*11 (W.D. Tex. Sept. 22, 2025) (“[O]nce released from immigration custody, noncitizens acquire ‘a protectable liberty interest in remaining out of custody on bond.’”); *Singh*, 2025 WL 1918679, at \*6 (“Furthermore, the Supreme Court has held that, even when a statute authorizes revocation of an individual’s freedom, the individual may retain a protected liberty interest under the Due Process Clause.”).

53. To determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at \*2 (W.D. Tex. Sept. 8, 2025). The *Mathews* factors are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

54. These factors all favor a determination that the Petitioners are being held without due process of law. The deprivation of the Petitioners’ liberty interest based on *Yajure Hurtado* carries a high risk that the Petitioners’ liberty is being erroneously deprived.

55. The Respondents’ re-detention of Petitioners two years after their release on their recognizance, without prior notice, any showing of changed circumstances, or a meaningful opportunity to contest their re-detention violates the Fifth Amendment’s Due Process Clause.

### **Count III. *Accardi* Violation**

56. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under

the heading of “Apprehension, Custody, and Detention of Aliens,” the agencies explained that “[d]espite 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.” 62 Fed. Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

57. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioners.

58. The application of § 1225(b)(2)(A) to Petitioners unlawfully mandates their continued detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which for decades have recognized that noncitizens present without admission are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288–29 (describing § 1226 detention as relating to people “inside the United States” and “present in the country.”). Such protection is not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 512 (2003).

59. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) (“An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.”). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause, particularly when liberty is at stake. *See, e.g., Sering Ceesay v.*

*Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

#### **Count IV. *Flores* Settlement Violation**

60. DHS cannot detain a minor child for longer than 20 days in an unlicensed facility. *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1070 (C.D. Cal. 2017).

61. Nonetheless, DHS has detained Petitioner, a minor child, since November 13, 2025, much longer than 20 days.

62. Dilley Immigration Processing Center is not a licensed facility to hold minor children.

63. Under the *Flores* settlement, the government must release the Petitioner, a minor child, as it is currently holding the minor child in violation of the *Flores* settlement.

#### **VIII. PRAYER FOR RELIEF**

For the foregoing reasons, the Petitioners request that the Respondents be cited to appear and that, upon due consideration, the Court enter an order:

- a. Ordering the Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within five days why the Petitioners' writ of habeas corpus should not be granted.
- b. Granting a writ of habeas corpus finding that the Petitioners' detention is unlawful and unconstitutional;
- c. Providing declaratory relief that the Petitioners' detention is unlawful;
- d. Ordering Petitioners' immediate release from custody, or, in the alternative, ordering Respondents to provide them a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify their re-detention by demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioners a danger to the community or a flight risk;

- e. Ordering that Respondents not transfer the Petitioners to any facility outside of the boundaries of the Western District of Texas while this writ is pending.
- f. Awarding Petitioners reasonable attorney fees, expenses and costs; and
- g. Granting Petitioners such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR PETITIONERS

**VERIFICATION UNDER 28 U.S.C. § 2242**

Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

/s/ Lance Curtright  
Lance Curtright