UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JULIO ANGEL ACOSTA DOMINGUEZ :

Petitioner, :

-against- :

:

KRISTI NOEM, IN HER OFFICIAL CAPACITY, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; :

PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL; :

TODD LYONS, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT; :

MARY DE ANDA DE YBARRA, IN HIS OFFICIAL CAPACITY ICE FIELD OFFICE DIRECTOR DETENTION AND REMOVAL; :

WARDEN, ERO EL PASO CAMP EAST MONTANA :

Respondents. :

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PETITION FOR WRIT OF HABEAS CORPUS

Case No. 3:25-cv-741

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF

1. Petitioner, Julio Angel Acosta Dominguez ("Mr. Acosta-Dominguez"), is a citizen and national of the Dominican Republic.
2. Mr. Acosta-Dominguez entered the United States on December 7, 2022, after leaving the Dominican Republic.

3. Mr. Acosta-Dominguez was processed and released under 8 U.S.C. § 1182(d)(5); INA 212(d)(5), under a humanitarian parole. *See* Exh. 1
4. On October 28, 2025, Petitioner married a United States citizen in Clifton, New Jersey. *See* Exh. 2
5. Petitioner is also the stepfather to an 18 year old U.S. citizen child, for whom he provided emotionally and financially prior to his detention.
6. On November 26, 2025, Respondent appeared for his scheduled ICE check-in at the ICE office in Newark, New Jersey, as he had consistently done for more than (2) years and eleven months.
7. Through his Noncitizen Relative-Spouse I-130 application, Mr. Julio Acosta Dominguez will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.
8. On November 26, 2025, Petitioner was detained and taken into custody.
9. He was issued a Notice to Appear pursuant to 8 U.S.C. §1229(a), ordering him to appear at the Newark Immigration Court located at 625 Evans Street, RM148A, Delaney Hall, New Jersey 07201. *See* Exh. 3
10. Petitioner was served with a Notice to Appear, charging him under sections 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i). *id.*
11. On December 2, 2025, USCIS received and issued a receipt notice for an I-130 (Noncitizen Relative Petition-Spouse). *See* Exh. 2
12. Petitioner was initially detained in Newark, New Jersey, before being transferred to ERO El Paso- Camp East Montana, located at 6920 Digital Road, NA, El Paso, TX 79936, where he remains detained while his removal proceedings are pending. *See* Exh. 4

13. Petitioner is eligible for Adjustment of Status to Lawful Permanent Residence under 8 U.S.C. § 1255(a).
14. The petitioner suffers from high blood pressure (hypertension). *See* Exhibit 5
15. Petitioner's wife also suffers from multiple serious medical conditions, including kidney insufficiency and anemia caused by severe and prolonged menstrual bleeding, which require frequent hospital visits. Since Respondent's detention, his wife's health has deteriorated due to stress and uncertainty, and she has struggled to manage her medical needs while caring for her child without Respondent's assistance. *See* Exhibit 5
16. Prior to his detention, Petitioner resided with his wife in New Jersey.
17. Petitioner's spouse and step-child, both of whom depend on him financially and emotionally, reside in New Jersey. *See* Exh. 5
18. Petitioner's wife also suffers from multiple serious medical conditions, including kidney insufficiency and anemia caused by severe and prolonged menstrual bleeding, which require frequent hospital visits. Since his detention, Petitioner's wife's health has deteriorated due to stress and uncertainty, and she has struggled to manage her medical needs while caring for her child without Respondent's assistance. *Id.*
19. Since Petitioner's detention, his wife and U.S. citizen child have experienced significant emotional distress. His wife's existing medical conditions have worsened due to the stress and uncertainty surrounding his detention, and she struggles to manage her own health while attempting to care for her children alone.
20. Without relief from this court, Petitioner faces continued detention without the possibility of an individualized bond hearing.

21. On July 8, 2025, DHS issued a new policy memorandum to all , On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

22. The BIA's September 5, 2025, precedential decision in *Matter of Yajure-Hurtado*, held that the plain language of 8 U.S.C. § 1225(b)(2)(A) mandates that all aliens who have entered the United States without admission are subject to mandatory detention. 29 I&N Dec. 216 (BIA 2025). This decision is in contravention with the DHS's longstanding interpretation that noncitizens already present in the country such as Respondent were detained pursuant to 8 U.S.C. § 1226(a) and not §1225(b)(2)(A).

23. Petitioner's instant removal case is still pending.

24. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission."

Rather, he should continue to be detained pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for Mr. Acosta-Dominguez and allows for release on conditional parole or bond.

25. Through this petition, Mr. Acosta-Dominguez asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a), which DHS processed him under on November 26, 2025, and immediately release Mr. Acosta-Dominguez from custody in accordance with the initial custody determination made in December 8, 2022. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

CUSTODY

26. Petitioner is in the physical custody of Defendant-Respondent MARY DE ANDA DE YBARRA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent Warden of the ERO EL PASO CAMP EAST MONTANA. At the time of the filing of this petition, Plaintiff-Petitioner is detained at the ERO EL PASO CAMP EAST MONTANA in El Paso, Texas. The ERO EL PASO CAMP EAST MONTANA is run by DHS to detain noncitizens such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

27. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. 1131 (federal question), 28 USC 1346 (original jurisdiction), 5 USC 702 (waiver of sovereign immunity), 28 USC 2241 (habeas corpus jurisdiction), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

VENUE

28. Venue is proper because Petitioner is currently detained in El Paso, TX, and now remains detained at the ERO EL PASO CAMP EAST MONTANA. *See* Exhibit 4; *See also generally* *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also* *Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which petitioner is currently detained.

PARTIES

Petitioner

29. Petitioner Mr. Acosta Dominguez is a citizen and national of the Dominican Republic. Previous to his detention, resided with his spouse at Clifton, NJ. He is currently in ICE custody and detained at the ERO EL PASO CAMP EAST MONTANA, 6920 Digital Road NA El Paso, TX 79936.

Respondents

30. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a

custodian of the Petitioner. She is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

31. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She routinely transacts business in the District of Texas in this capacity; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. She is sued in her official capacity. At all times relevant hereto, Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

32. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the Western District of Texas, El Paso Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the Petitioners's immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

33. Respondent MARY DE ANDA YBARRA is the Field Office Director for Detention and Removal, ICE, DHS. She is the custodial official acting within the boundaries of the

judicial district of the United States District Court for the Western District of Texas. Pursuant to Respondent's orders, Petitioner remains in custody. Respondent is sued in his official capacity. Her address is 999 S Oregon St. El Paso, TX 79901.

34. Respondent Warden at the ERO EL PASO CAMP EAST MONTANA, 6920 Digital Road NA El Paso, TX 79936 where the petitioner is detained. The Warden has immediate physical custody of Petitioner. He is sued in his official capacity.

STATEMENT OF THE FACTS

35. Mr. Acosta-Dominguez is a forty-one-year-old male with no criminal history.
36. Mr. Acosta-Dominguez entered the United States on December 7, 2022, after leaving the Dominican Republic.
37. Mr. Acosta-Dominguez was processed and released under 8 U.S.C. § 1182(d)(5); INA 212(d)(5), under a humanitarian parole. *See* Exh. 1
38. On October 28, 2025, Petitioner married a United States citizen in Clifton, New Jersey. *See* Exh. 2
39. Petitioner is also the stepfather of an 18 year old U.S. citizen child, for whom he provided emotionally and financially prior to his detention.
40. On November 26, 2025, Respondent appeared for his scheduled ICE check-in at the ICE office in Newark, New Jersey, as he had consistently done for more than (2) years and eleven months.
41. On November 26, 2025, Petitioner was detained and taken into custody.
42. He was issued a Notice to Appear pursuant to 8 U.S.C. §1229(a), ordering him to appear at the Newark Immigration Court located at 625 Evans Street, RM148A, Delaney Hall, New Jersey 07201. *See* Exh. 3

43. Petitioner was served with a Notice to Appear, charging him under sections 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i). *Id.*

44. On December 2, 2025, USCIS received and issued a receipt notice for an I-130 (Noncitizen Relative Petition-Spouse). *See* Exh. 2

45. Petitioner was initially detained in Newark, New Jersey, before being transferred to ERO El Paso- Camp East Montana, located at 6920 Digital Road, NA, El Paso, TX 79936, where he remains detained while his removal proceedings are pending. *See* Exh. 4

46. Petitioner is eligible for Adjustment of Status to Lawful Permanent Residence under 8 U.S.C. § 1255(a).

LEGAL BACKGROUND

47. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also* I.N.S. v. St. Cyr, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

48. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

49. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." Boumediene v. Bush, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, St. Cyr, 533 U.S. at 302.

50. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

51. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

52. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

53. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

54. 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, 300-582 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).

55. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of 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). 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 (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

56. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("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 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

57. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

58. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is an 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. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now

> treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission (emphasis original).

59. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id.*

60. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

61. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the

detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id.* § 1003.19(e).

CAUSES OF ACTION

COUNT I

VIOLATION OF 8 U.S.C. § 1226(a)

UNLAWFUL DENIAL OF RELEASE ON BOND

1. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
2. 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, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).
3. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.

4. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

VIOLATION OF BOND REGULATIONS

8 C.F.R. §§ 236.1, 1232.1 and 1003.19

UNLAWFUL DENIAL OF RELEASE ON BOND

5. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
6. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.
7. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to § 1226(a).
8. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

COUNT III

VIOLATION OF THE APA CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

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

10. 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).

11. 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 whom Defendants-Respondents previously determined should be detained and released under 8 U.S.C. § 1226(a). Such noncitizens are detained (and released) under 8 U.S.C. § 1226(a) and are eligible for release on bond, unless they were initially placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) or (b), or were detained under 8 U.S.C. § 1226(c) or § 1231.

12. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to 8 U.S.C. § 1226(a).

13. Defendants-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.

14. The application of 8 U.S.C. § 1225(b)(2) to Plaintiff-Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT IV

VIOLATION OF THE APA AND DUE PROCESS CLAUSE IMPERMISSIBLY RETROACTIVE APPLICATION OF NEW LEGAL INTERPRETATION

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

16. 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).

17. Respondents adopted a new interpretation of the INA and its regulations due to the BIA's May 15, 2025 decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Prior to *Matter of Q. Li*, Defendants-Respondents interpreted and applied the INA detention and release scheme to empower Defendants-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 8 U.S.C. § 1226(a).

18. 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 8 U.S.C. § 1226(a) or 8 U.S.C. § 1226(b)(2). *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 8 U.S.C. § 1226(a). The noncitizens argued that their release constituted a parole because their detention (and release) could only have been accomplished through 8 U.S.C. § 1225(b). The BIA firmly rejected that reading of the statute.

19. "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.

20. And the BIA reiterated this reading of the INA's detention and release statutory scheme again in *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025). There, the noncitizen entered without inspection or admission and then was released. He argued that he had been paroled because DHS could only detain him under § 1225(b). The BIA rejected the argument concluding that DHS detained him under § 1226(a) and released him conditionally under § 1226(a)(2)(B). The BIA concluded that the noncitizen had "not meaningfully distinguished his release from DHS' custody from the conditional parole at

issue in *Matter of Cabrera-Fernandez*, 28 I&N Dec. at 747, 750." *Matter of Roque-Izada*, 29 I&N Dec. at 109.

21. Petitioner was detained and released under § 1226(a). This is confirmed factually and legally by the documentation concerning her release and the state law of the law in effect at that time. *Matter of Cabrera-Fernandez* buttresses this point.

22. *Matter of Q. Li*, 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's case however is unfair and unlawful.

23. 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).

24. 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).

25. 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).
26. The change here is significant. Petitioner's right to be free from detention is eliminated and she is now subject to mandatory detention.
27. The retroactive application of *Matter of Q. Li* is unfair, unreasonable and unlawful.
28. Further, the application of 8 U.S.C. § 1225(b)(2) 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). Retroactive application of *Matter of Q. Li* to Petitioner also violates her due process rights.

COUNT V

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

Failure to Adhere to Prior Published Precedent

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

30. 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).

31. 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.

32. 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).

33. 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.

34. 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.

35. Prior BIA precedent requires application of *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023). If the facts demonstrate that DHS exercised its authority to detain and release a noncitizen under § 1226(a), then that election controls and the noncitizen is eligible for bond under that provision.

36. The disregard of the rule of orderliness and application of § 1225(b)(2) to Plaintiff-Petitioner are agency actions that are arbitrary, capricious, and not in accordance with law, and as such, they violate the APA. *See* 5 U.S.C. § 706(2).

COUNT VI

VIOLATION OF DUE PROCESS CALUSE

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

38. Substantive due process protects against arbitrary and unjustified deprivations of liberty. In the immigration context, every detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute's purpose. *See Zadvydas v. Davis*, 533 U.S.690; *Demore v. Kim*, 538 U.S. 523. When the government misapplies the

statutory basis for detention, no legitimate justification exists, and due process is infringed. *Id.*

39. DHS affirmatively chose to process Petitioner under section 8 U.S.C. § 1226(a), as demonstrated by by issuance of a Notice to Appear on November 26, 2025 and absence of expedited removal forms (I-867AB, I-860)[1]. By subsequently detaining him under section 1225(b), DHS did not provide him with the bond protections specified under 8 U.S.C. § 1226(a), resulting in a statutory mismatch that affected the legal basis for her continued detention.

40. Respondents' actions violate Petitioner's substantive due process rights.

CLAIM FOR RELIEF

I. VIOLATION OF 8 U.S.C. § 1226(a) , UNLAWFUL DENIAL OF RELEASE ON BOND

1. Petitioner restates and realleges all paragraphs as if fully set forth here.
2. Mr. Acosta-Dominguez was initially detained and processed on December 7, 2022. At that time, ICE released from detention under 8 U.S.C. § 1182(d)(5)(A) .
3. On November 26, 2025, Mr. Acosta-Dominguez was detained and taken into custody even though he did not violate the terms of his humanitarian parole. At this time, DHS subjected him to detention under 8 U.S.C. § 1225, stating that he is subject to mandatory detention.
4. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

[1] The Notice to Appear contains charges of inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i), note that under 8 U.S.C. § 1225(b)(1) are 8 U.S.C. 1182 (a)(6)(c)-misrepresentation OR no valid documents under 8 U.S.C. § 1182(a)(7)(a)

5. Petitioner's continuing detention is therefore unlawful.

II. CONTINUED DETENTION CONSTITUTES A VIOLATION OF DUE PROCESS

6. Petitioner incorporates all factual allegations as though restated here.
7. ICE detained Mr. Acosta-Dominguez without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.
8. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.
9. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.
10. Mr. Acosta-Dominguez detention violates his Fifth Amendment rights for at least three related reasons.
11. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (*citing Zadvydas*, 533 U.S. at 690).
12. Whereas here, the government has ordered release humanitarian parole, detention is not reasonably related to its purpose.
13. Second, the Due Process Clause requires that any deprivation of Mr. Acosta Dominguez's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens").

14. Petitioner's on-going imprisonment does not satisfy that rigorous standard as he did not commit any crime, was released from custody, and has a pending asylum case joined by his wife.

15. Third, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

16. Mr. Acosta-Dominguez was detained under §1226(a), but for a new policy memorandum now subjecting everyone present in the United States who entered without a valid visa to mandatory detention, deprives the Petitioner of an individualized bond determination.

17. The "essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

18. In *Mathews v. Eldridge*, three factor balancing test is carried out when determining the adequacy of process in the context of civil immigration confinement. *Id. at* 851.

    a. Private interest

        i. Mr. Acosta-Dominguez invokes "the most significant liberty interest there is– the interest in being free from imprisonment." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

        ii. Petitioner was wrongfully detained without an individualized determination of his flight risk or dangerousness. (*i.e.* who made the decision to detain him, when that decision occurred, on what basis the decision to detain him was made, whether there was any material change

in circumstances with respect to what triggered his detention, or whether there was some policy change that triggered his detention.

iii. Petitioner states that DHS must comply with the procedures already in place, and its failure to do so amounts to a complete and arbitrary denial of due process.

iv. DHS, acting pursuant to the wrong statute, deprived Mr. Acosta-Dominguez of his statutorily mandated procedural protections

b. The Risk of erroneous deprivation

i. When DHS paroled Mr. Acosta-Dominguez could not have done so validly unless it did not consider him a flight risk or danger to the community at the time. 8 C.F.R. § 212.5(b).

ii. When DHS rearrested and detained Mr. Acosta Dominguez in November 2025, its determination solely rests upon falling under 8 U.S.C. § 1225(b)(2); INA § 235(b)(2).

iii. DHS has not articulated what change happened between the initial grant of humanitarian parole on December 7, 2022 to November 26, 2025 check in.

c. The Government's interest

i. DHS has discretion to detain individuals under 8 U.S.C. § 1226 (a), and is valid when it advances a legitimate government interest, such as ensuring the appearance of noncitizens at future immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

ii. Here Mr. Acosta-Dominguez is not a flight risk or danger to the community. He has complied with his ICE check ins, he is married to a US citizen who has filed an Noncitizen Petition-Spouse (I-130). He has established community ties to New Jersey and maintained a clean record.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Declare that Respondents' new mandatory detention policy that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful and in violation of the INA;
3. Order Respondents to file with the Court a complete copy of the administrative file from the Dept. of Justice and the Dept. of Homeland Security;
4. Enjoin ICE from transferring Petitioner outside of the Western District of Texas while this matter is pending;
5. Issue an order directing Respondents to show cause why the writ should not be granted within seventy-two hours;
6. Find that a custody redetermination pursuant to 8 C.F.R. 236.1(d) is an inadequate remedy because of DHS's lack of initial decision to review.
7. Find that DHS exercised no discretion under 8 C.F.R. § 236.1(d).

8. Find that redetaining Petitioner under the wrong statute, DHS afforded him no due process, after all bond hearings before an Immigration Judge are held after DHS makes an initial determination to detain[2].
9. Find that Petitioner's detention under 8 U.S.C. § 1226 absent an individualized assessment is a violation of his due process rights.
10. Find that DHS's failure to follow its own regulations and its failure to afford Petitioner the minimal due process under the 5th Amendment violated his rights.
11. In the alternative, Respondents should provide Petitioner a fair bond redetermination hearing before an Immigration Judge as provided by 8 U.S.C. § 1226 and enjoin his further detention under 8 U.S.C. § 1225(b). Many courts, including some in this district, have placed the burden on Respondents to bear the burden of justifying Petitioner's continued detention by clear and convincing evidence at the bond redetermination hearing. *See* Vieira v. Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 (W.D. Tex. Oct. 16, 2025) (collecting cases); Erazo Rojas v. Noem, No. EP-25-CV-442-KC, 2025 WL 3038262, 2025 U.S. Dist. LEXIS 217585 (W.D. Tex. Oct. 30, 2025).
12. Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in Barco v. Witte, 65 F.4th 782 (5th Cir. 2023), cert. denied, 144 S. Ct. 553 (2024) ruling that fees are not available to be awarded in 28 U.S.C. § 2241.

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[2] The BIA and Immigration judges lack jurisdiction to decide constitutional challenges to the Immigration and Nationality Act or its implementing regulations. In Cantu-Delgadillo v. Holder, the Fifth Circuit held that "the BIA lacked jurisdiction to consider" an alien's due process claims, citing the BIA's own precedent in Matter of C-, which established that "it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations" (Cantu-Delgadillo v. Holder, 584 F.3d 682 (2009))
This principle applies to both facial and as-applied constitutional challenges, as "any error was harmless because the BIA lacked jurisdiction to consider those challenges" (Cantu-Delgadillo v. Holder, 584 F.3d 682 (2009)

Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. Recently, the Tenth Circuit held that the reasoning in *Barco* was not compelling and granted EAJA fees in an immigration detention habeas action. *Daley v. Ceja*, 2025 WL 3058588, 2025 U.S. App. LEXIS 28669 at *24-26 (10th Cir. Nov. 3, 2025) (declining to follow the Fourth and Fifth Circuit precedents holding that habeas is a "hybrid proceeding" no matter the underlying detention.); *see also Abioye v. Oddo*, 2024 WL 4304738, 2024 US. Dist. LEXIS 174205 at *5-8 (W.D. Pa. Sept. 26, 2024) (highlighting the circuit split between the Fourth and Fifth Circuits versus the Second and Ninth Circuits). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

13. Grant any other relief that this Court deems just and proper.

Respectfully submitted,

/s/ David H. Square
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Julio Angel Acosta-Dominguez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23rd day of December 2025.

/s/ David H. Square
David H. Square, Esq.