UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Yunel Fonseca Reyes, *Petitioner*, *v.* PAMELA BONDI, United States Attorney General; KRISTI NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; SYLVESTER ORTEGA Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, ROSE THOMPSON Warden Karnes County Immigration Processing Center *Respondents.*	§	Cause No. 5:26-cv-00017 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, PETITION FOR WRIT OF HABEAS CORPUS**

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I. INTRODUCTION

1. Petitioner, Yunel Fonseca Reyes, is in physical custody of Respondents at the Karnes County Immigration Processing Center. He now faces unlawful detention because the Department of Homeland Security (DHS), in concert with the Executive Office for Immigration Review (EOIR), has concluded that he is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. Relying on this charge in Petitioner's removal proceedings, DHS denied him release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to treat any noncitizen inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered without admission or inspection—as subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for bond.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge lacks authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board concluded that such individuals are detained under 8 U.S.C. § 1225(b)(2)(A) and thus cannot be released on bond.
5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and now reside in the United States. Instead, such individuals are subject to a different statute, § 1226(a), which authorizes release on conditional parole or bond.

That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents' new legal interpretation is irreconcilable with the statutory framework and decades of agency practice applying § 1226(a) to individuals in Petitioner's position.

7. The Government has also taken an abrupt and improper about-face on this issue. Respondents should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A) because they previously prevailed in litigation after asserting the opposite interpretation. *See New Hampshire v. Maine*, 532 U.S. 742 (2001) (judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a later proceeding to gain an unfair advantage). Here, Respondents previously—and successfully—argued that individuals who entered the United States without inspection are detained under § 1226(a), not § 1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and contend that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in position undermines the integrity of the judicial process and imposes an unfair detriment on Petitioners who relied on the prior interpretation. Respondents should be estopped from asserting this inconsistent position.

8. The Government's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) confirms a discretionary, fact-based determination that he was not subject to mandatory detention under § 1225(b)(2)(A). *See* Exh. 1 (DHS Form I-220A). DHS made this quasi-adjudicative decision at the outset of proceedings, based on facts available to both parties and Petitioner's admissions. In the Notice to Appear, DHS alleged that

Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the BIA—that Petitioner is ineligible to apply for bond before EOIR. Exh. 2 (DHS Form I-862, Notice to Appear). This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

9. Under 8 U.S.C. § 1226(b) and 8 C.F.R. § 242.2(c), DHS has authority to revoke a noncitizen's bond or parole "at any time," even after that individual has been released. There is no statutory or regulatory authority for DHS to revoke a noncitizen's bond or parole under a different statute—that is, under any provision other than 8 U.S.C. § 1226.

10. "[I]t is well established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority" over which noncitizens may remain in the United States or be detained here. *Hernandez v. Sessions*, 872 F.3d 976, 990 n.17, citing *Zadvydas*, 533 U.S. 678, 695 (2001). The Due Process Clause protects Petitioner, a person within the United States, from unlawful detention resulting from the denial of adequate procedural protections. *See Zadvydas*, 533 U.S. at 693, cited in *Hernandez v. Wofford*, No. 25-CV-00986, 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025). Even those whose liberty is significantly constrained, or over whom the government wields substantial discretion, retain a protected liberty interest. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019), citing *Young v. Harper*, 520 U.S. 143, 150 (1997). The "essence" of procedural due process is that a person at risk of

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

11. Accordingly, Petitioner seeks a writ of habeas corpus ordering his immediate release. In the alternative, Petitioner asks this Court to order a new bond hearing under 8 U.S.C. § 1226(a) within three days.

II. JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at Karnes County Immigration Processing Center, in Karnes City, Texas.

13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

15. Pursuant to *Braden v. 30th Judicial Circuit Court 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 currently is detained.

16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

18. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. PARTIES

19. Petitioner Yunel Fonseca Reyes is a citizen of Cuba who has been in immigration detention since September 15, 2025. He is currently detained at the Karnes County Immigration Processing Center.

20. Respondent Pamela Bondi is the Attorney General of the United States. She leads the Department of Justice, which includes the Executive Office for Immigration Review and the immigration courts. She is sued in her official capacity.

21. 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. She has ultimate custodial authority over Petitioner and is sued in her official capacity.

22. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. In that role, he is responsible for ICE's immigration enforcement and detention operations and is a legal custodian of Petitioner. He is sued in his official capacity.

23. Respondent Sylvester Ortega is the Field Office Director for the San Antonio Field Office of ICE. He is responsible for enforcement of the immigration laws within this district and for overseeing ICE officials' compliance with agency policies and procedures. He is a legal custodian of Petitioner and is sued in his official capacity.

24. Respondent, Rose Thompson, the Warden of Karnes County Immigration Processing Center, operated by GEO Group, Inc. The Warden has immediate physical custody of Petitioner pursuant to an agreement with ICE and is a legal custodian of Petitioner. The Warden is sued in her official capacity.

VI. FACTS

1. Petitioner has resided in the United States since approximately October 19, 2021 and is currently detained at the Karnes County Immigration Processing Center. Despite his initial entry into the United States without permission, Yunel Fonseca Reyes has maintained a hardworking, honorable life. He is currently detained at Karnes County Immigration Processing Center.

25. Upon his entry into the United States, DHS released Petitioner on a Form I-220A, Order of Release on Recognizance ("OREC"), which expressly states that he was arrested, placed in removal proceedings, and released pursuant to INA § 236. *See* Exh. 1 (Form I-220A, Order of Release on Recognizance). The OREC makes clear that Petitioner's release was conditioned on compliance with § 236 and related regulations. *Id.* With an Order of Release

on Recognizance an individual can live and work in the United States with the permission of DHS; intermittent check-ins and compliance with all obligations to the Immigration and Customs Enforcement (ICE) and Executive Office for Immigration Review (EOIR). *Id.*

2. On December 21, 2021 DHS filed a Notice to Appear ("NTA") with EOIR alleging that Petitioner entered the United States without inspection. *See* Exh. 2 (Form I-862, Notice to Appear).
3. Petitioner timely filed his Form I-589 application for asylum with the Immigration Court on July 15, 2022. The Immigration Court has scheduled his next hearing for January 9, 2026. *See* Exh. 3 (EOIR Notice of Hearing). Petitioner also filed his own application for adjustment of status with USCIS on November 23, 2022. That application was assigned case number MSC2390108726 and remains pending. Exh. 4 (I-485 Adjustment of Status Receipt Notice). He also has employment authorization.
4. On or about September 15, 2025 in San Antonio, Texas, Petitioner was arrested when he appeared for a scheduled check-in with immigration authorities. He was subsequently transferred to the Karnes County Immigration Processing Center, where he remains detained. He has no criminal arrests or convictions.
5. DHS has placed Petitioner in removal proceedings before the Pearsall Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged him, inter alia, as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the United States without inspection.
6. Following Petitioner's arrest and transfer to Karnes County Immigration Processing Center on September 15, 2025 ICE issued a custody determination continuing his detention without affording him an opportunity to post bond or be released on alternative conditions.

7. As a result of *Matter of Yajure Hurtado* and DHS's July 8, 2025 Lyons memorandum—which together adopt the position that individuals who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)—no immigration judge can consider Petitioner's bond request. His unlawful detention therefore cannot be meaningfully litigated before EOIR or the BIA, which have already adopted DHS's position wholesale, rendering any administrative effort futile.

8. Petitioner remains detained. Absent relief from this Court, he faces the prospect of months or even years in immigration custody—despite an immigration judge's prior finding that he is neither a danger nor a flight risk and while his January 9, 2026 hearing and his pending adjustment application remain unresolved—based solely on Respondents' unlawful reclassification of his custody status under § 1225(b)(2)(A).

VII. LEGAL FRAMEWORK

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

10. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

11. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

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

VIII. ARGUMENT

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

14. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

15. Following IIRIRA, EOIR issued regulations explaining that, as a general rule, people who entered the United States without inspection were not treated as detained under § 1225, but instead fell under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

16. For decades thereafter, noncitizens who entered without inspection and were placed in ordinary § 1229a removal proceedings received bond hearings unless barred by the criminal mandatory-detention provision at 8 U.S.C. § 1226(c). That practice was consistent with earlier law, under which non-"arriving" noncitizens were entitled to custody hearings before an immigration judge or other officer. *See* 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) "restates" the prior detention authority in § 1252(a)).

17. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not

apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days… then they are under 1226(a) and not 1226(c)" and further clarified, in response to a question concerning "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border," the Government responded, "The answer is they are held under 1226(a) and that they get a bond hearing…" Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (No. 15-1204). DHS reiterated that such individuals "would be held under 1226(a)" and cited the administrative record to support that position. *Id.* These statements reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

18. On July 8, 2025, ICE—"in coordination with" DOJ—issued the "Interim Guidance Regarding Detention Authority for Applicants for Admission" (the "Todd M. Lyons memo"), abruptly abandoning this long-settled regime. The memo asserts that all individuals who entered without inspection are now subject to § 1225(b)(2)(A)'s

mandatory-detention provision, regardless of when or where they are apprehended, even if they have lived in the United States for years. [1]

19. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. 29 I&N Dec. 216 (BIA 2025).

20. Since Respondents adopted their new policies, a wave of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same new reading of the statute as ICE.[2]

21. Courts in this District have reached the same conclusion and provided detailed reasoning that strongly supports Petitioner's position here. *See Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025) (preliminary injunction holding that § 1226, not

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[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[2] *See, e.g., Dominguez-Vega v. Thompson*, 25-CA-01439-XR (W.D. Tex Nov. 19, 2025); *Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Luna Quispe v. Crawford, et al.*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025); *Vazquez v. Bostock*, No. 25-cv-05240, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427, at *5 (N.D. Iowa, Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 2025); *Alvarez-Chavez v. Kaiser*, 25-cv-06984-LB 2025 WL 2909526 (N.D. Cal., Oct. 9, 2025);*Cerritos-Echevarria v Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Az. Oct. 3, 2025);*Padron-Covarrubias v. Vergara*, 5:25-cv-00112, (S.D. Tex. October 8, 2025); *Santiago-Santiago v. Bondi*, EP-25-CV-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Az. Oct. 7, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025). *But see Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025 ("by the plain language of § 1225(a)(1) the petitioners are "applicants for admission" and thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2)[.]"); *Vargas-Lopez v. Trump, et al.*, 8:25CV526 2025 WL 2780351 (D. Neb. Sept. 29, 2025) (the petitioner is an alien within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a, per 8 U.S.C. § 1225(b)(2)).

§ 1225(b)(2), governs custody for interior arrests because a broad reading of § 1225(b)(2) would render § 1226 superfluous); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025) (TRO requiring § 1226 process and enjoining re-detention without notice and a pre-deprivation hearing); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025) (TRO requiring a prompt § 1226 bond hearing with the Government bearing the burden, or release if no hearing is set); *Santiago-Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (granting habeas relief for a DACA recipient misclassified under § 1225(b)); *Alvarez Martinez v. Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025) (granting habeas and holding that the automatic stay of an IJ's bond order violates due process); *Lopez-Arevelo v. Ripa*, No. 3:25-cv-00337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (rejecting §§ 1252(g) and 1252(b)(9) as jurisdictional bars and ordering a bond hearing with a clear-and-convincing burden on the Government); *Martinez v. Noem*, No. 3:25-cv-00430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (holding that even assuming § 1225(b) applies, *Mathews* requires an individualized bond hearing); *Souza Vieira v. De-Anda Ybarra*, No. 3:25-cv-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Erazo Rojas v. Noem*, No. 3:25-cv-00443-KC (W.D. Tex. Oct. 30, 2025).

22. Courts elsewhere in the Fifth Circuit—particularly in the Southern District of Texas—have repeatedly rejected Respondents' new reading of the detention statutes and held that § 1226(a)—not § 1225(b)(2)—governs custody for long-resident noncitizens arrested in the interior, including those charged with entry without inspection. *See Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Padron*

Covarrubias v. Vergara, No. 5:25-cv-00112 (S.D. Tex. Oct. 8, 2025); *Ortiz-Ortiz v. Bondi*, No. 5:25-cv-00132 (S.D. Tex. 2025); *Hernandez Lucero v. Noem*, No. 4:25-cv-03981 (S.D. Tex. 2025); *Granados Gonzalez v. Bondi*, No. 4:25-cv-04756 (S.D. Tex. 2025); *Barrera Martinez v. Noem*, No. 5:25-cv-00164 (S.D. Tex. 2025); *Lopez de Leon v. Harlingen Field Office of Immigration & Customs Enforcement and Removal Operations Div.*, No. 5:25-cv-00165 (S.D. Tex. 2025). Those decisions uniformly recognize that applying § 1225(b)(2) to long-resident interior arrests would render § 1226 superfluous and violate due process, and they order either immediate release or a prompt bond hearing at which the Government bears the burden.

23. *Hernandez-Fernandez v. Lyons* is especially instructive and closely parallels Petitioner's situation. *See also Dominguez-Vega v. Thompson*, 25-CA-01439-XR (W.D. Tex. Nov. 19, 2025). There, a Cuban national entered near Eagle Pass without inspection, was released two days later on an Order of Release on Recognizance (I-220A) issued "in accordance with section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226]," lived in the United States for approximately three years, and was later re-detained at a routine check-in after the Government adopted its new § 1225(b) theory. Relying on new BIA precedent, the immigration judge concluded he lacked jurisdiction to conduct a bond hearing and treated the petitioner as subject to mandatory detention under § 1225(b). The district court held that (1) none of the INA's jurisdiction-stripping provisions barred habeas review; (2) further administrative exhaustion would be futile and would only prolong unlawful detention; (3) detaining the petitioner without a meaningful bond process violated procedural due process under *Mathews v. Eldridge*; and (4) the proper remedy was to require either a prompt bond hearing at which the Government bore a clear-and-convincing

burden of proving danger or flight risk, or release under reasonable conditions. *See Hernandez-Fernandez*, 2025 WL 2976923, at *1–11*. Petitioner stands in the same legal posture and should receive the same protection here.

24. *Granados v Noem et al* is another case like Mr. Foseca Reyes's. *Granados v Noem et al*, 5:25-cv-01464 (W.D. Tex. Nov. 26, 2025). In this case Petitioner was rearrested years after arriving in the United States. *Id.* The court held that Petitioner cannot be detained under Section 1225(b)(2) and that 1126 was the only other option for Petitioner's detention. Because Respondent did not argue that Petitioner was being detained pursuant to section 1226, the court found "no reason to consider" Section 1226 as a basis for Petitioner's current detention. *Id.* (quoting Martinez v. Hyde, F.Supp.3d 211 n.23 (D. Mass. 2025)). The court held that the Petitioner's detention was unlawful, habeas relief was proper and ordered Petitioner's immediate release. *Id.*

25. Outside this Circuit, a growing number of federal courts have likewise rejected ICE and EOIR's expanded interpretation of § 1225(b)(2), holding that § 1226(a) governs detention for noncitizens who have entered the interior and lived in the community. *See,* e.g., *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937-DEH (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494 (D. Neb. Sept. 3, 2025); and *Rodriguez Vazquez v. Bostock*, 779 F.

Supp. 3d 1239 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b), governs detention for long-resident noncitizens and that the Government's new reading of § 1225(b) is likely unlawful).

26. Taken together—particularly the decisions from this District and from *Hernandez-Fernandez*—this growing body of case law confirms the same point: § 1226(a) is the default detention authority for noncitizens in § 1229a removal proceedings who are already present in the United States, including those charged as inadmissible for entering without inspection, whereas § 1225(b) governs inspections at the border and recent arrivals "seeking admission."

27. The text of § 1226 confirms this reading. Section 1226(a) applies by default to "any alien" arrested and detained "pending a decision on whether the alien is to be removed from the United States." Those removal decisions are made in § 1229a proceedings "to decid[e] the inadmissibility or deportability of an alien." By its terms, § 1226 applies to noncitizens charged as inadmissible, including those present without admission or parole. *See* 8 U.S.C. § 1226(c)(1)(E). Congress's decision to carve out specific mandatory-detention categories in § 1226(c) "proves" that, absent those exceptions, § 1226(a) generally governs and bond is available. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010); *Gomes*, 2025 WL 1869299, at *7.

28. Section 1226 therefore squarely applies to people like Petitioner: noncitizens already in the interior, charged as inadmissible for entering without inspection, and placed in § 1229a proceedings.

29. By contrast, § 1225(b) is structurally and textually tied to inspections "at the Nation's borders and ports of entry," where the Government must determine whether a person

"seeking to enter" is admissible. *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(2)(A). It is not the default detention authority for individuals who, like Petitioner, have already entered, been released into the interior under § 1226, and lived in the community for an extended period.

30. The Government's own records in this case confirm that Petitioner falls under § 1226(a), not § 1225(b). DHS issued Petitioner an I-220A, or Order of Release on Recognizance, explicitly invoking § 236 of the INA (8 U.S.C. § 1226) and setting conditions of release. DHS then alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission." That combination—a § 1226-based release and an entry-without-inspection charge—squarely places Petitioner within § 1226's framework, just as in *Hernandez-Fernandez* and the Western District cases cited above.

31. Issuance of an I-220A under § 236 is not a ministerial act, it is a formal, quasi-judicial determination of custody status that reflects DHS's decision that the person is subject to § 1226's discretionary regime rather than § 1225(b)'s mandatory-detention provisions. Under long-standing principles of administrative preclusion, courts "have not hesitated" to apply collateral estoppel and res judicata to final agency determinations where the agency acted in a judicial capacity and the parties had a fair opportunity to litigate. *See Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). Congress is understood to legislate against that background. *See Astoria*, 501 U.S. at 108. DHS's prior § 236 determination—memorialized in the I-220A—thus constitutes a binding judgment for purposes of collateral estoppel and cannot be set aside simply because the agency's litigation strategy has shifted.

32. In light of the statutory text, regulatory history, decades of consistent practice, the Government's prior representations to the Supreme Court, and the growing judicial consensus—including multiple decisions from this District and the closely analogous *Hernandez-Fernandez* decision—Respondents' attempt to reclassify Petitioner under § 1225(b)(2)(A) is unlawful. Section 1226(a) governs his custody and entitles him to an individualized bond hearing; the Government's contrary position should be rejected and, to the extent necessary, barred by judicial estoppel and principles of administrative preclusion.

33. Section 1226 therefore leaves no doubt that it applies to noncitizens charged as inadmissible to the United States, including those who are present without admission or parole.

34. Conversely, § 1225(b) applies to individuals arriving at U.S. ports of entry or who have only recently entered the United States and remain under "official restraint," not free to mingle with the general population. Its framework is premised on inspections at the border of individuals "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 287.

35. Accordingly, the mandatory-detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at or near the border, then released after a quasi-judicial determination by an immigration official on Form I-220A that they fall under the discretionary arrest provision of § 1226(a) as uninspected entrants. DHS's issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a considered, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). That decision was made at the outset of proceedings based on facts

available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

36. For decades, it has been settled practice for immigration officials to issue an I-220A, or Order of Release on Recognizance, to noncitizens encountered at or near the border whom DHS elects to place into the § 1226 framework. The issuance of an I-220A under § 236 is, by design, a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b). The Supreme Court has "long favored application of the common-law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria*, 501 U.S. at 108 (citing *Utah Constr.*, 384 U.S. at 422). As *Utah Construction* explains, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." 384 U.S. at 422. Because Congress legislates against this background of common-law adjudicatory principles, DHS's prior § 236 determination—memorialized in

the I-220A—constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

IX. CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

38. 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 who received an I-220A and who were subsequently accused by DHS of having "entered" the United States. Those actions by DHS, followed by the Petitioner's concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

39. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II
Violation of the Bond Regulations

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

41. 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.

42. Nonetheless, pursuant to *Matter of Yajure Hurtado*, both EOIR as well as ICE have a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

43. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Due Process

44. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

45. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

46. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia*

v. Barr, 280 F. Supp. 3d1168, 1197 (N.D. Cal. 2017), aff'd sub nom. Saravia for *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom.

47. At a minimum, in order to lawfully re-arrest Petitioner, the government must first establish, by clear and convincing evidence and before a neutral decision-maker that he is a danger to the community or a flight risk, such that his re-incarceration is necessary. Here an immigration judge has already determined he is neither a danger nor a flight risk. ICE's re-arrest of Petitioner on June 11, 2025, violated these regulations, laws, and due process.
48. Petitioner has a fundamental interest in liberty and being free from official restraint.
49. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

Judicial Estoppel

50. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
51. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). *See Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S.

742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

X. PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(4) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days;

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

(6) Grant the writ of habeas corpus ordering Respondents to release Petitioner on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention.

(7) Award costs and, if permissible, attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, preserving Petitioner's position that EAJA may apply in habeas notwithstanding *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), and noting contrary authority, including *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985); *Daley v. Ceja*, No. 24-1191,

— F.4th —, 2025 WL 3058588 (10th Cir. Nov. 3, 2025) (holding that habeas actions challenging immigration detention are unambiguously "civil actions" within EAJA's "any civil action" language and affirming an EAJA award where the habeas petition materially altered the parties' legal relationship by securing a bond hearing and release); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W.D. Pa. 2024); and *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (D. Colo. 2023).

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

DATED this 5th day of January 2026.

/s/ Edna Yang
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Yunel Fonseca Reyes, 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 5th day of January 2026.

/s/ Edna Yang
Edna Yang

/s/ Amanda Aguilar
Amanda Aguilar

CERTIFICATE OF SERVICE

I hereby certify that on January 5th, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

Justin R. Simmons | U.S. Attorney's Office for the Western District of Texas
ATTN: Civil Process Clerk
601 NW Loop 410,
San Antonio, Texas 78216
and by email at: USATXS.CivilNotice@usdoj.gov

Rose Thompson, Warden
Karnes County Immigration Processing Center
409 FM1144
Karnes City, TX 78118
United States

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 5th day of January, 2026.

/s/ Edna Yang
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