


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MAYENSY CRUZ-MOMBLAS,	§	
	§	Civ. No. 5:26-00196
	§	
<i>Petitioner,</i>	§	
	§	DHS File Number: 
v.	§	
	§	
PAMELA BONDI,	§	
United States Attorney General;	§	<b>PETITION FOR WRIT OF HABEAS</b>
	§	<b>CORPUS UNDER 28 U.S.C. § 2241</b>
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 Detention Facility;	§	
	§	
<i>Respondents.</i>	§	
	§	

## I. INTRODUCTION

1. Petitioner Mayensy Cruz-Momblas (“Petitioner” or “Ms. Cruz-Momblas”) is in the physical custody of Respondents at the Karnes County Immigration Processing Center. *See* Exh. 1 (ICE Locator Results).
2. Petitioner has been detained since December 3, 2025, when she appeared for her regular ICE check-in in San Antonio, Texas.
3. Petitioner is in removal proceedings and is charged, inter alia, as inadmissible for having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i); *see also* Exh. 4 (DHS Form I-862, Notice to Appear).
4. Petitioner is currently scheduled for a master calendar hearing on January 21, 2026. *See* Exh. 2 (EOIR Automated Case Information Results).
5. Petitioner has pending applications for relief, including Form I-589 (Application for Asylum) and Form I-485 (Application to Register Permanent Residence or Adjust Status).
6. DHS has denied Petitioner release from immigration custody based on a new legal position announced in DHS’s July 8, 2025, guidance, which instructs ICE to treat individuals charged under § 1182(a)(6)(A)(i) as detained under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for bond.
7. Consistent with that approach, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a binding precedent decision holding that immigration judges lack authority to consider bond requests for individuals who entered without admission, reasoning that such individuals are detained under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

8. Petitioner's detention under § 1225(b)(2)(A) is unlawful. Section 1225(b)(2)(A) does not govern individuals like Petitioner who previously entered and are now residing inside the United States. Instead, Congress provided a different custody framework—8 U.S.C. § 1226(a)—which expressly applies to noncitizens in Petitioner's posture and authorizes release on bond or conditional parole.
9. Respondents' position is not only contrary to the statutory scheme and decades of agency practice, but it also represents an abrupt reversal from positions Respondents previously advanced in court—after successfully arguing that individuals who entered without inspection are detained under § 1226(a), not § 1225(b)(2)(A). Under the principles articulated in *New Hampshire v. Maine*, 532 U.S. 742 (2001), Respondents should not be permitted to adopt an inconsistent position to deny bond process here.
10. The record also reflects that DHS itself previously treated Petitioner as a § 1226(a) detainee by issuing an I-220A Order of Release on Recognizance. *See* Exh. 3 (ICE Form I-220A). Having made that discretionary, fact-based custody determination, DHS cannot lawfully re-label Petitioner's custody under a different statute to foreclose the bond process Congress provided in § 1226(a).
11. Finally, the Due Process Clause constrains the Respondent's detention authority and requires, at minimum, meaningful procedures before depriving a person within the United States of liberty. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 348 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
12. Accordingly, Petitioner seeks a writ of habeas corpus ordering her immediate release from unlawful detention.

## **II. JURISDICTION AND VENUE**

13. Petitioner is detained in civil immigration custody in Karnes County at the Karnes County Immigration Processing Center, in Karnes, Texas. *See* Exh. 1 (ICE Locator Results). She has been detained since or about, December 3, 2025.
14. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq.
15. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). 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.
16. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391, because at least one Respondent is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

## **III. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION**

17. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response “within three days” unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.


#### IV. PARTIES

18. Petitioner Mayensy Cruz-Momblas is a citizen of Cuba who has been in immigration detention since December 3, 2025. After arresting Petitioner at her check-in in San Antonio, Texas and transferring her Karnes County Detention Center, ICE did not set bond and Petitioner is unable to obtain review of her custody by an immigration judge (IJ), pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Due to this erroneous decision, it would be futile for Petitioner to apply to EOIR without the intervention of this honorable Court.
19. 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 it operates is a component agency. She is sued in her official capacity.
20. 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 (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
21. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

22. Respondent Sylvester Ortega is named in their official capacity as the Field Office Director for the San Antonio Field Office of ICE. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Ortega is a legal custodian of Petitioner.
23. Respondent Rose Thompson is named in their official capacity as the warden of the Karnes County Detention Center (KCDF). The Warden is an employee of the Geo Group, Inc. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

**V. FACTS**

24. Petitioner has resided in the United States since on or about August 2022. She is currently detained at the Karnes County Immigration Processing Center ("Karnes") in Karnes City, Texas. *See* Exh. 1.
25. On August 24, 2022, DHS released Petitioner on an Order of Release on Recognizance (Form I-220A). The Form I-220A reflects that DHS released Petitioner under INA § 236, 8 U.S.C. § 1226(a), and conditioned her release on compliance with § 236 and the related regulations. *See* Exh. 3 (Form I-220A, Order of Release on Recognizance).
26. DHS initiated removal proceedings by filing a Notice to Appear with EOIR alleging, inter alia, that Petitioner entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i); Exh. 4.
27. Petitioner filed her Form I-589 application for asylum in or about November 2022, shortly after her arrival, and that application remains pending.

28. Petitioner also filed an application for adjustment of status with USCIS under the Cuban Adjustment Act. In 2023, USCIS issued a receipt notice for that application (Receipt No. ).
29. From her release on August 24, 2022, until her arrest on December 3, 2025, Petitioner complied with DHS's conditions of release. She appeared for every required check-in, maintained a stable residence, worked, and remained an active member of her community. She has no criminal history.
30. On or about December 3, 2025, Petitioner appeared for a scheduled ICE check-in in San Antonio, Texas, where DHS took her into custody. She has remained detained at Karnes since that date.
31. Petitioner's removal proceedings are pending before the Pearsall Immigration Court under 8 U.S.C. § 1229a. ICE charges Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), among other allegations.
32. DHS is detaining Petitioner under the theory that § 1225(b)(2)(A) governs her custody and that she is therefore ineligible for a bond hearing. Under *Matter of Yajure-Hurtado*, immigration judges are treating individuals charged under § 1182(a)(6)(A)(i) as § 1225(b)(2) detainees and declining bond jurisdiction. *See Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Because that precedent forecloses bond jurisdiction for individuals like Petitioner, seeking custody redetermination in immigration court would be futile.
33. Petitioner's continued detention has caused severe emotional hardship to her family, including her partner, and has separated her from the community and stability she maintained for more than two years while complying with DHS's supervision.

34. Without relief from this Court, Petitioner faces prolonged detention at Karnes with no meaningful opportunity to seek release through the ordinary bond process provided in 8 U.S.C. § 1226(a) and 8 C.F.R. § 236.1.

## **VI. LEGAL FRAMEWORK**

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

36. 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).

37. 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).

38. 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).

## **VII. ARGUMENT**

### **A. This Court Has Jurisdiction Under 28 U.S.C. § 2241 to Remedy Unlawful Immigration Detention**

39. Petitioner challenges only the legality of her present civil detention and seeks release from custody that is not authorized by the INA. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) and § 2243 to determine whether Petitioner “is in custody in violation of the Constitution or laws . . . of the United States” and to order release where detention lacks

statutory authority. See *Zadvydas v. Davis*, 533 U.S. 678, 687–88, 699–700 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 292–95 (2018).

40. The INA’s jurisdiction-channeling provisions do not bar this Court’s review because Petitioner does not seek review of a final removal order and does not challenge the commencement or adjudication of removal proceedings; she challenges only ongoing detention authority. See *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000); *Duron v. Johnson*, 898 F.3d 644, 647 (5th Cir. 2018).
41. Courts in this District have repeatedly exercised habeas jurisdiction over materially identical challenges to the Respondent’s attempt to detain long-resident noncitizens under § 1225 without bond. See e.g. *Reyes Perez v. Bondi*, No. SA-25-CV-1302-XR (W.D. Tex. Nov. 26, 2025); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025), *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025).
39. Respondents’ recurring threshold arguments confirm—not defeat—jurisdiction. In *Reyes Perez*, the Court rejected the Respondent’s efforts to treat a detention challenge as a removability challenge and explained that reading § 1252(b)(9) to bar habeas would make unlawful detention “effectively unreviewable,” especially given the BIA’s position that IJs lack authority to even entertain bond requests for those who entered without inspection (EWI). *Reyes Perez*, No. SA-25-CV-1302-XR, at 6–7 (citing *Jennings*, 583 U.S. at 293).
40. Respondents likewise cannot rely on § 1225(b)(4) to defeat jurisdiction. As *Reyes Perez* explained, § 1225(b)(4) addresses inter-officer challenges to favorable admission determinations and “has nothing to do with the scope of DHS’s detention authority or the

federal courts' jurisdiction over challenges to detention.” *Reyes Perez*, No. SA-25-CV-1302-XR, at 7; *accord Erazo Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262, at \*2 (W.D. Tex. Oct. 30, 2025).

**B. The INA’s Text and Structure Draw a Clear Line Between § 1225 and § 1226**

44. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Those provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was later amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), but Congress did not convert § 1225(b)(2) into a mandatory-detention statute for long-resident noncitizens already living in the United States and placed in full § 1229a proceedings.
45. Following IIRIRA, DOJ’s implementing regulations reflected the long-settled understanding that, in general, noncitizens placed into standard removal proceedings after entry without inspection are not detained under § 1225 but instead fall under § 1226(a)’s discretionary custody framework. *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).
46. For decades, that framework governed: most EWIs in full proceedings received custody redeterminations unless subject to a specific statutory bar such as § 1226(c). *See* 8 U.S.C. § 1226(c); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting § 1226(a) “restates” prior detention authority).
47. The Supreme Court has described § 1225 detention as operating “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter

the country is admissible,” while § 1226 “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 287, 303.

48. Even the Government’s *Jennings* position reflected this statutory line: when asked about an alien who entered unlawfully and later takes up residence in the interior, the Government stated the person “is held under 1226(a)” and “get[s] a bond hearing.” Tr. of Oral Arg. at 7–8, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204).

**C. Respondents’ Post–July 2025 “About-Face” Cannot Expand § 1225 Beyond Its Limits and Has Been Rejected in This District**

49. On July 8, 2025, ICE issued “Interim Guidance Regarding Detention Authority for Applicants for Admission” (the “Lyons Memorandum”), asserting that noncitizens charged under 8 U.S.C. § 1182(a)(6)(A)(i) should be treated as subject to § 1225(b)(2)(A) and thus ineligible for IJ bond.<sup>1</sup>

50. On September 5, 2025, the BIA adopted the same position in a published precedent, holding that immigration judges lack bond authority for noncitizens who entered without admission or parole because they fall under § 1225(b)(2)(A). *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In practice, under *Matter of Yajure-Hurtado*, IJs are treating § 1182(a)(6)(A)(i) EWIs as § 1225(b)(2) detainees with no bond jurisdiction.

42. Courts in this District have rejected that expanded § 1225 detention theory and granted habeas relief<sup>2</sup> on materially similar facts. See e.g. *Reyes Perez*, No. SA-25-CV-1302-XR,

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

<sup>2</sup> See, e.g., *Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025); *Santiago v. Noem*, No. 3:25-cv-00361-KC, 2025 WL 2606118 (W.D. Tex. Sept. 9, 2025); *Alvarez Martinez v. Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Martinez v. Noem*, No. 3:25-cv-00430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (even assuming § 1225(b) applies, holding under *Mathews v. Eldridge* that due process requires an individualized bond hearing with the Government bearing the burden); *Souza Vieira v. De-Anda Ybarra*, No. 3:25-cv-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (following *Lopez-Arevelo*’s jurisdictional analysis, rejecting §§ 1252(g) and 1252(b)(9) as bars, and granting habeas relief); *Dominguez*

at 8–13; *Santiago*, 2025 WL 2792588, at \*3; *Lopez-Arevelo*, 2025 WL 2691828, at \*5; *Erazo Rojas*, 2025 WL 3038262, at \*2; *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025), *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025).

51. Those decisions reflect a straightforward conclusion, which is that Respondents may not use an internal policy shift (and a bond-jurisdiction precedent) to rewrite Congress’s detention scheme, convert long-resident noncitizens in full proceedings into § 1225 detainees, and deny the statutory custody framework that applies “pending a decision on whether the alien is to be removed.” 8 U.S.C. § 1226(a); see *Reyes Perez*, No. SA-25-CV-1302-XR, at 11–13.

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*Vega v. Thompson*, No. 5:25-cv-01439-XR (W.D. Tex. Nov. 19, 2025); *Hernandez-Hervert v. Bondi*, No. 1:25-cv-01763-RP (W.D. Tex. Nov. 14, 2025); *Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE, 2025 WL 3251728 (W.D. Tex. Nov. 5, 2025); *Melendez Hernandez v. Bondi*, No. 1:25-cv-01811-DAE (W.D. Tex. Nov. 26, 2025) (granting a TRO and ordering a § 1226(a) bond hearing with the Government bearing the clear-and-convincing burden of flight risk or danger, or release if no timely hearing is provided); *Becerra Vargas v. Bondi*, No. 5:25-CV-01023-FB-HJB (W.D. Tex. Nov. 26, 2025); *Navarrete Perdomo v. Bondi*, No. 5:25-cv-01398 (W.D. Tex. Nov. 25, 2025); *Paredes Quintero v. Bondi*, No. 5:25-cv-01697-JKP (W.D. Tex. Dec. 18, 2025) (granting habeas and ordering release within 24 hours); *Trejo Enriquez v. Bondi*, No. 1:25-cv-02012-ADA-DH (W.D. Tex. Dec. 19, 2025) (granting habeas and ordering release); *Rodriguez Rivera v. Bondi*, No. 1:25-cv-01979-RP (W.D. Tex. Dec. 19, 2025) (granting habeas and ordering immediate release); *Narvaez San Elias v. Bondi*, No. 5:25-cv-01736-JKP (W.D. Tex. Dec. 22, 2025); *Rodriguez Miranda v. Bondi*, No. 1:25-cv-02005-RP (W.D. Tex. Dec. 23, 2025); *Siac Guzman v. Bondi*, No. 1:25-cv-02055-RP (W.D. Tex. Dec. 23, 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, at \*3 (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); *Vargas-Lopez v. Trump, et al.*, 8:25CV526 2025 WL 2780351 (D. Neb. Sept. 29, 2025).

**D. Section 1225(b) Does Not Apply to Petitioner; Section 1226(a) Governs**

53. Section 1225(b)(2)(A) applies only to an “applicant for admission” who is “seeking admission,” after inspection-based determinations at the threshold of entry. 8 U.S.C. § 1225(b)(2)(A). That text cannot be stretched to cover a noncitizen already living in the United States, placed in full removal proceedings under § 1229a, and detained “pending a decision” in those proceedings. See 8 U.S.C. §§ 1226(a), 1229a; *Jennings*, 583 U.S. at 287.
54. Congress’s own drafting confirms § 1226(a)’s default applicability to inadmissible noncitizens in full proceedings, including EWIs. Section 1226(c) creates specific mandatory-detention exceptions and expressly includes certain noncitizens inadmissible under § 1182(a)(6)(A)(i). 8 U.S.C. § 1226(c)(1)(E). That targeted carve-out presupposes that § 1226(a) otherwise applies absent a mandatory-detention trigger.
55. Respondents also cannot justify detention under § 1225(b)(1) where the statutory predicates are absent and DHS is proceeding in “full” removal proceedings rather than expedited removal. See *Reyes Perez*, No. SA-25-cv-1302-XR, at 12 (rejecting detention under § 1225(b)(1) where petitioner was in full removal proceedings and Respondents could not detain “based on expedited removal proceedings that do not exist”).
56. Where § 1225(b) does not apply, Respondents’ remaining option is § 1226. But in *Reyes Perez*, the Court held that because the Government did not claim it was detaining the petitioner under § 1226, “the Court sees no reason to consider” § 1226 as a basis for the petitioner’s current detention; the detention was unlawful and release was required. *Reyes Perez*, No. SA-25-CV-1302-XR, at 12 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025)).

57. The same logic applies here. Respondents' asserted § 1225(b) authority is inapplicable, and the Government's effort to deny any meaningful custody forum by treating Petitioner as a categorical § 1225(b)(2) detainee renders her ongoing detention unlawful.

**E. DHS's I-220A Custody Determination Bars the Respondent's Retroactive Re-Labeling**

58. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at the border and released after a quasi-judicial determination by an immigration official on a form I-220A that Petitioner falls under the discretionary arrest provision of § 1226(a). The Respondent's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that Petitioner (Exh. 4) "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Respondent'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.

59. It has been the settled practice for decades for immigration officials to issue an I-220A, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an I 220A under § 236 is not a ministerial act but 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 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)). As the Court explained in *Utah Construction*, “[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. This presumption applies because “Congress is understood to legislate against a background of common-law adjudicatory principles.” *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, 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.

**F. Exhaustion Is Futile and Due Process Supports Immediate Relief**

60. Exhaustion is not required here because the administrative forum cannot provide a meaningful remedy. Under *Matter of Yajure-Hurtado*’s operative rule, immigration judges are declining bond jurisdiction for § 1182(a)(6)(A)(i) EWIs treated as § 1225(b)(2) detainees. Requiring Petitioner to pursue an unavailable custody remedy would be futile and would risk the “effectively unreviewable” detention problem identified in *Jennings*. See *Jennings*, 583 U.S. at 293; *Reyes Perez*, No. SA-25-cv-1302-XR, at 6–7.

61. The Due Process Clause also constrains civil immigration detention and requires meaningful procedures before liberty is restrained. *See Zadvydas*, 533 U.S. at 690–93; *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976). Respondents’ statutory about-face—re-detaining a previously released, compliant supervisee under a theory that eliminates any meaningful custody forum—underscores why the writ must issue.
43. Consistent with this District’s decisions, the proper course is not to normalize unlawful detention through an agency re-labeling, but to enforce the statutory limits Congress enacted and order release where detention is unauthorized. *See Reyes Perez*, No. SA-25-CV-1302-XR, at 12–13; *Lopez-Arevelo*, 2025 WL 2691828, at \*10–12; *Santiago*, 2025 WL 2792588, at \*8–10; *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025), *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025).

## VIII. CLAIMS FOR RELIEF

### COUNT I

#### Violation of the INA

62. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
63. 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.

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

## **COUNT II**

### **Violation of the Bond Regulations**

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

66. 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.

67. 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.

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

**COUNT III**

**Violation of Due Process**

69. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
70. 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).
71. 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. 3d 1168, 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.
72. At a minimum, in order to lawfully re-arrest of Ms. Cruz-Momblas, the government must first establish, by clear and convincing evidence and before a neutral decision-maker, that she is a danger to the community or a flight risk, such that her re-incarceration is necessary. ICE’s re-arrest of Ms. Cruz-Momblas on December 3, 2025, violated these regulations, laws, and due process.
73. Petitioner has a fundamental interest in liberty and being free from official restraint.

74. The Respondent's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

#### **COUNT IV**

##### **Judicial Estoppel**

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

76. 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 Respondent's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

#### **IX. 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 deported or 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) Declare that Petitioner's detention is unlawful;
- (5) Grant the writ of habeas corpus ordering Respondents to release Ms. Cruz Momblas under conditions of release no more restrictive than those in place prior to the detention at issue here;
- (6) Grant any other and further relief that this Court deems just and proper.

DATED this 15th day of January 2026.

/s/ Maria Nereida Jaimes  
Maria Nereida Jaimes, Esq.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Mayensy Cruz Momblas, and submit this verification on her 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 15th day of January 2026.

/s/ Maria Nereida Jaimes  
Maria Nereida Jaimes, Esq.

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