

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

JOSE CARLOS CABRERA FUENTES

Petitioner,

v.

Civ. No.

Warden, Eden Detention Center,

Respondent

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner JOSE CARLOS CABRERA FUENTES () files this petition for a writ of habeas corpus requesting this Court's intervention because Respondent is unlawfully detaining him. Petitioner entered the United States on or about May 1, 2022, and since that time has fully complied with all immigration requirements, including regular ICE check-ins. He was not apprehended at the border and instead was permitted to remain in the United States under supervision. On February 11, 2026, Petitioner appeared for a scheduled ICE check-in, where he was unexpectedly detained without prior warrant, despite having no criminal history and no record of noncompliance. He was subsequently transferred to and remains detained at the Eden Detention Center in Eden, Texas.

Following his detention, Petitioner requested a bond hearing before the Immigration Court. The Immigration Judge denied jurisdiction without providing any legal analysis or statutory basis for

that determination, effectively depriving Petitioner of any opportunity for an individualized custody determination.

Respondent's interpretation and application of 8 U.S.C. § 1225(b)(2) is erroneous and violates Petitioner's rights under the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act (INA), and the Administrative Procedure Act (APA). Respondent improperly characterizes Petitioner as an "arriving" noncitizen applying for admission, even though he entered the United States years ago and has been residing in the interior under ICE supervision.

Petitioner respectfully seeks a writ from this Court ordering his immediate release, or in the alternative, an order requiring Respondent to provide him with a prompt individualized bond hearing.

This case presents a straightforward question: whether DHS may reclassify a noncitizen previously processed and released under 8 U.S.C. § 1226(a) as subject to mandatory detention under § 1225(b)(2) years later, without any change in circumstances.

CUSTODY

Petitioner is in the physical custody of Respondent, the Warden of the Eden Detention Center. At the time of the filing of this petition, Petitioner is detained at the Eden Detention Center, located at 702 E Broadway, Eden, TX 76837, a facility that contracts with DHS to detain noncitizens pending their removal proceedings. Petitioner is under the direct control of Respondent and its agents.

JURISDICTION AND VENUE

1. The Court also has jurisdiction over this petition under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, Cl. 2 of the United States Constitution (“Suspension Clause”).

2. Venue properly lies within the Northern District of Texas because Petitioner is detained within this district.

3. No petition for habeas corpus has previously been filed in any court to review Petitioner’s case.

PARTIES

4. JOSE CARLOS CABRERA FUENTES is a national and citizen of Cuba. He is currently detained at the Eden Detention Center, located at 702 E Broadway, Eden, TX 76837.

Respondent is the Warden of the Eden Detention Center, located at 702 E Broadway, Eden, TX 76837. He is Petitioner’s immediate custodian and is named in his official capacity.

FACTS

1. On or about May 5, 2022, Petitioner entered the United States and was apprehended and processed by the Department of Homeland Security, placed in removal proceedings, and affirmatively released by DHS on his own recognizance pursuant to Form I-220A. This discretionary release reflects DHS’s prior exercise of authority under 8 U.S.C. § 1226(a), and not mandatory detention under § 1225(b), and Petitioner was never treated as an arriving noncitizen. Since that time, Petitioner has fully complied with all conditions imposed by DHS.

2. Petitioner resides and works in Dallas, Texas. He is legally married to his spouse, a lawful permanent resident of the United States, who is currently eight months pregnant and experiencing a high-risk pregnancy. Petitioner is the primary provider for his household and provides critical emotional and financial support. His continued detention imposes severe hardship on his family, particularly in light of his spouse’s vulnerable medical condition. Exhibit C-1

3. On February 11, 2026, Petitioner was taken into custody by Immigration and Customs Enforcement (“ICE”) following his routine, scheduled check-in appointment, despite having fully complied with all reporting requirements. Petitioner was detained without a prior arrest warrant and without any violation of the conditions of his release. He was subsequently transferred to and remains detained at the Eden Detention Center in Eden, Texas, pending his removal proceedings, without any intervening violation or change in circumstances.

4. Petitioner requested a custody redetermination hearing before the Immigration Court. On or about March 12, 2026, during proceedings before the Immigration Judge at the Conroe Immigration Court, the request for bond was denied solely on the basis of “lack of jurisdiction.” The Immigration Judge provided no legal analysis and cited no statutory or regulatory authority in support of that determination. As reflected in the written order, the denial consisted of a conclusory finding without explanation. Petitioner, who has no criminal history, was denied any individualized determination of flight risk or danger despite his continued detention. Exhibit C-2.

5. Mr. Cabrera Fuentes’ removal case is pending, and he has been detained without a lawful statutory basis.

6. Mr. Cabrera Fuentes remains detained. There continues to be no evidence in the record to indicate that Mr. Cabrera Fuentes is a flight risk, or that allowing him to be released would present a danger to public safety.

7. Petitioner is a national and citizen of Cuba and appears to be prima facie eligible for adjustment of status under the Cuban Adjustment Act. Petitioner has a pending Form I-130 petition filed on his behalf by his spouse, a lawful permanent resident of the United States. Additionally, Petitioner timely filed an application for asylum within one year of his arrival in the

United States, which remains pending. These pending forms of relief further demonstrate that Petitioner has a viable path to lawful status and a strong incentive to comply with all immigration proceedings.

LEGAL FRAMEWORK

DHS'S DISCRETIONARY AUTHORITY AND PROCEDURAL ELECTIONS

8. The Immigration and Nationality Act (INA) broadly empowers the DHS to detain and initiate removal proceedings against noncitizens. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

9. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in regular removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Persons detained under § 1226(a) 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 until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

10. 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).

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

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

13. 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 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

14. Following the enactment of the IIRIRA, the Department of Justice 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 (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

15. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond or their own recognizance. They also received bond hearings before an 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 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

16. When a noncitizen is detained upon arrival in the United States, DHS elects whether to exercise its arrest authority under § 1226(a) or § 1225(b). This procedural election constrains the noncitizen’s subsequent relief options and creates binding legal consequences. When DHS

chooses to detain and release someone under § 1226(a), the agency must follow that statute's detention and release procedures.

17. The procedural safeguards for persons detained under § 1225(b)(2) are much more limited. The person is subject to mandatory detention and can only be released under the DHS's parole authority in 8 U.S.C. § 1182(d)(5)(A). The limited procedural safeguards for persons detained under § 1225(b)(2) are found in 8 C.F.R. § 235.3.

18. In recent months, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the Board of Immigration Appeals (BIA) issued a published decision holding that noncitizens detained upon arrival in the United States are applicants for admission and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). The DHS does not have authority to exercise its detention and release power under § 1226(a). Release is only available through the grant of parole under § 1182(d)(5)(A).

19. *Matter of Q. Li* requires mandatory detention only if the DHS elects to detain under § 1225(b) persons arriving in the U.S. for expedited removal proceedings or regular removal proceedings. The decision, however, creates no authority for applying mandatory detention where: (a) DHS elected alternative processing under 8 U.S.C. § 1226(a), or (b) DHS failed to complete formal requirements necessary to invoke 8 U.S.C. § 1225(b).

20. On July 8, 2025, ICE, "in coordination with the Department of Justice (DOJ)," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. See *Ex. 2*. The new policy claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.*

21. The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades. Further, the policy applies even to those noncitizens to whom DHS elected to arrest under § 1226(a) and released them pursuant to that provision.

22. Subsequently the BIA decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA formally adopted the ICE and DOJ's unreasonable interpretation of § 1225(b). The noncitizen in *Matter of Yajure Hurtado* entered in November 2022 without being inspected or paroled. He obtained Temporary Protected Status (TPS) but that status terminated. In April 2025, the DHS arrested him in the interior of the United States and initiated removal proceedings. He requested a bond hearing from an immigration judge but the judge concluded that they lacked jurisdiction because the noncitizen was an applicant for admission subject to mandatory detention under § 1225(b)(2). This was so even though the noncitizen was not arriving in the country, had made no application to be admitted, and had resided in the United States for more than two years.

23. The BIA held that all persons who are not inspected or admitted, whether arriving in the United States or not and regardless of the length of residence in this country, remained "applicants for admission" and subject to § 1225(b)'s mandatory detention provision if placed in removal proceedings. As a result, immigration judges all over the country are now denying bond to all noncitizens who entered without inspection and admission.

CAUSES OF ACTION

COUNT I

PROCEDURAL DUE PROCESS VIOLATION – DENIAL OF A BOND HEARING

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

25. 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. That provision applies to noncitizens who “arrive” in the United States. Application of the new interpretation of § 1225(a)(1) and (b)(2) to persons who are not “arriving” contradicts the plain language of the statute.

26. Petitioner was detained during a routine ICE check-in after demonstrating full compliance with all reporting requirements. This type of detention, without prior notice or warrant, constitutes arbitrary government action and violates fundamental principles of due process.

27. By denying him a bond hearing as required by § 1226(a), Respondents denied him procedural rights guaranteed by the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

28. Petitioner’s continued detention without a bond hearing is unlawful regardless of the agency’s recharacterization of his status.

COUNT II

PROCEDURAL DUE PROCESS – IMPERMISSIBLE RETROACTIVE APPLICATION OF *MATTER OF YAJURE HURTADO* AND *MATTER OF Q. LI*

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

30. Petitioner reasonably relied on his compliance with DHS supervision and prior release on recognizance. The sudden change in legal interpretation disrupts settled expectations

and imposes new consequences on past conduct, despite full compliance with all conditions imposed by DHS.

31. The Due Process Clause prohibits the Federal Government and its agents from depriving persons of life, liberty and property without observing certain procedures. The right to fair notice is essential to procedural due process. Retroactive application of administrative decisions implicates “due process interests in fair notice, reasonable reliance, and settled expectations.” *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015)).

32. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado* and *Matter of Q. Li*, *supra*. Prior to these, Respondents interpreted and applied the INA detention and release scheme to empower 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 § 1226(a).

33. 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 § 1226(a) or § 1225(b). *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 § 1226(a). The noncitizens argued that their release constituted a parole because their detention (and release) could only have been accomplished through § 1225(b). The BIA firmly rejected that reading of the statute.

34. “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.

35. And the BIA reiterated this reading of the INA's detention and release statutory scheme again in *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025). There, the noncitizen entered without inspection or admission in January 2022 and was subsequently detained in the interior of the United States in January 2025. The immigration judge granted the noncitizen's request for bond. In reviewing the DHS's appeal of the bond decision, the BIA made the uncontroversial observation that the noncitizen's bond request was "governed by the provision of section [§ 1226(a)] of the Immigration and Nationality Act." *Matter of Akhmedov*, 29 I&N Dec. at 166.

36. On or about May 1, 2022, Petitioner entered the United States and was apprehended, processed, and affirmatively released by the Department of Homeland Security on his own recognizance pursuant to Form I-220A. Petitioner remained fully compliant with all conditions imposed by DHS until February 11, 2026, when he was taken into custody during a routine ICE check-in. Notwithstanding these facts, Respondents now improperly attempt to characterize Petitioner as an "arriving" noncitizen applying for admission, even though he has been living in the interior of the United States for years under DHS supervision. Such characterization is inconsistent with both the factual record and the statutory framework governing detention.

37. Respondents seek to retroactively impose a different legal regime, one that subjects Petitioner to mandatory detention and eliminates any opportunity for release. This position disregards the undisputed fact that DHS previously processed and affirmatively released Petitioner under its discretionary authority, and that Petitioner remained fully compliant with all conditions imposed. By now attempting to reclassify Petitioner as an “arriving” noncitizen, Respondents impermissibly alter the legal consequences of past events and deprive Petitioner of rights that were previously available to him, in violation of due process.

38. *Matter of Yajure Hurtado and 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.

39. 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).

40. 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).

41. 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).

42. The change here is significant. Mr. Cabrera Fuentes’ right to be free from detention is eliminated and he is now subject to mandatory detention.

43. The retroactive application of *Matter of Yajure Hurtado* and *Matter of Q. Li* is unfair and unreasonable and violates his due process rights.

COUNT III

IMMIGRATION AND NATIONALITY ACT – DENIAL OF BOND HEARING

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

45. The DHS detained Petitioner under 8 U.S.C. § 1226(a). Under that statute, Petitioner has the right to request to be released on bond by an immigration judge.

46. DHS previously exercised its discretionary authority by releasing Petitioner pursuant to Form I-220A, reflecting detention under 8 U.S.C. § 1226(a), not § 1225(b). As such, Petitioner is entitled to a bond hearing.

47. 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.

48. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Petitioner who are not “arriving” in the United States. Such noncitizens have resided in the United States for years, and in many cases, for decades.

49. To date, numerous courts have ruled in favor of noncitizens challenging the denial of a bond hearing based on *Matter of Yajure Hurtado* and Respondents’ interpretation of § 1225(b). *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Roa et al. v. Albarran et al.*, No. 25-CV-07802-RS, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall et. Al.*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, (W.D. Ky. Sept. 19, 2025); *Chafila et al., v. Scott et al.*, No. 2:25-CV-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Carlton v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Vazquez v. Feeley et al.*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025). In the present case, Petitioner has been in the United States over 4 years, since 2022.

50. The unlawful application of § 1225(b)(2) to Petitioner mandates his continued detention and violates the INA and its implementing regulations, 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

51. Respondents' disregard of Petitioner's right to a bond hearing violates the INA.

52. DHS's prior exercise of authority under 8 U.S.C. § 1226(a) is binding and cannot be retroactively altered to justify mandatory detention under 8 U.S.C. § 1225(b)(2).

COUNT IV
Violation of the APA
Contrary to Law and Arbitrary and Capricious Agency Policy

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

54. 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).

55. 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 noncitizens who are not arriving in the United States, who are not making an application for admission, and are detained far from the international border. Noncitizens are detained (and released) under § 1226(a) and are eligible for release on bond, unless they were initially detained pursuant to § 1225(b)(1) or (b), or were detained under § 1226(c) or § 1231.

56. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Petitioner who are not arriving in the United States, are not arrested near the international border, and have made no application for admission.

57. 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.

58. The application of § 1225(b)(2) and *Matter of Yajure Hurtado* 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). Further, their refusal to provide him with a bond hearing violates § 706(1) of the APA.

COUNT V
Violation of the APA --
Impermissible Retroactive Application of New Legal Interpretation

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

60. 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).

61. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Prior to these BIA decisions, Respondents interpreted and applied the INA detention and release scheme to empower 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 § 1226(a).

62. The retroactive application of *Matter of Yajure Hurtado* is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT VI
Violation of the Administrative Procedure Act
Contrary to Law and Arbitrary and Capricious Agency Policy
Failure to Adhere to Prior Published Precedent

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

64. 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).

65. 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.

66. 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).

67. 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.

68. 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.

69. Prior BIA precedent requires application of *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023) and *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

70. The disregard of the rule of orderliness and application of § 1225(b)(2) to 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(1) and (2).

PRAYER FOR RELIEF

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

1. Issue an Order declaring that Mr. CABRERA FUENTES is detained under 8 U.S.C. § 1226(a), and is therefore entitled to an individualized bond hearing;
2. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Mr. CABRERA FUENTES is unlawful, arbitrary, capricious, and contrary to law;
3. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Mr. CABRERA FUENTES violates the INA;

4. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Mr. CABRERA FUENTES violates his due process rights;
5. Issue an Order instructing Respondents to immediately release Petitioner from custody;
6. In the alternative, order Respondents to provide Petitioner with an immediate individualized bond hearing before an Immigration Judge within seven (7) days;
7. Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412; and
8. Grant any other relief which this Court deems just and proper.

Dated: March 31, 2026

Respectfully submitted,



/s/ Marisol Y. Valentín-Bezarez
Marisol Y. Valentín-Bezarez, Esq.
Attorney for Petitioner
2727 Lyndon B Johnson Fwy
Suite 1005
Dallas, Texas 75234
Tel: 214-434-1758
Email: camargosmarisol@gmail.com