

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

- X
LASHA GUDASHVILI :

Petitioner, :

-against- :

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

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

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

MIGUEL VERGARA, IN HIS OFFICIAL CAPACITY :
ICE FIELD OFFICE DIRECTOR DETENTION AND :
REMOVAL :

DAVID COLE, WARDEN, IN HIS OFFICIAL :
CAPACITY, RIO GRANDE PROCESSING :
DETENTION CENTER. :

Respondents. X
-

**PETITION FOR
WRIT OF HABEAS CORPUS**

Case No. 5:25-cv-181

**FIRST AMENDED COMPLAINT
FOR PRELIMINARY
INJUNCTIVE RELIEF AND
PETITION FOR HABEAS
CORPUS**

Introduction

1. Petitioner, Lasha Gudashvili (“Mr. Gudashvili”), is a citizen and national of Georgia.

2. On February 20, 2023, Mr. Gudashvili entered the United States after fleeing persecution in his home country, Georgia. Mr. Gudashvili and his wife fled Georgia because they were persecuted on account of their political opinion.
3. On the same date, the Government, pursuant to 8 U.S.C. § 1229(a), issued a Notice to Appear (NTA) charging Petitioner with removability. Exh. A. The Government's NTA directed Petitioner to appear at the Newark Immigration Court located at 970 Broad Street, Room 1200, in Newark, New Jersey. Id.
4. After interviewing Mr. Gudashvili, the Government released him from custody on his own recognizance under 8 U.S.C. § 1226(a). Exh. B. The Government did not consider Petitioner to be a flight risk or a danger to the community.
5. Mr. Gudashvili timely filed Form I-589, Application for Asylum and for Withholding of Removal, seeking protection from removal. Sometime thereafter, Mr. Gudashvili moved to New York. His case was transferred to the immigration court in New York City. Petitioner's immigration is scheduled for an individual hearing on December 14, 2027. Mr. Gudashvili has never been arrested or convicted of a crime.
6. On September 26, 2025, Mr. Gudashvili was encountered at a Customs and Border Protection ("CBP") inspection station near Encinal, Texas. When approached by the agents, Petitioner provided his New York commercial driver's license and his work authorization. Notwithstanding Petitioner's documentation and order of released, CBP unlawfully detained him and transferred him to the Rio Grande Processing Center in Laredo, Webb County, Texas. To date, Petitioner remains behind bars. On July 8, 2025, DHS issued a new policy memorandum to all,

7. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” Memorandum, U.S. Immigration & Customs Enf’t, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), available at AILA Doc. No. 25071607, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>
8. Through his pending asylum application, Mr. Gudashvili will have the opportunity to become a lawful permanent resident. Petitioner’s removal is not reasonably foreseeable.
9. Mr. Gudashvili is detained at the Rio Grande Processing Center away from his family and immigration counsel who is in New York City.
10. On October 10, 2025, Mr. Gudashvili requested a custody re-determination from an immigration judge. The immigration judge denied Petitioner’s request for bond.
11. Mr. Gudashvili requests that this Court find that Respondents have unlawfully detained him and order his immediate release from custody. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001). Petitioner also requests that this Court finds that Respondent’s actions are capricious and arbitrary and order his immediate release.

CUSTODY

12. Petitioner is in the physical custody of Defendant-Respondent MIGUEL VERGARA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement (“ICE”), DHS, and Respondent DAVID COLE, Warden of the Rio Grande Processing Center in Laredo, Texas. At the time of the filing of this petition, Plaintiff-Petitioner is detained at the Rio Grande Processing Center in Laredo, Texas. The Geo Group contracts with the DHS to detain noncitizens such as Plaintiff-Petitioner. Plaintiff-Petitioner is under the direct control of Defendants-Respondents and their agents.

JURISDICTION

13. This Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1331 and 5 U.S.C. § 702 as Plaintiff-Petitioner suffered a legal wrong from agency action. 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”). This Court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et. Seq
14. Venue properly lies within the Southern District of Texas because all the events and omissions giving rise to this action occurred in the district. 28 USC 1391(b).
15. No petition of habeas corpus has previously been filed in any court to review Petitioner’s case.

PARTIES

16. Petitioner Mr. LASHA GUDASHVILI is a citizen and national of Georgia. He is currently detained at the Rio Grande Processing Center, 1001 San Rio Boulevard, Laredo, Texas 78046.
17. Defendant-Respondent TODD M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Texas, Laredo Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.
18. Defendant-Respondent KRISTY NOEM is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem'
19. Defendant-Respondent KRISTY NOEM is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the

Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem's address: U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

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

21. Defendant-Respondent MIGUEL VERGARA is the Field Office Director for Detention and Removal, ICE, DHS. He is the custodial official acting within the boundaries of the judicial district of the United States District Court for the Southern District of Texas. Pursuant to Defendant-Respondent's orders, Plaintiff-Petitioner remains in custody. Defendant-Respondent is sued in his official capacity. His address is 1777 NE Loop 410, Floor 15, San Antonio, Texas 78217.

22. Defendant-Respondent, David Cole, is the Warden of the Rio Grande Processing Center in Laredo, Texas. He is Plaintiff-Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Southern District of Texas Laredo Division. Respondent is named in his official capacity. Respondent's address is 1001 San Rio Blvd., Laredo, Texas 78046.

FACTS

23. Mr. Gudashvili is a twenty-nine-year-old male with no criminal history.

24. On February 20, 2023, Mr. Gudashvili entered the United States under by presenting himself at the port of entry and requesting asylum.
25. Immediately after, the Government issue an NTA charging Plaintiff-Respondent with removability. Exh. A.
26. On the same date, the Government released Mr. Gudashvili on his own recognizance pursuant to section 8 U.S.C. § 1226(a)(2). Exh. B.
27. On December 21, 2023, USCIS received Mr. Gudashvili's Form I-589, Application for Asylum and for Withholding of Removal. Exh. C.
28. Plaintiff-Petitioner's asylum case is pending, and he is scheduled for a hearing on December 14, 2027 before the immigration court in New York City.
29. On September 26, 2025, CBP apprehended Mr. Gudashvili at the inspection station in Encinal, Texas. At that time, Mr. Gudashvili identified himself with his commercial driver's license and his duly issued work authorization. Despite showing his lawful presence in the United States, he was arrested and taken into ICE custody. The Government did not provide Plaintiff-Petitioner with any reason for his detention. Rather, they took him into custody without a warrant, without reasonable suspicion of a crime, nor based on any immigration violation.
30. On October 10, 2025, the immigration judge denied Plaintiff-Petitioner's request for bond.
31. Mr. Gudashvili remains detained and separated from his family. There continues to be no evidence in the record to indicate Mr. Gudashvili poses a flight risk, and that if released during the pendency of his asylum case would present a danger to public safety.

LEGAL BACKGROUND

DHS'S DISCRETIONARY AUTHORITY AND PROCEDURAL ELECTIONS

32. 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.
33. 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).
34. 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).
35. 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).
36. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
37. 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).

38. 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”).
39. 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)).
40. At the time of detention, 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.

41. 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. Violations of these safeguards invalidate expedited removal determinations and preclude application of mandatory detention provisions.
42. In recent weeks, 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 all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for a bond hearing before an immigration judge under 8 U.S.C. § 1225(b)(2)(A). See *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).
43. *Matter of Q. Li* establishes mandatory detention only after an alien has been validly placed in expedited proceedings under 8 U.S.C. § 1225(b). 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).
44. 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 Exh. E (Interim Guidance Regarding Detention Authority for Applicants for Admission"). 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.*

45. 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.
46. Here, Plaintiff-Petitioner entered the United States by presenting himself to the port of entry on February 20, 2023. ICE detained Plaintiff-Petitioner and elected to process her and released him under 8 USC1226(a)(2) following his entry. Exh. B. The Government election to release Plaintiff-Petitioner conclusively established three fundamental facts: (a) DHS released him on his own recognizance under the authority conferred to the Government by 8 USC1226(a)(2); (b) DHS issued an NTA placing him under removal proceedings under 8 USC 1229a; and, (c) DHS did not elect to process Plaintiff-Petitioner for expedited removal by following the procedure under 8 C.F.R. §235.3(b)(2).
47. Notably, DHS did not initiate nor comply with mandatory procedural requirements set forth in 8 C.F.R. § 235.3(b)(2) necessary to invoke expedited removal, including: (a) completion of sworn Form I-867AB statement; (b) service of Form I-860 with supervisory approval; and (c) adequate interpreter assistance. These procedural failures independently preclude application of 8 U.S.C. § 1225(b).
48. Section 2241 of 28 United States Code provides in relevant part that “[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions” when a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3); see also *I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

49. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).
50. Habeas corpus “entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (quoting, *St. Cyr*, 533 U.S. at 302).
51. The Fifth Amendment’s Due Process Clause protects the right of all persons to be free from “depriv[ation] of life, liberty, or property, without due process of law.” U.S. Const. amend. V “It is well established that the Fifth Amendment entitles aliens to due process of law[.]” *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. On July 8, 2025, DHS stated a new position with regard to custody determinations as follows:
52. An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens”

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

<https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original). As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond.

53. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).” *Id.*

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

55. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee “demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding.” 8 C.F.R. § 36.1(c)(8). “[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond.” Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will “be considered only upon a showing that the alien’s circumstances have changed materially.” Id. § 1003.19(e). “It is well established that the Fifth Amendment entitles aliens to due process of law[.]” *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. See <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original).

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

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

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

CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

1. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
2. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of

inadmissibility. As relevant here, § 1225(b)(2) does not apply to those persons

Respondents previously determined should be detained and released under § 1226(a).

Further, § 1225(b)(2) does not justify cancellation of a bond or release order issued under § 1226(a).

3. Nonetheless, Defendants-Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.
4. The unlawful application of § 1225(b)(2) to Plaintiff-Petitioner unlawfully mandates her continued detention and violates the INA.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1232.1 and 1003.19

Unlawful Denial of Release on Bond

5. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
6. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

7. Nonetheless, Defendants-Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Plaintiff-Petitioner whom Defendants-Respondents previously determined should be detained and released pursuant to § 1226(a).
8. The unlawful application of § 1225(b)(2) to Plaintiff-Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

COUNT III

Violation of the APA

Contrary to Law and Arbitrary and Capricious Agency Policy

9. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
10. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
11. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those whom Defendants-Respondents previously determined should be detained and released under § 1226(a). Such noncitizens are detained (and released) under § 1226(a) and are eligible for release on bond, unless they were initially placed in expedited removal proceedings pursuant to § 1225(b)(1) or (b), or were detained under § 1226(c) or § 1231.
12. Nonetheless, Defendants-Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Plaintiff-Petitioner whom Defendant-Respondents previously determined should be detained and released pursuant to § 1226(a).

13. Defendants-Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.
14. The application of § 1225(b)(2) to Plaintiff-Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

COUNT IV

Violation of the APA and Due Process Clause

Impermissibly Retroactive Application of New Legal Interpretation

15. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
16. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
17. Defendants-Respondents adopted a new interpretation of the INA and its regulations due to the BIA’s May 15, 2025 decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Prior to *Matter of Q. Li*, Defendants-Respondents interpreted and applied the INA detention and release scheme to empower Defendants-Respondents to detain and release or afford a bond hearing before an immigration judge to most people who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).
18. As recently as 2023, the BIA interpreted the INA to empower the DHS to choose whether to detain and release persons who entered without inspection either under § 1226(a) or

§ 1226(b)(2). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023). There, the noncitizens entered without inspection or admission and were detained shortly after entering the United States. The DHS detained and released them under § 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.

19. “For applicants for admission charged as inadmissible, DHS has authority to determine whether to initiate expedited removal proceedings under...8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a.”). The BIA explained:

- This authority is illustrated in the Attorney General’s decision in *Matter of D-J-*, 23 I&N Dec. 572, 572–76 (A.G. 2003), which involved a similar fact pattern. In that case, DHS apprehended a respondent shortly after he entered the United States without admission or parole and charged him with the same ground of inadmissibility at issue here [having entered without inspection or admission]. The Attorney General reviewed his eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). Cf. *Matter of M-S-*, 27 I&N Dec. 509, 510–13 (A.G. 2019) (addressing the detention and release of respondents whom DHS initially elects to place in expedited removal proceedings, but who are later transferred to section 240 removal proceedings after establishing a credible fear of persecution or torture). *Id.* at 748-49.

20. And the BIA reiterated this reading of the INA’s detention and release statutory scheme again in *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025). There, the noncitizen

entered without inspection or admission and then was released. He argued that he had been paroled because DHS could only detain him under § 1225(b). The BIA rejected the argument concluding that DHS detained him under § 1226(a) and released him conditionally under § 1226(a)(2)(B). The BIA concluded that the noncitizen had “not meaningfully distinguished his release from DHS’ custody from the conditional parole at issue in *Matter of Cabrera-Fernandez*, 28 I&N Dec. at 747, 750.” *Matter of Roque-Izada*, 29 I&N Dec. at 109.

21. Petitioner was detained and released under § 1226(a). This is confirmed factually and legally by the documentation concerning her release and the state law of the law in effect at that time. *Matter of Cabrera-Fernandez* buttresses this point.
22. *Matter of Q. Li*, as interpreted by the immigration judge and Respondents, is a sea change in immigration law. Retroactive application of this new interpretation of the law to Petitioner’s case however is unfair and unlawful.
23. Retroactivity is greatly disfavored in the law. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The Supreme Court has been emphatic that this aversion to retroactive rulemaking is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) (internal quotation and citations omitted).

24. The Fifth Circuit too has instructed the BIA and immigration courts that it is patently unfair to subject noncitizens to new interpretations of immigration laws. This is a matter of due process and fair notice. The Court explained:

- “The leading case on administrative retroactivity’ instructs that any disadvantages from the ‘retroactive effects’ of deciding a ‘case of first impression . . . must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.’ To apply that instruction, this court ‘balances the ills of retroactivity against the disadvantages of prospectivity.’ ‘If that mischief of prospectivity is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.’ *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (internal citations omitted).

25. Thus, if application of the new rule is significant and changes the legal landscape by updating an agency’s earlier position, then retroactive application of the new rule alters basic presumptions of this administrative system. *Id.* at 431. “A ‘presumption of prospectivity attaches to Congress’s own work,’ and it should generally attach when an agency ‘exercises delegated legislative....authority.’” *Id.* (internal citation omitted).

26. The change here is significant. Petitioner’s right to be free from detention is eliminated and she is now subject to mandatory detention.

27. The retroactive application of *Matter of Q. Li* is unfair, unreasonable and unlawful.

28. Further, the application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2). Retroactive application of *Matter of Q. Li* to Petitioner also violates her due process rights.

COUNT V

Violation of the Administrative Procedure Act

Contrary to Law and Arbitrary and Capricious Agency Policy

Failure to Adhere to Prior Published Precedent

29. Plaintiff-Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
30. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
31. The Executive Office for Immigration Review (EOIR) is an adjudicatory body that functions much like the federal court system. The immigration court renders decisions on legal issues concerning a noncitizens removability, eligibility for relief and fitness for bond. The BIA reviews decisions and from time-to-time issues precedential decisions.
32. The parties expect the BIA and the immigration courts to apply faithfully Supreme Court, circuit court, and BIA precedent as well as decision-making principles that ensure consistency and predictability in deciding cases. The rule of orderliness is one such principle that circuit courts and district courts apply. Under the rule of orderliness, “one panel of [the circuit] court may not overturn another panel’s decision, absent an intervening change in law, such as by a statutory amendment, or the Supreme Court, or [the] en banc court.” *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016). This rule is also applied by the district courts. See *Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 575-76 (W.D. Tex. 2019).
33. The EOIR has acknowledged that it does not abide by the rule of orderliness. The EOIR calls it the “prior-panel-precedent” rule. See EOIR Policy Memoranda (PM) 25-34 (July

3, 2025) found at <https://www.justice.gov/eoir/media/1406956/dl?inline>. The EOIR acknowledges that the functional equivalent of the rule of orderliness exists in its regulations and in narrow circumstances, one panel can overrule an earlier panel if a majority of the permanent Board members vote to reject the earlier decision. 8 C.F.R. § 1003.1(g)(3). Nevertheless, there is no rule or guidance for immigration courts for resolving conflicts between prior BIA precedents or which BIA precedent to follow. EOIR PM 25-34 at 2.

34. Instead, EOIR instructs immigration judges to essentially “try their best.” *Id.* at 4. “Until the Board or the Attorney General resolves any conflicts in Board precedent... or adopts a clear rule regarding which precedent should control when there is a conflict, Immigration Judges will have to apply their best judgment and traditional legal tools or methods of analysis in order to adjudicate cases before them where Board precedent is in conflict.” *Id.* The rule of orderliness thus does not control.

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

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

COUNT VI
VIOLATION OF THE DUE PROCESS CLAUSE

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

38. Substantive due process protects against arbitrary and unjustified deprivations of liberty.

In the immigration context, every detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute's purpose. See *Zadvydas v. Davis*, 533 U.S.690; *Demore v. Kim*, 538 U.S. 523. When the government misapplies the statutory basis for detention, no legitimate justification exists, and due process is infringed. *Id.*

39. DHS affirmatively chose to process Plaintiff-Petitioner under section 1226(a), as demonstrated by her release on recognizance (§ 1226(a)(2)(B)), issuance of a Notice to Appear, and absence of expedited removal forms (I-867AB, I-860). By subsequently detaining her under section 1225(b), DHS did not provide her with the bond protections specified under § 1226(a), resulting in a statutory mismatch that affected the legal basis for her continued detention.

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

PRAYER FOR RELIEF

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

1. Issue an Order declaring that Petitioner is detained under 8 U.S.C. § 1226(a);
2. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Petitioner is unlawful, arbitrary, capricious and contrary to law;
3. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Petitioner violates her due process rights;
4. Issue an Order for Preliminary Injunctive Relief ordering Defendants- Respondents to release Petitioner or, alternatively, grant her a bond hearing before an immigration judge.

5. 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,
6. Grant any other relief which this Court deems just and proper. Respectfully submitted,

/s/ Alfonso Otero

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VERIFICATION OF COUNSEL

I, Alfonso Otero, hereby certify that I am familiar with the case of the named Petitioner and that the facts stated above are true and correct to the best of my knowledge and belief.

/s/ Alfonso Otero

Alfonso Otero

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Memo contains **6,971 words**, which complies with the word limit of L.R. 11-6.1.

/s/ Alfonso Otero
Alfonso Otero

CERTIFICATE OF SERVICE

I, Alfonso Otero, hereby certify that the foregoing document was served on Counsel for the Government on October 24, 2025 by the ECF electronic filing system.

/s/ Alfonso Otero

Alfonso Otero