**Case Number 1:26-cv-119**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

| | | |
|---|---|---|
| D.Y.L.T,<br><br>[redacted] (age nine),<br><br>[redacted] (age six).<br><br>*Petitioners-Plaintiffs*,<br><br>*v.* | § | Cause No. |
| JOSE RODRIGUEZ, in his official capacity as Warden of the Dilley Immigrant Processing Center;<br><br>PAMELA BONDI, United States Attorney General;<br><br>KRISTI NOEM, Secretary of the United States Department of Homeland Security;<br><br>TODD M. LYONS, Director of United States Immigration and Customs Enforcement;<br><br>SYLVESTER ORTEGA Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement,<br><br>*Respondents.* | § | **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, PETITION FOR WRIT OF HABEAS CORPUS** |

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## I. INTRODUCTION

1. This case concerns the illegal courthouse arrest and the illegal subsequent detention of Petitioners-Plaintiffs ("Petitioners"): [redacted] a six-year-old girl; her nine-year-old sister [redacted]; and their mother Ms. D.Y.L.T. (hereinafter, "Ms. L.T.") (collectively, "the family"). The family are asylum seekers and citizens of Venezuela. They have done everything the government has asked them since their initial entry without inspection. The Department of Homeland Security released Ms. L.T. and her two daughters on a Form I-220A, Order of Release on Recognizance on April 20, 2023. Exh. 1 (Form I-220A Order of Release on Recognizance). The family started a life in the United States, where Ms. L.T. has maintained stable employment and the girls are valued members of their school in San Antonio, Texas. The family were scheduled for a preliminary immigration hearing with the Executive Office of Immigration Review on December 9, 2025. The family attended, presented applications for relief, and were set for a final hearing for the Immigration Judge to decide the merits of their asylum case. As the family were walking out of their hearing, they were detained by masked Immigration and Customs Enforcement Agents.

2. Petitioners are in the physical custody of Respondents at the Dilley Immigration Processing Center. The family now faces unlawful detention because the Department of Homeland Security (DHS), in concert with the Executive Office for Immigration Review (EOIR), has concluded that they are subject to mandatory detention.

3. Petitioners are charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

4. On January 6, 2026, in response to release requests submitted to ICE on the family's behalf on December 18, 2025, and December 29, 2025,, ICE replied with a de facto denial, stating,

"Your client has [sic] master hearing scheduled for 1/21/26. Your client will know more once a disposition is reached on that day." This de facto denial is consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to treat any noncitizen inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered without admission or inspection—as subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for bond. *See* Exh. 4, Email Correspondence from ICE ERO.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge lacks authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board concluded that such individuals are detained under 8 U.S.C. § 1225(b)(2)(A) and thus cannot be released on bond, rendering any administrative effort futile.
6. Petitioners' detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and now reside in the United States. Instead, such individuals are subject to a different section, § 1226(a), which authorizes release on conditional parole or bond. That statute expressly applies to people who, like Petitioners, are charged as inadmissible for having entered the United States without inspection.
7. Respondents' new legal interpretation is irreconcilable with the statutory framework and decades of agency practice applying § 1226(a) to individuals in Petitioners' position.
8. The Government has also taken an abrupt and improper about-face on this issue. Respondents should be judicially estopped from asserting their current interpretation of 8

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

9. The Government's own issuance of an I-220A placing Petitioners in custody under 8 U.S.C. § 1226(a) confirms a discretionary, fact-based determination that she was not subject to mandatory detention under § 1225(b)(2)(A). *See* Exh. 1 (Form I-220A, Order of Release on Recognizance). DHS made this quasi-adjudicative decision at the outset of proceedings, based on facts available to both parties and Petitioners' admissions. In the Notice to Appear, DHS alleged that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the BIA—that Petitioner is ineligible to apply for bond before EOIR. Exh. 2 (Form I-862, Notice to Appear). This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*,

575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

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

11. "[I]t is well established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority" over which noncitizens may remain in the United States or be detained here. *Hernandez v. Sessions*, 872 F.3d 976, 990 n.17, citing *Zadvydas*, 533 U.S. 678, 695 (2001). The Due Process Clause protects Petitioner, a person within the United States, from unlawful detention resulting from the denial of adequate procedural protections. *See Zadvydas*, 533 U.S. at 693, cited in *Hernandez v. Wofford*, No. 25-CV-00986, 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025). Even those whose liberty is significantly constrained, or over whom the government wields substantial discretion, retain a protected liberty interest. See *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019), citing *Young v. Harper*, 520 U.S. 143, 150 (1997). The "essence" of procedural due process is that a person at risk of losing liberty receive notice and an opportunity to be heard in a meaningful manner and at a meaningful time. *See Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

12. Accordingly, Petitioners seek a writ of habeas corpus ordering their immediate release. In the alternative, Petitioners ask this Court to order a bond hearing under 8 U.S.C. § 1226(a) within three days.

## II. JURISDICTION

13. Petitioners are in the physical custody of Respondents. Petitioners are detained at Dilley Immigration Processing Center.

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

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

## III. VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioners are currently is detained.

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

## IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

19. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application

for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

## V. PARTIES

20. Petitioners, [redacted] a six-year-old girl; her nine-year-old sister [redacted] and their mother Ms. L.T. are citizens of Venezuela who have been in immigration detention since December 9, 2025. They are currently detained at the Dilley Immigration Processing Center.

21. Respondent, Jose Rodriguez, is Warden of the Dilley Immigration Processing Center, operated by Core Civic. The warden has immediate physical custody of the Petitioners pursuant to an agreement with ICE and is a legal custodian of Petitioners. The warden is sued in his official capacity.

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

23. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. She has ultimate custodial authority over Petitioners and is sued in her official capacity.

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

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

## VI. FACTS

26. Petitioners have been in the United since April 15, 2023. Despite her initial entry into the United States without permission, Ms. L.T. has maintained a hardworking, honorable life. Ms. L.T. has maintained stable employment by a single employer for the duration of her time in the United States, and her work supervisor even volunteered to serve as Ms. L.T.'s sponsor in the event she were released from detention. Ms. L.T.'s two daughters are model students in the San Antonio public school system, well-regarded by their peers and teachers. The family is currently detained at Dilley Immigration Processing Center. The Petitioners are suffering mentally in detention, and both minors have suffered physical illness. The nine-year old Petitioner suffered a severe case of the flu, and her younger sister fell ill shortly after. Ms. L.T. believes the medical care in detention is inadequate in comparison to what her daughters would receive outside of detention.

27. Upon Petitioners' entry into the United States, DHS released Petitioners on a Form I-220A, Order of Release on Recognizance ("OREC"), which expressly states that they were arrested, placed in removal proceedings, and released pursuant to INA § 236. *See* Exh. 1 (Form I-220A, Order of Release on Recognizance). The OREC makes clear that Petitioners' release was conditioned on compliance with § 236 and related regulations. *Id.* With an Order of Release on Recognizance an individual can live and work in the United States with the permission of DHS, intermittent check-ins, and compliance with all

obligations to the Immigration and Customs Enforcement (ICE) and Executive Office for Immigration Review (EOIR).

28. On April 20, 2023, DHS filed Notices to Appear ("NTA") with EOIR alleging that Petitioners entered the United States without inspection. *See* Exh. 2 (Form I-862, Notice to Appear).

29. Petitioners timely filed their Form I-589 application for asylum with the Immigration Court in April 2024. The Immigration Court has scheduled their next hearing for January 21, 2026. *See* Exh. 3 (Notice of Hearing). Petitioner Ms. L.T. also has an employment authorization document.

30. On December 9, 2025, in San Antonio, Texas, Petitioners were arrested when they appeared for their regularly scheduled hearing at the immigration court. They were subsequently transferred to the Dilley Immigration Processing Center, where they remain detained. Petitioners have no criminal arrests or convictions.

31. DHS has placed Petitioners in removal proceedings before the Pearsall Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioners, inter alia, as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the United States without inspection.

32. Following Petitioners' arrest and transfer to Dilley Immigration Processing Center on December 9, 2025, ICE responded to their release request on January 6, 2026, with an email with only two sentences: "Your client has [sic] master hearing scheduled for 1/21/26. Your client will know more once a disposition is reached on that day." *See* Exh. 4 (Email Correspondence from ICE ERO).This response from ICE is a de facto denial of Petitioners' release request, as it did not respond to her request for release and failed to afford them an opportunity to post bond or be released on alternative conditions.

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

34. Petitioners remain detained. Absent relief from this Court, the family faces the prospect of months or even years more in immigration custody based solely on Respondents' unlawful reclassification of their custody status under § 1225(b)(2)(A).

## VII. 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 Immigration Judge. *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).

39. The 1997 Flores Settlement Agreement governs the federal government's treatment and custody of immigrant children. *See* Exh. 5 1997 Flores Settlement Agreement. The Flores Settlement Agreement arose from a lawsuit filed by a group of immigrant children challenging their detention and seeking to be released to family members and/or sponsors within the United States. S*ee Flores v. Sessions*, 862 F.3d 863, 869 (9th Cir. 2017) (discussing the history of the Flores litigation); s*ee also Flores v. Sessions*, Case No. CV 85-4544-DMG (C.D. Cal., July 9, 2018) (affirming the terms of the Flores Settlement Agreement). In 1997, the plaintiff children entered into a consent decree with the federal government that created a nationwide policy governing the custody and release of immigrant children by immigration authorities and applies to this case. *Flores v. Reno*, No. CV 85-4544, Settlement Agreement ("Flores Settlement Agreement"), Ex. 5. Among other things, the Agreement requires: (a) release without unnecessary delay, (b) release to an adult caregiver, with parents, legal guardians, and other family members given priority, and (c) placement in the "least restrictive setting" appropriate to the minor's needs. Flores Settlement Agreement, ¶¶ 11, 14. The Flores Settlement Agreement remains under the supervision of U.S. District Judge Dolly M. Gee in the Central District of California. *Flores v. Bondi*, No. CV 85-4544-DMG (AGRx).

## VIII. ARGUMENT

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

41. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section

1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

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

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

44. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days… then they are under 1226(a) and not 1226(c)". Then Solicitor General Ian Gershengorn further clarified, in response to a question concerning "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the

border," that "The answer is they are held under 1226(a) and that they get a bond hearing…" Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ___ (2018) (No. 15-1204). DHS reiterated that such individuals "would be held under 1226(a)" and cited the administrative record to support that position. *Id.* These statements reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

45. On July 8, 2025, ICE—"in coordination with" DOJ—issued the "Interim Guidance Regarding Detention Authority for Applicants for Admission" (the "Todd M. Lyons memo"), abruptly abandoning this long-settled regime. The memo asserts that all individuals who entered without inspection are now subject to § 1225(b)(2)(A)'s mandatory-detention provision, regardless of when or where they are apprehended, even if they have lived in the United States for years. [1]

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

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

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

48. In this District, courts have repeatedly rejected Respondents' new reading of the detention statutes and have held that § 1226(a)—not § 1225(b)(2)—governs custody for long-resident noncitizens arrested in the interior, including those charged with entry without inspection, and provided detailed reasoning that strongly supports Petitioner's position here. *See Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025) (preliminary injunction holding that § 1226, not § 1225(b)(2), governs custody for interior arrests because a broad reading of § 1225(b)(2) would render § 1226 superfluous); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025) (TRO requiring § 1226 process and enjoining re-detention without notice and a pre-deprivation hearing); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025) (TRO

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

requiring a prompt § 1226 bond hearing with the Government bearing the burden, or release if no hearing is set); *Santiago-Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (granting habeas relief for a DACA recipient misclassified under § 1225(b)); *Alvarez Martinez v. Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025) (granting habeas and holding that the automatic stay of an IJ's bond order violates due process); *Lopez-Arevelo v. Ripa*, No. 3:25-cv-00337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (rejecting §§ 1252(g) and 1252(b)(9) as jurisdictional bars and ordering a bond hearing with a clear-and-convincing burden on the Government); *Martinez v. Noem*, No. 3:25-cv-00430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (holding that even assuming § 1225(b) applies, *Mathews* requires an individualized bond hearing); *Souza Vieira v. De-Anda Ybarra*, No. 3:25-cv-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Erazo Rojas v. Noem*, No. 3:25-cv-00443-KC (W.D. Tex. Oct. 30, 2025).

49. *Hernandez-Fernandez v. Lyons* is especially instructive and closely parallels Petitioner's situation. *See also Dominguez-Vega v. Thompson*, 25-CA-01439-XR (W.D. Tex. Nov. 19, 2025). There, a Cuban national entered near Eagle Pass without inspection, was released two days later on an Order of Release on Recognizance (I-220A) issued "in accordance with section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226]," lived in the United States for approximately three years, and was later re-detained at a routine check-in after the Government adopted its new § 1225(b) theory. Relying on new BIA precedent, the immigration judge concluded he lacked jurisdiction to conduct a bond hearing and treated the petitioner as subject to mandatory detention under § 1225(b). The district court

held that (1) none of the INA's jurisdiction-stripping provisions barred habeas review; (2) further administrative exhaustion would be futile and would only prolong unlawful detention; (3) detaining the petitioner without a meaningful bond process violated procedural due process under *Mathews v. Eldridge*; and (4) the proper remedy was to require either a prompt bond hearing at which the Government bore a clear-and-convincing burden of proving danger or flight risk, or release under reasonable conditions. *See Hernandez-Fernandez*, 2025 WL 2976923, at *1–11*. Petitioners stand in the same legal posture and should receive the same protection here.

50. *Granados v Noem et al* is another case similar to Petitioners. *Granados v Noem et al*, 5:25-cv-01464 (W.D. Tex. Nov. 26, 2025). Petitioner, Granados, was rearrested years after arriving in the United States. *Id.* The court held that Petitioner, Granados, could not be detained under Section 1225(b)(2) and that Section 1226 was the only other option for Petitioner's detention. *Id.* However, because the government did not argue that Petitioner was being detained pursuant to section 1226, the court found "no reason to consider" Section 1226 as a basis for Petitioner's current detention. *Id.* (quoting Martinez v. Hyde, F.Supp.3d 211 n.23 (D. Mass. 2025)). The court held that the Petitioner's detention was unlawful, habeas relief was proper and ordered Petitioner's immediate release. *Id. See also*, *Ramos de Lara v. Noem et al.,* 5:25-cv-01459 (W.D. Tex. Nov. 21, 2025) (holding that because Petitioner cannot be detained under § 1225(b), the remaining option is § 1226, but as Respondents do not claim that Petitioner's current detention is under § 1226, "the Court sees no reason to consider" § 1226 as a basis for Petitioner's current detention, therefore "her detention is unlawful, and habeas relief is proper"); *Vargas v. Bondi*, 2025 WL3300446, at *5 R&R WDTX (discussing why the appropriate habeas relief is release

rather than a bond redetermination hearing); *Lopez-Tipaz v. Noem et al*, 4:25-cv-04905 (S.D. Tex. Nov. 25, 2025) (holding that consistent with its prior decisions addressing similar circumstances, the Court finds that the appropriate remedy is immediate release); *Ortega-Aguirre v. Noem, et al.*, No. 4:25-cv-4332, at 7-8 (S.D. Tex. Oct. 10, 2025) (ordering the same); *Ascencio-Merino v. Dickey et al.*, No. 4:25-cv-4904 at 5 (S.D. Tex. Oct. 21, 2025) (same); *Gamez-Chinchilla v. Dickey et al.*, No. 4:25-cv-4427, at 5 (S.D. Tex. Oct. 29, 2025) (same).

51. Outside this Circuit, a growing number of federal courts have likewise rejected ICE and EOIR's expanded interpretation of § 1225(b)(2), holding that § 1226(a) governs detention for noncitizens who have entered the interior and lived in the community. *See,* e.g., *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937-DEH (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494 (D. Neb. Sept. 3, 2025); and *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b), governs detention for long-resident noncitizens and that the Government's new reading of § 1225(b) is likely unlawful).

52. Taken together—particularly the decisions from this District and from *Hernandez-Fernandez*—this growing body of case law confirms the same point: Section 1226(a) is the

default detention authority for noncitizens in Section 1229a removal proceedings who are already present in the United States, including those charged as inadmissible for entering without inspection, whereas Section 1225(b) governs inspections at the border and recent arrivals "seeking admission."

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

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

55. By contrast, § 1225(b) is structurally and textually tied to inspections "at the Nation's borders and ports of entry," where the Government must determine whether a person "seeking to enter" is admissible. *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(2)(A). It is not the default detention authority for individuals who, like Petitioner, have already entered, been released into the interior under § 1226, and lived in the community for an extended period.

56. The Government's own records in this case confirm that Petitioner falls under § 1226(a), not § 1225(b). DHS issued Petitioner an I-220A, or Order of Release on Recognizance, explicitly invoking § 236 of the INA (8 U.S.C. § 1226) and setting conditions of release. *See* Exh. 1. DHS then alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission." *See* Exh. 2. That combination—a § 1226-based release and an entry-without-inspection charge—squarely places Petitioner within § 1226's framework, just as in *Hernandez-Fernandez* and the Western District cases cited above.

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

58. In light of the statutory text, regulatory history, decades of consistent practice, the Government's prior representations to the Supreme Court, and the growing judicial consensus—including multiple decisions from this District and the closely analogous *Hernandez-Fernandez* decision—Respondents' attempt to reclassify Petitioners under §

1225(b)(2)(A) is unlawful. Section 1226(a) governs the family's custody and entitles them to an individualized bond hearing or immediate release. The Government's contrary position should be rejected and, to the extent necessary, barred by judicial estoppel and principles of administrative preclusion.

59. Accordingly, the mandatory-detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at or near the border, then released after a quasi-judicial determination by an immigration official on Form I-220A that they fall under the discretionary arrest provision of § 1226(a) as uninspected entrants. DHS's issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a considered, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). That decision was made at the outset of proceedings based on facts available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

60. For decades, it has been settled practice for immigration officials to issue an I-220A, or Order of Release on Recognizance, to noncitizens encountered at or near the border whom DHS elects to place into the § 1226 framework. The issuance of an I-220A under § 236 is,

by design, a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b). The Supreme Court has "long favored application of the common-law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria*, 501 U.S. at 108 (citing *Utah Constr.*, 384 U.S. at 422). As *Utah Construction* explains, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." 384 U.S. at 422. Because Congress legislates against this background of common-law adjudicatory principles, DHS's prior § 236 determination—memorialized in the I-220A—constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

61. Additionally, the Department's continued detention of Ms. L.T.'s two minor daughters at the Dilley Immigration Processing Center violates the 1997 Flores Settlement Agreement, which governs the federal government's treatment and custody of immigrant children nationwide. The Flores Settlement requires the government to (1) release children without unnecessary delay, (2) release them to an adult caregiver, with parents and family members given priority, and (3) ensure placement in the least restrictive setting appropriate to the children's needs. Flores Settlement Agreement ¶¶ 11, 14. Exh. 5

62. The Flores protections plainly apply here. Petitioners have been present in the United States since April 15, 2023. Ms. L.T. has lived a hardworking, honorable, and stable life in the United States. She has maintained continuous employment with a single employer for the

duration of her time in the country, and her work supervisor has affirmatively volunteered to serve as a sponsor should she be released. Ms. L.T.'s two daughters were model students in the San Antonio public school system and were well regarded by their teachers and peers prior to detention. These facts demonstrate not only the availability of appropriate custodial placement, but also the absence of any legitimate justification for continued detention of the children.

63. Moreover, the children's ongoing detention is causing concrete harm, in direct contravention of Flores's requirement that children be placed in the least restrictive setting appropriate to their needs. The Petitioners are suffering mentally in detention, and both minors have suffered physical illness while confined. The nine-year-old Petitioner experienced a severe case of the flu, followed shortly by her younger sister falling ill. Ms. L.T. reasonably believes that the medical care available in detention is inadequate compared to the care her daughters would receive if released into the community. *Flores* does not permit the government to subject children to deteriorating physical and mental health where safe release to a parent or sponsor is available.

64. In short, the government's continued detention of Ms. L.T.'s daughters violates the express terms and underlying purpose of the Flores Settlement Agreement. Because the children can be immediately released to their mother and because detention is actively harming their health and well-being, their continued confinement at Dilley is unlawful. Immediate release is required to bring the government into compliance with Flores.

## IX. CLAIMS FOR RELIEF

### COUNT I
### Violation of the INA

65. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

66. 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.

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

**COUNT II**
**Violation of the Bond Regulations**

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

69. 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.

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

71. 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**

72. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

73. 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).

74. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d1168, 1197 (N.D. Cal. 2017), aff'd sub nom. Saravia for *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom.

75. At a minimum, in order to lawfully re-arrest Petitioners, the government must first establish, by clear and convincing evidence and before a neutral decision-maker that they are a danger to the community or a flight risk, such that their re-incarceration is necessary.
76. Petitioners have a fundamental interest in liberty and being free from official restraint.
77. The government's detention of Petitioners without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates their right to due process.

**COUNT IV**
**VIOLATION OF THE FLORES SETTLEMENT AGREEMENT**

78. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
79. The *Flores* Settlement Agreement authorizes any minor who disagrees with ORR's placement or custodial determination to seek review in "any United States District Court with jurisdiction and venue over the matter to challenge that placement determination . . ." Flores Settlement Agreement, ¶ 24B. Paragraphs 28A (incorporating by reference Paragraph 14), 32, and 33 of the Flores Settlement Agreement continues to apply, and these paragraphs together with Paragraph 21.A continues to apply to ORR secure, heightened supervision, and out-of-network facilities. *Flores v. Garland*, 2024 WL 3467715 *5-6, 9 (C.D. Cal. June 28, 2024). 79.
80. The Flores Settlement Agreement requires that if a child is not a flight risk or a danger to the community, they be released "without unnecessary delay" to a parent or sponsor. FSA ¶ 14. 80. As an immigrant minor detained in a secure facility, is a member of the Flores class detained in a facility subject to the Flores Settlement Agreement and is therefore authorized to challenge Respondents' custodial decision in this Court. 82. Respondents'

continued incarceration of the minors in a secure facility, is a violation of the Flores Settlement Agreement.

**Judicial Estoppel**

81. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

82. The Government is judicially estopped from asserting that Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). *See Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

## X. PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

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

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

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

(5) Declare that Petitioners' detention is unlawful;

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

(7) Award costs and, if permissible, attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, preserving Petitioners' position that EAJA may apply in habeas notwithstanding *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), and noting contrary authority, including *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985); *Daley v. Ceja*, No. 24-1191, — F.4th —, 2025 WL 3058588 (10th Cir. Nov. 3, 2025) (holding that habeas actions challenging immigration detention are unambiguously "civil actions" within EAJA's "any civil action" language and affirming an EAJA award where the habeas petition materially altered the parties' legal relationship by securing a bond hearing and release); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W.D. Pa. 2024); and *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (D. Colo. 2023).

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

DATED this 16th day of January 2026.

**/s/ Elisa Jelley**
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioners, D.Y.L.T., [redacted] and [redacted], and submit this verification on their 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 16th day of January 2026.

/s/ Elisa Jelley

Elisa Jelley

/s/ Amanda Aguilar

Amanda Aguilar

**CERTIFICATE OF SERVICE**

I hereby certify that on January 16th, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

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

Warden
Dilley Immigration Processing Center
300 El Rancho Way
Dilley, TX 78017
United States

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

Dated this 16th of January, 2026.

**/s/ Elisa Jelley**

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