UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

GODELIVE VALSAINT,	§	Civ. No. 5:26-cv-693
Petitioner-Plaintiff,	§	DHS File Number: [redacted]
v.	§	
PAM BONDI, United States Attorney General;	§	**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, PETITION FOR WRIT OF HABEAS CORPUS**
KRISTI LYNN NOEM, Secretary of the United States Department of Homeland Security;	§	
TODD M. LYONS, Director of United States Immigration and Customs Enforcement;	§	
SYLVESTER ORTEGA Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement,	§	
WAYMON BARRY, Warden, Karnes County Detention Facility;	§	
Respondents-Defendants.	§	

I. INTRODUCTION

1. Petitioner, Godelive Valsaint, is in the physical custody of Respondents at the Karnes County Detention Facility. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no 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 determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or

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

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. More importantly, the Government itself has made an abrupt 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. As explained in *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 subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and assert that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process and imposes an unfair detriment on Petitioners who relied on the prior interpretation. Accordingly, Respondents should be estopped from asserting this inconsistent position.

8. Furthermore, the Government's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that

Petitioner "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.

9. Under 8 U.S.C. § 1226(b) and 8 C.F.R. 242.2(c), the DHS has authority to revoke a noncitizen's bond or parole "at any time," even if that individual has previously been released. There is no statutory authority or regulatory authority for DHS to revoke a noncitizen's bond or parole under a different statute, i.e, one that is not under "8 U.S.C. §1226."

10. Godelive Valsaint is a Haiti national who holds Temporary Protected Status (TPS) under 8 U.S.C. 1254a. TPS holders may not be either detained or deported so long as their TPS is valid. The TPS statute provides that "[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien's immigration status in the United States." 8 U.S.C. 1254a(d)(4) (emphasis added). That protection remains available even if the TPS holder has a final removal order or lacks other immigration status, because the government "shall not remove the alien from the United States during the period in which such [TPS] status is in effect." 8 U.S.C. 1254a(a)(1)(A). *See also* 8 U.S.C. 1254a(a)(5) (TPS statute provides no authority to "deny temporary protected status to an alien based on the alien's immigration status"); 8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" non-citizens).

11. "[I] 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 be allowed to remain in the United States, or who may be detained in the United States. *Hernandez v Sessions*, 872 F.3d 976, 990 n.17, *citing Zadvydas*, 533 U.S. at 695. 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 who face significant constraints on their liberty or those over whose liberty the government wields significant discretion retain a protected interest in their liberty. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019), *citing Young v. Harper*, 520 U.S. 143, 150 (1997). And the "essence" of procedural due process is that a person who is at risk of losing their liberty be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time. *E.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

12. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released within three days.

II. JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Karnes County Detention Facility, in Karnes City, Texas.

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

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

III. VENUE

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

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

IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

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

V. PARTIES

19. Petitioner Godelive Valsaint is a citizen of Haiti who has been in immigration detention since the 9th of January 2026. After arresting Petitioner at during a traffic stop and transferring him to Karnes County Detention Center, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Due to this erroneous

decision, it would be futile for Petitioner to apply to EOIR without the intervention of this honorable Court.

20. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

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

22. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

23. Respondent Sylvester Ortega is named in their official capacity as the Field Office Director for the San Antonio Field Office of ICE. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Ortega is a legal custodian of Petitioner.

24. Respondent Waymon Barry is named in their official capacity as the warden of the Karnes County Detention Center (KCDF). The Warden is an employee of the Geo Group, Inc. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

VI. FACTS

25. Petitioner has resided in the United States since June 21, 2019, and currently resides physically in Karnes City, Texas, where he is detained.

26. Upon his entry into the United States, the DHS released Respondent into the country with an I-220A form *Order of Release on Recognizance*, or "OREC," which found that Respondent was detained and released under INA 236, formally documenting that he was arrested, placed in removal proceedings, and released pursuant to INA § 236. The OREC expressly states that respondent's release was conditioned on compliance with § 236 and related regulations. *Id.*

27. On June 23, 2019, the DHS filed a Notice to Appear (NTA) with EOIR alleging that Petitioner entered the United States without inspection. *See* Exh. 1, Form I-862, Notice to Appear.

28. Petitioner timely filed his form I-821, Application for Temporary Protected Status with the USCIS on or about March 18, 2023. That application was assigned case number [redacted]. *See Exhibit 2*

29. Petitioner was granted Temporary Protected Status on March 14, 2024. Petitioner has maintained his Temporary Protected Status throughout his residence in the United States. *Id.*

30. On or about January 9, 2026, Petitioner was arrested when he was stopped by a Texas Department of Public Safety Officer for a routine traffic stop due to Petitioner allegedly not having rear reflectors. Petitioner is a truck driver and transports goods in his normal course of business. TDPS Officer contacted Custom and Border Protection despite Petitioner having a valid driver's license and work authorization pursuant to his Temporary Protected Status. Custom and Border Protection detained him despite having a valid driver's license, work authorization and Temporary Protected Status. Petitioner is now detained

at the Karnes County Detention Center.

31. DHS placed Petitioner in removal proceedings before the Pearsall Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *See Exhibit 1*

32. Godelive Valsaint's detention has inflicted profound harm on his family, particularly his United States Citizen son, [redacted]. He is experiencing emotional and developmental hardship in his absence. Also, His wife who herself has Temporary Protected Status is suffering economic hardship due to his detention for two months. His wife is also currently pregnant expecting their second child. Petitioner was the primary financial support for the family and is essential to his relatives' well-being and stability. His deportation would cause lasting trauma and grief, not only within his household but also across the broader community in Miami that values his contributions. His case exemplifies the urgent need to consider family unity in detention decisions.

33. Following Petitioner's arrest and transfer to Karnes County Detention Center on January 9, 2026, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

34. Pursuant to *Matter of Yajure Hurtado*, no immigration judge is able to consider Petitioner's bond request, see 29 I&N Dec. 216, and his unlawful detention cannot be litigated before that BIA, who as the Lyons memorandum implies was involved with the DHS's July 8, 2025 decision to make its reading an agency policy – and who is a party to these contested proceedings – to adopt the DHS's position wholesale, because such efforts would be futile.

35. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and

community.

VII. LEGAL FRAMEWORK

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

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

38. 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).

39. 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).

40. Last, INA TPS statute clearly states that "[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien's immigration status in the United States." *See* 8 U.S.C. § 1254a(d)(4)

VIII. ARGUMENT

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

42. 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).

43. Following the enactment of the IIRIRA, EOIR 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).

44. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *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)).

45. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days… then they are under 1226(a) and not 1226(c)" and further clarified, in response to a question concerning "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border," the Government responded, "The answer is they are held under 1226(a) and that they get a bond hearing…" Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. __(2018) (No. 15-1204). DHS reiterated that such individuals "would be held under 1226(a)" and cited the administrative

record to support that position. *Id.* These statements reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States, a position directly contrary to the agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having prevailed in *Jennings* after taking this position, they should be estopped from taking the contrary position now simply because their political or litigation interests have changed. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

46. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

47. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). 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. ("Todd M. Lyons memo").

48. 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).

49. 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]

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

[2] *See, e.g., Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v.*

50. Most recently, on January 21, 2026, this Court rejected the Respondents argument that § 1225 applied as opposed to § 1226, and granted a temporary restraining order ordering the release of the Petitioner and enjoining them from re-detaining the Petitioner without notice and a pre-depravation hearing. *Mendoza Patino v Bondi et al*, No. 5:26-CV-0169 JKP (W.D. Tex. January 21, 2026).

51. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

52. A growing number of federal courts have rejected ICE and EOIR's expanded interpretation of the Immigration and Nationality Act's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority

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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. October 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Az. October 7, 2025).*Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025). *But see Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. September 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. September 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)).

applicable in these cases. For example, courts in Arizona, California, Iowa, Kentucky, Louisiana, Michigan, Minnesota, New York, New Jersey, Nebraska, Texas, and Washington have reached this conclusion. *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*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, *Lopez Benitez v. Francis*, No. 25 CIV. 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. 8:25CV494 (D. Neb. Sept. 3, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 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).

53. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

54. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

55. Indeed, according to the I-220A, Release on Recognizance document issued to Respondent upon his encounter with Government officials, as well as the DHS's own factual

allegations contained in the Notice to Appear, the DHS themselves determined that Petitioner had entered the U.S. under the INA and thus falls under § 1226(a), not § 1225(b). *See Exh. 1 ("NTA").*

56. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

57. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

58. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

59. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v.*

Rodriguez, 583 U.S. 281, 287 (2018).

60. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at the border and released after a quasi-judicial determination by an immigration official on a form I-220A that Respondent falls under the discretionary arrest provision of § 1226(a) as an uninspected entrant. The Government's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that Petitioner "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.

61. It has been the settled practice for decades for immigration officials to issue an I-220A, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an I-220A under § 236 is not a ministerial act but a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b). The Supreme Court has "long favored application of the common law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria Fed. Sav. &*

Loan Ass'n v. Solimino, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). As the Court explained in *Utah Construction*, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." 384 U.S. at 422. This presumption applies because "Congress is understood to legislate against a background of common-law adjudicatory principles." *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, DHS's prior § 236 determination—memorialized in the I-220A—constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

62. Furthermore, the Court need analyze only one statutory provision to resolve this habeas petition. The TPS statute unequivocally prohibits the detention of persons with valid TPS, and Petitioner must be released. See 8 USC 1254a(a)(1)(A), (d)(4) ("[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General") (emphasis added).[3] It is hard to imagine a clearer statutory mandate proscribing detention.

63. The Court need not delve further in an attempt to understand other aspects of Petitioner's immigration status, because TPS protection remains valid even if the TPS holder has a final removal order or lacks other immigration status. 8 U.S.C. 1254a(a)(1)(A) (the government "shall not remove the alien from the United States during the period in which such [TPS] status is in effect."). Indeed, individuals with a final order of removal are statutorily eligible for TPS and may not be denied TPS if otherwise eligible on the basis of that removal order. 8 U.S.C. 1254a(a)(5) (TPS statute provides no authority to "deny temporary protected status to

[3] "Attorney General" in Section 1254a now refer to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. 1103; 6 U.S.C. 557.

an alien based on the alien's immigration status"). *See also* 8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" non-citizens). For that reason alone, this Court should grant the writ and order Petitioner's immediate release. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law).

IX. CLAIMS FOR RELIEF

COUNT I
VIOLATION OF THE INA
8 U.S.C. § 1226

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

65. 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.

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

COUNT II
VIOLATION OF THE BOND REGULATIONS

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

68. 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.

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

70. 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

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

72. 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).

73. 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.

74. At a minimum, in order to lawfully re-arrest Mr. Valsaint, the government must first establish, by clear and convincing evidence and before a neutral decision-maker, that he is a danger to the community or a flight risk, such that his re-incarceration is necessary. ICE's re-arrest of Mr. Valsaint on January 9, 2026, violated these regulations, laws, and due process.

75. Petitioner has a fundamental interest in liberty and being free from official restraint.

76. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT IV
JUDICIAL ESTOPPEL

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

78. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). *See Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the

opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

COUNT V
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – 8 U.S.C. § 1254a

79. Petitioners reallege and incorporate by reference each and every allegation contained above.

80. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS holders, including their detention and removal under federal immigration law.

81. Section 1254a(d)(4) states "[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien's immigration status in the United States." (emphasis added). There is no exception to this rule provided in the statute.

82. Thus, Petitioners' detention violates Section 1254a, and he is entitled to immediate release from custody.

X. PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

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

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

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

within three days;

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

(6) Grant the writ of habeas corpus ordering Respondents to release Ms. Reyes Perez on her 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 her as subject to mandatory detention.

(7) Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed with *Barco*. *See 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); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024): *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

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

DATED this 2nd day of February, 2026.

//s/ Juan R Gonzalez
Juan R Gonzalez, Esq.

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

I represent Petitioner, Romel Surin, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 22nd day of January, 2026.

s/ Juan R Gonzalez

Juan R Gonzalez