

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Fabricio BENITEZ PENA

Petitioner-Plaintiff,

v.

PAM BONDI,

United States Attorney General;

KRISTI LYNN NOEM,

Secretary of the United States

Department of Homeland Security;

TODD M. LYONS,

Director of United States

Immigration and Customs Enforcement;

MIGUEL VERGARA

Field Office Director

for Detention and Removal, U.S.

Immigration and Customs Enforcement,

Warden, Charlotte Thompson

T. Don Hutto Detention Center;

Respondents-Defendants.

Civ. No. 1:26-cv-00429-RP

DHS File Number:



AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF; PETITION
FOR HABEAS CORPUS UNDER 28
U.S.C. § 2241

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	4-
INTRODUCTION.....	5-6
JURISDICTION AND VENUE	6
REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION	7
PARTIES.....	7-8
FACTUAL ALLEGATIONS	8-10
LEGAL FRAMEWORK: DUE PROCESS CLAUSE.....	10-12
CLAIM FOR RELIEF VIOLATION OF THE INA: REQUEST FOR RELIEF PURSUANT TO MALDONADO BAUTISTA.....	12-19
RELIEF SOUGHT.....	19-23
PRAYER FOR RELIEF.....	23-24
VERIFICATION PURSUANT TO 28 U.S.C. § 2242.....	25
CERTIFICATE OF SERVICE.....	26

APPENDIX

EXHIBIT 1: ICE DETENTION INFORMATION.....	34
EXHIBIT 2: PETITIONER’S INTERIN NOTICE AUTHORIZING PAROLE.....	36
EXHIBIT 3: NOTICE TO APPEAR.....	39
EXHIBIT 4: I-589 APPLICATION FOR ASYLUM RECEIPT.....	43
EXHIBIT 5: PETITIONERS EMPLOYMENT AUTHORIZATION CARD.....	59

PRELIMINARY STATEMENT

This petition challenges the unlawful detention of Petitioner Fabricio BENITEZ PENA (“Mister BENITEZ PENA”), a 19-year-old who entered the United States on or about March 30, 2022. On January 31, 2026, the petitioner was detained while traveling as a passenger in a vehicle driven by his father. The vehicle was stopped by officers of the Austin Police Department without any explanation or stated reason for the stop. During the encounter, officers ordered the petitioner’s father to remain silent and proceeded to arrest them. Shortly thereafter, immigration officers arrived at the scene. Petitioner has been held at T. Don Hutton Detention Center without a bond hearing. **See Exhibit 1, ICE Locator Search Results.** The Department of Homeland Security (“DHS”) asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), despite Congress’s separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge (“IJ”) review.

DHS’s novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025)—contradicts the Immigration and Nationality Act’s (INA) text, the canon against surplusage, longstanding administrative practice, and Due Process. It effectively erases section 236(a) of the INA, collapses Congress’s dual-track detention scheme, and imposes categorical detention on long-time residents like Mister Fabricio BENITEZ PENA who presents no danger and is not a flight risk. On March 30, 2022, Mister BENITEZ PENA received a preliminary authorization of parole under INA section 212(d)(5)(A). **See Exhibit 2, Interim Notice Authorizing Parole** He was later released from immigration custody without any restrictions.

The human consequences are immediate and severe. Mister BENITEZ PENA, is distressed due to conditions of detention. **Fabricio Javier BENITEZ PENA is in fear. Fabricio Javier, although 19 years old, has experienced significant emotional distress and anxiety attacks associated with family separation and detention. Because he is considered an adult under Texas law, he has been separated from his family in detention.**

The Petitioner, Fabricio BENITEZ PENA (“Mister BENITEZ PENA”), respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner’s unlawful detention and attempted removal from the United States by Respondents.

I. INTRODUCTION

1. Petitioner, Fabricio BENITEZ PENA, is in the physical custody of Respondents at the T. Don Hutto Detention Center. 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. Petitioner was born in Honduras and entered the United States **on or about March 30, 2022**. He entered the U.S. as an arriving alien and was briefly detained by Department of Homeland Security (“DHS”). He was admitted with parole under section 212(d)(5)(A) of the Immigration and Nationality Act. and later released without any conditions. **See Exhibit 2, Interim Notice Authorizing Parole.**
2. Petitioner was released by DHS and served with a Notice to Appear (“NTA”), which designated him as “an arriving alien present in the United States who applied for admission into the United States” and charged him with removability pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”) as amended, as an immigrant who, at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211 (a) of the Act”. **See Exhibit 3, Notice to Appear**
3. Following Petitioner’s release, his mother timely filed a Form I-589, Application for Asylum with the immigration court, on which Petitioner is listed as a rider. **See Exhibit 4, Form I-589 Asylum Application Receipt.** On or about January 31, 2026, petitioner was detained while traveling as a passenger in a vehicle driven by his father. The vehicle was stopped by officers of the Austin Police Department without any explanation or stated reason for the stop. During the encounter, officers ordered the petitioner’s father to remain silent and proceeded to arrest them. Shortly thereafter, immigration officers arrived at the scene. Petitioner is now detained by ICE at the T. Don Hutto Detention Center.
4. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a).

Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a change in custody redetermination (i.e. bond hearing) with an Immigration Judge (“IJ”).

5. However, on July 8, 2025, DHS issued an internal Interim Guidance (“Policy”) that took the baseless position that—contrary to statutory principles and governing case law—noncitizens like Petitioner who entered the United States without permission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b) instead of discretionary detention under section 1226(a). On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) that sided with DHS’ position.
6. DHS’s contention that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is without merit. DHS’s policy has upended decades of DHS’s own interpretation of bond eligibility under sections 1226(a) and 1225(b). The vast majority of district courts across the country that have addressed this issue have rejected DHS’s arguments and found that it violates the INA and noncitizens’ due process rights.
7. Petitioner’s detention became unlawful when Petitioner was detained without probable cause, arrested without a judicial warrant, and denied bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and now *Buenrostro v. Bondi*, No. 25-20496, --- F.4th --- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026).
8. On February 18, 2026, the California Central district court judge Sykes issued her decision in *Maldonado Baustista v. Santacruz* (Case No. 5:25-cv-1873) vacating the BIA case *Matter of Yajure Hurtado*. Nonetheless, in the Fifth Circuit immigration judges have received instruction that this order is not binding. Exh. 8, Immigration Judge’s Guidance Sets Up Race to Avoid Fifth Circuit. Bloomberg Law.
<https://news.bloomberglaw.com/litigation/immigration-judges-guidance-sets-up-race-to-avoid-fifth-circuit>.
9. Immigration judges have informed class members in bond hearings that they have been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not

controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

10. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner.

II. JURISDICTION AND VENUE

11. Petitioner is detained in civil immigration custody in Williamson County at the T. Don Hutto Detention Center, Taylor, Texas. He has been detained since or about, January 31, 2026. He has no criminal convictions.
12. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*
13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
14. Venue is proper in the Western District of Texas, San Antonio Division, under 28 U.S.C. § 1391, because Petitioner is detained in this District and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243, Writ of Habeas Corpus Issuance, Return, Hearing, and Decision

15. 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.*
16. 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 writ of habeas

corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

14. Petitioner, Fabricio BENITEZ PENA is a citizen of Honduras who has been in immigration detention since the 31st of January 2026. He is 19 years old. After arresting Petitioner during a stop in Austin, Texas and transferring him to T. Don Hutto 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.
15. Respondent Pamela Bondi is named in their official capacity as the U.S. She is responsible for the administration and policy of the immigration courts, which resulted in the denying of this noncitizen's attempt to seek a custody redetermination from the U.S. Department of Justice under 8 C.F.R. §1003.19.
16. Respondent Kristi Noem is named in their official capacity as the Secretary of U.S. Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, they are responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for the Office of the Principle Legal Advisor of ICE, and in any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.
17. 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.

18. Respondent Sylvester Ortega is named in their official capacity as the Acting 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.
19. Respondent, Charlotte Thompson, Warden of the T. Don Hutto Detention Center. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

V. FACTUAL ALLEGATIONS

20. Petitioner has resided in the United States since March 30, 2022, and currently resides physically in Hutto, Texas, where he is detained.
21. Upon his entry into the United States, the DHS released respondent into the country with an interim parole under section 212(d)(5)(A) of the Immigration and Nationality Act. With no conditions and a notice being issued as Form I-94, Arrival-Departure Record, see 8 C.F.R. § 235.1(h)(2). **See Exhibit 2, Interim Notice Authorizing Parole**
22. On April 20, 2023, the DHS filed a Notice to Appear (NTA) with EOIR alleging that Petitioner entered as arriving alien subject to be removed. **See Exhibit 3, Notice to Appear. This is incorrect since Petitioner when he entered the United States, entered as a minor and his mother declared her fear of persecution in Honduras and her intent to apply for asylum, were Petitioner is a beneficiary, he was subsequently paroled under 8 U.S.C. § 1182(d)(5)(A) "pending [his] immigration hearing," after Immigration and Customs Enforcement ("ICE") determined that he was neither a flight risk nor a danger to the community.**
23. Petitioner's mother timely filed her form I-589, application for asylum, where he shows as a rider, with the San Antonio Immigration Court on March 29, 2023, and was scheduled for a non-detained Individual hearing for July 26, 2027. **See Exhibit 4, Form I-589 Asylum Application Receipt.**
24. On or about January 31, 2026, in Austin, Texas, petitioner was detained while traveling

as a passenger in a vehicle driven by his father. The vehicle was stopped by officers of the Austin Police Department without any explanation or stated reason for the stop. During the encounter, officers ordered the petitioner's father to remain silent and proceeded to arrest them. Shortly thereafter, immigration officers arrived at the scene.

25. At the time of his detention, the petitioner presented valid identification, including his Employment Authorization Document issued under the asylum category. **See Exhibit 5, Employment Authorization Card** Despite this, he was not provided with any explanation regarding the basis for his arrest or detention. No additional information was given to him.
26. Fabricio BENITEZ PENA was on his way to work at the time of his arrest. He is employed by a construction company known as Jay-Reese Contractors, where he was in his second week of employment.
27. Fabricio Javier Benitez Pena is 19 years old, graduated senior student at Austin Achieve High School. 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. See Lyons ICE Memorandum, available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>(last checked December 9, 2025).
28. 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.

VI. LEGAL FRAMEWORK: Due Process Clause

28. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
29. 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).
30. 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).
31. 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).
32. Parole under § 1182(d)(5)(A) explicitly does not constitute admission, though federal district courts increasingly recognize constitutional limits on indefinite detention. on the government's initial determination that they posed no flight risk or danger to the community. In *Lopez-Arevelo v. Ripa*, the Western District of Texas found that the government's decision to release *Lopez-Arevelo* on his own recognizance three years earlier "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk" (citing *Saravia v. Sessions*), and that detaining him without a bond hearing violated procedural due process. *See, Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668 (2025). The court reasoned that the government's prior release decision, combined with *Lopez-Arevelo's* compliance during three years at liberty, undermined arguments about dangerousness or flight risk.
33. Additionally, some courts have distinguished between different types of parole. In *De Andrade v. Moniz*, the District of Massachusetts distinguished between humanitarian parole under § 1182(d)(5)(A) and conditional parole under § 1226(a), holding that the government's use of conditional parole meant the petitioner was no longer subject to § 1225 arriving alien detention provisions and was instead entitled to discretionary detention under § 1226. *De Andrade v. Moniz*, 802 F.Supp.3d 325 (2025).
34. The Supreme Court's decision in *Zadvydas v. Davis* fundamentally altered the

constitutional landscape by recognizing that "A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court held that immigration detention statutes must be read to include implicit temporal limitations to avoid constitutional violations, establishing a presumptive six-month limit on reasonable detention.

35. The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. CONST., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The petitioner seeking habeas relief must demonstrate they are in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).
36. The detention provisions at section 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(c) was most recently amended earlier this year by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025).
37. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 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). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA, 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 section 1226(a) simply “restates” the detention authority previously found at section 1252(a)).

38. As a result of the Lyons ICE July 8, 2025, Memorandum cited above, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, to be subject to mandatory detention under section 1225(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*
39. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.
40. As a result of the Lyons ICE July 8, 2025, Memorandum cited above, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, to be subject to mandatory detention under section 1225(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*
41. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

VII. ARGUMENT

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Mr. Benitez’s arrest and detention are unlawful. A discretionary parole given as a discretionary exercise by DHS under section 1182(d)(5)(A), “shall not be regarded as an admission of the alien.” 8 U.S.C. § 1182(d)(5)(A).
39. 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).
40. 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).
41. 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)).
42. 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 stopped 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.

43. 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.
44. 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”).
45. 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).
46. 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
47. Recently, on October 10, 2025, and since after, judges in this district have rejected the Respondents argument that § 1225 applied as opposed to § 1226, and have granted relief or a temporary restraining order ordering the release of the Petitioner on bond and enjoining them from re-detaining the Petitioner without notice and a pre-deprivation hearing. See e.g., *Pereira-Verdi v. Lyons*, No. 5:25-CV-01187 (W.D. Tex. Oct. 10, 2025).
48. 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).
49. 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 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, 2025); *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 Quintero 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).

50. 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).
51. 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.
52. Indeed, according to the Parole under section 212(d)(5)(A) of the Immigration and Nationality Act, notice issued as Form I-94, Arrival-Departure Record, under 8 C.F.R. § 235.1(h)(2), 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 Exhibit C
53. 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]."
54. 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.

55. 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.
56. 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).
57. 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 of "interim parole" under section 212(d)(5)(A) of the Immigration and Nationality Act. 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.

58. Under 8 C.F.R. § 212.5(e)(2)(i), the governing regulation, the government may revoke parole “upon written notice” and either “[1] accomplishment of the purpose for which parole was authorized or [2] when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States.” Courts have found that revocation of parole requires an individualized determination. See, e.g., *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1138 (D. Or. 2025) (“Common sense suggests ... that parole given only on a case-by-case basis is to be terminated only on such a basis.” (citation omitted)); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (“[B]oth common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis[.]”); but see *Doe v. Noem*, 152 F.4th 272, 287 (1st Cir. 2025) (concluding that “[t]he statute does not require individualized termination of parole” where parole for class of immigrants had been properly terminated by government).

59. It has been the settled practice for decades for immigration officials to issue an “interim parole”, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an interim parole under section 212(d)(5)(A) of the Immigration and Nationality Act. 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.

PETITIONER’S POSITION ON MALDONADO-BAUTISTA CLASS ACTION

59. Nor does Petitioner believe the impact of *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) affects this Court’s ability to grant the immediate relief he seeks of an order of release from detention. If that litigation did affect it, Petitioner urges this Court to find that he is a class member and to defer to the district court’s statutory analysis in that case—but further submits that the declaratory judgement there does not moot his claims nor necessitate that he administratively exhaust his remedies before the immigration court. Despite the *Maldonado Bautista* decision, exhaustion remains futile. Since the decision there was issued, Respondents have instructed immigration judges not to apply the decision to class members, since the nationwide relief was only declaratory. As a result, immigration judges are continuing to deny bond to individuals like Petitioner around the country and in the San Antonio area. Moreover, even were the *Maldonado Bautista* being implemented in practice, which it is not, *Maldonado Bautista* does not dispose of Petitioner’s due-process claims nor settle the question of appropriate remedy.
60. For those reasons, Petitioner urges the Court to order his immediate release.

Maldonado Bautista

61. *Maldonado Bautista v. Santacruz* is a class-action case brought pursuant to the bond statute and regulations and the Administrative Procedure Act, not the federal habeas statute.³ On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs in the case and, on November 25, 2025, certified a

nationwide class and extended declaratory relief to the certified class. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV- 01873-SSS-BFM, --- F. Supp. 3d , 2025 WL 3289861, at *11 (C.D. Cal. Nov.20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista*, 2025 WL 3288403, at *9 (order certifying Plaintiffs-Petitioners’ proposed nationwide Bond Eligible Class, and adding “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole”). The bond class certified is defined as: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista*, 2025 WL 3288403, at *1. The second prong of this definition is subject to some dispute: class counsel believes that the relevant apprehension is the most *recent* apprehension (which for Petitioner Mister BENITEZ PENA would mean his apprehension in January 2026), but Respondents have argued that the definition excludes entrants without inspection *initially* apprehended shortly after crossing the border. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. Respondents are bound by the judgment in *Maldonado Bautista* as to class members nationwide, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).⁴

62. But since that declaratory judgment, Respondents have instructed Immigration Judges *not* to comply with the ruling and not to find entrants without inspection are eligible for bond. This appears to stem from their interpretation of the decision as non-final and improper.
63. Petitioner submits that he is a member of the *Maldonado Bautista* bond class. But he also does not think the questions of his class membership nor even the binding nature of *Maldonado Bautista* is necessary to the resolution of this case. To the extent the Court disagrees that she is a class member, or concurs with Respondents’ erroneous contention that the *Maldonado Bautista* decision does not in fact order nationwide declaratory

relief, he nonetheless urges the Court to follow the reasoning in *Maldonado Bautista*—and hundreds of other courts nationwide—as to the authority for his detention.

VIII. CLAIMS FOR RELIEF

COUNT 1

Violation of the INA

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 a discretionary humanitarian release under parole 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 his continued detention and violates the INA.
67. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.
68. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioner to the Bond Eligible Class as a whole.”
69. Respondent is party to *Maldonado Bautista* and bound by the Court’s declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

70. The United States District Court for the Central District of California on February 18, 2026, in *Bautista v. Santacruz* expressly vacated *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, as contrary to law under the Administrative Procedure Act. The Court concluded that *Yajure Hurtado* “contains an identical, incorrect interpretation of law” to the DHS Interim Guidance previously set aside, is “functionally equivalent” to that policy, and therefore warranted APA vacatur to restore the status quo and to enforce the Court’s final declaratory judgment.
71. The Order makes clear why vacatur was necessary. Respondents argued that *Yajure Hurtado* remained binding on immigration judges because it is a precedential BIA decision, but the Court found that position irreconcilable with the Court’s prior declaration of law and with the APA’s remedial framework, emphasizing that “the interpretation in *Yajure Hurtado* ... which contradicts the Court’s reasoning is no longer controlling” and that continued reliance on it impermissibly privileged an executive interpretation over a judicial one. The Court noted Respondents’ inability to identify any other legal basis that would require immigration judges to deny bond hearings if *Yajure Hurtado* were vacated, underscoring that the BIA precedent was the operative barrier to compliance with the Court’s final judgment.
72. The vacatur operates with immediate effect. The Court issued the vacatur as part of granting Petitioners’ Motion to Enforce Judgment, expressly invoking its authority to provide further relief under § 2202 based on its prior declaratory judgment and to set aside unlawful agency action under the APA in order to restore the status quo. In tandem with vacating *Yajure Hurtado*, the Court ordered class wide notice and related implementation measures to ensure that immigration adjudicators and detained class members are informed that *Yajure Hurtado*’s contrary interpretation no longer controls.
73. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner’s statutory rights under the INA and the Court’s judgment in *Maldonado Bautista*.

COUNT II

Violation of the Bond Regulations

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

75. 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.
76. 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.
77. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Due Process

78. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
79. 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).
80. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual’s release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The

government has further clarified in litigation that any change in circumstances must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom.

81. At a minimum, in order to lawfully re-arrest Mr. Benitez Pena, 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. Benitez Pena on January 31, 2026, violated these regulations, laws, and due process.
82. Petitioner has a fundamental interest in liberty and being free from official restraint.
83. 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.
84. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The *Mathews* factors are as follows: First, the private interest that will be affected by the official action; [Second], the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.
85. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner “has perhaps the most acute private interest known to personkind short of life itself: bodily freedom.” *Leal-Hernandez v. Noem*, No. 1:25- cv-02428, 2025 LX 327685, at *34 (D. Md. Aug. 24, 2025).

86. Likewise, Mr. Benitez has a high liberty interest in being free from detention due to his years in the United States, the risk of erroneously deprivation is high due to no individualized review of flight risk or danger to the community factors, and the government interest in maintaining Petitioner's detention to seek a removal order against him is low. He was released initially on parole, so DHS did not consider he was a flight risk nor a public safety danger.
87. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims.
88. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody.
89. The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:
90. First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); See *Arreola*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

Private Interests

91. Turning to the first *Mathews* factor, “‘The interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Petitioner has a substantial private interest in remaining free from detention. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner resided at liberty within the U.S. for 3 years, and during that time, he established extensive ties

and life in the community. His detention denies him that freedom.

92. Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. See *supra*; See, e.g., *Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”). Petitioner resided at liberty within the U.S. for over 3 years, and during that time, he established extensive ties and life in the community including a stable address, employment, and caring for his wife and United States citizen children.

Risk of Erroneous Deprivation

93. Second, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention, which is “nonpunitive in purpose and effect[,]” is justified when a noncitizen presents a risk of flight or danger to the community. See *Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). The government’s refusal to provide bond hearings creates a high risk of erroneous deprivation, since the process afforded in removal proceedings does “not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed.”
94. There is not sufficient evidence that petitioner is a flight risk or danger to community. Nonetheless, ICE detained him, and the government has not given any reason why it did so, other than arguing that he is subject to mandatory detention based on the government’s decision pursuant to a nation-wide policy involving a novel interpretation

of the INA. Petitioner has not been provided with any procedural safeguards to determine whether his detention is justified under the Fifth Amendment.. Given the absence of any procedural safeguards, “the probable value of additional procedural safeguards, i.e., a bond hearing, is high.” A.E., 2025 WL 1424382, at *5.

Government’s Interest

95. Third, the government’s interest in detaining petitioner without a hearing is “low.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Noem*, No. 2:25-cv-01103-DAD-AC 2025 WL 691664 at *6 (E.D. Cal. Apr 17, 2025). The government’s interest is further diminished where a person “does not have a criminal record,” *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763 at *2 (N.D. Cal. July 4, 2025), as is the case here. In immigration court, custody hearings are routine and impose a “minimal” cost. *Doe*, 2025 WL 691664, at *6. Regardless of the government’s purported interest in enforcing the immigration detention statutes, a habeas petitioner’s “constitutional interest in his liberty exists above and apart from the INA.” *Rojas*, 2025 WL 3038262 at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”)).

96. On balance, the Mathews factors show that Petitioner is entitled to immediate release as his detention is unlawful from its inception. “[T]he root requirement’ of the Due Process Clause” is ““that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest.”” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); See *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (“Applying [the Mathews] test, the Court usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty ”). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their parole finally revoked. See *Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). However, under the current Fifth circuit

Buenrostro opinion immediate release is the only mechanism for relief. Petitioner previously sought a bond hearing and the immigration judge found he lacked jurisdiction.

97. Given the absence of “evidence of urgent concerns,” this Court should conclude that immediate release is the appropriate remedy. Indeed, many district courts have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights. See, e.g., *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025). In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. See *J.U.*, 2025 WL 2772765, at *10; *Zumba*, 2025 WL 2753496 *10.

98.

Judicial Estoppel

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

100. 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.

IX. PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be 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 within three days;
- (5) Declare that Petitioner's detention is unlawful;
- (6) Grant the writ of habeas corpus ordering Respondents to release Mister BENITEZ PENA on his own recognizance, parole, or reasonable conditions of supervision;
- (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 4th of March, 2026

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Iris A. Albizu Rivera (TX Bar #24082611)

P.O. Box 202943

Austin TX 78720

Telephone: (512) 861-5638

Facsimile: (866) 584-6996

Email: iris@albizulaw.com

Attorney for Petitioner

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

I represent Petitioner, Fabricio Javier Benitez Pena, and submit this verification on his behalf.

I hereby verify that the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED 4th of March 2026



Iris A. Albizu Rivera (TX Bar #24082611)

P.O. Box 202943

Austin TX 78720

Telephone: (512) 861-5638

Facsimile: (866) 584-6996

Email: iris@albizulaw.com

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on 4th of March 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:

U.S. Attorney's Office for the Western District of Texas
Attn: Stephanie Rico | Civil Process Clerk
601 N.W. Loop 410, Suite 600 San Antonio, TX 78216

Warden, T. Don Hutto Detention Center
Charlotte Thompson
1001 Welch
Taylor, TX 76574

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 4th of March 2026



Iris A. Albizu Rivera (TX Bar #24082611)
P.O. Box 202943
Austin TX 78720
Telephone: (512) 861-5638
Facsimile: (866) 584-6996
Email: iris@albizulaw.com
Attorney for Petitioner