JUDGE LEON SCHYDLOWER

FILED
AUG 26 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FIDEL LEAL-BARRERA **Petitioner,** **v.** **TODD BLANCHE,** **United States Attorney General;** **TODD LYONS,** **Acting Director of Immigration and Customs Enforcement** **MARKWAYNE MULLIN,** **Secretary of Homeland Security;** **MARY DE ANDA-YBARRA,** **EL PASO ICE Field Office Director For Detention and Removal, U.S. Immigration and Customs Enforcement; and,** **ROGELIO SANCHEZ,** **ERO East Montana Camp, El Paso, TX;** **in their official capacities;** **Respondents.**	**Civ. No.** EP26CV2212

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner FIDEL LEAL-BARRERA (A# [redacted] files this petition for a writ of habeas requesting the Court's intervention because Respondents are wrongfully detaining him. Petitioner has been residing in the United States since March 2022. On March 2022, he entered the United States, was detained and processed with an I-220A, and released on his own

recognizance because he did not pose a threat or danger to the community. He was arrested and detained into custody by ICE on August 13, 2026, when he attended his ICE scheduled appointment. Shortly after his detention, agents of the Department of Homeland Security placed him in El Paso Service Processing Center in El Paso, Texas. At the time of filing this Habeas Corpus, Mr. LEAL-BARRERA does not have the possibility to request a bond, because he does not have an open case in Immigration Court. On July 31, 2026, an Immigration Judge in Houston ordered his removal. He timely appealed the decision to the Board of Immigration Appeals on August 18, 2026, and the appeal can take years to resolve, creating a condition of indefinite detention.

2. Under *Matter of Jonathan Javier YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), Petitioner cannot ask to be released on bond because Immigration Judges are using the interpretation given by the BIA to declare themselves without jurisdiction. He has been detained by ICE without the benefit of requesting a bond because he does not have an open case in Immigration Court and he timely appealed his removal order to the Board of Immigration Appeals, which can take years to be adjudicated, making his detention indefinite.

The detention is premised on a misreading of the Immigration and Nationality Act (INA). Respondents maintain that Mr. LEAL-BARRERA is subject to mandatory detention. This is so even though he entered on March 2022, was detained, processed and later released on an I-220A, released on his own recognizance because he did not pose any threat or danger to the community. Now, because the Immigration Judges are relying on a twisted interpretation of Yajure Hurtado, the petitioner does not qualify for bond, plus the appeal, make his detention indefinite.

Respondent's interpretation and application of 8 U.S.C. § 1225(b)(2) is wrong and violates Mr. LEAL-BARRERA's rights under the Due Process Clause, the INA, and the Administrative Procedure Act (APA). Petitioner seeks a writ from this Court ordering his release or in the alternative, that Respondents afford him a bond hearing.

CUSTODY

3. Petitioner is in the physical custody of Respondent MARY DE ANDA-YBARRA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent ROGELIO SANCHEZ, Warden of ERO Camp East Montana, El Paso, Texas. At the time of the filing of this petition, Petitioner is detained at El Paso Service Processing Center in El Paso, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

4. The Court also has jurisdiction over this petition under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, C1. 2 of the United States Constitution ("Suspension Clause").

5. Venue properly lies within the Western District of Texas, El Paso Division because all of the events or omissions giving rise to this action and/or illegal detention occurred in the district. 28 U.S.C. § 1391(e)(1)(B).

PARTIES

6. Petitioner FIDEL LEAL-BARRERA is a national and citizen of Cuba. He is currently detained at El Paso Service Processing Center, El Paso, Texas, located at 8915 Montana Avenue, El Paso, Texas 79925.

7. Respondent TODD BLANCHE is the Attorney General of the United States and the most senior official in the United States Department of Justice ("DOJ"). He has the authority

to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"). Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

8. Respondent TODD LYONS is Acting Director of Immigration and Customs Enforcement. Respondent's address is 500 12th St SW Washington, DC 20536

9. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Respondent is named in her official capacity. His address is Department of Homeland Security, 207 Martin Luther King Jr. Ave., SE, Washington, D.C. 20528.

10. Respondent MARY DE ANDA-YBARRA is the Field Office Director for Detention and Removal (ERO), ICE, DHS, for the El Paso, Texas ERO Office with overseeing capacity over El Paso Service Processing Center, El Paso, Texas. She is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of El Paso. Pursuant to Respondent's orders, Petitioner remains detained. Respondent is sued in her official capacity. Respondent can be served with process at U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisory, 500 12th St., SW, Mail Stop 5900, Washington, DC 20536-5900.

11. Respondent ROGELIO SANCHEZ is the Warden of El Paso Service Processing Center in El Paso, Texas. He is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas, El Paso Division.

Respondent is named in his official capacity. Respondent Woodall can be served with process at 8915 Montana Avenue, El Paso, Texas 79925.

FACTS

12. On or about March 2022, Mr. LEAL-BARRERA entered the United States, was detained, processed and released with an I-220A, under his own recognizance because he did not pose any threat or danger to the community.

13. Mr. LEAL-BARRERA was issued Notice to Appear, tried his asylum case in Immigration Court, the Immigration Judge issued a removal order which he timely appealed to the Board of Immigration Appeals. He cannot request a bond because he does not have an open case in Immigration Court, but even if he did, Immigration Judges are declaring without jurisdiction based on the twisted interpretation of Matter of Yahure-Hurtado, making the Petitioner's detention indefinite.

14. Before his detention, he resided in [redacted] Midland, Texas [redacted]. He is married and was the economic support for his family.

15. On or about August 13, 2026, ICE took custody of Mr. LEAL-BARRERA when he attended his scheduled ICE appointment. After detaining him, he was transferred to El Paso Service Processing Center in El Paso, Texas. Now, Mr. LEAL-BARRERA has a pending appeal of his removal order in the Board of Immigration Appeals but does not have the possibility of obtaining a bond because he does not have an open case in Immigration Court, making his detention indefinite.

16. Mr. LEAL-BARRERA was detained although he committed no crime. Mr. LEAL-BARRERA has no criminal record, nor convictions, and could not request a bond with the Immigration Court because he does not have an open case, making his detention indefinite.

17. Mr. LEAL-BARRERA is subject to the wrong and twisted interpretation of Yajure Hurtado given by the BIA and Immigration Judges are using it to declare without jurisdiction.

18. Mr. LEAL-BARRERA remains detained. There continues to be no evidence in the record to indicate that Mr. LEAL-BARRERA is a danger to the community or a flight risk, or that allowing him to be released would present a danger to public safety.

19. Mr. LEAL-BARRERA maintains that the BIA erred in concluding that *Matter of Yajure Hurtado* and *Matter of Q. Li* bar the immigration court from hearing and granting him request for bond, especially when authorities did not press charges against him and there is no deportation order against him.

20. Mr. LEAL-BARRERA has no other remedy at law but to seek relief from this Court.

LEGAL FRAMEWORK

DHS'S DISCRETIONARY AUTHORITY AND PROCEDURAL ELECTIONS

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

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

23. 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).

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

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

26. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

27. Following the enactment of the IIRIRA, the Department of Justice drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

28. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond or their own recognizance. They also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior

practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

29. When a noncitizen is detained upon arrival in the United States, DHS elects whether to exercise its arrest authority under § 1226(a) or § 1225(b). This procedural election constrains the noncitizen's subsequent relief options and creates binding legal consequences. When DHS chooses to detain and release someone under § 1226(a), the agency must follow that statute's detention and release procedures.

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

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

32. *Matter of Q. Li* requires mandatory detention only if the DHS elects to detain under § 1225(b) persons arriving in the U.S. for expedited removal proceedings or regular removal proceedings. The decision, however, creates no authority for applying mandatory detention where:

(a) DHS elected alternative processing under 8 U.S.C. § 1226(a), or (b) DHS failed to complete formal requirements necessary to invoke 8 U.S.C. § 1225(b).

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

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

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

36. The BIA held that all persons who are not inspected or admitted, whether arriving in the United States or not and regardless of the length of residence in this country, remained

"applicants for admission" and subject to § 1225(b)'s mandatory detention provision if placed in removal proceedings. As a result, immigration judges all over the country are now denying bond to all noncitizens who entered without inspection and admission.

CAUSES OF ACTION

COUNT I PROCEDURAL DUE PROCESS VIOLATION – DENIAL OF A BOND HEARING

37. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. That provision applies to noncitizens who "arrive" in the United States. Application of the new interpretation of § 1225(a)(1) and (b)(2) to persons who are not "arriving" contradicts the plain language of the statute. By denying the Petitioner fair bond hearing as required by § 1226(a), because he has no criminal record and appealed his deportation order, and has no open case in Immigration Court, Respondents create a condition of indefinite detention denying his procedural rights guaranteed by the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

COUNT II

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

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

39. The Due Process Clause prohibits the Federal Government and its agents from depriving persons of life, liberty and property without observing certain procedures. The right to fair notice is essential to procedural due process. Retroactive application of administrative decisions implicates "due process interests in fair notice, reasonable reliance, and settled

expectations." *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015)).

40. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado* and *Matter of Q. Li*, *supra*. Prior to these, Respondents interpreted and applied the INA detention and release scheme to empower Respondents to detain and release or afford a bond hearing before an immigration judge to most people who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

41. As recently as 2023, the BIA interpreted the INA to empower the DHS to choose whether to detain and release persons who entered without inspection either under § 1226(a) or § 1225(b). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023). There, the noncitizens entered without inspection or admission and were detained shortly after entering the United States. The DHS detained and released them under § 1226(a). The noncitizens argued that their release constituted a parole because their detention (and release) could only have been accomplished through § 1225(b). The BIA firmly rejected that reading of the statute.

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

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

Id. at 748-49.

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

44. In ..., Mr. LEAL-BARRERA entered the United States, was detained, processed and released with an I-220A, on his own recognizance because did not pose a threat or danger to the community. On August 13, 2026, ICE detained him after he attended his scheduled ICE appointment. The Petitioner does not have the possibility to request a bond because he does not have an open case in Immigration Court, he timely appealed his deportation order and t even though he does not have criminal history, faces an indefinite detention.

45. Respondents seek to turn back the clock and impose a different legal regime with different circumstances, one where Mr. LEAL-BARRERA is subject to mandatory detention and has no right to be released.

46. *Matter of Yajure Hurtado* and *Matter of Q.Li*, as interpreted by the immigration judge and Respondents, is a sea change in immigration law. Retroactive application of this new interpretation of the law to Petitioner's case, however, is unfair and unlawful. Being detained after timely appealed his removal order and with no possibility to request a bond and facing indefinite detention is equally unfair and illegal.

47. Retroactivity is greatly disfavored in the law. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The Supreme Court has been emphatic that this aversion to retroactive rulemaking

> is deeply rooted in our jurisprudence and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.

Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994) (internal quotation and citations omitted).

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

> "The leading case on administrative retroactivity' instructs that any disadvantages from the 'retroactive effects' of deciding a 'case of first impression . . . must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.' To apply that instruction, this court 'balances the ills of retroactivity against the disadvantages of prospectivity.' If that mischief of prospectivity is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.'

Monteon-Camargo v. Barr, 918 F.3d 423, 430 (5th Cir. 2019) (internal citations omitted).

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

50. The change here is significant. Mr. LEAL-BARRERA's right to be free from detention is eliminated and he is now subject to mandatory detention.

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

COUNT III
IMMIGRATION AND NATIONALITY ACT – DENIAL OF BOND HEARING

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

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

54. 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 "despite 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. In this case, the Petitioner Mr. LEAL-BARRERA arrived to the United States, was detained, processed and released on his own recognizance into the United States, so he is entitled to a fair process or to be released from custody because he timely appealed his deportation order to the Board of Immigration Appeals in a timely manner and he has no criminal record.

55. To date, numerous courts have ruled in favor of noncitizens challenging the denial of a bond hearing based on *Matter of Yajure Hurtado* and Respondents' interpretation of § 1225(b).

Valencia Zapata v. Kaiser, No. 25-CV-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Roa et al. v. Albarran et al.*, No. 25-CV-07802-RS, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall et. Al.*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, (W.D. Ky. Sept. 19, 2025); *Chafla et al., v. Scott et al.*, No. 2:25-CV-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Vazquez v. Feeley et al.*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025). In the present case, Petitioner has been in the United States over 2.5 years, since 2023.

56. The unlawful application of § 1225(b)(2) and or 1226(a) to Petitioner mandates her continued detention and violates the INA and its implementing regulations, 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

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

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

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

59. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

60. Although Petitioner was detained, processed, and released on his own recognizance into the United States when he entered, after being detained pursuant to 8 U.S.C. § 1225(b), that statutory authority does not apply to him and no longer justifies his continued detention. Petitioner was processed and released on his own recognizance, and he timely appealed his removal order. As a result, Petitioner is not subject to mandatory detention under § 1225(b). His continued detention has therefore become discretionary in nature and is governed by the Due Process Clause of the Fifth Amendment. Where, as here, case the Petitioner timely appealed his removal order, continued custody is constitutionally impermissible absent an individualized determination that detention is necessary to serve a legitimate governmental purpose. Accordingly, Petitioner is entitled to immediate release or, at a minimum, a prompt individualized fair custody hearing before a neutral decision-maker.

61. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Petitioner who is not arriving in the United States, was detained, processed and released on his own recognizance and now faces indefinite detention.

62. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

63. The application of above-mentioned sections and dispositions of law to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2). Further, their refusal to provide him with a bond hearing violates § 706(1) of the APA.

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

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

65. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

66. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Prior to these BIA decisions, Respondents interpreted and applied the INA detention and release scheme to empower Respondents to detain and release or afford a bond hearing before an immigration judge to most people who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

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

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

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

69. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

70. The Executive Office for Immigration Review (EOIR) is an adjudicatory body that functions much like the federal court system. The immigration court renders decisions on legal issues concerning a noncitizens removability, eligibility for relief and fitness for bond. The BIA reviews decisions and from time-to-time issues precedential decisions.

71. The parties expect the BIA and the immigration courts to apply faithfully Supreme Court, circuit court, and BIA precedent as well as decision-making principles that ensure consistency and predictability in deciding cases. The rule of orderliness is one such principle that circuit courts and district courts apply. Under the rule of orderliness, "one panel of [the circuit] court may not overturn another panel's decision, absent an intervening change in law, such as by a statutory amendment, or the Supreme Court, or [the] en banc court." *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016). This rule is also applied by the district courts. *See Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 575-76 (W.D. Tex. 2019).

72. The EOIR has acknowledged that it does not abide by the rule of orderliness. The EOIR calls it the "prior-panel-precedent" rule. *See* EOIR Policy Memoranda (PM) 25-34 (July 3, 2025) found at https://www.justice.gov/eoir/media/1406956/dl?inline. The EOIR acknowledges that the functional equivalent of the rule of orderliness exists in its regulations and in narrow circumstances, one panel can overrule an earlier panel if a majority of the permanent Board members vote to reject the earlier decision. 8 C.F.R. § 1003.1(g)(3). Nevertheless, there is no rule or guidance for immigration courts for resolving conflicts between prior BIA precedents or which BIA precedent to follow. EOIR PM 25-34 at 2.

73. Instead, EOIR instructs immigration judges to essentially "try their best." *Id.* at 4. "Until the Board or the Attorney General resolves any conflicts in Board precedent… or adopts a clear rule regarding which precedent should control when there is a conflict, Immigration Judges

will have to apply their best judgment and traditional legal tools or methods of analysis in order to adjudicate cases before them where Board precedent is in conflict." *Id.* The rule of orderliness thus does not control.

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

75. The disregard of the rule of orderliness and application of § 1225(b)(2) to Petitioner are agency actions that are arbitrary, capricious, and not in accordance with law, and as such, they violate the APA. *See* 5 U.S.C. § 706(1) and (2).

PRAYER FOR RELIEF

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

1. Issue an Order declaring that Mr. LEAL-BARRERA is detained under 8 U.S.C. § 1226(a);
2. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) Mr. LEAL-BARRERA is unlawful, arbitrary, capricious and contrary to law;
3. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Mr. LEAL-BARRERA violates the INA;
4. Issue an Order declaring that application of 8 U.S.C. § 1225(b)(2) to Mr. LEAL-BARRERA violates his due process rights;
5. Issue an order instructing Respondents to release Petitioner immediately.
6. Grant any other relief which this Court deems just and proper.

Dated: August 20, 2026

VERIFICATION OF PETITIONER

I, Fidel Leal-Barrera, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

FIDEL LEAL-BARRERA
PETITIONER

Respectfully submitted,



FIDEL LEAL-BARRERA
PETITIONER