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UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

AYSLLAN MONTEIRO SOARES Petitioner, v. E.L. TATUM, Warden of FCI Berlin; PATRICIA HYDE, Acting Field Office Director, U.S. Customs and Immigration, Enforcement and Removals Operations, Boston; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of U.S. Department of Homeland Security; Respondents.	Case No. 1:25-cv-313-SE-TSM **RESPONSE TO MOTION TO DISMISS OR ALTERNATIVELY FOR SUMMARY JUDGMENT** **ORAL ARGUMENT REQUESTED**

1. Aysllan Monteiro Soares (hereinafter referred to as "Aysllan," "Mr. Monteiro Soares," or "Petitioner") responds to the Motion to Dismiss or Alternatively for Summary Judgment filed by Petitioners on September 4, 2025. Doc. 6.

INTRODUCTION

2. Petitioner, Aysllan Monteiro Soares, **has been detained since June 28, 2025 (102 days)**, despite having an order from the immigration court since July 14, 2025, ordering his release upon payment of bond.

3. In order to prevent Petitioner from being released, Respondents have filed an appeal with the Board of Immigration Appeals ("BIA") that automatically stayed the Immigration Judge's decision, based on a new interpretation that the Immigration Court did not have jurisdiction to redetermine his custody.

4. The appeal is still pending before the BIA, which is part of the Executive Office for Immigration Review ("EOIR"). The EOIR operates under the Department of Justice (DOJ)'s authority, and has supported DHS' interpretation of the statute to deny the Immigration Court's jurisdiction over bond hearings for most noncitizens. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

5. The interpretation set by the DOJ and DHS has been strongly rejected in several federal court rulings.[1] By accepting Respondents' Motion to Dismiss, this Court would force

[1] *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *also Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also, e.g.*, *Rodriguez Vazquez v. Bostock*, — F. Supp. 3d —, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) (holding same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *dos Santos v. Lyons*, 2025 WL 2370988 (D. Mass Aug. 14, 2025) (same); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025) (granting preliminary relief after positively weighing likelihood of success), *report and recommendation adopted sub nom. O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on *ex parte* motion for temporary restraining order after finding likelihood of success); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *Rodrigues De Oliveira v. Joyce*, 2025 WL 1826118 (D. Me. July 2, 2025) (recognizing disagreement as to the detention statutes and granting habeas petition on due process grounds). *But see Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025).

Petitioner to remain detained and refile a habeas petition once his appeal is denied. In the meantime, Petitioner would be at risk of receiving a final removal order and being removed from the country. Respondents' motion attempts to perpetuate an egregious violation of Petitioner's due process rights, which this Court should not accept.

ARGUMENTS

I. Petitioner is Neither an Applicant for Admission, Nor Subject to Mandatory Detention

6. Respondents assert that 8 C.F.R. § 1003.19(i)(2), which automatically stays Petitioner's release on bond for a maximum of 90 days, is statutorily authorized by 8 U.S.C. § 1225(b)(2) – requiring detention for Petitioner throughout his entire removal proceedings. Doc. 6.

7. Respondents believe that Petitioner is subject to a mandatory detention requirement because he qualifies as an "applicant for admission."[2] In their view, because Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," his detention is mandatory, and he is thus properly detained. Doc. 6 (citing 8 U.S.C. § 1225(b)(2)(A)).

8. This position sustained by Respondents is contradictory to ***all*** the documents DHS created and submitted in Petitioner's removal proceedings.

9. The Notice to Appear issued to Petitioner charges him under Immigration and Nationality Act 212(a)(6)(A)(i), as an "alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." Ex. A. The Notice to Appear does not classify

2 An "applicant for admission" is a non-citizen present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1).

Petitioner as an arriving alien, but rather as an "alien present in the United States who has not been admitted or paroled." *Id.*

10. Similarly, the issued Form I-200, Warrant for Arrest of Alien, authorizes the arrest of Petitioner under Sections 236 and 287 of the INA, not under section 235. Ex. B.

11. Lastly, the issued Form I-286, Notice of Custody Determination, explicitly states that Petitioner was detained "pursuant to Section 236 of the Immigration and Nationality Act." Ex. C.

12. Respondents are raising an argument that *all* inadmissible noncitizens present in the United States must be detained pending the finality of their removal proceedings, regardless of any prior release with the government's acquiescence during the pendency of their removal proceedings.

13. The argument sustained by Respondents is based on a novel interpretation of the law by DHS and DOJ, which violates the Fifth Amendment, and is also contrary "to the plain text of the statute and the overall statutory scheme." *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *see also Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez Vazquez v. Bostock*, — F. Supp. 3d —, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) (holding same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *dos Santos v. Lyons*, 2025 WL 2370988 (D. Mass Aug. 14, 2025)

(same); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025) (granting preliminary relief after positively weighing likelihood of success), *report and recommendation adopted sub nom. O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on *ex parte* motion for temporary restraining order after finding likelihood of success); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *Rodrigues De Oliveira v. Joyce*, 2025 WL 1826118 (D. Me. July 2, 2025) (recognizing disagreement as to the detention statutes and granting habeas petition on due process grounds). *But see Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025).

14. This position would render significant portions of 8 U.S.C. § 1226 meaningless, violating one of the most basic canons governing the interpretation of federal statutes, which provides that a statute "should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant …" *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted); *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023). "This principle ... applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

15. Under the proposed interpretation, § 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an enumerated crime, including those "present in the United States without being admitted or paroled," would be meaningless

and superfluous because "all noncitizens who have not been admitted" would already be governed by § 1225's mandatory detention authority. *See Shulman*, 58 F.4th at 410-11. *See also Corley*, 556 U.S. at 314, n.5 (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which includes observing the "antisuperflousness" canon).

16. The Supreme Court's decision in *Jennings v. Rodriguez*, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) likewise supports harmonizing §§ 1225 and 1226 in a manner contrary to Respondents' position. The Court described § 1225 as part of the process that "generally begins 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*, at 836. In contrast, the Court explained that § 1226 governs "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including those "who were inadmissible at the time of entry." *Id.* at 837. The Court summarized the distinction succinctly: "U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 838.

17. The legislative history of § 1226 reinforces that it governs the detention of noncitizens—like Petitioner—who were found in the United States after not having applied for admission. Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), the predecessor to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States. *See* 8

U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. INS*, 180 F.3d 992, 994 (9th Cir. 1999) (noting that a "deportation hearing" was the "usual means" of proceeding against a noncitizen physically present in the United States). Like § 1226(a), the predecessor statute authorized discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994).

18. When Congress enacted IIRIRA, it expressly stated that § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210. Because noncitizens in Petitioner's position were entitled to discretionary detention under the predecessor statute, and because Congress confirmed that IIRIRA did not narrow that authority, § 1226 should likewise be interpreted to allow discretionary release on bond for similarly situated noncitizens.

19. Respondents' interpretation of § 1226 is also undermined by DHS' longstanding practice of treating noncitizens taken into custody while residing in the United States—including those who were initially found inadmissible upon inspection but released into the country with the government's acquiescence and who have committed no crimes since—as detained under § 1226(a). *See Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). "[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." *Id.* (internal quotations omitted, second brackets in original). The Supreme Court has further recognized that deference to executive interpretations of federal statutes is "especially

warranted when [the interpretation] was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.*

20. This principle is particularly compelling here, where an individual who has resided in the United States with the government's acquiescence for years is subjected to an infringement of liberty interests—discussed *infra*—solely due to a new administration seeking to expedite removal of non-criminal noncitizens under discretionary conditions.

21. Indeed, *mandatory detention for all applicants has only been the official policy of DHS since July 8, 2025,* when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had "revisited its legal position."[3]

22. DHS' selective reading of the statute violates the rule against surplusage and undermines the plain meaning of the text. *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("'[E]very clause and word of a statute' should have meaning.") (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)); *United States v. Abbas*, 100 F.4th 267, 283 (1st Cir. 2024) ("'We begin, as always, with the text of the statute' and read it 'according to its plain meaning at the time of enactment'" (quoting *United States v. Winczuk*, 67 F.4th 11, 16 (1st Cir. 2023), cert. denied, 145 S. Ct. 319 (2024)). The statutory phrase "seeking admission" is not explicitly defined but necessarily conveys a present-tense, ongoing action. *See Matter of M-D-C-V-*, 28 I.&N. Dec. 18, 23 (B.I.A. 2020) ("The 'use of the present progressive,

[3] The existence of the memorandum was first reported by the Washington Post on July 14, 2025 (*ICE declares millions of undocumented immigrants ineligible for bond hearings*, Maria Sacchetti & Carol D. Leonnig, available at https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/).

like use of the present participle, denotes an ongoing process,'" (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011–12 (9th Cir. 2020))).

II. Respondents' Interpretation of *Jennings* Stands in Contrast to Caselaw and Statutory Language

23. According to Respondents, the Supreme Court has confirmed that a non-citizen who is present but was never admitted is deemed "an applicant for admission" and that "detention must continue…until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. Doc. 6 (citing *Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018)).

24. This reinterpretation of *Jennings* was made only a few months ago. *See Diaz Martinez*, 2025 WL 2084238, at *4–5 & nn.9–11 (D. Mass. July 24, 2025). Furthermore, it is contrary to "the agency's own implementing regulations, *id.* at 6 & nn.14, 16; its published guidance, *id.* at 8; the decisions of its immigration judges (until very recently), *id.*; decades of practice, *id.* at 4 & nn.9–11; the Supreme Court's gloss on the statutory scheme, *id.* at 8; and the overall logic of our immigration system, *id.*" *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (citing *Diaz Martinez*, 2025 WL 2084238, at *4–5 & nn.9–11 (D. Mass. July 24, 2025).

25. Respondents' interpretation of *Jennings* ignores important parts of the decision where the Supreme Court makes a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. The opinion states "§ 1226 applies to aliens already present in the United States" and "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings*, at

847. As long as the detained alien is not covered by § 1226(c), the Attorney General 'may release' the alien on 'bond ... or conditional parole.' § 1226(a). Aliens detained under § 1226(a) receive bond hearings at the outset of detention. See 8 CFR §§ 236.1(d)(1), 1236.1(d)(1)." *Jennings*, at 847.

26. This understanding has long been supported by the Supreme Court, indicating that noncitizens have fewer protections at their initial entry. In *Zadvydas v. Davis*, the Court stated that "certain constitutional protections available to persons inside the United States are unavailable to aliens **outside** of our geographical borders." 533 U.S. 678, 693 (2001) (emphasis added). "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.'" *Id.* at 690.

27. In *Shaughnessy v. United States ex rel. Mezei,* the Court again ratified that the different protections are for those "on the threshold of initial entry." 345 U.S. 206, 212 (1953). The Supreme Court stated that "an alien on the threshold of initial entry stands on a different footing" than a noncitizen who has effected an entry into the United States, and that "once passed through our gates, 'even illegally,' noncitizens may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.*

28. The Supreme Court has made similar distinctions in other cases, such as *Nishimura Ekiu*, where the Court clarified that arriving aliens are only individuals who have never been to the U.S. 142 U.S. 651 (1892) ("[they are] foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even

been admitted into the country pursuant to law"). In *United States v. Flores-Montano,* the Supreme Court reiterated that the power over immigration is "at its zenith at the **international border**." 541 U.S. 149, 152–53 (2004) (emphasis added).

29. Therefore, there is no question that the Supreme Court has long recognized a distinction between those who are arrested at the border trying to enter the country and those arrested while in the country.

III. The Temporary Nature of Petitioner's Detention has been nullified by the BIA

30. In their preceding Motion, Respondents also noted that the ruling in *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) was predicated upon an indefinite, mandatory stay, and that the regulation had since amended to permit an automatic stay of up to only 90 days. Doc. 6 (citing *Altayar v. Lynch*, No. CV1602479PHXGMSJZB, 2016 WL 7383340, at *6 (D. Ariz. Nov. 23, 2016), report and recommendation adopted, No. CV-16-02479-PHXGMS, 2016 WL 7373353 (D. Ariz. Dec. 20, 2016); *see also Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1032 (E.D. Wis.), aff'd sub nom. *Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007) (comparing two versions of the regulation and rejecting contention that the current version violates a detainee's due process rights, declining to follow *Zavala*)).

31. First, Congress has carefully delineated the scope of custody and release authority in the Immigration and Nationality Act ("INA"). Section 236(a) of the INA, codified at **8 U.S.C. § 1226(a)**, authorizes the Attorney General to arrest and detain noncitizens pending removal proceedings, and to release them on bond or conditional parole. That same statute provides Immigration Judges ("IJs") with jurisdiction to conduct custody

redetermination hearings. See 8 U.S.C. § 1226(a); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

32. Notably, **Congress did not authorize DHS to override or stay an IJ's release order.** The INA is silent on any mechanism permitting the Department of Homeland Security, as the prosecuting agency, to suspend an adjudicator's custody decision. Instead, the automatic stay procedure arises solely from regulation, **8 C.F.R. § 1003.19(i)(2)**.

33. During immigration proceedings, including custody redeterminations, DHS is one of the parties to the process, and the use of Form EOIR-43, as currently determined by the regulations, allows one of the parties to simply ignore the Immigration Court's decision while the appeal is pending, imposing a significant burden on the other party – in this case, Petitioner.

34. Because this regulatory scheme finds no basis in the statute, it is ultra vires and unlawful under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(C). *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987) (agency regulations cannot "trump" Congress's clear statutory text). The INA assigns authority to Immigration Judges to make bond determinations; it does not permit DHS, a party to the proceedings, to veto those determinations.

35. Moreover, the regulation violates the **Due Process Clause of the Fifth Amendment**. The automatic stay deprives noncitizens of liberty by allowing the government to nullify a judicial officer's individualized custody decision without any neutral review. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("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."). Permitting the prosecuting

agency to suspend release ordered by a neutral adjudicator collapses the distinction between prosecutor and judge, contrary to fundamental due process principles. *See Tumey v. Ohio*, 273 U.S. 510, 522 (1927).

36. Even if the Court were to accept the regulations as not conflicting with the Fifth Amendment and the INA, the use of discretionary authority is not absolute by any department, especially whenever there is reason to believe that it was used to deliberately undermine the adjudicator's decision. In *INS v. St. Cyr,* the Supreme Court decided that federal courts can review discretionary and statutory determinations in immigration proceedings when Congress has not explicitly removed jurisdiction. *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001). The fact that the regulation itself has placed certain limits on DHS's power to automatically stay an Immigration Judge's decision to release someone upon the payment of bond (by establishing the $10,000.00 bond value, for example) is proof that this discretion is not to be abused.

37. Here, Respondents clearly used the automatic stay provision to support their new interpretation of the law that strips thousands, if not millions, of noncitizens of due process rights, by denying them an opportunity to have their custody reviewed by an impartial adjudicator – the Immigration Judge.

38. However, even if the Court understands that DHS was within its authority to automatically stay the order from the Immigration Judge ordering Petitioner's release upon the payment of bond, the likelihood of Petitioner's detention remaining temporary has been drastically altered by the Board of Immigration Appeals' (BIA) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA

proclaimed that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond – reversing longstanding precedent.[4]

39. Previously, the BIA's position was that "in the run-of-the-mill case of a person who entered without inspection, the immigration judge had power to grant release on bond under INA § 236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk." *Id.* This position was reiterated by the BIA in a precedential decision approximately three months ago. *Id.* (citing *Matter of Gairat Akhmedov*, 29 I&N Dec. 166 (BIA 2025)).

40. In *Yajure Hurtado*, the BIA announced that people who entered the United States without being "admitted" by an immigration officer are "applicants for admission," and therefore the border detention statute, INA § 235(b)(2), applies when they are in removal proceedings. *Yajure Hurtado*, at 220.

41. The impact of the BIA's ruling in *Yajure Hurtado* has been immediate and broad:

> [I]n immigration courts across the country, thousands of detained immigrants who were eligible for a bond hearing last week now have no recourse to be released during their immigration court proceedings unless they file—and win—a federal lawsuit...[5]

42. Even before *Yajure Hurtado*, dozens of federal district courts rejected this re-interpretation of the law – including a court in the same federal district where Mr.

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[4] *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants*, Rebecca Cassler, American Immigration Council, Sept. 12, 2025, available at https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/.

5 *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants*, *supra* note 3.

Yajure Hurtado's immigration proceedings are taking place. *Id.* (citing *Rodriguez Vazquez v. Bostock*, 3:25-cv-05240, (W.D. Wash. Apr 24, 2025) ECF No. 29). Subsequent to *Yajure Hurtado*, multiple federal courts have reiterated established law: "§ 235(b)(2) applies to people coming in at U.S. borders and ports of entry, while § 236(a) applies to people already in the country." *Id.* (citing *Pizarro Reyes v. Immigration and Customs Enforcement, Acting Director of Detroit Field Office, Enforcement and Removal Operations*, 2:25-cv-12546, (E.D. Mich. Sep 09, 2025) ECF No. 12; *Moises Salomon Zaragoza Mosqueda v. Kristi Noem*, 5:25-cv-02304, (C.D. Cal. Sep 08, 2025) ECF No. 11; *Sampiao v. Hyde*, 1:25-cv-11981, (D. Mass. Sep 09, 2025) ECF No. 27).

43. In this new environment, the "unstated goal" of the administration with detention is evident – "to coerce immigrants to abandon the legal process." *Id.* The BIA, an agency housed within the Department of Justice, has fired each of its Biden appointees. *Id.* All 41 precedential decisions issued by the BIA since the inauguration of the current administration have been decided in its favor, save one where the government won only in large part. *Id.*

44. Given these circumstances, it is highly likely that the BIA will find in favor of the Department of Homeland Security and keep Petitioner detained throughout the duration of his removal proceedings. Such an outcome would essentially render Petitioner's detention indefinite.

Respectfully submitted,

Timothy Caron

Timothy G. Caron
Counsel for Petitioner

Dated: September 18, 2025

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

I represent Petitioner Aysllan Monteiro Soares, and I submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing document are true and correct to the best of my knowledge.

Dated this 18th day of September, 2025.

Timothy Caron
Timothy G. Caron

CERTIFICATE OF SERVICE

I, Timothy Caron, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: September 18, 2025

Timothy Caron
Timothy Caron, Esq.