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8 Office: (619) 231-3991  
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10 Attorneys for Petitioner,  
Fidel Arias Torres

11  
12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**  
14

15 FIDEL ARIAS TORRES, ) Case No. 3:25-cv-02457-BAS-MSB  
16 Petitioner, )  
17 v. )  
18 PAM BONDI, Attorney General of the )  
United States, in her official capacity; )  
KRISTI NOEM, Secretary of the U.S. )  
Department of Homeland Security, in her )  
official capacity; EXECUTIVE OFFICE )  
FOR IMMIGRATION REVIEW; TODD )  
LYONS, Acting Director of U.S. )  
Immigration and Customs Enforcement, )  
in his official capacity; PATRICK )  
DIVVER, ICE Field Office Director for )  
San Diego County, in his official capacity; )  
WARDEN OF OTAY MESA )  
DETENTION CENTER. )  
Respondents. )  
\_\_\_\_\_  
)

1 Petitioner Fidel Arias Torres, by and through his attorneys, hereby move  
2 this Court to reopen the case, to reconsider the denial of temporary restraining  
3 order and Preliminary Injunction, and for leave to file a Second Amended Petition.  
4

5 The basis of this motion is that the Court previously found it lacked  
6 jurisdiction because the July 8, 2025 DHS memorandum had not been applied to  
7 Petitioner and no final BIA decision had issued doing so.

8 The jurisdictional basis for the Court's prior denial has now been cured by  
9 the BIA's October 14, 2025 decision, which applied *Matter of Yajure Hurtado*,  
10 sustained DHS's appeal, and denied bond pursuant to DHS's unlawful categorical  
11 policy.

13 Petitioner further requests that the Court reset the briefing and hearing  
14 schedule. At the prior hearing, the Court indicated that it would reach the merits of  
15 Petitioner's claims if the BIA had issued its decision.

16 This Court denied the Petition and TRO without prejudice on the ground that  
17 the July 8, 2025 DHS memorandum had not yet been applied to Petitioner. At the  
18 hearing, the Court indicated that if Petitioner obtained the BIA's decision applying  
20 the policy, it would reach the merits.

21 Petitioner now seeks reconsideration because, on October 14, 2025, the BIA  
22 issued a decision sustaining DHS's appeal and explicitly applying *Matter of Yajure*  
23 *Hurtado*, thereby enforcing the categorical no-bond policy against Petitioner.  
24 (Exhibit I to the Second Amended Petition, attached hereto).

26 At the time of the hearing, Petitioner was unaware of the ruling because  
27 Petitioner's counsel was not provided timely electronic notice of the decision. This  
28 new evidence eliminates the basis for dismissal and establishes jurisdiction under

1 28 U.S.C. § 2241. Reconsidering or reopening this case will promote judicial  
2 economy and avoid duplicative proceedings.

3 Petitioner respectfully clarifies that the original Petition did not intend to  
4 condition the Court’s jurisdiction or requested relief on the individualized  
5 application of the July 8, 2025 DHS memorandum. Rather, the Petition challenged  
6 a categorical detention policy—a policy that predated the July memorandum, was  
7 memorialized in it, and was argued by DHS before the Immigration Judge as the  
8 sole basis for opposing bond eligibility, and later asserted as the exclusive basis for  
9 appeal to the BIA.

10  
11 The July 8 memorandum was cited in the pleadings solely as evidence of the  
12 categorical policy at issue and the futility of the then-pending BIA appeal—not as  
13 the source of Petitioner’s injury.

14  
15 That injury arises from DHS’s unlawful policy of classifying all long-term  
16 residents who entered without inspection as “arriving aliens” under INA §  
17 235(b)(2), thereby categorically denying them access to release under § 236(a).

18  
19 The Immigration Judge in this case expressly rejected that position, found  
20 that § 235(b)(2) did not apply to Petitioner, and ordered his release on bond under  
21 § 236(a). DHS appealed solely on the basis of its categorical policy.

22  
23 That same policy has now been expressly applied to Petitioner through the  
24 BIA’s October 14, 2025 decision sustaining DHS’s appeal and citing *Matter of*  
25 *Yajure Hurtado* as controlling authority. This development eliminates the  
26 jurisdictional basis for the Court’s prior denial and squarely presents the merits for  
27 review.

28 Counsel has conferred with counsel for Respondent, who indicated via email

1 that Respondent does not oppose notifying the Court of the BIA decision or leave  
2 to file a Second Amended Petition.

3 Petitioner therefore moves this Court to reopen the case, reconsider its prior  
4 denial of injunctive relief, and grant leave to file a Second Amended Petition. The  
5 amendment clarifies that the challenged action is the categorical policy denying  
6 bond and release under INA § 236(a) to long-term residents who entered without  
7 inspection, not the July 8, 2025 DHS memorandum as an operative fact.

8 Reopening and allowing the amended petition to proceed will permit the  
9 Court to reach the merits and prevent Petitioner's unlawful detention from  
10 continuing. In the interests of justice, judicial economy, and fairness, Petitioner  
11 respectfully requests that the Court reset the hearing on the temporary restraining  
12 order and petition on an expedited basis.

13 Dated: October 28, 2025

14 Respectfully submitted,

15 /s/ Pedro De Lara, Jr.

16 Pedro De Lara, Jr.

17 /s/LeRoy George Siddell

18 LeRoy George Siddel

19 Attorneys for Petitioner

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## ATTACHMENT 1



Executive Office for Immigration Review  
Board of Immigration Appeals  
Office of the Clerk

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041



**De Lara, Pedro**  
**Law Offices of Pedro De Lara, Jr.**  
**355 Third Avenue, Suite C**  
**Chula Vista CA 91910**

**DHS/ICE Office of Chief Counsel - OTM**  
**P.O.Box 438150**  
**San Diego CA 92143**

**Name: ARIAS-TORRES, FIDEL**

A

**Date of this Notice: 10/14/2025**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

John Seiler  
Acting Chief Clerk

Enclosure

Userteam: Docket



Executive Office for Immigration Review  
Board of Immigration Appeals  
Office of the Clerk

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

ARIAS-TORRES, FIDEL

A [REDACTED]

[REDACTED]

DHS/ICE Office of Chief Counsel - OTM  
P.O.Box 438150  
San Diego CA 92143

Name: ARIAS-TORRES, FIDEL

A [REDACTED]

Date of this Notice: 10/14/2025

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

A handwritten signature in black ink, appearing to read "John Seiler".

John Seiler  
Acting Chief Clerk

Enclosure

Userteam: Docket

**NOT FOR PUBLICATION**

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

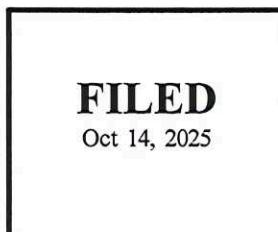
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**MATTER OF:**

Fidel ARIAS-TORRES, A 

Respondent

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**FILED**

Oct 14, 2025

ON BEHALF OF RESPONDENT: Pedro De Lara Jr., Esquire

ON BEHALF OF DHS: Tracie A. Klein, Assistant Chief Counsel

**IN BOND PROCEEDINGS**

On Appeal from a Decision of the Immigration Court, Otay Mesa, CA

Before: Hunsucker, Appellate Immigration Judge

HUNSUCKER, Appellate Immigration Judge

The Department of Homeland Security (“DHS”) appeals an Immigration Judge’s bond decision dated July 14, 2025, ordering that the respondent be released from detention upon the posting of a \$2,500 bond. Section 236(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a). On July 31, 2025, the Immigration Judge issued a memorandum setting forth the reasons for his decision. DHS’s appeal will be sustained.

We review the Immigration Judge’s findings of fact, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met any applicable burden of proof and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge granted a change in custody status after determining that the respondent carried his burden of establishing that his release would not pose a danger to persons or property and that a \$2,500 bond was sufficient to ensure the respondent’s future appearance (IJ Bond Memo, at 1-3). *See* INA § 236(a), 8 U.S.C. § 1226(a). On appeal, DHS argues that the Immigration Judge lacked jurisdiction because the respondent is an applicant for admission and is thus subject to detention pursuant to INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A).

The respondent, a native and citizen of Mexico, entered the United States without inspection in 2001. He has remained present in the United States without admission or parole. Before the Immigration Judge, DHS argued that the Immigration Judge lacked jurisdiction to redetermine the respondent’s custody because he was not admitted or paroled into the United States and is subject to detention under INA § 235, 8 U.S.C. § 1225 (IJ Bond Memo, at 1-2). The Immigration Judge rejected DHS’s argument after finding that the respondent “was not an arriving alien, having last entered the United States in 2001 at an unknown location,” and that his case was distinguishable from *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) “because the respondent was not detained

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while arriving in the United States and this was an arrest, not a revocation of parole" (IJ Bond Memo, at 1).

On September 5, 2025, this Board issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that under the plain language of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or grant bond to aliens who are present in the United States without admission or parole. The Board specifically concluded that such respondents are applicants for admission under INA § 235(a)(1), 8 U.S.C. § 1225(a)(1), and are subject to mandatory detention for the duration of their removal proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. at 220-22. We reject the respondent's arguments for the reasons set forth in *Matter of Yajure Hurtado*. We will sustain DHS's appeal, and vacate the Immigration Judge's decision granting release on bond as the Immigration Judge lacked authority. INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); *Matter of Yajure Hurtado*, 29 I&N Dec. at 225.

Accordingly, the following orders shall be entered.

ORDER: DHS's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision is vacated.