

Pedro De Lara, Jr. (SBN 238795)
355 Third Avenue, Suite C
Chula Vista, CA 91910
(619) 550-9496
Email: delara.law77@gmail.com

Leroy George Siddell (SBN 48670)
2323 Broadway, Ste. 104
San Diego, CA 92102
Office: (619) 231-3991
Email: attorneysiddell@yahoo.com

Attorneys for Petitioner,
Fidel Arias Torres

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FIDEL ARIAS TORRES,	) Case No. 3:25-cv-02457-BAS-MSB
)
Petitioner,)
	) UNOPPOSED MOTION TO
v.	) REOPEN CASE, FOR
	) RECONSIDERATION OF
PAM BONDI, Attorney General of the	) DENIAL OF TEMPORARY
United States, in her official capacity;	) RESTRAINING ORDER AND
KRISTI NOEM, Secretary of the U.S.	) PRELIMINARY INJUNCTION,
Department of Homeland Security, in her	) AND FOR LEAVE TO FILE
official capacity; EXECUTIVE OFFICE	) SECOND AMENDED PETITION
FOR IMMIGRATION REVIEW; TODD	) FOR WRIT OF HABEAS
LYONS, Acting Director of U.S.	) CORPUS AND COMPLAINT
Immigration and Customs Enforcement,	) FOR DECLARATORY AND
in his official capacity; PATRICK	) INJUNCTIVE RELIEF
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.
12

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

17 This Court denied the Petition and TRO without prejudice on the ground that
18 the July 8, 2025 DHS memorandum had not yet been applied to Petitioner. At the
19 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).
25

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

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

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

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

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

15 Dated: October 28, 2025

16 Respectfully submitted,

17
18 /s/ Pedro De Lara, Jr.

19 Pedro De Lara, Jr.

20 /s/LeRoy George Siddell

21 LeRoy George Siddell

22 Attorneys for Petitioner
23
24
25
26
27
28

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,

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

John Seiler
Acting Chief Clerk

Enclosure

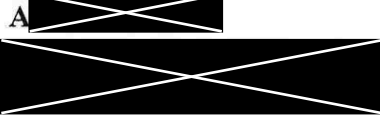
Userteam: Docket



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

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

ARIAS-TORRES, FIDEL



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

Name: ARIAS-TORRES, FIDEL



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, reading "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

MATTER OF:

Fidel ARIAS-TORRES, A 

Respondent

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

A071-912-104

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.