UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MOISES ANTONIO PARADA HERNANDEZ and ANA PINEDA, Petitioners v. JOSHUA JOHNSON, Acting Field Office Director, ERO Dallas; ET AL., Respondents.	§ § § § § § § § § § §	Case No 3:25-cv-2729-K-BN

REPLY TO RESPONSE TO
MOTION FOR TEMPORARY RESTRAINING ORDER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitution

Cases

Agency cases

Statutes

Regulations

I. ARGUMENT AND AUTHORITIES

A. Exhaustion of Administrative Remedies is not required for Parada Hernandez and Pineda due to futility.

Petitioners Parada Hernandez and Pineda are not required to file for a custody redetermination prior to filing a Petition for Writ of Habeas Corpus, where a precedential decision of the Board of Immigration Appeals (*Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) strips the Immigration Court of jurisdiction to consider such relief (and likewise precludes the BIA from providing relief). The Board's new precedent **forecloses** any individualized hearing procedures for aliens who, like your Petitioners, who should not be detained indefinitely. Nor, in the wake of this BIA precedent, has DHS published an alternative hearing or review procedure. DHS' argument the "exhaustion" stands in the way of his suit is **disingenuous. When Petitioner voluntarily surrendered, DHS could have (but did not) offer an alternative opportunity to request review of his nondetained Order of Supervision converted into a humanitarian parole pursuant to 8 USC § 1182(d)(5).**

The legal posture of the case at bar is identical to that in *Chiliquinga Yumbillo v. Stamper*, No. 21:25-CV-00479-SDN (D. Me. Sept. 19, 2025) (Order on Motion for Temporary Restraining Order) *Chiliquinga Yumbillo v. Stamper,* No. 21:25-CV-00479-SDN (D. Me. Sept. 30, 2025)(Order granting Petition for Writ of Habeas Corpus). In *Chiliquinga Yumbillo*, the Court in granting the Petition for Habeas Corpus (and the TRO prior thereto) considered whether a bond hearing request was required prior to filing for the Petition for Writ of Habeas Corpus under the exhaustion doctrine. The court concluded that there was no statutory nor common law requirement for administrative exhaustion of remedies under the circumstances presented where the Government claimed that the Petitioner Plaintiff was being held under the mandatory detention provisions of 8 USC § 1225.

Identically with Mr. Chiliquinga Yumbillo, Parada Hernandez was initially categorized and released under 8 USC § 1226(a). The Maine federal Court cited a collection of cases that hold that, when a noncitizen has resided in the interior of the United States continuously for more than two years, section 1226(a) applies to their detention status. *Chiliquinga Yumbillo* is legally indistinguishable from the instant claim.

Co-Petitioner Ana Pineda is detained under a different method than imprisonment.[1] Due to the current ICE enforcement actions, she is at risk at any time, including in the middle of the night, of being handcuffed, zip-tied, taken for processing to alter her current custody to imprisonment. What, then of the fate of her ten-year-old child with cerebral palsy and her three-year-old U.S. citizen child? Under the authorities cited in the instant petition, her claim is equally compelling and equally ripe.

B. 8 USC § 705 (Part of the APA) is available to Parada Hernandez and Pineda

Classifying Plaintiff Petitioners as "arriving aliens" and labeling them as subject to mandatory detention under 8 USC 1225 is both unconstitutional as well as "arbitrary and capricious."

8 USC § 705 provides in relevant part:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
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> *****
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be—

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[1] Alternative forms of detention available and used by DHS include 1) Electronic Monitoring Program and 2) Intense Supervision Appearance Program: Radio Frequency with "ankle monitors"; Telephonic reporting with Voice Verification; Global Positioning Satellites; Curfews; In-person Reporting; Home Visits

> (A)arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> (B) contrary to constitutional right, power, privilege, or immunity

Habeas alone may not be an adequate remedy to protect individuals situated such as Pineda. Being taken away from her disabled non-verbal child with cerebral palsy and held during the pendency of further proceedings could never sufficiently redress or remedy the cruel and pointless alteration in her custody status - not brought by any change in circumstances or misconduct on her part.

Respondents rely on *Trump v. J.G.G.*, 604 U.S. 670 (2025), a case that examined custody under the Alien Enemies Act. The Supreme Court ruled on procedural grounds that challenges to removals under the Alien Enemies Act must be brought as individual habeas corpus petitions, rather than class actions Plaintiff-Petitioners do not seek class-certification. They seek a determination that they are not properly classified as falling under 8 USC 1225(a) for mandatory detention.

C. Parada Hernandez and Pineda are not "applicants for admission" subject to mandatory detention under 8 USC 1225 without the requirement of a bond hearing.

The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law," U.S. Const. amend. V, and applies to noncitizens in immigration proceedings, *Reno v. Flores*, 507 U.S. 292, 306 (1993). They are being deprived of their due process protections under the Fifth Amendment because they are unable to seek a custody redetermination hearing under 8 USC 1226(a). Under 8 U.S.C. § 1225(b)(2), a noncitizen "who is an applicant for admission"[2] shall be detained for a removal proceeding "if

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[2] An "applicant for admission" is defined as "[a][noncitizen] present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a[][noncitizen] who is brought to the United States after having been interdicted in international or United States waters) . . . ."

the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). In contrast, under 8 U.S.C. § 1226, a noncitizen is entitled to procedural protections that are not afforded under the expedited removal statute. See 8 C.F.R. § 236.1 (2025) (enumerating the procedural protections). "The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b).

However, "ICE's decision to re-detain a noncitizen like Hernandez-Parada who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2) (2025)).[3]

This Court must determine whether Plaintiff-Petitioners are likely to succeed in their claims that section 1226(a)—which entitles them to a redetermination hearing—rather than section 1225(b)—which requires mandatory detention—applies. The Court directed the parties specifically to address the decision in *Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC (W.D. Tex., Sept. 22. 2025). Respondents simply state that *Lopez-Arevelo* and all the cases cited within are wrongly decided.

The decision in *Lopez-Arevelo* represents the majority of court decisions across the country which have determined that when a noncitizen has resided in the interior of the United

[3] 8 C.F.R. § 241.13 states, "The Service may revoke a[] [noncitizen's] release under this section and return the [noncitizen]to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future."

States continuously for more than two years, section 1226(a) applies to their detention status.[4] *See, e.g., Salcedo Aceros v. Kaiser*, No.25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV- 11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R&R adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Maldonado v. Olson,* No. 25-CV-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez-Campos v. Raycraft*, No. 2:25- CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Diaz Diaz v. Mattivelo*, No.1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Rodrigues De Oliveira v. Joyce*, No. 2:25-CV-00291, 2025 WL 1826118 (D. Me. July 2, 2025). These courts' well-reasoned decisions establish the likelihood of success on the merits in the instant case.

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[4] Parada Hernandez entered the country on March 2, 2019 and a Notice to Appear was served on him on April 1, 2019. Pineda entered the country on December 17, 2018 and a Notice to Appear was served on her on December 21, 2018. Therefore, both have resided continuously in the country for more than two years.

II. CONCLUSION

The petition for writ of habeas corpus and the accompanying motion for temporary restraining order should be granted.

Respectfully submitted,

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Certificate of Service

On October 21, 2025, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Sondra Turin
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