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

MOISES ANTONIO PARADA HERNANDEZ et al., Petitioners,	§	Civil Action No. 3:25-CV-2729-K-BN
V.	§	
JOSHUA JOHNSON, et al., Respondents.	§	

PLANTIFFS' OBJECTIONS TO FINDINGS AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, MOISES ANTONIO PARADA-HERNANDEZ AND ANA PINEDA,

PLAINTIFFS and file this, their *Plaintiff's Objections to Findings and Recommendations of the United States Magistrate Judge* and in support thereof would respectfully show as follows:

I. The denial of a bond hearing is not <u>merely</u> a procedural due process denial but also a denial of substantive due process, calling for more substantive, immediate relief, including the issuance of a TRO.

The Honorable Magistrate Judge recommends that the court order that Defendants give Plaintiff Parada-Hernandez an IJ bond hearing. Plaintiffs do not object to this remedy *per se*, but argue to the court that this remedy, by itself, is **<u>insufficient</u>** for a number of reasons supported by binding case law and common sense.

A. Parada-Hernandez's current detention by Mr. Parada-Hernandez is *indefinite*.

For an alien who poses no danger to the community and is not a flight risk (like Parada-Hernandez) only detention minimally necessary to ensure compliance with removal proceedings is lawful. *Demore v. Kim*, 538 U.S. 510 (2003). Parada-Hernandez's individual asylum hearing had been scheduled in the Dallas Immigration Court for 09/14/2027 prior to his arrest on 10/07/2025.

Now, as a result of his 10/07/2025 arrest, he has a "Master Calendar" hearing set for 11/17/2025 at 9:30 AM. This may seem like "progress"; however, his case previously was docketed for a *final* hearing; now it is docketed for a *preliminary* hearing before a new Immigration Judge. At best, at this Master Calendar hearing, the case-in-chief will be rescheduled for some time indefinitely in the future, likely in 2026. Whoever loses that hearing may appeal to the Board of Immigration Appeals (BIA) who have a substantial backlog of cases.

adding a likely six month period of time to the proceedings. Even an expeditious hearing and resolution of Parada-Hernandez's removal proceedings and asylum application will almost certainly leach into 2027. An alien who loses at the BIA may have the right to petition for review before a U.S. Circuit Court, a proceeding that usually takes at least another six to twelve months. This is a typical chronology, found to amount to "indefinite" detention in *dos Santos v. Noem*, No. 1:25-cv-12052-JEK (D.Mass. Aug. 14, 2025), citing case law. Recently, a court found that an appeal to the BIA of the denial of bond *alone*, itself usually takes six months. *Hernandez-Fernandez v. Lara*, No. 5:25-CV-00773-JPK (W.D.Tex. Oct. 21, 2025).

B. **Courts have found needless detention of this sort to be a *substantive* denial of due process, where there is not a *timely*, individualized bond hearing.**

Hernandez-Lara, v. Lyons, 10 F.4th 19, 27-28 (1st Cir. 2021); *Chiliquinga-Yumbillo v. Stamper*, No. 2:25-cv-00479-SDN (D.Me. Sept. 30, 2025) hold that the substantive requirements of *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) are violated when an alien is denied '...the opportunity to be heard at a meaningful time and in a meaningful manner.'

In *Hernandez-Fernandez v. Lara, supra*, the District Court gave the DHS Respondents **fourteen days** to report either the results of a bond hearing for the plaintiff or that he had been released from physical custody. This order for a prompt remedy to indefinite detention was premised by the court on a previous holding that aliens "...possess a cognizable interest in their freedom from custody". See, e.g., *Gashaj v. Garcia*, 234 F.Supp.2d 661, 666 (W.D. Tex. 2002). The court reasoned that "...once released from immigration custody, noncitizens acquire "...a protectable liberty interest in remaining out of custody on bond." *Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)(collecting cases); accord, *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025)("Just as people on pre-parole, parole, and probation status have a liberty interest, so too

does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.") (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D.Cal. 2019); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025).

Thus, the Honorable Magistrate's holding that Parada-Hernandez's "re-detention" for no just cause amounts to merely a *procedural* denial of due process misreads the law applicable to this case and fails to do justice. Furthermore, unlike the court in *Hernandez-Fernandez, supra*, no recommendation is made to order Defendants to give Mr. Parada-Hernandez an *immediate* bond hearing (or re-release him). Thus, the instant Recommendation provides substantially less relief—and less *meaningful* relief—than has been provided in recent cases on all fours with the case at bar.

II. **The Recommendation fails to take cognizance of and making a ruling upon the lawfulness of Defendants' reclassification of your Plaintiffs from the provisions of 8 U.S.C. Sec. 1226 to those of Sec. 1225, which Defendants now, belatedly invoke.**

Your Defendants assert that their arrest of Parada-Hernandez on 10/07/2025, when he voluntarily appeared (as he always has in the past) under his Order of Supervision is a lawful action under 8 U.S.C. Sec. 1225, which categorically denies bail to aliens such as your Plaintiffs, who in the past entered the United States without inspection, irrespective of the fact that, as *prima facie* asylum applicants, they properly have filed asylum applications in Immigration Court, ***after the government previously has found them to have a credible fear of persecution***. Your Plaintiffs were previously released under their Orders of Supervision because: (1) they have a credible fear of persecution in El Salvador and promised to make a timely asylum application (which they have done); (2) they appeared to pose no danger to the community (having no criminal history); (3) they appeared to pose no flight risk (proven conclusively by the fact that they have both appeared every time ordered to do so—including

Parada-Hernandez's 10/07/2025 appearance at the Dallas ERO Office where he was arrested and detained for no just cause).

The Recommendation fails to make a recommendation as to how this court should rule on the *lawfulness* of Defendants' application of the INA to their cases. Specifically, as pleaded herein, based upon the recent decision of the BIA in *Matter of Yajure-Hurtado*, 29 I & N Dec. 216 (BIA Sept. 5, 2025) the Justice Department, in cooperation with DHS, has **forbidden** Immigration Judges to give bond hearings to the majority of aliens in removal proceedings, including all those who initially entered the U.S. without inspection. This BIA decision affirms Defendants' legal opinion that your Plaintiffs are simply ineligible to bail—and that the previous grant of bail to them, notwithstanding their assiduous compliance with their bail orders—leaves them with no complaint and no entitlement to be free from indefinite detention whatsoever. Virtually every court in this country now hearing apposite cases has rejected Defendants' legal premise and by necessary implication, the soundness of *Yajure-Hurtado, supra.*

The consequence of the Recommendation's failure to squarely address Plaintiffs' statutory claim—that they were released under 8 U.S.C. Sec. 1226 heretofore and complied with those orders—is that this court is now recommended to order an IJ bond hearing for Parada-Hernandez, at some non-defined future time, with no guardrails and no cited, statutory authority under which an IJ would agree to comply with this court's order! Put differently, the law of the case doctrine requires that this court directly address Plaintiffs' claims that they are **not** subject to detention without bond/bail under 8 U.S.C. Sec. 1225; that *a fortiori* if they are entitled to bail, they **must** fall under the aegis of Sec. 1226.

III. Plaintiffs Object to the lack Of An Immediate Bond Hearing for Parada-Hernandez and hence to the Magistrate's Holding that A TRO merely seeks the ultimate relief sought by the Petition.

The Recommendation erroneously holds that granting injunctive relief presents the "same question" as the claim for ultimate relief sought by this *habeas corpus* action. This is untrue for two legal reasons:

A. The detention of any person in the United States implicates a liberty interest under the Fifth Amendment, U.S. Const. and if the detention is unlawful, each day the person is detained constitutes irreparable harm.

The provision of relief to Parada-Hernandez *ultimately*, perhaps several months from now or a year hence, cannot undo the inherent harm of the loss of liberty itself, also including the loss of consortium, the loss of income to provide basic needs for his family, including his ten-year-old with cerebral palsy, the likely loss of abode (due to income loss). Your Plaintiffs have an *immediate* interest in their liberty, which is reversed by the Recommendation. *Hernandez-Fernandez, supra* and cases cited therein. This court should consider and grant a TRO in this case, with the question of which party prevails in the case in chief decided later, after due deliberation.

B. Denial of prompt, injunctive relief will result in further, much-prolonged detention of Parada-Hernandez.

This risk is exacerbated by the fact that the Government asserts the right to invoke the administrative stay provision of 8 C.F.R. § 1003.19(i)(2) (2025) even if Parada-Hernandez is granted a bond by an IJ.

> ...[a]ccording to data released by the Executive Office for Immigration Review, the average processing time for bond appeals **exceeded 200 days in 2024**." *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924, at *6 (D. Mass. Sept. 9, 2025) (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025)).

Chiliquinga-Yumbillo v. Stamper, 2:25-cv-00479-SDN, which further held:

> Mr. Chiliquinga Yumbillo is facing a potentially **indefinite period of unlawful detention** if he is denied access to a bond hearing while his removal proceedings are pending.. And "[a]ccordingly is facing a potentially indefinite period of unlawful detention if he is denied access to a bond hearing while his removal proceedings are pending.
>
> This risk is exacerbated by the fact that the Government intends to invoke the administrative stay provision in 8 C.F.R. § 1003.19(i)(2) (2025) even if he is granted a bond hearing under section 1226(a).5 See ECF No. 21 at 10 n.5. And "[a]ccordingly is facing a potentially indefinite period of unlawful detention if he is denied access to a bond hearing while his removal proceedings are pending
>
> "[a]ccording to data released by the Executive Office for Immigration Review, the average processing time for bond appeals **exceeded 200 days in 2024**." *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924, at *6 (D. Mass. Sept. 9, 2025) (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025)). By any measure, Mr. Chiliquinga Yumbillo is likely to endure many months of potentially unlawful detention."

This case is on all fours with the case at bar.

IV. The Recommendation errs in concluding that Plaintiff Ana Pineda is not "detained" for habeas corpus jurisdiction and remedy.

The Recommendation, p. 4, distinguishes between Plaintiff Parada-Hernandez (who was taken into custody with no bail proceeding on 10/07/2025) and his wife, co- Plaintiff Pineda, who is merely "threatened" with apprehension on April 14, 2026, when her "call-in" notice to self-report to the Dallas ERO (Enforcement and Removal Office) is scheduled. [This assumes that Defendants do not arrest her without notice in the interim, which their Brief claims they have every right to do.] The Magistrate's conclusion is that her claim is "not ripe".

Other than the difference in their reporting dates (and both Plaintiffs have always appeared as demanded by Defendants in the past) their cases are apposite. They had both been released *pendente lite* under the same Order of Supervision ("O-Sup") granted to them

previously. The Honorable Magistrate's ripeness conclusion flies in the face of dispositive law to the contrary.

U.S. law long recognizes a broad definition of "custody". *Hensley v. Municipal Court*, 411 U.S. 345, 348-49 (1973); *Jones v. Cunningham*, 371 U.S. 236, 240-43 (1963). An alien need not be in the immediate physical custody of immigration agents. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). The Fifth Circuit, joining numerous other circuit courts, has held the same in *Rosales v. ICE*, 426 F.3d 733, 734-36 (5 th Cir. 2005)[an alien with a final removal order, though not yet physically detained, is "in custody" for habeas corpus purposes]. *Romero v. DHS Secretary*, 20 F.4th 1374, 1378-80 (11 th Cir. 2021) specifically holds that an alien under "supervised release" [such as Ms. Pineda] is "in custody" for habeas corpus purposes. The fact that this non-criminal couple, who have always reported to DHS, who have pending asylum hearings scheduled in the future in Immigration Court and who are providing the sole care to a ten-year-old child with cerebral palsy and a three-year-old U.S. citizen child, who will both become wards of the state upon Ms. Pineda's apprehension, has not stayed Defendants' needless apprehension and indefinite detention of Mr. Parada-Hernandez and their latent threat to do the same to Ms. Pineda.

V. Conclusion

Wherefore, premises considered Petitioners Pray that the court provide the following relief, in the alternative:

A. Grant a Temporary Restraining Order against Defendants, ordering the immediate release from physical custody of Plaintiff Parada-Hernandez;

B. In the alternative to A., order that Defendants either obtain an Immigration Judge bond hearing for Plaintiff Parada-Hernandez within fourteen days or release him until further order of this court. In the event of B., the court should premise its order on a holding that he is subject to the terms of 8 U.S.C. Sec. 1226, not Sec. 1225.

C. Provide such further relief as this court deems just.

Date: November 12, 2025

Respectfully Submitted,

/s/ Sondra Turin

TX State Bar No.: 00797755

ESQUENAZI AND TURIN
2201 Main Street, Suite 1010
Dallas, Texas 75201
214-688-7080
214-598-7231 (Direct)
Sondra@TXimmigrant.com

Attorney for Plaintiffs

Certificate of Service

On November 12, 2025, I electronically submitted the foregoing document with the clerk of 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 M. Turin
Sondra M. Turin
Attorney at Law