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

ROMAN PEREZ-GONZALEZ,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center, KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, GREGORY J ARCHAMBEAULT, Field Office Director, San Diego Field Office, US ICE, US DHS

Respondents.

CIVIL CASE NO.: 25-CV-2727-JO

**Amended[1] Petition for a Writ of Habeas Corpus**

[1] Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to "amend its pleading once as a matter of course no later than 21 days after serving it." Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Mr. Perez-Gonzalez therefore files this amended petition as of right.

## INTRODUCTION

This petition arises from a sudden change in the way that the Board of Immigration Appeals interprets 8 U.S.C. §§ 1225, 1226. "For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting Petitioner's brief and noting that Respondents had not contested that claim). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals ("BIA") accepted the government's new position that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

Courts do not agree. The government has lost this argument in districts across the United States, *see, e.g.*, *Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including this one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.). This Court should reject that argument, too, and order Petitioner's immediate release on the bond imposed by the immigration judge ("IJ")

## STATEMENT OF FACTS

Roman Perez-Gonzalez is a Mexican citizen who first came to the United States in May 1996. Exh. A at ¶ 1. He has resided in the United States continuously since 2007. *Id.* at ¶ 1. He was placed in removal proceedings around 2007 or 2008. *Id.* After detaining him for a couple of weeks, ICE voluntarily released him pending those proceedings. *Id.* ICE then agreed to close the removal case in 2014. *Id.*

Mr. Perez-Gonzalez has been living free in the Southern California community since then. *Id.* at ¶ 2. He received a work permit, and he worked as a mechanic. *Id.* He had his own shop. *Id.* Mr. Perez-Gonzalez has two daughters. His older daughter is an adult. *Id.* His younger daughter lives part time with her mother and part time with Mr. Perez-Gonzalez. *Id.*

In June 2025, Mr. Perez-Gonzalez got a call from his former attorney. *Id.* at ¶ 3. The attorney had received a letter saying that Mr. Perez-Gonzalez's case would be reopened. *Id.* Mr. Perez-Gonzalez regularly checked online to see when his next court date was scheduled. *Id.* But no court date ever showed up on the online system. *Id.* On July 9, however, ICE agents arrested Mr. Perez-Gonzalez. *Id.* He asked why he was being arrested—he had a work permit and he had never missed a court date. *Id.* But agents arrested him anyway. *Id.*

On July 20, 2025, Mr. Perez-Gonzalez had a bond hearing in immigration court. *Id.* at ¶ 4. Mr. Perez-Gonzalez was a strong candidate for bond. He had always appeared for his immigration court dates and has no criminal convictions. *Id.* at ¶ 7. After hearing the parties' arguments, the IJ set a $1,500 bond. *Id.*; Exh. B. Nevertheless, Mr. Perez-Gonzalez soon received a letter saying that DHS had appealed. Exh. A at ¶ 4. About a week ago, he received another letter saying that DHS won the appeal. Exh. A at ¶ 4; Exh. C.

The letter's reasoning confused Mr. Perez-Gonzalez. Exh. A at ¶ 4. As Mr. Perez-Gonzalez understood it, the court had ruled that he was ineligible for bond because he was asking to enter the United States. *Id.* He sent ICE a message

saying that that was wrong. *Id.* He was not requesting admission—he had already been living in the United States for years. *Id.* ICE advised Mr. Perez-Gonzalez to take it up with the judge at the next court date. *Id.* That court date is scheduled for January 29, 2026. *Id.*

Detention has proved to be a serious hardship for Mr. Perez-Gonzalez. A few months ago, he moved to San Diego with his oldest daughter and girlfriend. *Id.* at ¶ 5. They signed a year lease. *Id.* But because he was detained, he could not make money to pay the rent. *Id.* After paying for two months, the family ran out of funds. *Id.* The landlord imposed a $6,000 fee for breaking the lease. *Id.*

Now, Mr. Perez-Gonzalez faces the possibility of losing his auto shop. *Id.* at ¶ 6. The rent is high, and though Mr. Perez-Gonzalez's brother is trying to work and pay the bills, he is not making enough money to cover it. *Id.*

On October 13, 2025, Mr. Perez-Gonzalez filed a habeas petition challenging his detention without the possibility of bond. Dkt. No. 1. The Court then appointed Federal Defenders of San Diego, Inc. to represent Mr. Perez-Gonzalez. Dkt. No. 5. This amended petition follows.

## LEGAL BACKGROUND

### I. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter without inspection of the right to seek bond.

This habeas petition turns on the BIA's recent decision in *Yajure Hurtado*. The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A).

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." 8 U.S.C. § 1226(a) (punctuation altered). "Federal regulations"

implementing this statute "provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" certain immigration proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people detained under that section. Instead, "DHS has the sole discretion to temporarily release on parole 'any alien applying for admission to the United States' on a 'case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

By their terms, these statutes apply to different groups of immigrants. "Section 1226(a) sets out the default rule," which governs unless some other, more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an "applicant for admission" who is also an "alien seeking admission." 8 U.S.C. § 1225(b)(2)(A).

*Yajure Hurtado* considered which of these provisions—the default rule in § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to immigrants who enter the United States without inspection but live for years in the country's interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had entered without inspection in November 2022, before obtaining Temporary Protected Status ("TPS"). *Id.* at 216–17. He was arrested after his TPS expired in April 2025. *Id.* An immigration judge ("IJ") ruled that he was subject to mandatory detention under § 1225(b)(2)(A). *Id.* at 217.

On appeal to the BIA, the respondent conceded that he was an "applicant for admission" in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been

legally "admitted"—that is, he had not effected a "lawful entry . . . into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)'s ambit because he was not actively "seeking admission" at the border. 29 I&N Dec. at 221. He had crossed the border and proceeded to the country's interior years ago. *Id.*

The BIA disagreed, holding that only noncitizens who were legally admitted retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that conclusion.

First, the BIA rejected the distinction between immigrants who are "applicants for admission" and those who are "seeking admission." In the BIA's view, that distinction would leave people like Mr. Yajure Hurtado without any "legal status" and would create a line-drawing problem. *Id.* at 221.

Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c). Instead, it asserted without explanation that limiting the reach of § 1225(b)(2) would render that provision superfluous. *Id.* at 221–22.

Third, the BIA claimed that the legislative history supported its construction of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of the prior statutory scheme, which provided greater procedural and substantive rights to noncitizens who entered without inspection (and were placed in deportation proceedings) than those who presented themselves to authorities for inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA did not cite any legislative history specifically addressing detention statutes or custody determinations that would support its interpretation. *Id.*

For these reasons, the BIA concluded that noncitizens who enter without inspection have no right to seek bond from an IJ, regardless of how long they have been residing in the country and irrespective of whether they were apprehended by immigration authorities. *Id.* at 228.

**II. Courts disagree with the BIA's reasoning.**

Since *Yajure Hurtado* was decided, many immigrants who otherwise would have received bond hearings under § 1226(a) have challenged that decision in the federal courts. Courts broadly agree that the BIA's novel constructions of § 1225(b)(2)(A) and § 1226(a) are not correct.

On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who are at or near the border or other ports of entry, for at least three reasons.

*First*, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. at 297, 287. Throughout its text, the statute refers to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2) (referring to "inspections" in their titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"). Many statutory provisions, various regulations, and BIA precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's interpretation accords

*Second*, consistent with the statute's overall focus on the moment of physical entry, § 1225(b)(2)'s plain language limits the statute's reach to persons actively attempting to enter the United States. The statute applies only to those who are *both*

"applicants for admission" *and* in the process of "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Because the statute's first clause already limits the provision to "applicants for admission," the phrase "seeking admission" must have a different meaning. Any other reading would constitute "an obvious violation of the rule against surplusage." *Romero*, 2025 WL 2403827, at *10.

On its face, the phrase "seeking admission" suggests an active attempt to enter the country. Congress's use of the present and present progressive tenses "necessarily requires some sort of present-tense action," excluding noncitizens in the interior who are no longer in the process of seeking admission to the U.S. *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the statute's "present-tense active language"). "Realistically speaking," it is hard to accept that the statute's plain language could mean anything else: "[I]f Congress's intention" to detain everyone who entered without inspection "was so clear, why did it take thirty years to notice?" *Romero*, 2025 WL 2403827, at *12.

*Third*, the statutory history supports a limited reading of § 1225(b)'s reach. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b).

The BIA's contrary reading of the legislative history is not persuasive. True, IIRIRA "altered the typology of immigration *proceedings* to 'place[ ] on equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*, 2025 WL

2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the outcome of those proceedings." *Id.* (emphasis added). All these indicators suggest that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not people who have already entered the country.

On the other hand, § 1226(a) is best read to apply to some inadmissible persons. It cannot plausibly be the case that all inadmissible persons fall under § 1225(b)(2)(A) and none fall under § 1226(a).

*First*, § 1226(a)'s statutory structure makes clear that it reaches some individuals who have not been admitted and have entered without inspection. Section 1226(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 1226(a). "Among the individuals carved out and subject to mandatory detention are certain categories of 'inadmissible' noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D), (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category" of persons not eligible for bond "includes those noncitizens who are deemed inadmissible, including for being 'present in the United States without being admitted or paroled,' and who have been arrested, charged with, or convicted of certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to inadmissible noncitizens, then the longstanding carve outs that refer to inadmissibility and Congress' most recent amendments would all be surplusage. *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's in *Jennings*: that § 1226(a) "applies to aliens already present in the United States." 583 U.S. at 303.

*Second*, § 1226(a)'s legislative history supports Petitioner's reading. "After passing the IIRIRA, Congress declared the new § 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.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed inadmissible "were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA," § 1226(a) must "allow for a discretionary release on bond for" inadmissible noncitizens, too. *Id.*

Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is eligible for bond. And under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S. 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225, 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, this Court should give it no weight. If anything, the government's "decades of practice" providing bond hearings to those who entered without inspection is a more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238, at *4.

## III. Because an appeal to the BIA would be futile and Mr. Perez-Garcia faces irreparable harm, exhaustion is not required.

Petitioners raising this argument need not exhaust remedies by appealing to the BIA. "Here, no statute requires exhaustion." *Romero*, 2025 WL 2403827, at *5. Rather, "exhaustion here is a prudential requirement." *Garcia*, 2025 WL 2549431, at *4. "[A] court may waive the prudential exhaustion requirement if . . . pursuit of administrative remedies would be a futile gesture." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (cleaned up). "Here, exhausting administrative remedies would be futile because all ICE employees have been directed by DHS' and DOJ's

new policy to consider anyone arrested in the United States and charged with being inadmissible under § 1182(a)(6)(A)(i) to be an 'applicant for admission' under § 1225(b)(2)(A) and therefore be subject to mandatory detention." *Garcia*, 2025 WL 2549431, at *5 (cleaned up).

But in any case, Mr. Perez-Gonzalez has now exhausted his remedies. He appealed to the BIA, and the BIA reversed the IJ's grant of bond. Exh. C. This habeas petition can therefore proceed.

## IV. Release on the bond issued by the IJ is the proper remedy.

Because an IJ granted Mr. Perez-Gonzalez bond, the proper remedy is to order his release on that bond with no additional conditions. *See, e.g.*, *Leal-Hernandez,* 2025 WL 2430025, at *15; *Carmona-Lorenzo*, 2025 WL 2531521, at *5; *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

## CLAIMS AND PRAYER FOR RELIEF

**Detaining Petitioner Without a Bond Hearing Violates 8 U.S.C. § 1226(a), Associated Regulations, the Administrative Procedures Act, and the Fifth Amendment Right to Due Process.**

For the reasons just given, Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). Both the statute and its associated regulations entitle Petitioner to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly, the Fifth Amendment's due process clause requires the government to provide the legally required bond hearing before Petitioner is detained. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

The statute and regulations implement the due process protection that attends any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (expressing "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of

liberty would have thought so"). The Supreme Court has "repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v. Salerno,* 481 U.S. 739, 755 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

Here, Petitioner received a hearing and got bond under § 1226(a), but the government detained him anyway. That violated the statute, regulations, due process, and the Administrative Procedures Act.

Accordingly, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody on the terms and conditions on the bond issued by the IJ, with no additional conditions beyond those imposed in the IJ's order; and
2. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: October 22, 2025

*s/ Katie Hurrelbrink*

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# Exhibit B

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**OTAY MESA IMMIGRATION COURT**
**7488 Calzada de la Fuente**
**San Diego, California 92154**

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| File No.: A[redacted] | ) | |
| | ) | |
| In the Matter of | ) | |
| | ) | **IN BOND PROCEEDINGS** |
| Roman PEREZ-GONZALEZ, | ) | |
| | ) | |
| Respondent. | ) | |

**ON BEHALF OF RESPONDENT:**

Isaac B. Rodriguez, Esquire
1805 Newton Avenue
San Diego, California 92113

**ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY:**
Lauren Bortolotti, Assistant Chief Counsel
P.O. Box 438150
San Diego, California 92143

## BOND MEMORANDUM OF THE IMMIGRATION JUDGE

On July 14, 2025, Respondent filed a bond redetermination request with this Court. On July 21, 2025, the Court conducted a custody redetermination hearing. After determining the Court had jurisdiction, it found that Respondent had met his burden to show that he does not pose a danger to the community but found that he did present a risk of flight which could be mitigated with bond and Alternatives to Detention. The Court granted Respondent's release with a $1,500 bond. *See* Order of the Immigration Judge, July 21, 2025. On July 22, 2025, the Department filed form EOIR-43, indicating its intent to appeal the Court's custody order. The Board of Immigration Appeals notified the Court of the Department's appeal on August 18, 2025. The Court provides this memorandum to facilitate review of the Department's appeal. *See* 8 C.F.R. § 1003.6(c)(2)(2025); EOIR Policy Man., Part II, Ch. 9.3(e)(7).

At the outset of the hearing, the Department argued that the Court lacked jurisdiction to redetermine Respondent's custody because the Respondent's case is administratively closed. While the Department contended that the Respondent is subject to mandatory custody, it did not present a legal argument for its position. *See Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (holding that statements made by counsel are not evidence). Further, the regulations authorize an immigration judge to determine an amount of bond prior to a final order of removal. 8 C.F.R. 1236.1(d). Although the Respondent's case is administratively closed, he is not subject to a final order of removal. Thus, the Court has jurisdiction to conduct a bond hearing. The Department also argued that the Court did not have jurisdiction because the Respondent is present without inspection and is an applicant for admission who is subject to mandatory detention under section 235(b) of the Immigration and Nationality Act ("INA"). Finally, the Department argued the Court did not have jurisdiction to conduct a bond hearing claiming that Respondent is subject to detention pursuant to *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) or *Matter of M-S-*, 27 I&N

Dec. 509 (A.G. 2019). For the reasons stated below, the Court finds the Department's argument unpersuasive.

As explained in *Matter of M-S-*, INA sections 235 and 236 each cover distinct, non-overlapping classes of aliens. *Matter of M-S-*, 27 I&N Dec. at 516. Section 235(b)(2)(A) provides that "applicants for admission" who are determined not to be clearly and beyond a doubt entitled to be admitted shall be detained for INA section 240 proceedings. The phrase "applicant for admission" is a term of art denoting a particular legal status. *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020). However, the Ninth Circuit has rejected the theory that any applicant for admission should be "treated as having made a continuing application for admission that does not terminate 'until it [is] considered by an immigration officer.'" *Torres*, F.3d at 922 (*overruling Minto v. Sessions*, 854 F.3d 619, 624 (9th Cir. 2017)). Thus, there is some temporal limitation to such classification. *See United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (distinguishing *Torres*, who was placed in removal proceedings 13 years after entry, with *Gambino-Ruiz*, who was detained near the border shortly after crossing it, and stating that "*Torres* merely rejected the view that an alien remains in a perpetual state of applying for admission."). As such, the Court declines to consider someone like Respondent, who has been physically present in the United States for approximately 29 years, as an applicant for admission. To be sure, an alien "detained near the border shortly after he crossed it" is considered an applicant for admission. *Gambino-Ruiz*, 91 F.4th at 990. However, this did not occur in Respondent's case. Respondent was not detained near the border and has been present in the United States since 1996. Exh. 1 at 73-76. Therefore, the Respondent is not an "applicant for admission" who would be subject to detention under section 235(b)(2)(A). Additionally, based on his length of time in the United States, the Respondent is not an arriving alien who would be subject to expedited removal. 8 C.F.R. § 235.3(b)(1)(ii). Furthermore, the Court found that the Respondent was not detained "while arriving in the United States" pursuant to a warrantless arrest and released with parole, as envisioned in *Matter of Q. Li*. Based on the foregoing, the Court determined that the Respondent is detained pursuant to section 236(a) of the INA and that the Court did have jurisdiction to consider his custody status.

A respondent in a custody redetermination hearing under INA section 236(a) must establish to the satisfaction of the Immigration Judge that he does not present a danger to persons or property, is not a threat to national security, and does not pose a risk of flight. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). In determining whether a respondent merits release from custody, the Immigration Judge may consider various factors, as well as the amount of bond that is appropriate, and may consider any evidence that is probative and specific. *Matter of Guerra*, 24 I&N Dec. 37, 40-41 (BIA 2006).

The Immigration Judge has broad discretion in deciding which factors to consider in custody redeterminations and may choose to give greater weight to one factor over others, as long as the decision is reasonable. *Guerra*, 24 I&N Dec. 40 at 40-41. These factors may include any or all of the following: (1) whether the respondent has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States, and whether they may entitle the respondent to reside permanently in the United States in the future; (4) employment history; (5) record of appearance in court; (6) criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) history of immigration

violations; (8) any attempts to flee prosecution or otherwise escape from authorities; and (9) the manner of entry to the United States. *Id.* (citations omitted); *see also Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (noting that the recency and severity of criminal offenses must be considered, because criminal history alone is not always grounds for denial of bond). A respondent who is likely to abscond is a poor bail risk and does not merit release on bond. *Guerra*, 24 I&N Dec. at 40. Dangerous respondents are properly held without bond; the Immigration Judge should only determine a bond amount upon which the respondent may be released if he is not a danger to the community. *Id.* at 38; *see also Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009).

First, the Court found that Respondent does not pose a danger to the community. The Respondent does not have a criminal history and has been in the United States for 26 years without incident. Exh. 1 at 158. There is nothing in the Respondent's lengthy history in the United States that suggests he would be a danger to others. The Court determined that the Respondent presents some risk of flight because of his manner of entry and violation of immigration laws. However, the Respondent possesses various positive factors which mitigate his risk of flight. Namely, he has strong ties to the community, including two United States citizen children. He has resided in the United States for 26 years and established significant community ties. Exh. 1 at 98-156. He has been a business owner for 18 years. Exh. 1 at 100. He also has a sponsor who would financially support the Respondent and ensure he appears in court. Exh. 1 at 166-187. As such, the Court determined that a bond of $1,500 would mitigate any risk of flight and ensure his appearance at future hearings.

In making its determination, the Court considered all the information, evidence, and arguments presented by the parties. *See Guerra*, 24 I&N Dec. at 40. The Court found that Respondent does not pose a danger to the community, but that he presents a risk of flight. *See id.* Accordingly, the Court granted his request for a change in his custody status and imposed a $1,500 bond with Alternatives to Detention at the Department's discretion.

Dated: 8/20/2025

Eugene H. Robinson, Jr.
Immigration Judge

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