

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Iverson Esmaycol MEJIA-JUAREZ, Petitioner,)	
)	
v.)	CIVIL No. <u>4:25-CV-5199</u>
)	
Bret BRADFORD, Field Office)	
Director, Immigration and Customs)	
Enforcement;)	
Pamela BONDI, Attorney General;)	
Kristi NOEM, Secretary,)	
Department of Homeland Security;)	
Respondents.)	

**PETITIONER’S OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT**

This opposition is in response to Respondent’s motion for summary judgment. The Respondent, as the moving party, is not entitled to summary judgment because the Respondent has not met the burden of demonstrating the absence of a genuine factual dispute and is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The plain language and structure of 8 U.S.C. § 1225(b)(2) and the history of the Immigration and Nationality Act indicate that the Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Moreover, *Matter of Yajure*

Hurtado, 29 I. & N. Dec. 216 (BIA 2025) should be given little deference and persuasive decisions from this district, and districts nationwide support the Petitioner's position.

I. The Plain Language and Structure of the INA

When a statute is ambiguous or internally contradictory, courts must "use every tool at their disposal to determine the best reading of the statute." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The Court begins its analysis with the statute's plain text. *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017) ("Our analysis begins with the language of the statute.") (citation omitted). 8 U.S.C. § 1225(a) defines and applicant for admission as:

[a]n alien 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 an alien who is brought to the United States after having been interdicted in international or United States waters)...

8 U.S.C. §1225(a)(1).

Meanwhile, the statute which the Respondent asserts the Petitioner is rightfully detained under reads:

[I]n 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 a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2).

The Respondent conflates the terms “applying for admission” and “seeking admission” by treating them as synonymous. However, such a reading would render the phrase “seeking admission” in §1225(b) superfluous. To qualify for §1225(b)(2), the Petitioner must (1) be an applicant for admission, (2) be “seeking admission”, and (3) be “not clearly and beyond a doubt entitled to be admitted. If, as the Respondent argues that “applying for admission” and “seeking admission” are the same, then the phrase “seeking admission”, would add nothing to the provision, which would violate the rule against surplusage. *See United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (“[E]very clause and word of a statute should have meaning.”); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“[N]o clause, sentence, or word shall be superfluous, void, or insignificant.”) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

The Respondent’s position conflicts with the implementing regulation for § 1225(b). *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024) (implementing regulations may provide a “useful reference point for understanding a statutory scheme” when issued “contemporaneously”). 8 C.F.R. § 235.3 describes Section 1225(b)(2) as applying to “any *arriving alien* who appears to the inspecting officer to be inadmissible.” (Emphasis added.) The regulation thus contemplates that “applicants *seeking admission*” are a subset of applicants “roughly interchangeable” with “arriving aliens.” “Arriving aliens” are specifically defined by regulation as

applicants for admission "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. This certainly does not describe the Petitioner. In fact, the Petitioner's Notice to Appear similarly distinguishes between "arriving alien" and "alien present in the United States who has not been admitted or paroled." *See* NTA, Exh. 1. The regulations and forms presume that the term "seeking admission" does not have unlimited application the Respondent proposes.

The Respondent attempts to employ another provision of section 1225 which requires noncitizens "who are *applicants for admission* or otherwise *seeking admission* or readmission" to be inspected by immigration officers to prove that those terms are synonymous. 8 U.S.C. § 1225(a)(3) (emphasis added). However, the Respondent's example in this provision, like its argument concerning section 1225(b)(2), conflates distinct categories of noncitizens. Section 1225(a)(3)'s inspection protocol applies to two different categories of noncitizens: (1) those already present or arriving in the United States, in other words "applicant[s] for admission"; and (2) those who may "seek admission from anywhere in the world. *See, e.g.,* 8 U.S.C. 1225a(a) (requiring preinspection at certain foreign airports before such noncitizen "passengers . . . arrive from abroad"); 19 U.S.C. § 1629(a) (authorizing inspection of persons in foreign countries "prior to their arrival in . . . the United States").

A plain reading of the regulatory/statutory scheme clearly demonstrates that the Petitioner is unlawfully detained and that the Respondents have failed to meet their burden of proof.

II. The History of the Immigration and Nationality Act

Assuming arguendo that the statutory/regulatory scheme is ambiguous or vague, then a historical analysis of the origins of the statute, nonetheless, shows that the Petitioner's interpretation is correct. Prior to 1996, the INA primarily distinguished individuals on the basis of "entry" and not "admission." See § 1101(a)(13) (1994) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise"). "Entry" dictated what type of enforcement proceeding applied to determine whether a non-citizen could be removed or barred from the country. Non-citizens who had effected an "entry" into the United States were subject to deportation proceedings, while those who had not made an "entry" were subject to exclusion proceedings. Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, 1-1 Immigration Law and Procedure § 1.03(2)(b) (2010).

This so-called "entry doctrine" resulted in an anomaly. Under this regime, non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to

more summary exclusion proceedings. IIRIRA addressed this anomaly by substituting "admission" for "entry" and by replacing deportation and exclusion proceedings with a general "removal" proceeding. Under the new regime, "admission" now determines whether a non-citizen is subject to grounds of deportability or inadmissibility within the context of a removal proceeding. See IIRIRA, Pub. L. No. 104-208, div. C, § 220, 110 Stat. 3009 (amending 8 U.S.C. § 1101(a)(13); *id.* div. C, § 240, 110 Stat. 3009 (enacting 8 U.S.C. § 1229a); see also H.R. Rep. No. 104-469, at 225-26 (Conf. Rep.) (1996) (explaining reasons for the amendment).

In making these changes, Congress did not fully disrupt the old system, including the system of detention and release. In fact, according to the legislative record, "Section 236(a) [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. REP. 104-469, 229. Congress' concern about adjusting the law in some respects to reduce inequities in the removal process did not mean Congress intended to entirely up-end the existing detention regime by subjecting all inadmissible noncitizens to mandatory detention, a seismic shift in the established policy and practice of allowing discretionary release under Section 1226(a) - the scope of which Congress did not alter.

Until the government adopted its new interpretation of § 1225(b)(2) this year, the longstanding (almost three decades) practice of the agencies charged with interpreting and enforcing the INA since IIRIRA was enacted was to apply § 1226(a) to noncitizens who entered the U.S. without inspection and were apprehended while present in the U.S. By contrast, those apprehended at or near a port of entry were designated as "arriving alien(s)." The Executive Office for Immigration Review's (EOIR) regulations drafted to implement the IIRIRA amendments explained this distinction. See Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not. This procedure maintains the status quo . . .") (emphasis added). This distinction is consistent with the definition of "arriving alien". 8 C.F.R. § 1.2.

III. The BIA's decision in *Matter of Hurtado* is not binding.

Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025) is entitled to little deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities,"

"[c]ourts do"). Under *Skidmore*, the "weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

The Respondent asserts that its position is correct as it is supported by the BIA which "utilized its immigration expertise and gave a lengthy, comprehensive account." However, the BIA's current position is inconsistent with its earlier pronouncements. Prior to *Matter of Yajure Hurtado*, the BIA issued three non-precedential decisions taking the opposite position. In September 2023, the BIA remanded a case for the IJ to determine conditions of custody after the IJ erroneously found they had no jurisdiction over the matter because the applicant entered the U.S. without being admitted or paroled. *See Matter of XXX XXX XXX*, AILA Doc. No. 23101604 (BIA Sept. 1, 2023), Exh. 2. In that same case, the Board even stated that it was "unaware of any precedent" that would support the Government's position. *Id.* In October 2025, the BIA remanded a case finding that because the Respondent's NTA marked them as a noncitizen "present without admission or parole," they were not subject to the detention provisions under INA § 235(b), 8 U.S.C. § 1225(b). *See Appeal ID 5449981* (BIA Oct. 17, 2023), Exh. 3; In December 2023, the BIA reiterated their position for a third time, finding that a noncitizen who was placed

directly into removal proceedings under §1229(a) was thus not subject to mandatory detention under §1225(b)(1) or (b)(2) because DHS had elected to place them directly into removal proceedings without placing them in expedited removal first. *See* Appeal ID 5454441 (BIA Dec. 14, 2023), Exh. 4. Under *Loper*, the Court has no obligation to defer to the BIA's view, particularly when that view has not "remained consistent over time." *Loper*, 603 U.S. at 386; see also *Skidmore*, 323 U.S. at 140.

IV. Persuasive decisions from other district courts support the Petitioner's position.

While the Respondent cites 4 recent decisions of Courts in this district that have held that the detention of those in a similar position to the Petitioner is governed by § 1226 as opposed to § 1225¹, and follows it with the legal axiom that none of these opinions are binding upon the Court, it proceeds to cite only 1 recent decision in this district and three from other districts to support its position.² Although there is no doubt that other district court rulings are not binding on this Court, the reality is that an overwhelming number of district courts across the nation have found that the Respondent's statutory interpretation is incorrect.³ The sole decision which the

¹ *See Buenestro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Nery Ortiz-Ortiz v. Bondi*, Civil Action 5:25-cv-132 Dk 17 (S.D. Tex. Oct. 15, 2025); *Baltazar v. Vasquez*, 5:25-cv-160 Dkt 10 (S.D. Tex. Oct. 14, 2025); *Fuentes v. Lyons*, Civil Action 5:25-cv-00153 Dkt. 15 (S.D. Tex. Oct. 16, 2025).

² *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 625-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 L.

³ *See, e.g., Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, --- F. Supp. 3d ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9,

2025) (White, J.); *Gimenez Gonzalez v. Raycraft*, No. 25-CV-13094, 2025 WL 3006185 (E.D. Mich. Oct. 27, 2025) (Kumar, J.); *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Noem*, No. 25-CV-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-CV-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 Civ. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 25-CV-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, No. 25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); *Doe v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Jimenez v. FCI Berlin, Warden*, --- F. Supp. 3d ---, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*, No. 25-CV-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Guzman v. Andrews*, No. 25-CV-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-5624, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Garcia Cortes v. Noem*, No. 25-CV-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Pablo Sequen v. Kaiser*, --- F. Supp. 3d ---, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025); *Maldonado Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Velasquez Salazar v. Dedos*, No. 25-CV-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafra v. Scott*, No. 25-CV-00437, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Singh v. Lewis*, No. 25-CV-96, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Giron Reyes v. Lyons*, --- F. Supp. 3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito Barrajas v. Noem*, No. 25-CV-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, --- F. Supp. 3d ---, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez v. Hardin*, No. 25-CV-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-CV-07802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, --- F. Supp. 3d ---, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Alves da Silva v. U.S. Immigr. & Customs Enft*, No. 25-CV-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Chang Barrios v. Shepley*, No. 25-CV-00406, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Inlago Tocagon v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2778023 (D. Mass. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Romero-Nolasco v. McDonald*, --- F. Supp. 3d ---, 2025 WL 2778036 (D. Mass. Sept. 29, 2025); *Quispe v. Crawford*, No. 25-CV-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Quispe-Ardiles v. Noem*, No. 25-CV-01382, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *D.S. v. Bondi*, No. 25-CV-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Ayala Casun v. Hyde*, No. 25-CV-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Chanaguano Caiza v. Scott*, No. 25-CV-00500, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, No. 25-CV-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Rocha v. Hyde*, No. 25-CV-12584, 2025 WL 2807692 (D. Mass. Oct. 2, 2025); *Alvarenga Matute v. Wofford*, No. 25-CV-01206, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025); *Escobar v. Hyde*, No. 25-CV-12620, 2025 WL 2823324 (D. Mass. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, No. 25-CV-07286, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Echevarria v. Bondi*, No. 25-CV-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Guerrero Orellana v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Hyppolite v. Noem*, No. 25-CV-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025).³

Respondent cites from this district, *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025), and its reasoning on which the Respondent relies is limited to the conclusory statement of “[t]he statutory definition of applicant for admission is broad and, indeed, so broad that Petitioner doesn’t dispute that she is such a person. That factual determination itself resolves the question as to whether 1225(b)(2)(A) applies.” Conversely to the petitioner in *Cabanas*, the Petitioner contests that he is an arriving alien. Additionally, the factual determination is incorrect as it fails to incorporate the meaning of “*seeking admission*.”

Conclusion

The Petitioner is not subject to mandatory detention under the plain language and structure of 8 U.S.C. 1225(b)(2) and the history of the INA further supports his position. Furthermore, *Matter of Yajure Hurtado* is not binding on this Court and should be given little weight considering the BIA’s inconsistent application of the statute prior to its extreme shift. Lastly, although not binding on the Court, the persuasive decisions from numerous district courts lends credence to 8 U.S.C. 1226(a) governing the Petitioner’s removal proceedings.

Respectfully submitted,

/s/Robert K. Hoffman

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LIST OF ATTACHMENTS

Exhibit	Description
1	Notice to Appear
2	<i>Matter of XXX XXX XXX</i> , AILA Doc. No. 23101604 (BIA Sept. 1, 2023)
3	Appeal ID 5449981 (BIA Oct. 17, 2023)
4	Appeal ID 5454441 (BIA Dec. 14, 2023)

Exhibit 1

Uploaded on: 08/04/2025 at 01:24:26 PM (Central Daylight Time) Base City: CIC

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [Redacted]
Even: [Redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [Redacted] FINS: [Redacted] File No: [Redacted]

In the Matter of

Respondent: **ARJULPO JIMENEZ CUELLO AKA: JIMENEZ**, See Continuation Page Made a Part Hereof currently residing at:
 [Redacted] (936) 521-4900
 (Number, street, city, state and ZIP code) (Area code and phone number)

You are an arriving alien
 You are an alien present in the United States who has not been admitted or paroled.
 You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You entered the United States at or near an unknown location, on or about unknown date;
4. You were not then admitted or paroled after inspection by an Immigration Officer;
5. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the See Continuation Page Made a Part Hereof

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
 Section 235(b)(1) order was vacated pursuant to 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at

806 HILBIG RD, STE 2-300 CONROE, TEXAS 77301, CONROE IMMIGRATION COURT
 (Complete Address of Immigration Court, including Room Number, if any)

on August 28, 2025 at 8:00 am to show why you should not be removed from the United States based on the
 (Date) (Time)
 charge(s) set forth above

[Signature]
 R9889 VIEBCKA SUDO
 (Signature and Title of Issuing Officer)

Date: August 2, 2025 Conroe, Texas
 (City and State)

DOTR - 1 of 4

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Exhibit 2

NOT FOR PUBLICATION

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

MATTER OF:

██████████, A ██████████

Respondent

FILED
Sep 01, 2023

ON BEHALF OF RESPONDENT: Caroline K. Medeiros, Esquire

IN BOND PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Tacoma, WA

Before: Malphrus, Deputy Chief Appellate Immigration Judge; Petty, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Hunsucker
Appellate Immigration Judge Petty, see concurring opinion

HUNSUCKER, Appellate Immigration Judge

The respondent appeals from the Immigration Judge's February 28, 2023, bond order denying his request for a change in custody status. The Immigration Judge issued a bond memorandum on March 3, 2023, setting forth the reasons for the bond decision. The Department of Homeland Security ("DHS") filed a response brief agreeing with the respondent that he is entitled to a custody redetermination hearing.¹ The appeal will be sustained and the record remanded for further proceedings.

The Immigration Judge concluded that because the respondent last entered the United States without being admitted or paroled, she was without jurisdiction to redetermine the respondent's custody status (IJ at 1-3).

We acknowledge the analysis of the Immigration Judge. However, both the respondent and the DHS have filed briefs arguing that the Immigration Judge may redetermine the conditions of the respondent's custody. Further, we are unaware of any precedent stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here. Accordingly, we will remand this case so that the respondent may receive a custody redetermination hearing before the Immigration Judge.

ORDER: The respondent's appeal is sustained.

¹ An unsolicited brief was also submitted by amicus curiae in support of the respondent's appeal. In light of our disposition of the case, we chose to reject the brief submitted by amicus curiae to avoid further delay in the respondent's case.

A [REDACTED]

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.
PETTY, Appellate Immigration Judge, concurring opinion

I write separately solely to note my dissatisfaction with DHS's presentation to the Board in this case. DHS submits that the Immigration Judge's legal conclusion was inconsistent with the position taken by the Solicitor General in *Biden v. Texas*, 142 S. Ct. 2528 (2022), both in the briefs and at oral argument at the Supreme Court. Relying on our decision in *Matter of Mangabat*, 14 I&N Dec. 75, 78 (BIA 1972), DHS submits that the Solicitor General's position is binding on the Board and, by extension, on Immigration Judges (*see* DHS Br. at 9 (purportedly quoting *Matter of Mangabat* for the proposition that "[t]he views of the [Attorney General] as expressed in the briefs filed by the Office of the Solicitor General with the Court are binding on the BIA.")).

I am unable to locate the quote DHS attributed to *Matter of Mangabat*, or even anything similar to it, anywhere in that decision. Nor was I able to find it anywhere else. And while it is possible that authority for the proposition DHS puts forward exists somewhere—notwithstanding the Board's own independent delegation of authority from the Attorney General, *see* 8 C.F.R. § 1003.1(d)(i)-(ii)—I have not found that, either.

DHS also claimed that "[a]t oral argument before the U.S. Supreme Court, Solicitor General Prelogar reiterated the Department of Justice's position that INA § 236 is an appropriate means of release for noncitizens who entered the United States without inspection. *See* Tr. of Oral Arg. at 44-45" (DHS Br. at 10 n.8). What the Solicitor General actually said was "*DHS's* long-standing interpretation has been that 1226(a) [INA § 236(a)] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Transcript of Oral Argument at 44-45, *Biden v. Texas*, 142 S. Ct. 2528 (2022) (No. 21-954) (emphasis added). She then emphasized that it has been "the agency's consistent interpretation." *Id.* at 45. However long-standing, and regardless of whether the Solicitor General mentions it during oral argument in the Supreme Court, none of DHS's legal interpretations can bind the Board or Immigration Judges. *See* INA § 103(g)(2), 8 U.S.C. § 1103(g)(2).

Exhibit 3

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

A (b)(6)

Respondent

FILED
Oct 17, 2023

ON BEHALF OF RESPONDENT: Siobhan S. Ayala, Esquire

IN BOND PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Tacoma, WA

Before: Borkowski, Temporary Appellate Immigration Judge¹

BORKOWSKI, Temporary Appellate Immigration Judge

The respondent appeals from the Immigration Judge's August 1, 2023, decision denying his request for a redetermination of his custody status. We will sustain the appeal and remand the record for further proceedings and issuance of a new decision.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's request for a redetermination of his custody status on the grounds that she lacked jurisdiction over the request (U at 2-4). The Immigration Judge reasoned that the respondent is an applicant for admission as defined at section 235(b)(1)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(1)(A), and therefore subject to the mandatory custody provisions at § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) (U at 3-4).

Under our de novo review, we hold that the Immigration Judge erred in determining that she did not have jurisdiction over the respondent's request for a redetermination of his custody status. Section 235(b)(1)(A) of the INA, 8 U.S.C. § 1225(b)(1)(A), applies to "arriving aliens," and deems them to be "applicants for admission." See *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 525 and n. 4 (BIA 2011) ("Under section 235(a)(1) of the Act, arriving aliens are 'deemed' to be applicants for admission.").

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

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The Notice to Appear issued by the Department of Homeland Security ("DHS") did not charge the respondent as an arriving alien, however, but as an "alien[] present without permission or parole," under INA § 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i) (IJ at 1). Thus, the respondent is not an arriving alien, and is not subject to the mandatory custody provisions of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Thus, the Immigration Judge erred in determining that she did not have jurisdiction over the respondent's request for a change in his custody status (IJ at 2-4).

We also hold that the law of the case directs that the Immigration Judge has jurisdiction to determine the respondent's request for a change in his custody status. The electronic records of the Executive Office for Immigration Review reflect that on August 23, 2023, the Board issued a decision on the respondent's appeal from a May 15, 2023, Immigration Judge decision denying a request for change in the respondent's custody status on the grounds that the Immigration Judge lacked jurisdiction.² The Board's August 23, 2023, decision remanded the record for the Immigration Judge to conduct a bond hearing and issue a decision that addressed relevant custody factors, including the respondent's flight risk (BIA at 1-2, Aug. 23, 2023).

Thus, we will remand the record for the Immigration Judge to conduct a bond hearing pursuant to the Immigration Judge's authority under INA § 236(a), 8 U.S.C. § 1226(a), and to issue a decision adjudicating the respondent's request for a change in his custody status. Accordingly, the following order will be issued.

ORDER: The respondent's appeal is sustained, and the record is remanded for further proceedings in accordance with the foregoing opinion and issuance of a new decision.

² The May 15, 2023, decision was issued by an Immigration Judge in Oakdale, Louisiana. Venue in these proceedings was subsequently changed to the Tacoma, Washington Immigration Court (IJ at 1-2).

Exhibit 4

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Dec 14, 2023

ON BEHALF OF RESPONDENT: Ling Li, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Conroe, TX

Before: Goodwin, Appellate Immigration Judge; Pepper, Temporary Appellate Immigration Judge; Crossett, Temporary Appellate Immigration Judge¹

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

The respondent appeals from the Immigration Judge's bond order dated September 5, 2023, denying change in custody status. The Immigration Judge issued a bond memorandum explaining his decision on September 19, 2023. The Department of Homeland Security ("DHS") has not responded to the appeal. The appeal will be sustained, and the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is an applicant for admission, who on or about July 12, 2023, entered the United States without inspection, and was apprehended between ports of entry shortly after entering (IJ at 4). See section 235(a)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(a)(1). On the same day, July 12, 2023, DHS issued a Notice to Appear ("NTA") commencing removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a (IJ at 4).

The Immigration Judge determined that the respondent was subject to mandatory detention under section 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2), and denied the respondent's request for a change in custody status based on a lack of jurisdiction (IJ 4-5). On appeal, the respondent argues that the Immigration Judge had jurisdiction to redetermine custody status because the statutory scheme governing his detention is section 236(a) of the INA, 8 U.S.C. § 1226(a) (Respondent's Br. at 3-9).

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

Cite as: Appeal ID 5454441 (BIA Dec. 14, 2023)

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Specifically, the respondent contends he is not subject to mandatory detention under sections 235(b)(1) or (b)(2) of the INA, 8 U.S.C. §§ 1225(b)(1)-(2), because he was never placed in expedited removal proceedings, he was not "transferred" from expedited removal proceedings into removal proceedings upon a credible fear determination, nor was he found not to have a credible fear of persecution (Respondent's Br. at 3-9). Instead, DHS opted to place him directly into removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (IJ at 4; Respondent's Br. at 9).² See *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 521-22 (BIA 2011) (explaining that it is within DHS' discretion to process noncitizens described in section 235(b) by either placing them into section 235 expedited removal proceedings or placing them directly into section 240 removal proceedings).

The Immigration Judge would have lacked jurisdiction to redetermine the respondent's custody status if DHS had ever placed the respondent in expedited removal proceedings. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) (explaining that an applicant for admission is subject to mandatory detention when he or she has been continuously in expedited removal proceedings); *Matter of M-S-*, 27 I&N Dec. 509, 510-12 (A.G. 2019) (requiring mandatory detention of individuals placed in expedited removal proceedings and later transferred to full removal proceedings). This is not the case here. As the respondent was placed in section 240 removal proceedings at the inception of proceedings, he is not subject to mandatory detention. See generally *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747-48 (BIA 2023) (discussing the operation of the detention schemes under section 235 and 236 of the INA for arriving noncitizens and noncitizens who entered without inspection and apprehended near the U.S.-Mexico border).

The procedural posture and facts of the present matter are analogous with those in *Matter of D-J-*, 23 I&N Dec. 572, 572-76 (A.G. 2003), where the Attorney General reviewed eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). Moreover, the respondent does not fall within the classes of persons for whom Immigration Judges are prohibited from redetermining the conditions of custody. See 8 C.F.R. § 1003.19(h)(2)(i)(A)-(E).

Therefore, we will vacate the Immigration Judge's September 5, 2023, decision and remand this matter for further proceedings consistent with the foregoing. In remanding, we express no opinion as to the ultimate outcome of the proceedings. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained and the Immigration Judge's September 5, 2023, order is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for entry of a new decision.

² The Immigration Judge's factual findings in the Bond Memorandum, the respondent's contentions on appeal and the factual allegations in the NTA and its date of issuance inform us that the respondent was never placed in expedited removal proceedings.

CERTIFICATE OF SERVICE

I, Robert K. Hoffman, hereby certify that a true and correct copy of the foregoing “Petitioner’s Sur-Reply in Response to Defendant’s Opposition to Petitioner’s Request for a Temporary Restraining Order”, including all attachments, will be served on Defendants via US Postal Service Certified mail addressed as follows:

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On this the 26th day of November 2025.

Respectfully submitted,

/s/Robert K. Hoffman

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