UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANA GLADYS MELGAR	§	CASE NUMBER 4:25-cv-05261
v.	§	
PAM BONDI, in her capacity as United States Attorney General	§	IMMIGRATION FILE NUMBER A[redacted]
BRET BRADFORD, in his capacity as Houston Field Office Director, Immigration and Customs Enforcement	§	
RANDALL TATE, in his capacity as Warden, Montgomery Processing Center	§	

PETITIONER'S RETORT TO GOVERNMENT'S RESPONSE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Ana Melgar, Petitioner, by and through Salvador Colón, her attorney, and respectfully submits her retort to the Government's Opposition to her Petition for Writ of Habeas Corpus.

CLASS CERTIFICATION AND INJUNCTION

On December 19, 2025, the Central District of California issued a classwide injunction which has the effect of enjoining the Government from continuing to detaining Mr. Chen without the opportunity for bond. *Lazaro*

Maldonado Bautista v. Ernesto Santacruz Jr, 5:25-cv-01873, C.D. Cal. 2025). certification. The bond eligible class is defined by that court as

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

An important point in this case is that Ms. Melgar was already out on bond, having been granted bond in 2016!. However, the Government now argues that the Immigration Judge lacked jurisdiction to grant the bond and has chosen to detain Ms. Melgar. The significance of *Bautista's* class wide injunction to this case is that it validates the Immigration Judge's authority to grant bond to Ms. Melgar.

RESPONSE TO GOVERNMENT

The Government argues that because Ms. Melgar entered the U.S. without authorization, she is subject to mandatory detention. In a statement which is dramatic for its understatement, the Government proclaims that "For many years after IIRIRA, immigration judges treated aliens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2)." When the Government says "many years," it means the 29 years since IIRAIRA was enacted.

IIRAIRA did not eliminate the distinction between what had previously been excludable non citizens and deportable non citizens. Although IIRAIRA combined what had been exclusion and deportation proceedings into a single "removal proceedings,"the Act preserved the distinction between what were formerly called excludable persons (now called "arriving aliens"), and those noncitizens present in the U.S. but found to be deportable.

The distinctions have always been meaningful. For instance, a non citizen who is paroled in to the U.S. is generally classified as an "arriving alien." The term does not mean that the arriving non citizen has no legal status, in so far as a parole does grant protections and rights not available to someone without status. However, because these non citizens are "arriving aliens," they may not adjust status before the immigration judge. However, they can adjust status before USCIS, even if they are in removal proceedings. 8 C.F.R § 1245.2. All of which is to say that there are significant differences between deportable non citizens and those classified as "arriving aliens."

The Government's answer to Ms. Melgar' petition does not dispute the history of the immigration statute as it pertains to the jurisdiction of the Immigration Judge to grant bonds. What the Government says is simply that the Government changed its mind when the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Prior to September 1996, there were two different proceedings under the 1952 Immigration and Nationality Act: exclusion proceedings under then § 236 of the Immigration and Nationality Act (8 USC §1226), and deportation proceedings under then §242 (8 USC § 1252). The immigration judge (at the time called "special inquiry officers") could grant bond to noncitizens in deportation proceedings under § 242(a) of the Act, but not in exclusion proceedings. § 235(b) of the Act, 8 U.S.C. § 1225.

In September 1996, the Illegal Immigration Reform and Immigration Responsibility Act combined both immigration court proceedings into what is now Removal Proceedings under § 240 of the Act, 8 USC § 1229a.
and exclusion proceedings. Even though proceedings were combined, the Act preserved the distinction between what were formerly called excludable persons (now called "arriving aliens"), and those noncitizens present in the U.S. but found to be deportable.

Among the differences between the two classes is that arriving aliens are subject to mandatory detention under § 235(b)(2) of the Act, 8 USC § 1225(b)(2). The law has always been interpreted to grant the immigration judge jurisdiction to release deportable noncitizens on bond. § 236 of the Act, 8 USC § 1225(b)(1)(2). In other words, mandatory detention under § 235(b)(2) applies only to "arriving aliens" and applicants for admission.

The Supreme Court recently analyzed the interplay between §§ 1225 and 1226 in *Jennings v. Rodriguez, supra.* According to the Supreme Court,"an alien who arrived in the United States or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings,* 583 U.S. at 287 (citing 8 U.S.C. § 1225(a)(1). The Supreme Court then states that § 1226 "applies to aliens already present in the United States." Id. at 303. "Section 1226(a) creates a default rule for those aliens by permitting – but not requiring – the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section.'" *Id.* at 303. Subsection (c) of Section 1226 pertains to terrorists and those who commit certain criminal offenses.

Jennings adopts the long held difference between the detention of arriving aliens under § 1225 and the detention of noncitizens who are already present in the U.S. § 1226. This understanding was affirmed by the BIA itself as recently as June 30, 2025. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025), which stated that a noncitizen present in the U.S. without inspection or admission was in custody pursuant to § 236(a), not § 235.

In *Yajure Hurtado, supra*, issued by the Board of Immigration Appeals on September 5, 2025, the BIA essentially eliminates § 236 of the Act, 8 USC § 1226. The decision is a precedent decision, meaning it is a published decision binding on all immigration judges and all ICE personnel. *Yajure Hurtado* found that any

noncitizen who is present in the United States without having been inspected and admitted is subject to detention under INA § 235(b)(2), not INA § 236(a).

COURT'S AUTHORITY TO ORDER BOND HEARINGS

This Court, in habeas proceedings, has the authority to order a bond hearing. "[C]ommon-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances. See 3 Blackstone (describing habeas as "the great and efficacious writ, in all manner of illegal confinement"); see also *Schlup v. Delo*, 513 U.S. 298, 319, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose")." *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). *Hamdi v. Rumsfeld*, 542 U.S. 507, 526 (2004) (discussing "the flexibility of the habeas mechanism").

A constitutionally adequate habeas court "must have the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene*, *supra*, 779.

CONCLUSION

Ms. Melgar therefore respectfully asks this Court to order Ms. Melgar's immediate release pursuant to the bond she posted nine years ago, in accordance with the injunction in *Bautista v. Santacruz Jr.*, *supra*.

Respectfully submitted,

/s/ Salvador Colón

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that on December 21, 2025, a true and complete copy of the foregoing was served on opposing cousel via the Court's electronic filing system.

/s/ Salvador Colón

Salvador Colón