

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

|  |   |                             |
|--|---|-----------------------------|
| ALAN ORTIZ ALVARADO,                         | ) |                             |
|  | ) | Case No. _____              |
| Petitioner,                                  | ) |                             |
|  | ) | <b>PETITION FOR WRIT OF</b> |
| v.   | ) | <b>HABEAS CORPUS</b>        |
|  | ) |                             |
| PATRICIA HYDE, Field Office Director,        | ) |                             |
| MICHAEL KROL, HSI New England Special        | ) |                             |
| Agent in Charge, and TODD LYONS, Acting      | ) |                             |
| Director U.S. Immigrations and Customs       | ) |                             |
| Enforcement, and KRISTI NOEM, U.S. Secretary | ) |                             |
| of Homeland Security, PAMELA BONDI, United   | ) |                             |
| States Attorney General, and MICHAEL         | ) |                             |
| NESSINGER, Warden of the Donald W. Wyatt     | ) |                             |
| Detention Center                             | ) |                             |
|  | ) |                             |
| Respondents.                                 | ) |                             |
| _____  | ) |                             |

**INTRODUCTION AND ALLEGED FACTS**

1. Petitioner, Alan Ortiz Alvarado [hereinafter, “Alan”], is a Guatemalan national who entered the United States without inspection in 2016. He was detained by immigration officials upon entry into the United States and placed in removal proceedings where he sought relief from removal in the form of asylum. He has been present in the United States since his initial entry.
2. On March 31, 2023, final merits hearing on his application for asylum was held and the Immigration Judge denied his asylum application. He filed a timely appeal to the Board of Immigration Appeals, which remains pending as of the filing of this petition. Exhibit 1.
3. On August 19, 2025, Alan was arrested for Driving Under the Influence of Liquor. He was released on bail and appeared at his initial two hearings before the Rhode Island Criminal

Court but was unable to appear for his third hearing scheduled on September 11, 2025, as he was arrested by ICE. Exhibit 2. He was taken into ICE custody and has been in ICE custody since his initial detention by ICE. He is currently detained at the Wyatt Detention Facility, in Rhode Island.

4. On November 6, 2025, undersigned counsel submitted a Motion for Bond Re-determination with the Chelmsford Immigration Court. The Immigration Court scheduled the Bond Re-Determination hearing for November 20, 2025. On information and belief, the Petitioner believes the Immigration Judge will determine she does have jurisdiction to hold a Bond hearing in his case. (Exhibit 3).
5. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at \*23 (D.D.C. Aug. 29, 2025).
6. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently “seeking admission” to the United States
7. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.
8. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226.
9. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c),

including because he has not been convicted of any crime that triggers such detention. See *Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

10. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).
11. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
12. Petitioner has requested such a bond hearing.
13. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.<sup>1</sup>
14. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.
15. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *Ayala Casun v. Hyde*, No. 25- cv-427-JJM-AEM, 2025 WL 2806769, at \*3 (D.R.I. Oct. 2, 2025) (citing *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL

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<sup>1</sup> The BIA’s reversal and newly revised interpretation of the statute are not entitled to any deference. See *Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). See also *Elias Escobar v. Hyde*, 2025 WL 2823324, at \*3 (D. Mass. October 3, 2025) (rejecting the BIA’s reasoning in *Matter of Yajure Hurtado* because, in part, “the decision is inconsistent with other BIA decisions and with decades of the Department of Homeland Security’s practice”; *Chogllo Chafra v. Scott*, 2025 WL 2688541, at \*7-8 (D. Me. Sept. 22, 2025) (same).

2607924, at \*6 (D. Mass. Sept. 9, 2025)).

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16. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. See *Flores-Powell*, 677 F. Supp. 2d at 463 (holding “exhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation” of the relevant statute).
17. There is no statutory requirement for Petitioner to exhaust administrative remedies. See *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at \*4 (D. Mass. July 7, 2025) (“[E]xhaustion is not required by statute in this context.”).
18. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. See *Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).
19. Based on these well-established principles, this court has specifically rejected the argument that exhaustion is required in a detained noncitizen’s challenge to the BIA’s decision in *Matter of Yajure Hurtado*, supra:

a court may hear unexhausted claims in circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.” *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455,463 (D. Mass. 2010) (cleaned up). Such a circumstance “exists when substantial doubt exists about whether the agency is empowered to grant meaningful redress” as well as “when the potential decisionmaker ... can be shown to have predetermined the issue” *Id.*

*Inlago Tocagon v. Moniz*, 2025 WL 2778023 (Sept. 29 2025), at \*2.

20. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

21. Petitioner asks this Court to find that he was unlawfully detained and order his release.

### **JURISDICTION**

22. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

23. Venue is proper because Jose is currently detained in the state of Rhode Island.

### **PARTIES**

24. The Petitioner, Alan Ortiz Alvarado, is a 40-year-old man who has a pending asylum application under review by the board of Immigration Review.

25. Respondent Patricia Hyde is the New England Field Office Director for U.S. Immigration and Customs Enforcement.

26. Respondent Michael Krol is the New England Special Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement.

27. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

28. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.

29. Respondent Pamela Bondi is the United States Attorney General.

30. Respondent Michael Nessinger is the warden of the Donald W. Wyatt Detention Center, where the Petitioner is detained.

31. All respondents are named in their official capacities.

32. On information and belief, Petitioner is currently in custody in the State of Rhode Island, and one or more of the Respondents is his immediate custodian. His asylum application is

under review by the Board of Immigration Review, he has sought bond from the Immigration Court and, on information and belief, the Immigration Judge will find she has no Jurisdiction over his request for Bond.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of Fifth Amendment Right to Due Process**

1. On information and belief, Petitioner is currently being arrested and detained by federal agents without cause and in violation of his constitutional rights to due process of law.

**PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the State of Rhode Island;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (6) If immediate release is not considered a viable option, Order the Immigration Court to hold the November 20, 2025, Custody Redetermination Hearing under 8 U.S.C. § 1226(a), and enjoin the Court from denying Petitioner bond on the basis that he is detained pursuant to 8 U.S.C § 1225(b)(1), or under *Matter of Yajure Hurtado*, supra.
- (7) Award attorney's fees under the Equal Access to Justice Act 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and
- (8) Grant any further relief this Court deems just and proper.

Dated: November 6, 2025

Respectfully submitted,

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