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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

BRAYAN DEONEL HERNANDEZ REYES

Alien# 

-Petitioner

PETITIONER'S RESPONSE TO
MOTION TO DISMISS

-against-

Case No. 25-CV-01151

Buffalo Federal Detention Facility,
U.S. Department of Homeland Security
and Executive Office for Immigration Review
-Respondents

Petitioner by his attorney, Lorne J. Kelman, responds to Respondents' Motion to Dismiss as follows:

Well -Established Precedent

The central argument of Respondents is based upon a decision of the Board of Immigration Appeals ("BIA") in *Matter of Jonathan Javier YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025)

In reaching that decision, the BIA ignored decades of precedent to essentially relegate an entire class of aliens to mandatory detention, many of whom have been residing in the USA for decades with family.

Most telling is the BIA's comment in footnote 6 at page 225 of that decision: "*We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us*"

Petitioner submits that the reason the issue was not 'previously raised' in the estimated thousands of bond applications over the past decades is because it was well-settled law!

Indeed, Petitioner is not alone. Other sessions of this court, as well as other courts across the country, have determined that the Respondents' expansive interpretation misreads the statute. As the Supreme Court recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), § 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."

Throughout its text, the statute refers to "inspections"—a term not defined but which typically connotes an examination upon or soon after physical entry.

Many statutory provisions, various regulations and agency precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that 8 USC §1225 has a limited temporal and geographic scope

Examples include 8 USC §1225 which is titled “Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing” and 8 USC §§1225(b)(1)-(2) which refer to “inspections” in their titles and 8 USC §1225(d)(1) which authorizes immigration officials to search certain conveyances in order to conduct “inspections” where noncitizens “are being brought into the United States”.

By its own terms, 8 U.S.C. § 1225(b)(2), which provides for mandatory detention, applies only to “applicant[s] for admission” who an “examining immigration officer” has determined are “not clearly and beyond a doubt entitled to be admitted,” 8. U.S.C. § 1225(b)(2)(A), and thus “authorizes the Government to detain certain aliens seeking admission into the country,” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Thus, in the case of Petitioner, who was arrested and detained inside the United States, the correct statute to apply is 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2) even if the alien meets the definition of an applicant for admission as an alien present in the United States who has not been admitted.

By contrast, 8 U.S.C. § 1226, which creates a discretionary detention framework (again subject to exclusions not applicable here), applies to noncitizens arrested “[o]n a warrant,” 8. U.S.C. § 1226(a), and authorizes the government “to detain certain aliens already in the country,” *Jennings*, 583 U.S. at 289; see also *id.* at 288 (noting that § 1226 applies also to “aliens who were inadmissible at the time of entry”).

Noncitizens subject to 8 U.S.C. § 1226's discretionary detention framework are entitled to a bond hearing before an immigration judge. *Id.* at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021). Because Petitioner was already in the country when ICE arrested him on a warrant, [ECF No. [14] -1 ¶ 11], he is subject to 8 U.S.C. § 1226's discretionary detention framework and entitled to a bond hearing. He has not received such a hearing, so his detention is unlawful.

New Class Action Membership

In addition, it would appear that Petitioner is now a member of a new "Bond Eligible Class" that was certified last week in the U.S. District Court for the Central District of California.

On November 20, 2025, that district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

The declaratory judgment certified a "Bond Eligible Class" to "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.”

Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

Given that the petitioner falls squarely within that Class, we submit, he should be entitled to apply for Bond.

All of which is respectfully submitted,

Dated: December 8, 2025
Valley Stream, NY

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