

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIGUEL ANGEL OCEGUEDA
GONZALEZ,

Case No. 2:25-cv-62261-DMM

Plaintiff,

v.

SECRETARY, KRISTI NOEM, et al.,

Defendants,

PETITIONER'S SUPPLEMENTAL BRIEF

On December 10, 2025, this Court entered an order [ECF No 22] directing the parties to file supplemental briefing on the following issue: Does a live case or controversy exist to enable the Court to rule on Petitioner's Amended Petition for Writ of Habeas Corpus?

The simple answer is yes. The heart of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226.

Petitioner alleges that the Attorney General is unlawfully holding him under § 1225(b)(2), which mandates his detention, instead of under § 1226(a)'s discretionary detention scheme, where he could be eligible for release. As a result, his continued detention is unconstitutional. Section 1225 applies to "applicants for admission," defined as noncitizens who are either "present in the United States" without having been admitted or who are arriving in the

United States. 8 U.S.C. § 1225(a)(1).

Applicants for admission are divided into two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Relevant here is § 1225(b)(2), which establishes a mandatory detention regime for “an alien who is an applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted” for the duration of removal proceedings. 8 U.S.C. § 1225(b)(2)(A). *See Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (plurality opinion) (holding §§ 1225(b)(1) and 1225(b)(2) do not provide authority for bond hearings).

In contrast, § 1226 provides additional direction for the apprehension and detention of aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226(a) gives immigration authorities power to issue an administrative warrant and either “continue to detain the arrested alien” or release the alien from detention on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). However, § 1226(a) does not grant “any right to release on bond.” *Matter of D-J-*, 23 I.&N. Dec. 575 (A.G. 2003) (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)).

On July 8, 2025, the DHS issued new guidance to all ICE employees to ensure immediate and consistent application of the immigrant detention authority under 8 U.S.C. § 1225. ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission. (**Exhibit A**)

The DHS instructed all ICE employees to treat anyone inadmissible under § 1182(a)(6)(A)(i) as subject to detention under 8 U.S.C. § 1225(b)(2)(A), and therefore ineligible to be released on bond. *Id.* The Board of Immigration Appeals (“BIA”) applied the DHS’ guidance in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) holding any person who entered into the United States without admission or inspection, even if they have been residing in the United States for years without lawful status, is an applicant for admission and subject to detention under 8 U.S.C. § 1225(b)(2)(A).

Immigration Judges, throughout the Nation, are following Board precedent in *Matter of Yajure Hurtado*, determining they do not have jurisdiction over any alien who has entered the United States without inspection. (**Exhibit B – example of an order**). The sole reason for denying bond is listed as “the Court lacks jurisdiction as Respondent is an applicant for admission”.

The Petitioner need not exhaust administrative remedies if “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000).

This court continues to have jurisdiction because this action falls outside the scope of § 1252(g) and (b)(9), and exhaustion is excused because it would be futile. *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL

3041895 (M.D. Fla. Oct. 31, 2025) and *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025).

Courts throughout Florida have already covered this ground and addressed the issues raised by the Petitioner. See *Hernandez-Lopez v. Hardin*, et al., No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025). There, the Courts were satisfied with its jurisdiction and found that petitioners were being held in violation of their rights under the INA, entitling them to habeas relief.

Petitioner is seeking an individualized bond hearing consistent with 8 U.S.C. section 1226(a), not just a bond hearing to be scheduled. This Court should find that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A).

Respectfully submitted this 15th day of December 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 15, 2025, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF. I further certify that the foregoing was served on all counsel of record via CM/ECF.

/s/ Juliana G. Lamardo, Esq.

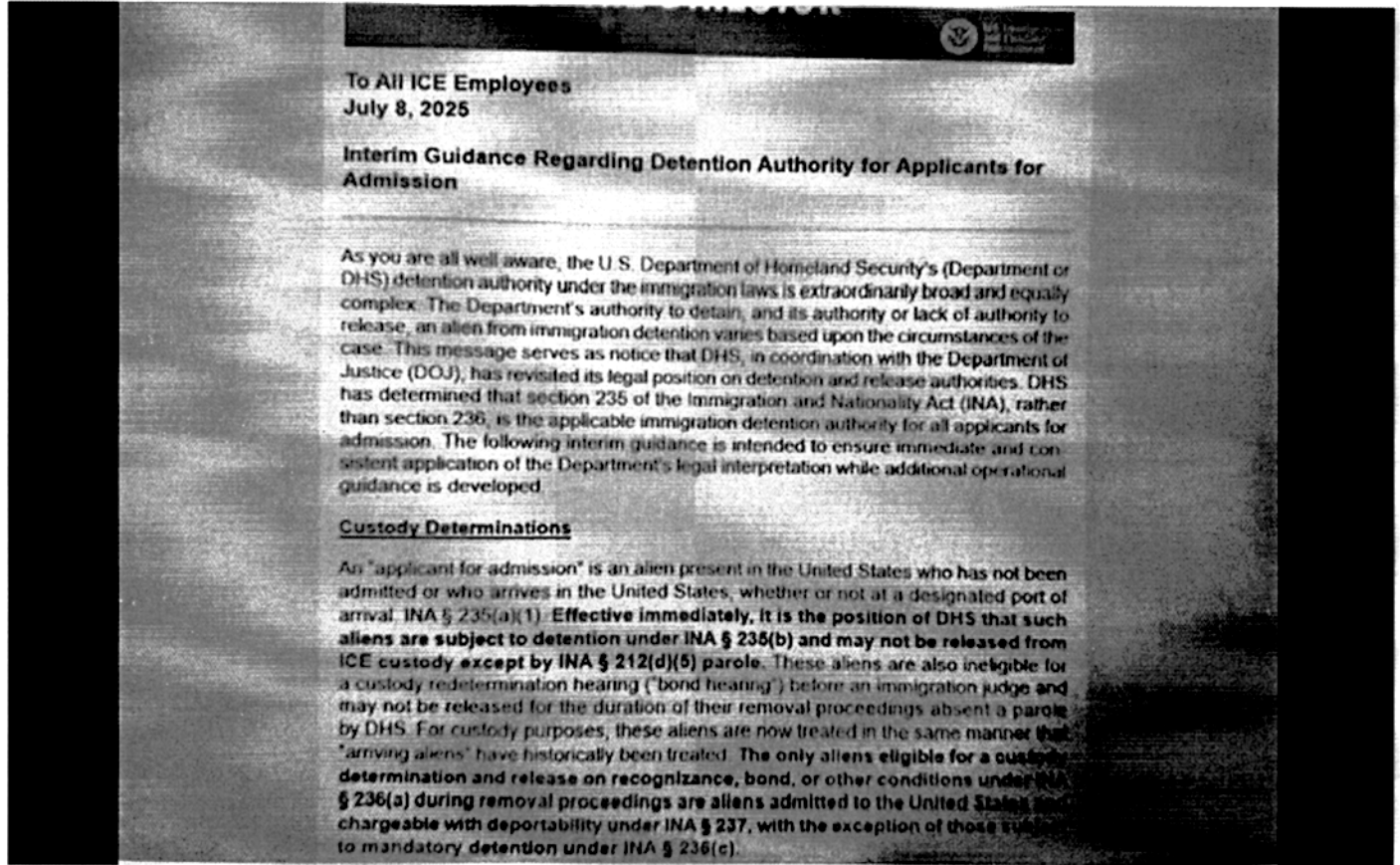
Exhibit A

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ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission

7/8/25 | AILA Doc. No. 25071607 | [Detention & Bond, Removal & Relief](#)

On July 8, 2025, ICE issued interim guidance regarding detention authority for applicants for admission.



applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(i), (ii)(V), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by fixing INA § 212(d)(5) parole paperwork.

Exhibit B



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
LASALLE IMMIGRATION COURT**

Respondent Name:

To:
Ramirez, Aida Marta

A-Number:

Custody Redetermination Proceedings

Date:

08/26/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because
the Court lacks jurisdiction as Respondent is an applicant for admission.

Granted. It is ordered that Respondent be:
 released from custody on his own recognizance.
 released from custody under bond of \$
 other:

Other:



Immigration Judge: Wells, 08/26/2025

Appeal:	Department of Homeland Security:	<input checked="" type="checkbox"/>	waived	<input type="checkbox"/>	reserved
	Respondent:	<input type="checkbox"/>	waived	<input checked="" type="checkbox"/>	reserved

Appeal Due: 09/25/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name :

Riders:

Date: 08/26/2025 By: MORGAN, JOCELYN, Court Staff