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8 Attorney for *Petitioner*

9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 ABELINO RAMOS DIAZ


13 Petitioner,

14 vs.

15 CHRISTOPHER J. LAROSE *in his*  
16 *official capacity*, Senior Warden, Otay  
17 Mesa Detention Center; PATRICK  
18 DIVVER *in his official capacity*, San  
19 Diego Field Office Director,  
20 Immigration and Customs Enforcement  
21 and Removal Operations (“ICE ERO”);  
22 TODD LYONS *in his official capacity*,  
23 Acting Director of Immigration Customs  
24 Enforcement (“ICE”); U.S.  
25 IMMIGRATION AND CUSTOMS  
26 ENFORCEMENT; KRISTI NOEM *in*  
27 *her official capacity*, Secretary of the  
28 Department of Homeland Security  
29 (“DHS”); U.S. DEPARTMENT OF  
30 HOMELAND SECURITY; and  
31 PAMELA BONDI *in her official*  
32 *capacity*, Attorney General of the United  
33 States,

34 Respondents.

Civil Action File No. **'25CV3105 BJC MSB**

Agency No. 

**PETITION FOR WRIT OF HABEAS  
CORPUS UNDER 28 U.S.C. § 2241**

1 **INTRODUCTION**

2 1. COMES NOW Petitioner Abelino Ramos Diaz (“Petitioner”), and files  
3 this Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241. Petitioner is a  
4 native and citizen of Mexico and is currently in the physical custody of the UNITED  
5 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”) at the Otay  
6 Mesa Detention Center in San Diego, California.

7 2. Petitioner is a 49-year-old Mexican citizen and national who has been  
8 living in the United States for 27 years. Petitioner is currently being held in civil  
9 immigration detention at the Otay Mesa Detention Center in San Diego, California.  
10 Prior to his arrest by immigration officers in July of this year, Petitioner lived with  
11 his partner and three sons—the youngest of whom is a minor United States citizen—  
12 in Garden Grove, California. Petitioner is an active member of his community;  
13 throughout the past 18 years, Petitioner has been a self-employed landscaper and  
14 registered parishioner of Saint Polycarp Catholic Church. In nearly three decades  
15 living in the United States, Petitioner has incurred no criminal convictions.  
16 Petitioner has a pending application for cancellation of removal and adjustment of  
17 status for certain nonpermanent residents as well as asylum and withholding of  
18 removal before the San Diego Immigration Court.

19 3. As discussed forthwith, Petitioner has already been determined by the  
20 appropriate authority (the Immigration Court) to pose no risk of flight or threat to  
21 the community. Nevertheless, relying on a reinterpretation of immigration law that  
22 stands in opposition to decades of legal precedent, the Board of Immigration  
23 Appeals (“BIA”) granted Respondents’ appeal of Petitioner’s custody  
24 redetermination, thus allowing Respondents to continue holding Petitioner in  
25 immigration detention in violation of the Immigration and Nationality Act, Pub. L.  
26 82–414, 66 Stat. 163 (“INA”); the Administrative Procedure Act, Pub. L. 79–404,  
27 60 Stat. 237 (“APA”), and; the Fifth Amendment of the United States Constitution.

1 Petitioner is being detained without recourse, at the whim of the enforcement  
2 agency.

3 4. Petitioner seeks a Writ of Habeas Corpus from this Court ordering his  
4 release as well as the additional forms of relief described forthwith so that he may  
5 return to his family and continue his case before the Immigration Court from his  
6 home in Garden Grove. Petitioner has exhausted his administrative remedies to the  
7 extent required by law, and his only remedy is by way of the instant Petition.

### 8 JURISDICTION

9 5. This Court has jurisdiction under art I, § 9, cl. 2 of the United States  
10 Constitution (Suspension Clause) and 28 U.S.C. §§ 1131 and 2241(c)(1) & (3) as  
11 Petitioner is presently in custody under color of the authority of the United States,  
12 and such custody is in violation of the Constitution, laws, or treaties of the United  
13 States. *See, e.g., Mayers v. United States INS*, 175 F.3d 1289 (11th Cir. 1999);  
14 *Henderson v. Reno*, 157 F.3d 106, 122 (2d Cir. 1998), *cert. denied sub. nom.*; *Reno*  
15 *v. Navas*, 119 S. Ct. 1141 (1999).

16 6. This Court may grant relief pursuant to 28 U.S.C. § 2241 et seq.; the  
17 Administrative Procedures Act (“APA”), 5 U.S.C. §§ 701-706; the All Writs Act, 28  
18 USC § 1651; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and; the  
19 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1252(e)(2).

### 20 VENUE

21 7. A petition for writ of habeas corpus challenging present physical  
22 confinement must generally be filed in the district of confinement. 28 U.S.C. §  
23 2241(a); *see generally Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Moreover,  
24 several of the material events from which the instant petition arises took place  
25 within this District’s territorial jurisdiction, wherein records and witnesses pertinent  
26 to such events are also located. *See Braden v. 30th Judicial Circuit Court*, 410 U.S.  
27 484, 493-94 (1973). Lastly, under 28 U.S.C. § 1391(e), venue is proper because  
28 Petitioner is in Respondents’ physical custody in this District. *See Reuben H.*

1 *Donnelley Corp. v. F.T.C.*, 580 F.2d 264, 266 n.3 (7th Cir. 1978) (ruling that, for  
2 purposes of determining proper venue pursuant to § 1391(e)(1), federal officers  
3 reside in the location where they perform their official duties).

4 **REQUIREMENTS OF 28 U.S.C. §§ 2241 and 2243**

5 8. The Court must grant the Petition for Writ of Habeas Corpus or issue  
6 an Order to Show Cause (“OSC”) to Respondents “forthwith,” unless the petitioner  
7 is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must  
8 require Respondents to file a return “within three days unless for good cause  
9 additional time, not exceeding twenty days, is allowed.” *Id.*

10 **PARTIES**

11 9. Petitioner is a 49-year-old citizen and national of Mexico who has been  
12 living continuously in the United States since March of 1998, when he was 21 years  
13 old. Prior to his immigration arrest on July 9, 2025, Petitioner was living with his  
14 wife and three sons at [REDACTED] Garden Grove, California. At  
15 present, Petitioner is being held by Respondents at the Otay Mesa Detention Center  
16 in San Diego, California.

17 10. Respondent Christopher J. LaRose (“Respondent LaRose”) is sued in  
18 his official capacity as Senior Warden of the Otay Mesa Detention Center  
19 (“OMDC”) located at 7488 Calzada de la Fuente in San Diego, California. OMDC  
20 is a private facility owned and operated by CoreCivic, Inc. pursuant to a detention  
21 services agreement with ICE. Respondent LaRose handles daily operations at  
22 OMDC. As such, Respondent LaRose is Petitioner’s physical and legal custodian.

23 11. Respondent Patrick Divver (“Respondent Divver”) is sued in his  
24 official capacity as Director of Enforcement and Removal Operations (“ERO”) at  
25 the ICE San Diego Field Office. Located at 880 Front Street, Number 2242, in San  
26 Diego, California, the ICE San Diego Field Office manages the arrest, detention,  
27 and subsequent custody status of noncitizens in San Diego and Imperial County.  
28 Because Petitioner is being held in immigration detention within the territorial


1 jurisdiction of the ICE San Diego Field Office, Respondent Divver exercises legal  
2 authority over Petitioner's present custody. Hence, Respondent Divver is a legal  
3 custodian of Petitioner.

4 12. Respondent Todd Lyons ("Respondent Lyons") is sued in his official  
5 capacity as Acting Director of ICE, the federal executive agency that identifies,  
6 apprehends, and detains removable noncitizens. ICE is headquartered at 500 12th  
7 Street Southwest in Washington, District of Columbia. Respondent Lyons has legal  
8 authority over the enforcement activity carried out by Respondents LaRose and  
9 Divver as well as all of ICE generally. Accordingly, Respondent Lyons is a legal  
10 custodian of Petitioner.

11 13. Respondent Kristi Noem ("Respondent Noem") is sued in her official  
12 capacity as Secretary of the Department of Homeland Security ("DHS" or "the  
13 Department"). Respondent Noem oversees the enforcement activity of ICE, which  
14 includes determining custody status of apprehended noncitizens. Respondent Noem  
15 has legal authority over the enforcement actions of Respondents LaRose, Divver,  
16 and Lyons as well as the Department at large. Respondent Noem is therefore a legal  
17 custodian of Petitioner.

18 14. Pamela Bondi ("Respondent Bondi") is sued in her official capacity as  
19 the Attorney General of the United States. The Office of the Attorney General is  
20 located at the U.S. Department of Justice, 950 Pennsylvania Avenue Northwest in  
21 Washington, District of Columbia. As the chief law enforcement officer of the  
22 Federal Government, Respondent Bondi is charged with faithfully administering the  
23 immigration laws of the United States. 8 U.S.C. § 1103(g). Accordingly,  
24 Respondent Bondi is legally responsible for Petitioner's detention and, as such, is a  
25 legal custodian of Petitioner.

26 **STATEMENT OF FACTS**

27 15. Petitioner was born on  in Tzintzuntzan, Michoacan,  
28 Mexico. (EXH. A).

1 16. Petitioner began residing in the United States in March of 1998, when  
2 he was 21 years old. Petitioner entered at Calexico, California, without having been  
3 inspected or admitted by an immigration officer.

4 17. Petitioner married his wife of 24 years, Ms. Hermila Domingo Vazquez  
5 (“Hermilia”), on April 28, 2001, in Santa Ana, CA. (EXH. B). At that time,  
6 Petitioner began raising his then 3-year-old stepson, [REDACTED]  
7 [REDACTED] (EXH. C). Today, 29-year-old [REDACTED] regards Petitioner as having  
8 “filled that [fatherly] role with so much love, care, and dedication.” (*Id.*)

9 18. On [REDACTED] 2001, Petitioner and Hermila welcomed a son, [REDACTED]  
10 [REDACTED] in Garden Grove, California. (EXH. D). However, [REDACTED] passed away only  
11 two days after his birth. (*Id.*)

12 19. On [REDACTED] 2003, Petitioner and Hermila welcomed [REDACTED]  
13 [REDACTED] in Santa Ana, California. (EXH. E).

14 20. Petitioner briefly departed the United States in December of 2006,  
15 when he returned to Michoacan to visit his ailing parents. Petitioner believed his  
16 parents’ death to be imminent, and he wanted to say his goodbyes. At that time,  
17 Petitioner’s parents were lawful permanent residents of the United States, but they  
18 had returned to Michoacan, and their poor health prevented them from traveling.

19 21. Petitioner returned to California on January 23, 2007, and has not left  
20 the United States since then. Petitioner was not inspected or admitted by an  
21 immigration official upon his return.

22 22. Following his last entry, Petitioner began working as an independent  
23 contractor doing landscaping work in the Southern California area. To date,  
24 Petitioner is his family’s sole financial provider. (EXH. F).

25 23. In 2010, Petitioner began residing with Hermila, [REDACTED] at  
26 [REDACTED] Garden Grove, California. Moreover, after visiting his  
27 parents, Petitioner grew closer to his Catholic faith and began associating with local  
28 parishes. (EXH. G). At present, Petitioner is a registered parishioner of Saint

1 Polycarp Catholic Church in Stanton, California, and he also attends Sunday Mass at  
2 Saint Justin Martyr Church in Anaheim, California. (*Id.*)

3 24. On [REDACTED] 2009, Petitioner and Hermila welcomed [REDACTED]  
4 in Fountain Valley, California. (EXH. H).

5 25. On July 9, 2025, in the middle of his workday, Petitioner was arrested  
6 by the ICE ERO Los Angeles Task Force in San Bernardino, California. Petitioner  
7 was processed by the ICE ERO San Bernardino Field Office, held without bond, and  
8 charged with being present in the United States without admission or parole in  
9 violation of section 212(a)(6)(A)(i) of the INA, as amended, 8 U.S.C. §  
10 1182(a)(6)(A)(i). (EXH. I).

11 26. In the days following his immigration arrest, Petitioner was transferred  
12 to OMDC in San Diego, California.

13 27. On July 14, 2025, DHS initiated removal proceedings under INA § 240  
14 through issuance of a Notice to Appear (“NTA”) filed before the San Diego  
15 Immigration Court. (*Id.*). The NTA charges Petitioner as subject to removable  
16 pursuant to INA § 212(a)(6)(A)(i). 8 U.S.C. § 1182(a)(6)(A)(i) (“An alien present  
17 in the United States without being admitted or paroled, or who arrives in the United  
18 States at any time or place other than as designated by the Attorney General, is  
19 inadmissible.”). (*Id.*)

20 28. On July 15, 2025, on Petitioner’s behalf, the undersigned filed  
21 Petitioner’s Motion Requesting Custody and Bond Redetermination before the San  
22 Diego Immigration Court. (EXH. J). Petitioner argued he is not subject to  
23 mandatory detention under 8 U.S.C. 1226(c), and that he merits release on bond  
24 pursuant to 8 U.S.C. 1226(a) and in consideration of the balance factors prescribed  
25 by 8 C.F.R. § 241.4(f) and expounded in *Matter of Patel*, 15 I&N Dec. 666 (BIA  
26 1976); *Matter of Daryoush*, 18 I&N Dec. 352 (BIA 1982), and; *Matter of Garcia-*  
27 *Garcia*, 25 I&N Dec. 93 (BIA 2009). (*Id.*).

28

1           29. On July 25, 2025, Immigration Judge Mark Sameit (“Judge Sameit”) of  
2 the San Diego Immigration Court conducted a custody redetermination hearing.  
3 (*Id.*). At the outset of the hearing, DHS-ICE was represented by Assistant Chief  
4 Counsel Antonio Estrada (“ACC Estrada”) of the Office of the Principal Legal  
5 Advisor (OPLA). ACC Estrada asserted the Immigration Court lacks jurisdiction to  
6 grant bond because Petitioner is subject to detention under INA § 235, 8 U.S.C. §  
7 1225. (*Id.*). Moreover, as noted by Judge Sameit, ACC Estrada stated Petitioner is  
8 subject to mandatory custody without making a supporting legal argument. (*Id.*).  
9 Lastly, ACC Estrada failed to identify the subsection of INA § 235, 8 U.S.C. §  
10 1225, under which Petitioner is being held. (*Id.*)

11           30. After considering Petitioner’s argument, Judge Sameit “decline[d] to  
12 consider someone like Petitioner, who has been physically present in the United  
13 States for approximately 18 years, as an applicant for admission” subject to  
14 mandatory detention under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). (*Id.*).  
15 Instead, Judge Sameit categorized Petitioner’s detention as falling under the  
16 provisions of INA § 236(a). (*Id.*). Moreover, Judge Sameit found that Petitioner  
17 does not pose a threat to the community, and that a bond of an appropriate amount  
18 would mitigate any risk of Petitioner’s flight. (*Id.*). Accordingly, Judge Sameit  
19 ordered that Petitioner be released from custody under bond of \$4,500 bond with  
20 Alternatives to Detention. (*Id.*; EXH. K).

21           31. That same, day, DHS-ICE Counsel, Min Young Chan, filed Notice of  
22 ICE Intent to Appeal Custody (“Form EOIR-43”), which automatically stayed Judge  
23 Sameit’s custody redetermination decision pursuant to 8 C.F.R. § 1003.19(i)(2).

24           32. On July 31, 2025, DHS-ICE Counsel, Naleen Martinez, (“DHS-ICE  
25 Counsel Martinez”) filed Notice of Appeal from a Decision of an Immigration Judge  
26 (“Form EOIR-26”). In the written brief accompanying Form EOIR-26, DHS-ICE  
27 Counsel Martinez cites *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) to argue  
28 that Petitioner, despite living in California for the past 18 years, is nevertheless an

1 “applicant for admission” detained pursuant to INA § 235(b)(2)(A). Accordingly,  
2 DHS-ICE Counsel Martinez contends Petitioner’s release is authorized only  
3 “pursuant to DHS’ discretionary parole authority under INA 212(d)(5)” and not to  
4 INA § 236(a).

5 33. However, in the certification accompanying Form EOIR-26, ICE Chief  
6 Counsel Jason Aguilar (“ICE CC Aguilar”) states “the legal argument, specifically  
7 warranted above, may be premised on the alien being subject to mandatory  
8 detention pursuant to 236(c) of the Immigration and Nationality Act, 8 U.S.C. §  
9 1226(c).”

10 34. On August 11, 2025, Petitioner’s bond sponsor submitted a request to  
11 post Petitioner’s bond through the ICE electronic Bonds Online system  
12 (“eBONDS”). That same day, the status of the bond payment request was updated to  
13 show “Alien Not Bondable.” (EXH. L).

14 35. On August 14, 2025, Judge Sameit issued his Bond Memorandum of  
15 the Immigration Judge “to facilitate review of the Department’s appeal” before the  
16 BIA. (EXH. J).

17 36. On September 8, 2025, ICE CC Aguilar filed DHS Brief on Appeal in  
18 support of DHS-ICE’s appeal of Petitioner’s bond grant.

19 37. On September 29, 2025, the BIA issued an order sustaining DHS’  
20 appeal and requiring Petitioner to remain in detention without bond. (EXH. M).

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1 **CLAIMS FOR RELIEF**

2 **COUNT ONE**

3 **Petitioner’s Detention Violates the INA**

4 38. Petitioner restates and realleges all paragraphs as if fully set forth  
5 herein.

6 39. The infrastructure of civil immigration detention arises from several  
7 provisions of authority in the INA, amongst which are sections 235 and 236. 8  
8 U.S.C. §§ 1225 and 1226. *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830  
9 (2018). In *Jennings*, the Supreme Court distinguishes between the immigration  
10 detention schemes of section 1225 and section 1226 by pointing to the historical  
11 treatment of the former as mandatory and the latter as discretionary. *Id.* 583 U.S. at  
12 289, 138 S. Ct. at 838. (“U.S. immigration law authorizes the Government to detain  
13 certain [noncitizens] *seeking admission into the country* under §§ 1225(b)(1) and  
14 (b)(2)” and “to detain certain [noncitizens] *already in the country* pending the  
15 outcome of removal proceedings under §§ 1226(a) and (c).”) (emphasis added).

16 40. Noncitizens encountering immigration officials at or near a port of  
17 entry who are unable to prove they are “clearly and beyond a doubt entitled to be  
18 admitted . . . *shall* be detained for a proceeding under section 1229(a) of this title.”  
19 INA § 235(b)(2)(A), 8 U.S.C. § 1225 (emphasis added). More specifically,  
20 “applicants for admission” fall into one of two categories, those covered by  
21 §1225(b)(1) and those covered by §1225(b)(2).” *Jennings*, 583 U.S. 281, 287, 138  
22 S. Ct. 830, 837 (2018). In cases of inadmissibility due to fraud, misrepresentation, or  
23 lack of valid documentation, §1225(b)(1) permits the Government to remove  
24 arriving noncitizens “without further hearing or review.” *Id.* 583 U.S. 281, 287, 138  
25 S. Ct. 830, 837 (2018) (internal citations omitted). However,

26 41. On the other hand, the Supreme Court refers to §1225(b)(2) as the  
27 “catchall provision” applying to those inadmissible arriving noncitizens not covered  
28 by §1225(b)(1). *Id.* As to this class of “arriving” noncitizens, the INA allocates

1 release authority entirely to DHS. INA § 212(d)(5); 8 U.S.C. § 1182(d)(5) (granting  
2 the Department discretion to issue parole for “urgent humanitarian reasons or  
3 significant public benefit” to detained applicants for admission on a case-by-case  
4 basis); *see also Jennings*, 583 U.S. 281, 297, 138 S. Ct. 830, 842 (observing that  
5 “neither §1225(b)(1) nor §1225(b)(2) says anything whatsoever about bond  
6 hearings”).

7 42. Notably, in *Jennings*, the Court contrasts applicants for admission with  
8 those noncitizens who entered the country without inspection or admission and were  
9 later apprehended in the country’s interior. As it does for §1225, the Court separates  
10 its discussion of §1226 into two parts: one corresponding to subsection (a) and the  
11 other to subsection (c). *Id.* 583 U.S. at 289, 138 S. Ct. at 838. The “default rule” of  
12 §1226(a) permits the Government to release a detained noncitizen not subject to the  
13 mandatory detention provision of §1226(c). *Id.* In other words, this category of  
14 noncitizens unlawful entrants are subject to the discretionary provisions of §1226(a).  
15 INA § 236(a); *see* 8 CFR 1236.1(d)(1) (authorizing an immigration judge to  
16 exercise discretionary release authority pursuant to INA § 236(a), 8 U.S.C. §  
17 1226(a)).

18 43. Nevertheless, following a July 8, 2025, DHS policy classifying all  
19 unlawful entrants as “applicants for admission,” the Board of Immigration Appeals  
20 (“BIA”) wrongly decided that any noncitizen who entered the United States at any  
21 time without having been inspected or admitted is nevertheless an “applicant for  
22 admission” subject to the mandatory detention provision of INA § 235(b)(2), as  
23 amended, 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA  
24 2025).

25 44. In reaching this conclusion, the BIA misappropriates the Court’s use of  
26 the term “catchall provision” in *Jennings* to engineer the inclusion of noncitizens  
27 such as Petitioner, who has been residing in the United States for 18 years following  
28 his last entry. *Jennings*, 583 U.S. 281, 287, 138 S. Ct. 830, 837 (2018) (internal

1 citations omitted). The facts and issues in *Jennings* are not analogous to those in  
2 *Yajure Hurtado*. The detained noncitizen in *Jennings* was a lawful permanent  
3 resident, and the Supreme Court decided only on the issue of noncitizen detainees’  
4 right to periodic bond hearings. As used in *Jennings*, the term “catchall provision”  
5 refers §1225(b)(2), which applies to those *arriving* noncitizens not subject to the  
6 expedited removal provision of §1225(b)(1). *Id.* 583 U.S. 281, 287, 138 S. Ct. 830,  
7 837 (2018) (internal citations omitted). Yet under the guise of a plain reading  
8 analysis, the BIA grafts the Court’s words from *Jennings* onto the distinct facts of  
9 *Yajure Hurtado* in order to address and summarily resolve the issue of applicability  
10 of section 1225 as opposed to 1226.

11 45. For this reason, in Petitioner’s case, the BIA erroneously determined  
12 Petitioner is an “applicant for admission” for purposes of INA U.S.C. § 1225(b)(2)  
13 and recategorized his detention as mandatory under 8 U.S.C. § 1229. Consequently,  
14 the BIA vacated Petitioner’s prior bond grant and ordered him detained without  
15 bond.

16 46. After conducting a plain language analysis of §§ 1225 and 1226, this  
17 Court and several others in this Circuit have since rejected the argument that the  
18 detention of noncitizens such as Petitioner who have been living in the United States  
19 for several years is governed by § 1225. *See, e.g., Lopez v. Larose*, No. 25-cv-2717-  
20 JES-AHG, 2025 LX 438186, at \*13 (S.D. Cal. Oct. 30, 2025) (finding in favor of a  
21 plaintiff similarly situated to Petitioner who argued his detention is governed by the  
22 discretionary framework of § 1226(a)) (“*every court* who has examined this novel  
23 interpretation of Section 1225 by the United States has rejected [the Government’s]  
24 theory”)(internal citations omitted); *see also, Vazquez v. Feeley*, No. 2:25-cv-01542-  
25 RFB-EJY, 2025 LX 460110 (D. Nev. Sep. 17, 2025) (holding that § 1226(a) and  
26 not § 1225(b) is the appropriate statutory authority providing for the detention of a  
27 noncitizen who has resided in the United States for many years).

28

1 47. Consistent with the holdings of federal district courts across the United  
2 States and the decades of legal precedent preceding them, Petitioner’s correct  
3 statutory classification is §1226(a) as Petitioner has been residing in the interior of  
4 the country for 18 years following his last entry. *See, e.g., Zaragoza Mosqueda v.*  
5 *Noem*, No. 5:25-cv-02304, 2025 LX 343661 (C.D. Cal. Sep. 8, 2025); *Gutierrez v.*  
6 *Baltasar*, Civil Action No. 25-CV-2720-RMR, 2025 U.S. Dist. LEXIS 208448, at  
7 \*15 (D. Colo. Oct. 17, 2025) (“The Court also agrees with those district courts that  
8 have ‘join[ed] the numerous other district courts that have rejected the government’s  
9 recent interpretation of the relationship between § 1225 and § 1226’ after the BIA’s  
10 decision in *Yajure Hurtado*.”) (quoting *JAIME VINICIO ORTIZ Donis Petitioner, v.*  
11 *CHRISTOPHER Chestnut ET AL., Respondents.*, No. 1:25-CV-01228 JLT SAB,  
12 2025 U.S. Dist. LEXIS 200565, 2025 WL 2879514, at \*11 (E.D. Cal. Oct. 9, 2025).  
13 Accordingly, the terms of his detention are governed not by § 1225, which applies to  
14 noncitizens presently “seeking admission,” but rather the discretionary detention  
15 framework of § 1226(a).

16 48. As such, the BIA erred in finding Judge Sameit lacks jurisdiction to  
17 grant Petitioner bond. From the moment of his arrest, Petitioner has been subject to  
18 discretionary detention under §1226(a). Moreover, as he is neither a criminal  
19 noncitizen nor a flight risk, Petitioner is not subject to the mandatory detention  
20 provision of § 1226(c) and merits release from custody under the balancing factors  
21 of 8 C.F.R. § 241.4(f) as expounded in, for example, *Matter of Patel*, 15 I&N Dec.  
22 666 (BIA 1976).

23 49. This Court is not required to accept the BIA’s the BIA’s “newly-minted  
24 interpretation of § 1225(b)(2)(A).” *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025  
25 LX 482036, at \*27 (D.N.J. Sep. 26, 2025) (referencing *Loper Bright Enters. v.*  
26 *Raimondo*, 603 U.S. 369, 400-01, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024) (ruling  
27 that courts are not required to defer to an agency’s reasonable interpretation of an  
28 ambiguous law as they are vested with ultimate authority to interpret and give

1 meaning to federal statutes by Article Three of the United States Constitution)); *see*  
2 *also Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 LX 330524, at \*9 (N.D.  
3 Cal. Sep. 12, 2025) (acknowledging the diversion from longstanding detention  
4 practice under § 1226) (“[I]n its briefing before this Court, the Government  
5 acknowledges that ‘until recently,’ it considered § 1226(a) to be an available  
6 detention authority for noncitizens who might also be subject to § 1225”) (internal  
7 citations omitted).

8 **COUNT TWO**

9 **Petitioner’s Detention Violates Fifth Amendment Due Process**

10 50. Petitioner restates and realleges all paragraphs as if fully set forth  
11 herein.

12 51. The United States Constitution prohibits the Government from  
13 depriving any person—regardless of immigration status—of “life, liberty, or  
14 property, without due process of law.” U.S. Const. amend. V; *see, e.g., Zadvydas v.*  
15 *Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 2500 (2001) (“[T]he Due Process Clause  
16 applies to all ‘persons’ within the United States, including aliens, whether their  
17 presence here is lawful, unlawful, temporary, or permanent.”) (referencing  
18 *Plyler v. Doe*, 457 U.S. 202, 210, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982)); *see*  
19 *also Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 U.S. Dist. LEXIS 165015,  
20 at \*31 (D. Md. Aug. 24, 2025) (“This precious right to be free from arbitrary  
21 detention extends to noncitizens present in the United States - even those with final  
22 orders of removal.”) (quoting *Zadvydas* at 493).

23 52. While the government has discretion to detain individuals under 8  
24 U.S.C § 1226(a), such detention authority it is not “unlimited” and must comport  
25 with constitutional due process. *Zadvydas v. Davis*, 533 U.S. at 698 (2001); *accord*  
26 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (“The government’s discretion to  
27 incarcerate non-citizens is always constrained by the requirements of due process.”).

28

1 53. By reading § 1225(b)(2) as reaching all unlawful entrants, the BIA has  
2 retroactively wrested jurisdiction from immigration judges to grant release on bond  
3 to noncitizens such as Petitioner who have been living in the United States for  
4 decades. Put another way, the BIA's reinterpretation of 1225 allows Respondents to  
5 classify all noncitizens with unlawful entries as applicants for admission, thereby  
6 using that section's mandatory detention provision to do away with the due process  
7 protections previously afforded to noncitizens subject only to discretionary  
8 detention under §1226(a). Consequently, in one fell swoop, the BIA has cleared the  
9 way for Respondents to bypass the constitutional due process protections recognized  
10 by the Supreme Court as they apply to noncitizens like Petitioner. *See, e.g.,*  
11 *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 2500 (2001) (“[O]nce an  
12 alien enters the country, the legal circumstance changes, for the Due Process Clause  
13 applies to all "persons" within the United States, including aliens, whether their  
14 presence here is lawful, unlawful, temporary, or permanent.”).

15 54. The Ninth Circuit Court of Appeals has determined a procedural due  
16 process claim is twofold: "(1) a deprivation of a constitutionally protected liberty or  
17 property interest, and (2) a denial of adequate procedural protections." *Miranda v.*  
18 *City of Casa Grande*, 15 F4th 1219, 1225 (9th Cir. 2021) (internal quotations and  
19 citation omitted). First, Petitioner was deprived of his constitutionally protected  
20 liberty interest when Respondents continued holding him under the mandatory  
21 detention framework of §1225. Second, Petitioner was denied of adequate  
22 procedural protections when Respondents invoked the automatic stay provision of 8  
23 C.F.R. §1003.19(i)(2), thereby disregarding Judge Sameit's order for Petitioner to  
24 be released from custody on bond.

25 55. Moreover, Petitioner's continued custodial detention also violates his  
26 Fifth Amendment right to procedural due process under the *Mathews* test. *Mathews*  
27 *v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976); *see* (“[T]he Ninth Circuit has noted  
28 the common use of the *Mathews* test and assumed (without deciding) that it applies

1 to due process claims in the immigration detention context”) (citing *Rodriguez Diaz*  
2 *v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022)).

3 56. More specifically, in assessing the constitutional adequacy of the  
4 Government’s actions, the Mathews test considers three factors: First, the private  
5 interest that will be affected by the official action; Second, the risk of an erroneous  
6 deprivation of such interest through the procedures used, and the probable value, if  
7 any, of additional or substitute procedural safeguards, and; Third, the Government’s  
8 interest, including the function involved and the fiscal and administrative burdens  
9 that the additional or substitute procedural requirement would entail. *Mathews* 424  
10 U.S. at 335.

11 57. Here, all three of the *Mathews* factors weigh decidedly in Petitioner’s  
12 favor.

13 58. First, Petitioner’s private interest is his freedom from the mandatory  
14 detention provisions of §1225. *See, e.g., Leal-Hernandez v. Noem*, No. 1:25-cv-  
15 02428, 2025 U.S. Dist. LEXIS 165015, at \*34 (D. Md. Aug. 24, 2025) (finding a  
16 similarly situated plaintiff to Petitioner to have “perhaps the most acute private  
17 interest known to personkind short of life itself: bodily freedom.”). In the months  
18 spent in confinement, Petitioner has been taken from his home of nearly two  
19 decades, kept away from his wife and children, and in all that time detained without  
20 recourse, at the whim of the enforcement agency. Moreover, the deprivation of  
21 Petitioner’s private interest in being free of bodily restraint has the potential to  
22 continue indefinitely—until an immigration judge grants relief or orders him  
23 removed.

24 59. Second, the risk of erroneous deprivation of Petitioner’s bodily  
25 freedom has already fully manifested: by erroneously misclassifying Petitioner as an  
26 “applicant for admission” subject to § 1225 mandatory detention, Respondents have  
27 kept Petitioner unlawfully detained without recourse. Additionally, by invoking the  
28 automatic stay provision of 8 C.F.R. §1003.19(i)(2) and not allowing Petitioner’s

1 bond sponsor to post his bond, the Government has unilaterally supplanted its own  
2 custody determination decision in the place of the Immigration Court's.

3 60. Lastly, in consideration of the third *Mathews* factor, the fiscal and  
4 administrative burden to the Government entailed by releasing Petitioner are  
5 minimal as a custody redetermination hearing has already been held, and Petitioner  
6 has already established he merits release on bond as evidenced by Judge Sameit's  
7 custody redetermination order. *See Matter of Patel*, 15 I&N Dec. 666 (BIA 1976);  
8 *see also Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at \*29 (D.N.J.  
9 Sep. 26, 2025) ("The third Mathews factor also weighs in [Petitioner's] favor as  
10 neither the government nor the public has a significant interest in detaining a long-  
11 term resident of the United States with no criminal history who is participating in  
12 cancellation of removal proceedings, which are civil in nature.") (referencing 8  
13 U.S.C. § 1229).

14 61. In sum, under *Mathews*, Petitioner's continued detention violates his  
15 Fifth Amendment right to procedural due process because Petitioner is being  
16 wrongfully held under § 1225, his detention serves no legitimate governmental  
17 purpose as he is not a threat to public safety and is able and willing to post bond,  
18 and the Government would incur no additional burden by accepting Petitioner's  
19 bond payment and releasing him from detention.

20 **COUNT THREE**

21 **Petitioner's Detention Violates the APA**

22 62. Petitioner restates and realleges all paragraphs as if fully set forth here.

23 63. A reviewing court has authority to "hold unlawful and set aside"  
24 agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not  
25 in accordance with law." 5 U.S.C. § 706(2)(A). As discussed above, Petitioner is not  
26 subject to mandatory detention under §§ 1225 or 1226(c) and instead merits release  
27 as evidenced by Judge Brock's initial custody redetermination.

28



1 7. Declare that Respondents' conduct violates the Administrative  
2 Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in  
3 accordance with law;

4 8. In the alternative, should the Court determine that immediate release is  
5 not warranted, order Respondents to provide Petitioner an individualized bond  
6 hearing before an impartial immigration judge within 14 days, at which the  
7 government bears the burden to justify continued detention by clear and convincing  
8 evidence;

9 9. Award reasonable attorneys' fees and costs pursuant to the Equal  
10 Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

11 10. Grant such other and further relief as the Court deems just and proper.

12 Respectfully submitted this November 10, 2025.

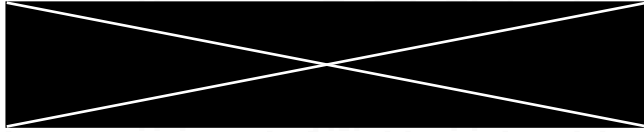
13  
14 SERRATO LAW FIRM, PC

15  
16 By: /S/ Fabian Serrato, Esq.  
17 Fabian Serrato (CA SBN 202792)  
18 217 Main Street, 3rd Fl  
19 Santa Ana, CA 92701  
20 Tel: (714) 775-6654  
21 Fax: (714) 775-6654  
22 Email: fabian@serratolaw.com  
23 Attorney for Petitioner  
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26  
27  
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INDEX OF EXHIBITS

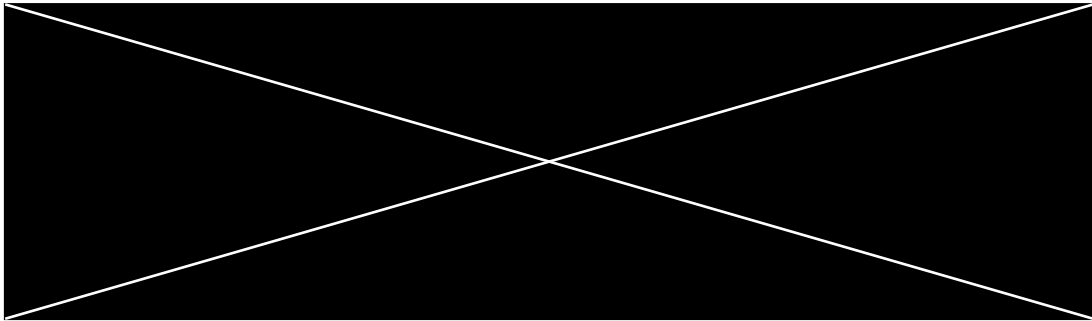
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EXHIBIT DESCRIPTION



C

  
Statement of Luis Alberto Dominguez Domingo  
(Petitioner's stepson)



F

 Statement of Hermila Domingo-  
Vazquez (Petitioner's Wife)

G

Letters of Support from Saint Polycarp Catholic Church and Saint  
Justin Martyr Church



I

DHS Form I-862, Notice to Appear

J

Bond Memorandum of the Immigration Judge (dated August 14,  
2025)

K

Order of the Immigration Judge (dated July 25, 2025)

L

Rejection of eBONDS Payment Request

M

Decision of the BIA (dated September 9, 2025)

# EXHIBIT C

July 10, 2025

Luis Alberto Dominguez Domingo



Garden Grove, CA 92841

**To whom it may concern:**

My name is Luis Alberto Dominguez Domingo, and I am the oldest son of Abelino Ramos Diaz. While I may not be his biological child, he has been my father in every sense of the word. He came into my life when I was only three years old, after my biological father passed away, and from that moment on, he raised me as his own.

I never felt like I was missing a father, because Abelino filled that role with so much love, care, and dedication. He didn't just love and care for me—he treated my mother with the utmost respect and gave our family a sense of stability and unity that shaped my entire life.

He is the kind of man who wakes up early, works hard all day, and comes home late, not to complain, but to bring joy into the home with his jokes and presence. He taught me that nothing in life is handed to you—you have to be willing to work hard for what you want.

Even though he came from very little and faced many struggles, especially in his early life, he never let that stop him from building a better life for us. He has always been a provider, a positive role model, and someone who puts his family above everything.

Right now, my mother is heartbroken. The love of her life isn't home, and I see the pain in her every day. It hurts me deeply to watch her fall apart without him, and I feel the same way. Our home feels empty without his presence, his laughter, and his guidance.

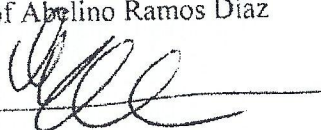
Abelino is a good man. He is kind, humble, and full of love. He's never hurt anyone or caused problems—he has only ever given love to those around him and worked to build a future for us.

Please, from the bottom of my heart, know that we miss him more than words can say. Thank you for your time and consideration.

Sincerely,

Luis Alberto Dominguez Domingo

Son of Abelino Ramos Diaz

A handwritten signature in black ink, appearing to read 'Luis Alberto Dominguez Domingo', written over a horizontal line.

# EXHIBIT E

Steve Ramos



Garden Grove, CA 92844

July 10, 2025

**To Whom It May Concern,**

My name is Steve Ramos, and I'm the son of Abelino Ramos Diaz. Before I begin expressing how important my father is to me, I would like to share the type of person he is. My father came to the United States in hopes of a better life and future for his children. He's a hardworking, responsible, kind, and caring person with no criminal record. Just like every other individual born in the United States, my father pays his taxes and respects the law. He's known as a cheerful person who makes everyone laugh and smile with just his presence. My father is the sole reason I am the person I am today and the father I strive to be for my daughter.

With my father in custody, our family is not the same. My mother and younger brother of age 15 have been negatively impacted by this event. My father worked very hard everyday to make sure they were taken care of. In sickness, my father pushed through and worked knowing his wife and sons depend on him. This event has caused tremendous sadness to me. I'm a father of a two month old infant and it breaks my heart to imagine a life where my daughter and father will not be together creating beautiful memories. My father was overfilled with joy in knowing that his first grandchild would be a girl and promised to always show her love. He belongs here with us- his family and home..

With a heavy heart, I beg you to keep our family united. My father is not a threat to this country. He represents love, dedication, strength, kindness, and hardship. I love my father so much and cannot imagine a world where he isn't present.

Thank you for taking the time to hear my voice. I urge you to consider the impact your decision will have on my family.

With sincere gratitude,

Steve Ramos

Son of Abelino Ramos Diaz

*Steve Ramos*

# EXHIBIT F

**July 10, 2025**

Hermila Domingo-Vazquez



Garden Grove, CA 92841

**Dear Officer,**

My name is Hermila Domingo-Vazquez, and I am the wife of Abelino Ramos Diaz.

I am writing this letter with a knot in my throat and a piece missing from my heart. I am beyond saddened by what my husband is currently facing.

Abelino is an excellent husband, but beyond that, he is an extraordinary father. He is the glue that holds our family together, and I do not know what I would do without him.

He has been the sole financial provider throughout our marriage, giving me the blessing of staying home while he worked hard to support our family. Our youngest son is only 15 years old, and I honestly do not know how I could financially care for him alone. My baby needs his father, and it is incredibly painful to watch him suffer, wondering why his dad never made it home from work.

Aside from being an amazing dad, Abelino is also a loving grandfather to our middle son's newborn baby girl. He adores our granddaughter, and it breaks my heart to know she is not surrounded by her full family — especially her grandfather, who was so excited to be part of her life.

Abelino does not know how to read or write, but even with that disadvantage, he came to this country at a young age and worked tirelessly to build a better life. Through his landscaping business and dedication, he has given us a comfortable life filled with love, stability, and dignity. We pay taxes, we contribute to our community, and we have built a family grounded in strong values.

I am deeply afraid of what will happen to us — emotionally, mentally, and financially. We are hurting, and we miss him more than words can describe.

With all my heart, I ask that you please consider the impact his absence is having not only on me but on our sons, our granddaughter, and our entire family. Please give my husband the chance to return home to where he belongs and proceed with court hearings — with his family, where he is needed and deeply loved.

Thank you for your time and understanding.

**Kind regards,**

Hermila Domingo-Vazquez

Hermila D.

# EXHIBIT G



SAINT POLYCARP  
Catholic Church



8100 Chapman Avenue / Stanton, CA 90680 / (714) 893-2766 / www.stpolycarp.org

Stanton, CA,  
July 14th, 2025

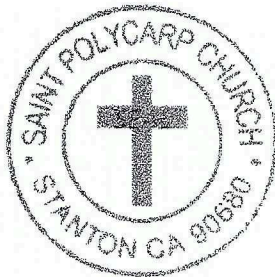
To Whom It May Concern,

Peace and all Good.


The undersigned, the Rev. Luis Segura, vicar of the Saint Polycarp Catholic Church, greets you warmly, and hereby inform you that Mr. **ABELINO RAMOS** is registered as a parishioner of our Church [REDACTED] with Address at [REDACTED] (Garden Grove, CA 92841), as indicated by the records we have in our parish office.

We leave this information manifest for matters that are convenient for the interested party.

Without further delay, I appreciate the attention given and put myself at your service for anything I can help you with.



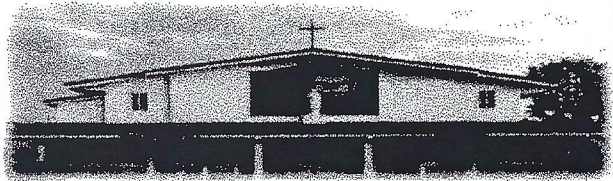
Fraternally yours in Christ:



Fr. Luis G. Segura  
Parochial Vicar

***St. Justin Martyr Church***

2050 West Ball Rd  
Anaheim, CA 9280-5415  
Phone: 714-774-2595 Fax:714-774-9849



Anaheim, CA July 14, 2025

To whom it may concern:

I Fr. Sergio Ramos Pastor of Saint Justin Martyr catholic church located in the city of Anaheim; CA write this letter on behalf of Mr. Abelino Ramos Diaz 49 years old married to Hermila Domingo with 3 children.

Mr. Abelino is a good father and husband and hard worker him and his family goes to Mass every Sunday, he is a good citizen as far as I know he doesn't have any bad civil record. On the contrary, he always tries to help others in need.

My petition is that you may reconsider his petition for him to stay in the country to continue to support his family financially and morally.

For further information please contact me on the office phone number that is in the head letter.

Sincerely,

Fr. Sergio Ramos Pastor



# EXHIBIT H

July 10, 2025

[REDACTED]

[REDACTED]

Garden Grove, CA 92841

**To Whom It May Concern,**

My name is [REDACTED] and I am the 15-year-old son of Abelino Ramos Diaz.

I want to express how much it's affecting me that my dad is not with us and the kind of person he is. My dad is my hero and my source of happiness. He has taught me what it means to be a hardworking man who always provides for his family. He made the sacrifice to come to this great country to give me the opportunity to live a better life. My heart broke when I found out that my dad had been taken into custody. He's never been a person to have problems with the police and in fact has always told me that we need to be calm and caring to others.

Anyone who knows my dad would describe him as a kind, peaceful, and compassionate man. I would describe him as a dedicated, selfless, and reliable father and man. Always there to guide me and teach me how to be a better person everyday. He is my main provider, and without him, I don't know how I will be financially supported and the thought of my mom having to carry that burden kills me. He has given me everything I've ever needed. Not only is he an amazing dad, but he's also a loving husband to my mom. He always puts her first, and I worry about how this is affecting her mentally. They have a very strong relationship and rely on each other deeply.

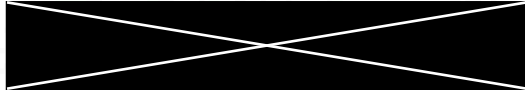
He's the heart of our home, the one who keeps us all strong and supported behind everything life throws at us. I can't imagine life without him in our house, making us laugh or celebrating our birthdays.

Please consider this letter as an expression of the pain I am going through right now. My dad deserves to be home with us. I need him, and I love him so much. We are truly so lost without my dad.

Sincerely,

A small black rectangular box with a white 'X' drawn across it, used to redact the sender's name.

Son of Abelino Ramos Diaz

A large black rectangular box with a white 'X' drawn across it, used to redact the sender's address.

# EXHIBIT I

DEPARTMENT OF HOMELAND SECURITY  
NOTICE TO APPEAR

DOB: [REDACTED]  
Event No: [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: ABELINO RAMOS DIAZ currently residing at:

7488 Calzada De La Fuente San Diego, CALIFORNIA 92154 (619) 671-8700  
(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 unknown place, on or about unknown date;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

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:

212(a) (6) (A) (i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- 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:

7488 CALZADA DE LA FUENTE, SAN DIEGO, CALIFORNIA 92154. OTAY MESA DETENTION CENTER  
(Complete Address of Immigration Court, including Room Number, if any)

on July 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.

ALEXANDRO HERNANDEZ - Supervisor  
(Signature and Title of Issuing Officer)

Date: July 14, 2025 SAN DIEGO, CA  
(City and State)

EOIR - 1 of 5

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/I-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date:

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on July 14, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person by certified mail, returned receipt # requested by regular mail
Attached is a credible fear worksheet.
Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent if Personally Served)

D 9819 BRUNETTE - Deportation Officer
(Signature and Title of officer)

EOIR - 2 OF 5

Privacy Act Statement

**Authority:**

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

**Purpose:**

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

**Routine Uses:**

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorns>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.


For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

**Disclosure:**

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

# EXHIBIT J

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OTAY MESA IMMIGRATION COURT  
7488 Calzada de la Fuente  
San Diego, California 92154

File No.:  )  
 )  
In the Matter of )  
 ) **IN BOND PROCEEDINGS**  
Abelino RAMOS DIAZ, )  
 )  
Respondent. )

**ON BEHALF OF RESPONDENT:**

Fernando Magdaleno, Esquire  
217 N. Main Street, Suite 300  
Santa Ana, California 92701

**ON BEHALF OF THE DEPARTMENT  
OF HOMELAND SECURITY:**

Antonio Estrada, Assistant Chief Counsel  
P.O. Box 438150  
San Diego, California 92143

**BOND MEMORANDUM OF THE IMMIGRATION JUDGE**

On July 15, 2025, Respondent filed a bond redetermination request with this Court. On July 25, 2025, the Court conducted a custody redetermination hearing. After determining the Court had jurisdiction, it found that Respondent had met his burden to show that he does not pose a danger to the community, but found that he did present a risk of flight which could be mitigated with bond and Alternatives to Detention. The Court granted Respondent’s release with a \$4,500 bond. *See* Order of the Immigration Judge, July 25, 2025. On July 25, 2025, the Department filed form EOIR-43, indicating its intent to appeal the Court’s custody order. The Board of Immigration Appeals notified the Court of the Department’s appeal on August 13, 2025. The Court provides this memorandum to facilitate review of the Department’s appeal. *See* 8 C.F.R. § 1003.6(c)(2); EOIR Policy Man., Part II, Ch. 9.3(e)(7).

At the outset of the hearing, the Department argued that the Court lacked jurisdiction to redetermine Respondent’s custody because the Respondent is present without inspection and is subject to detention under section 235 of the Immigration and Nationality Act (“INA”).<sup>1</sup> While the Department contended that the Respondent is subject to mandatory custody, it did not present a legal argument for such position. *See Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (holding that statements made by counsel are not evidence). Additionally, the Department did not identify under which subsection of section 235 the Respondent was allegedly detained.

Furthermore, as explained in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), INA sections 235 and 236 each cover distinct, non-overlapping classes of aliens. *Matter of M-S-*, 27 I&N Dec. at 516. Section 235(b)(2)(A) provides that “applicants for admission” who are determined not to

<sup>1</sup> The Department did not argue that the Respondent is subject to detention pursuant to *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) or *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

be clearly and beyond a doubt entitled to be admitted shall be detained for INA section 240 proceedings. The phrase “applicant for admission” is a term of art denoting a particular legal status. *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020). However, the Ninth Circuit has rejected the theory that any applicant for admission should be “treated as having made a continuing application for admission that does not terminate ‘until it [is] considered by an immigration officer.’” *Torres*, F.3d at 922 (overruling *Minto v. Sessions*, 854 F.3d 619, 624 (9th Cir. 2017)). Thus, there is some temporal limitation to such classification. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (distinguishing *Torres*, who was placed in removal proceedings 13 years after entry, with *Gambino-Ruiz*, who was detained near the border shortly after crossing it, and stating that “*Torres* merely rejected the view that an alien remains in a perpetual state of applying for admission.”). As such, the Court declines to consider someone like Respondent, who has been physically present in the United States for approximately 18 years, as an applicant for admission. To be sure, an alien “detained near the border shortly after he crossed it” is considered an applicant for admission. *Gambino-Ruiz*, 91 F.4th at 990. However, this did not occur in Respondent’s case. Respondent was not detained near the border and has been present in the United States since 2007. Therefore, the Respondent is not an “applicant for admission” who would be subject to detention under section 235(b)(2)(A). Additionally, based on his length of time in the United States, the Respondent is not an arriving alien who would be subject to expedited removal. 8 C.F.R. § 235.3(b)(1)(ii) (2025). Furthermore, the Court found that the Respondent was not detained “while arriving in the United States” pursuant to a warrantless arrest and released with parole, as envisioned in *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025). Based on the foregoing, the Court determined that the Respondent is detained pursuant to section 236(a) of the INA and that the Court did have jurisdiction to consider his custody status.

A respondent in a custody redetermination hearing under INA section 236(a) must establish to the satisfaction of the Immigration Judge that he does not present a danger to persons or property, is not a threat to national security, and does not pose a risk of flight. See *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). In determining whether a respondent merits release from custody, the Immigration Judge may consider various factors, as well as the amount of bond that is appropriate, and may consider any evidence that is probative and specific. *Matter of Guerra*, 24 I&N Dec. 37, 40-41 (BIA 2006).

The Immigration Judge has broad discretion in deciding which factors to consider in custody redeterminations and may choose to give greater weight to one factor over others, as long as the decision is reasonable. *Guerra*, 24 I&N Dec. 40 at 40-41. These factors may include any or all of the following: (1) whether the respondent has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States, and whether they may entitle the respondent to reside permanently in the United States in the future; (4) employment history; (5) record of appearance in court; (6) criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) history of immigration violations; (8) any attempts to flee prosecution or otherwise escape from authorities; and (9) the manner of entry to the United States. *Id.* (citations omitted); see also *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (noting that the recency and severity of criminal offenses must be considered, because criminal history alone is not always grounds for denial of bond). A respondent who is likely to abscond is a poor bail risk and does not merit release on bond. *Guerra*, 24 I&N Dec. at 40. Dangerous respondents are properly held without bond; the Immigration Judge should

only determine a bond amount upon which the respondent may be released if he is not a danger to the community. *Id.* at 38; *see also Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009).

First, the Court found that Respondent does not pose a danger to the community. The Respondent does not have a criminal history. There is nothing in the respondent's lengthy 18-year history in the United States that suggests he would be a danger to others. The Court determined that the Respondent presents some risk of flight because of his limited relief and manner of entry in violation of immigration laws. However, the Respondent possesses various positive factors which mitigate his risk of flight. Namely, he has strong ties to the community, including two United States citizen children, a United States citizen brother, and a permanent resident sister. He has resided in southern California for 17 years. He also has a sponsor who financially supports the Respondent and will support the Respondent and ensure he appears in court. As such, the Court determined that a bond of \$4,500 would mitigate any risk of flight and ensure his appearance at future hearings.

In making its determination, the Court considered all the information, evidence, and arguments presented by the parties. *See Matter of Guerra*, 24 I&N Dec. at 40. The Court found that Respondent does not pose a danger to the community, but that he presents a risk of flight. *See id.* Accordingly, the Court granted his request for a change in his custody status and imposed a \$4,500 bond with Alternatives to Detention at the Department's discretion.

Dated: 8/14/25

  
\_\_\_\_\_  
Mark Sameit  
Immigration Judge

# EXHIBIT K



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

Respondent Name:

RAMOS DIAZ, ABELINO

To:

Serrato, Fabian C  
217 N Main Street  
Suite 300  
Santa Ana, CA 92701

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

07/25/2025

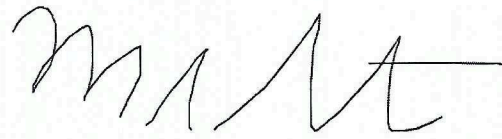
**ORDER OF THE IMMIGRATION JUDGE**

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

- Granted. It is ordered that Respondent be:
- released from custody on his own recognizance.
  - released from custody under bond of \$ 4,500.00
  - other:  
and ATD under the discretion of DHS.

Other:




Immigration Judge: SAMEIT, MARK 07/25/2025

Appeal: Department of Homeland Security:  waived  reserved  
Respondent:  waived  reserved

Appeal Due: 08/25/2025

**Certificate of Service**

This document was served:

Via: [ M ] Mail | [ P ] Personal Service | [ E ] Electronic Service | [ U ] Address Unavailable  
To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [ E ] Noncitizen's atty/rep. | [ E ] DHS  
Respondent Name : RAMOS DIAZ, ABELINO | A-Number : 

Riders:

Date: 07/25/2025 By: Rosa Rodriguez, Court Staff

# EXHIBIT L

electronic Bonds Online (eBONDS)

Enter Alien Name or A#...



Home      **Submit Bond Request**      Maintain Profile      Help      Logout

Cancel    Add Comments/Attachment

Alien File Number:   
 Alien Name: RAMOS, ABELINO  
 Bond Status: Alien Not Bondable

Bond Amount: \$  
 Bond Type:  
 Detention Location:

Bond Action History

Date	Status	Comments
08/11/2025 15:48:10	Alien Not Bondable	Detain in the custody of ICE.
08/11/2025 11:45:50	Pending ERO Response	
08/11/2025 11:42:03	Request Submitted	

To stop further processing of this bond you may withdraw this bond request by entering comments below and clicking on the Withdraw button. This action cannot be undone.

\*Withdraw comments:

Withdraw



# EXHIBIT M

NOT FOR PUBLICATION

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

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MATTER OF:

Abelino RAMOS DIAZ, 

Respondent

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**FILED**

Sep 29, 2025

ON BEHALF OF RESPONDENT: Fabian C. Serrato, Esquire

ON BEHALF OF DHS: Michael P. McQuinn, Assistant Chief Counsel

IN BOND PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Otay Mesa, CA

Before: Reid, Temporary Appellate Immigration Judge<sup>1</sup>

REID, Temporary Appellate Immigration Judge

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s July 25, 2025, decision ordering the respondent released from custody on bond.<sup>2</sup> The Immigration Judge issued a bond memorandum on August 14, 2025, setting forth the reasons for the decision. The appeal will be sustained.

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).

Since the Immigration Judge’s decision in the case, the Board issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that, based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack the authority over bond requests for aliens who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 220-28; *see also* 8 C.F.R. § 235.3(b)(1)(ii). The respondent is present in the United States without inspection (IJ Bond Memorandum at 1). The respondent is charged as inadmissible under section 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(7)(A)(i)(I) (Exh. 3).

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

<sup>2</sup> On July 25, 2025, DHS filed a Notice of ICE Intent to Appeal Custody Redetermination (Form EOIR-43), automatically staying the decision of the Immigration Judge which remains in abeyance pending a decision of the appeal by this Board. 8 C.F.R. § 1003.19(i)(2).



Pursuant to the Board's decision in *Matter of Yajure Hurtado*, the Immigration Judge lacked authority to consider the respondent's request for a bond. Based on the above, we will sustain DHS's appeal, vacate the Immigration Judge's decision, and order that the respondent is detained without bond. Accordingly, the following orders will be entered.

ORDER: DHS's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision is vacated, and the respondent is ordered detained without bond.