

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>WISTON MONTES RESTREPO,</b>	:	<b>Civil Action No. 2:25-cv-06518</b>
<b>Petitioner</b>	:	
v.	:	
	:	
<b>J.L. JAMISON, Warden</b>	:	
<b>Federal Detention Center of Philadelphia,</b>	:	
<b>Respondent</b>	:	

**PETITIONER’S REPLY TO THE GOVERNMENT’S RESPONSE IN OPPOSITION TO  
HIS APPLICATION FOR HABEAS CORPUS RELIEF**

On November 7, 2025, Petitioner Winton Montes Restrepo, (hereinafter referred to as “Petitioner,”) was detained at a regularly scheduled check-in with Immigration and Customs Enforcement. The detention was made pursuant to the Board of Immigration Appeals recent decision in **Matter of Yajure Hurtado, 29 I & N Decision 216 (BIA 2023)** which specifically held that “Under the plain reading of the INA...aliens who are present in the United States without admission are applicants for admission as defined under Section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings. See Jennings, 583 U.S. at 300 (holding that the INA “unequivocally mandates that aliens falling within the scope [of section 235(b)(1) and (2)] ‘shall’ be detained,” and that “[u]nlike the word ‘may,’ which implies discretion, the word ‘shall’ usually connotes a

requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))). **Matter of Yajure Hurtado at 220.**

The government argues that **Yajure Hurtado** governs this matter, but that argument is in error with respect to this particular Petitioner. In **Yajure Hurtado**, *supra*, the alien at issue had entered the United States without admission or parole. The alien, a Venezuelan national, was apprehended approximately three years after his entry without admission into the United States. See **Matter of Yajure Hurtado at p. 216**. When he was apprehended by Immigration and Customs Enforcement in the interior of the United States, he was served with a Notice to Appear which charged him with being present in the country in violation of Section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i) (2018), as “[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General.” See **Matter of Yajure Hurtado at p. 217**.

In its opposition to the Petitioner’s application for Habeas Corpus, the government incorrectly asserts that the Petitioner herein “crossed the United States Border without authorization and was not inspected and admitted on May 4, 2022.” **Government’s Response at page 2**. This is in error, since the Petitioner was lawfully paroled into the United States on May 4, 2022,. See **Exhibit** , Parole stamp attached. While the government attaches as its own **Exhibit A** a copy of the I-213 purportedly issued on August 9, 2023, a full year after he was lawfully paroled into the United States, it is clear that the Petitioner has in fact been paroled into the country. Therefore, the holding in **Yajure Hurtado** can be distinguished from this matter, and is not binding. It does not, therefore, strip an immigration judge of jurisdiction to review a bond redetermination request for this Petitioner.

The government is also heard to argue that the Petitioner is challenging the government's interpretation of a statute which authorizes its ability to initiate removal proceedings against him. **See Government's response at page 6.** That is likewise incorrect. The Petitioner herein is not challenging the statutory interpretation made by the government in detaining him. It is challenging the application of the decision in **Yajure Hurtado**, supra, to his case, since as noted above, this Petitioner was paroled into the country, and **Yajure Hurtado** cannot be read to govern factual situations such as the one at bar.

Recently, in a non precedential decision from this court, **Deybin Jose Rivas Rodriguez**, **1:25-cv-17419**, the court held that where the applicant for relief had been paroled into the United States, he was not bound by the decision in **Yajure Hurtado** holding that "Petitioner was paroled into the United States in September 2021 pursuant to the Department of Homeland Security's exercise of discretion under 8 U.S.C. § 1182(d)(5)(A), following a medical risk review, (ECF No. 1, at ¶ 3; ECF No. 1–5, at 1), and because § 1225(b)(1)(A)(iii)(II) applies only to individuals "who have not been . . . paroled," the plain language of the statute clearly and unambiguously shows that § 1225(b)(1)(A)(iii) cannot serve as the basis for Petitioner's detention, *see, e.g., Rodriguez-Acurio v. Almodovar*, No. 25-6065, 2025 WL 3314420, at \*15–17 (E.D.N.Y. Nov. 28, 2025) (concluding that "has not been . . . paroled" in § 1225(b)(1)(A)(iii)(II) describes a past event of parole, not a present status, because the present-perfect tense captures whether parole occurred "at any time in the indefinite past," and that although the term "parole" can refer to both a manner of entry and legal status, contextual clues, such as the pairing of "admitted or paroled into the United States," show that Congress referred to a manner of entry, not an ongoing legal status) (cleaned up)); moreover. Respondents offer no statutory-interpretation argument to the contrary and do not provide any analysis as to the text, structure, or grammar of § 1182(d)(5)(A)

or § 1225(b)(1); nor do Respondents dispute that Petitioner has resided in the United States continuously for more than two years.” *Id.* at p 4.

The government would argue that the issuance of the Notice To Appear one year after the Petitioner was paroled into the United States essentially “revoked” that parole, thereby returning him to the status that he had before he obtained the parole. However, that is an incorrect interpretation of the law. As noted in **Rivas Rodriguez, supra**, “to the extent Respondents *imply* that revocation of parole somehow returns Petitioner to his pre-parole status; the statutory text does not support such a reading and as the court in *Coalition* explained, § 1182(d)(5)(A) does *not* state that a parolee “return[s] . . . to the position of an applicant for admission standing at the threshold of entry,” or that he “reverts to the status he possessed prior to the grant of parole,” it provides only that, upon expiration of parole, the individual “shall . . . return . . . to the custody from which he was paroled” and that “his case shall continue to be dealt with in the same manner as that of any other *applicant for admission*,” *i.e.*, any ordinary noncitizen present in the United States without admission, *e.g.*, *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-872, 2025 WL 2192986, at \*23–24 (D.D.C. Aug. 1, 2025) (emphasis added) (quoting 8 U.S.C. § 1182(d)(5)(A)); *see also* 8 U.S.C. § 1225(a)(1) (defining “applicants for admission”); *Rodriguez-Acurio*, 2025 WL 3314420, at \*17–18 (“All the term ‘applicant for admission’ requires is presence in the United States without admission.”). *Id.* At p. 5

The government is also heard to argue that the Petitioner has not exhausted all of his remedies, but there is no obligation for an applicant for relief to make a futile application when there is absolutely no likelihood that the relief will be granted. Requiring the Petitioner to exhaust his appeal to the BIA prior to litigating his claims before this Court is futile. Such a requirement “would almost certainly result in the BIA persisting in its earlier rulings and

applying those rulings to Petitioner, all while he remains in detention without the bond hearing due him.” *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at \*13 (W.D. Pa. Oct. 23, 2025). Furthermore, in its response, the government has basically conceded the futility of any exhaustion when it states that “Pursuant to the September 5, 2025 Hurtado precedential decision that is binding on all immigration judges, an immigration judge has no authority to consider a bond request for any person who entered the United States without admission. The Board determined that such individuals are subject to detention under 8 USC Section 1225(b)(2)(A) and therefore ineligible to be released on bond.” **Respondent’s Brief at page 2-2 fn2**

#### CONCLUSION

For all of the foregoing reasons, Petitioner respectfully submits that the petition for habeas corpus be granted, and that he be immediately released from custody as his continued detention violates his constitutional right to due process. He is not subject to mandatory detention, and the government has erroneously applied the law in keeping him detained, despite his eligibility for release.

Respectfully submitted

  
Christine M. Flowers, Esquire

JOSEPH M ROLLO AND ASSOCIATES PC,

ATTORNEYS FOR PETITIONER

Dated December 8, 2025

CERTIFICATE OF SERVICE

I, Christine M. Flowers, Esquire, hereby certify that on this date, I filed the foregoing Petitioner's Reply to the government's Response in Opposition to his application for habeas relief via the Court's Case Management/Electronic Case Filing System, thereby making it available for viewing and download by all parties to the case.

A handwritten signature in cursive script, reading "Christine M. Flowers", is written over a horizontal line.

CHRISTINE M. FLOWERS, ESQUIRE

JOSEPH M ROLLO AND ASSOCIATES, PC

ATTORNEYS FOR PETITIONER

Dated December 8, 2025

# EXHIBIT A

CONTROL Name (Last, First, Middle) MONTES-RESTREPO, WISYON						
Birthdate		Age 32	Marital Status <input checked="" type="checkbox"/> Single <input type="checkbox"/> Separated		<input type="checkbox"/> Widowed <input type="checkbox"/> Married <input type="checkbox"/> Divorced	File Number
Sex M	Hair BLK	Eyes BRN	Complexion MED	Height 68	Weight 165	Scars or Marks None Indicated
U.S. Address/Mail (Number) (Street) (City) (State) (ZIP CODE)						
Alien's Telephone # 610 742-0702			Date of Action 05/04/2022		Location Code MCS	
City, Province (State) and Country of Birth MARACAIBO, VENEZUELA				Country of Citizenship VENEZUELA		
Date, Place, Time, and Manner of Last Entry/Attempted Entry 05/04/2022, 0001, 14.45 mile(s) W of HID, PNAH (NAFT)				Status at Entry PNA Mexico		
Foreign Address/Residence (Number, Street, City, Province (State), Country) MARACAIBO VENEZUELA						
Method of Location/Apprehension PB UNKNOWN			(A/Near) EDDAGO, TX		Date & Hour 05/04/2022 0200	

U.S. DEPARTMENT OF HOMELAND SECURITY  
**PAROLED**

Until July 3, 2022

Purpose: 22(e)(5)

91023

5/4/22 RGV VF3

(Date) (Location) (Officer)

U.S. DEPARTMENT OF HOMELAND SECURITY