UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

JOSE ORLANDO GIRON Petitioner, vs. **KRISTI NOEM**, et al. Respondents.	Case No.: 4:25-cv-5637 **PETITIONER'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Petitioner is in receipt of Respondent's Answer to his Writ for Habeas Corpus and Motion for Summary Judgment, filed on December 5, 2025.

This Opposition is filed within three (3) days.

II. BACKGROUND

Petitioner seeks an order directing Respondents to hold a bond hearing under 8 U.S.C. §1226(a). Conversely, Respondents allege that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), in that he is "an alien who is an applicant for admission, if the examining immigration officer determines that an

alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." Resp. Ans. at 4.

III. OPPOSITION TO SUMMARY JUDGEMENT

Pursuant to Fed. R. 56, the court shall grant summary judgment if the movant demonstrates that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.

Respondents note that the Board of Immigration Appeals has held that individuals, like Petitioner, found to be removable under 8 U.S.C. §1182(a)(6)(A)(i) [present in the United States *without being admitted or paroled...]* is subject to mandatory detention. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Resp. Ans. at page 1.

However, Respondents concede that there is a mixed range of decisions, even within the Texas Districts, some favoring its position [agreeing with Yajure Hurtado],[1] and others siding with Petitioner's view that, although he might be removable under 8 U.S.C. §1182(a)(6)(A)(i) (*present without being admitted or paroled]*) this is not the same as someone "seeking admission" within the meaning of the mandatory detention provision at 8 U.S.C. § 1225(b)(2), as "seeking" is a term

[1] *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) and *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge),

that cannot reasonably apply to someone who has been placed into removal proceedings well after their entry to the United States.[2] *Compare,* Resp. Ans. at page 7 and Pet. Amended Writ at page 17.[3]

Indeed, in this case, Petitioner has been in the United States since 1996 and there is a genuine issue about whether he can reasonably be considered to be "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)[mandatory detention]. *See* Pet. Amended Writ, pages 13-17.

Respondents believe that more decisions will be decided in their favor, Resp. Ans. at page 7, however, it is notable that decisions on both sides post-date the BIA's decision in Yajure Hurtado, and so there truly are genuine issues of fact (i.e. whether

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[2] *Buenrostro- Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025)(on appeal); *Fuentes v. Lyons*, 5:25-cv-153 (S.D. Tex. October 16, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. October 15, 2025); *Baltazar v. Vasquez*, 25-cv-175 (S.D. Tex. October 14, 2025); *Covarrubias v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

[3] Notably, Petitioner's arguments find further support in the fact that in 2025, Congress passed the Laken Riley Act, which added additional categories of Section 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). It mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* If Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL 2690565, at *4; *LopezCampos*, 2025 WL 2496379, at *8.

Petitioner is "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)[mandatory detention]), and so Respondents have not shown they are entitled to judgment as a matter of law.

To be sure, while Respondents reference a recent decision in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge) finding Petitioner was an "applicant for admission," and so also subject to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A)," other courts have found that the term "seeking" in "seeking admission" "implies action – something that is currently occurring, and [], would most logically occur at the border upon inspection." *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera*, 2025 WL 2690565, at *4. In other words, individuals, like Petitioner, who have been present in the country for years are not reasonably viewed as "seeking admission" [at the border]. *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

Respondents further inform that, after Petitioner's initial Writ was filed, the Central District of California certified a class of aliens who, like Petitioner, are deemed applicants for admission, detained by Respondents under 8 U.S.C. § 1225(b)(2), and providing that such class members be afforded a bond hearing. *See* Resp. Ans. at p.8, *citing Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

Respondents concede that Petitioner may be a member of this class, although the matter is presently under review by the Department of Justice, in which case, he'd be entitled to a bond hearing. Resp. Ans. at 8 fn 5.

III. CONCLUSION

Accordingly, for all these reasons, Petitioner offers that Respondents have not met their burden for Summary Judgment as there is no binding that entitle them to a ruling in their favor as a matter of law, and there remain outstanding issues of fact such as whether Petitioner is "seeking admission" and subject to mandatory detention, or whether he will be recognized as a *Maldonado Bautisa* class member who is entitled to a bond hearing.

December 8, 2025

Respectfully submitted,

/s/ Vital D'Carpio

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CERTIFICATE OF SERVICE

I certify that, on December 6, 2025 the foregoing was filed and served on all attorneys of record via the District's ECF system.

/s/ Vital D'Carpio

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