

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRISA LILIA LÓPEZ GÓMEZ

v.

PAM BONDI,
in her capacity as
United States Attorney General

KRISTI NOEM,
in her capacity as Secretary of the
U.S. Department of Homeland Security

BRET BRADFORD,
in his capacity as Houston Field
Office Director, Immigration and
Customs Enforcement

RANDALL TATE,
in his capacity as Warden, Montgomery
Processing Center



CASE NUMBER
4:25-cv- 5667

PETITIONER'S RETORT TO GOVERNMENT'S RESPONSE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Brisa López, Petitioner, by and through Salvador Colón, her attorney, and respectfully submits her retort to the Government's Opposition to her Petition for Writ of Habeas Corpus and her response to the Government's Motion to Dismiss the same.

CLASS CERTIFICATION AND NATIONAL INJUNCTION

On November 26, 2025, the Central District of California certified a class and issued an order which has the effect of enjoining the Government from continuing to detaining Mr. Gutierrez without the opportunity for bond. *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, C.D. Cal. 2025). certification. The bond eligible class is defined by that court as

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Ms. López lacks lawful status, entered the U.S. without inspection, was not apprehended upon arrival and, contrary to the Government's position, is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

The 1996 statute, IIRAIRA, created the § 1226(c), § 1225(b)(1), or § 1231 distinctions. In doing so, it did not eliminate the distinction between what had previously been excludable non citizens and deportable non citizens. Although IIRAIRA combined what had been exclusion and deportation proceedings into a single "removal proceedings," the Act preserved the distinction between what were formerly called excludable persons (now called "arriving aliens"), and those noncitizens present in the U.S. but found to be deportable.

The distinctions have always been meaningful. For instance, a non citizen who is paroled in to the U.S. is generally classified as an "arriving alien." The term does not mean that the arriving non citizen has no legal status, in so far as a parole does grant protections and rights not available to someone without status.

However, because these non citizens are “arriving aliens,” they may not adjust status before the immigration judge. However, they can adjust status before USCIS, even if they are in removal proceedings. 8 C.F.R § 1245.2. All of which is to say that there are significant differences between deportable non citizens and those classified as “arriving aliens.”

The Government’s answer to Ms. López’ petition does not dispute the history of the immigration statute as it pertains to the jurisdiction of the Immigration Judge to grant bonds. What the Government says is simply that the Government changed its mind, and that because that change found unanimous expression, this Court must give “great weight” to the BIA’s radical departure from legal tradition. Government Response at p. 7. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Furthermore, says the Government, all the other courts that have dismissed the Government’s approach are doing so “mistakenly.” Government answer at p. 5.

Ms. López has three United States citizen children: twenty five year old Domingo Rivera, fifteen year old M [REDACTED] and eleven year B [REDACTED]. Ms. López is statutorily eligible for cancellation of deportation due to her long standing ties to the United States and her marriage to a United States Citizen.

The Government argues that Ms. López did not avail herself of administrative remedies. Asking for a bond from the Immigration Judge is futile.

In *Yajure Hurtado, supra*, issued by the Board of Immigration Appeals on September 5, 2025, the BIA essentially eliminates § 236 of the Act, 8 USC § 1226. The decision is a precedent decision, meaning it is a published decision binding on all immigration judges and all ICE personnel. *Yajure Hurtado* found that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under INA § 235(b)(2), not INA § 236(a). Under *Yajure Hurtado* the Immigration Judge lacks jurisdiction to entertain Ms. López' bond request.

Appeal of the Immigration Judge's denial is not only futile, but extremely time consuming and exacerbates the irreparable harm to Ms. López. Ms. López must care for her two minor U.S. Citizen children: fifteen year old M  and eleven year B  Ms. López' continued detention causes extreme disruption and pain to her U.S. Citizen family, and irreparable harm to her.

Ms. López' first appearance before the Immigration Judge is on December 10, 2025. Ms. López respectfully prays that by that date the Court order the Immigration Judge to consider an application for bond in Ms. López' case.

Respectfully submitted,

/s/ Salvador Colón

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that on December 5, 2025, a true and complete copy of the foregoing was served on opposing counsel via the Court's electronic filing system.

/s/ Salvador Colón

Salvador Colón