

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

LASHA NIKABADZE

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CIVIL ACTION NO. 5:25-cv-236

VS.
MIGUEL VERGARA et al.

RESPONSE TO THE H. UNITED STATES DISTRICT JUDGE MARINA GARCIA
MARMOLEJO'S ORDER 12/03/'25

STATEMENT OF FACTS

1. Petitioner, Mr. Lasha Nikabadze, entered the United States without inspection on or about 12/07/2021.
2. After entering into the United States he was processed and released from custody into the United States on February 8, 2022. A Notice to Appear charging Petitioner as being inadmissible was not filed with the Executive Office of Immigration Review to initiate removal proceedings under 8 U.S.C. § 1229a.
3. As such, Petitioner applied for asylum affirmatively with USCIS on December 13, 2022 as required by 8 U.S.C. § 1158.
4. Petitioner's affirmative asylum application was heard by an asylum officer, which then referred the case to the Immigration Judge by issuing a Notice to Appear. The Notice to

Appear dated January 2, 2025, identified and charged Petitioner as being inadmissible under 8 U.S.C. §§ 1182(a)(7)(A)(i)(I) and (a)(6)(A)(i). *See* Dkt 1-2 at 1. Petitioner was not detained upon issuance of the Notice to Appear and he was ordered to appear at 26 Federal Plaza, 12th Floor, Room 1237, New York, NY, on March 20, 2026.

5. On September 16, 2025, Mr. Nikabadze was detained at an immigration checkpoint. He was served with a Notice of Custody Determination, DHS Form I-286, indicating that he was detained by DHS “[p]ursuant to the authority contained in section 236” of the INA. *See* Exhibit 1- I-286. Petitioner requested a review of his custody by an IJ. *Id.*
6. Petitioner requested a bond hearing with the Immigration Judge which was conducted on November 24, 2025. The IJ denied the request “because [Petitioner] is ineligible for bond pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as an alien who is present in the United States without admission”. *See* Exhibit 2- Bond Denial Order

LEGAL BACKGROUND

7. On November 25, 2025, the U.S. District Court for the Central District of California issued an order in *Maldonado Bautista v. Santacruz*, certifying the following nationwide class “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.” Dkt No. 4 at 1 (citing *Maldonado Bautista v. Santacruz, Jr.*, ---

F.R.D. ---, 5:25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

8. In the class certification order, the Court “extend[ed] the same declaratory relief granted to Petitioner’s to the Bond Eligible Class as a whole”. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *14 (C.D. Cal. Nov. 20, 2025). The Court previously granted declaratory relief in Petitioner’s Motion for Partial Summary Judgement, but denied final judgment as other claims remained pending. A status conference has been set to address how the parties wish to proceed in the matter as to the remaining issues and claims. *Id.* at 15. The Court’s Partial Summary Judgement order held that the government’s policy was inconsistent with the INA and that petitioners were properly subject to 8 U.S.C. § 1226(a), which entitles them to a bond hearing.
9. As such there are 2 groups of people who have claims to relief.
10. First, those who entered the United States, were not apprehended at or near the border or close in time to their entry, and who were later arrested by immigration authorities.
11. Second, those who were apprehended at or near the border and close in time to their entry, were released on recognizance, and then were re-detained by immigration authorities after residing in the United States.

ANALYSIS

12. Petitioner contends that he is a member of the nationwide class as part of the second group identified above. He entered the United States on December 17, 2021, was apprehended near the border and close in time to his entry, was released into the United States, and was re-detained by immigration authorities on September 16, 2025 after residing in the United States for almost four years.

13. As such, he is entitled to the same declaratory relief the Court granted the petitioner's Partial Summary Judgment, which was extended to the nationwide class. Under Federal Rule of Civil Procedure 54(b), a court may order a final judgment even if it has not resolved all claims and it is therefore a binding, final judgment against the Respondents.
14. The IJ denied Petitioner's bond request by citing Matter of Yajure-Hurtado, the binding precedential decision in immigration courts administered by the Attorney General holding that all inadmissible are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This decision was issued in coordination with DHS's policy change which led to the nationwide class and the instant habeas corpus petition. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *2-3, 7-8 (C.D. Cal. Nov. 20, 2025) (finding federal respondents' interpretation of 8 U.S.C. §§ 1225(b)(2), 1226 by means of a concerted DHS and DOJ policy change invalid and granting petitioner's motion for partial summary judgment as a live controversy remained since petitioners would be re-arrested and subjected to mandatory detention citing Yajure-Hurtado).
15. Numerous district courts have rejected Yajure-Hurtado finding the BIA's interpretation not to be persuasive and have not given the BIA's statutory interpretation deference. *See e.g., Buenrostro-Mendez v. Bondi*, Case No. H-25-3726, 2025 WL 2886346, at *6 (S.D. Tex. Oct. 7, 2025) (citing Loper Bright Enters. v. Raimondo, 603 U.S. 369, 413 (2024) and collecting cases). *Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip op. at *4 n.1 (S.D. Tex. Oct. 15, 2025) (citing Salcedo Aceros v. Kaiser, No. 25-CV-6924, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025)).

16. For the first time, Federal Respondents allege Petitioner is detained subject to 8 U.S.C. § 1225(b)(1). Dkt 12-1 at 4. However, Federal Respondents re-detained Petitioner on September 15, 2025 by issuing a Form I-286 invoking the detention authority of 8 U.S.C. § 1226(a). Exhibit 1 - I-286. Additionally, Federal Respondents issued Petitioner a Notice to Appear on January 2, 2025, charging him as being removable pursuant to INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Aliens subject to inadmissibility under § 1182(a)(6)(A)(i) are not amenable to expedited removal under § 1225(b)(1). Most recently, the IJ denied the bond request by determining that Petitioner's detention stemmed from § 1225(b)(2).

CONCLUSION

17. Petitioner is a member of the nation wide class , as he entered without inspection, was released on recognizance, and then re-detained by immigration authorities after residing in the United States. His inadmissibility was determined upon the issuance of the Notice to Appear over three years after he entered the United States and he was placed into removal proceedings. Eight months after that determination was made he was then apprehended by Border Patrol at the immigration checkpoint and remanded into the custody of DHS. Federal Respondents have already determined that his custody is being exercised under 8 U.S.C. § 1225(b)(2) when the IJ denied his bond request on November 24, 2025.

18. Petitioner's position with respect to the effect of the declaratory relief under Maldonado Bautista, should be that the Petitioner should be afforded a redetermination of custody status before an Immigration Judge as he is being detained pursuant to 8 U.S.C. §

1226(a). Even if this Honorable Court were to find that Petitioner is not part of the nationwide class and accordingly not entitled to the declaratory relief provided, Petitioner still maintains that he is detained pursuant to 8 U.S.C. § 1226(a), “because [he] was released and resided in the United States for months to years prior to their most recent apprehension[], [he] is subject to detention under 8 U.S.C. § 1226(a) and therefore entitled to [a] bond hearing.” See Del Valle Castillo v. Wamsley, No. 2:25-cv-02054-TMC (W.D. Wash. Nov. 26, 2025), Dkt. 28, at *4 (“[T]he fact that Petitioners are not Bond Denial Class members does not prevent them from seeking habeas relief on similar legal grounds.”).

Dated: December 5th, 2025

Respectfully Submitted,

/s/ David H. Square
DAVID H. SQUARE, ESQ.
LAW OFFICE OF DAVID H. SQUARE, PLLC
225 PALM BLVD.
BROWNSVILL, TX 78520
T: (956) 421-1010
E: DAVID@LAWOFFICEOFDHS.COM
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on December 5, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/David H. Square

David H. Square
Attorney for Petitioner