UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Miguel Zambrano,	X	
Petitioner,	X	
	X	
v.	X	Case No.:
	X	3:25-cv-1464
Pamela Jo Bondi, U.S. Attorney General,	X	
U.S. Department of Justice, **Kristi Noem**,	X	
Secretary, U.S. Department of Homeland	X	
Security; **Garrett Ripa**, Field Office Director,	X	
U.S. Immigration and Customs Enforcement,	X	
Miami, Florida,	X	
Respondents.	X	

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MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR EXPEDITED CONSIDERATION OF PETITION SEEKING WRIT OF HABEAS CORPUS AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT OF TEMPORARY RESTRAINING ORDER

COMES NOW, Miguel Zambrano ("Petitioner"), by and through the undersigned counsel and hereby files this memorandum of law in support of request for expedited consideration of petition seeking writ of habeas corpus and incorporated memorandum of law in support of Temporary Retraining Order.

In support thereof, Petitioner states as follows:

1. That these proceedings were initiated upon the filing of a petition seeking issuance of a writ of habeas corpus.
2. That Petitioner is currently detained by the U.S. Department of Security ("Department") at its Baker Correctional Facility ("BCF") located in Sanderson, Florida.
3. That an alien who is detained by the Department can seek a redetermination of custody status before a U.S. Immigration Judge ("IJ") through a procedure set forth in detail at 8 C.F.R. §1003.19.
4. That recently, however, the Board of Immigration Appeals ("Board")[1] released its precedent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA Sep. 5, 2025).
5. That as will be explained in more detail herein, publication of Matter of Yajure Hurtado immediately rendered many aliens seeking a custody redetermination hearing no longer in a position to move forward with such request.
6. That the Immigration and Nationality Act ("INA" or "Act") provides as follows:

   (a) "Inspection

      (1) Aliens treated as applicants for admission

[1] The Board of Immigration Appeals is an office within the Executive Office for Immigration Review ("EOIR"), a component agency within the U.S. Department of Justice.

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C. §1225(a)(1).

Furthermore, "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers. 8 U.S.C. §1225(b)(3).

7. That the provisions of the INA discussing the inspection of aliens distinguishes between two different types of "applicants for admission."

- Aliens who approach a designated port-of-entry and make application for admission before an "immigration officer" are described at 8 U.S.C. §1225(b)(1)(A)(i). This provision provides, in pertinent part, that

  > "[i]f an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution."

- All other "applicants for admission" are described at §1225(b)(2)(A), which provides, in pertinent part, that

  > "[s]ubject to subparagraphs (B) and (C), in the case of 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 a proceeding under section 1229a of this title."

8. That the other provision of importance in the discussion herein is 8 U.S.C. §1226(a). This provision states, in pertinent part, that

> "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General-
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> (1) may continue to detain the arrested alien; and
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> (2) may release the alien on-
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> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole; but
>
> (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization."

9. That question presented herein is whether Petitioner's ongoing custody status is to be considered by reference to §1225 or §1226. Recently, the Board released its precedent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA Sep. 5, 2025).

This case involved a Venezuelan national who was present in the United States without having been inspected and admitted or paroled. The alien was charged with being inadmissible to the United States in violation of 8 U.S.C. §1182(a)(6)(A)(i)[2] and requested a custody redetermination hearing

[2] "An 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, is inadmissible."

as described ay 8 C.F.R. §1003.19. The IJ concluded that he lacked jurisdiction to consider the alien's bond request for reasons similar to the questions presented herein and the alien appealed this determination to the Board.

Reviewing the pertinent statutory language, the Board stated that

> "[u]nder the plain reading of the INA, we affirm the Immigration Judge's determination that he did not have authority over the bond request because aliens who are present in the United States without admission are applicants for admission as defined under ... 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." Matter of Yajure Hurtado, *supra*, at 220.

The alien offered a number of arguments in response. First, the alien argued that while he remained an "applicant for admission," he was not "seeking admission" as described at §1225(b)(2)(A) inasmuch as he had been physically present within the United States for two years or more."[3] As such, the alien argued that his custody status was controlled by §1226. The Board concluded, however, that this "argument is not supported by the plain language of the INA, and actually creates a legal conundrum..." because "[i]f he is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status." Id. at 221.

[3] As indicated supra, two types of aliens are described at §1225(b). The first set of individuals are described in §1225(b)(1) and are therefore subject to the "expedited removal" procedures set forth therein. This group of individuals also includes "[a]n alien ... who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. §1225(b)(1)(A)(iii)(II).

Next, the alien argued that the Board's interpretation of §1225(b)(2)(A) would render as superfluous certain recently enacted provisions of the INA. Specifically, the Laken Riley Act., Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025). Enactment of this legislation added §1226(c)(1)(E) and renders as ineligible for release on bond any alien who

> (i) "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
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> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,
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> when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense."

Although the Board seemingly recognized that its interpretation of §1225(b)(2)(A) rendered the Laken Riley Act as superfluous, the Board side-stepped this argument. The Board rejected this claim "because nothing in the statutory text of [§1226](c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of [§1225](b)(2)(A)..."[4] Id. at 221-222.

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[4] Petitioner concedes that the Board was correct when it concluded that the changes to the INA made as a result of the Laken Riley Act do not discuss the language at §1225(b)(2)(A). Nevertheless, the Board's choice to ignore this argument would appear deliberate inasmuch as concluding otherwise would undercut the very interpretation put in place through publication of Matter of Yajure Hurtado. Where the Board should have gone with this analysis was in the direction of cases like Lorillard v. Pons, 434 U.S. 575, 580 (1978), where the Supreme Court observed that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change." Nevertheless, Petitioner submits that the Board simply ignored the ordinary rules of statutory construction in favor of issuing its preferred interpretation of the INA provisions at hand.

The Board also reviewed the legislative history relating to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546 (Sept. 30, 1996) ("IIRIRA"), the legislation that enacted the vast majority of the current provisions of the INA at issue herein. As to this concern, the Board stated that "[t]he House Judiciary Committee Report makes clear that Congress intended to eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights than those who presented themselves to authorities for inspection." Rejecting the alien's claim that IIRIRA's legislative history supported his position that the alien's custody status was to be assessed in accordance with §1226, the Board stated that "[i]nterpreting the provisions of the INA in the manner the respondent argues would essentially repeal the statutory fix that Congress made with the 1996 passage of IIRIRA." Id. at 222-225.

10. That following the Board's publication of Matter of Yajure Hurtado, dozens of petitions seeking a writ of habeas corpus have been filed before U.S. District Courts throughout the United States. In Quinapanta v. Bondi, *et al.*, Case No. 25-cv-795-WMC (W.D. Wis.) (Nov. 12, 2025), the district court considered an Ecuadoran national who had initially arrived without inspection in or around 2021. On or about September 4, 2025, the alien was detained by ICE and was issued a Form I-200, Warrant for Arrest ("Form I-200"). Concomitantly

therewith, the Department issued a Form I-862 against the alien thus initiating proceedings seeking removal.

Aware that Matter of Yajure Hurtado would preclude a request for a custody redetermination hearing before an IJ, the alien's initial request for a hearing in bond proceedings was initiated through a petition filed seeking habeas corpus relief in accordance with 28 U.S.C. §2241. After receiving briefing on the questions presented, the district court laid out the reasons why it was granting the petition and further ordering the alien to receive a bond hearing before an IJ within seven (7) days.

The district court described its task as follows:

> "[t]he primary issue in this case, which has now been raised and litigated in countless other cases in district courts across the country, involves the interplay of two statutes found in the INA, as amended by the ... "IIRIRA", which governs detention of noncitizens pending removal proceedings. 8 U.S.C. §§1225 and1226. As outlined below, while §1225 mandates detention without eligibility for a bond hearing, §1226 establishes a discretionary framework for detention and bond. Thus, the pending petition turns on which provision is the appropriate statutory framework for determining eligibility for a bond hearing for noncitizens like petitioner, who are long-term residents in the country and are being held pending formal removal proceedings for entering the United States without inspection." Id. at *5.

Initially noting that "[w]hen read in isolation, respondents' argument seems persuasive. However, as numerous other district court have held, this court must consider §1225 in context and apply traditional rules of statutory interpretation." Id. at *9.

The district court noted the issuance of a Form I-200 to the alien that that "specifically references INA §236 as codified at 8 U.S.C.

§1226. (*Id.*) Indeed, the plain terms of §1226(a) authorize the arrest and detention of an alien pending a decision on removability '[o]n a warrant issued by the Attorney General.'" Id. at *10-11. Additionally, the district court found reference to 8 U.S.C. §1357(a)[5] as helpful in determining the underlying provisions of the INA that would guide the alien's request for custody redetermination.

The district court also found persuasive prior policy guidance that had been issued by the legacy Immigration and Naturalization Service ("INS") following enactment of IIRIRA and in anticipation of its upcoming effective date of April 1, 1997. The district court wrote that

> "[i]In addition, petitioner persuasively argues that the applicability of §1226(a) is consistent with previous agency practice from 1996 through 2025 ... which instructed that 'non-criminal aliens' who were 'present without having been admitted or paroled (formerly referred to as aliens who entered without inspection),' like petitioner, were 'eligible for bond and bond redetermination' despite being considered "applicants for admission.' Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312-01, 10323 (March 6, 1997). While the Supreme Court has now held that courts need not defer to an agency's interpretation of the law it is directed to enforce where a statute is ambiguous, courts may refer to 'interpretations of those responsible for implementing particular statutes" when exercising their independent judgment as to the meaning of statutory provisions. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394 (2024). This includes an interpretation by the executive branch that was "issued roughly contemporaneously with enactment of the statute [that] remained

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[5] "Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant-within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States..." 8 U.S.C. §1257(a)(3).

> consistent over time." Id. at 386. In particular here, the court finds the application of a statute, adoption of regulations, and a long-standing practice that remained uniform for approximately 29 years after the IIRIRA was enacted in 1996 are all persuasive indications that aliens in petitioner's position are, at a minimum, eligible to be considered for release on bond, subject to conditions imposed by immigration officials or an immigration judge despite the provision in §1225(a)(1) may arguably permit aliens to be deemed applicants for admission under more ambiguous circumstances." Id. at *11-12.

Observing the government's current interpretation of the alien's custody status as requiring mandatory detention for a plethora of individual previously understood to be eligible for consideration for release on bond, the district court concluded that

> "this abrupt change in policy contradicts how the Supreme Court has traditionally construed the relationship between §1225(b) and §1226(a) Specifically, as noted above, the Supreme Court has interpreted §1225(b) to govern 'aliens seeking admission into the country' and §1226(a) to govern 'aliens already in the country' who are subject to removal proceedings. Jennings, 583 U.S. at 289. This interpretation is particularly significant when considered in historical context, since '[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.' Zadvydas, 533 U.S. at 693; *see also* Leng May Ma v. Barber, 357 U.S. 185, 187 (1958) ('[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'). Thus, for those who have already entered to United States, 'the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" Leng May Ma, 357 U.S. at 187 (*citing* Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953)). Against this longstanding consistent interpretation, never corrected by any remedial legislation over decades, respondents offer no basis to conclude that Congress's actual intention at the time enacted was for §1225(b)(2) to apply to noncitizens like petitioner, who have been detained pending removal after being present in the United States for several years." Id. at *12-13.

11. That the questions presented herein have previously been addressed by other district court judges sitting in the Middle District of Florida. District Judge Chappell, siting in Ft. Myers, issued an Opinion and Order in Hinojosa Garcia v. Noem, *et al*., Case No. 2:25-cv-879-SPC-NPM (Oct. 31, 2025), granting the request for issuance of a writ of habeas corpus, in part. Here, the alien arrived in the United States without inspection in or about 2007, had immigration benefit applications pending before U.S. Citizenship and Immigration Services ("USCIS") and was in possession of a valid employment authorization document ("EAD").

The Court's assessment begins as follows:

> "[t]he key question is whether Hinojosa Garcia's detention is governed by Section 1225(b)(2), which mandates detention, or Section 1226(a), which allows for release on bond. The respondents argue Hinojosa Garcia is an 'alien seeking admission' under Section 1225(b)(2) because he entered the United States without inspection. They contend it does not matter how long he has been in the country. Hinojosa Garcia argues he is not an 'alien seeking admission' because he has been living in this country for years, so Section 1226(a) applies.
>
> The plain language of the statute supports Hinojosa Garcia's position, as do the legislative history and case law. Section 1225(b)(2) mandates the detention of applicants for admission 'if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to admission[.]' The INA defines 'admission' and 'admitted' as 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.' 8 U.S.C. § 1101(a)(13)(A). By using the term 'seeking admission,' Section 1225(b)(2) limits its application to aliens actively attempting to lawfully enter the United States. That interpretation is supported by Section 1225's repeated reference to 'arriving aliens' and the existence of Section 1226-a separate statute that allows for detention and removal of noncitizens already present in the country." Id. at *8-9.

As was the case in Quinapanta, *supra*, Judge Chappell found the Supreme Court's opinion in Jennings v. Rodgriguez, 138 S. Ct. 830 (2018), as instructive. There, Justice Alito wrote that

> "[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c)." Id. at 838.

This oft-cited portion of the Jennings opinion consistently draws a line between those aliens who are "applicants for admission" who fall within the purview of the mandatory detention provisions at §1225(b)(2)(A) and those whose custody determination is instead guided by §1226. In other words, those "applicants for admission" whose custody determination arises in or around the immediate border area or within a prescribed amount of time or distance after entering without inspection are properly described within §1225(b)(2)(A). These individuals interact with the immigration authorities at or near "the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." Id. at 836. Important to this discussion is that soon thereafter, Justice Alito draws a sharp distinction between the group of "applicants for admission" described at §1225(b)(2)(A) and aliens considered to be "inside the United States." Id. at 837. "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." Id.

Returning to Hinojosa Garcia v. Noem, *et at.*, *supra*, Judge Chappell compared the legacy INS' Federal Register notice of March 6, 1997 [6] against the newly-issued policy guidance issued by ICE on or about July 8, 2025, entitled *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission*, AILA Doc. No. 25071607 (July 8, 2025). Judge Chappel stated that

> "DHS's new interpretation flies in the face of the plain language and historical understanding of the INA discussed above. It also nullifies Congress's recent amendment of the INA through the Laken Riley Act, codified at 8 U.S.C. §1226(c)(1)(E). The amendment mandates detention of noncitizens who meet certain criminal and inadmissibility criteria. If mere inadmissibility already made detention of a resident noncitizen mandatory under Section 1225, the Laken Riley Act would have no effect." Id. at *10-11.

Judge Chappel noted that concluded that "[s]ince DHS's change in policy, courts in this District and around the country have rejected its new interpretation of the INA. This Court agrees with the growing consensus." Id. at *11.[7] The district court granted the petition, ordering that Hinojosa Garcia either be immediately released or provided a bond hearing in accordance with §1226.

12. That in sum, Petitioner submits that his ongoing detention without access to a custody redetermination hearing before an IJ violates his rights to due process as provided in Article V of the U.S. Constitution. In a few short pages, the

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[6] *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

[7] In footnote 5, Judge Chappel lists twenty-four different cases where the same questions presented herein have resulted in a District Court ordering that an alien either be released or be provided a custody redetermination hearing in accordance with §1226.

Board's decision in Matter of Yajure Hurtado overturned decades of law interpreting the INA while incorporating any changes made through enactment of the IIRIRA. Petitioner seeks to remedy this violation through the instant Petition.

13. That to that end, Petitioner is herein requesting this tribunal's use of injunctive relief to provide the most efficient and most effective means of extinguishing any further violations pf Petitioner's right to due process of law. Petitioner submits that such a request is best considered in accordance with Fed. R. Civ. Pro. 65. In light of the circumstances presented herein, Petitioner is requesting that this matter be scheduled for an expedited hearing on the merits of his request for a Temporary Restraining Order ("TRO"). Petitioner concedes that any such hearing should occur only after Respondents have been provided an opportunity to respond to the claims made herein.

14. That "[a] preliminary injunction is appropriate if the movant demonstrates all of these elements: (1) a substantial likelihood of success on the merits; (2) that the preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant; and (4) that the preliminary injunction would not be averse to the public interest." Chavez v. Warden, 742 F.3d 1267, 1271 (11th Cir. 2014), *citing* Parker v. State Bd. of Pardons & Paroles, 275 F.3d 1032 (11th Cir. 2001).

15. That with reference to the first element of a TRO, Petitioner submits that he has herein established a substantial likelihood of success on the merits of the arguments set forth herein. As discussed above, Matter of Yajure Hurtado represents a significant departure from long-established norms that have acted as guides to civil immigrant prosecutors, defense practitioners and IJ's, both before and after enactment of the IIRIRA. The Board's analysis provides very little support aimed at understanding its decision to ignore well-entrenched policy guidance issued by federal agencies with expertise in this area and to otherwise "reinvent the wheel" as it pertains to whether someone like Petitioner continues to be eligible to seek review of his custody status before an IJ in accordance with 8 C.F.R. §1003.19.

Contrary to the Board's attempts in Matter of Yajure Hurtado to suggest otherwise, Petitioner submits that the only "change" warranting the Board's new "interpretation" was the recent inauguration of a new Presidential Administration on January 20, 2025. While this inauguration likely cleared the pathway towards final enactment of the Laken Riley Act, the practical impact of this legislation undergirds the shaky foundation upon which the Board's analysis in Matter of Yajure Hurtado relies.

Petitioner reiterates the argument discussed above with reference to the Laken Riley Act. If Petitioner is subject to mandatory detention as an "applicant for admission" who is described at §1225(b)(2)(A), the entirety of the Laken Riley Act becomes superfluous.

Without saying as much, the Laken Riley Act assumes that individuals who are present without having been admitted and inspected or paroled would otherwise be eligible to seek a custody redetermination hearing. The purpose of adding §1226(c)(1)(E) was to render certain aliens within this group of individuals as ineligible to seek custody redetermination. This group is comprised of those individuals

> "charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person…"

Matter of Yajure Hurtado instructs the reader that individuals who are present without inspection are statutorily ineligible to pursue a custody redetermination hearing before an IJ because these individuals fall are described at §1225(b)(2)(A). If this is correct, no purpose is served by adding the language now found at §1226(c)(1)(E). Yet the Board offers no explanation to address the rule of statutory construction that Congress is presumed to be familiar with background of existing law when it legislates. Cannon v. Univ. of Chicago, 441 U.S. 677, 699 (1979). Rather, the Board does nothing more than to purposefully obfuscate this issue in Matter of Yajure Hurtado. Petitioner submits that the Board's reluctance to squarely address this concern is part and parcel of the reasons why Petitioner submits that he is likely to find success on the merits of this case as the matter moves forward.

16. That with reference to "irreparable injury," Petitioner submits that his ongoing and indefinite detention without any means of seeking a custody redetermination hearing has resulted thus far in the requisite "irreparable injury" and that these injuries continue to occur each day that he is not provided an avenue to challenge his custody status.

"An injury is irreparable 'if it cannot be undone through monetary remedies." Scott v. Roberts, 612 F.3d 1279, 1296 (11th Cir. 2010), *citing* Cunningham v. Adams, 808 F.2d 815 (11th Cir. 1987). In Scott v. Roberts, the panel noted that "[w]e have repeatedly held that harms to speech rights "for even minimal periods of time, unquestionably constitute[ ] irreparable injury.'" In Jones v. Governor of Florida, 950 F.3d 795, 828 (11th Cir. 2020), the panel concluded that "[t]he district court did not abuse its discretion in finding that the plaintiffs would suffer an irreparable injury if they are precluded … from voting in an election in which they were constitutionally entitled to vote…." More directly on point, the Supreme Court has opined that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." Zadvydas v Davis, 533 U.S. 678, 690 (2001).

17. That the next element of establishing eligibility for issuance of a TRO is to balance the threatened injury against the harm the preliminary injunction would cause the other litigant. "Where the government is the opposing party, balancing of the harm and the public interest merge. *See* Nken v. Holder, 556 U.S. 418, 435 … (2009). Thus, the Court asks whether any significant 'public

consequences' would result from issuing the preliminary injunction. Winter, 555 U.S. at 24..."[8] Although the Supreme Court has advised that "[t]here is always a public interest in prompt execution of removal orders,"[9] doing so does not require an alien to remain indefinitely detained pending a decision being made on the merits of that individual alien's case pending before an IJ in removal proceedings.

18. That the last element of establishing eligibility for a TRO requires the movant to establish that the preliminary injunction would not be averse to the public interest. Petitioner submits that any order granting a TRO, or the underlying petition for writ of habeas corpus, would not create any issues averse to the public's interest. Providing Petitioner with a means through which to obtain review of his current custody status through the long-standing procedure set forth at 8 C.F.R. §1003.19 would operate to promote the public's interest in seeing the fair and orderly operation of the entire system created to allow an alien to seek a custody redetermination hearing before an IJ. What would be averse to the public interest is continuing to allow Respondents to violate Petitioner's rights to due process by precluding him from seeking the individualized bond hearing that he would otherwise have been eligible to pursue, but for Matter of Yajure Hurtado.

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[8] Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008).
[9] Nken v. Holder, 556 U.S. 418, 436 (2009).

19. That on balance, Petitioner submits that the circumstances presented herein warrant the expedited consideration of the instant Petition seeking a writ of habeas corpus and issuance of a TRO. As has been argued herein, the Board's decision in Matter of Yajure Hurtado undercuts decades of policy guidance and published case law providing aliens like Petitioner an opportunity to seek a custody redetermination hearing before an IJ. Not only can Petitioner establish that the underlying Petition is likely to be meritorious, the balance of equities lies heavily in favor of Petitioner being provided the very custody redetermination hearing that the Board's decision currently precludes. The irreparable harm suffered by Petitioner as a result of the deprivation of his rights to due process under the U.S. Constitution only compounds each day that Petitioner's liberty interests are infringed as a result of Matter of Yajure Hurtado.

Petitioner further submits that moving this matter forward on an expedited basis with consideration of a TRO is appropriate under the circumstances presented. Petitioner asks only that he be placed in functionally the same position that he occupied prior to the Board's publication of Matter of Yajure Hurtado and that this tribunal enter an order requiring that he be provided the custody redetermination hearing requested herein. Not only is this proposed remedy directly proportional to the ongoing harm created as a result of the Department's actions as discussed herein, Petitioner further

submits that neither the Department nor the public would be harmed in any way were the requests made herein to be granted.

Prayer For Relief

Petitioner respectfully prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Consider this Petition and the associated requests for relief on an expedited basis;
3. Declare that Petitioner is currently detained in the custody of Respondents in violation of the Constitution and laws of the United States and that Petitioner is being detained indefinitely without any means of seeking any custody redetermination before the Office of the Chief Immigration Judge or before any other administrative agency;
4. Grant temporary and permanent injunctive relief requiring Petitioner to be released from ICE's custody. Alternatively, Petitioner would request that this Court grant temporary and permanent injunctive relief requiring an Immigration Judge to complete a custody redetermination hearing within a time certain following issuance of any such order;
5. Award Petitioner his costs and reasonable attorneys' fees in this action as provided by 28 U.S.C. §2412 or other statute; and
6. Grant such further relief as the Court deems just and proper.

Dated: November 25, 2025

Respectfully submitted,

/s/ David Stoller /s/
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CERTIFICATE OF SERVICE

I, David Stoller, certify that on this 26th day of November, 2025 I either placed a copy of the foregoing in the US mail, postage pre-paid or electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. Either method of service will send notice of this filing to:

United States Attorney's Office
300 N. Hogan Street, Suite 700
Jacksonville, Florida 32202

/s/ David Stoller /s/
David Stoller, Esquire
Attorney for Petitioner