

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

**Carlos RIOS LOPEZ,**

**Petitioner-Plaintiff,**

**v.**

**PAM BONDI, *et al.*,**

**Respondents-Defendants.**

Civ. No. 4:25-CV-05787

DHS File Number: 

**PETITIONER'S OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION RECOMMENDING GRANT OF RESPONDENT'S MOTION  
FOR SUMMARY JUDGMENT**

## INTRODUCTION AND STANDARD OF REVIEW

Petitioner respectfully submits these Objections to the Magistrate Judge's Report and Recommendation ("R&R"), which recommends granting Respondent's Motion for Summary Judgment and denying habeas relief. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R rests on legal error and a misapplication of the Immigration and Nationality Act's detention framework, including an incorrect premise regarding the statutory authority governing Petitioner's custody.

Specifically, the R&R concludes that Petitioner is subject to mandatory detention under INA § 235(b), notwithstanding DHS's decision to initiate standard removal proceedings under INA § 240 and its failure to invoke expedited-removal procedures. That conclusion is contrary to the statutory text, structure, and governing precedent. DHS charged Petitioner as an alien present in the United States without admission or parole and did not designate Petitioner as an arriving alien or process her under INA § 235(b). Detention authority therefore arises, if at all, under INA § 236(a), which entitles Petitioner to an individualized custody determination. The R&R's contrary conclusion improperly extends mandatory detention beyond the limits Congress enacted and deprives Petitioner of the process required by statute and the Constitution.

Under 28 U.S.C. § 636(b)(1), this Court must conduct a de novo review of those portions of the R&R to which specific objections are made. Because the R&R's recommendation to grant summary judgment turns on questions of statutory interpretation and constitutional law, de novo review is required. For the reasons set forth below, the Court should reject the R&R, deny Respondent's Motion for Summary Judgment, and grant appropriate habeas relief or, at a minimum, order a custody redetermination hearing under INA § 236(a).

### OBJECTION NO. 1

The Report and Recommendation Erroneously Concludes That Petitioner Is Detained Under INA § 235(b) Despite DHS's Own Charging Document and Procedural Choices

The Report and Recommendation ("R&R") rests on the erroneous premise that Petitioner is subject to mandatory detention under INA § 235(b). That conclusion is contradicted by DHS's own charging document and by the statutory framework governing detention authority.

DHS served Petitioner with a Notice to Appear charging him as "an alien present in the United States who has not been admitted or paroled," pursuant to INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). The Notice to Appear does not designate Petitioner as an "arriving alien," nor does it invoke expedited-removal procedures under INA § 235(b). Instead, DHS affirmatively elected to place Petitioner into standard removal proceedings under INA § 240. That procedural choice is dispositive of the detention statute that governs Petitioner's custody. The INA draws a deliberate distinction between expedited removal processing under § 235(b) and full removal proceedings under § 240. Detention authority flows from the procedural mechanism DHS chooses to invoke. Where DHS initiates expedited removal, detention arises under § 235(b). Where DHS serves a Notice to Appear and places an individual into § 240 proceedings, detention authority arises under § 236(a). Nothing in the statute authorizes DHS to bypass expedited removal procedures and nevertheless impose mandatory detention under § 235(b).

Here, DHS did not administer sworn statements under Forms I-867A/B, did not issue a Form I-860 expedited-removal order, and did not classify Petitioner as an arriving alien. Having elected not to invoke § 235(b), DHS cannot retroactively impose § 235(b) detention based solely on Petitioner's inadmissibility charges. Inadmissibility under INA § 212 does

not itself trigger mandatory detention; detention authority depends on the statutory and procedural posture of the case.

The R&R improperly conflates inadmissibility with expedited-removal detention and treats Petitioner as subject to § 235(b) despite the absence of any statutory prerequisites for that provision. That approach effectively permits DHS to impose mandatory detention without following the procedures Congress expressly required, collapsing the distinction between §§ 235(b) and 236(a) and rendering § 236(a) superfluous for individuals placed in § 240 proceedings.

Because DHS charged Petitioner as an alien present in the United States without admission or parole and placed him in standard removal proceedings, Petitioner's detention is governed—if at all—by INA § 236(a). Under that provision, Petitioner is entitled to an individualized custody determination. The R&R's contrary conclusion constitutes legal error and warrants rejection.

## OBJECTION NO. 2

The Report and Recommendation Misapplies *Matter of Yajure Hurtado*, Which Is Limited to Individuals Properly Processed Under INA § 235(b)

The Report and Recommendation (“R&R”) further errs by relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to conclude that Petitioner is subject to mandatory detention under INA § 235(b). That reliance is misplaced because *Yajure Hurtado* applies only to individuals who were properly placed into expedited-removal proceedings under § 235(b). Petitioner was not.

In *Yajure Hurtado*, the respondent was apprehended at or near the border and was processed through the expedited-removal framework Congress established in INA § 235(b). The Board's holding was expressly tethered to that procedural posture. The decision did not announce a general rule that all noncitizens charged as inadmissible, or all individuals who entered without inspection, are subject to mandatory detention regardless of how DHS proceeds.

Petitioner bears none of the characteristics of a *Yajure* respondent. DHS did not initiate expedited-removal proceedings, did not administer sworn statements under Forms I-867A/B, did not issue a Form I-860, and did not designate Petitioner as an arriving alien. Instead, DHS served a Notice to Appear and placed Petitioner into standard removal proceedings under INA § 240. Where DHS elects that procedural path, detention authority arises under INA § 236(a), not § 235(b).

By extending *Yajure Hurtado* to a case in which DHS never invoked § 235(b), the R&R improperly expands the decision beyond its statutory limits. That interpretation would permit DHS to impose mandatory detention without complying with the procedural prerequisites Congress imposed for expedited removal, effectively allowing § 235(b) detention to attach by implication rather than by law. Nothing in *Yajure Hurtado* authorizes such a result.

Moreover, reading *Yajure Hurtado* to apply whenever a noncitizen is charged as inadmissible would collapse the INA's detention framework and eliminate the role of § 236(a) for individuals placed in § 240 proceedings. Courts have consistently rejected interpretations that erase statutory distinctions or allow agencies to bypass congressionally mandated procedures.

Because *Matter of Yajure Hurtado* governs only individuals properly processed under INA § 235(b), and because Petitioner was not so processed, the R&R's reliance on that decision constitutes legal error. The recommendation should therefore be rejected.

### OBJECTION NO. 3

The Report and Recommendation Erroneously Overlooks the Due Process Violation Resulting from the Denial of Any Custody Hearing

The Report and Recommendation (“R&R”) further errs by concluding that Petitioner’s detention is lawful despite the undisputed fact that Petitioner has never received any custody hearing whatsoever. This conclusion ignores binding due process principles and the statutory safeguards Congress enacted to prevent erroneous or prolonged civil detention.

Immigration detention is civil, not punitive. As a result, the Fifth Amendment requires procedures reasonably calculated to ensure that detention serves a legitimate governmental purpose, such as preventing flight or protecting the community. Where detention is discretionary under INA § 236(a), due process requires an individualized custody determination, including an opportunity to be heard and a meaningful chance to contest the legal and factual basis for continued detention.

Here, the Immigration Judge refused to conduct a custody hearing, declined to accept briefing, and issued a written denial based solely on a categorical legal conclusion regarding detention authority. Petitioner was not afforded an opportunity to present evidence, challenge his custody classification, or require DHS to meet any burden of proof. As a result, Petitioner was detained without any individualized assessment of flight risk or dangerousness.

Even assuming DHS asserted mandatory detention, due process required the Immigration Judge to conduct a *Joseph* hearing to determine whether Petitioner was in fact properly subject to mandatory detention under the statute DHS invoked. Likewise, where DHS’s authority to detain under INA § 235(b) was disputed, a *Victorph* hearing was required to determine whether Petitioner had been correctly classified under that provision. The Immigration Judge’s refusal to conduct

either hearing deprived Petitioner of the procedural mechanisms specifically designed to prevent misclassification and unlawful detention.

The R&R treats the absence of any custody hearing as legally irrelevant, effectively permitting detention to continue based solely on a disputed statutory interpretation without affording Petitioner any process to contest that interpretation. That approach is incompatible with the Fifth Amendment. Courts have repeatedly held that detention imposed without a meaningful opportunity to be heard violates procedural due process, particularly where liberty interests are at stake and the detention turns on a contested legal classification.

Because Petitioner was denied any custody hearing, any opportunity to be heard, and any mechanism to challenge the legal basis for his detention, the R&R's conclusion that his detention is lawful cannot stand. The denial of all custody-review procedures constitutes a violation of procedural due process and requires rejection of the Report and Recommendation.

#### **OBJECTION NO. 4**

**The Report and Recommendation Improperly Relies on Alleged Criminal History to Justify Detention Without Any Statutory or Procedural Safeguards**

The Report and Recommendation ("R&R") further errs by crediting Respondent's references to Petitioner's criminal history as justification for continued detention, despite the absence of any custody hearing or statutory basis for mandatory detention. Reliance on Petitioner's criminal conviction, without the individualized custody review required by INA § 236(a), does not cure the underlying legal error; it reinforces it.

Respondent has not contended—and cannot—that Petitioner's criminal history places him within the mandatory-detention provisions of INA § 236(c). Nor has Respondent identified any qualifying offense that would authorize detention without an individualized custody determination.

At most, Respondent's arguments suggest that criminal history might be relevant to a discretionary custody analysis under INA § 236(a). But that analysis has never occurred.

Under the INA, criminal history does not itself authorize detention. Rather, it is a factor to be weighed during a custody redetermination hearing, where DHS bears the burden of demonstrating that detention is necessary to address flight risk or danger to the community. By invoking alleged criminal conduct to justify detention while simultaneously denying Petitioner access to any custody hearing, Respondent seeks to impose detention without process.

The R&R's acceptance of this approach effectively allows DHS to rely on untested allegations to sustain detention while bypassing the statutory and constitutional safeguards Congress enacted. That reasoning collapses the distinction between discretionary and mandatory detention and permits incarceration based on allegations alone, without any opportunity for Petitioner to be heard.

Because Petitioner's alleged criminal history does not trigger mandatory detention and has never been evaluated in a lawful custody proceeding, it cannot justify the denial of habeas relief. The proper remedy is not continued detention, but an individualized custody determination under INA § 236(a).

### CONCLUSION

For the foregoing reasons, the Magistrate Judge's Report and Recommendation rests on legal error and should be rejected. DHS charged Petitioner as an alien present in the United States without admission or parole and placed him in standard removal proceedings under INA § 240. DHS did not invoke expedited-removal procedures, did not classify Petitioner as an arriving alien, and did not establish any basis for mandatory detention. Detention authority therefore arises, if at all, under INA § 236(a).

By treating Petitioner as subject to mandatory detention, misapplying *Matter of Yajure Hurtado*, and endorsing detention without any custody hearing, the Report and Recommendation contravenes the INA and the Fifth Amendment. Petitioner was denied all procedural safeguards designed to prevent erroneous detention, and Respondent's reliance on alleged criminal history cannot substitute for the individualized custody determination required by law.

Accordingly, Petitioner respectfully requests that the Court reject the Report and Recommendation, deny Respondent's Motion for Summary Judgment, and grant the Petition for Writ of Habeas Corpus, or, at a minimum, order the Immigration Court to conduct a prompt and constitutionally adequate custody redetermination hearing under INA § 236(a).

Respectfully submitted on January 13, 2026.

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CERTIFICATE OF SERVICE

I certify that on January 13, 2026, the foregoing was filed and served on counsel for Respondent via the Court's CM/ECF service.

/s/ Daniel J. Corno  
Counsel for Petitioner