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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

FLORENCIO PADILLA PEREZ,

Petitioner,

v.

**KRISTI NOEM, in her official capacity as Secretary
of the Department of Homeland Security (DHS);**

**TODD LYONS; in his official capacity as Acting
Director of Immigration and Customs Enforcement
(ICE);**

**FIELD OFFICE DIRECTOR, for Immigration and
Customs Enforcement (ICE) for Southern Nevada;**

**JOHN MATTOS, in his official capacity as Warden
of the Nevada Southern Detention Center;**

**PAMALA BONDI, in her official capacity as the
United States Attorney General;**

The Executive office for Immigration Review;

**United States Immigration and Customs
Enforcement (ICE).**

Respondents.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

IMMIGRATION HABEAS CASE

CASE NO: 25-2399

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Florencio Padilla Perez (“Petitioner”) respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his continued detention by U.S. Immigration and Customs Enforcement (“ICE”) without a valid legal basis in clear violation of the Immigration and Nationality Act (“INA”), violations of his Constitutional rights to due process under the Due Process Clause of the Fifth Amendment, the Suspension Clause, and the constitutional separation of powers; AND OTHER RELEVANT FACTS.

2. Petitioner has been detained at the Nevada Southern Detention Center in Pahrump, 2190 E Mesquite Ave, Pahrump, NV 89060, since August 4, 2025. He has no criminal history, deep family and community ties in Utah, and five U.S. citizen children.

3. On September 4, 2025, an Immigration Judge (“IJ”) determined that Petitioner was detained under INA § 236(a) and ordered his release on a \$2,500 bond. (*See, Exhibit A; Order of Immigration Judge Granting Petitioner’s Release on Bond*)

4. Despite this order, DHS refused to honor the bond and filed a Motion to Reconsider, invoking the newly issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which reinterpreted INA § 235(b)(2) to strip Immigration Judges of custody jurisdiction for all noncitizens who entered without inspection.

5. On September 18, 2025, the IJ vacated his bond order, stating he was bound by *Yajure Hurtado*. Petitioner now seeks habeas relief because his continued detention is unlawful, contrary to statute, precedent, and constitutional protections. (*See, Exhibit B; Order of Immigration Judge Granting DHS Motion to Reconsider Bond Order*)

6. On October 20, 2025, while Petitioner was still in detention, an Individual Merits Hearing was held on Petitioner’s 42-B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, wherein evidence and testimony were presented before the IJ.

7. On October 22, 2025, the IJ entered an Order granting Petitioner’s 42-B Application. (*See, Exhibit C; Order of Immigration Judge Granting Petitioner’s 42-B Application*)

8. Despite this order, DHS continued to refuse to release Petitioner on the grounds that DHS reserved appeal.

9. Pursuant to 8 C.F.R. § 1003.38(b), DHS had 30 calendar days after the stating of an immigration judge's oral decision. DHS failed to file the required Notice of Appeal within the required 30 calendar days, which expired on November 20, 2025. However, DHS did file its Notice of Appeal on November 24, 2025 – 4-days after the required deadline had passed – and, in an apparent effort to circumvent this defect, DHS inserted into its filing an arbitrary statement asserting that the BIA “acknowledges receipt” of the appeal on November 18, 2025—a claim wholly unsupported by any BIA time-stamp, docket entry, mailing record, filing-fee receipt, ECAS receipt, or any other official documentation whatsoever. (*See, Exhibit D; DHS late-filed Notice of Appeal*). This capricious and unverified statement regarding a “receipt date” appears nowhere on any EOIR-generated record and functions only as an attempt to manufacture the appearance of timeliness where none exists.

10. Since Petitioner’s arrest on August 4, 2025, DHS has transferred and detained him far from his home, family, and community in Utah. His confinement at Nevada Southern Detention Center—hundreds of miles from his wife, children, and retained counsel—has severely impeded his ability to meaningfully participate in his defense, assist with preparation of evidence, maintain contact with counsel, and exercise the statutory and constitutional rights afforded to him in his removal proceedings.

11. Despite all of the above facts—including a lawful bond grant, the IJ’s explicit findings that Petitioner poses no danger or flight risk, and the subsequent grant of Cancellation of Removal—DHS has continued to detain Petitioner in violation of the Due Process Clause. Rather than honor the IJ’s findings or the existing statutory framework, DHS has taken affirmative steps to override, delay, or nullify lawful orders by invoking automatic stays, misapplying *Matter of Yajure Hurtado*, and ultimately filing an untimely appeal to prevent Petitioner’s release.

12. DHS’s ongoing refusal to release Petitioner, despite a final grant of relief under longstanding immigration law, represents a deliberate and unconstitutional effort to circumvent judicial findings and prolong detention without lawful authority.

13. Accordingly, to vindicate Petitioner’s statutory and Constitution rights, this Court should grant the instant petition for writ of habeas corpus, by determining that his detention is not justified, and to order his immediate release.

JURISDICTION & VENUE

14. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in custody under federal authority in violation of U.S. law. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

15. Jurisdiction also lies under 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause), the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651. This action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

16. Venue is proper in the District of Nevada under 28 U.S.C. § 2241(a) and § 1391(e), because Respondents are agencies of the United States or officers or employees thereof acting in their official capacity or under color of legal authority; Petitioner is detained within this District at the Nevada Southern Detention Center, which is in the jurisdiction of the Utah District Court and there is no real property involved in this action.

17. There is no requirement for exhaustion of administrative remedies in the present case as neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INA require petitioners to exhaust administrative remedies before filing petitions for habeas corpus.

REQUIREMENTS OF 28 U.S.C § 2243

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petition is not entitled to relief. 28 U.S.C. § 2243. IF an

order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days is allowed.” *Id.* (emphasis added)

19. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391 400 (1963) (emphasis added).

20. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

PETITIONER

21. Petitioner, Florencio Padilla Perez (A# ) is a native and citizen of Mexico who has lived in the United States since the early 1990s. He is currently detained at the Nevada Southern Detention Center in Pahrump, Nevada.

RESPONDENTS

22. Respondent — KRISTI NOEM (Secretary Noem) is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States Government.

23. Respondent — TODD LYONS is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

24. Respondent —FIELD OFFICE DIRECTOR for Immigration and Customs Enforcement for Southern Nevada. He is in charge of the custody of all Immigration and Customs Enforcement Detainees

in the United States District Court for the District of Nevada. Respondent, the Filed Office Director is sued in his official capacity as an agent of the United States Government.

25. Respondent — JOHN MATOS, Warden of the Nevada Southern Detention Center, is charged with the custody of all immigrant detainees for the Nevada Southern Detention Center, and thus is has custody over Petitioner. Respondent Matos is sued in his official capacity as an agent of the United States Government.

26. Respondent — PAMELA BONDI, is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.

27. Respondent — The EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, is charged with adjudicating all immigration related applications for relief and decisions related thereto under U.S. Immigration laws, including the unlawful detention, and constitutional violations, of Petitioner.

28. Respondent — Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

PROCEDURAL & FACTUAL BACKGROUND

29. **Background.** Petitioner is a native and citizen of Mexico, born [REDACTED] He has lived continuously in the U.S. since February 1992. Petitioner has no criminal record, and DHS has never alleged that he poses a danger to the community. Petitioner resides at [REDACTED] Utah, with his wife and five (5) U.S. citizen children, who rely on him for support.

30. **Arrest & Initiation of Proceedings.** On August 4, 2025, DHS officers—who were conducting surveillance in Petitioner’s neighborhood for an unrelated individual—encountered Petitioner during a traffic stop. Petitioner was not the target of the operation, yet ICE nevertheless apprehended him and subsequently issued a Notice to Appear charging removability under INA § 212(a)(6)(A)(i).

31. **Custody & Appeal.** Shortly after proceedings commenced, Petitioner sought custody redetermination under INA § 236(a). On September 4, 2025, Immigration Judge Glen Baker granted bond in the amount of \$2,500, finding Petitioner neither a flight risk nor a danger to the community. Rather than honor the order, DHS immediately filed a Notice of Appeal—invoking the automatic stay at 8 C.F.R. § 1003.19(i)(2)—thereby preventing his release.

32. **DHS Opposition.** On September 18, 2025, DHS filed a Motion to Reconsider, arguing that *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), stripped Immigration Judges of all bond jurisdiction over individuals alleged to have entered without inspection. The IJ, bound by the BIA’s newly minted and constitutionally dubious precedent, vacated his prior bond order solely on that basis. Petitioner remained detained *even though no factual findings of dangerousness or flight risk had ever been made against him*.

33. **Merits Adjudication & Grant of 42-B Relief.** Despite DHS’s attempts to keep Petitioner detained indefinitely, his Individual Hearing proceeded on October 20, 2025. On October 22, 2025, the IJ granted Petitioner’s application for Cancellation of Removal under § 240A(b), recognizing his decades-long residence, good moral character, and the exceptional hardship his removal would impose on his U.S. citizen children. DHS “reserved appeal” but still refused to release Petitioner.

34. **DHS’s Untimely Appeal.** Under 8 C.F.R. § 1003.38(b), DHS had 30 days following the IJ’s oral decision to file a Notice of Appeal—on or before November 20, 2025. DHS did not file by that date. Instead, on November 24, 2025—four days after the jurisdictional deadline—Petitioner received a BIA receipt which, astonishingly, purported to “acknowledge receipt” on November 18, 2025—a date wholly unsupported by any BIA time-stamp, docket entry, mailing record, filing-fee receipt, ECAS receipt, or other official documentation whatsoever. That manufactured date conflicts with the document’s actual filing metadata and cannot revive a jurisdictionally void appeal. The IJ’s 42-B grant thus became final as a matter of law on November 21, 2025, and Petitioner’s ongoing detention is unlawful.

EXHAUSTION OF REMEDIES

35. There is no statutory exhaustion requirement for habeas petitions brought under 28 U.S.C. § 2241. The only exhaustion obligation is prudential, and courts have long recognized that exhaustion is excused when administrative remedies are unavailable, inadequate, or futile, or when pursuit of such remedies would cause irreparable harm. See *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004).

36. Here, Petitioner has no administrative remedy to challenge his continued detention. Although Immigration Judges ordinarily retain custody jurisdiction under INA § 236(a), the Board of Immigration Appeals’ recent precedent, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), has been interpreted to strip IJs of bond jurisdiction over noncitizens alleged to have entered without inspection.

37. Further, no administrative mechanism exists to challenge the legality or timeliness of DHS’s Notice of Appeal from the Immigration Judge’s October 22, 2025 grant of Petitioner’s 42-B application. The Immigration Judge has no authority to revisit or assess the timeliness of a DHS appeal, and the BIA—being the very body that issued *Yajure Hurtado* and accepted DHS’s untimely filing—does not provide a neutral or meaningful forum to contest jurisdiction or raise due-process objections. Because the BIA’s own acceptance of a late appeal is the source of the harm, requiring Petitioner to seek relief from the BIA would be both futile and structurally incapable of providing redress.

38. Accordingly, habeas corpus under 28 U.S.C. § 2241 is the only available and adequate avenue for judicial review of Petitioner’s detention, which now rests solely on an unlawful, untimely DHS appeal and an administrative framework that denies Petitioner any meaningful opportunity to contest the legality of that detention.

LEGAL FRAMEWORK

DHS’s Notice of Appeal Was Untimely Under 8 C.F.R. § 1003.38(b).

39. Under the governing regulation, “The Notice of Appeal must be filed within 30 calendar days after the Immigration Judge’s oral decision.” 8 C.F.R. § 1003.38(b). This deadline is both strict and jurisdictional. The Supreme Court has repeatedly held that jurisdictional filing deadlines cannot be

extended, tolled, or excused for equitable reasons. *See Stone v. INS*, 514 U.S. 386, 405 (1995); *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

40. Here, the Immigration Judge granted Petitioner’s 42-B application on October 22, 2025, making DHS’s filing deadline November 20, 2025. DHS failed to file by that date. A late administrative appeal is a legal nullity and cannot confer jurisdiction on the BIA. Accordingly, the IJ’s grant of cancellation of removal became final as a matter of law on November 21, 2025, and Petitioner’s continued detention after that date lacks any statutory or regulatory basis.

The BIA’s Acknowledgment Letter Cannot Retroactively Create Jurisdiction.

41. Following DHS’s late appeal, the BIA issued an “acknowledgment” notice purporting to reflect a receipt date of November 18, 2025—two days before the actual filing. Such acknowledgment notices are not legal determinations of timeliness; they are automated or administrative intake documents generated during mail processing. They do not establish the legal filing date, they do not confer jurisdiction where none exists, and they cannot override the filing deadline set by regulation. Only the actual date-stamp, mailroom receipt, postmark, or ECAS timestamp constitutes legal filing under 8 C.F.R. § 1003.38.

42. Thus, the BIA’s acknowledgment letter cannot convert DHS’s untimely submission into a timely appeal, nor can it resurrect the BIA’s jurisdiction where the filing deadline had already expired.

Under the Accardi Doctrine, the Government Must Follow Its Own Regulations.

43. The Supreme Court has long held that federal agencies are bound by their own regulations, and actions taken in violation of mandatory procedural rules are void. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

44. The Accardi doctrine requires strict adherence to regulatory deadlines and prohibits agencies from selectively relaxing procedural requirements—particularly where individual liberty is at stake.

45. When DHS filed an untimely appeal and EOIR nevertheless accepted and processed it as if timely, both agencies violated their own regulations, rendering the appeal void and the continued detention unlawful. Such agency disregard for its own rules violates due process and mandates judicial correction through habeas relief.

Continued Detention Based on a Void Appeal Violates Constitutional Limits on Arbitrary Executive Detention.

46. The Constitution does not permit the Executive Branch to detain individuals arbitrarily or on the basis of procedurally defective proceedings. The Supreme Court has repeatedly condemned detention that is untethered to valid statutory authority or that lacks meaningful procedural safeguards. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Boumediene v. Bush*, 553 U.S. 723 (2008).

47. Petitioner’s continued detention rests exclusively on a jurisdictionally void DHS appeal—an appeal that was filed after the regulatory deadline and accepted by EOIR in violation of its own rules. Such detention is therefore arbitrary, punitive, and unconstitutional, and it offends both substantive and procedural due process. Only this Court, through habeas corpus, can remedy the unlawful restraint on Petitioner’s liberty.

LEGAL CLAIMS / CAUSES OF ACTION

COUNT 1 – Continued Detention Violates the INA

48. The allegations in the above paragraphs are realleged and incorporated herein.

49. Petitioner is not an “arriving alien” or recent border crosser. He has lived in the U.S. for more than 33 years.

50. INA § 236(a), not § 235(b)(2), governs his custody. Federal courts (e.g., *Vazquez v. Bostock*, Case No. 3:25-cv-054240-TMC (W.D. Wash. 2022)) have enjoined similar attempts to expand § 235(b)(2) to long-term residents.

51. The IJ correctly applied § 236(a) before being compelled to vacate under *Yajure Hurtado*. This reinterpretation is contrary to statute and should not be enforced.

COUNT 2 – Due Process Violations.

52. The allegations in the above paragraphs are realleged and incorporated herein.

53. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.57.

54. Petitioner has been deprived of due process and denied a meaningful opportunity to secure release despite the IJ’s factual findings that he is neither a flight risk nor a danger.

55. Arbitrary and indefinite detention violates due process. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

56. Detention during removal proceedings must remain reasonably related to its constitutionally permissible purpose—ensuring the noncitizen’s appearance at hearings—and must include adequate procedural protections. *Demore v. Kim*, 538 U.S. 510 (2003).

57. Even in the context of immigration detention, the Supreme Court has emphasized that procedural safeguards must be meaningful, and detention cannot be prolonged arbitrarily or without valid statutory authority. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

58. Here, every factual and procedural safeguard weighs in favor of release:

- (a) Petitioner was granted bond by the Immigration Judge on September 4, 2025, after a full evidentiary hearing in which the IJ found him neither a flight risk nor a danger to the community.
- (b) DHS has never introduced a single piece of evidence suggesting Petitioner is dangerous or unlikely to appear; instead, Petitioner has lived in the United States for over three decades, has no criminal history, and has five U.S. citizen children who depend on him.
- (c) DHS weaponized the automatic stay by filing an immediate Notice of Appeal—solely to block Petitioner’s release—and then compounded the abuse by invoking *Matter of Yajure-Hurtado* to force the IJ to vacate the bond order, despite the IJ’s original findings.
- (d) After Petitioner won his 42-B cancellation of removal case on October 22, 2025, DHS failed to file a timely appeal, yet EOIR nevertheless accepted a jurisdictionally void appeal and continued detention as if DHS had complied with the filing deadline.

59. These actions convert civil immigration detention into punitive incarceration in direct violation of the Fifth Amendment.

60. Petitioner remains detained not because of any individualized finding of risk, nor because the law permits his continued detention, but solely because DHS invoked procedural mechanisms in bad faith and EOIR accepted a late appeal that divested the IJ of jurisdiction. Such detention—untethered to any legitimate governmental objective—is arbitrary, excessive, and unconstitutional.

COUNT 3 – Unlawful Application of *Matter of Yajure Hurtado*

61. The allegations in the above paragraphs are realleged and incorporated herein.

62. DHS invoked *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), in an unlawful and constitutionally impermissible manner. DHS argued—both in its Motion to Reconsider and throughout custody litigation—that *Yajure Hurtado* categorically strips Immigration Judges of bond jurisdiction over any individual alleged to have entered without inspection, regardless of the person’s length of residence in the United States, community ties, or lack of danger.

63. DHS used this sweeping reinterpretation of INA § 235(b)(2) to override the Immigration Judge’s September 4, 2025 bond grant, despite the IJ’s detailed and favorable factual findings after a full evidentiary hearing.

64. The application of *Yajure Hurtado* to Petitioner is legally erroneous and factually baseless. Petitioner is not an arriving alien, recent border crosser, or individual encountered in the context contemplated by INA § 235(b). Rather, he has lived continuously in the United States for over thirty years, has no criminal history, and was apprehended only because DHS was conducting a surveillance operation in his neighborhood targeting an entirely unrelated individual.

65. Treating Petitioner as subject to mandatory detention under § 235(b)(2) is contrary to statute, contrary to longstanding agency interpretation, and contrary to numerous federal district court decisions rejecting DHS’s expanded use of § 235(b)(2) for long-term residents.

66. The IJ initially recognized that INA § 236(a)—not § 235(b)(2)—governs Petitioner’s custody and granted bond accordingly. However, after DHS filed its Motion to Reconsider, the IJ stated he was bound by *Yajure Hurtado* and vacated his prior order solely on that basis. The IJ made no new factual findings, identified no danger or flight risk, and did not reassess Petitioner’s equities. The vacatur was the direct and exclusive result of DHS’s overbroad and unlawful invocation of *Yajure Hurtado*.

67. DHS’s application of *Yajure Hurtado* to Petitioner violates due process, the INA, and fundamental principles of administrative law. DHS used the decision as a detention override, not as a legitimate statutory interpretation. The use of *Yajure Hurtado* to negate the IJ’s authority after a full evidentiary hearing—and to deprive Petitioner of liberty without individualized findings—constitutes arbitrary and capricious executive action and exceeds DHS’s statutory authority.

68. Moreover, because *Yajure Hurtado* was issued on September 9, 2025—after the IJ had already granted bond on September 4, 2025—its retroactive application to rescind Petitioner’s previously ordered release violates elemental fairness principles and the anti-retroactivity doctrine applicable to administrative adjudications.

69. For these reasons, the application of Yajure Hurtado to Petitioner’s custody is unlawful, unconstitutional, and cannot serve as a basis for continued detention. The IJ’s original bond grant under INA § 236(a) remains the only lawful custody determination in this case.

COUNT 4 – DHS’s Untimely Appeal and EOIR’s Acceptance of It Violate the INA, Due Process, the Suspension Clause, and Separation of Powers

70. Petitioner realleges and incorporates all prior paragraphs as though fully set forth herein.

71. **Violation of 8 C.F.R. § 1003.38(b)**. Under 8 C.F.R. § 1003.38(b), DHS had 30 days from the Immigration Judge’s October 22, 2025 oral decision granting Petitioner’s Cancellation of Removal under INA § 240A(b) to file a Notice of Appeal. The filing deadline was November 20, 2025. DHS did not file its appeal by that date. A late appeal is a jurisdictional nullity, and the Immigration Judge’s grant became final as a matter of law on November 21, 2025. EOIR therefore lacked any legal authority to accept, docket, or process DHS’s appeal, and Petitioner’s continued detention after the statutory deadline is without lawful basis.

72. **Due Process and Accardi Violations**. EOIR’s acceptance and processing of DHS’s untimely appeal violate the Fifth Amendment’s Due Process Clause, the Accardi doctrine, and fundamental principles of procedural fairness. Under *United States ex rel. Accardi v. Shaughnessy*, agencies must follow their own regulations.

73. Here, both DHS and EOIR disregarded the mandatory filing deadline at 8 C.F.R. § 1003.38(b), fabricated a retroactive “receipt date” to manufacture jurisdiction, and continued to detain Petitioner even though DHS failed to invoke appellate jurisdiction in a timely manner. Detention based on a violation of the agency’s own rules is constitutionally impermissible.

74. **Arbitrary Executive Detention**. Petitioner’s detention now rests solely on an unlawful, untimely appeal by DHS—an appeal that cannot confer jurisdiction and cannot lawfully suspend the finality of his 42-B cancellation grant. Detention untethered to valid statutory authority constitutes arbitrary executive detention, which the Supreme Court has repeatedly condemned. See *Zadvydas v. Davis*; *Hamdi*

v. Rumsfeld; Boumediene v. Bush. Petitioner is not detained based on any individualized determination of risk or removal likelihood, but solely because DHS and EOIR ignored jurisdictional deadlines. Such detention is punitive, not regulatory, and violates substantive and procedural due process.

75. **Separation-of-Powers Violation.** The Executive Branch cannot lawfully exercise all roles simultaneously: prosecutor (DHS), adjudicator (EOIR/BIA), and jailer (ICE)—while also ignoring the jurisdictional constraints that define the limits of each role. When DHS files a late appeal, EOIR accepts it despite lacking jurisdiction, and ICE continues detention based on that invalid filing, the Executive Branch collapses the separation between prosecution and adjudication. This creates a structurally biased system where DHS’s procedural defaults are cured by EOIR rather than judged by EOIR, undermining neutrality and violating the Constitution’s separation-of-powers safeguards.

76. **Suspension Clause Violation.** Because the IJ is stripped of bond jurisdiction under *Yajure Hurtado*, and because the BIA is the very body that accepted the untimely appeal, and because no administrative mechanism exists to challenge DHS’s jurisdictional defect, habeas corpus is the only available remedy. Continued detention based on a void appeal while simultaneously denying Petitioner any administrative avenue to contest legality violates the Suspension Clause. The Constitution requires that habeas remain available where, as here, executive detention is asserted without lawful authority.

COUNT 6 – Violations of the Immigration and Nationality Act (INA)

1. Petitioner realleges and incorporates all prior paragraphs as though fully set forth herein.
2. The Immigration and Nationality Act (INA) sets forth specific circumstances under which the federal government may detain noncitizens. Under 8 U.S.C. § 1225(b)(1), arriving aliens may be detained pending a determination of admissibility, and under 8 U.S.C. § 1226(a), the Attorney General may take into custody aliens who are already in removal proceedings. Additionally, 8 U.S.C. § 1226(c) mandates detention for certain criminal aliens during removal proceedings. Once an alien is no longer subject to expedited removal, has completed credible fear proceedings, or does not fall within one of these statutory

categories, the INA provides no authority for continued detention. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

3. *Matter of Hurtado* impermissibly expands the definition of “arriving alien” beyond the limits established by Congress, and therefore cannot serve as a basis to deny petitioner a bond hearing. The INA expressly distinguishes between individuals seeking admission at the border and those apprehended inside the United States, assigning the former to the § 1225(b) detention framework and the latter to the discretionary custody-and-bond provisions of § 1226(a). By collapsing these categories and treating entry-without-inspection as functionally equivalent to presenting at a port of entry, *Hurtado* rewrites the statutory scheme and nullifies Congress’s deliberate decision to afford bond eligibility to non-arriving respondents. Because agency interpretations that contradict clear statutory text are invalid, DOJ and DHS cannot rely on *Hurtado* to deprive petitioner of custody review. Additionally, because Petitioner was rightfully granted relief pursuant to his 42-B application, which was granted within the statutory framework that governs his actual circumstances, and because DHS failed to timely file for appeal as previously described herein, his continued confinement is ultra vires and violative of his constitutional rights, and the rights afforded under the INA.

4. Because the petitioner does not fall within any statutory basis for mandatory detention under the INA, and because Petitioner was rightfully granted relief pursuant to his 42-B application and DHS failed to timely file for appeal as previously described herein, his continued confinement is ultra vires, and he should be released immediately, or alternatively released pursuant to his prior grant of his bond request, or given a new bond hearing immediately.

COUNT 6 – Government’s Bad Faith Conduct

5. Petitioner realleges and incorporates all prior paragraphs as though fully set forth herein.

6. DHS has engaged in a clear and troubling pattern of bad-faith conduct throughout Petitioner’s custody proceedings. The agency reflexively invoked the Notice of Appeal mechanism on September 4, 2025—not because DHS had any evidence suggesting Petitioner was dangerous or unlikely

to appear, but solely to trigger the automatic stay under 8 C.F.R. § 1003.19(i)(2). DHS has adopted a practice of reflexively and arbitrarily filing immediate, boilerplate appeals whenever an Immigration Judge grants bond, including in Petitioner’s case, thereby converting what Congress intended to be an individualized custody determination into a categorical administrative veto.

7. This practice frustrates the statutory scheme of the INA, which vests Immigration Judges with authority under INA § 236(a) to evaluate whether an individual poses a flight risk or danger and to set appropriate conditions of release. By filing perfunctory appeals solely to invoke the automatic stay—and without presenting any individualized evidence—DHS nullifies the IJ’s lawful authority and deprives noncitizens of the practical benefit of a custody determination to which they are legally entitled.

8. Courts have long recognized that government actions designed to delay, obstruct, or defeat access to relief without substantive justification constitute bad faith. See, e.g., *Singh v. Holder*, 638 F.3d 1196, 1202–03 (9th Cir. 2011) (condemning government conduct that “frustrates meaningful bond procedures”). DHS’s conduct in this case mirrors the very types of practices that the Ninth Circuit has warned against—those that impede individualized determinations and rely on procedural gamesmanship rather than substantive evidence.

9. After losing the bond hearing, DHS did not present new facts or evidence to contradict the IJ’s finding that Petitioner was neither a flight risk nor a danger. Instead, DHS filed a Motion to Reconsider and invoked *Matter of Yajure-Hurtado* as a categorical rule stripping all IJs of custody jurisdiction over individuals alleged to have entered without inspection. DHS took this position even though Petitioner has lived in the United States for more than three decades, making the application of INA § 235(b)(2) facially improper and contrary to decades of settled practice. DHS ignored these facts and used *Yajure-Hurtado* solely as a tool to overturn the bond grant.

10. DHS’s pattern of bad faith did not stop there. When the IJ granted Petitioner’s 42-B Cancellation of Removal on October 22, 2025—a full merits ruling—DHS again refused to release him, instead “reserving appeal” solely to maintain custody. DHS then failed to file its Notice of Appeal by the November 20, 2025 jurisdictional deadline. Only after the deadline passed did DHS file a late appeal, which

EOIR nonetheless accepted. The BIA's receipt, dated November 24, 2025, falsely claimed "acknowledgment" as of November 18, 2025—a transparent attempt to manufacture jurisdiction after the deadline had already expired.

11. DHS's use of a late appeal—and EOIR's acceptance of it—reveals a continuing strategy to prolong detention regardless of substantive merit or statutory authority. DHS's litigation posture reflects not genuine disagreement with the IJ's findings, but an attempt to ensure Petitioner remains detained by any procedural means available, including those foreclosed by regulation. In this context, the late-filed appeal functions not as a good-faith effort to obtain review, but as a detention-preservation mechanism executed in bad faith.

12. Like the conduct condemned in *Singh*, DHS's actions here demonstrate a deliberate attempt to circumvent individualized custody determinations and to use procedural devices as blunt instruments to maintain detention. DHS relied on the automatic stay without evidence, invoked *Yajure-Hurtado* as an all-purpose detention override without regard to Petitioner's 30-plus years of residence, and then filed an untimely appeal while relying on EOIR's administrative machinery to retroactively supply jurisdiction. Each of these steps reflects not neutral law enforcement but strategic maneuvering to defeat Petitioner's liberty interests.

13. Taken together, DHS's conduct—(1) the reflexive appeal to trigger an automatic stay, (2) the categorical use of *Yajure-Hurtado* to vacate a bond order supported by an IJ's factual findings, and (3) the filing of an untimely appeal in order to prolong detention despite a granted 42-B application—**constitute arbitrary, capricious, and bad faith governmental conduct in violation of the Due Process Clause**. No constitutional system permits the government to detain an individual indefinitely through repeated reliance on procedural devices designed to prevent individualized review, evade judicial scrutiny, and ignore jurisdictional deadlines.

14. These actions not only lack legal foundation but also demonstrate a coordinated effort to frustrate established immigration law, undermine the statutory role of Immigration Judges, and deprive

Petitioner of the rights and protections guaranteed by the United States Constitution. DHS's continued bad faith conduct reinforces the necessity for habeas relief.

RELIEF REQUESTED

Petitioner respectfully asks this Court to:

1. Assume jurisdiction over this matter.
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days; to justify his continued and currently unjustified detention; and to account for their acts of bad faith;
3. Declare that Petitioner's ongoing detention violates the Fifth Amendment of the Constitution;
4. Declare that Petitioner's retroactive application of *Matter of Yajure Hurtado*, subjecting him to mandatory detention under 8 U.S.C. § 1225(b), is erroneous and denied him his statutory rights under 8 U.S.C. § 1226(a);
5. Declare that DHS Notice of Appeal was untimely and erroneous;
6. Declare that the IJ's grant of his 42-B as final;
7. Issue a writ of habeas corpus ordering his immediate release from ICE custody; or
8. In the alternative, order DHS to honor the Immigration Judge's September 4, 2025 bond order and release him upon posting the \$2,500 bond, or alternatively on his own recognizance.
9. Grant an award of attorneys' fees and costs pursuant to the Equal Access to Justice Act, 42 U.S.C. § 1998 and any other applicable law;
10. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to remedy the harms to Petitioner; and
11. Grant such further relief as this Court deems just and proper.

Respectfully submitted this 3rd day of December 2025.

/s/ T. Laura Lui

T. Laura Lui, NV Bar #: 5535
Pro Hac Vice Counsel
Fillmore Spencer LLC
5902 Simons Dr
Reno, NV 89523

/s/ Matthew K. Toyn

Matthew K. Ton, UT Bar #: 15271
Attorney for Petitioner
Prospera Legal, PC
2975 W Executive Pkwy, Suite 159
Lehi, Utah 84043

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28

U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's Attorneys. I have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted this 3rd day of December 2025.

/s/ Matthew K. Toyn

Matthew K. Ton, UT Bar #: 15271

Attorney for Petitioner

Prospera Legal, PC

2975 W Executive Pkwy, Suite 159

Lehi, Utah 84043

PETITIONER'S EXHIBITS IN SUPPORT OF PETITIONER'S VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner submits the following Exhibits in support of this Petition:

EXHIBIT	DESCRIPTION
Exhibit A	Order of Immigration Judge Granting Petitioner's Release on Bond)
Exhibit B	Order of Immigration Judge Granting DHS Motion to Reconsider Bond Order
Exhibit C	Order of Immigration Judge, Granting Petitioner's 42-B Application
Exhibit D	DHS late-filed Notice of Appeal (filed on 11/24/2025)

EXHIBIT A

(Order of Immigration Judge Granting Petitioner's Release on Bond)



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
LAS VEGAS IMMIGRATION COURT

Respondent Name:

PADILLA-PEREZ, FLORENCIO

To:

Smith, Shawn Michael
2975 W Executive Pkwy
Suite 159
Lehi, UT 84043

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

09/04/2025

AMENDED ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because

Granted. It is ordered that Respondent be:

released from custody on his own recognizance.

released from custody under bond of \$ 2,500.00

other:

The respondent claims that he has resided in the United States since 1992. See Bond Exh. 1. He has not been designated as an arriving alien, nor was he placed in expedited removal proceedings. The respondent does not appear to be a recent entrant to the United States within the past two years, nor was he apprehended near the U.S./Mexico border. Accordingly, this Court has jurisdiction in this matter under section 236(a) of the Immigration and Nationality Act. See Matter of Q Li, 29 I&N Dec. 66 (BIA 2025); see also Vazquez v. Bostock, Case No. 3:25-cv-054240-TMC (W.D. Wash 2022) (enjoining the Immigration Court in Tacoma from applying section 235 of the Immigration and Nationality Act to find no jurisdiction in similar cases).

The respondent has no reported criminal history. The Court declines to make a finding that the respondent is currently a danger to community. The respondent has submitted evidence of a fixed address, employment history and family ties in the United States, including five United States citizen children. See Bond Exh. 1. This evidence supports the conclusion that his appearance at future immigration proceedings may be ensured by the posting of a reasonable bond. See Matter of Guerra, 24 I&N Dec. 37 (BIA 2006).

Other:
ATD at DHS discretion.

Immigration Judge: Baker Glen 09/04/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved
Appeal Due: 10/06/2025

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To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : PADILLA-PEREZ, FLORENCIO | A-Number :

Riders:

Date: 09/04/2025 By: Kraay, Megan, Court Staff

EXHIBIT B

(Order of Immigration Judge Granting DHS Motion to Reconsider Bond Order)



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
LAS VEGAS IMMIGRATION COURT**

Respondent Name:

PADILLA-PEREZ, FLORENCIO

To:

Smith, Shawn Michael
2975 W Executive Pkwy
Suite 159
Lehi, UT 84043

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

09/15/2025

ORDER OF THE IMMIGRATION JUDGE

Respondent the Department of Homeland Security has filed a motion to reconsider.

Upon consideration of the motion, and any opposition from the non-moving party, the motion is granted denied for the following reason(s):

- The motion is numerically barred. *See* INA § 240(c)(6)(A); 8 C.F.R. § 1003.23(b)(1).
- The motion is untimely. *See* INA § 240(c)(6)(B); 8 C.F.R. § 1003.23(b)(1).
- The motion does not specify errors of law or fact in the previous order or is not supported by pertinent authority. *See* INA § 240(c)(6)(C); 8 C.F.R. § 1003.23(b)(2).
- Other:

The authority of the Immigration Judge to set bond has been superseded by the decision of the Board of Immigration Appeals in Matter of Yasjure Hurtado, 29 I&N Dec. 216 (BIA 2025).



Immigration Judge: Baker Glen 09/15/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due:

Certificate of Service

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To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : PADILLA-PEREZ, FLORENCIO | A-Number : 

Riders:

Date: 09/15/2025 By: REINHARDT, D., Court Staff

EXHIBIT C

(Order of Immigration Judge Granting Petitioner's 42-B Application)



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
LAS VEGAS IMMIGRATION COURT

Respondent Name:

PADILLA-PEREZ, FLORENCIO

To:

Smith, Shawn Michael
2975 W Executive Pkwy
Suite 159
Lehi, UT 84043

A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

10/22/2025

ORDER OF THE IMMIGRATION JUDGE

- This is a summary of the oral decision entered on 10/22/2025. The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.
- Both parties waived the issuance of a formal oral decision in this proceeding.

I. Removability

The immigration court found Respondent removable inadmissible under the following Section(s) of the Immigration and Nationality Act (INA or Act): 212(a)(6)(A)(i) & 212(a)(7)(A)(i)(I)

The immigration court found Respondent not removable not inadmissible under the following Section(s) of the Act:

II. Applications for Relief

Respondent's application for:

A. Asylum/Withholding/Convention Against Torture

- Asylum was granted denied withdrawn with prejudice withdrawn without prejudice
- Withholding of Removal under INA § 241(b)(3) was granted denied withdrawn with prejudice withdrawn without prejudice
- Withholding of Removal under the Convention Against Torture was granted denied withdrawn with prejudice withdrawn without prejudice
- Deferral of Removal under the Convention Against Torture was granted denied withdrawn with prejudice withdrawn without prejudice
- Respondent knowingly filed a frivolous application for asylum after notice of the consequences. *See* INA § 208(d)(6); 8 C.F.R. §1208.20

B. Cancellation of Removal

- Cancellation of Removal for Lawful Permanent Residents under INA § 240A(a) was granted denied withdrawn with prejudice withdrawn without prejudice
- Cancellation of Removal for Nonpermanent Residents under INA § 240A(b)(1) was granted denied withdrawn with prejudice withdrawn without prejudice
- Special Rule Cancellation of Removal under INA § 240A(b)(2) was granted denied withdrawn with prejudice withdrawn without prejudice

C. Waiver

- A waiver under INA § was granted denied withdrawn with prejudice withdrawn without prejudice

D. Adjustment of Status

- Adjustment of Status under INA § was granted denied withdrawn with prejudice withdrawn without prejudice

E. Other

III. Voluntary Departure

- Respondent's application for pre-conclusion voluntary departure under INA § 240B(a) post-conclusion voluntary departure under INA § 240B(b) was denied.
- Respondent's application for pre-conclusion voluntary departure under INA § 240B(a) post-conclusion voluntary departure under INA § 240B(b) was granted, and Respondent is ordered to depart by . The respondent must post a \$ bond with DHS within five business days of this order. Failure to post the bond as required or to depart by the required date will result in an alternate order of removal to taking effect immediately.
- The respondent is subject to the following conditions to ensure his or her timely departure from the United States:
 - Further information regarding voluntary departure has been added to the record.
 - Respondent was advised of the limitation on discretionary relief, the consequences for failure to depart as ordered, the bond posting requirements, and the consequences of filing a post-order motion to reopen or reconsider:

If Respondent fails to voluntarily depart within the time specified or any extensions granted by the DHS, Respondent shall be subject to a civil monetary penalty as provided by relevant statute, regulation, and policy. *See* INA § 240B(d)(1). The immigration court has set

- the presumptive civil monetary penalty amount of \$3,000.00 USD
- \$ USD instead of the presumptive amount.

If Respondent fails to voluntarily depart within the time specified, the alternate order of removal shall automatically take effect, and Respondent shall be ineligible, for a period of

10 years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act, to include cancellation of removal, adjustment of status, registry, or change of nonimmigrant status. *Id.* If Respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of such a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply.

If Respondent appeals this decision, Respondent must provide to the Board of Immigration Appeals (Board), within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if Respondent does not submit timely proof to the Board that the voluntary departure bond has been posted.

In the case of conversion to a removal order where the alternate order of removal immediately takes effect, where Respondent willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. See INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

IV. Removal

- Respondent was ordered removed to
- In the alternative, Respondent was ordered removed to
- Respondent was advised of the penalties for failure to depart pursuant to the removal order:

If Respondent is subject to a final order of removal and willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. See INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

V. Other

- Proceedings were dismissed terminated with prejudice
 terminated without prejudice administratively closed.
- Respondent's status was rescinded under INA § 246.
- Other:



Immigration Judge: Baker Glen 10/22/2025

Appeal: Department of Homeland Security: waived reserved
 Respondent: waived reserved

Appeal Due: 11/21/2025

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Respondent Name : PADILLA-PEREZ, FLORENCIO | A-Number



Riders:

Date: 10/22/2025 By: REINHARDT, D., Court Staff

EXHIBIT D

(DHS Late-Filed Notice of Appeal)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LAS VEGAS, NV

Nov 24, 2025

A



PADILLA-PEREZ, FLORENCIO

TO: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

This Record of Proceeding (ROP) is forwarded to the Board of Immigration Appeals for consideration of the following:

- Appeal of the Immigration Judge decision.
- Appeal of Immigration Judge decision on a motion to reopen.

Please note:

- The respondent / applicant is DETAINED.
- Other _____

- This ROP is for an appeal on a decision entered prior to July 1, 1996. This ROP is being submitted to APU at the following stage:
 - Notice of Appeal filed. Tapes need to be transcribed.
 - IJ has signed decision. Briefing schedule needs to be set.
 - Motion for Extension of Time to Extend Briefing Schedule has been submitted.
 - Briefing Schedule is complete / expired.

PZ



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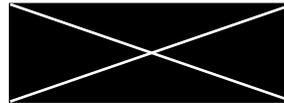
UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

PADILLA-PEREZ, FLORENCIO
A 221-416-468
IN ICE CUSTODY
2190 E MESQUITE AVE
PAHRUMP, UT 89060

DHS/ICE Office of Chief Counsel - LVG
501 S. Las Vegas Blvd., Suite 200
Las Vegas, NV 89101

Name:

PADILLA-PEREZ, FLORENCIO



Riders:

Date of Notice: 11/24/2025

FILING RECEIPT FOR APPEAL OR MOTION

The Board of Immigration Appeals (Board or BIA) acknowledges receipt of the appeal or motion and fee or fee waiver request (where applicable) on 11/18/2025, in the above-referenced case, filed by the Department

Additional Comments

N/A

WARNING FOR APPEALS:

Departure. If you leave the United States after filing this appeal but before the Board issues a decision, your appeal may be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. § 1001.1(c)).