UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

J Guillermo Sabala Peres, Petitioner, v. Pamela BONDI, Attorney General; Kristi NOEM, Secretary, Department of Homeland Security; Juan AGUDELO, Field Office Director, Immigration and Customs Enforcement; Francisco VENEGAS, El Valle Detention Center Warden Respondents.	)	No. _____ Alien No. A[redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW, J Guillermo Sabala Peres, Petitioner, by and through his counsel, ROBERT K. HOFFMAN, in the above-styled and numbered cause, and petitions this Honorable Court for a writ of habeas corpus and injunctive relief to remedy his indefinite detention, in violation of the laws and regulations of the United States. In support of this petition and complaint for injunctive relief, Petitioner would show unto the court the following:

Petitioner, J Guillermo Sabala Peres, is in the physical custody of the Department of Homeland Security (DHS) - Immigration and Customs Enforcement (ICE) by order of Field Office Director JUAN AGUDELO, detained at the El Valle Detention Facility, 1800 Industrial Dr., Raymondville, Texas, a facility contracted by ICE to hold immigration detainees. *See* ICE Online Detainee Locator Printout**,** Exh. 1. He has been detained at that facility by Respondents since November 1, 2025, approximately.

PARTIES

Petitioner, J GUILLERMO SABALA PERES, is a sixty-three (63) year old native and citizen of Mexico. The Petitioner's legal name is denoted as J GUILLERMO SABALA-PERES in all Department of Justice documents and correspondence.

Respondent Francisco VENEGAS is employed by Management and Training Corporation as Warden of the El Valle Detention Facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity only.

Respondent Juan AGUDELO is the Field Office Director for Detention and Removal with Immigration and Customs Enforcement (ICE) and administers the immigration laws on behalf of the Secretary of the Department of Homeland Security (DHS) and the Attorney General, and as such has immediate control and custody of the Petitioner. He is sued in his official capacity only.

Respondent, Kristi NOEM, is the Secretary of the Department of Homeland Security (DHS). She is responsible for the administration, implementation and enforcement of the immigration laws and is a legal custodian of the Petitioner. 8 USC § 1103(a). She is sued in her official capacity only.

Respondent, Pamela BONDI, is the Attorney General of the United States, and is authorized by law to administer and enforce the immigration laws pursuant to 8 USC § 1103(g). She is sued in her official capacity only.

JURISDICTION AND VENUE

This action arises under Article 1, Section 9, Clause 2 of the Constitution of the United States, 28 U.S.C. § 2241(c) (the codification of the Great Writ), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 1331 (federal question jurisdiction), the Immigration and Nationality Act (I.N.A.), 8 U.S.C. § 1101 et seq., and the Administrative Procedures Act (A.P.A.), 5 U.S.C. § 701 et seq.

This Court has jurisdiction to consider this petition pursuant to 28 U.S.C. §2241, Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331, as the Petitioner is presently in the physical custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws or treaties of the United States. *See INS v. St. Cyr*, 533 US 289 (2001); *Zadvydas v. Davis, et. Al.*, 533 US 678; *Heikkila v. Barber*, 345 US 229 (1953); *Felker v. Turpin*, 518 US 651 (1996). This Court may grant relief pursuant to 28 U.S.C. § 2241, the A.P.A., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. § 1651.

Venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Respondent, JUAN AGUDELO, Field Office Director, ICE, is located, and it is the District in which a substantial part of the events or omissions giving rise to the claim occurred, including the facility in which the Petitioner is currently detained. 28 U.S.C. § 1391(e).

CASE AND PROCEDURAL HISTORY

Petitioner, J GUILLERMO SABALA PERES, entered the United States without inspection on or about January 1, 1982, when he was 19 years old. On or about October 29, 2025, Immigration and Custom Enforcement encountered the Petitioner in Houston, Texas, and questioned him about his immigration status. After the Petitioner freely admitted to being a citizen of Mexico who is without legal status in the United States, he was placed under arrest and transported to the Montgomery Processing Center in Conroe, Texas. The Petitioner was eventually transferred to the El Valle Detention Facility where he is currently detained.

On November 24, 2025, the Immigration Judge ruled that the Petitioner is subject to mandatory detention and that she had no jurisdiction to determine bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Order of the Immigration Judge Denying Bond, Exh. 2. The Petitioner reserved appeal, while the Department of Homeland Security waived appeal.

On November 25, 2025, the United States District Court for the Central District of California certified a nationwide class of individuals who are being subject to the government's new bond policy—the Bond Eligible Class—and expressly extended the same declaratory relief granted to petitioners who were being detained under 8 U.S.C. § 1225(b)(2) to the Bond Eligible Class as a whole. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (emphasis added). Such class members, consisting of individuals who entered the United States without inspection, are eligible for a bond hearing in Immigration Court under 8 U.S.C. § 1226(a). *Id.*

The Petitioner is being held contrary to law in violation of his constitutionally protected liberty interest.

EXHAUSTION OF REMEDIES

Exhaustion does not bar this Court's review because it is not a statutory requirement in these circumstances. *See Lopez Benitez v. Francis*, 25 Civ. 5937, 2025 WL 2371588 at *13 (S.D.N.Y. Aug. 13, 2025). When a "'legal question is fit for resolution and delay means hardship,' a court may choose to decide the issues itself." *Pizzaro Reyes*, 2025 WL 2609425, at *3 (quoting *Shalala v. Ill. Council on Long Term Care, Inc.,* 529 U.S. 1, 13 (2000)).

Assuming arguendo that the case does not pose a legal question fit for resolution, then, a person seeking habeas relief must first exhaust available administrative remedies. *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). "The exhaustion of administrative remedies doctrine requires not that only administrative remedies selected by the complainant be first exhausted, but instead that all those prescribed administrative remedies which might provide appropriate relief be pursued prior to seeking relief in the federal courts." *Id.* at 314 (quoting *Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir. 1985), *abrogated on other grounds by McCarthy v. Madigan*, 503 U.S. 140, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992), *superseded by statute on other grounds*, *Woodford v. Ngo*, 548 U.S. 81, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006); *see* also *Lee v. Gonzales*, 410 F.3d 778, 786 (5th Cir. 2005) ("[A] petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists.").

Conversely, "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam) (quoting *Hessbrook*, 777 F.2d at 1003); *Hinojosa*, 896 F.3d at 315 (finding that procedures provided a basis for the Plaintiffs to rectify the

wrongful determination that they are not citizens, so they could not show that pursuing such remedies would be futile); *Fuller* F.3d at 62 (finding that the Plaintiff could not show his appeal would be futile as Plaintiff did not file an appeal even though it was untimely).

There is no administrative remedy to compel the Immigration Judge to consider the Petitioner's eligibility for an immigration bond, as she has asserted that she has no jurisdiction to adjudicate the matter. The Immigration Judge relied on the binding precedential decision issued in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and any attempt by the Petitioner to appeal to the authority that issued the precedential decision, i.e., the Board of Immigration Appeals, would be patently futile.

The Petitioner has, therefore, exhausted his administrative remedies to the extent required by law, and this Petition is his only remedy. He has sought release through the administrative procedures established by the regulations. The Petitioner challenges the constitutionality of the Respondent's actions, and the Immigration Judge's interpretation of the relevant statutes. The Petitioner is being detained indefinitely, at the whim of the agency.

Assuming arguendo that the Petitioner has failed to exhaust his administrative remedies, the Petitioner should be exempt from complying with the exhaustion of administrative remedies doctrine as his continued detention, in spite of his vested liberty interest, will result in irreparable harm, i.e. loss of liberty), such administrative remedies would be futile, as well as the existence of constitutional questions that cannot be resolved through the administrative process. *Doherty v. Barr*, 503 US 901 (1992)(finding that even aliens unlawfully present in the US have a "substantive due process right to liberty during deportation proceedings.").

FEDERAL DECLARATORY JUDGMENT PROHIBITING THE PETITIONER'S CONTINUED DETENTION UNDER 8 U.S.C. § 1225(b)(2)

The Petitioner brings this petition for a writ of habeas corpus to seek enforcement of his right as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). On November 20, 2025, the United States District Court for the Central District of California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

The district court certified the following Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista*, 2025 WL 3288403, at *9.

The Petitioner is a class member because he entered the United States without inspection. Furthermore, he was not apprehended upon arrival. Lastly, he is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 when DHS made its initial custody determination.

The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

Nonetheless, the Executive Office for Immigration Review and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that those in the Petitioner's position be denied the opportunity to be released on bond.

Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011). This understanding of declaratory judgments, and, thus, this Court's obligation to comply with the declaratory judgment in *Maldonado Bautista*, is consistent with the decisions of many courts. *See Sanchez-Espinoza v. Rea*gan, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("[T]he discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court."), *abrogated on other grounds by Schieber v. United States,* 77 F.4th 806 (D.C. Cir. 2023), *cert. denied*, 144 S. Ct. 688 (2024); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory

relief as "the functional equivalent of a writ of mandamus"); *Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay pending appeal."), *rev'd on other grounds*, 184 F.3d 900 (D.C. Cir. 1999).Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite the Petitioner's clear entitlement to consideration for release on bond as a Bond Eligible Class member.

Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent DHS must release Petitioner. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION OF THE IMMIGRATION JUDGE AND MANDATORY DETENTION

Assuming arguendo that the Petitioner is not entitled to relief pursuant to *Maldonado Bautista*, the Petitioner individually asserts that his detention is unlawful. The issue here largely involves a question of statutory interpretation, which is historically within the province of the courts. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (citing *Marbury v. Madison*, 5 U.S. 137 (1803)). The plain language and structure of 8 U.S.C. § 1225(b)(2) and the history of the Immigration and Nationality Act indicate that the Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), but rather eligible for bond under 8 U.S.C. § 1226(a). Moreover, *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025) should be given little deference and persuasive decisions from this district, and districts nationwide support the Petitioner's position.

I. The Plain Language and Structure of the INA

When a statute is ambiguous or internally contradictory, courts must "use every tool at their disposal to determine the best reading of the statute." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The Court begins its analysis with the statute's plain text. *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017) ("Our analysis begins with the language of the statute.") (citation omitted). 8 U.S.C. § 1225(a) defines and applicant for admission as:

> [a]n 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)…

8 U.S.C. §1225(a)(1).

Meanwhile, the statute which the Respondent asserts the Petitioner is rightfully detained under reads:

> [I]n 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 U.S.C. § 1225(b)(2).

The Respondent conflates the terms "applying for admission" and "seeking admission" by treating them as synonymous. However, such a reading would render the phrase "seeking admission" in §1225(b) superfluous. To qualify for §1225(b)(2), the Petitioner must (1) be an applicant for admission, (2) be "seeking admission", and (3) be "not clearly and beyond a doubt entitled to be admitted. If, as the Respondent argues that "applying for admission" and "seeking admission" are the same, then the phrase "seeking admission", would add nothing to the provision, which would violate the rule against surplusage. *See United States, ex rel. Polansky v. Exec. Health Res., Inc.,* 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."); TRW Inc. v. *Andrews,* 534 U.S. 19, 31 (2001) ("[N]o

clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

The Respondent's position conflicts with the implementing regulation for § 1225(b). *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024) (implementing regulations may provide a "useful reference point for understanding a statutory scheme" when issued "contemporaneously"). 8 C.F.R. § 235.3 describes Section 1225(b)(2) as applying to "any *arriving alien* who appears to the inspecting officer to be inadmissible." (Emphasis added.) The regulation thus contemplates that "applicants *seeking admission*" are a subset of applicants "roughly interchangeable" with "arriving aliens." "Arriving aliens" are specifically defined by regulation as applicants for admission "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. This certainly does not describe the Petitioner. In fact, the Petitioner's Notice to Appear similarly distinguishes between "arriving alien" and "alien present in the United States who has not been admitted or paroled." *See* NTA, Exh. 4. The regulations and forms presume that the term "seeking admission" does not have unlimited application the Respondent proposes.

The Respondent attempts to employ another provision of section 1225 which requires noncitizens "who are *applicants for admission* or otherwise *seeking admission* or readmission" to be inspected by immigration officers to prove that those terms are synonymous. 8 U.S.C. § 1225(a)(3) (emphasis added). However, the Respondent's example in this provision, like its argument concerning section 1225(b)(2), conflates distinct categories of noncitizens. Section 1225(a)(3)'s inspection protocol applies to two different categories of noncitizens: (1) those already present or arriving in the United States, in other words "applicant[s] for admission"; and (2) those who may "seek admission from anywhere in the world. *See*, *e.g.,* 8 U.S.C. 1225a(a) (requiring preinspection at certain foreign airports before such noncitizen "passengers . . . arrive from abroad"); 19 U.S.C. § 1629(a)

(authorizing inspection of persons in foreign countries "prior to their arrival in . . . the United States").

Furthermore, the phrases "an alien who is an applicant for admission" and "an alien seeking admission" are not synonymous as the first term can describe a noncitizen who for weeks, months, or years is an applicant for admission, whether present in the country or not, while the latter term describes a current activity, namely standing at the border and asking to be allowed in the United States. This foregoing interpretation of the words "an alien seeking admission" is consistent with § 1225(b)'s role in governing the process that "begins at the Nation's borders and ports of entry." *See Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). According to the *Jennings* court, § 1225(b)(2) serves as a "catchall" for aliens seeking admission who are "not clearly and beyond a doubt" entitled to admission, but not for one of the reasons set forth in §1225(b)(1), i.e., fraud, misrepresentation, or lack of valid documentation. *Id.,; see* 8 U.S.C. § 1225(b)(1). Aliens to whom § 1225(b)(2) applies and who are detained may be temporarily released on parole for "urgent humanitarian reason or significant public benefit," but they must return to custody when the Secretary of Homeland Security concludes that the purposes of the parole have been served. *See* 8 U.S.C. § 1182(d)(5)(A).

In *Jennings*, the Supreme Court recognized that a different provision of the INA, namely 8 U.S.C. § 1226, applies to aliens who are *already present* in the United States, but might be removable because they either were inadmissible at the time of entry or have been convicted of one or more statutorily-enumerated criminal offenses. *See* 583 U.S. at 288. (emphasis added). Section 1226(a) reads as follows:

> On 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-

(1) may continue to detain the arrested alien; and

(2) may release the alien on--

(A) bond of at least $1,500 with security approved by,

and containing conditions prescribed by,

prescribed by the Attorney General; or

(B) conditional parole . . . .

Here, 8 U.S.C. § 1226 applies to the Petitioner because he was already present in the United States when he was detained decades after entering the United States.

The Agency's overly broad interpretation of the statutory/regulatory scheme entails holding that every non-citizen who entered the United States without inspection is subject to mandatory detention with no opportunity to be released on bond. Such interpretation is contrary to precedent issued by the Board of Immigration Appeals, such as *Matter of Akhmedov,* 29 I&N Dec. 166 (BIA 2025), as well as Congressional intent and decades of interpretation. *See generally* Public Law 119-1; The Laken-Riley Act. The Petitioner should be allowed to apply for an immigration bond and have an Immigration judge determine his eligibility for an immigration bond so as to avail himself of his constitutional right to liberty during Deportation Proceedings. *Doherty v. Barr*, 503 US 901 (1992) (finding that even aliens unlawfully present in the US have a "substantive due process right to liberty during deportation proceedings.")

In *Matter of Akhmedov*, the position of the Board of Immigration Appeals is that those who entered unlawfully are necessarily detained under 8 U.S.C. § 1226, which gives an Immigration Judge discretion to grant bond to a detainee. The

Department of Justice, however, paints with a broad brush, holding that anyone who enters without inspection is subject to 8 U.S.C. § 1225, a much more stringent provision under which Immigration Judges lack jurisdiction to grant bond.

The Agency's finding that all non-citizens who enter without inspection are subject to mandatory detention and, thus, ineligible for bond would run contrary to Congressional intent, as it would make the Laken-Riley Act unnecessary and superfluous. Congress would have had no need to carve out an exception that excludes non-citizens who entered without inspection *and* have been charged with offenses, such as theft or assault, from requesting bond if *everyone* who entered unlawfully was ineligible for bond, thus demonstrating congressional intent that those who entered without inspection are eligible for bond under 8 U.S.C. § 1226.

A plain reading of the regulatory/statutory scheme clearly demonstrates that the Petitioner is unlawfully detained and that the Respondents have failed to meet their burden of proof.

II. The History of the Immigration and Nationality Act

Assuming arguendo that the statutory/regulatory scheme is ambiguous or vague, then a historical analysis of the origins of the statute, nonetheless, shows that the Petitioner's interpretation is correct. Prior to 1996, the INA primarily distinguished individuals on the basis of "entry" and not "admission." See § 1101(a)(13) (1994) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise"). "Entry" dictated what type of enforcement proceeding applied to determine whether a non-citizen could be removed or barred from the country. Non-citizens who had effected an "entry" into the United States were subject to deportation proceedings, while those who had not made an "entry" were subject to exclusion proceedings. Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, 1-1 Immigration Law and Procedure § 1.03(2)(b) (2010).

This so-called "entry doctrine" resulted in an anomaly. Under this regime, non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings. IIRIRA addressed this anomaly by substituting "admission" for "entry" and by replacing deportation and exclusion proceedings with a general "removal" proceeding. Under the new regime, "admission" now determines whether a non-citizen is subject to grounds of deportability or inadmissibility within the context of a removal proceeding. See IIRIRA, Pub. L. No. 104-208, div. C, § 220, 110 Stat. 3009 (amending 8 U.S.C. § 1101(a)(13); id. div. C, § 240, 110 Stat. 3009 (enacting 8 U.S.C. § 1229a); see also H.R. Rep. No. 104-469, at 225-26 (Conf. Rep.) (1996) (explaining reasons for the amendment).

In making these changes, Congress did not fully disrupt the old system, including the system of detention and release. In fact, according to the legislative record, "Section 236(a) [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. REP. 104-469, 229. Congress' concern about adjusting the law in some respects to reduce inequities in the removal process did not mean Congress intended to entirely up-end the existing detention regime by subjecting all inadmissible noncitizens to mandatory detention, a seismic shift in the established policy and practice of allowing discretionary release under Section 1226(a) - the scope of which Congress did not alter.

Until the government adopted its new interpretation of § 1225(b)(2) this year, the longstanding (almost three decades) practice of the agencies charged with interpreting and enforcing the INA since IIRIRA was enacted was to apply § 1226(a) to noncitizens who entered the U.S. without inspection and were apprehended while

present in the U.S. By contrast, those apprehended at or near a port of entry were designated as "arriving alien(s)." The Executive Office for Immigration Review's (EOIR) regulations drafted to implement the IIRIRA amendments explained this distinction. See Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination . . . . The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not. This procedure maintains the status quo . . ."") (emphasis added). This distinction is consistent with the definition of "arriving alien". 8 C.F.R. § 1.2.

III. The BIA's decision in *Matter of Yajure Hurtado* is not binding.

Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025) is entitled to little deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do"). Under Skidmore, the "weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944).

The Respondent asserts that its position is correct as it is supported by the BIA precedent of *Matter of Yajure Hurtado*. However, the BIA's current position is

inconsistent with its earlier pronouncements. Prior to *Matter of Yajure Hurtado*, the BIA issued three non-precedential decisions taking the opposite position. In September 2023, the BIA remanded a case for the IJ to determine conditions of custody after the IJ erroneously found they had no jurisdiction over the matter because the applicant entered the U.S. without being admitted or paroled. *See Matter of XXX XXX XXX* , AILA Doc. No. 23101604 (BIA Sept. 1, 2023), Exh. 5. In that same case, the Board even stated that it was "unaware of any precedent" that would support the Government's position. *Id.* In October 2025, the BIA remanded a case finding that because the Respondent's NTA marked them as a noncitizen "present without admission or parole," they were not subject to the detention provisions under INA § 235(b), 8 U.S.C. § 1225(b). *See* Appeal ID 5449981 (BIA Oct. 17, 2023), Exh. 6; In December 2023, the BIA reiterated their position for a third time, finding that a noncitizen who was placed directly into removal proceedings under §1229(a) was thus not subject to mandatory detention under §1225(b)(1) or (b)(2) because DHS had elected to placed them directly into removal proceedings without placing them in expedited removal first. *See* Appeal ID 5454441 (BIA Dec. 14, 2023), Exh. 7. Under *Loper*, the Court has no obligation to defer to the BIA's view, particularly when that view has not "remained consistent over time." *Loper*, 603 U.S. at 386; see also *Skidmore*, 323 U.S. at 140.

IV. Persuasive decisions from courts in this district and others support the Petitioner's position.

In the absence of controlling authority, the Court should follow those district courts that have applied the plain language of the INA and held that Petitioners such as Mr. Sabala Peres are not subject to mandatory detention under § 1225(b)(2).

Although there is no doubt that other district court rulings are not binding on this Court, the reality is that an overwhelming number of Courts, including Courts in this district, have found that the Respondent's statutory interpretation is incorrect.[1]

[1] *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025; *Sandoval v. Acuna*, No. 625-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); Vargas Lopez v. Trump, No. 8:25-CV-00526, 2025 L.
[1] *See, e.g., Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, --- F. Supp. 3d ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Gimenez Gonzalez v. Raycraft*, No. 25-CV-13094, 2025 WL 3006185 (E.D. Mich. Oct. 27, 2025) (Kumar, J.); *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Noem*, No. 25-CV-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-CV-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 Civ. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 25-CV-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, No. 25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); *Doe v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Jimenez v. FCI Berlin, Warden*, --- F. Supp. 3d ---, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*, No. 25-CV-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Guzman v. Andrews*, No. 25-CV-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-5624, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Garcia Cortes, v. Noem*, No. 25-CV-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Pablo Sequen v. Kaiser*, --- F. Supp. 3d ---, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025); *Maldonado Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Velasquez Salazar v. Dedos*, No. 25-CV-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Choglo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Singh v. Lewis*, No. 25-CV-96, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Giron Reyes v. Lyons*, --- F. Supp. 3d ---, 2025 WL 2712427 (N.D. Iowa Sept.

See Buenrostro-Mendez v. Bondi, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025)(Rosenthal, J.); *see also Nery Ortiz-Ortiz v. Bondi*, Civil Action 5:25-cv-132 Dkt. 17 (S.D. Tex. Oct. 15, 2025)(Kazen, J.); *See also Baltazar v. Vasquez*, 5:25-cv-160 Dkt. 10 (S.D. Tex. Oct . 14, 2025)(Marmolejo, J.); *Fuentes v. Lyons*, Civil Action 5:25-cv-00153 Dkt. 15 (S.D. Tex. Oct. 16, 2025)(Saldana, J.).

The foregoing cases also indicate that the claim in question is ripe for review as the pendency of removal proceedings has not prevented numerous other courts from finding jurisdiction, nor has it prevented them from granting a Temporary Restraining Order in similar situations.

23, 2025); *Brito Barrajas v. Noem*, No. 25-CV-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, --- F. Supp. 3d ---, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez v. Hardin*, No. 25-CV-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-CV-07802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, --- F. Supp. 3d ---, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Alves da Silva v. U.S. Immigr. & Customs Enf't*, No. 25-CV-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Chang Barrios v. Shepley*, No. 25-CV-00406, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Inlago Tocagon v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2778023 (D. Mass. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Romero-Nolasco v. McDonald*, --- F. Supp. 3d ---, 2025 WL 2778036 (D. Mass. Sept. 29, 2025); *Quispe v. Crawford*, No. 25-CV-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Quispe-Ardiles v. Noem*, No. 25-CV-01382, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *D.S. v. Bondi*, No. 25-CV-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Ayala Casun v. Hyde*, No. 25-CV-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Chanaguano Caiza v. Scott*, No. 25-CV-00500, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, No. 25-CV-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Rocha v. Hyde*, No. 25-CV-12584, 2025 WL 2807692 (D. Mass. Oct. 2, 2025); *Alvarenga Matute v. Wofford*, No. 25-CV-01206, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025); *Escobar v. Hyde*, No. 25-CV-12620, 2025 WL 2823324 (D. Mass. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, No. 25-CV-07286, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Echevarria v. Bondi*, No. 25-CV-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Guerrero Orellana v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Hyppolite v. Noem*, No. 25-CV-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025).[3]

STATUTORY AND CONSTITUTIONAL FRAMEWORK

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be...deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 US 71, 80 (1992). See also *St. John v. McElroy*, 917 F. Supp. 243, 250 (S.D.N.Y. 1996)("[T]the private interest affected is St. John's liberty interest, which is of the highest constitutional import."); *Doherty v. Barr*, 503 US 901 (1992)(finding that even aliens unlawfully present in the US have a "substantive due process right to liberty during deportation proceedings.")

Substantive due process requires that detention authorized for non-punitive purposes not be "excessive in relation to the regulatory goal Congress sought to achieve." *United States v. Salerno*, 481 US 739, 747 (1987). Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances "where a special justification…outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Kansas v. Hendricks*, 521 US 346, 356 (1997).

Even if the Petitioner's continued detention did not violate his constitutional right to substantive due process, his continued detention violates his constitutional right to procedural due process. The Petitioner has been indefinitely deprived of his liberty by the unilateral decision of an ICE official without being heard at a meaningful time and in a meaningful manner. *Matthews v. Eldridge*, 424 US 319, 334 (1976).

This Honorable Court must consider three factors when analyzing a claim that involves the violation of procedural due process: 1) the nature of the private interest

affected by the government action; 2) the risk of an erroneous deprivation of the interest as a result of the procedures used and the probable value of additional or substitute safeguards; and, 3) the government's interest in using its own procedures and the fiscal and administrative burdens by additional or substitute safeguards. *Matthews, supra* at 335.

In the instant case, the private interest is the right to be considered for immigration bond under the provisions of 8 U.S.C. § 1226. Freedom from government custody or detention "lies at the heart of the liberty" that due process protects. *Zadvyas, supra* at 690. The Respondents have failed to demonstrate that the Petitioner presents an identified and articulable threat to the community, nor have they demonstrated that the Petitioner is a flight risk, so as to justify his continued detention.

The risk of an erroneous deprivation of the Petitioner's liberty interest is substantive and grave considering that he has been in custody of Immigration and Customs Enforcement for over a month already, as well as the fact that the Agency erroneously held that it has no jurisdiction to adjudicate the Petitioner's application for immigration bond. The value of additional and substitute safeguards is nil, as the Petitioner remains detained indefinitely.

The government's interest in using its own procedures, as well as the fiscal and administrative burdens by additional or substitute safeguards is not particularly relevant. The government's fiscal and administrative burdens while the Petitioner remains detained are actually higher than they would otherwise be if the Petitioner were released.

REQUEST FOR INJUNCTIVE RELIEF

For all the reasons outlined, *supra*, which are incorporated and re-urged herein as if fully set forth verbatim, the Petitioner respectfully requests injunctive relief in the form of the entry of an order enjoining the Respondents from further and continued detention of the Petitioner, absent a new basis for such detention arising subsequent to this action and independent of his manner of entry to the United States.

This injunction is necessary as Respondents have shown themselves unwilling to hold any administrative hearing to adjudicate the Petitioner's application for an immigration bond under their own administrative framework.

REQUEST FOR DECLARATORY RELIEF

For all the reasons outlined, *supra,* which are incorporated and re-urged herein as if fully set forth verbatim, the Petitioner respectfully requests declaratory relief in the form of the entry of a decree which specifies the rights and liabilities of the parties to the instant litigation. The Petitioner also requests that this Honorable Court retain continuing jurisdiction over this civil action and that, after reasonable notice of hearing and hearing had, it enter any further declaratory, mandatory, or other injunctive order that is necessary to enforce any declaratory judgment. 28 U.S.C. § 22.02.

REQUEST FOR ATTORNEY FEES AND COSTS

The Petitioner is entitled to recover reasonable attorney's fees and costs of court, both of which he respectfully requests under the Equal Access to Justice Act. 28 U.S.C. § 2412. The position of the Respondents herein is not substantially

justified, and no circumstances exist which would render an award of fees and costs unjust. 28 U.S.C. § 2412(d)(1)(A).

PRAYER

WHEREFORE, PREMISES CONSIDERED, in view of the arguments and authority noted herein, Petitioner respectfully prays that the Respondents be cited to appear and answer herein and that, upon due consideration, this Honorable Court:

(a) grant Petitioner's petition for writ of habeas corpus and issue a declaratory judgment stating that Respondents' continuing detention of the Petitioner is arbitrary and capricious, clearly contrary to law, and in excess of statutory jurisdiction, and that Petitioner be released on recognizance, or in the alternative, permitted to apply for an immigration bond pursuant to 8 U.S.C. § 1226(a);

(b) issue an order enjoining Respondents from further, continuing detention of the Petitioner absent new cause arising subsequent to this action and not dependent upon his status at entry to the United States;

(c) retain jurisdiction over this civil action to the extent necessary to ensure the entry of any declaratory, injunctive, or mandatory order that may be necessary or proper to enforce any declaratory judgment;

(d) award Petitioner reasonable attorney's fees and costs; and

(e) grant such other relief at law and in equity as justice may require.

Respectfully submitted,

/s/Robert K. Hoffman

Robert K. Hoffman
Rushton Hoffman and Associates, PLLC
Attorneys for Petitioner
Texas Bar No. 24073807
5909 West Loop S., Ste. 150
Bellaire, TX 77401
(713)838-8500
(713)838-9826 Fax

LIST OF ATTACHMENTS

Exhibit	Description
1	ICE Online Detainee Locator Printout
2	Order of the Immigration Judge Denying Bond
3	Petitioner's Passport Biographic Page
4	Notice to Appear
5	*Matter of XXX XXX XXX* , AILA Doc. No. 23101604 (BIA Sept. 1, 2023)
6	Appeal ID 5449981 (BIA Oct. 17, 2023)
7	Appeal ID 5454441 (BIA Dec. 14, 2023)

EXHIBIT 1

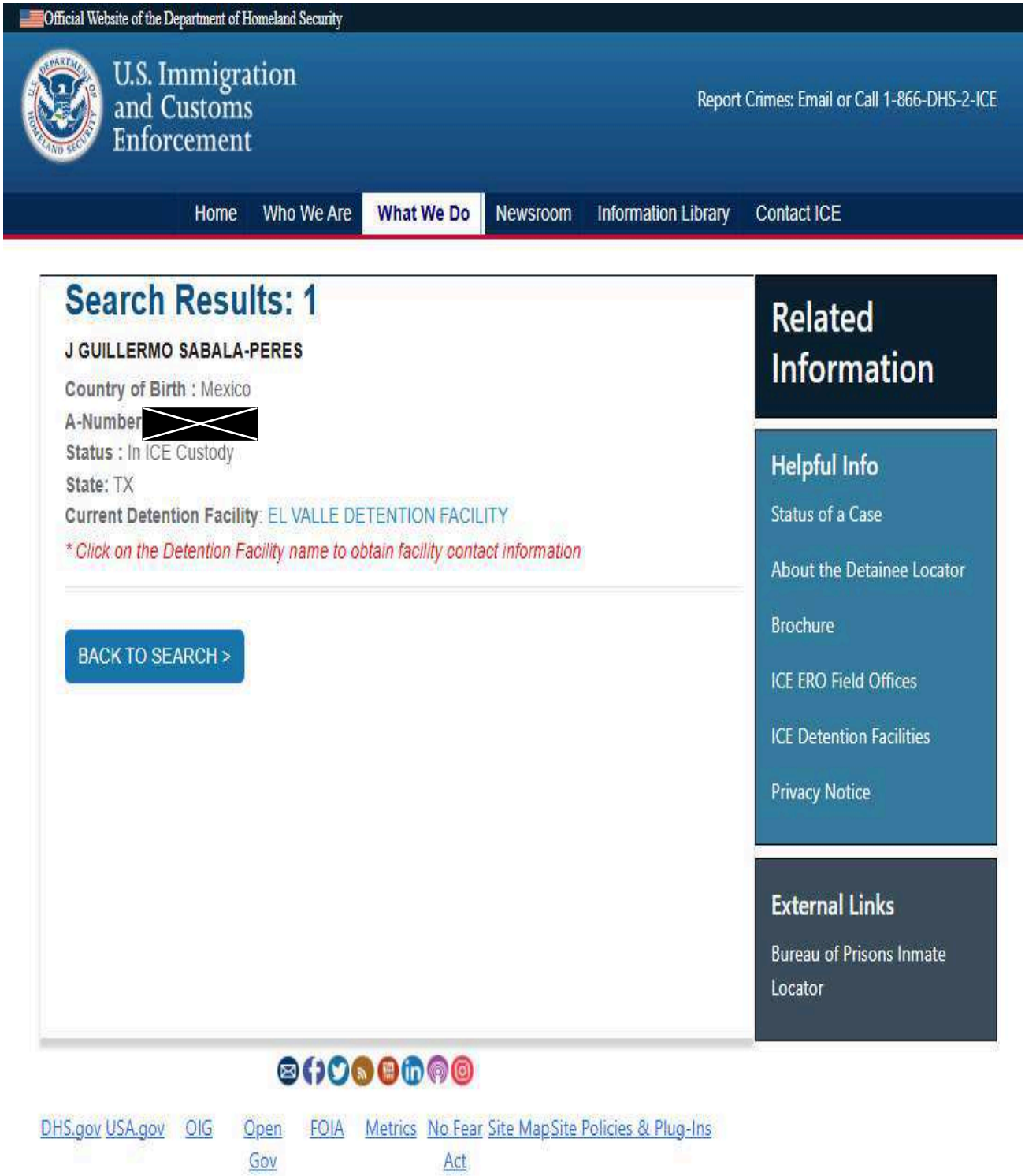
Official Website of the Department of Homeland Security
U.S. Immigration and Customs Enforcement
Report Crimes: Email or Call 1-866-DHS-2-ICE
Home
Who We Are
What We Do
Newsroom
Information Library
Contact ICE
Search Results: 1
J GUILLERMO SABALA-PERES
Country of Birth : Mexico
A-Number
Status : In ICE Custody
State: TX
Current Detention Facility: EL VALLE DETENTION FACILITY
* Click on the Detention Facility name to obtain facility contact information
BACK TO SEARCH >
Related Information
Helpful Info
Status of a Case
About the Detainee Locator
Brochure
ICE ERO Field Offices
ICE Detention Facilities
Privacy Notice
External Links
Bureau of Prisons Inmate Locator
DHS.gov USA.gov OIG Open Gov FOIA Metrics No Fear Act Site Map Site Policies & Plug-Ins

EXHIBIT 2

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
HOUSTON - GREENSPOINT PARK
IMMIGRATION COURT

Respondent Name:
SABALA-PERES, J GUILLERMO

To:
Hoffman, Robert Kenneth
5909 West Loop South
Suite 150
Bellaire, TX 77401

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
11/24/2025

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
No jurisdiction under Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025).

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☐ Other:

Immigration Judge: Parker, Martinque 11/24/2025

Appeal: Department of Homeland Security: ☑ waived ☐ reserved
Respondent: ☐ waived ☑ reserved
Appeal Due: 12/24/2025

Certificate of Service

This document was served:
Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable
To: [ ] Alien | [ ] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS
Respondent Name : SABALA-PERES, J GUILLERMO | A-Number : [redacted]
Riders:
Date: 11/24/2025 By: MARTIN, SHARLA, Court Staff

EXHIBIT 3

EXHIBIT 4

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [redacted]
Event

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

In the Matter of:

Respondent: J GUILLERMO SABALA-PERES AKA: See Continuation Page Made a Part Hereof currently residing at:

[redacted]
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of MEXICO and a citizen of MEXICO;

3. You entered the United States at or near Brownsville, Texas, on or about January 1, 1982;

4. You were not then admitted or paroled after inspection by an Immigration Officer.At that time you arrived at a time or place other than as designated by the Attorney General.
See Continuation Page Made a Part Hereof

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

16800 GREENSPOINT PRK DR, 2ND FL HOUSTON, TEXAS 77060. HOUSTON GREENSPOINT PARK
(Complete Address of Immigration Court, including Room Number, if any)

on November 13, 2025 *(Date)* at 8:30 am *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

J 3194 CUELLAR - SDDO
(Signature and Title of Issuing Officer)

Date: November 1, 2025

Edinburg, Texas
(City and State)

EOIR – 1 of 4

DHS Form I-862 (6/22) Page 1 of 4

EXHIBIT 5

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

[redacted], A[redacted]

Respondent

FILED
Sep 01, 2023

ON BEHALF OF RESPONDENT: Caroline K. Medeiros, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Tacoma, WA

Before: Malphrus, Deputy Chief Appellate Immigration Judge; Petty, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Hunsucker
Appellate Immigration Judge Petty, see concurring opinion

HUNSUCKER, Appellate Immigration Judge

The respondent appeals from the Immigration Judge's February 28, 2023, bond order denying his request for a change in custody status. The Immigration Judge issued a bond memorandum on March 3, 2023, setting forth the reasons for the bond decision. The Department of Homeland Security ("DHS") filed a response brief agreeing with the respondent that he is entitled to a custody redetermination hearing.[1] The appeal will be sustained and the record remanded for further proceedings.

The Immigration Judge concluded that because the respondent last entered the United States without being admitted or paroled, she was without jurisdiction to redetermine the respondent's custody status (IJ at 1-3).

We acknowledge the analysis of the Immigration Judge. However, both the respondent and the DHS have filed briefs arguing that the Immigration Judge may redetermine the conditions of the respondent's custody. Further, we are unaware of any precedent stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here. Accordingly, we will remand this case so that the respondent may receive a custody redetermination hearing before the Immigration Judge.

ORDER: The respondent's appeal is sustained.

[1] An unsolicited brief was also submitted by amicus curiae in support of the respondent's appeal. In light of our disposition of the case, we chose to reject the brief submitted by amicus curiae to avoid further delay in the respondent's case.

A[redacted]

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

PETTY, Appellate Immigration Judge, concurring opinion

I write separately solely to note my dissatisfaction with DHS's presentation to the Board in this case. DHS submits that the Immigration Judge's legal conclusion was inconsistent with the position taken by the Solicitor General in *Biden v. Texas*, 142 S. Ct. 2528 (2022), both in the briefs and at oral argument at the Supreme Court. Relying on our decision in *Matter of Mangabat*, 14 I&N Dec. 75, 78 (BIA 1972), DHS submits that the Solicitor General's position is binding on the Board and, by extension, on Immigration Judges (*see* DHS Br. at 9 (purportedly quoting *Matter of Mangabat* for the proposition that "[t]he views of the [Attorney General] as expressed in the briefs filed by the Office of the Solicitor General with the Court are binding on the BIA.")).

I am unable to locate the quote DHS attributed to *Matter of Mangabat*, or even anything similar to it, anywhere in that decision. Nor was I able to find it anywhere else. And while it is possible that authority for the proposition DHS puts forward exists somewhere—notwithstanding the Board's own independent delegation of authority from the Attorney General, *see* 8 C.F.R. § 1003.1(d)(i)-(ii)—I have not found that, either.

DHS also claimed that "[a]t oral argument before the U.S. Supreme Court, Solicitor General Prelogar reiterated the Department of Justice's position that INA § 236 is an appropriate means of release for noncitizens who entered the United States without inspection. *See* Tr. of Oral Arg. at 44-45" (DHS Br. at 10 n.8). What the Solicitor General actually said was "*DHS's* long-standing interpretation has been that 1226(a) [INA § 236(a)] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Transcript of Oral Argument at 44-45, *Biden v. Texas*, 142 S. Ct. 2528 (2022) (No. 21-954) (emphasis added). She then emphasized that it has been "the agency's consistent interpretation." *Id.* at 45. However long-standing, and regardless of whether the Solicitor General mentions it during oral argument in the Supreme Court, none of DHS's legal interpretations can bind the Board or Immigration Judges, *See* INA § 103(g)(2), 8 U.S.C. § 1103(g)(2).

EXHIBIT 6

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Oct 17, 2023

ON BEHALF OF RESPONDENT: Siovhan S. Ayala, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Tacoma, WA

Before: Borkowski, Temporary Appellate Immigration Judge[1]

BORKOWSKI, Temporary Appellate Immigration Judge

The respondent appeals from the Immigration Judge's August 1, 2023, decision denying his request for a redetermination of his custody status. We will sustain the appeal, and remand the record for further proceedings and issuance of a new decision.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's request for a redetermination of his custody status on the grounds that she lacked jurisdiction over the request (IJ at 2-4). The Immigration Judge reasoned that the respondent is an applicant for admission as defined at section 235(b)(1)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(1)(A), and therefore subject to the mandatory custody provisions at § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) (IJ at 3-4).

Under our de novo review, we hold that the Immigration Judge erred in determining that she did not have jurisdiction over the respondent's request for a redetermination of his custody status. Section 235(b)(1)(A) of the INA, 8 U.S.C. § 1225(b)(1)(A), applies to "arriving aliens," and deems them to be "applicants for admission." *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 525 and n. 4 (BIA 2011) ("Under section 235(a)(1) of the Act, arriving aliens are 'deemed' to be applicants for admission.").

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

Cite as: Appeal ID 5449981 (BIA Oct. 17, 2023)

The Notice to Appear issued by the Department of Homeland Security ("DHS") did not charge the respondent as an arriving alien, however, but as an "alien[] present without permission or parole," under INA § 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i) (IJ at 1). Thus, the respondent is not an arriving alien, and is not subject to the mandatory custody provisions of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Thus, the Immigration Judge erred in determining that she did not have jurisdiction over the respondent's request for a change in his custody status (IJ at 2-4).

We also hold that the law of the case directs that the Immigration Judge has jurisdiction to determine the respondent's request for a change in his custody status. The electronic records of the Executive Office for Immigration Review reflect that on August 23, 2023, the Board issued a decision on the respondent's appeal from a May 15, 2023, Immigration Judge decision denying a request for change in the respondent's custody status on the grounds that the Immigration Judge lacked jurisdiction.[2] The Board's August 23, 2023, decision remanded the record for the Immigration Judge to conduct a bond hearing and issue a decision that addressed relevant custody factors, including the respondent's flight risk (BIA at 1-2, Aug. 23, 2023).

Thus, we will remand the record for the Immigration Judge to conduct a bond hearing pursuant to the Immigration Judge's authority under INA § 236(a), 8 U.S.C. § 1226(a), and to issue a decision adjudicating the respondent's request for a change in his custody status. Accordingly, the following order will be issued.

ORDER: The respondent's appeal is sustained, and the record is remanded for further proceedings in accordance with the foregoing opinion and issuance of a new decision.

[2] The May 15, 2023, decision was issued by an Immigration Judge in Oakdale, Louisiana. Venue in these proceedings was subsequently changed to the Tacoma, Washington Immigration Court (IJ at 1-2).

EXHIBIT 7

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Dec 14, 2023

ON BEHALF OF RESPONDENT: Ling Li, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Conroe, TX

Before: Goodwin, Appellate Immigration Judge; Pepper, Temporary Appellate Immigration Judge; Crossett, Temporary Appellate Immigration Judge[1]

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

The respondent appeals from the Immigration Judge's bond order dated September 5, 2023, denying change in custody status. The Immigration Judge issued a bond memorandum explaining his decision on September 19, 2023. The Department of Homeland Security ("DHS") has not responded to the appeal. The appeal will be sustained, and the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is an applicant for admission, who on or about July 12, 2023, entered the United States without inspection, and was apprehended between ports of entry shortly after entering (IJ at 4). *See* section 235(a)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(a)(1). On the same day, July 12, 2023, DHS issued a Notice to Appear ("NTA") commencing removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a (IJ at 4).

The Immigration Judge determined that the respondent was subject to mandatory detention under section 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2), and denied the respondent's request for a change in custody status based on a lack of jurisdiction (IJ 4-5). On appeal, the respondent argues that the Immigration Judge had jurisdiction to redetermine custody status because the statutory scheme governing his detention is section 236(a) of the INA, 8 U.S.C. § 1226(a) (Respondent's Br. at 3-9).

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

A[b)(6)]

Specifically, the respondent contends he is not subject to mandatory detention under sections 235(b)(1) or (b)(2) of the INA, 8 U.S.C. §§ 1225(b)(1)-(2), because he was never placed in expedited removal proceedings, he was not "transferred" from expedited removal proceedings into removal proceedings upon a credible fear determination, nor was he found not to have a credible fear of persecution (Respondent's Br. at 3-9). Instead, DHS opted to place him directly into removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (IJ at 4; Respondent's Br. at 9).[2] *See Matter of E- R- M- & L-R-M-*, 25 I&N Dec. 520, 521-22 (BIA 2011) (explaining that it is within DHS' discretion to process noncitizens described in section 235(b) by either placing them into section 235 expedited removal proceedings or placing them directly into section 240 removal proceedings).

The Immigration Judge would have lacked jurisdiction to redetermine the respondent's custody status if DHS had ever placed the respondent in expedited removal proceedings. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) (explaining that an applicant for admission is subject to mandatory detention when he or she has been continuously in expedited removal proceedings); *Matter of M-S-*, 27 I&N Dec. 509, 510-12 (A.G. 2019) (requiring mandatory detention of individuals placed in expedited removal proceedings and later transferred to full removal proceedings). This is not the case here. As the respondent was placed in section 240 removal proceedings at the inception of proceedings, he is not subject to mandatory detention. *See generally Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747-48 (BIA 2023) (discussing the operation of the detention schemes under section 235 and 236 of the INA for arriving noncitizens and noncitizens who entered without inspection and apprehended near the U.S.-Mexico border).

The procedural posture and facts of the present matter are analogous with those in *Matter of D-J-*, 23 I&N Dec. 572, 572-76 (A.G. 2003), where the Attorney General reviewed eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). Moreover, the respondent does not fall within the classes of persons for whom Immigration Judges are prohibited from redetermining the conditions of custody. *See* 8 C.F.R. § 1003.19(h)(2)(i)(A)-(E).

Therefore, we will vacate the Immigration Judge's September 5, 2023, decision and remand this matter for further proceedings consistent with the foregoing. In remanding, we express no opinion as to the ultimate outcome of the proceedings. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained and the Immigration Judge's September 5, 2023, order is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for entry of a new decision.

[2] The Immigration Judge's factual findings in the Bond Memorandum, the respondent's contentions on appeal, and the factual allegations in the NTA and its date of issuance inform us that the respondent was never placed in expedited removal proceedings.

CERTIFICATE OF SERVICE

I, Robert K. Hoffman, hereby certify that a true and correct copy of the foregoing "Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief", including all attachments, will be served on Respondents via US Postal Service Certified mail addressed as follows:

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On this the 6th day of December 2025.

Respectfully submitted,

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