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

Dani Diaz-Gamboa Petitioner v. Bret Bradford, Director, HOUSTON DHS-ICE Field Office & Warden Randy Tate, Montgomery Processing Center	Case no.: 25-cv-5975 WRIT OF HABEAS CORPUS

PETITION FOR A WRIT OF HABEAS CORPUS

TO THE HONORABLE COURT:

COMES NOW Dani Diaz-Gamboa, through the undersigned counsel, and most respectfully **STATES AND PRAYS** as follows:

I. INTRODUCTION

"Every statute has limits which are capable of being exceeded thus even under statutes granting an official the broadest discretion there will be some I'll be at fewer cases capable of arising under the statute which will present issues to which the court will have to apply the law." Abdelhamid v. Ilchert, 774 F 2d 1447, 1449 (CA9 1985) This court has the authority to ensure that the Executive Office for Immigration Review and the Board of Immigration Appeals, both federal agencies, do not act beyond the legislative intent of their enabling statute.

"Any hearing held by the agency must be fair, there must be no error of law, there must be evidence to support the findings of fact. If one of the elements mentioned is lacking the proceeding

is void and must be set aside." (Internal quotations omitted.) Kessler v. Strecker, 307 US 22, 34, 59 S. Ct. 694, 83 L. Ed. 1082 (1939).

This is a petition for a writ of Habeas Corpus challenging the illegal detention of petitioner Dani Diaz-Gamboa by Immigration and Customs Enforcement (ICE) under 28 USC §2241. He is currently held at the Montgomery Processing Center, 806 Hilbig Road, Conroe, TX 77301. His ***A# is 240-307-526.***

II. JURISDICTION AND VENUE

The district court has subject matter jurisdiction under 28 U.S.C. § 2241, AND under 28 U.S.C. § 1331 (federal question). The court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651 and Article I § 9, cl. 2 of the U.S. Constitution (Suspension Clause). See INS v. Cyr, 533 US 289 (2001) and Guerrero-Lasprilla v. Barr, 589 US 221, 140 S. Ct. 1062, 1067-73, 206 L. Ed. 2d 271.

This action arises under the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

Jurisdiction is proper as Petitioner is detained and the proceedings challenged took place within the jurisdiction of the court. Rumsfeld v. Padilla, 542 U.S. 426, 443 (2004) Venue is proper under 18 USC §1391 (e) as he is currently detained within the jurisdiction of the court by the officers and agencies of the United States identified as defendants.

This is a challenge to "detention simpliciter" under § 2241—so the jurisdiction-stripping provisions of 8 USC § 1252 don't bar review of the immigration detention conditions and duration.

III. PARTIES

Bret Bradford is the Director of the Houston ICE (Immigration and Customs Enforcement) Field Office, located in 126 Northpoint Drive, Houston, Texas, 77060. He has responsibility over the detention facility or contract governing the detention facility where Petitioner is held.

Randy Tate is the warden and "immediate custodian" at the Montgomery Processing Center, 806 Hilbig Road, Conroe, TX 77301 where Petitioner is being held. He is who makes custodial decisions regarding non-citizens detained in immigration custody.

See Rumsfeld v. Padilla, 542 US 426, 439 (2004); 28 U.S.C. § 2242 and § 2243.

IV. AGENCY FINAL DECISION

The immigration court issued an order on December 4, 2025 denying Mr. Diaz-Gamboa 's request for bond for lack of jurisdiction. See **Exhibit 1**.

V. STATEMENT OF FACTS

Dani Diaz-Gamboa , [redacted], is a citizen and national of Cuba. He entered the United States almost four (4) years ago, on February 18, 2022. He was issued a form I-220A upon arrival, allowing him to remain free after his initial entry through the port of entry at Eagles Pass, Texas. He has never left the United States since his entry.

He has no prior history of arrests or convictions.

He was arrested on July 29, 2025 while on his way to work as Production Operator at Mausser Packaging Solutions, in Texas. He was initially held at IAH Adult Detention Center in Livingston, Texas, but was subsequently moved to Montgomery Processing Center, in Conroe, Texas, on August 4, 2025. He has been continuously detained, as of today, for a **total of 135 days** since his arrest.

His first court appearance was on December 4, 2025, a hearing on his request for bond redetermination before Immigration Judge (IJ) Andrew Caborn. The IJ issued an order stating he

had no jurisdiction over a bond for Mr. Diaz-Gamboa under the Board of Immigration Appeals (BIA) case *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). **Exhibit 1**.

Mr. Diaz-Gamboa has since filed an application for adjustment of status before the immigration court under the Cuban Adjustment Act (CAA)[1] for which he paid the corresponding application fee on October 21, 2025, and filed additional supporting documents on October 31, 2025.

VI. CLAIMS FOR RELIEF

We ask the court to order the immediate release of petitioner from detention and:

1. Find that the IJ incorrectly determined he lacked jurisdiction to conduct bond redetermination hearings.
2. Find that Petitioner's *prolonged detention* without a bond hearing constitutes a violation of due process and of immigration statutes that establish a respondent's right to have a detention hearing under INA §236, 8 USC §1226.

VII. APPLICABLE LAW

Habeas review depends upon the circumstances of the case, including the thoroughness of procedures provided during the underlying administrative proceedings. Boumediene v. Bush, 553 US 723, 781, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008)

In **Exhibit 1**, the IJ determined he lacked jurisdiction for a bond redetermination hearing under the BIA precedential decision in *Matter of Hurtado*, ante. Petitioner's detention is under INA § 236, 8 USC §1226, as he was apprehended inside the United States after more than three (3) years of residence inside the country.

[1] Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (Nov. 2, 1966), as amended, codified as a historical and statutory note to 8 U.S.C. § 1255.

This is a refusal to exercise bond jurisdiction because of the BIA's *Matter of Yajure Hurtado*, supra, which stripped the immigration courts from jurisdiction to conduct bond redetermination hearings during the pendency of immigration proceedings. That decision addresses detention under §236, §1226, and found that the IJ "did not have authority over the bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings". *Id*, p. 20. This §235, 8 USC §1225, is the mandatory detention statue, whereas §236 is the discretionary detention statute, and they are applied to distinct groups of respondents in immigration proceedings. See Jennings v. Rodriguez, 583 U.S. 281, 288–89 (2018). Petitioner belongs to the category of aliens already present in the United States and who *may* be detained pending removal proceedings, with certain exceptions for certain criminal offenses and terrorism. *Id,* at p. 303. Even the BIA, as recently as June 30, 2025, in *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025), had stated that a noncitizen present in the U.S. without inspection or admission was in custody pursuant to§ 236(a), not§ 235. *Matter of Hurtado* changed that.

The structure of the order citing lack of jurisdiction to conduct such a redetermination follows *Matter of Hurtado* and is an order which has been repeatedly found to be contrary to the black letter of the immigration law in this Southern District of Texas. See Fuentes v. Lyons, 5:25-cv-00153, Dkt. No. 15 (S.D. Tex. Oct. 16, 2025); Buenrostro-Mendez v. Bondi, 2025 WL 2886346, at *3 & *3 n.3, *4 (S.D. Tex. Oct. 7, 2025); and Espinoza Andres v. Noem, No. H-25-5128, slip op. at 8–11 (S.D. Tex. Dec. 2, 2025). These recent S.D. Texas opinions concretely say that *Hurtado* is not binding after Loper Bright Enters. v. Raimondo, 603 U.S. 369, 391-392 (2024) and that it is

not persuasive, and thus §1226(a) controls. But none of these cases enter into a system-wide injunction against this EOIR practice in the district.

Maldonado-Bautista v. Ernesto Santacruz, Jr.

*2025 WL 3288403, at 9 **and** *2025 WL 3289861, at 9–11 (C.D. Cal. Nov. 25, 2025)

Maldonado-Bautista did issue a partial summary judgment in the first case number referenced declaring the reliance on 8 USC §1225 for long-term respondents who entered without inspection unlawful and confirming that §1226 governs bond eligibility, declining any deference to *Hurtado* under Loper Bright, ante. The later issued nationwide class-wide declaratory judgment for the "Bond Eligible Class", and the Executive Office for Immigration Review, EOIR, is a named defendant bound by that declaration.[2]

The EOIR courts within the jurisdiction of the court continue to apply Hurtado, as in Exhibit 1, despite the rulings.

Maldonado-Bautista certified a nationwide "bond eligible class" of plaintiffs and extends declaratory relief to the class from decisions by IJ denying jurisdiction to hear bond redetermination petitions by detained respondents. In addition, Rodriguez Vazquez v. Bostock, 779 F. Supp. 3d 1239, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025), has also certified a "bond denial class" of detainees in the district under the same legal principles as Maldonado-Bautista, that is, that the §1225(b)(2)/Hurtado theory is a mistake of law and that these respondent are detained under 8 USC §1226(a), not §1225(b)(2) and are thus eligible for bond eligibility.

In the recent case of Solares Rodriguez v. Noem, No. 5:25-cv-00222 (S.D. Tex. Dec. 1, 2025) (Kazen, J.), the court did recognize the Maldonado-Bautista nationwide class and its class-

[2] See Exhibit 2, fn 2: "Garland v. Aleman Gonzalez, the Supreme Court interpreted 8 U.S.C. § 1252(f)(1) to prohibit class wide injunctive relief regarding certain immigration detention statutes like the ones at issue here. 596 U.S. 543 (2022). However, § 1252(f)(1) does not bar other forms of relief, like class wide declaratory relief. See, e.g., Al Otro Lado v. Exec. Off. for Immigr. Rev., 138 F.4th 1102, 1123–24 (9th Cir. 2025)."

wide declaratory relief and directed the parties to *brief* whether the petitioner is a class member and the effect of that declaratory judgment on her detention.

Under the explicit terms of Exhibit 1, it is clear that §1226 (a) applies to Mr. Diaz-Gamboa, that he belongs *prima fascia* to the class identified in Maldonado-Bautista, and that his detention without a bond hearing is unlawful.

BOND ELIGIBILITY FOR CLASS MEMBERS

Exhibit 1 expresses the IJ's view that until "the District Court issues a class-wide declaratory judgement or injunction" he lacks jurisdiction under *Matter of Hurtado*, ante, to consider a bond redetermination request. The IJ is absolutely wrong in that opinion.

Immigration judges have the authority to make findings of fact and law in proceedings under their jurisdiction, and he can decide that he does have jurisdiction under the Maldonado-Bautista class, if Petitioner satisfied the requirements to make that legal argument and the IJ found them persuasive. Immigration judges have the authority under 8 C.F.R. § 1003.10(b) and the Immigration Court Practice Manual, ICPM, in bond proceedings, to engage with legal arguments, apply statutes, and interpret case law—including recent district-court decisions. See ICPM Part II, Ch. 1.1(c), "[n]othing in this manual shall limit the discretion of Immigration Judges to act in accordance with law and regulation" and Part I, Ch. 1.1, "[n]othing in this manual shall limit the discretion or authority of EOIR's adjudicators to act in accordance with the law, including applicable statutes, regulations, and precedents." However, the same practice manual and regulations also state that BIA precedents are binding unless "controlling federal court" overrule them, as set out in 8 C.F.R. § 1003.1(g) and EOIR Policy Manual Appendix I, § (1)(B)(i) states that "[p]recedent decisions by the BIA are binding on the immigration courts, unless modified or overruled by the Attorney General or a federal court." Under these controlling regulations, the IJ

had no limitations upon his legal decision-making authority and it was error by the IJ in **Exhibit 1** that he had to somehow adhere to *Matter of Hurtado* after the respondent raised the legality of that ruling and requested a bond redetermination hearing.

As to membership in the bond eligible class, there have been several practice advisories helping potential class members navigate the class membership and injunction issues in Maldonado-Bautista. One such advisory is published by the American Civil Liberties Union, ACLU. See **Exhibit 2**, Maldonado-Bautista-Practice-Advisory_12-3-2025.pdf, herein forward ACLU advisory, p. 3.

Under the class definition, there are two groups of people who have claims to relief. One comprises those who entered the United States, were not apprehended at or near the border or close in time to their entry, and who were later arrested inside the country by immigration authorities. We can surely say that Mr. Diaz belongs in the category of EOIR respondents placed in proceedings and detained after their entry into the United States.

In addition, Petitioner was released upon entering the US at a port of entry and after receiving a I220A, which is a Department of Homeland Security (DHS) form used to release an immigrant from custody, placing them under the supervision of DHS Immigration and Customs Enforcement (ICE) for a period of time. This means that Mr. Diaz was inspected at a port of entry, was released into the US on a Form I-220A and had remained free until his detention by ICE on his way to work. [3]

HABEAS CORPUS RELIEF IS AVAILABLE

[3] There is currently a case before the District of Columba federal court, Hernandez v. Noem, No. 1:25-cv-02344 (D.D.C.) (a putative class action) that challenges ICE's use of I-220A as a release mechanism that "denied [plaintiffs] parolee status" and thereby excluded them from CAA adjustment, challenging the legality of the BIA precedent of Matter of Cabrera-Fernandez, 28 I&N Dec. 747, 749–50 (BIA 2023) deciding that I-220A is not § 212(d)(5)(A) parole for CAA. Petitioner has filed an application for adjustment of status under the CAA with the EOIR.

Petitioner falls squarely into the "bond eligibility class" identified in Maldonado-Batista. In the alternative, because Maldonado Bautista did not include habeas claims on behalf of the class, even if he qualifies as class member, he is not precluded from filing this habeas petition that asserts that he has been unlawfully detained because Defendants denied them his statutory rights to a bond hearing. **Exhibit 2**, p. 5.

In Maldonado-Bautista four (4) named individual requested injunctive and declaratory relief and certification of a nationwide class. The injunction order recognizes relief and enjoins the federal government from continuing to detain the four named petitioners unless they receive individualized bond hearings in 7 days and from transferring them out of the district. See **Exhibit 3**, p. 13. The order granting Partial Summary Judgement in 2025 WL 3289861, holds that the government's "no-bond" policy (treating interior EWIs as § 1225(b)(2) "applicants for admission") conflicts with the INA and that petitioners are properly detained under 8 U.S.C. § 1226(a), not §1225(b)(2) and invalidates the policy. Nothing in the order precludes a petitioner's habeas corpus relief as a follow-on enforcement mechanism by individuals like Mr. Diaz-Gamboa to obtain bond hearings or be released by ICE. See **Exhibit 4**, pp. 15-17.

Therefore, even if this court was to recognize that Petitioner is a member of the class of "bond eligible" respondents in EOIR detained proceedings identified in Maldonado-Bautista, it still retains full jurisdiction to determine whether Mr. Diaz-Gamboa should receive relief from the unlawful detention after the denial of his bond redetermination request by the IJ citing *Matter of Hurtado*.

CORRECT BOND REDETERMINATION PROCEDURE

Because Petitioner was arrested inside the US, the IJ had to consider his bond request and engage in the proper evaluation of the evidence under the standard found in *Matter of Guerra*, 24

I&N Dec. 37, 40 (BIA 2006). The case holds that, in determining the need for and amount of bond, the following, non-exclusive factors should be considered:

- stable employment history.
- length of residence in the community.
- family ties.
- record of nonappearance at court.
- prior criminal or immigration law violations.

Because he decided he lacked jurisdiction, the IJ denied Petitioner the right to have the court review the merits of his bond motion and his evidence under the correct standard of law.

VIII. ORDERING A FURTHER DETENTION HEARING IS FUTILE

Matter of Cerda Reyes, 26 I&N Dec. 528 (BIA 2015) holds that the filing rules for bonds in 8 C.F.R. § 1003.19(c) are about venue, not subject-matter jurisdiction, and confirms that the IJ's bond authority derives from INA § 236 via 8 C.F.R. § 1236.1(d)(1). This IJ had jurisdiction to consider the bond request.

However, the new BIA precedent *Matter of Hurtado,* supra, at p. 227-228, restricts the immigration courts' jurisdiction for those "present without admission", This means that even if the IJ was ordered to conduct a bond redetermination hearing the BIA precedent in would mean that the IJ would now have to deny the availability of a hearing based on lack of jurisdiction. This is exactly what IJ Andrew Caborn did in Exhibit 1. That precedent is legally wrong because the Board holds that any noncitizen present in the U.S. "without admission" is an "applicant for admission" under § 235(a)(1) and therefore must be detained under § 235(b)(2)(A), not § 236(a). See 29 I&N Dec. 216, 223–25.

Therefore, this Petitioner can show that the new precedent in *Matter of Yajure Hurtado* renders further referral for a bond hearing before an EOIR immigration judge futile because of the position taken by IJ's as seen in **Exhibit 1**.

IX. ARGUMENT FOR HABEAS RELIEF

The Petitioner meets all the requirements to receive habeas corpus relief under 28 USC §2242.

He has been detained by DHS-ICE at Montgomery Processing Center, Conroe, Texas, under §1225 after the IJ found he had no jurisdiction to hold a bond redetermination hearing. He has been detained for 135days, in a flagrant violation of his rights under the Immigration and Naturalization Act at 8 USC §1226 that is the correct statute for him, a person detained inside the US. It is DHS stated policy to classify all persons in the US as belonging to the class of immigrants that are not eligible for arrest, "collapsing" §1226 into §1225, contrary to the text of the law. Exhibit 3, p. 8.

The government's reading would invert the statute and violate basic canons of construction as discussed in Exhibit 3, at p. 8. Section 1226(a) begins "[e]xcept as provided in subsection (c)," making clear that § 1226(c) is the exclusive exception to the discretionary bond regime for noncitizens already inside the country. Allowing § 1225(b)(2) to operate as an unstated, global bar to bond for any non-admitted alien—no matter how long resident, and no matter that he was taken into custody on a § 1226 warrant—would both nullify the "seeking admission" limitation in § 1225(b)(2) and render the careful structure of § 1226(a)/(c) pointless.

In Cardona-Lozano v. Noem, No. 1:25-cv-01784 (W.D. Tex. Nov. 14, 2025), a long-time EWI resident detained in the interior was classified by DHS as subject to "mandatory" § 1225 detention and denied bond. The Western District of Texas rejected that position, holding that §

1225(b)(2) applies to recent "applicants for admission" at the border and that extending it to interior, long-resident detainees would effectively erase § 1226's role and render the specific mandatory-detention carve-out in § 1226(c) superfluous. The court ordered DHS to treat the detention as governed by § 1226(a) and to provide an individualized bond hearing. Similar results follow in Cerritos Echevarria v. Bondi, No. CV-25-03252-PHX (D. Ariz. Oct. 3, 2025); Loja Lema v. FCI Berlin, Warden, 25NH127P (D.N.H. Nov. 4, 2025); Dos Santos v. Noem, No. 25-12052-JEK (D. Mass. Aug. 14, 2025);); Buenrostro-Mendez v. Bondi, 2025 WL 2886346, at *3 & *3 n.3, *4 (S.D. Tex. Oct. 7, 2025); and Espinoza Andres v. Noem, No. H-25-5128, slip op. at 8–11 (S.D. Tex. Dec. 2, 2025).and related cases, all holding that DHS may not treat long-resident, interior arrestees in § 1229a proceedings as § 1225(b)(2) detainees to strip them of bond eligibility.

Petitioner falls squarely within § 1226(a). She was (1) placed into full removal proceedings under 8 U.S.C. § 1229a, (2) residing in the interior of the United States, and (3) arrested and detained pursuant to an immigration warrant issued under § 1226, not held continuously since a border encounter. Once the government elected to proceed by warrant arrest under § 1226 and standard § 1229a immigration court proceedings, Petitioner's detention is governed by § 1226(a)'s discretionary framework, including access to a custody-redetermination (bond) hearing before an IJ. Nothing in the text of § 1225(b)(2) authorizes DHS to re-characterize an interior, warrant-based § 1226 detention as § 1225(b)(2) "mandatory" custody in order to avoid bond jurisdiction.

X. CONCLUSION

Because 8 USC §1226(a) applies, Petitioner's continued detention without a bond hearing is unlawful. This Honorable Court should GRANT this petition and order him released so that the immigration courts can do their proper job and consider the merits of any application for relief he may file under the law.

WHEREFORE, we respectfully request the Most Honorable Court to:

- ORDER that Respondents immediately release Mr. Diaz-Gamboa from custody, or in the alternative, provide him with a bond hearing under 8 U.S.C. § 1226(a) within five (5) days of the order of the court.
- If released, ORDER that Respondents must notify Mr. Diaz-Gamboa's counsel of the exact time and location of his release *no less than three hours prior* to releasing her.
- ORDER that Respondents provide the Court with a status update on the outcome of any bond hearing conducted pursuant to this Order.
- ORDER that if no bond hearing is held, advise the Court as to the status of Mr. Diaz-Gamboa's release from custody pursuant to this Order.
- ORDER that the parties should also notify the Court if the Government seeks a stay of any bond granted under 8 C.F.R. § 1003.19(i).

VERIFIED PETITION

I hereby declare, under penalty of perjury, that the information contained in this petition is true and correct and that I have personally verified its contents before signing and submitting it.

Signed on this 11th day of December, 2025, in Houston, Texas.

Julie Soderlund, Attorney

RESPECTFULLY SUBMITTED on this 11th day of December, 2025, in Houston, Texas.

S/. Julie Soderlund

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