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

Jeyson Estuardo Tobar Tovar Petitioner, v. Kristi Noem, Secretary of Dept. of Homeland Security, et al. Respondents.	Civil Case No. 4:25-cv-06056 **PETITIONER'S REPLY IN SUPPORT OF HABEAS RELIEF AND IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Respondents' submission rests on a single, legally erroneous premise: that Petitioner was, at some point, lawfully subject to mandatory detention under INA § 235(b) and that such authority may now be revived years later. That assumption is incorrect.

The Petitioner was never subject to detention under INA § 235 at all. Upon entry in 2012, the Department of Homeland Security ("DHS") determined that Petitioner was an Unaccompanied Alien Child ("UAC"). That determination immediately triggered a mandatory statutory divestment of DHS custody authority under the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), which required DHS to transfer custody to the Office of Refugee Resettlement ("ORR") within 72 hours. Once that determination was made, DHS lacked the legal authority to detain the Petitioner under the border inspection regime of § 235.

Because § 235 detention never lawfully attached, there is no § 235 authority to "revive" following Petitioner's 2025 interior arrest. The present detention is governed by INA § 236(a), and Petitioner is entitled to an individualized bond hearing before an Immigration Judge.

Respondents' reliance on *Matter of Yajure Hurtado* and Southern District of Texas cases such as *Cabanas v. Bondi* and *Jimenez v. Thompson* fails because those cases presuppose lawful § 235 custody in the first instance—an assumption that cannot be made where Congress expressly stripped DHS of custody authority at the moment of UAC determination. Under these facts, DHS relinquished any § 235 detention authority long ago. The 2025 detention is firmly governed by INA § 236(a), and the Petitioner is entitled to an individualized bond hearing before an immigration judge.

II. LEGAL FRAMEWORK

The INA establishes two distinct pre-final-order detention regimes: INA § 235 and § 236. § 235 governs the inspection and detention of applicants for admission at or near the border, premised on DHS custody during inspection. INA § 236 governs the detention of noncitizens pending removal proceedings, including discretionary release on bond under § 236(a). The TVPRA overlays this framework with mandatory child-specific rules that supersede the DHS's general border detention authority.

III. PETITIONER WAS NEVER SUBJECT TO DETENTION UNDER INA § 235

a. DHS's UAC Determination Triggered a Mandatory Transfer of Custody Under the TVPRA, and the Statute Provides No Mechanism for Later Re-Designation

Congress enacted the TVPRA to remove unaccompanied children from the immigration-enforcement custody system. The statute provides in mandatory terms: "Except in the case of

exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody **shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child**." 8 U.S.C. § 1232(b)(3) (emphasis added).

The use of "shall" leaves DHS with no discretion. Once DHS determines UAC status, DHS is statutorily prohibited from retaining custody. Because INA § 235 detention presupposes DHS custody, the TVPRA prevents § 235 detention from attaching at all once a UAC determination is made. This is not a temporary pause in § 235 authority. It is a jurisdiction-stripping transfer from an enforcement agency to a child-welfare agency.

i. The TVPRA Contains No Mechanism for Later Re-Designation or Revival

Nothing in the TVPRA authorizes DHS to rescind a UAC determination, retroactively treat a former UAC as continuously subject to border detention, or reassert § 235 authority years after the UAC is released into the interior. While ORR custody ends when an individual turns eighteen (18), the statute does not state nor imply that DHS's border-detention authority is restored. Congress could have included language permitting later re-designation or revival of § 235 authority. However, it did not.[1]

[1] Respondents' reliance on *Jose L.P. v. Whitaker*, 431 F. Supp. 3d 540, 550 (D.N.J. 2019), is misplaced for both legal and factual reasons. *Jose L.P.* did not involve detention under INA § 235 or the denial of bond jurisdiction. To the contrary, the petitioner in *Jose L.P.* was detained under INA § 236(a) and received an individualized bond hearing before an Immigration Judge, who expressly recognized jurisdiction under § 236(a) and denied bond only after finding that the petitioner failed to meet his burden to show he was neither a danger to the community nor a flight risk. *See id.* at 546–47. The Immigration Judge's decision rested on allegations of [redacted] and repeated failures to appear at prior immigration hearings, and the Board of Immigration Appeals subsequently affirmed the bond denial on appeal. *Id.* at 547–48. Because the petitioner in *Jose L.P.* had already received the very process at issue here—an Immigration Judge bond hearing under § 236(a)—arguments premised on detention without any bond hearing were "inapplicable" in that case. *Id.* at 550. Nothing in *Jose L.P.* authorizes DHS to deny bond jurisdiction altogether or to invoke INA § 235 mandatory detention years after a UAC determination and release. Accordingly, *Jose L.P.* provides no support for the Respondents' position in this case.

Recent federal court enforcement of the TVPRA further confirms that DHS cannot evade statutory limits on detention by recharacterizing custody authority years after release. In a December 2025 decision enforcing class-wide relief for former unaccompanied children, the District Court for the District of Columbia held that DHS's obligations under 8 U.S.C. § 1232(c)(2)(B) apply regardless of whether DHS purports to detain an individual under INA § 1225 or § 1226, and that DHS may not lawfully re-detain former unaccompanied children absent a material change in circumstances. *See Garcia Ramirez et al. v. ICE et al.,* 1:18-cv-00508-RC, Doc. No. 436 (D. D.C., Dec. 12, 2025). The court rejected DHS's attempt to rely on newly articulated § 1225 theories to justify re-detention, emphasizing that statutory child-protection constraints cannot be nullified through post hoc relabeling of detention authority. Id. That reasoning independently forecloses Respondents' position here, where DHS seeks to apply § 235(b)(2) to a former unaccompanied child years after mandatory transfer and release, without any intervening statutory predicate.

Allowing DHS to re-invoke § 235 years later would convert a child-protection statute into a lifetime detention hook, a result incompatible with the TVPRA's text and purpose.

IV. PETITIONER'S CURRENT AGE DOES NOT REVIVE § 235 OR DEFEAT BOND ELIGIBILITY

The Respondents emphasize that the Petitioner "is now an adult" and asserts that the TVPRA "no longer applies." *See* Doc. No. 12 at n. 2. This argument misunderstands both the TVPRA and the bond analysis.

First, UAC status is determined at entry, not at re-detention. While ORR custody ends at age 18, the legal consequences of the original UAC processing do not disappear. The question here is which detention statute governs, not whether the Petitioner remains eligible for ORR placement.

Turning 18 does not retroactively nullify the UAC determination, undo DHS's prior transfer of custody, or transform a 2025 interior arrest into a 2012 border encounter.

a. Section 235 Authority is Not Age-Contingent

Nothing in § 235 conditions detention authority on the noncitizen's age at re-arrest. The Government's theory would allow DHS to deny bond for life to any former UAC, an outcome Congress did not authorize.

V. GUERRERO ORELLANA'S REASONING APPLIES WITH FULL FORCE HERE

Respondents' theory—that INA § 235(b) authorizes mandatory detention whenever DHS later labels a noncitizen an "applicant for admission"—has been carefully examined and rejected by other federal courts. Most notably, in *Guerrero Orellana v. Moniz*, the District of Massachusetts held that § 235 cannot be used to detain individuals who were released into the United States and later arrested in the interior, because § 235 is a border-processing statute, not a perpetual detention regime. 25-cv-12664 (D. Mass. 2025).[2]

In *Guerrero Orellana*, the government advanced essentially the same argument it presses here: that because the petitioners had entered without inspection and had never been admitted, they remained "applicants for admission" subject to mandatory detention under § 235(b)(2), even after release into the interior and placement in § 240 proceedings.

The court rejected that position. It held that § 235 detention authority does not extend to noncitizens who are arrested in the interior after DHS has released them from border custody, and that such individuals are instead detained under INA § 236(a), with access to bond hearings before

[2] Courts addressing DHS's 2025 § 1225 detention theory have likewise rejected efforts to use § 1225 to override independent statutory limits on detention, particularly with respect to former unaccompanied children. *See Garcia Ramirez et al. v. ICE et al.,* 1:18-cv-00508-RC, Doc. No. 436 (D. D.C., Dec. 12, 2025).c

an Immigration Judge. Critically, the court reasoned that § 235's text, structure, and function are tied to inspection and initial processing at the border, and that DHS's interpretation would improperly collapse § 235 and § 236 into a single, status-based detention regime—an outcome Congress did not intend.

Petitioner's case fits comfortably within the reasoning of *Guerrero Orellana*, and in fact presents an even clearer case for rejecting § 235 detention. Here, DHS did not merely release Petitioner from border custody. DHS made a formal Unaccompanied Alien Child determination, which triggered a mandatory statutory transfer of custody to ORR under the TVPRA. That transfer constituted a congressionally mandated divestment of DHS custody authority—not a discretionary parole or temporary release.

Thus, whereas *Guerrero Orellana* involved individuals who were released by DHS as a matter of enforcement discretion, this case involves an individual whom Congress required DHS to remove from the border-detention system altogether. If § 235 cannot govern detention after discretionary release, it certainly cannot govern detention after statutory divestment of custody authority.

VI. PETITIONER IS A MEMBER OF THE GUERRERO ORELLANA CLASS, AND DHS IS BOUND BY THE DECLARATORY JUDGMENT ENTERED IN THAT CASE

The Petitioner is not relying solely on Guerrero Orellana v. Moniz as persuasive authority. Rather, Petitioner falls within the certified class in Guerrero Orellana, and DHS is therefore bound by the declaratory judgment entered in that case as applied to him. There are five elements ((a) through (e)) that an individual must meet to be a class member. The Petitioner meets all five elements.

Petitioner is not in expedited removal proceedings under 8 U.S.C. § 1225(b)(1), does not have an expedited removal order, and is not currently in removal proceedings based on a credible fear determination under 8 U.S.C. § 1225(b)(1)(B)(ii). Instead, Petitioner is in regular removal proceedings under INA § 240, as evidenced by the Notice to Appear charging removability under INA § 212(a)(6)(A)(i) and by the Immigration Judge's adjudication of custody under that framework. Accordingly, Criterion (a) is satisfied.

For Petitioner's most recent entry into the United States, the Government has not alleged that Petitioner was admitted and has not alleged that Petitioner was paroled under 8 U.S.C. § 1182(d)(5)(A), either at the time of entry or following continuous detention upon arrival. To the contrary, DHS alleges that Petitioner entered without inspection and admission. That allegation is the very basis on which DHS now attempts to apply INA § 235(b)(2). Criterion (b) is therefore met.

Petitioner does not meet the criteria for mandatory detention under 8 U.S.C. § 1226(c). DHS has not alleged, and the Immigration Judge has not found, that Petitioner is subject to criminal mandatory detention. The Immigration Judge denied bond solely on jurisdictional grounds under *Matter of Yajure Hurtado*, not because § 1226(c) applies. Criterion (c) is satisfied.

Petitioner is not subject to detention under 8 U.S.C. § 1231. His removal proceedings are ongoing, and no final order of removal has been entered. Criterion (d) is satisfied.

The Petitioner's most recent arrest occurred within the interior of the United States, not at the border while arriving in the United States. He was not continuously detained from the time of entry. To the contrary, Petitioner was released into the United States years earlier and lived in the interior before his 2025 ICE arrest. Furthermore, Petitioner's release was not discretionary; it

followed a mandatory statutory transfer of custody under the TVPRA after DHS determined that he was an unaccompanied child. Criterion (e) is therefore satisfied.

Because Petitioner satisfies each element of the Guerrero Orellana class definition, DHS is bound by the declaratory judgment entered in that case with respect to Petitioner's detention. While *Guerrero Orellana* may not constitute binding precedent on this Court as a matter of stare decisis, it is binding on DHS as a party to the class action and may not be disregarded as to a class member. Accordingly, DHS may not lawfully detain Petitioner under INA § 235(b)(2) and must instead treat Petitioner as detained under INA § 236(a), with access to an Immigration Judge bond hearing.

Even if the Court were to conclude that Petitioner does not fall within the certified class in *Guerrero Orellana*, the result here would be the same. The Court's obligation to determine which detention statute governs does not depend on class membership. As set forth above, the TVPRA mandated an immediate divestment of DHS custody authority upon the UAC determination, rendering detention under INA § 235 statutorily unavailable from the outset. Nothing in the INA authorizes DHS to invoke § 235(b)(2) years later following an interior arrest, and nothing in *Matter of Yajure Hurtado* alters that conclusion—particularly after *Loper Bright Enterprises v. Raimondo*, which requires courts to exercise independent judgment in statutory interpretation. Thus, whether analyzed through the lens of class membership or through first-principles statutory construction, Petitioner's detention is governed by INA § 236(a), and he is entitled to an individualized bond hearing before an Immigration Judge.

VII. CABANAS AND JIMENEZ ARE FACTUALLY AND LEGALLY INAPPOSITE

The Respondents rely heavily on *Cabanas v. Bondi* and *Jiminez v. Thompson*. Neither controls this case.

a. *Cabanas v. Bondi*

Cabanas involved a recent entrant with minimal temporal separation between entry and detention. The court emphasized the continuity of DHS's border-related custody authority. Here, by contrast, the Petitioner entered in 2012, was released by ORR, lived in the United States for more than ten years, and then was arrested in 2025 on an interior detainer. There is no continuity of border custody as there was in *Cabanas*.

b. *Jinenez v. Thompson*

Jimenez, likewise, involved detention closely tethered to the initial border encounter. The court did not address—because it was not presented with—a former UAC who had been transferred out of DHS custody and released years earlier. Applying Jimenez here would improperly extend its reasoning far beyond its facts.

VIII. THE IMMIGRATION JUDGE'S RELIANCE ON MATTER OF YAJURE HURTADO DOES NOT FORECLOSE HABEAS RELIEF

The Immigration Judge denied bond solely on jurisdictional grounds under *Matter of Yajure Hurtado*. But habeas courts are not bound by BIA interpretations that conflict with governing statutes or exceed statutory authority. Because § 235 never applied, *Yajure Hurtado*—which presumes lawful § 235 custody—does not control this case.

Moreover, even if this Court were to reach *Matter of Yajure Hurtado* on its own terms, no deference is owed to that decision in any event. In *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Supreme Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, holding that courts may not defer to an agency's interpretation of a statute simply because the statute is ambiguous. Instead, courts must exercise independent judgment and "decide what the law is." *Id.* at 2273–74.

Under *Loper Bright*, agency interpretations—including precedential decisions of the Board of Immigration Appeals—are entitled to at most Skidmore-style respect, proportional to their persuasiveness, consistency, and fidelity to the statutory text. *Id.* at 2266–67. Where, as here, an agency interpretation conflicts with the plain structure of the statute or disregards a later-enacted, more specific congressional command, it warrants no persuasive weight at all.

Matter of Yajure Hurtado rests on the premise that INA § 235(b)(2) may govern detention whenever a noncitizen is deemed an "applicant for admission," regardless of whether DHS lawfully possesses custody authority at the time of detention. That premise cannot be squared with the INA's detention framework or with the TVPRA's mandatory divestment of DHS custody over unaccompanied children. Because *Yajure Hurtado* neither grapples with the TVPRA's jurisdiction-stripping effect nor reconciles its holding with the statutory requirement that DHS relinquish custody upon a UAC determination, its reasoning lacks persuasive force under *Loper Bright*'s standard.

Accordingly, this Court need not—and should not—defer to *Matter of Yajure Hurtado*. The question of which detention statute governs Petitioner's custody is one of pure statutory interpretation, committed to the judiciary. Exercising that independent judgment, the Court should conclude that § 235 never applied and that Petitioner's detention is governed by INA § 236(a).

IX. CONCLUSION

This case does not turn on the expiration of INA § 235 detention, the length of Petitioner's confinement, or the Court's willingness to extend or limit recent district court decisions. It invokes statutory limits that Congress placed on DHS's detention authority, limits that DHS exceeded here. The Petitioner was never lawfully subject to detention under INA § 235. Upon entry in 2012, DHS determined that Petitioner was an unaccompanied child. That determination triggered a mandatory,

non-discretionary divestment of DHS custody authority under the TVPRA, requiring transfer to ORR within 72 hours. Once Congress stripped DHS of custody authority, § 235—by its own terms—could not attach. Because § 235 never applied, there is no § 235 authority to revive following Petitioner's 2025 interior arrest.

The Government's attempt to recharacterize a long-settled interior arrest as border detention would convert § 235 from a limited inspection statute into a perpetual, status-based detention bar, nullifying INA § 236(a) and undermining the child-protection regime Congress deliberately created. Neither the INA nor the TVPRA authorizes such an outcome.

Nor does *Matter of Yajure Hurtado* compel a different result. That decision presumes lawful § 235 custody and, in any event, is owed no deference after *Loper Bright Enterprises v. Raimondo*. The Court must exercise independent judgment and apply the statute Congress enacted, not the interpretation the agency prefers.

Because DHS lacks authority to detain Petitioner under § 235, his detention is governed by INA § 236(a). He is therefore entitled to an individualized bond hearing before an Immigration Judge. The Immigration Judge's contrary conclusion rested on a misapplication of law, not a discretionary determination.

For these reasons, the Court should deny Respondents' motion for summary judgment, grant the petition for writ of habeas corpus, and order Respondents to provide Petitioner a prompt bond hearing under INA § 236(a).

Respectfully submitted,
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By His Counsel,

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Date: 01/13/2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jeyson Estuardo Tobar Tovar, and submit this verification on his behalf. I hereby verify that the foregoing Reply to Respondent's Opposition and Opposition to Respondent's Motion for Summary Judgment was served on Respondents via EM/CF on this day.

Date: 01/13/2026

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