



U.S. Department of Justice

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Via ECF

Honorable Christine P. O'Hearn, U.S.D.J.
United States District Court
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

**Re: *Cruz Santos v. Baker, et al.*, No. 25-18959 (CPO)
Expedited Answer to § 2241 Petition**

Dear Judge O'Hearn:

This Office represents Respondents in the above habeas matter filed by a noncitizen challenging the legality of his detention by U.S. Immigration and Customs Enforcement ("ICE") pursuant to 8 U.S.C. § 1225(b)(2). We respectfully submit this letter response in light of the Court's several decisions in § 1225(b)(2) cases.¹ Respondents acknowledge that their answer to this Petition relies on the same statutory-interpretation arguments made in *Morales Penazola v. Bondi*, No. 25-18686 (CPO) (D.N.J.), ECF No. 9 (Order granting petition in § 1225(b)(2) matter and ordering petitioner's immediate release). Respondents also acknowledge that this Petition involves similar statutory arguments as those in *Morales Penazola*. However, this matter is factually distinguishable from *Morales Penazola* because this Petitioner has never been encountered by immigration officials and therefore has not

¹ See, e.g., *Ayala Amaya v. Bondi*, No. 25-16427 (ESK), 2025 WL 3033880 (D.N.J. Oct. 30, 2025); *Smit Patel v. Almodovar*, No. 25-15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Lomeu v. Lyons*, No. 25-16589 (EP), 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-13004 (JKS), 2025 WL 2985256, at *2 (D.N.J. Oct. 23, 2025); *Soto v. Soto*, No. 25-16200 (CPO), 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Castillo v. Lyons*, No. 25-16219 (MEF), 2025 WL 2940990 (D.N.J. Oct. 10, 2025); *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025). Respondents have filed a notice of appeal in *Rivera Zumba*, which would create binding precedent concerning the § 1225(b)(2) issue in this Circuit.

been re-detained. Moreover, in this matter, Petitioner does not currently have any pending relief applications before the immigration court. Nonetheless, Respondents submit this expedited answer given the similar issues, the importance of efficient resolution of this habeas petition, and the preservation of the Court's and the parties' resources.²

The Court's December 24, 2025, Order (ECF No. 13) directs Respondents to justify the detention and support the justification with certified records. *Id.* ¶¶ (1)-(8). Upon receipt of the Court's Order, this Office promptly notified ICE of the requested information, and ICE has informed this Office that they are working diligently to gather responsive documents. While ICE has provided this Office with several documents, all discussed below, Respondents recognize that the attachments do not satisfy the Court's Order in full and that the Order expressly gave Respondents notice that the failure to comply with the Order "shall result in an Order of immediate release without further notice or an opportunity to be heard." Respondents accordingly will be prepared to promptly release Petitioner upon order of the Court.

Nevertheless, Respondents offer the following explanation regarding Petitioner's detention and the attached documents in response to the Court's order. Respondents submit that Petitioner is in ICE detention without bond pursuant to the Department of Homeland Security's ("DHS") interpretation of "applicants for admission" under § 1225(b)(2) and the Board of Immigration Appeals' ("BIA") recent decision *Matter of Yajure Hurtado*, 29 I&N Dec. 215 (BIA 2025). Respondents contend that Petitioner's detention is governed by § 1225(b)(2) because Petitioner is a noncitizen who illegally entered the United States without having been admitted or paroled after inspection by an immigration officer. Ans. Ex. A (Notice to Appear). Petitioner has been in ICE custody since he was arrested pursuant to an administrative arrest warrant on December 10, 2025. Ans. Ex. B (Form I-213) at 2; Ans. Ex. C (Arrest Warrant).³ Notably, Petitioner has not been re-detained by ICE; the recent arrest on December 10 is his initial detention because he was never previously encountered by immigration officials. ECF No. 1, Pet. ¶ 39; Ans. Ex. B (Form I-213) at 2.

² In recent matters, the Court has summarily adjudicated § 1225(b)(2) habeas matters without requiring a formal answer because Respondents raised identical statutory-interpretation arguments and the petition raised similar material facts. *See Moreira Da Silva v. LaForge*, No. 25-17095 (EP), ECF No. 6 (D.N.J. Nov. 13, 2025) (ordering bond hearing following status conference); *Vicens-Marquez v. Soto*, No. 25-16906 (KSH), ECF No. 15 (same).

³ ICE has advised this Office that despite its diligent efforts, it was unable to provide a certification for this response. We are providing the Court with copies of all relevant documents this Office has received from ICE.

Petitioner has not received a bond hearing since his recent arrest on December 10. Additionally, he is not subject to a final order of removal. Petitioner was issued a Notice to Appear which was filed with the immigration court on December 10, 2025, thereby initiating removal proceedings. Ans. Ex. A (Notice to Appear). Removal proceedings are ongoing before the Immigration Court located in Florence, Arizona, and his next hearing date is for a master hearing on December 30. Ans. Ex. D (Hearing Notice). According to ICE, as of December 24, Petitioner has not submitted an application for relief from removal. Notably, Petitioner is not currently and has never been detained by ICE at a detention facility in the State of New Jersey. ECF No. 9, Declaration of Assistant Field Office Director Joseph Burki (“Burki Decl.”) at ¶¶ 8-10. According to Burki, Petitioner was detained at the ICE Baltimore Field Office in Baltimore, Maryland and ultimately transferred to a detention center in Florence, Arizona where he is still currently detained. *Id.* at ¶ 8; *see* ICE Online Detainee Locator System, <https://locator.ice.gov/odls/#/search> (last visited on Dec. 28, 2025). Burki indicated that Petitioner was physically located in New Jersey at Liberty Newark International Airport (EWR) awaiting a flight to Arizona when his habeas petition was filed. *See* Burki Decl. at ¶ 9-10. Petitioner’s brief physical presence in New Jersey while his habeas was filed by counsel in Maryland was submitted as the basis for this Court’s jurisdiction. *See* ECF No. 8, Joint Motion to Transfer Venue; *see also* ECF No. 10, Order granting Joint Motion to Transfer Case to D.N.J.

In conclusion, Respondents contend as they have in all prior § 1225(b)(2) matters in this District, that Petitioner’s detention is governed by § 1225(b)(2) because Petitioner is an alien who entered without inspection or parole and was initially detained by immigration authorities in the interior of the country without having been lawfully admitted. As such, he is an “applicant for admission” who is not entitled to a bond hearing. *See, e.g., Lomeu v. Lyons*, Civ. No. 25-16589 (EP), ECF No. 7, Respondents’ Br. at 9-18 (citing *Matter of Yajure Hurtado*). Respondents also contend that the only remedy, if the Court finds § 1225 does not apply, is a bond hearing under § 1226(a) not immediate release. *See id.*

We thank the Court for its time and attention to this matter.

Respectfully submitted,

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