

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Jovan HERNANDEZ RUBIO,

Petitioner,

v.

Sylvester ORTEGA, Field Office Director of  
Enforcement and Removal Operations, San  
Antonio Field Office, Immigration and Customs  
Enforcement; Kristi NOEM, Secretary, U.S.  
Department of Homeland Security; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; Pamela BONDI, U.S. Attorney  
General; EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; Bobby  
THOMPSON, Warden of South Texas  
Detention Complex,

Respondents.

Case No. 1:26-cv-00040-DAE

**Petitioner's Reply to Respondents'  
Response to Petition for Writ of Habeas  
Corpus**

## **I. INTRODUCTION**

Petitioner Jovan HERNANDEZ RUBIO provides the following Reply to the Respondents' Response filed with the Court on January 17, 2026. Petitioner maintains that his continued detention is unconstitutional and violates the statutory scheme of the Immigration and Nationality Act. The Petitioner urges this Court to grant his petition for habeas corpus and order Respondents to release him immediately.

## **II. Relevant Facts and Procedural History**

Petitioner is a native and citizen of Mexico who asserts that he entered the United States by crossing an international land bridge, a designated point of entry, in a car when he was 12 years old. *See* Pet Response Exh A. Petitioner graduated from Travis High School in May 2013. *Id.* at 24. He applied for and was granted Deferred Action for Childhood Arrivals (DACA) and renewed his employment authorization. *Id.* at 7. Prior to his detention, Petitioner resided in the same apartment complex for the last 4 years and provided the Immigration Judge a copy of his valid lease. *Id.* at 10.

On January 8, 2026, a custody redetermination hearing was held before Immigration Judge Erick Tijerina. *See* ECF 4.2. During the hearing, the Petitioner testified that he had not entered without inspection, but instead, was waved through at a port of entry when he was 12 years old.<sup>1</sup> He testified that his father's friend, "Benito", was driving, his mother was in the front passenger seat and he was in the back seat with his two younger US citizen sisters. The Petitioner was able to provide the date of entry because he recalled that it was the day before he turned 13 years old. The Petitioner provided details about the entry, including the identities of

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<sup>1</sup> The Petitioner has a copy of the Digital Audio Recording of the hearing and will have it transcribed, if necessary.

the other passengers in the car, the exact date of entry, and the interaction that happened between the driver of the vehicle and the immigration agent.

The Department of Homeland Security maintained that the Petitioner had entered without inspection. The only evidence provided by Respondent Department of Homeland Security was form I-213. *See* Pet. Response Exh B. The I-213, says the Petitioner does not know his own marital status and that he does not speak English. *Id.* The I-213 says, “Records checks, biometric responses, and statements made by the subject revealed that he illegally entered the United States by foot, at or near an unknown location, on or about an unknown date.” *Id.* When questioned about the I-213, the Petitioner testified that he had never said he entered without inspection, but rather said that he crossed at the international bridge and provided the date of entry.

Despite this, the Immigration Judge found that the Petitioner did not meet their burden establishing manner of entry and ruled in favor of the Department of Homeland Security. *See* ECF 4-2. The Immigration Judge ruled that the Petitioner did not establish that they were “lawfully admitted to the United States” and was therefore detained under 8 U.S.C. §1225(b)(2)(A), and further finding that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *See* ECF 4-2.

The Immigration Judge concluded that he lacked authority to adjudicate the bond request under 8 U.S.C. § 1225(b)(2)(A), yet nonetheless issued a ruling on a matter over which he expressly found he lacked jurisdiction. As a result, the Petitioner is effectively double barred from release, rendering administrative review impossible. Any appeal to the Board of Immigration Appeals would be dismissed for lack of jurisdiction, consistent with the Board’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Consequently, the

Immigration Judge's findings that the Petitioner was a flight risk, despite having lived in the United States since age twelve, maintaining long-standing community ties including a sixteen-year-old U.S. citizen son, holding stable employment, and residing at the same address for four years, are legally irrelevant. The Immigration Judge's further conclusion that no amount of money could guarantee the Petitioner's appearance at future court dates, based on alleged unauthorized employment and operation of a motor vehicle without a valid license, is likewise immaterial given his threshold determination that he lacked jurisdiction.

### **III. Argument**

#### **A. The Immigration Judge's alternative finding of flight risk is void and irrelevant because he first found he had no jurisdiction over the bond case.**

The concept of jurisdiction is one of the most basic tenants of law. "Without jurisdiction the court cannot proceed at all." *Ex parte McCardle*, 7 Wall 506, 514 (1869). Once the Immigration Judge concluded he lacked jurisdiction, he was barred from issuing an alternative ruling on the merits. The Petitioner was effectively never afforded a bond hearing; the Immigration Judge expressly ruled that he did not have the authority. *See* ECF 4-2. The double ruling leaves the Petitioner without administrative recourse, resulting in a Catch-22. Because of the lack of jurisdiction ruling, there is no way to appeal the Immigration Court's finding of flight risk to the Board of Immigration Appeals because the Immigration Judge found he had no authority to issue the finding in the first place. A merits determination issued after a finding of no jurisdiction is ultra vires and void. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998).

#### **B. Respondent's jurisdictional arguments are inapplicable in this case**

The Respondents allege that Petitioner is challenging the Immigration Judge's finding of flight risk. This is incorrect. The Petitioner does not need to challenge the Immigration Judge's flight risk determination because the Immigration Judge's finding of flight risk is void because he found he had no jurisdiction. The Respondents try to minimize the Immigration Judge's ruling on jurisdiction stating that the "[immigration] court did mention *Matter of Yajure Hurtado*, 29 I. & N. Dec. 215 (BIA 2025)." ECF No. 4 at 4. However, the Immigration Judge did not merely mention *Matter of Yajure Hurtado*, but instead made an express ruling finding he lacked jurisdiction. ECF No. 4.2 at 3. The issue before this Court is the Respondents' interpretation of the Immigration and Nationality Act's detention provisions, a federal question, and therefore reviewable by this Court. 28 U.S.C. § 1331.

**C. Respondents' interpretation violates the plain language of the INA**

Respondents devote significant attention to arguments that the Government is not required to follow the class certification in the *Maldonado Bautista* decision. This argument and Respondents' focus on Petitioner's membership in the *Maldonado Bautista* class is misplaced. It just so happens that Respondent is also a class member and therefore covered by the *Maldonado Bautista* rulings. However, the issue before this Court is the Respondents' erroneous interpretation of the INA, that because the Petitioner is alleged to have entered without inspection, he is considered an "applicant for admission" and therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A).

Two closely related principles of statutory interpretation undermine Respondents' construction of 8 U.S.C. § 1225(b)(2)(A). That provision applies only to a subset of "applicants for admission," namely those who are both (1) not subject to expedited removal under § 1225(b)(1), see § 1225(b)(2)(B)(ii), and (2) "seeking admission." § 1225(b)(2)(A). Petitioner

contends that, although the government may characterize him as an “applicant for admission” as defined in § 1225(a)(1), he was not “seeking admission” within the meaning of the statute at the time of his apprehension. Accordingly, he falls outside § 1225(b)(2)(A) and instead is governed by the default detention authority of § 1226(a). Respondents argue that the phrases “applicant for admission” and “seeking admission” are synonymous and that any individual who qualifies as the former necessarily satisfies the latter.

That interpretation is inconsistent with settled canons of statutory construction. Where Congress employs different terms within the same statutory scheme, courts presume those terms carry distinct meanings. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) (“A variation in terms suggests a variation in meaning.”). Section 1225(b)(2)(A) uses two different phrases: “applicant for admission” and “seeking admission”, and therefore requires satisfaction of both conditions. An “applicant for admission” is defined broadly to include a noncitizen present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). By contrast, “seeking admission” denotes a present, active effort to obtain entry, rather than a static legal classification. As the canons of construction instruct, statutory terms must be read in accordance with their ordinary grammatical usage. *Reading Law* at 140.

Applied here, this distinction is dispositive. At the time of his arrest, Petitioner was living and working in the United States and had done so for many years. He was not presenting himself at a port of entry, requesting inspection, or otherwise actively attempting to gain admission to the country. While the government may deem him an “applicant for admission” as a legal matter, he was not “seeking admission” in any ordinary or contemporaneous sense of that phrase. Because

§ 1225(b)(2)(A) requires both statuses, it does not apply, and Petitioner's detention is properly governed by § 1226(a).

**D. Respondents' interpretation has been rejected by Courts across the country**

The Respondents new interpretation and massive expansion of mandatory detention has been widely rejected by Courts across the country, including this Court. *See* Appendix A.

**E. Petitioner is a member of the *Maldonado Bautista* class. Respondents are bound by the court order in that case.**

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. Petitioner is a class member based on Respondents' allegations in the pending removal proceedings. *See* ECF 4-1.

The Respondents are operating in violation of the court order and class certification in *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).

On November 20, 2025, the district court 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. 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.

When Respondents continued to operate in violation of the order, on December 19, 2025, the district court in *Maldonado Bautista* granted a motion to clarify and entered a new order issuing a final judgement under Rule 54(b). Pet Response Exh C. Despite this updated order, the Immigration Judge denied consideration for release on bond under § 1225(b)(2)(A), in direct violation of the district court's order. *See* ECF 4-2.

#### **F. Conclusion**

The Petitioner has resided in the United States since he was 12 years old. He graduated high school. He has a US citizen son. His entire immediate family is in the United States. Before his life was upended by his unlawful detention, he had a steady job and a valid apartment lease. In their response to Petitioner's petition, Respondents try and muddy the issue by focusing on an Immigration Judge's finding of flight risk that was improvidently issued. The Petitioner is not being held because he is a flight risk. The Petitioner is being held in detention because the Respondents are misinterpreting a federal statute and are violating a district court order. We urge the court to grant our petition for writ of habeas corpus and order the immediate release of the Petitioner.

DATED this 20th day of January 2026.

Respectfully submitted,  
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