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*Attorney for Petitioner*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

GENSEL ALBERTO CRUZ MENDEZ )  
Alien Number:  )  
Petitioner, )  
 )  
v. )  
 )  
PAMELA BONDI, U.S. Attorney General )  
 )  
KRISTI NOEM, U.S. )  
Secretary of Homeland Security ("DHS"), )  
 )  
TODD LYONS, Acting )  
Director U.S. Immigration and Customs )  
Enforcement, )  
 )  
JUAN AGUDELO, Acting Miami Field )  
Office Director, )  
 )  
DAVID HARDIN, Sheriff and Warden of )  
Glades County Detention Center, )  
 )  
 )  
IN THEIR OFFICIAL )  
CAPACITIES )  
 )  
Respondents. )  
\_\_\_\_\_ )

Case No.:  
PETITION FOR WRIT OF HABEAS  
CORPUS

## INTRODUCTION

1. Petitioner, Gensel Alberto Cruz Mendez, is in the physical custody of Respondents at the Glades County Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner has been in ICE custody since approximately September 16, 2025, as of the date of this filing, has been detained for 126 days.
3. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
4. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
6. Further, EOIR has issued nationwide guidance on *Maldonado Bautista* and has instructed Immigration Judges to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. *See, Exhibit A, Practice Alert Regarding EOIR Nationwide Guidance.*
7. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are

subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

8. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.
10. Petitioner, Gensel Alberto Cruz Mendez, entered the United States on or about July 5, 2024, and has been residing in the United States continuously since; thereafter the Petitioner was detained by ICE in the interior of the country.
11. Over the years, the courts have stepped in to ensure that vulnerable classes of immigrants receive the protections to which they are entitled as a matter law, due process, and fundamental notions of fairness. *See id*; *see also, Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491 (2001)<sup>1</sup>. The case at bar is an opportunity for this Honorable Court to step in once again in the interest of justice to allow this innocent man to be released to in accordance with the law.

### **JURISDICTION**

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

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<sup>1</sup> Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

**VENUE**

15. Venue is proper in this District under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241 because a substantial part of the events giving rise to these claims occurred in this district. Petitioner's removal and detention proceedings originated at the Broward Transitional Center at 3900 N. Powerline Rd., Pompano Beach, FL 33073 and proceedings were presided over by Immigration Judge Michael Walleisa and the Petitioner's bond was denied by Immigration Judge Scott Alexander. In the event of jurisdictional error, the district court wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

**REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

16. The Court must grant the petition for writ of habeas corpus "forthwith" unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

18. Petitioner is "in custody" within the meaning of 28 U.S.C. § 2241 because he is arrested and detained by Respondents at the Glades County Detention Center in Moore Haven, Florida, pursuant to immigration detention authority. Petitioner challenges that custody as unlawful under the Constitution, federal law, and applicable treaties.

**PARTIES**

19. Petitioner is GENSEL ALBERTO CRUZ MENDEZ, a citizen and national of Honduras who entered the United States without inspection or paroled on or about July 5, 2024.

20. Respondent, DAVID HARDIN, in their official capacity as Sheriff and Warden, Glades County Detention Center, has immediate custody over Petitioner and is responsible for his detention.
21. Respondent, JUAN AGUDELO, in their official capacity as the Miami Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, is responsible for the custody, detention, and removal of noncitizens within this jurisdiction.
22. TODD LYONS, in their official capacity as Acting Director of the U.S. Department of Homeland Security Immigration and Customs Enforcement at Broward Transitional Center, 3900 N. Powerline Rd., Pompano Beach, FL 33073.
23. Respondent, KRISTI NOEM, in their official capacity as Secretary of the U.S. Department of Homeland Security, is the head of DHS, Broward Transitional Center, 3900 N. Powerline Rd., Pompano Beach, FL 33073, which oversees ICE and is ultimately responsible for the unlawful detention of Petitioner.
24. Respondent, PAM BONDI, in their official capacity as Attorney General of the United States, is charged with the administration and enforcement of the immigration laws and is a proper respondent under 28 U.S.C. § 2243.

#### **STATEMENT OF FACTS**

25. Petitioner, currently nineteen (19) years old, entered the United States on or about July 5, 2024 as an unaccompanied child (UAC) at the age of seventeen (17). *See, Exhibit B, Verification of Release.*
26. Petitioner was released by ICE with a verification of release and issued a Notice to Appear. *See, Exhibit C, First Notice to Appear.*

27. On or about September 1, 2025, the Petitioner was arrested for driving without a license and taken to the Palm Beach County jail. There, ICE placed a detainer/hold and he was subsequently transferred to ICE custody to the Glade County Detention Center where he has been detained since September 16, 2025, for approximately one hundred and twenty-six (126) days; there, the Respondent was issued his second Notice to Appear. *See, Exhibit D, Second Notice to Appear.*
28. Petitioner filed his Application for Asylum and for Withholding of Removal with the United States Citizenship and Immigration Services (USCIS) as an unaccompanied minor, the agency for which initial jurisdiction of asylum applications resides for unaccompanied minors. 8 U.S.C. 1158(b)(3)(C); INA § 208(b)(3)(C); Petitioner subsequently filed a motion to terminate removal proceedings with the Immigration Court, to allow USCIS to adjudicate the Petitioner's asylum application as a UAC. On November 11, 2025, said motion was denied. *See, Exhibit E, Order Denying Motion to Terminate.*
29. After the Petitioner's motion to terminate removal proceedings was denied, Petitioner through Counsel, filed his Motion for Custody Redetermination with the Immigration Court. A hearing was conducted on November 14, 2025, where the Immigration Judge ruled that the "court lacks authority to determine the Respondent's custody status because the Respondent is subject to mandatory detention pursuant to section 235(b)(2)(A) of the INA; *Matter of Yajure Hurtado.*" *See, Exhibit F, Bond Order.*
30. As of the filing of the instant petition, petitioner has been detained for 125 days.

### EXHAUSTION

31. Petitioner remains detained after the Immigration Judge ruled that the Petitioner is subject to mandatory detention. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. *F.-G. v. Noem, No. 25-CV-0243-CVE-MTS*, 2025 U.S. Dist. LEXIS 111539 (N.D. Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that when "the question presented is purely legal

and has been repeatedly mishandled administratively, exhaustion serves no useful purpose.”). Here, the appellate body is the Board of Immigration Appeals, the same body that issued the decision stripping immigration judges of their jurisdiction to hear bonds.

32. Other districts have held that habeas corpus relief was available despite a pending BIA appeal, because “[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact” *LG v. Choate*, No. 23-cv00611, slip op. at 14 (D.N.M. 2024)
33. The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v. Bostock* explained, while the BIA has occasionally remanded bond denials where immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling. 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025).
34. Consequently, many immigration judges continue to deny bond altogether, and appeals typically take six months or more, during which noncitizens remain detained unlawfully, with severe consequences for their health, families, and ability to defend against removal. *Id.*
35. Because Petitioner’s injury is the very fact of unlawful detention, administrative remedies are neither timely nor effective. Habeas corpus is the only adequate remedy.

## LEGAL FRAMEWORK

### The History Unaccompanied Minors and Current J.O.P. Settlement Agreement

39. “The Flores Settlement arose out of a lawsuit first filed by plaintiffs in the Central District of California in 1985, challenging the policies of the Immigration and Naturalization Service (INS) regarding the release of detained minors. In 1997, the district court approved the current Settlement, which defines a ‘minor’ as ‘any person under the age of eighteen (18) years who is detained in the legal custody of the INS,’ Flores Settlement at ¶ 4,4 and the certified class as ‘[a]ll minors who are detained in the legal custody of the INS,’ *id.* at ¶ 10. The Settlement favors family reunification, and states the order of preference for

persons into whose custody detained minors are to be released, provided that detention is not required to secure their appearance before immigration authorities or to ensure [\*\*10] the safety of themselves or others. *Id.* at ¶ 14. The Settlement also addresses the appropriate care of those minors who cannot be immediately released, and who therefore remain in federal custody. *Id.* at ¶ 12A, 19-24. This includes providing such minors with the bond hearing that is the subject of this dispute.

Paragraph 24A of the Flores Settlement provides that:

**A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing. *Id.* at ¶ 24 . . .**

The Flores Settlement was intended as a temporary measure, but in 2001 the parties stipulated that it would remain in effect until ‘45 days following defendants’ publication of final regulation’ governing the treatment of detained, minors. It has now been twenty years since the Settlement first went into effect, and the government has not published any such rules or regulations. Thus, pursuant to the 2001 agreement, the Settlement continues to govern those agencies that now carry out the functions [\*\*11] of the former INS.” *Flores v. Sessions*, 862 F.3d 863, 869 (9th Cir. 2017)(emphasis added).

40. Since then, the TVPRA was enacted to guarantee protections to unaccompanied minors including: 1) the right to removal proceedings under 8 U.S.C. § 1229a; 2) access to counsel; 3) safe repatriation; and 4) exclusive Office of Refugee Resettlement (“ORR”) custody. See, e.g., 8 U.S.C. § 1232(a)(3)(5) (directing HHS to “ensure, to the greatest extent practicable” that unaccompanied minors “has counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking”); *id.* § 1232(a)(5)(6) (authorizing HHS “to appoint independent child advocates for trafficking victims and other vulnerable unaccompanied alien children”); *id.* § 1232(d)(8) (stating that “[a]pplications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children’s

cases.”); *id.* § 1232(e) (requiring DOS, DHS, HHS, and DOJ to “provide specialized training to all Federal personnel, and upon request, state and local personnel, who have substantive contact with unaccompanied alien children.”). *LGML v. Noem*, Case No. 1:25-cv-02942 at 14\* (D.D.C. 2025).

41. The District Court of D.C. in *LGML v. Noem*, (D.D.C. 2025) reinforced the binding effect of the Flores settlement on Respondents, which in addition to requiring bond proceedings for all unaccompanied minors also required the legacy INS to “treat all minors in its custody with dignity, respect, and special concern for their particular vulnerability as minors” and to “place each detained minor in the least restrictive setting appropriate to the minor’s age and special needs.” The Flores settlement was codified at Pub. L. No. 107-296, § 462, 116 Stat. 2143 (2002) extending all the key protections of the Flores Settlement Agreement.
42. In 2019, *J.O.P. v. DHS*, No. 19-1944, was a nationwide class action filed in the U.S. District Court for the District of Maryland that challenged a 2019 policy that limited the ability to seek asylum for certain children who arrived in the country alone.
43. On November, 25, 2024, the U.S. District Court for the District of Maryland granted final approval of the settlement agreement reached by the parties in *J.O.P. v. DHS*, No. 8:19-CV-01944-SAG (D. Md.).
44. A *J.O.P.* class member is defined as individuals who before February 24, 2025: 1) were determined to be a UAC; and 2) who filed an asylum application that was pending with USCIS; and 3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States able to provide care and physical custody; and 4) for whom USCIS had not adjudicated the individual’s asylum application on the merits. See *id.*
45. Pursuant to the settlement agreement, if CBP or ICE determined that the applicant was a UAC, and, as of the date of initial filing of the asylum application, that UAC status determination was still in place, USCIS will take initial jurisdiction over the asylum application, even if there appears to be evidence that the applicant may have turned 18 years of age or may have reunited with a parent or legal guardian since the CBP or ICE determination.

46. For any Class Member with a final removal order, the settlement agreement provides that ICE will refrain from executing the Class Member's final removal order until USCIS issues a final determination on the asylum application.

**U.S. District Court has entered a final Judgment on a proposed class**

36. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
37. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. 1229a. Individuals in §1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *See* 8 U.S.C. § 1226(c).
38. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).
39. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).
40. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
41. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009, 582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
42. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

43. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
44. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. See, **Exhibit G**, ICE Policy Memo.
45. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.
46. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.
47. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
48. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration courts stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

49. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).
50. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

51. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
52. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at \*7.
53. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.
54. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
55. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.
56. As a noncitizen who meets all of the class membership requirements, Petitioner is a *Bautista* class member and therefore entitled to a bond redetermination hearing.

### Mandatory Detention Scheme

57. Congress established two separate detention regimes. Section 1225 governs “applicants for admission” encountered at the border or its functional equivalent, while § 1226 governs individuals “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018). These provisions are mutually exclusive: “[A] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226.” *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at \*8 (D. Mass. July 24, 2025).
58. Section 1225(b)(2)(A) provides that “in 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.”
59. Detention under § 1225(b) is therefore mandatory and individuals detained following examination under section 1225 can only be paroled into the United States “for urgent humanitarian reasons or significant public benefit.” *Jennings*, 583 U.S. at 300, 138 S.Ct. 830 (quoting 8 U.S.C. § 1182(d)(5)(A)). This parole “into the United States” allows physical entry but reserves the Government’s ability to treat the person as if “stopped at the border.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020).
60. Crucially, courts and the BIA have recognized that the phrase “seeking admission” carries an active, temporal component: it refers to individuals “coming or attempting to come into the United States,” 8 C.F.R. § 1.2, i.e., those apprehended at or near the border and in the process of initial entry. *Martinez*, 2025 WL 2084238, at \*6–7.
61. By contrast, § 1226 governs detention of noncitizens already present in the United States and apprehended on a warrant issued by the Attorney General. 8 U.S.C. § 1226(a). Unlike § 1225’s mandatory scheme, § 1226(a) creates a discretionary framework, under which the Attorney General “may continue to detain,” or “may release” a noncitizen on bond or conditional parole. *Id.*

62. Individuals detained under § 1226 are entitled to an individualized custody determination and may appeal that determination to an immigration judge. 8 C.F.R. § 1236.1(d)(1); *see Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018).
63. Some narrow mandatory detention categories exist under § 1226(c) for certain criminal or security grounds, but those are not implicated here.
64. A contrary reading renders superfluous recent amendments in the *Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025), which added INA § 236(c)(1)(E) mandating detention for noncitizens inadmissible under § 212(a)(6)(A)(present without admission) who are implicated in enumerated crimes. If all such noncitizens were already mandatorily detained under § 235(b)(2)(A), Congress's addition would be meaningless. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (statutes must be construed to give effect to all provisions).
65. Multiple recent decisions confirm that § 1225 does not apply to long-resident noncitizens apprehended in the interior. *See Carlos Javier Lopez Benitez v. Francis*, No. 25- cv-11517, 2025 WL 1869299, at \*5–8 (D. Mass. July 7, 2025)(holding that § 1225(b)(2)(A) did not apply to a petitioner who had been residing in the United States for over two years; emphasizing that “seeking admission” requires an active, ongoing effort to enter, not mere presence in the country, and concluding that detention was governed by § 1226(a) with access to bond); *see also Rodriguez v. Bostock*, F. Supp. 3d, 2025 WL 1193850, at \*12–16 (W.D. Wash. Apr. 24, 2025) (finding that a non-citizen apprehended from within the United States and charged with inadmissibility was necessarily detained under section 1226, rather than section 1225); *Gomes*, 2025 WL 1869299 at \*5–8 (same); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 U.S. Dist. LEXIS 187233, at \*13 (E.D. Cal. Sep. 23, 2025).
66. As those courts recognized, interpreting § 1225 to cover all noncitizens who were never formally “admitted” would collapse the statutory distinction, render § 1226 superfluous,

and contradict longstanding DHS practice. *See Martinez*, 2025 WL 2084238, at \*8 (“This tension between sections 1225 and 1226 motivates the conclusion that they apply to different classes of aliens”); *Gomes v. Hyde*, 2025 WL 1869299, at \*5–8 (D. Mass. July 7, 2025); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013).

67. Courts have distilled two central principles:

- a. Geographic/temporal limits: § 1225 applies only to noncitizens apprehended at or near the border and in the act of entry (*see Thuraissigiam*, 591 U.S. 103, 114, 139 (2020)), not to those apprehended years later in the interior.
- b. Statutory structure: Reading § 1225 as covering all noncitizens who were never lawfully “admitted” would render § 1226 largely meaningless, contrary to the rule against surplusage. *See Martinez*, 2025 WL 2084238, at \*7; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at \*6–8 (D. Mass. July 7, 2025).

68. As set forth below, applying this framework compels the conclusion that Petitioner’s detention cannot fall under § 1225. Having resided in the United States for four years before detention within the interior, he falls squarely within the discretionary scheme of § 1226. Respondents’ reliance on § 1225 is therefore legally untenable.

69. Finally, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) is a landmark decision overruling *Chevron* deference thereby permitting this Honorable Court to come to its own conclusion on the interpretation of the relevant statutes without relying on Board precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which was wrongly decided.

## CLAIMS FOR RELIEF

### COUNT ONE

#### Violation of Due Process

70. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

71. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

72. Petitioner has a fundamental interest in liberty and being free from official restraint.

### COUNT TWO

#### **Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); 5 U.S.C. §§ 702, 706**

73. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

74. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.”

75. The Due Process Clause entitles Petitioner to meaningful process assessing whether his current detention is justified. The arrest and detention of Petitioner without an opportunity for him to contest his detention in front of a neutral decision-maker after he had been living and working in the United States for over four years provide insufficient due process and violates the Due Process Clause of the Fifth Amendment of the Constitution.

76. There have been no changes to the facts that justify this change in custody requiring Jose to await an unknown date when he will be scheduled for an asylum interview.

### COUNT THREE

#### **UNLAWFUL DETENTION UNDER 8 U.S.C. § 1225; CUSTODY PROPERLY GOVERNED BY 8 U.S.C. § 1226 (Misapplication of Mandatory Detention Statute)**

77. Petitioner is currently being detained after the Immigration Judge denied his bond based on DHS’s argument that he is “an Applicant seeking Admission under the provisions of Sec. 235(b)(2)(A) of the Immigration and Nationality Act (‘INA’).”

78. This argument is legally erroneous. Section 1225 applies to noncitizens actively “seeking admission” at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those “already in the country” pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018); *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019).
79. Petitioner plainly falls within § 1226. He was stopped and arrested by the Palm Beach Police Department hundreds of miles from any border or port of entry—detained by ICE and transferred to the Glades Detention Center, where DHS issued a notice to appear.
80. The charging document itself expressly alleges that Petitioner is “present in the United States without admission or parole,” language that presumes residence in the interior and confirms that he was not in the process of seeking admission. Taken together, these contradictions underscore the arbitrariness of Petitioner’s detention and the government’s mischaracterization of his case.
81. To hold otherwise would effectively erase the statutory line between §§ 1225 and 1226, converting virtually all noncitizens present without admission into mandatory detainees and rendering § 1226(a) a dead letter. Courts have consistently rejected this outcome. *See Martinez*, 2025 WL 2084238, at \*7 (rejecting interpretation that would “nullify” Congress’s amendment to § 1226(c)); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at \*7 (D. Mass. July 7, 2025) (noting that §§ 1225 and 1226 “apply to different classes” of noncitizens).
82. In sum, Petitioner was not “seeking admission” within the meaning of § 1225(b) but was “already in the country” within the meaning of *Jennings*, 583 U.S. at 288–89. Her custody is governed by § 1226(a), under which detention is discretionary and subject to individualized bond hearings. DHS’s argument is contrary to law, unsupported by the record, and must be set aside.

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the Southern District of Florida;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Declare that the Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (6) Grant any further relief this Court deems just and proper.

*/s/ Andres F. Amon*

---

Andres F. Amon, Esquire  
Counsel for Petitioner  
Law Office of Jan Peter Weiss  
1926 10th Avenue North, Suite 400  
Lake Worth, Florida 33461  
Phone: (561) 582-6401  
Fax: (561) 582-5458  
Email: legal@janpweissesq.com  
Florida Bar No.: 124023

CRUZ MENDEZ, GENSEL ALBERTO )  
 )  
 Petitioner, )  
 v. ) Case No.:  
 )  
 PAMELA BONDI, U.S. Attorney General, et al. )

**INDEX OF SUPPORTING DOCUMENTS**

<b>Attachment No.</b>	<b>Document Title</b>
1	Civil Cover Sheet
2	Evidentiary Exhibits A – G
3	Summons to the Attorney General of the United States
4	Summons to the U.S. Department of Homeland Security
5	Summons to the Glades County Center Detention Center
6	Summons to the U.S. Immigration and Customs Enforcement
7	Summons to the ICE Miami Field Office
8	Summons to the U.S. Attorney’s Office

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **PAMELA BONDI, Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania avenue, NW, Washington, DC 20530-0001.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **JUAN AGUDELO, Acting Miami Field Office Director, 865 SW 78th Avenue, Suite 101, Plantation, FL 33324.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **KRISTI NOEM, Secretary of Homeland Security, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, DC 20528-0485.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **TODD LYONS, Acting Director U.S. Immigration and Customs, Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **DAVID HARDIN, Sheriff and Glades County Detention Center, 1297 FL-78, Moore Haven, FL 33471.**

# **EXHIBIT A**

PRACTICE RESOURCES

# Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*

1/16/26 | AILA Doc. No. 26011404

Updated January 16, 2026

On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." Immigration judges are instructed to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. The guidance from EOIR states that a "declaratory judgment" is not binding and does not have the authority to compel specific action.<sup>1</sup>

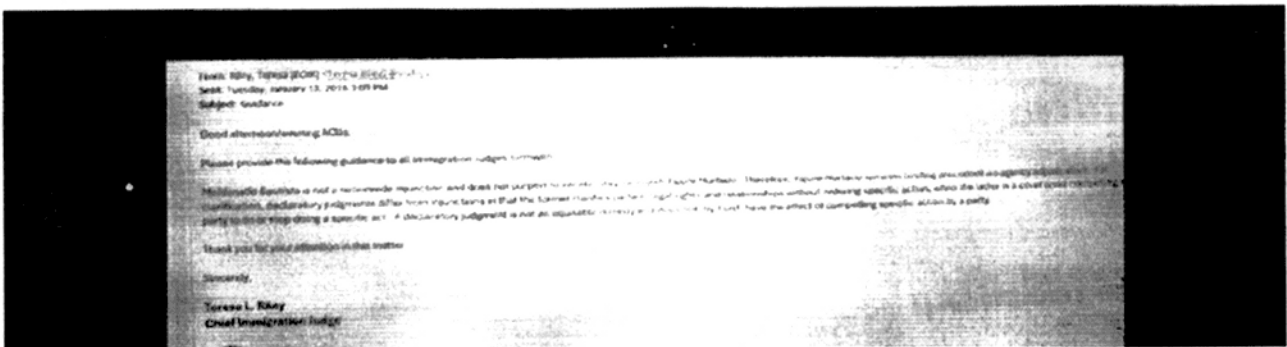
AILA members are reporting widespread denial of bond hearings based on this new guidance. Members pursuing released from federal court should keep in mind:

1. You must allege and prove your client's class membership. The relief does not apply beyond the class even if the Court in *Maldonado Bautista* concluded that the underlying legal position is fundamentally wrong. The notice to appear, itself should provide evidence of class membership and it should be argued that as such the factual allegation that the individual is not an arriving alien is undisputed especially where the NTA shows that the person is inadmissible under INA 212 (a)(6)(A)(i).
2. Members should file a copy of the December 18, 2025 [clarifying order](#) as an exhibit in the bond record of proceedings to ensure it is part of the record as well as copies of this advisal. It may not be enough to rely on citations. Many Immigration Judge's will not have previously read the decision.
3. Make sure you review the 2025 published BIA decisions on bond and provide sufficient evidence to establish your client is not a danger to the community or a flight risk as part of your motion for bond redetermination. Evidence of relief eligibility, housing, and family and community support are particularly persuasive.

AILA will continue to monitor the situation and provide updates moving forward. If you have specific case examples of courts denying eligibility based on this email, please submit your case examples [here](#).


Class members include "[a]ll 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." For more information, see class counsel's practice advisory [here](#).

To contact class counsel, reach out to [Bautista\\_EWI\\_Class@aclu.org](mailto:Bautista_EWI_Class@aclu.org).



<sup>1</sup> Relevant members should still be screening for *Guerrero-Orellana* class membership because they remain class members even if moved to states outside of New England. When filing a motion for bond, attorneys should specifically write/state that the Respondent is a class member of *Guerrero-Orellana* and therefore entitled to a bond hearing. Additionally, a class member who is denied a bond hearing should file a habeas petition and ask for immediate release and fees.

# **EXHIBIT B**



**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**  
**OFFICE OF REFUGEE RESETTLEMENT (ORR)**  
**DIVISION OF UNACCOMPANIED CHILDREN OPERATIONS (DUCO)**  
**VERIFICATION OF RELEASE**

**VERIFICATION OF RELEASE**

Name:	<input type="text" value="REDACTED"/>	Aliases (if any):	<input type="text"/>
Date of Birth:	<input type="text" value="REDACTED"/>	A#	<input type="text" value="REDACTED"/>
Country of Birth:	Honduras	Eye Color:	Brown
Primary Language:	Spanish		

The Office of Refugee Resettlement (ORR) has released the above named minor from Federal custody pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to the care of:



Name of Sponsor:	Yasmin Liseth Mendez Cantillano		
Address:	<input type="text" value="REDACTED"/>		
City:	West Palm Beach		
State:	FL	Zip Code	33415
Primary Phone#:	<input type="text" value="REDACTED"/>		
Relationship to Child:	Mother		

**ACKNOWLEDGEMENT OF THE SPONSOR CARE AGREEMENT**

The above-named sponsor has agreed to the provisions set forth in the Sponsor Care Agreement, pertaining to the minor's care, safety, and well-being, and the sponsor's responsibility for ensuring the minor's presence at all future proceedings before the Department of Homeland Security and the Department of Justice/Executive Office for Immigration Review (EOIR). In agreeing to these provisions, the sponsor holds authority to consent to medical and mental health care on behalf of the child.

ORR Care Provider Name:	Southwest Key San Diego
Discharge Date:	07/23/2024

THE PAPERWORK REDUCTION ACT OF 1995 (Pub. L. 104-13) STATEMENT OF PUBLIC BURDEN: The purpose of this information collection is to provide unaccompanied children and their sponsors with official documentation showing that ORR released the child into the sponsor's care and custody. Public reporting burden for this collection of information is estimated to average 0.17 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. This is a mandatory collection of information (Homeland Security Act, 6 U.S.C. 279). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995, unless it displays a currently valid OMB control number. The OMB control number for this information collection is 0970-0552. If you have any comments on this collection of information please contact [UCPolicy@ecl.hhs.gov](mailto:UCPolicy@ecl.hhs.gov).

# **EXHIBIT C**

DEPARTMENT OF HOMELAND SECURITY  
NOTICE TO APPEAR

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

Subject ID: [REDACTED]

FINS #: [REDACTED]

DOB: [REDACTED]

File No: [REDACTED]

Event No: [REDACTED]

In the Matter of:

Respondent: [REDACTED]

currently residing at:

IN DHS CUSTODY

(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 HONDURAS and a citizen of HONDURAS ;
3. You arrived in the United States at or near TECATE, CA , on or about July 5, 2024 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

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:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- 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:

AT A PLACE TO BE SET

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be to show why you should not be removed from the United States based on the

charge(s) set forth above.

THRON S FRANCISCO  
Date: 2024.07.05 17:43:19 -07:00  
CBP

Acting/Patrol Agent in Charge

(Signature and Title of Issuing Officer)

Date: July 05, 2024

San Diego, California

(City and State)

**Notice to Respondent**

**Warning:** Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the Immigration judge.

**One-Year Asylum Application Deadline:** If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at [www.uscis.gov/i-589](http://www.uscis.gov/i-589). Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

**Failure to appear:** You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

**U.S. Citizenship Claims:** If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

**Sensitive locations:** To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Upon information and belief, the language that the alien understands is SPANISH

**Request for Prompt Hearing**

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

\_\_\_\_\_  
(Signature of Respondent)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature and Title of Immigration Officer)

**Certificate of Service**

This Notice To Appear was served on the respondent by me on July 5, 2024, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person  by certified mail, returned receipt # \_\_\_\_\_ requested  by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Gensei  
(Signature of Respondent if Personally Served)

MICHAEL A SIJAREZ  
Date: 2024.07.05 17:46:03 -07:00  
CBP

\_\_\_\_\_  
(Signature and Title of officer)

### Privacy Act Statement

**Authority:**

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

**Purpose:**

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

**Routine Uses:**

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notice-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

**Disclosure:**

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

# **EXHIBIT D**

DEPARTMENT OF HOMELAND SECURITY  
NOTICE TO APPEAR

DOB: [REDACTED]

Event No: [REDACTED]

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

[REDACTED]

currently residing at

Glades County Detention Center - 1297 East SR 78 Moore Haven, FLORIDA 33471

(561) 772-4005

(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 HONDURAS and a citizen of HONDURAS;
3. You entered the United States at an unknown location, on an unknown date;
4. You were not then admitted or paroled after inspection by an Immigration Officer;
5. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

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

3900 N POWERLINE RD, POMPANO BEACH, FLORIDA 33073, BROWARD TRANSITIONAL CENTER

(Complete Address of Immigration Court, including Room Number, if any)

on November 10, 2025 at 8:00 am to show why you should not be removed from the United States based on the

(Date)

(Time)

charge(s) set forth above

G 8116 VALCOURT - SDPO

(Signature and Title of Issuing Officer)

Date October 28, 2025

POMPANO BEACH, FL

This Notice to Appear Supersedes the Notice to Appear issued on September 3, 2025

(City and State)

**Notice to Respondent**

**Warning:** Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

**One-Year Asylum Application Deadline:** If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at [www.uscis.gov/I-589](http://www.uscis.gov/I-589). Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

**Failure to appear:** You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

**U.S. Citizenship Claims:** If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

**Sensitive locations:** To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Upon information and belief, the language that the alien understands is SPANISH

**Request for Prompt Hearing**

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

\_\_\_\_\_  
(Signature of Respondent)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature and Title of Immigration Officer)

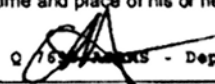
**Certificate of Service**

This Notice To Appear was served on the respondent by me on October 28, 2025 in the following manner and in compliance with section 239(a)(1) of the Act.

- in person     by certified mail, returned receipt # \_\_\_\_\_ requested     by inter-detention mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the \_\_\_\_\_ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

\_\_\_\_\_  
(Signature of Respondent If Personally Served)

 - Deportation Officer  
(Signature and Title of officer)

**Privacy Act Statement**

**Authority:**

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

**Purpose:**

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

**Routine Uses:**

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorns>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

**Disclosure:**

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

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U.S. Department of Homeland Security

Continuation Page for Form I-862

Alien's Name CRUZ MENDEZ, GENSEL ALBERTO	File Number [REDACTED]	Date 09/03/2025
Event No: [REDACTED]		

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:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Signature G 8116 VALCOURT	Title SDDO
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# EXHIBIT E



UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
MIAMI KROME IMMIGRATION COURT

Respondent Name:  
CRUZ MENDEZ, GENSEL ALBERTO

To:  
Weiss, Jan Peter  
1926 10th Avenue North  
Suite 400  
Lake Worth, FL 33461

A-Number:  
[REDACTED]

Riders:  
In Removal Proceedings  
Initiated by the Department of Homeland Security  
Date:  
11/11/2025

ORDER OF THE IMMIGRATION JUDGE

Respondent  the Department of Homeland Security has filed a motion to terminate these proceedings, and the non-moving party was accorded notice and an opportunity to respond. The motion is  opposed  unopposed.

After considering the facts and circumstances, the immigration court orders that the motion to terminate is  granted  with  without prejudice  denied because:

- The Department of Homeland Security  met  did not meet its burden of proving by clear and convincing evidence that Respondent is removable as charged. 8 C.F.R. § 1240.8(a).
- Respondent  met  did not meet the burden of proving that Respondent is clearly and beyond a doubt entitled to admission to the United States and is not inadmissible as charged. 8 C.F.R. § 1240.8(b)-(c).
- Other.
- Further analysis/explanation:

Respondent was born on [REDACTED], Respondent did not file his application for asylum with USCIS until September 30, 2025. Therefore, the Respondent failed to file his asylum application prior to attaining the age of 18. In Matter of M-A-CO-, 27 I&N Dec. 477 (BIA 2018), the court found that a Respondent who had turned 18 prior to filing his application for asylum with USCIS was no longer a UC at the time he filed his asylum applications with USCIS and accordingly, the BIA found that the initial jurisdiction provision of the TVPRA did not apply to his case affirmed the immigration judge's exercise of initial jurisdiction. The BIA held that the TVPRA does not: 1) prevent immigration judges from determining whether they have initial jurisdiction over an application filed by a UC after they turn eighteen, or 2) require that the DHS and HHS determinations of UC status be binding on immigration judges. It also noted that UC status is not static and may

change, and that judges should ensure that a UC is a UC when adjudicating a case. “Viewing the statute as a whole, nothing in the TVPRA or the statute it revised

suggests that the jurisdictional provision applies to formerly unaccompanied alien children.” *Harmon v. Holder*, 758 F.3d 728, 734 (6th Cir. 2014); see also *Matter of Castro-Tum*, 27 I&N Dec. 271, 279 n.4 (A.G. 2018) (“An alien who does not meet the statutory definition of an unaccompanied alien child is not entitled to that status.”). Thus, viewed in context, the most natural reading of the statutory language is that an asylum officer only has initial jurisdiction over a UAC’s asylum application if it is filed while the applicant is in UAC status. *Harmon*, 758 F.3d at 734 (“The language ‘filed by an unaccompanied alien child’ creates simultaneous statutory requirements—filing the asylum application while an unaccompanied alien child.

Pursuant to 8 CFR 236.3(d)(2), “[w]hen an alien previously determined to be a UAC has reached the age of 18, when a parent or legal guardian in the United States is available to provide care and physical custody for such alien, or when such alien has obtained lawful immigration status, the alien is no longer a UAC”. “An alien who is no longer a UAC is not eligible to receive legal protections limited to UAC’s under the relevant sections of the Act. Pursuant to 8 CFR 236.3(d)(3), : [w]hen an alien previously determined to have been a UAC is no longer a UAC because he or she turns 18 years old, relevant ORR and ICE procedures shall apply.”

The Respondent, now being years of age, and over the age of 18, is no longer a minor or a UAC under 8 CFR 236.3(d)(2). Further, Respondent was released to his mother, therefore he was no longer a UAC as of July 23, 2024 when he was released to his mother. See, 8 CFR 236.3(d)(2). “UAC status is not static, as both a

UAC’s age and his or her accompaniment may change. Thus, judges should ensure that an alien claiming to be a UAC is, in fact, a UAC at the time his or her case is adjudicated. See, *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018). As the Respondent is no longer a UAC by virtue of his age, at the time his application for relief is to be adjudicated, therefore, the court has jurisdiction to adjudicate Respondent’s asylum application. As expressly stated in the J.O.P. Settlement Agreement, the Department “retains discretion” to oppose a class member’s motion to terminate “if it deems such opposition warranted based on the individual facts of the case.” In the instant case, the Department has exercised its discretion to keep the respondent in removal proceedings. However, Respondent should be afforded review of his asylum application by USCIS in the first instance, before adjudication of the application by the court.

The court will deny the motion to terminate, without prejudice, and direct that the Department of Homeland Security shall request expedited review of the Respondent’s application for asylum by USCIS.

*Michael Walleisa*

Immigration Judge: Walleisa, Michael 11/11/2025

Appeal: Department of Homeland Security:  waived  reserved  
Respondent:  waived  reserved


Appeal Due:

**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 : CRUZ MENDEZ, GENSEL ALBERTO | A-Number : 

Riders:

Date: 11/11/2025 By: Walleisa, Michael, Immigration Judge

# **EXHIBIT F**



UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
MIAMI KROME IMMIGRATION COURT

Respondent Name:

CRUZ MENDEZ, GENSEL ALBERTO

To:

Weiss, Jan Peter Abad, Abril  
1926 10th Avenue North  
Suite 400  
Lake Worth, FL 33461

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

11/14/2025

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

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

Other:

The court lacks authority to redetermine Respondent's custody status because the Respondent is subject to mandatory detention pursuant to section 235(b)(2)(A) of the INA. Matter of Yajure Hurtado, ID #4125.

SGA

Immigration Judge: ALEXANDER, SCOTT 11/14/2025

Appeal:	Department of Homeland Security:	<input type="checkbox"/> waived	<input checked="" type="checkbox"/> reserved
	Respondent:	<input type="checkbox"/> waived	<input checked="" type="checkbox"/> reserved

Appeal Due: 12/15/2025

**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 : CRUZ MENDEZ, GENSEL ALBERTO | A-Number : 

Riders:

Date: 11/14/2025 By: ALEXANDER, SCOTT, Immigration Judge

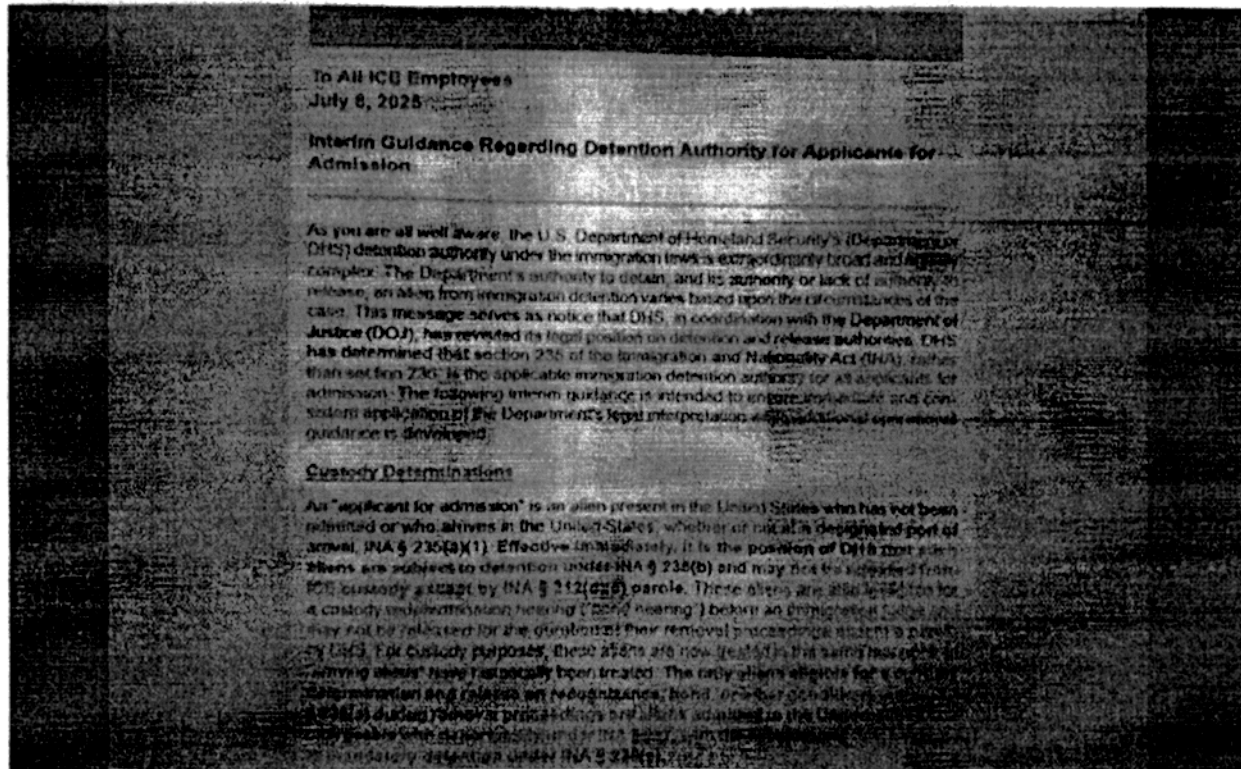
# **EXHIBIT G**

MEMO & REGULATORY COMMENT

# ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission

7/8/25 | AILA Doc. No. 25071607 | [Detention & Bond, Removal & Relief](#)

On July 8, 2025, ICE issued interim guidance regarding detention authority for applicants for admission.



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Moving forward, ICE will not issue Form I-295, *Notice of Custody Determination*, to applicants for admission because Form I-295 applies by its terms only to custody determinations under INA § 235 and part 235 of Title 8 of the Code of Federal Regulations. With a limited exception for certain high-risk persons, which the Office of the Principal Legal Advisor (OPLA) will identify, advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively state the

Because the position that detention is pursuant to INA § 235(b) is likely to be adopted, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, in support of OPLA's arguments of dangerousness and flight risk in those bond proceedings.

**Re-detention**

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detainer. Rather, the custody provisions at INA § 235(b)(1)(A), (B)(1), and (B)(2) are best read to prohibit release of an alien who enters ICE custody, absent a determination of detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case until additional guidance is issued. ERO and HSI should consult with OPLA prior to re-detention in case of this nature.

**People Released by Previously Released Aliens**

It is expected that ICE will see an increase in applications for admission filed under INA § 235(a) requesting documentation of past admission. ICE should be prepared to assist such applicants for admission in more than one way. For example, ICE should be prepared to assist applicants of states that have not yet received a request for information from ICE regarding their immigration status. ICE should also be prepared to assist applicants of states that have not yet received a request for information from ICE regarding their immigration status.