U.S. District Court
Southern District of Florida
(Ft Lauderdale)

MARTIN ZARAGOZA VASQUEZ
Petitioner,

v.

SECRETARY, KRISTI NOEM, et al.,

Defendants,
_____/

CIVIL DOCKET
CASE #: 0:26-cv-60197-MD

Petitioner's Response to the Government's Response to the Petition

On February 11, 2025, this Court entered a paperless order [ECF No 14] directing the Petitioner to file a Surreply in Response to the Government's Response to the Petition, specifically addressing the issue of mootness raised in the Government's Response.

The Petitioner's Case is not moot

A case is moot when "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome". *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Whether this case is moot rests on a determination regarding what statute Petitioner is detained. This issue is currently the appeal filed by DHS with the Board of Immigration Appeals, therefore the Bond Determination issued by the Immigration Judge is not final.

Petitioner alleges that the Attorney General is unlawfully holding him under § 1225(b)(2), which mandates his detention, instead of under § 1226(a)'s

discretionary detention scheme, where he could be eligible for release. As a result, his continued detention is unconstitutional. Section 1225 applies to "applicants for admission," defined as noncitizens who are either "present in the United States" without having been admitted or who are arriving in the United States. 8 U.S.C. § 1225(a)(1).

Applicants for admission are divided into two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Relevant here is § 1225(b)(2), which establishes a mandatory detention regime for "an alien who is an applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted" for the duration of removal proceedings. 8 U.S.C. § 1225(b)(2)(A). *See Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (plurality opinion) (holding §§ 1225(b)(1) and 1225(b)(2) do not provide authority for bond hearings).

In contrast, § 1226 provides additional direction for the apprehension and detention of aliens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226(a) gives immigration authorities power to issue an administrative warrant and either "continue to detain the arrested alien" or release the alien from detention on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). However, § 1226(a) does not grant "any right to release on bond." *Matter of D-J-*, 23 I.&N. Dec. 575 (A.G. 2003) (citing Carlson v. Landon, 342 U.S. 524, 534 (1952)).

On July 8, 2025, the DHS issued new guidance to all ICE employees to ensure immediate and consistent application of the immigrant detention authority under 8 U.S.C. § 1225. ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission. (**Exhibit A**)

The DHS instructed all ICE employees to treat anyone inadmissible under § 1182(a)(6)(A)(i) as subject to detention under 8 U.S.C. § 1225(b)(2)(A), and therefore ineligible to be released on bond. Id.

The Board of Immigration Appeals ("BIA") applied the DHS' guidance in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) holding any person who entered into the United States without admission or inspection, even if they have been residing in the United States for years without lawful status, is an applicant for admission and subject to detention under 8 U.S.C. § 1225(b)(2)(A).

Courts throughout Florida have already covered this ground and addressed the issues raised by the Petitioner. *See Hernandez-Lopez v. Hardin*, et al., No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025). There, the Courts were satisfied with its jurisdiction and found that petitioners were being held in violation of their rights under the INA, entitling them to habeas relief.

Petitioner is seeking an individualized determination to be presented to the Board of Immigration Appeals that is consistent with 8 U.S.C. section 1226(a), not just a bond hearing to be scheduled. The Petitioner asks this court to find that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A).

In the alternative, the Petitioner requests immediate release from Custody pursuant to the bond issued by the Immigration Judge.

Respectfully submitted this 15th day of February 2026.

/s/ Juliana G. Lamardo, Esq.
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CERTFICATE OF SERVICE

I HEREBY CERTIFY that on February 15, 2025, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF. I further certify that the foregoing was served on all counsel of record via CM/ECF.

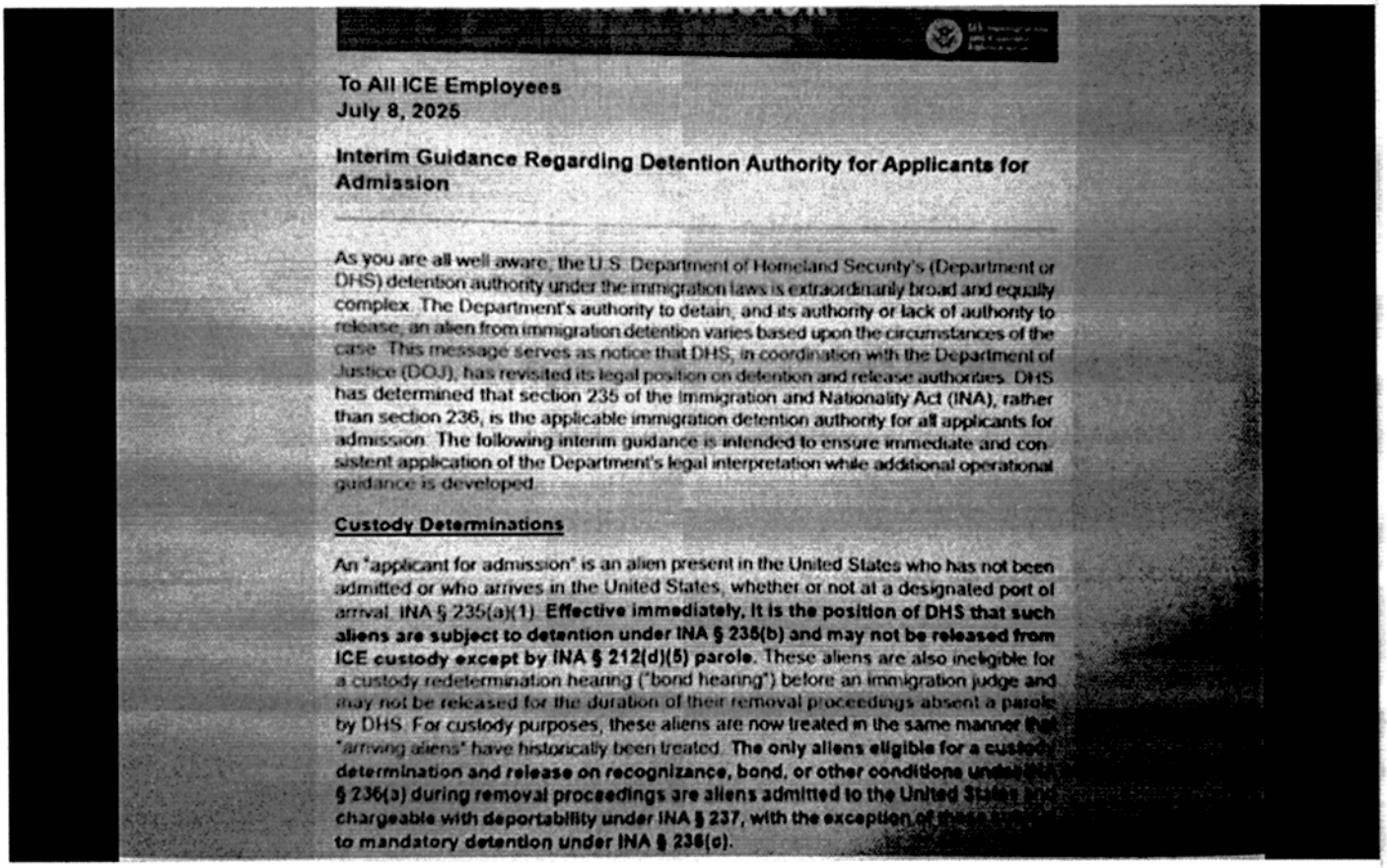
/s/ Juliana G. Lamardo, Esq.

Exhibit A

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.



To All ICE Employees
July 8, 2025

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Going forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually 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 cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, 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, to support 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 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(IV), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-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 rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were released on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.