

UNITED STATES DISTRICT COURT
[DISTRICT OF NEW MEXICO]

Zhushan Wang,

Petitioner,

v.

DORA CASTRO, *in her official capacity of
Warden, Otero County Processing Center*;
JOEL GARCIA, *in his official capacity as Field
Office Director of El Paso, Immigration and
Customs Enforcement*; KRISTI NOEM, *in her
official capacity as Secretary of the U.S.
Department of Homeland Security*; PAMELA
BONDI, *in her official capacity as Attorney
General of the United States*; EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. 2:26-cv-375

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Zhushan Wang, is in the physical custody of Respondents at Otero County Processing Center, 26 McGregor Range Road, Chaparral, NM 88081. 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 is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. 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.

4. 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.

5. 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.

6. 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.

7. ICE's detention of Petitioner is arbitrary, unsupported by statute, unconstitutional, and effectuated without any procedural safeguards. This Court should immediately order his release or direct an expedited bond hearing with adequate procedural protections. ICE's conduct fails to comply basic procedural protections required under the Constitution. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

8. On December 30, 2025, Immigration Judge Samuel Williams denied bond pursuant to *Matter of Yajure Hurtado*.

9. On February 4, 2026, BIA affirmed the Immigration Judge's decision denying bond and concluded that, under *Matter of Yajure Hurtado*, the Immigration Judge lacked jurisdiction to grant bond.

10. Accordingly, Petitioner seeks a writ of habeas corpus ordering immediate release from custody.

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otero County Processing Center, 26 McGregor Range Road, Chaparral, NM 88081.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District of New Mexico, the judicial district in which Petitioner currently is detained.

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of New Mexico.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner Zhushan Wang is a citizen of China who has been detained by ICE since November 14, 2025, following his arrest near Exit 36 on the Interstate 495 in New York. ICE did not set bond, and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

19. Defendant Dora Castro is the Warden of Otero County Processing Center, located within this division of this District. In that capacity, she is the immediate physical custodian of Petitioner. Warden Castro is sued in his official capacity.

20. Defendant Joel Garcia is the Field Office Director of Immigration Customs Enforcement for the El Paso office. In that capacity, Director Garcia oversees all ICE activities within El Paso region, which includes New Mexico. Director Garcia is sued in his official capacity.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

22. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

LEGAL FRAMEWORK

23. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

24. 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).

25. 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).

26. 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).

27. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

28. 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. 3009–546, 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).

29. 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).

30. 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)).

31. As recently as January 2025, the Laken Riley Act was enacted. This law amended the mandatory detention provision of INA § 236(c) to apply to aliens who are inadmissible under INA § 212(a)(6)(A), and were arrested for, convicted of, or committed a class of crimes related to theft or injury.² If the intent was for aliens charged under INA § 212(a)(6)(A) to be detained under INA § 235, then amending the provisions of INA § 236(c) in this manner would have been unnecessary. Likewise, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez vs Bostock*, 2025 WL1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). A contrary interpretation would override the purpose of the statute. *See Yao v. Almodovar*, No. 25-cv-9982 (PAE), at 18 (S.D.N.Y. Dec. 17, 2025) (finding that such interpretation of the Laken Riley Act “is at odds with modern-day principle of statutory construction. A foundational tenet of such is that the purpose of a statute as derived from the statements of legislators *cannot* override its plain text.”) (emphasis included) citing *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 111 (1991) (Scalia, J.); *Conn. Nat’l Bank v. Germain*, 503 U.S.

249, 253–54 (1992) (Thomas, J.); John F. Manning, *Textualism and the Equity of the Statute*, 101 Colum. L. Rev. 1, 6–7 (2001)

32. 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.

33. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ 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.

34. 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.

35. 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.

36. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court 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

¹ U.S. Immigration and Customs Enforcement, *Interim Guidance Regarding Detention Authority for Applications for Admission*. (July 8, 2025), AILA Doc. No. 25071607. <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez, supra*.

37. Subsequently, numerous federal courts adopted the same interpretation of the INA's detention provisions and rejected ICE and EOIR's contrary construction. *See 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); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at 2 (D. Neb. Aug. 14, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

38. 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.

39. 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[ed] the inadmissibility or deportability of [all] [noncitizen].”

40. 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* 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.

41. § 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.

42. 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 [all] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

43. 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.

44. Although a person present without admission may be classified as an “applicant for admission,” that status does not make them a person “seeking admission” under § 1225(b). Treating those terms as synonymous collapses two separate concepts Congress deliberately distinguished. Because Petitioner resides in the United States and is in standard § 1229a proceedings, his detention is authorized, if at all, under § 1226(a). Applying § 1225(b)(2)(A) to individuals in Petitioner’s circumstances would disregard the statutory structure and render superfluous. *See Yao v. Almodovar*, No. 25-cv-9982 (PAE), at 11-13 (S.D.N.Y. Dec. 17, 2025) (holding that “as a matter of statutory construction [...] § 1225 applies to arriving noncitizens, and § 1226 governs the process of arresting and detaining noncitizens who have entered the United States and remained here pending their removal.”) citing *J.G.O.*, 2025 WL 3040142, at *4; *Esperanza*, 2025 WL 3513983, at *5–6; *Tumba Huamani*, 2025 WL 3079014, at *3–4; *Cardenas v. Almodovar*, No. 25 Civ. 9169, 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025). A noncitizen “cannot be subject to both §§ 1225 and 1226.” *Lopez Benitez*, 795 F. Supp. 3d at 485; *see also*

Villegas, 2025 WL 3215597, at *2; *Campbell v. Almodovar*, No. 25 Civ. 9509, 2025 WL 3538351, at *1 (S.D.N.Y. Dec. 10, 2025); *Gonzalez*, 2025 WL 2961626, at *4.

FACTS

45. Petitioner has resided in the United States since July 23, 2017, and currently lives at 

46. On information and belief, on November 14, 2025, Petitioner was arrested by U.S. Immigration and Customs Enforcement while riding as a passenger in a friend's vehicle near Exit 36 on Interstate 495 (Long Island Expressway) in New York City. Petitioner is presently detained at the Otero County Processing Center, located at 26 McGregor Range Road, Chaparral, New Mexico 88081.

47. DHS placed Petitioner in removal proceedings before the New York Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

48. Petitioner is employed as a construction worker in New York and maintains a stable source of income and a fixed residence. He is a person of good moral character and has never had any criminal record. Petitioner is neither a flight risk nor a danger to the community.

50. According to official ICE Detainee Locator System, Petitioner is presently detained at 26 McGregor Range Road, Chaparral, New Mexico 88081, within the jurisdiction of this Court. A true and correct copy of this record is attached hereto as **Exhibit A**.

49. On information and belief, ICE served Petitioner with a Notice to Appear (NTA) initiating removal proceedings under 8 U.S.C. §1229(a). The NTA charges Petitioner as

removable under the Immigration and Nationality Act and was filed with the Executive Office for Immigration Review (EOIR) in New York. A true and correct copy of the NTA is attached hereto as **Exhibit B**.

50. Petitioner has a pending Form I-589, Application for Asylum and for Withholding of Removal, which was filed prior to his detention and remains awaiting adjudication. Although Petitioner has a scheduled Master Calendar Hearing on March 3, 2026 at 9:30 AM. This pending application demonstrates that Petitioner is actively pursuing lawful relief from removal. A true and correct copy of the pending Form I-589 is attached hereto as **Exhibit C**.

51. On December 30, 2025, Petitioner sought a bond hearing before an Immigration Judge; however, the Immigration Judge denied the request for lack of jurisdiction pursuant to *Matter of Yajure Hurtado*. A true and correct copy of the Immigration Judge's bond decision is attached hereto as **Exhibit D**

52. On February 4, 2026, the Board of Immigration Appeals ("BIA") issued a decision affirming the Immigration Judge's denial of bond, relying on *Matter of Yajure Hurtado* to conclude that the Immigration Judge lacked jurisdiction to conduct a bond hearing. BIA'S decision is attached hereto as **Exhibit E**

53. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request.

54. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from their family and community.

CLAIMS FOR RELIEF
COUNT I
Violation of the INA

55. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

56. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

57. The government's own custody paperwork frequently cites §1226 as the basis for detention, reflecting the longstanding agency practice and regulatory understanding that individuals in Petitioner's posture fall under §1226(a). Attempts to recharacterize detention under §1225(b) only after litigation begins deserve little weight, as agencies must justify their actions on the grounds they relied on at the time the action was taken. A shifting litigation position cannot retroactively validate a detention that was never grounded in §1225(b) to begin with.

58. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of the Bond Regulations

59. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

60. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.

Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

61. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

62. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III **Violation of Due Process**

63. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

64. 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).

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

66. The government’s detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

67. Petitioner’s detention violates the Due Process Clause because ICE re-detained

Petitioner at a routine check-in without providing any of the procedural safeguards required when the government seeks to deprive an individual of liberty. The Supreme Court’s framework in *Mathews v. Eldridge*, 424 U.S. 319 (1976), governs this analysis. Under *Mathews*, courts balance three considerations: the weight of the private interest at stake, the risk of erroneous deprivation under existing procedures and the value of additional safeguards, and the government’s interest in avoiding additional procedures. Each factor strongly favors Petitioner and demonstrates that the detention is unconstitutional.

68. Even if the statutory question were settled, Petitioner’s detention violates the Constitution. The Due Process Clause prohibits the government from depriving a person of physical liberty without procedural safeguards. Detention at a routine check-in, imposed without notice, without an individualized assessment of risk, and without any opportunity to be heard, is fundamentally incompatible with constitutional requirements.

EXHAUSTION

69. On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), in which it embraced DHS’s view that the INA requires mandatory detention—without the possibility of bond—for noncitizens present in the United States. In *Hurtado*, the BIA concluded that immigration judges categorically lack jurisdiction to conduct bond hearings or grant release to individuals charged with entering without inspection. *Id.*

70. In *Lazaro Maldonado Bautista et al. v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, the district court granted partial summary judgment invalidating DHS’s July 8, 2025 policy, which directed ICE to treat noncitizens arrested in the interior of the United States and charged

as inadmissible as subject to mandatory detention under § 1225 rather than discretionary detention under § 1226(a).

71. Under the certified class definition, noncitizens are class members if they: (1) entered the United States without inspection; (2) were not apprehended upon arrival; and (3) are not detained under § 1226(c), § 1225(b)(1), or § 1231 at the time DHS made their initial custody determination. The *Maldonado* court emphasized that the statutory inquiry is governed by longstanding principles of immigration detention: for decades, EWIs not apprehended at the border were treated as individuals detained under § 1226(a), eligible for individualized custody determinations and bond hearings.

72. The court of *Maldonado* also rejected the government's reliance on *Jennings v. Rodriguez*, 583 U.S. 281 (2018). As the court explained, *Jennings* expressly recognized § 1226(a) as authorizing detention of noncitizens already in the United States pending the outcome of removal proceedings and did not support DHS's attempt to subject interior arrests to mandatory detention under § 1225. *See Maldonado Bautista* at 16–17 (citing *Jennings* at 289). Applying traditional tools of statutory interpretation, the court concluded that DHS's expansive interpretation of “applicants for admission” would impermissibly nullify portions of the INA through executive reinterpretation, a result incompatible with separation-of-powers principles. *Id.* at 19 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024)). In reaching that conclusion, the court emphasized that § 1226 nowhere employs the terms “applicant for admission,” “admission,” or “admitted” in the manner DHS sought to import from § 1225, underscoring that Congress intentionally assigned different functions to the two provisions. *Id.* at

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73. However, subsequent nationwide guidance issued by the EOIR confirms that

further pursuit of relief before the immigration courts would be futile. On January 13, 2026, the Chief Immigration Judge issued binding nationwide instructions directing all immigration judges that *Maldonado Bautista* is not a nationwide injunction, does not vacate, stay or enjoin *Matter of Yajure Hurtado*, and does not compel any change in custody adjudications. Immigration judges were expressly instructed to continue treating *Matter of Yajure Hurtado* as binding precedent and to deny bond jurisdiction notwithstanding the declaratory judgment in *Maldonado Bautista*. Under these circumstances, requiring Petitioner to seek relief before an adjudicative body that has been formally instructed not to apply the relevant federal court decision would serve no purpose and would amount to a futile exercise²

74. Even if *Hurtado* were not controlling and Petitioner were deemed eligible to pursue a bond hearing, that avenue would still be inadequate and futile. The bond-hearing framework does not permit adjudication of the statutory and constitutional defects raised here and, as some courts have repeatedly recognized, offers no meaningful safeguard against the very harms that habeas review is designed to prevent.

75. There is no statutory requirement that an immigration detainee exhaust administrative remedies, including an appeal of a bond determination to the BIA, before seeking habeas relief under 28 U.S.C. § 2241. Other courts have repeatedly held that exhaustion in immigration-detention habeas cases is a judicially-created, prudential doctrine, not a jurisdictional bar. *See Nolasco Rodriguez v. Decker*, 507 F. Supp. 3d 179 (S.D.N.Y. 2020). Under the doctrine of exhaustion of administrative remedies, “a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all

² EOIR Practice Alert, *EOIR Issues Nationwide Guidance on Maldonado Bautista* (Updated Jan. 16, 2026), AILA Doc. No. 26011404, <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>

possible relief within the agency itself.” *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (quoting *Guitard v. U.S. Sec’y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

76. Because Congress has imposed no statutory exhaustion requirement on habeas challenges to immigration detention, courts treat exhaustion as a judicially-created prudential standard rather than a mandatory prerequisite. *Joseph v. Decker*, No. 18-cv-2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018); *see also Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003). Further, failure to exhaust administrative remedies may be excused “when such exhaustion would be futile or where the agency has predetermined the issue before it.” *See Rosenthal v. Killian*, 667 F. Supp. 2d 364, 366 (S.D.N.Y. 2009) (quoting *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009)); *see also Beharry*, 329 F.3d at 62. Failing to attempt to use administrative remedies is not necessarily dispositive of the exhaustion question if the ultimate outcome of such administrative remedies would be futile. *See Velasco Lopez v. Decker*, No. 19-cv -2912 (ALC), 2019 WL 2655806, at *2 (S.D.N.Y. May 15, 2019) (excusing exhaustion on futility grounds though petitioner had not appealed to the BIA); *see also Garcia v. Decker*, No. 20-cv -1345 (LJL), 2020 WL 1435007, at *8 (S.D.N.Y. Mar. 24, 2020); *Joseph*, 2018 WL 6075067, at *5.

77. Given this, pursuing an administrative appeal would serve no practical purpose. Exhaustion is unnecessary “where the agency’s position appears already set and recourse to administrative remedies is very likely futile.” *Vasquez-Rodriguez v. Garland*, 7 F.4th (9th Cir. 2021). Because immigration judges are bound by BIA decisions, *Hurtado* forecloses any finding of jurisdiction to consider custody redetermination for noncitizens in Petitioner’s position. As a result, only judicial intervention can remove the barrier imposed by *Hurtado* and permit

Petitioner to meaningfully pursue the administrative remedies otherwise available to her.

78. Likewise, the record demonstrates an ongoing pattern of violations by the agency. In practice, immigration bond hearings are routinely denied on boilerplate findings that a detainee is a “flight risk” or “danger to the community,” even where the detainee has strong family, community, and legal ties to the United States and is actively pursuing relief from removal.

79. That risk is compounded in Petitioner’s case. As a practical matter, a detained noncitizen cannot marshal the type of corroborative evidence that immigration courts routinely expect within a very short window. Obtaining character letters from employers, landlords, pastors, community members, or friends requires time, mail or electronic communication, translation, and, frequently, notarization. Petitioner has been given only a very short window in which to request and collect such letters, while simultaneously trying to communicate with counsel and navigate detention-facility restrictions on phone calls, email, and visitation. Under these conditions, “preparing” for a bond hearing is largely illusory: the detainee appears in court without the documentary support that could demonstrate ties to the community and rebut generalized assertions of flight risk or dangerousness.

80. Requiring Petitioner to pursue further bond proceedings or to exhaust an appeal to the BIA before seeking habeas relief would inflict precisely the sort of irreparable harm that prudential exhaustion is designed to avoid. Each additional day of detention constitutes an ongoing deprivation of liberty; and as in *Nolasco Rodriguez*, the BIA’s settled legal position on the relevant bond-hearing standards means that the outcome of any appeal is foreordained.

81. In the alternative should this Court conclude that a bond hearing is necessary,

the government must bear the burden of proving, by clear and convincing evidence, that Petitioner poses either a flight risk or a danger to the community. Shifting that burden to the detainee—particularly after prolonged detention imposed without an individualized hearing—would violate the Due Process Clause and render any further administrative process constitutionally deficient. *See Velasco Lopez* at 28 & n.14 (citing *German Santos v. Warden, Pike Cnty. Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020); *Casas-Castrillon v. D.H.S.*, 535 F.3d 942, 951 (9th Cir. 2008); *Darko v. Sessions*, 342 F. Supp. 3d 429, 435–36 (S.D.N.Y. 2018); *Medley v. Decker*, 18-cv-7361 (AJN), 2019 WL 7374408, at *3 (S.D.N.Y. Dec. 11, 2019) (discussing the “overwhelming consensus” of judges in the Southern District on this issue), appeal filed, (2d Cir. Dec. 27, 2019); *Rajesh v. Barr*, No. 6:19-cv-06415 (MAT), 2019 WL 5566236, at *6 (W.D.N.Y. Oct. 29, 2019) (joining the “vast majority” of district courts to hold that the Due Process Clause required the Government to bear the burden by clear and convincing evidence of justifying detention), appeal filed, (2d Cir. Dec. 27, 2019). *See also Brito v. Barr*, No. 19-cv-11314 (PBS), 2019 WL 6333093, at *4 (D. Mass. Nov. 27, 2019), appeal filed, (1st Cir. Feb. 10, 2020); *Hernandez-Lara v. Immigr. & Customs Enf’t, Acting Dir.*, 19-cv-394 (LM), 2019 WL 3340697, at *8 (D.N.H. July 25, 2019), appeal filed sub nom. *Hernandez Lara v. Lyons* (1st Cir. Oct. 11, 2019).

82. For all of these reasons, Petitioner respectfully submits that he is not required to exhaust further bond-hearing remedies before seeking habeas relief in this Court. In the alternative, to the extent any exhaustion requirement applies, this Court should excuse exhaustion on the grounds of futility, inadequacy of the bond-hearing process, and the ongoing irreparable harm caused by Petitioner’s continued detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the New Mexico while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Declare that Petitioner's detention is unlawful;
- e. Order Petitioner's immediate release from custody; or, in the alternative, grant such other relief as this Court deems just, proper, and appropriate under 28 U.S.C. § 2241.
- f. In the alternative, should the Court decline to order Petitioner's immediate release, Petitioner respectfully requests that the Court order a prompt individualized bond hearing at which the Government bears the burden of justifying continued detention by clear and convincing evidence, and must demonstrate that Petitioner poses a risk of flight or a danger to the community;
- g. Order that, upon release, Respondents shall not impose any electronic monitoring, location-tracking device, GPS ankle bracelet, or any other form of surveillance-based conditions on Petitioner; and
- h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law.

Dated: February 11, 2026

LAW OFFICE OF NG & WASSERMAN PLLC

/s/ Jed S. Wasserman

By: Jed Wasserman
LAW OFFICE OF NG & WASSERMAN PLLC
27 East Broadway, 2nd Floor
New York, NY 10002
Telephone: (212) 925-5616
jedwasserman@ngwasserman.com

EXHIBIT A



**U.S. Immigration
and Customs
Enforcement**

Report Crimes: Email or Call 1-866-DHS-2-ICE

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Facility Page

Detention Information For:

ZHUSHAN WANG

Country of Birth: China, Peoples
Republic of
A-Number: 



Current Detention Facility:

OTERO COUNTY PROCESSING
CENTER
26 MCGREGOR RANGE ROAD
CHAPARRAL, NM 88081
Visitor Information: (575) 824-0440

[MORE INFORMATION >](#)

ERO Office Information

Family members and legal representatives may be able to obtain additional information about this individual's case by contacting this ERO office:

ERO - Otero County Processing Center
Phone Number: (575) 824-0440

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Related Information

Helpful Info

- [Status of a Case](#)
- [About the Detainee Locator](#)
- [Brochure](#)
- [ICE ERO Field Offices](#)
- [ICE Detention Facilities](#)
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External Links

- [Bureau of Prisons Inmate Locator](#)



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EXHIBIT B

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [REDACTED]
Event: [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: ZHUSHAN WANG currently residing at:

[REDACTED]

(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 CHINA, PEOPLES REPUBLIC OF and a citizen of CHINA, PEOPLES REPUBLIC OF;
3. You entered the United States at or near unknown place, on or about unknown date;
4. At that time you arrived at a time or place other than as designated by the Attorney General.

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:

201 VARICK ST, 5TH FL RM 507 NEW YORK, NEW YORK 10014. NEW YORK VARICK

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

on December 15, 2025 at 8:30 am to show why you should not be removed from the United States based on the

(Date)

(Time)

charge(s) set forth above.

JASON V
LANGLOIS
J 6827 LANGLOIS - SDDO

(Signature and Title of Issuing Officer)

Date: November 14, 2025

Central Islip, NY

(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. 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/contactero>, 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.

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 November 14, 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 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 MANDARIN 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)

A. J. Martone
 A-4254 MARTONE - 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-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 C

EXHIBIT D



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTERO IMMIGRATION COURT**

Respondent Name:

WANG, ZHUSHAN

To:

Guo, Yangting
3915 Main St
Suite 510
Flushing, NY 11354

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

12/30/2025

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
Respondent entered the US by boat without inspection in 2017. Based on his entry, the court lacks jurisdiction to issue a bond in this case and would also find the Respondent to be a flight risk due to his manner of entry, lack of US ties, and speculative relief.
- ☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
 - ☐ released from custody under bond of \$
 - ☐ other:
- ☐ Other:



Immigration Judge: Williams, Samuel 12/30/2025

Appeal: Department of Homeland Security: ☒ waived ☐ reserved
Respondent: ☐ waived ☒ reserved
Appeal Due: 01/29/2026

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 : WANG, ZHUSHAN | A-Number :



Riders:

Date: 12/30/2025 By: Alarcon, Sharon, Court Staff

EXHIBIT E

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTERO IMMIGRATION COURT
26 MCGREGOR RANGE ROAD
CHAPARRAL, NEW MEXICO 88081**

IN THE MATTER OF:

WANG, Zhushan

Respondent**IN BOND PROCEEDINGS**

FILE NO.

**APPLICATION:** CUSTODY REDETERMINATION**ON BEHALF OF RESPONDENT:**

Yangting Guo, Esq.
Law Office of Yangting Guo PC
39-15 Main Street, Suite 510
Flushing, New York 11354

ON BEHALF OF THE GOVERNMENT:

Assistant Chief Counsel
Department of Homeland Security
11541 Montana Avenue, Suite O
El Paso, Texas 79936

MEMORANDUM OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The Respondent is a native and citizen of China who entered the United States at an unknown time and place, without having been admitted or paroled after inspection by an immigration officer. *See* Form I-862 (Nov. 14, 2025). The United States Department of Homeland Security (“DHS” or “Department”) commenced these removal proceedings by issuing the Respondent a Notice to Appear (“NTA”) and filing it with the Immigration Court. *Id.* The present bond redetermination request was filed on December 18, 2025. The Court held the Respondent’s custody redetermination hearing on December 30, 2025. At the conclusion of the hearing, the Court denied the Respondent’s request for bond. *See* Order of the Immigration Judge (Dec. 30, 2025). The Respondent appealed the Court’s decision to the Board of Immigration Appeals (“BIA” or “Board”). The Court provides this written memorialization of its findings to facilitate the Board’s review of the appeal. *See* Immigration Court Practice Manual, Chapter 9.3(e)(7).

II. SUMMARY OF EVIDENCE

The Court has familiarized itself with the entirety of the record and considered the submitted evidence and arguments presented, regardless of whether specifically mentioned in the text of this decision. *See* 8 C.F.R. § 1240.1(b). The Court also reviewed the Respondent’s NTA as permitted by 8 C.F.R. § 1003.19(d).

WANG, Zhushan

A



III. JURISDICTION

In a recently issued precedential decision, *Matter of Yajure Hurtado*, the Board confirmed that Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission pursuant to the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act (“INA”). 29 I&N Dec. 216 (BIA 2025).

Subsequently, on November 20, 2025, the United States District Court for the Central District of California granted an order for summary judgment in part in the case of *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873, 2025 WL 3289861, finding the Department’s interpretation of sections 235 and 236 of the INA to be unlawful as to the named plaintiffs. The order denied the plaintiffs’ request for a final judgment. On November 25, 2025, the District Court granted class certification to include “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 [INA § 236(c), § 235(b)(1), or § 241] at the time the [Department] makes an initial custody determination.” *Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 WL 3288403.

Then, on December 18, 2025, the United States District Court for the Central District of California entered a final judgment, declaring that aliens within a Bond Eligible Class “are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2).” *Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 WL 3713982. The United States District Court for the Central District of California denied a request to vacate *Matter of Yajure Hurtado*, but nevertheless held that “*Yajure Hurtado* is no longer controlling.” *Id.*

The Department of Justice has taken the position that “the *Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction.” *Alberto Rodriguez v. Jeffreys*, No. 8:25-cv-714, 2025 WL 3754411. Upon review, it appears that at least two United States District Courts agree. In *Calderon Lopez v. Lyons*, No. 1:25-cv-226-H, 2025 WL 3683918, the United States District Court for the North District of Texas held that “the [*Bautista*] orders do not change immigration judges’ obligations to deny bond hearings, and they afford no preclusive relief.” Likewise, in *Alberto Rodriguez v. Jeffreys*, No. 8:25-cv-714, 2025 WL 3754411, the United States District Court for the District of Nebraska agreed that the *Bautista* orders are void as to class members outside the Central District of California.

Here, the Respondent does not dispute that he entered the United States without having been inspected and admitted. Therefore, despite the entry of a final judgment in *Bautista*, the Court finds it is bound by *Matter of Yajure Hurtado* and lacks jurisdiction to grant the Respondent’s request for release on bond. Notably, the order in *Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Matter of Yajure Hurtado*. Thus, the Court is presented with a binding Board decision and the conflicting decisions of several United States District Courts. In this unique scenario, and in the absence of a resolution of this issue by the United States Court of Appeals for the Tenth Circuit, the Court respectfully finds that it is bound by *Matter of Yajure Hurtado* and lacks jurisdiction to grant bond.

WANG, Zhushan



IV. CUSTODY REDETERMINATION

In order for an alien to secure bond, the alien must demonstrate to the satisfaction of the Court that such release would not pose a danger to property or persons and that he is likely to appear for future proceedings. In other words, he must demonstrate that he is not a danger to the community and that he is not a flight risk. 8 C.F.R. § 1236.1(c)(8); *see also Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112–13 (BIA 1999).

In making its initial flight risk determination, the Court considered all relevant factors regarding the Respondent, including local family ties, length of residence in the community, prior arrests, convictions, record of appearances at hearings, employment history, membership in community organizations, manner of entry and length of time in the United States, immoral acts or participation in subversive activities, property or business ties, fixed address, availability and likelihood of relief, and financial ability to post bond. *See Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987); *see also Matter of Shaw*, 17 I&N Dec. 177 (BIA 1979); *Matter of Patel*, 15 I&N Dec. 666 (BIA 1979). The Court may further consider an alien's character as one of the factors in determining the necessity for or the amount of the bond. *See Matter of Andrade*, 19 I&N Dec. at 490. The Court has extensive discretion when determining whether to release an alien on bond. *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003).

After weighing the relevant factors, the Court finds that there exists insufficient evidence to conclude that the Respondent is a danger to the community. However, the Court finds the Respondent has not met his burden of showing that he is not a flight risk. The Court also denies the Respondent's request for bond as a matter of discretion.

To begin, the Court has concerns surrounding the form of relief proposed by the Respondent. The Respondent also filed a Form I-589, Application for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture, which was received by the Immigration Court on December 17, 2025. *See* Respondent's Evidence Part 01, Tab D at 39-48 (Dec. 18, 2025). However, the Respondent's application for asylum will likely be barred by the one-year filing deadline, as he filed the application more than eight years after his entrance into the United States, which allegedly occurred in approximately July 2017. *See id.* at 39 (claiming to have entered the United States on July 23, 2017). The Court acknowledges the Respondent's testimony that he affirmatively filed a Form I-589 with the United States Citizenship and Immigration Services ("USCIS") in 2017. *See also id.*, Tab A at 4 ("My husband has filed the Asylum application with New York Asylum Office when he arrived New York in 2017."). However, during the Respondent's Custody Redetermination Hearing, the Department informed the Court that system checks did not reveal a Form I-589 has been filed with USCIS. More importantly, the Respondent failed to provide a USCIS receipt notice or any other documentary evidence demonstrating that a Form I-589 has been filed prior to 2025. The Respondent will have the opportunity to develop his theory of eligibility for relief in the underlying proceedings. Nevertheless, concerns about the Respondent's path to relief contribute to the Court's bond determination. *See Matter of Andrade*, 19 I&N Dec. at 490 ("A respondent with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who . . . has less potential of being granted such relief.").

WANG, Zhushan

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Further, the Court notes that the Respondent's manner of entry into the United States is particularly concerning. The respondent testified that he entered the United States unlawfully, after arriving by boat from the Bahamas. More specifically, the Respondent admits that he applied for a United States visa and, even after his application was denied, he "chose to smuggle into liberal America." *See* Respondent's Evidence Part 01, Tab D at 52 (Dec. 18, 2025). The Respondent's manner of entry is indicative of a lack of respect for the laws of the United States and diminishes the Court's confidence that he would appear at non-detained Immigration Court hearings upon his release. In addition, the Court finds the Respondent provided insufficient evidence demonstrating ties to the United States. The Court acknowledges the Respondent's arguments that he resides with his spouse and has one cousin who is a lawful permanent resident of the United States that is willing to serve as his sponsor upon his release from custody. *See* Respondent's Evidence, Tabs A-C (Dec. 18, 2025). However, the Court notes that the Respondent's spouse similarly entered the United States unlawfully and is presently in removal proceedings. *See* Respondent's Evidence Part 01, Tab C (Dec. 18, 2025). Thus, in light of the Respondent's manner of entry and his speculative form of relief, the Court is not persuaded that having a spouse without lawful status and one extended family member in the United States is sufficient to establish significant, meaningful ties to the United States and his community.

V. CONCLUSION

The Court finds that it lacks jurisdiction to grant the Respondent bond. In the alternative, the Court finds that the Respondent has failed to meet his burden of proving he is not a flight risk if released on bond. The Court further finds that the Respondent is properly detained without bond, and the Court declines to set bond in his case. *See Guerra*, 24 I&N Dec. at 38.

IT IS HEREBY ORDERED THAT the Respondent's request for custody redetermination is **DENIED**.

Date: February 4, 2026

Samuel G. Williams

Samuel G. Williams
United States Immigration Judge