UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

David Ayala Rodriguez, *Petitioner*, v. Kristi Noem, *Secretary of Homeland Security*, Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*, George Sterling, *Director, Atlanta ICE Field Office* Pamela Bondi, *Attorney General, U.S. Department of Justice* Warden, *Folkston D Ray ICE Processing Center*, *Respondents*.	)	Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner David Ayala Rodriguez (A[redacted] is a citizen of El Salvador. He entered the United States in early 2003, without inspection between ports of entry on the U.S.-Mexico border. He was arrested by immigration officers at that time, detained for approximately one month in Florence, Arizona, and subsequently released on an immigration bond. Despite this, Respondents would now subject Petitioner to mandatory detention under a separate provision and strip him of previously afforded process. Shortly after his release in 2003, the immigration court granted voluntary departure, but Petitioner failed to depart within the designated timeframe. Petitioner began reporting on an Order of Supervision, and years later, he successfully reopened his removal proceedings. Nearly 22 years after his initial entry and release, U.S. Immigration and

Customs Enforcement ("ICE") rearrested Petitioner under facts and circumstances that place him squarely within ICE's general detention authority 8 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to seek discretionary release on bond from an Immigration Judge ("IJ"). However, due to a policy reversal announced by ICE in July 2025, and a September 2025 Board of Immigration Appeals (BIA) decision that similarly overturns decades of settled law, Respondents contend that Petitioner is actually detained under 8 U.S.C. § 1225(b)(2). However, while § 1225 requires mandatory detention and does not allow release on bond, it only applies to noncitizens apprehended at the border "seeking admission." Petitioner therefore brings this action for injunctive relief from this Court to namely enjoin Respondents from holding Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and denying him a bond hearing on that basis; and seeking an order that Respondents schedule him for a discretionary bond hearing pursuant to § 1226(a) before an IJ within 7 days.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. This Court also has federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

3. Venue lies in this District because Petitioner is currently detained within the

territorial jurisdiction of this division of this District; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

THE PARTIES

4. Petitioner David Ayala Rodriguez is a citizen and native of El Salvador and is currently detained by Respondents at the Folkston D Ray ICE Processing Center in Folkston, Georgia, within the territorial jurisdiction of this Court.

5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

7. Respondent George Sterling is the Director of the Atlanta ICE Field Office. He is responsible for overseeing ICE operations pertaining to noncitizens within his territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. He is Petitioner's immediate legal custodian for purposes of a federal habeas petition.

8. Respondent Pamela Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges, who decide removal cases and applications for bond as her designees.

9. Respondent Warden of the Folkston D. Ray ICE Processing Center in Folkston, GA is the immediate custodian who is currently holding Petitioner in physical custody.

10. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

11. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

12. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c)." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "'[e]xcept as provided in subsection (c) of this section,' the Attorney General 'may release' an alien detained under § 1226(a) 'on ...bond' or 'conditional parole.'" *Id.*

13. Alternatively, mandatory detention is authorized for "certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

> "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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission."

§ 1225(a)(1).

14. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an "arriving alien," and if they have not been physically present in the United States continuously for a two-year period immediately prior. Regulations define an "arriving alien" as:

> "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."

8 C.F.R. § 1.2.

15. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "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 of this title," i.e. for traditional removal proceedings [emphasis added].

16. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

17. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a

case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

18. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

19. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. BIA Decision in *Matter of Q. Li*

20. On May 15, 2025, the BIA issued its decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), which held that an applicant for admission "who was arrested without a warrant

while arriving in the United States and thereafter placed in removal proceedings, is detained under section 235(b)(2)(A), until the conclusion of removal proceedings." *Id.* at 71.

21. Q. Li was encountered upon entry into the United States, she was arrested by immigration officers, and paroled into the U.S. under 8 U.S.C. § 1182(d)(5). *Id.* at 67. Part of the condition of her §1182(d)(5) parole was to report regularly to ICE. *Id.* Following a subsequent alert as to an international arrest warrant, she was taken back into custody, issued a Notice to Appear commencing removal proceedings, and issued a new Notice of Custody Determination and detained. *Id.* She requested a custody redetermination before an IJ and was denied for lack of jurisdiction, because she was subject to mandatory detention under § 1225(b)(2). *Id.*

22. In particular, the BIA reasoned that the termination of parole restored Q. Li to her prior custody status. *Id.* at 69. ("When parole granted by DHS is terminated, "the alien shall forthwith return or be returned to the custody from which he was paroled." INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i)."). Additionally, Q. Li had been arrested without a warrant, and had never been subject to 8 U.S.C. § 1226(a) authority. *Id.* at 70. Ultimately, the BIA agreed that she was subject to § 1225(b)(2) and ineligible for bond. *Id.* at 71.

23. While Respondents have attempted to apply *Q. Li* more broadly to individuals encountered at the interior of the country – or in the absence of a parole under § 1182(d)(5) – this argument has been consistently rejected. *See Valerio v. Joyce,* No. CV 25-17225 (ZNQ), 2025 WL 3251445, at *3 (D.N.J. Nov. 21, 2025); *Diaz Rudecindo v. Florentino*, No. CV 25-16942 (ES), 2025 WL 3470299, at *2 (D.N.J. Dec. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *9-11 (D. Md. Aug. 24, 2025); *Vasque Romero v. Noem*, No. CV 3:25-524, 2026 WL 116379, at *1 (W.D. Pa. Jan. 15, 2026); *and Hasan v. Crawford*, 800 F. Supp. 3d 641, 657, n.11 (E.D. Va. 2025).

C. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

24. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum "Interim Guidance Regarding Detention Authority for Applications for Admission."[1] This memo concerns the detention of "applicants for admission" as defined by § 1225(a)(1). "Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* ("For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.")

25. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

26. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct"

[1] Available at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited Sept. 25, 2025).

paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO and HIS are not required to 'correct' the release paperwork by issuing INA § 212(d)(5) parole paperwork.")

27. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

D. BIA decision *Matter of Yajure Hurtado*

28. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

29. The BIA held that the respondent was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

30. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. *Id.* at 220.

31. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

32. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service,

previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled '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), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'")

33. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

34. The BIA decision is binding on all immigration judges nationwide.

35. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")

FACTS

36. Petitioner David Ayala Rodriguez is a citizen of El Salvador. He entered the United States without inspection between ports of entry, across the U.S.-Mexico border, in or around 2003. He was encountered upon entry by immigration officers at that time, who, upon information and belief, took him into custody at that time. Immigration officers also placed him in removal proceedings. *See* Ex. 1, ICE Form I-862 Notice to Appear.

37. Upon information and belief, Petitioner was detained in immigration custody in Florence, Arizona, for approximately one month. Upon information and belief, Petitioner's brother

paid an immigration bond of approximately $1,500.00, and was released in approximately July 2003. Petitioner then traveled to Baltimore, MD.

38. On November 12, 2003, the Immigration Court granted Petitioner a voluntary departure (VD), and ordered to depart by March 11, 2004. *See* Ex. 2, EOIR Order of the Immigration Judge – Voluntary Departure. The Petitioner did not depart, and has remained in the United State. Thus, on March 11, 2004, Petitioner's order converted to a final order of removal.

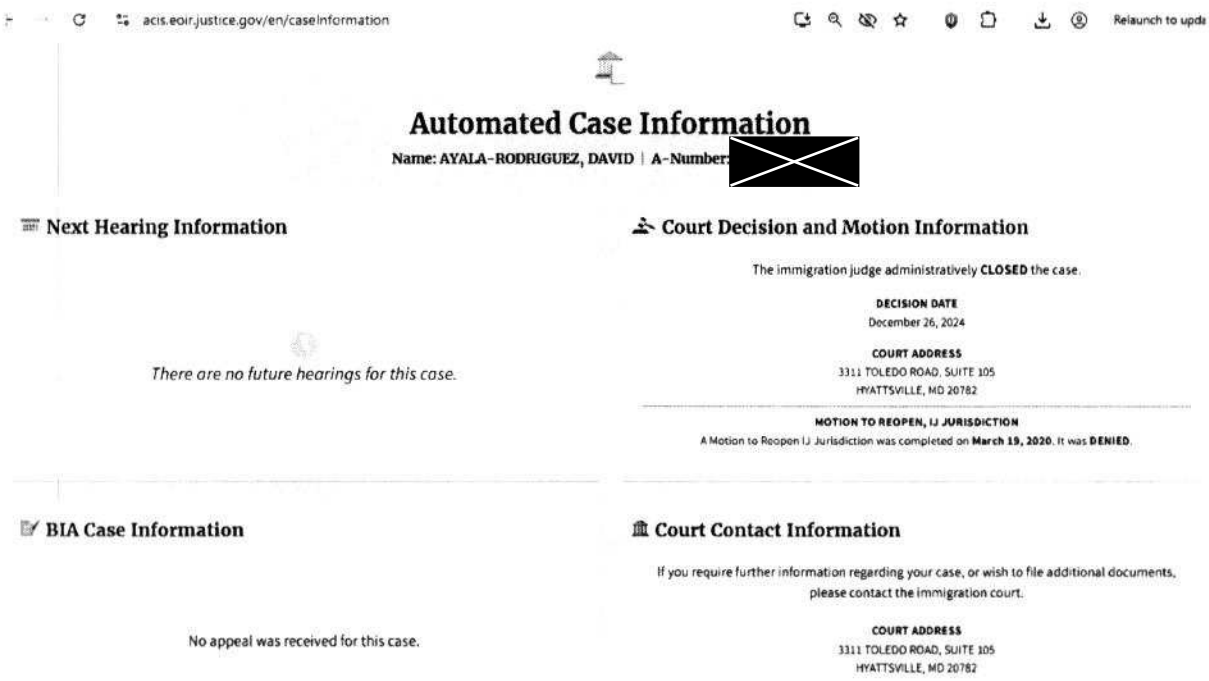
39. Petitioner then established a peaceful life in Maryland. He currently resides in Silver Spring, MD, with his aunt and niece, provides financial and parental support for his U.S. citizen daughter, and maintains a close and loving relationship with her, as she visits him frequently. He also has nine brothers and sisters residing in the United States, most of whom are U.S. citizens or lawful permanent residents.

40. On October 28, 2009, Petitioner received an I-130 Approval Notice as a beneficiary of one of his sisters. *See* Ex. 4, USCIS I-130 Approval Notice. Through counsel, on January 2, 2014, Petitioner presented Form I-246, Application for Stay of Deportation or Removal, based on his severely complicated heart condition, along with his time and family ties in the U.S. Petitioner's request was denied at first but lately approved by DHS and he was placed under supervision on January 22, 2014. *See* Ex. 3, ICE I-220B Order of Supervision (post-removal order). Petitioner continued to report under this Order of Supervision until he was detained in 2025, and never missed any appointments.

41. In 2020, seeking newly available immigration relief, Petitioner moved to reopen is prior removal proceedings, which was denied on March 19, 2020. *See* Ex. 5, EOIR Decision of the BIA. Petitioner then appealed to the Board of Immigration Appeals (BIA), which found the IJ failed to consider the evidence presented or that Petitioner was now eligible for cancellation of

removal under 8 U.S.C. ("240B(d)"). *Id.* The BIA then remanded back to the immigration court for further consideration of the motion to reopen. *Id.*

42. Petitioner's removal proceedings were reopened, and subsequently administratively closed on December 26, 2024, based on a joint request from Respondents and Petitioner. *See* Ex. 6, EOIR Order of the Immigration Judge – Administrative Closure. Petitioner does not yet have another scheduled hearing, but nonetheless, he is not currently subject to a final order of removal. *See also* EOIR Automated Case Information (available at https://acis.eoir.justice.gov/ (last visited on February 12, 2026)):



43. Despite his removal proceedings having been reopened, upon information and belief, Petitioner continued to dutifully report on his Order of Supervision. Further, upon information and belief, Petitioner was arrested on December 31, 2025, during a regular ICE check in appointment despite his continued compliance. Immigration officers de facto revoked

Petitioner's Order of Supervision and detained Petitioner without clear reason and placed him in immigration custody.

44. Petitioner is currently detained at the Folkston D. Ray ICE Processing Center in Folkston, Georgia, within the territorial jurisdiction of this Court. *See* ICE Detainee Locator information (available at https://locator.ice.gov/ (last visited on February 12, 2026)):

45. Petitioner has resided continuously in the United States since 2003 and has built deep, long-standing ties to this country for more than twenty years. He has nine siblings who live in the United States, most of whom are U.S. citizens or lawful permanent residents, demonstrating

his strong family support network and roots in the community. Petitioner is also the father of a U.S. citizen minor daughter who depends on him and has already shown significant emotional and psychological distress due to the fear of separation from her father. In addition, Petitioner suffers from a severe, lifelong heart condition requiring specialized and ongoing medical care. He has undergone two open-heart surgeries and must take heart medication for life. His medical history also includes a brain aneurysm, treatment for mitral valve endocarditis, an aortic valve replacement, and a mitral valve replacement. Continued detention places Petitioner's health at serious risk and causes profound hardship to both Petitioner and his U.S. citizen child.

46. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b). Accordingly, based on the BIA decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado,* it would be futile for Petitioner to appeal the bond denial to the Board of Immigration Appeals. Exhaustion of administrative remedies would therefore be futile.

FIRST CLAIM FOR RELIEF:
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)

47. Petitioner re-alleges and incorporates by reference paragraphs 1-46.

48. Petitioner was re-encountered by ICE at the interior of the country, over twenty-two years after his initial entry. Since Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

49. Moreover, when Petitioner's immigration bond was de facto revoked, when he was rearrested, ICE was required to do so under the original I-200 warrant. 8 U.S.C. § 1226(b). Accordingly, Petitioner remains entitled to a bond hearing under § 1226(a).

50. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a

bond redetermination hearing in front of an immigration judge.

SECOND CLAIM FOR RELIEF:
Bond Revocation In Violation of the Regulations

51. Petitioner re-alleges and incorporates by reference paragraphs 1-46.

52. Petitioner was previously granted bond by an immigration judge under 8 C.F.R. 236.1. Accordingly, regulations continue to govern his release on bond, including the revocation of that bond.

53. First, only designated officials are empowered to revoke an immigration bond, including "district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9). It is not clear that anyone other than immigration officers at his ICE check-in, who are not empowered to revoke an immigration bond, made the determination to rearrest him, despite his prior release on bond.

54. Second, a revocation of bond is only warranted in the context of changed circumstances. *Matter of Sugay*, 17 I. & N. Dec. at 640. Petitioner has resided peacefully in the United States since 2021 and has been employed and supporting his family. "In practice, the DHS re-arrests individuals only after a 'material' change in circumstances." *Mayo v. Semaia,* No. 5:25-CV-3003-MEMF-E, 2025 WL 3496774, at *3 (C.D. Cal. Dec. 5, 2025), citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). There is no apparent change in circumstances that would justify his bond revocation and, regardless, none were furnished prior to Petitioner's rearrest.

55. Respondents' actions, as set forth herein, violated regulatory procedure and standards, and should therefore be reversed.

THIRD CLAIM FOR RELIEF:
Detention in Violation of Due Process

56. Petitioner re-alleges and incorporates by reference paragraphs 1-46.

57. While the government's authority to revoke an immigration bond is in their sole discretion, it must still comport with due process. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*." *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685 (W.D. Tex. 2025), citing 424 U.S. 319 (1976).

58. Petitioner has a strong private interest at stake in his liberty. As held in *Lopez-Arevalo*, another case involving a detainee who was rearrested following a prior release, "the interest in being free from physical detention by [the] government" is "the most elemental of liberty interests[.]" 2025 WL 2691828, *10, quoting *Martinez v. Noem*, 2025 WL 2598379, at *2 and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Moreover, "it is well-established that parolees have a strong interest in their conditional release, ... and courts have held they cannot be re-arrested without a due process hearing in which they can challenge their re-incarceration." *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *9 (N.D. Cal. Sept. 16, 2025), citing *Morrissey v. Brewer*, 408 U.S 471, 481-2 (1972). Petitioner was released pursuant to an immigration bond. Accordingly, his liberty interest is *at least as great* as those serving criminal sentences on parole. *Id.* Moreover, Petitioner's liberty interest has only grown in the time since his prior immigration detention in 2003. *Id.* at *10. *See also Lopez Arevalo*, 801 F. Supp. 3d at 686 (same).

59. Next, the risk of erroneous deprivation of said liberty to Petitioner is high. Respondents have not provided a reason for Petitioner's rearrest nor do they believe they are

required to do so. *See* July 2025 ICE Memo, supra at ¶¶ 22-25. *See also Rodriguez Diaz*, 2025 WL 3011852, at *11, citing *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, at *8 (N.D. Cal. Jul. 17, 2025). ("Respondents' new position would grant ICE unlimited authority to disregard any bond determination made by an IJ for any reason, which is 'a recipe for arbitrary and erroneous deprivations of liberty.'"). Moreover, seeking a bond hearing before an immigration judge without a ruling from this Court would be equally as futile as appeal to the BIA, as it is sure to be denied for lack of jurisdiction. *Lopez Arevalo*, 801 F. Supp. 3d at 686. ("[G]iven the BIA's interpretation of mandatory detention in *Yajure Hurtado*, that appeal is almost certainly a futile exercise."). *See also Rodriguez-Diaz*, 2025 WL 3011852, at *12 (same). Indeed, there are not yet removal proceedings re-commenced where he could even make such a request.

60. The government could only present minimal interests in continuing to detain Petitioner without affording him the very same bond hearing he was provided previously. There is no current evidence that Petitioner is a flight risk or a danger to the community. Any resource arguments fall flat because the cost of a mere bond hearing is surely dwarfed by accruing expenditures to finance his ongoing detention. *Lopez-Arevalo*, 801 F. Supp. 3d at 687. Moreover, the costs of a bond hearing are those that the government has allotted for decades without issue in these contexts. *Id.* Most importantly, "Petitioner-Plaintiff is not asking the Court to enjoin detention altogether, he only requests that Respondents justify his re-detention at a pre-deprivation hearing." *Rodriguez-Diaz*, 2025 WL 3011852, at *13. The same is true here.

61. Accordingly, all *Mathews* factors militate in favor of Petitioner, and Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate have therefore deprived Petitioner of his rights without due process of law.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;

b) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;

c) Enjoin Respondents from holding Petitioner subject to detention under 8 U.S.C. § 1225(b)(2) and denying a bond hearing on that basis;

d) Enjoin Respondents from re-arresting Petitioner subject to § 1225(b)(2);

e) Order Petitioner's immediate release from custody;

f) Order, in the alternative, Petitioner's immediate release and that Respondents conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 7 days;

g) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;

h) Award Petitioner his costs of suit; and

i) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: February 12, 2026

/s/ Benjamin Osorio
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Counsel for Petitioner

LIST OF EXHIBITS

Ex. 1, ICE Form I-862 Notice to Appear;

Ex. 2, EOIR Order of the Immigration Judge – Voluntary Departure;

Ex. 3, ICE I-220B Order of Supervision;

Ex. 4, USCIS I-130 Approval Notice;

Ex. 5, EOIR Decision of the BIA;

Ex. 6, EOIR Order of the Immigration Judge – Administrative Closure.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the Southern District of Georgia
22 Barnard Street, Suite 300
Savannah, GA 31401

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
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Washington, DC 20530-0001

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Warden,
Folkston D Ray ICE Processing Center
P.O. Box 248, 3424 Highway 252
East NA Folkston, GA 31537

Respectfully submitted,

Date: February 12, 2026

/s/ Benjamin Osorio
Benjamin Osorio, Esq.
Georgia State Bar no. 194702
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, Virginia 22030
Telephone: 703-352-2399
Facsimile: 703-763-2304
benjamin@murrayosorio.com

Counsel for Petitioner

U. S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

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

File No: [redacted]
Case No

In the Matter of:

Respondent: David AYALA-RODRIGUEZ currently residing at:

[redacted] 3250 N. PINAL PKWY FLORENCE, AZ. 85232
(Number, street, city state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

2003 JUN 19 AM 8:12

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of EL SALVADOR and a citizen of EL SALVADOR;

3) You arrived in the United States at or near SAN LUIS, ARIZONA, on or about June 8, 2003;

4) You were not then admitted or paroled after inspection by an Immigration Officer.

Exhibit 1 6/23/03

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: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 3250 N. PINAL PKWY FLORENCE, AZ 85232
(Complete Address of Immigration Court, Including Room Number, if any)

on a date to be set (Date) at a time to be set (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

ROBERT V. ANDERS
PATROL AGENT IN CHARGE
(Signature and Title of Issuing Officer)

Date: June 9, 2003 Exh 1 pg 2 6/12/03 YUMA, ARIZONA
(City and State)

See reverse for important information

Form I-862 (Rev. 3/22/99)N

000059

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 under 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 3.16. 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 which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. 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 and that you are inadmissible or deportable on the charges contained in the Notice to Appear. 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 departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court 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 INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

_____
(Signature and Title of INS Officer)

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on 6/12/03 (Date), in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organizations 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.

X _____
(Signature of Respondent if Personally Served)

_____
(Signature and Title of Officer)

Form I-862 (Rev. 3/22/99)N

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

In the Matter of:
AYALA-RODRIGUEZ, DAVID

Case No.: [redacted]

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon the basis of respondent's admissions, I have determined that the respondent is subject to removal on the charge(s) in the Notice to Appear. The respondent has made application solely for voluntary departure in lieu of removal.

It is HEREBY ORDERED that the respondent be GRANTED voluntary departure in lieu of removal, without expense to the Government on or before Mar 11, 2004 or any extensions as may be granted by the District Director, Immigration and Naturalization Service, and under whatever conditions the District Director may direct.

It is FURTHER ORDERED:

[ ] that the respondent post a voluntary departure bond in the amount of _____ with the Immigration and Naturalization Service on or before _____.

[ ] that the respondent shall provide the Immigration and Naturalization Service travel documentation sufficient to assure lawful entry into the country to which the alien is departing within 60 days of this order, or within any time extensions that may be granted by the Immigration and Naturalization Service.

[ ] Other _____

_____

It is FURTHER ORDERED that if any of the above ordered conditions are not met as required, the above order shall be withdrawn without further notice or proceedings and the following shall thereupon become immediately effective: respondent shall be removed to EL SALVADOR on the charge(s) in the Notice to Appear.

It is FURTHER ORDERED that if respondent fails to depart as required, the above order shall be withdrawn without further notice or proceedings and the following order shall become immediately effective: respondent shall be removed to EL SALVADOR on the charge(s) in the Notice to Appear.

If you fail to appear for removal at the time and place ordered by the INS, other than because of exceptional circumstances beyond your control (such as TMB

serious illness of, birth or death of an immediate relative of the alien, but not including less compelling circumstances), you will not be eligible for the following forms of relief for a period of ten (10) years after the date you were required to appear for removal:

(1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
(2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
(3) Adjustment of status or change of status as provided for in section 245, 248 or 249 of the Immigration and Nationality Act.

BRUCE M. BARRETT
Immigration Judge
Date: Nov 12, 2003

Appeal: WAIVED (A/I/B)
Appeal Due By: Dec 12, 2003

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL(M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] Alien's ATT/REP [ ] INS
DATE: 11/12/03 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Form EOIR 6 - 3T (Vol. Depart. - REMOVAL)

( ) 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appear for this hearing other than because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the date of entry of the final order of removal.

( ) 2. You have been scheduled for an asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other than because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years from the date of your scheduled hearing.

(✓) 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date other than because of exceptional circumstances beyond your control** will result in your being ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for ten (10) years from the date of the scheduled departure or the date of unlawful reentry, respectively. Your voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than $1000 and not more than $5000.

( ) 4. An order of removal has been entered against you. If you fail to appear pursuant to a final order of removal at the time and place ordered by the INS, other than because of exceptional circumstances beyond your control** you will not be eligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below for ten (10) years after the date you are scheduled to appear.

**the term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGIBLE ARE:

1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge.

Date:

Immigration Judge: _____ or Court Clerk: _____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [P] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] INS

DATE: 11/12/25 BY: COURT STAFF

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

U3

Order of Supervision

File No: [redacted]
Date: [redacted]

Name: AYALA RODRIGUEZ, David on March 11, 2004, you were ordered:
(Date of final order)

[ ] Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
[X] Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the Service has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

[X] That you appear in person at the time and place specified, upon each and every request of the Service, for identification and for deportation or removal.

[X] That upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.

[X] That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as the Service considers appropriate.

[X] That you do not travel outside Maryland, Virginia, Washington, DC for more than 48 hours with having notified this Service office of the dates and places of such proposed travel.

[X] That you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.

[X] That you report in person on Monday. 5/5/2014 at 10:00 am at: , DHS/ICE/ERO 31 Hopkins Plaza, Suite 630, Baltimore, MD 21201, unless you are granted written permission to report on another date.

[X] That you assist the Immigration and Customs Enforcement in obtaining any necessary travel documents.

[ ] Other:

[X] See attached sheet containing other specified conditions (Continue on separate sheet if required)

Dorothy Herrera-Niles

Dorothy Herrera-Niles
(Signature of ICE official)

Field Office Director
(Print name and title of ICE official)

Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

(Signature of INS official serving order) (Signature of alien) Date

Form I-220B(Rev. 4/1/97)N

002
SAL-ICE
01/24/2014 13:23 FAX 4105482461

U.S. Department of Homeland Security
Immigration and Customs Enforcement — Continuation Page for Form: **I-220B**

Alien's Name	File Number	Date
AYALA RODRIGUEZ, David	A [redacted]	January 22, 2014

Alien's Signature

Alien's Address

[redacted]

Alien's Telephone Number (if any)

RIGHT INDEX PRINT

PERSONAL REPORT RECORD

DATE	OFFICER	COMMENT/CHANGES
5/5/14	RS	NRD 11/5/14 at 10:30 am
11/5/14	WA	Sen 2/04/15 @ 9:30 Am
2/4/2015	Battle	NRD 2/3/2016 at 9 Am
2/3/2016	DO Revoked	NRD 2/13/2017 @ 9:30 am
2/13/2017	Small	Next Report 9/11/2017 @ 10:30
9/11/2017	Small	NRD 3/8/2018 @ 10:30
3-8-17	LR	Next Report date on 9-4-18 @ 9:30Am

Signature	Title

01/24/2014 13:23 FAX 4105482401

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Order of Supervision-Addendum

File N
Date: [redacted]

Name: AYALA RODRIGUEZ, David

X] That you do not associate with known gang members, criminal associates, or be associated with any such activity.

] That you register in a substance abuse program within 14 days and provide ICE with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.

] That you register in a sexual deviancy counseling program within 14 days and provide the INS with written proof of such within 30 days. You must provide the INS with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.

[ ] That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide the INS with written proof of such within 10 days.

[X] That you do not commit any crimes while on this Order of Supervision.

[ ] That you report to any parole or probation officer as required within 5 business days and provide the ICE with written verification of the officers name, address, telephone number, and reporting requirements.

[X] That you continue to follow any prescribed doctors orders whether medical or psychological including taking prescribed medications.

[ ] That you provide the ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.

[ ] That you provide the ICE with written responses from the Embassy or Consulate regarding your request.

[X] Any violation of the above conditions will may result in revocation of your employment authorization document.

[X] Any violation of these conditions may result in you being taken into Service custody and you being criminally prosecuted.

[ ] Other.

1/24/2014 13:23 FAX 4105482461 SAL-ICE 004

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Caminero, Joel A.
Mubarak Law, LLC
250 N. Orange Avenue
Suite 950
Orlando, FL 32801

DHS/ICE Office of Chief Counsel - BAL
31 Hopkins Plaza, Room 1600
Baltimore, MD 21201

Name: AYALA-RODRIGUEZ, DAVID [redacted]

Date of this notice: 10/5/2020

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Adkins-Blanch, Charles K.

Userteam: Docket

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

AYALA-RODRIGUEZ, DAVID
13635 GRENOBLE DRIVE
ROCKVILLE, MD 20853

DHS/ICE Office of Chief Counsel - BAL
31 Hopkins Plaza, Room 1600
Baltimore, MD 21201

Name: AYALA-RODRIGUEZ, DAVID **A** [redacted]

Date of this notice: 10/5/2020

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. §1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Adkins-Blanch, Charles K.

Userteam:

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: [redacted] – Baltimore, MD Date: OCT - 5 2020

In re: David AYALA-RODRIGUEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Joel A. Caminero, Esquire

ON BEHALF OF DHS: Amy Donze Sanchez
Assistant Chief Counsel

APPLICATION: Reopening

The respondent has appealed the Immigration Judge's decision dated March 19, 2020, denying his motion to reopen. An Immigration Judge had previously granted the respondent voluntary departure on November 12, 2003. We review an Immigration Judge's findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii). The record will be remanded to the Immigration Judge.

In his motion to reopen the respondent requests sua sponte reopening in light of his prima facie eligibility for adjustment of status, and given that he requires ongoing treatment and medication for heart disease for which he has undergone two open heart surgeries thus far. *See* 8 C.F.R. § 1003.23(b); *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). The respondent presents evidence of equities such as his numerous United States citizen and lawful permanent resident family members, including his daughter, father, and 9 siblings. The respondent also asserts materially changed country conditions in El Salvador sufficient to warrant the reopening of proceedings. *See* 8 C.F.R. § 1003.23(b)(4)(i). He provides voluminous documentary evidence regarding country conditions, as well as an asylum application.

The Immigration Judge's form order dated March 19, 2020, provides that the respondent's motion to reopen was denied because it was untimely filed, and finding "no changed circumstances under 8 C.F.R. § 1003.23(b)(4); facts were not presented showing that Respondent would face issues as a deportee in El Salvador." However, the respondent argues that the Immigration Judge did not consider his significant documentary evidence of changed country conditions in El Salvador, or his arguments and evidence regarding his prima facie eligibility for asylum. Respondent's Brief at 1-5. In addition, the Immigration Judge's decision finds that as the respondent failed to depart under an order of voluntary departure, the approved Form I-130 visa petition does not provide any avenue for relief. However, as more than 10 years have passed since the respondent did not depart pursuant to the 2003 voluntary departure order, he is not barred under section 240B(d) of the Act from being considered for adjustment of status. Under the particular circumstances of this case, we find it appropriate to remand the record to the Immigration Judge for further consideration of the respondent's motion and the entry of a new decision. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding ability on appeal); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994).

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further consideration of the respondent's motion to reopen.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND

IN THE MATTER OF	)	
David AYALA RODRIGRUEZ	)	**File No.:** A [redacted]
Respondent.	)	

Immigration Judge:

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's Motion to Reopen Proceedings, it is HEREBY ORDERED that the motion be

☐ **GRANTED** ☒ **DENIED** because:

☐ DHS does not oppose the motion.
☐ The respondent does not oppose the motion.
☐ A response to the motion has not been filed with the court.
☐ Good cause has been established for the motion.
☐ The court agrees with the reasons stated in the opposition to the motion.
☒ The motion is untimely per 8 CFR § 1003.23(b)(1)
☒ Other: No changed circumstances under 8 CFR § 1003.23(b)(4). Facts were not presented showing that Respondent would face issues as a deportee in El Salvador. Respondent also failed to depart under an order of voluntary departure so the I-130 provides no relief.

Deadlines:

☐ The application(s) for relief must be filed by _____.
☐ The respondent must comply with DHS biometrics instructions by _____.

3/19/2026
Date

Immigration Judge

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service
To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS
Date: 3/19/2026 By: Court Staff

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3311 TOLEDO ROAD, SUITE 105
HYATTSVILLE, MD 20782

Caminero Law
Caminero, Joel Alexis
151 East Washington St
218
Orlando, FL 32801

In the matter of
AYALA-RODRIGUEZ, DAVID

File [redacted]

DATE: Jan 6, 2025

__ Unable to forward - No address provided.
__ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041
__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
3311 TOLEDO ROAD, SUITE 105
HYATTSVILLE, MD 20782
__ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.
__ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.
X_ Other: **ORDER - ADMINISTRATIVELY CLOSED**

LGRANT
COURT CLERK
IMMIGRATION COURT FF

cc: DHS, ICE, OFFICE OF THE CHIEF COUNSEL
31 HOPKINS PLAZA 16TH FLOOR
BALTIMORE, MD, 212010000

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
HYATTSVILLE IMMIGRATION COURT

Respondent Name:
AYALA-RODRIGUEZ, DAVID

To:
Caminero, Joel Alexis
151 East Washington St
218
Orlando, FL 32801

A-Number:
[redacted]

Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
12/26/2024

ORDER OF THE IMMIGRATION JUDGE

It is hereby ordered that the above-captioned case be administratively closed for the following reason:

- ☑ Joint request by both parties.
- ☐ A party has requested administrative closure and the opposing party has not presented a persuasive reason why proceedings should not be administratively closed.
- ☐ The court has received information documenting that the respondent/applicant is currently detained/incarcerated and unable to appear for proceedings.
- ☑ Other:
  Good cause shown.

This case remains under the jurisdiction and docket control of the immigration court. If either party in this case desires further action on this matter, the party must file a written motion to recalendar the case (including a certificate of service on the opposing party) with the immigration court having administrative control over the Record of Proceeding in this case.

Immigration Judge: BROOKS, MARK 12/26/2024

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: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [M] Noncitizen's atty/rep. | [M] DHS

Respondent Name : AYALA-RODRIGUEZ, DAVID | A-Number : [redacted]

Riders:

Date: 01/06/2025 By: Grant, LaSheila, Court Staff