IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JULIE CRUZ SANTANA
IN REPRESENTATION OF DIOGENE FERMIN FERNANDEZ

Petitioners,

v.

REBECCA GONZÁLEZ RAMOS, Special Agent in Charge of Homeland Security Investigations in San Juan; et als

Respondents

Civil No. 3:26-cv-01036 (PAD)

PETITION FOR A WRIT OF *HABEAS CORPUS*

RESPONSE TO *MEMORANDUM* IN OPPOSITION TO PETITION FOR *WRIT OF HABEAS CORPUS* (DKT.16), AND TEMPORARY RESTRAINING ORDER (DKT. 18)

TO THE HONORABLE COURT:

Comes now the Petitioner, through the undersigned legal counsels and respectfully states, alleges and prays as follows:

On February 6, 2026 the Petitioner was notified with the Government Memorandum and Opposition at Dkts. 16 and 18. In compliance with the Court Order at Dkt. 19, the Petitioner's Response follows:

INTRODUCTION:

The main issue before this Court has been provoked by a change in directives issued in 2025 that contradicts almost 3 decades of customs and uses of immigration law, practice, and court precedents even after the approval of the *Illegal Immigration Reform and Immigration Responsibility Act* (IIRIRA) of 1996. The Board of Immigration Appeals (BIA) issued a decision on September 5, 2025 that labeled "aliens who entered the United

States without inspection" as "applicants for admission" depriving millions of immigrants of the due process granted under 8 USC section 1226. Hurtado, 29 I&N Dec. at 228, 225 (immigration judges has no authority to hear bond hearings or grant bond to this classification of aliens: "aliens … who are present in the United States without admission")

This controversy had produced a split decision in the 5fth Cir. in *Víctor Buenrostro Méndez v. Bondi, et als*, USCA No. 25-20496, consolidated with No. 25-40701. The Dissenting Opinion of *Circuit Judge* Dana M. Douglas is highly persuasive.[1]

"[T]he government distort the statutory text, abstract it from its context and history, ignore the Supreme Court's clearly stated understanding of the statutory scheme, and wave away the agency's previous failure to detain millions of noncitizens as if it were a rounding error." Id, p. 23.

The government proposes: "that 'seeking admission' is like being an 'applicant for admission,' in a statute that has never been applied in this way, based on little more than an apparent conviction that Congress *must have* wanted these noncitizens detained—some of them the spouses, mothers, fathers, and grandparents of American citizens." Id.

> The district courts in both cases consolidated here held that § 1226(a), not § 1225(b)(2)(A), applied to Petitioners. In Buenrostro-Mendez's case, the district court reasoned that "[a]s almost every district court to consider this issue has concluded, the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application [to noncitizens already present in the United States] for the past three decades support finding that § 1226 applies to these circumstances." *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (citation modified). Id., 24.

In summary, we are in court because the U.S. Department of Homeland Security and the US Department of Justice recently and abruptly began to misclassify people arrested by ICE inside the United States. DHS and USDOJ started systematically reclassifying these people from the statutory authority of 8 U.S.C. § 1226, which

[1] *See also, Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 1:18-cv-03757 (7th Cir.), pending before the 7th Circuit.

usually allows for the opportunity to request bond during removal proceedings, to the non-bond detention provisions of 8 U.S.C. § 1225, which does not apply to people arrested in the interior of the United States and placed in removal proceedings. The new policy is not supported by law and also creates further conflicts with other statutes.[2] (**https://www.uscis.gov/family/family-of-us-citizens/provisional-unlawful-presence-waivers#:~:text=The%20provisional%20unlawful%20presence%20waiver,for%20an%20immigrant%20visa%20(immediate)**

In addition, a Class action certification on this issue is pending before the First Circuit in *Guerrero Orellana v. Moniz*, Nos. 25-2152; 26-1094. The briefing schedule has been set between February and March 2026. The class action lawsuit challenges the widespread denial of bond hearings to people detained by U.S. Immigration and Customs Enforcement. This denial upends decades of settled law and established practice in immigration proceedings.

The case before the 1st Circuit was brought on behalf of Jose Arnulfo Guerrero Orellana and a putative class of similarly situated individuals. Mr. Guerrero Orellana has been living in the United States for over a decade. He brings this case to vindicate his own right to a bond hearing — where an immigration judge can determine whether his detention is justified to protect the community or ensure his appearance in court — and

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[2] Since March 4, 2013, certain immigrant visa applicants who are immediate relatives (spouses, children, and parents) of U.S. citizens can apply for ***provisional unlawful presence waivers*** before they leave the United States for their consular interview. On Aug. 29, 2016, the provisional unlawful presence waiver process **was expanded** to all individuals statutorily eligible for an immigrant visa and a waiver of inadmissibility for unlawful presence in the United States.

Aliens who are not eligible to adjust their status in the United States must travel abroad and obtain an immigrant visa. Individuals who have accrued more than 180 days of unlawful presence while in the United States **must obtain a waiver of inadmissibility** to overcome the unlawful presence bars under section 212(a)(9)(B) of the Immigration and Nationality Act before they can return. Typically, aliens cannot apply for a waiver until after they have appeared for their immigrant visa interview abroad, and a Department of State (DOS) consular officer has determined that they are inadmissible to the United States.

The provisional unlawful presence waiver process allows those individuals who are statutorily eligible for an immigrant visa (immediate relatives, family-sponsored or employment-based immigrants as well as Diversity Visa selectees); who only need a waiver of inadmissibility for unlawful presence to apply for that waiver in the United States before they depart for their immigrant visa interview.

This new process was developed to shorten the time that U.S. citizens and lawful permanent resident family members are separated from their relatives while those relatives are obtaining immigrant visas to become lawful permanent residents of the United States.

The expansion of the provisional unlawful presence waiver process does not affect the continued availability of the Form I-601 process: Individuals who do not wish to seek or do not qualify for a provisional unlawful presence waiver can still file Form I-601, Application for Waiver of Grounds of Inadmissibility, after a DOS consular officer determines that they are inadmissible to the United States. The new approach of DHS, ICE and the Department of Justice ignores these legal opportunities granted to *noncitizens already present in the United States*.

that of thousands of other detainees in Massachusetts, Rhode Island, Maine, and New Hampshire who will be denied the opportunity to seek release on bond under the new legal ruling adopted by the executive branch. The complaint alleges that the government's new policy violates constitutional and statutory due process rights as well as the Administrative Procedure Act. Same situation is affecting nowadays immigrants in Puerto Rico, under the jurisdiction of the First Circuit.

I. FACTUAL BACKGROUND:

Mr. Fermin is a 58 years old citizen and national of the Dominican Republic who last entered the US without undergoing proper inspection in December 2007. On December 23, 2023, he married in good faith Mrs. Elizabeth Guzman de los Santos, a US citizen by birth in San Juan, Puerto Rico. He has a USC child from a previous relationship, Jeremie Ricardo Fermin Perez, to whom he provides economic support and with whom maintains a very close relationship. Based on his marriage to Ms. Guzman, they filed and received approval for a Petition for Alien Relative. Subsequently, Petitioner applied for a provisional waiver to overcome inadmissibility issues. The case was accepted and is currently pending adjudication.

Around 7:40am in the morning of January 20, 2026, Mr. Fermin was blocked by immigration agents between two vans on his way to work in Villa Palmeras. They proceeded to open his car door and requested evidence of his legal presence in the US (no search warrant). In the absence of such evidence, they took him in and for the next two hours he was moved around Barrio Obrero, Piñones and Puerta de Tierra while picking up other people. All detainees were chained at all time by their arms and feet until they reached the Aguadilla SPC.

Attorney appearance along with a Pre-NTA Bond Predetermination Request was filed with the Immigration Court in Guaynabo, PR on January 22, 2026. The court was provided with evidence pertaining to Mr. Fermin's alienage, qualifying relatives, extended physical presence and good moral character. It was also provided with receipt notices for cases pending before immigration authorities (approved I-130 & pending I-601A).

Almost simultaneously a Habeas Writ was being prepared to file with the District Court for the District of

Puerto Rico.

Bond hearing was scheduled the following day before IJ Elvin Talavera pursuant to section 236(a) of INA. Counsel was present in court while Mr. Fermin appeared via videoconference from a local detention facility. Inasmuch as neither Mr. Fermin nor his attorney had been served with the corresponding charging document (NTA), bond was denied for lack of jurisdiction pursuant to 8 C.F.R.§ 1240, Matter of A-W, 25 I&N Dec. 45, 46-7(BIA 2009) In other words, Mr. Fermin had been inappropriately detained for three days. The Notice to appear (NTA) was finally served on Mr. Fermin that afternoon.

In compliance with said order, DHS filed a Motion for Court Order Custody Redetermination Hearing in which the agency emphasized: *"it's compliance with the Court's order and request for a bond hearing is made pursuant to the requirements of the order and is not intended, and should not be construed, as a waiver of any arguments, including its position that the respondent, who is present in the U.S. without admission is an applicant for admission as defined in INA § 235(a)(1), 8 U.S.C. § 1225(a)(1), and subject to detention under INA § 235(b)(2) 8 U.S.C. § 1225(b)(2); nor a waiver of any rights to seek appellate review or other relief from the Court's order."* The custody redetermination hearing along with the initial master calendar hearing were both scheduled for January 29, 2026 once again before IJ Elvin Talavera.

Once again, the court was provided with new and extensive evidence to reinforce Mr. Fermin did not represent a danger to society nor a risk flight. DHS replied with four arguments: 1) Mr. Fermin had re-entered in 2007 after he was granted a voluntary return; 2) he had been working throughout his time in the US without work authorization; 3) he had not filed his income tax returns and 4) Bond was set at $10,000, the highest counsel has seen in this jurisdiction for the 26 years she has been in practice. Mr. Fermin's master calendar hearing was continued for February 18, 2026 before the same immigration judge.

In his decision the immigration judge was quick at recognizing *Yajure Hurtado*, 29 I&N Dec. 216, 220-28 (BIA 2025) as a biding precedent and that, if it was not for the District Court order, the immigration court lacked jurisdiction to adjudicate bond request in Mr. Fermin's case.

Nonetheless, in its decision, the IJ relied on Hernandez-Lara v. Lyons, 10 F.4th 19 (1st Cir. 2021) which held that, *"due process requires the government to either (1) prove by clear and convincing evidence that [Hernandez] poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk."* The court's assessment of Mr. Fermin's case was summarized as follows:

> *"Respondent has been living in the United States continuously since he entered the Puerto Rico without inspection almost 18 years. Respondent has been married to a USC since December 2023. A Form I-130 was approved by USCIS in 2025 and a Form 601A waiver has been filed and pending adjudication. Respondent is an active parent of a USC minor, pays child support and has several other relatives living in the United States with LPR status. Respondent intends to file an EOIR-42B application with the Court. The respondent has no criminal record. There is no evidence that Respondent has paid any taxes in the United States."*
>
> *"The Court finds that it has not been proven by clear and convincing evidence that Respondent poses a danger to the community. The Court also finds that it has not been proven by a preponderance of the evidence that Respondent poses a flight risk."*
>
> *"After considering the positive and negative factors present in this case, in the exercise of the Court's discretion, it is ordered that Respondent be released from custody under bond of $10,000."*

Bond was subsequently paid for by private funding on February 3, 2026 and Mr. Fermin was released that same day. See Exhibits 1 and 2.

Mr. Fermin's detention serves no legitimate government interest. Respondents' decision to detain him without the right to a bond hearing was arbitrary and capricious.

Mr. Fermin Fernandez is not a flight risk or danger to the community. His detention took place while Mr. Fermin Fernandez was driving to work in Villa Palmeras, a highly dense Dominican sector in San Juan. The intervention was racially motivated, as many other cases, a conduct prohibited by the US Constitution.

Petitioner submits that his detention is a violation of his constitutional rights to due process. Detaining him now, after years of compliance, serves no legitimate purpose. It is a waste of government resources and inflicts an unbearable emotional and psychological burden on Mr. Fermin Fernandez, his USC spouse and his USC child.

II. JURISDICTION:

Because Article III "generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case," we will first address Respondents' challenge to this Court's

jurisdiction under 8 U.S.C. § 1252. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). This is an issue decided against Respondents in several Districts.

There are no jurisdictional hurdles precluding this Court from granting the Petition. The jurisdiction-stripping provision of 8 U.S.C. § 1252(g) does not apply here. This provision's scope is "narrow." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). It only strips federal court jurisdiction over claims arising from three circumstances: a decision or action (1) to commence removal proceedings, (2) to adjudicate cases, or (3) to execute removal orders. *See* 8 U.S.C. § 1252(g). Accordingly, § 1252(g) does not "cover[] all claims arising from deportation proceedings or impose[] a general jurisdictional limitation." *Regents of the Univ. of Cal.*, 591 U.S. at 19 (citation modified). None of the dispositions cited under 8 USC sec. 1252 are applicable to the facts of this case.

Section 1252(g) does not impose a jurisdictional limitation in this case because Petitioner's challenge does not arise from any of the narrow circumstances covered by that statute. Petitioner challenges only the decision to detain him during the pendency of those proceedings. *See Carrera-Valdez v. Perryman*, 211 F.3d 1046, 1047 (7th Cir. 2000) ("nothing in § 1252(g) precludes review of the decision to confine"); *Esquivel-Ipina v. LaRose*, No. 25-cv-2672, 2025 WL 2998361, at *3 (S.D. Cal. Oct. 24, 2025) (holding that § 1225(g) did not strip the court of jurisdiction to entertain habeas petitioner's challenge to his detention under § 1225(b)(2)(A)). Further, Section 1252(g) does not prohibit purely legal claims that do not challenge the Attorney General's discretionary authority. *See, e.g.*, *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (stating that § 1252(g) does not bar review of the "lawfulness" of a removal-related action because such claims are "collateral" to the discretionary decisions immunized by § 1252(g)).

The decision to detain Petitioner does not arises directly from the decision to commence and adjudicate removal proceedings against him. The decision to detain Petitioner is distinct from any of the decisions listed in § 1252(g). In Respondents' view, a decision to detain a noncitizen "arises from" a decision to commence proceedings insofar as the issue of detention arises as a consequence of the decision to commence proceedings in the first place. That construction fails because it flies in the face of Supreme Court precedent.

The Supreme Court has stated that the "arising from" language in § 1252(g) "refer[s] to just those three specific actions" listed therein. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). Because, as Respondents themselves implicitly recognize, Petitioner's challenge does not concern one of the three decisions listed in § 1252(g), that statute does not strip the Court of jurisdiction over this matter.

In addition to § 1252(g), neither 8 U.S.C. §§ 1225(b)(4) or section 1252(b)(9), bar federal court review of Petitioner's detention at this stage. Petitioner's challenge cannot be raised before an immigration judge in removal proceedings. Section 1225(b)(4) provides that a challenge to a decision of an immigration officer, "if favorable to the admission of any alien," shall proceed before an immigration judge. *See* 8 U.S.C. § 1254(b). Because the decision to detain Petitioner without the opportunity for bond is plainly not favorable to the admission of Petitioner, § 1225(b)(4) is inapposite. *See Cardona-Lozano v. Noem*, No. 1:25-cv-1784, 2025 WL 3218244, at *1 n.2 (W.D. Tex. Nov. 14, 2025) (Pitman, J.) (stating that "the Court finds nothing in § 1225(b)(4) that bars its jurisdiction" over habeas petitioner's challenge to his detention under §1225(b)(2)(A)).

Likewise, § 1252(b)(9) is inapplicable. That statute limits judicial review of questions of law and fact arising from a removal proceeding to judicial review of a final order of removal. *See* 8 U.S.C. § 1252(b)(9). But § 1252(b)(9)'s limitation does not apply "where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." *Regents of the Univ. of Cal.*, 591 U.S. at 19 (citation modified). In challenging the legality of his detention without the opportunity for bond, Petitioner is "not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." *See id.* Accordingly, § 1252(b)(9) does not bar Petitioner's challenge at this stage. *See Mahdawi v. Trump*, 136 F.4th 443, 452 (2d Cir. 2025) ("Consequently, even if his claims have a substantive overlap with challenges he may bring in his removal proceedings, his detention claims do not themselves challenge or arise from removal proceedings, and § 1252(b)(9)'s channeling function has no role to play." (citation modified)).

In addition, courts have consistently recognized that challenges to the legality of a noncitizen's detention are independent of removal-based claims and not barred by Section 1225(g). *See*, *e.g.*, *Carrera-Valdez v. Perryman*, 211 F.3d 1046, 1047 (7th Cir. 2000) ("[N]othing in § 1252(g) precludes review of the decision to confine."); *Hamama v. Adducci*, 912 F.3d 869 (6th Cir. 2018) (acknowledging that "the district court had jurisdiction over the detention-based claims and that this jurisdiction is an independent consideration that is not tied to whether the district court has jurisdiction over the removal-based claims.").[3] Further, Section 1252(g) does not prohibit purely legal challenges that do not challenge the Attorney General's discretionary authority. *United States v. Hovespian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (*en banc*); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (Section 1252(g) does not bar review of the "lawfulness" actions that are "collateral" to the discretionary decisions immunized by that provision.) Section 1252 (e) 3 is also inapplicable. This is not a judicial review of determinations under section 1225.

III. Petitioner Is Detained Pursuant to § 1226(a), Which Requires an Individualized Bond Hearing.

Mr. Fermin Fernandez alleges his detention violates his constitutional rights and the Immigration and Nationality Act (INA) as well as his due process rights, his right to access to counsel under the Fifth Amendment to the United States Constitution and adequate conditions of confinement. He requested, in part, an immediate TRO prohibiting the Government, their agents, and employees from transferring Petitioner out of the District of Puerto Rico until he receives a bond hearing and until his writ of habeas corpus is fully reviewed, which was granted in part by the Court at Dkt. 5:

> The Immigration and Nationality Act, 8 U.S.C. § 1226(a), "provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal." Rodriguez Diaz v. Garland, 53 F.4th 1189, 1196 (9th Cir. 2022). Section 1226(a) confers suspected noncitizens "an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing . . . ." Id. at 1202.

[3] In *Hamama*, the Sixth Circuit ultimately concluded that the detention-related claims were also barred from review; but that was because 8 U.S.C. § 1252(f)(1) bars claims seeking class-wide, non-habeas, injunctive relief, something Petitioner does not seek. *Hamama*, 912 F.3d at 877.

To assess whether Petitioner is likely to succeed on the merits in his request for a bond hearing, the Court addressed the threshold question of which statute provides the Government with authority to detain Mr. Fermin Fernandez. And five different judges from this District have arrived to the same conclusion. See Cases No. 26-1014; 26-1028; 26-1036; 26-1041and 26-1045.

The Government possesses the authority to detain certain noncitizens according to the Immigration and Naturalization Act (INA) Importantly, the INA differentiates between ***mandatory*** detention and ***discretionary*** detention. Only the latter provides a detainee with an entitlement to a bond hearing before an Immigration Judge. The statutory provisions controlling this distinction are: 8 U.S.C. §§ 1225 and 1226.

Section 1225 governs the detention of immigrants who have not been "admitted" under the INA. It provides for inspection of "[a]ll [noncitizens] . . . who are *applicants for admission* or otherwise seeking admission or readmission to or transit through the United States." 8 U.S.C. § 1225(a)(3).

An "**applicant for admission**" has not been clearly defined, but according to the statute it could be a "[non-citizen] present in the United States who has not been admitted or who arrives in the United States . . . ." Id. § 1225(a)(1). Notably, Section 1225(b)(2) marshals a **mandatory** detention scheme by providing that, for noncitizens *who are* ***"applicant[s] for admission***, if the examining immigration officer determines that a [noncitizen] **seeking** admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a [for full removal proceedings]." Id. § 1225(b)(2)(A). Detention under Section 1225(b)(2) is generally mandatory, and the statute does not provide for bond hearings. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

On the other hand, contrary to the reasoning of the Government in their Memorandum (Dkt.18), **Section 1226** governs the "usual removal process" and ***affords noncitizens procedural protections not available in expedited removal proceedings***. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020).

Under Section 1226, a person who is "arrested and detained" faces the following outcomes:

-the Attorney General "may continue to detain the arrested [noncitizen]";

-the Attorney General "may release the [noncitizen] on bond of at least $1,500"; or

-the Attorney General "may release the [noncitizen] on conditional parole." 8 U.S.C. § 1226(a).

Therefore, a " discretionary detention framework for noncitizens" pursuant to Section 1226(a), exists. *Gomes v. Hyde*, No. 1:25-CV-11571, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025).

Section 1226(a) of INA entitles a noncitizen to an initial bond hearing before a ***neutral*** decisionmaker, the *opportunity to be represented by counsel and to present evidence*, the right to appeal, and the right to seek new hearing when circumstances materially change. *See also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021) (holding that *the Government bears the burden of proving at an initial bond hearing held under Section 1226(a) that (1) a noncitizen poses a danger to the community based on* ***clear and convincing evidence****, or (2) the noncitizen poses a flight risk based on a* ***preponderance*** *of the evidence*); *Brito v. Garland*, 22 F.4th 240, 246 (1st Cir. 2021) (same).

Noncitizens involved in specific criminal activities are not covered by the general rule of discretionary detention under Section 1226(a). 8 U.S.C. § 1226(c)(1).

Respondents attempt to argue that Petitioner is "an applicant for admission" who is "seeking admission" and thus subject to the mandatory detention scheme under § 1225(b)(2)(A). Contrary to the Government's averments the Petitioner at no moment had admitted to be an "applicant for Admission" a concept not clearly defined by the statute, nor that he was seeking admission at the moment of the detention. Respondents repeat a novel interpretation, rejected by numerous federal courts, that § 1225 governs "applicants for admission" while § 1226 governs those "who have been admitted."[3] But it has been historically recognized that § 1226 applies to noncitizens inside the country, including those who entered without inspection, while § 1225 is limited to noncitizens seeking admission at a border or port of entry.[4]

This has been the statute interpretation for approximately 29 years, even after 1996 passage of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA).

> [T]he text of the statute supports Petitioners' reading for the reasons already articulated by the district court in *Padron Covarrubia*s's case: the government's reading renders "an alien seeking admission" needless surplusage, and makes several provisions of § 1226 surplusage as well, or, at best, mostly

> unnecessary because of overlapping with § 1225. This is a whirlpool of statutory confusion where, on Petitioners' reading, there are only still waters. Petitioners provide a simple revision Congress could have passed had it wished to make noncitizens already present in the United States subject to § 1225(b)(2)(A): "if the examining immigration officer determines that an [applicant for] admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained[.]" Instead, Congress specifically limited the subsection's mandatory detention authority to noncitizens "seeking admission." "If Congress had wanted the provision to have th[e] effect [urged by the government], it could have said so in words far simpler than those that it wrote." *Biden v. Texas*, 597 U.S. 785, 798 (2022). On the government's reading, the phrase "alien seeking admission" does no independent work. But "[i]t is . . . a cardinal principle of statutory construction that we must give effect, if possible, to every clause and word of a statute." *Williams v. Taylor*, 529 U.S. 362, 404 (2000). The government's reading does not do so.

Buenrostro-Mendez v. Bondi, Dissent, supra, pp. 25-26.

Respondents' arguments to the contrary are unavailing. As the overwhelming majority of courts that have considered this issue have determined, Respondents' reading of the statute is contrary to the plain meaning of the text, basic principles of statutory interpretation, and well-established federal precedent. *See, e.g.*, *Armando Becerra Vargas v. Bondi*, SA-25-cv-1023, 2025 WL 3300446 (W.D. Tex. Nov. 12, 2025) (Bemporand, MJ.) (collecting cases and noting that "the majority of the district courts in the Fifth Circuit—and the courts in this District—that have considered the issue" "have rejected Respondents' broad new interpretation of § 1225(b)(2)"), *report and recommendation adopted sub nom. Vargas v. Bondi*, SA-25-cv-1023, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) (Biery, J.); *Covarrubias v. Vergara*, 5:25-cv-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025) (Kazen, J.) (same).

Furthermore, Respondents' interpretation of "seeking admission" is at odds with background constitutional principles. Respondents posit that, on Petitioner's reading of the statute would now bestow him with the benefit of additional process. However, it is well established "that once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). By providing additional process for noncitizens that have entered the country, the relevant statutory framework aligns with well-established constitutional principles that do the same.

> The core issue is whether the phrase "an alien seeking admission" in § 1225(b)(2)(A) limits the sweep of persons subject to mandatory detention under the statute, or whether it merely restates the category of "applicant for admission" defined by § 1225(a)(1) and reproduced in § 1225(b)(2)(A)'s first phrase. The government argues that there is no meaningful difference between an "applicant for admission" and "an alien seeking admission," because the latter category is broader than and includes the former. Because Petitioners are applicants for admission as defined by § 1225(a)(1), therefore, they are necessarily also subject to § 1225(b)(2)(A). This is not a credible reading for several reasons. Instead, consistent with the statutory definition of "admission," the provision's context, the Supreme Court's understanding of the statutory scheme, and the whole history of American immigration law, "seeking admission" means what it sounds like: actively seeking to enter this country.

Buenrostro-Mendez v. Bondi, Dissent, supra at 25.

In short, Respondents do not dispute that Petitioner entered the United States without inspection in 2007 and has been present and resided in the United States for more than 2 decades. In other words, Petitioner was not "arriving" at a border nor "seeking admission" when he was arrested.[4] Accordingly, Petitioner is being detained pursuant to § 1226, which requires an individualized bond hearing as this Court correctly decided in the temporary restraining order.

IV. Petitioner's Continued Detention Without a Bond Hearing Violates Due Process.

Petitioner has also established that his continued detention without a bond hearing violates his right to procedural due process.

On January 23, 2026, Petitioner filed his *Temporary Restraining Order* to preserve the status quo and avoid transfer to other jurisdiction pending resolution of his *Petition for Writ of Habeas Corpus,* filed the same day.

[4] "Petitioners' reading gives "seeking admission" independent force—it refers to noncitizens seeking entry into the United States—and chimes with the statutory definition of "admission" as "lawful entry . . . into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see Granados v. Noem*, No. SA-25-CA-01464, 2025 WL 3296314, at *6 (W.D. Tex. Nov. 26, 2025) (observing that, when similar petitioners were detained, they "w[ere] not seeking entry, much less 'lawful entry . . . after inspection and authorization'" (quoting 8 U.S.C. § 1101(a)(13)(A))). As the district court in Padron Covarrubias's case recognized, "a variation in terms suggests a variation in meaning." Scalia & Garner, *supra*, at 170. The surplusage canon and statutory definition of "admission" reinforce the common-sense understanding: Petitioners were not "seeking admission" when they were arrested inside the United States. *See Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008) ("Under th[e] statutory definition, 'admission' is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status[.]"). *Buenrostro-Mendez v. Bondi*, Dissent, supra, pp. 26-27.

In his *Petition,* Mr. Fermin Fernandez alleges that his detention is a violation of his constitutional rights to due process and is not justified under the Immigration and Nationality Act.

This Court initially accepted Petitioner's claims that absent judicial intervention, he faces imminent transfer outside of the District of Puerto Rico that would cause irreparable harm by severely interfering with his right to counsel and other constitutional rights. Accordingly, the Court enjoined Respondents from transferring or relocating Petitioner outside the District of Puerto Rico. (Dkt. 5)

Contrary to the Government theory, Section 1226(a)'s discretionary regime governs the detention because Mr. Fermin, was arrested while residing in the United States. **This interpretation aligns with the statutory distinction between arriving applicants for admission (governed by Section 1225) and noncitizens who are already present in the United States and are later arrested and detained (governed by Section 1226).** Applying Section 1225(b)(2) to this factual posture would blur that distinction and render Section 1226(a) effectively redundant[5], contrary to basic principles of statutory interpretation. In addition, Mr. Fermin has no criminal record at all, which could otherwise subject him to the mandatory detention exception outlined under Section 1226(c). *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 26-27 (1st Cir. 2021); *Rodriguez-Diaz*, 53 F.4th at 1196.

Where removal and detention of a noncitizen is discretionary, and not mandatory, Section 1226(a), entitles a noncitizen to an initial bond hearing before a neutral decisionmaker, the opportunity to be

[5] "[T]he government's position that "[m]ere overlap [between § 1225(b)(2)(A) and § 1226(c)(1)] is no basis for re-writing clear statutory text" drastically understates the significance of what it proposes. **Section 1226(c)(1) functions as § 1226's own mandatory detention provision, listing criminal and terrorism offenses that render noncitizens otherwise covered by § 1226, and so eligible for bond hearings under § 1226(a), subject to mandatory detention**. 8 U.S.C. § 1226(c)(1). This list was expanded just last year by the Laken Riley Act, which added offenses like theft and assault of a law enforcement officer. Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at § 1226(c)(1)(E)). **But this Act, and several of the other § 1226(c) exceptions referring to inadmissible noncitizens, would have been largely unnecessary if all inadmissible noncitizens were already subject to mandatory detention without a bond hearing under § 1225(b)(2)(A)**. *See Santos M.C. v. Olson*, No. 25-CV-4264, 2025 WL 3281787, at *3 (D. Minn. Nov. 25, 2025) ("If the government is correct, there was no reason for Congress to amend § 1226[.]")." (Emphasis added) *Buenrostro-Mendez v. Bondi*, Dissent, supra, p. 28.

represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change. *Rodriguez-Diaz*, 53 F.4th at 1202; *see also Doe*, 11 F.4th at 2.

A. THE BOND HEARING and the Futility of Administrative Remedies:

On January 23, 2026, the Immigration Court held a custody redetermination hearing in response to a pre NTA hearing petitioned by counsel. On that day the Court denied the bond and custody redetermination because the NTA had not been served on Mr. Fermin nor his counsel. Therefore, the court stated that there was no jurisdiction over the matter. *Matter of AW*, 25 I&N Decisions 45, 46-47 BIA 2009.

That same day, counsel for Mr. Fermin informed the Court that a writ of habeas corpus was to be filed with the US District Court of Puerto Rico.

On January 26, 2026 The Department of Homeland Security filed a motion for a court ordered custody redetermination hearing before the Immigration court. Said filing was in response to the temporary restraining order granted on January 23, 2026 on behalf of Mr. Fermin by the United States District Court for the District of Puerto Rico.

The request was conducted pursuant to section 236(a) of INA. However, DHS clarified that compliance with the order was not intended or meant to be construed as a waiver of any arguments, including its position that the Petitioner was subject to mandatory detention under INA 235(b)(2).

The new custody redetermination hearing was scheduled for January 29, 2026 at 8:30 AM. Bond was set at $10,000.00 in January 29, 2026. It was paid on February 3, 2026 the same day in which Mr. Fermin was released. The IJ stressed that bond was fix in compliance with this Court Order because, according to the agency there is no jurisdiction to grant bond hearings in these cases.

-Exhaustion of Administrative Remedies:

Respondents refer that Petitioner must exhaust administrative remedies using his right to appeal before the BIA. But that remedy is impossible to exhaust since the Chief Justice of the BIA, Teresa Riley who was appointed in December 2025, as recent as January 13, 2026, at 3:09 pm reminded all immigration judges that "**Yajure-Hurtado remains binding precedent on agency adjudications**." Any allegations regarding

exhaustion of administrative remedies becomes futile in these circumstances. Petitioner not only challenged the legality of his detention but also requested a TRO which was granted *in part* by this Court. (Dkt. 5)

The Government bases its decision to not grant a bond hearing by resting upon a recent decision issued by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This administrative decision found that Immigration Judges do not have jurisdiction over custody redeterminations for noncitizens who were present in the United States without admission. Id. at 220-28.

However, the Court is not bound by BIA interpretations that conflict with the statutory text or controlling circuit precedent which is what the Government proposed. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). After a conscious analysis of the implications of the proposed interpretation by the Government and by the BIA, district courts have rejected the approach of *Matter of Yajure Hurtado* and upheld the right to a bond hearing under circumstances akin to those of the Petitioner.[6] In a recent Order at the District Court, similar circumstances of this case, the Court issued the habeas corpus and ordered "to release Petitioner immediately pending that bond hearing." See Case No. 26-1014 (MAJ):

> "Emergency Motion for Order to Show Cause." On January 13, 2025, this Court enjoined the Defendants from transferring Petitioner out of the District of Puerto Rico until Petitioner was afforded an opportunity for a bond hearing, since 8 U.S.C. § 1226(a) entitles Petitioner to a bond hearing as of right. (**ECF No. 5**) (citing *Elias Escobar v. Hyde*, Civ. No. 25-12620, 2025 WL 2823324, at *3 (D. Mass. Oct. 3, 2025)). **Since the subsequent bond proceedings held before an Immigration Judge were dismissed for lack of jurisdiction, (ECF No. 8 at 2), that prior Order remains in effect. Accordingly, at this time Respondents may not transfer Petitioner out of the District**. The Court notes that in other recent cases where the Government has argued that there is no right to a bond hearing for individuals detained under circumstances similar to those of Petitioner, their arguments have been rejected again and again by various district courts. ***See*,** e.g., *Elias Escobar*, 2025 WL 2823324; *Moreira Aguiar v. Moniz*, 25-cv-12706, 2025 WL 2987656 (D. Mass. Oct. 22, 2025); *Tomas Elias v. Hyde*, 25-cv-540, 2025 WL 3004437 (D.R.I. Oct. 27, 2025); *Rodriguez v. Nessinger*, 25-cv-505, 2025 WL 3306576 (D.R.I. Oct. 17, 2025); *Los Caballero v. Baltazar*, 25-cv-3120, 2025 WL 2977650 (D. Co. Oct. 22, 2025); *Barco Mercado v. Francis*, 25-cv-6582,

[6] *See*, *e.g.*, *Sampiao v. Hyde*, 799 F. Supp. 3d 14, 29 n.11 (D. Mass. 2025) (noting the court's disagreement with the BIA's analysis in Yajure Hurtado); *Elias Escobar v. Hyde*, No. 25-CV-12620, 2025 WL 2823324, at *3 (D. Mass. Oct. 3, 2025); *Moreira Aguiar v. Moniz*, No. 25-CV-12706, 2025 WL 2987656, at *3 (D. Mass. Oct. 22, 2025); Tomas *Elias v. Hyde*, No. 25-CV-540, 2025 WL 3004437, at *3 (D.R.I. Oct. 27, 2025); *Lora-Salazar v. Ripa*, No. 26-CV-1014-MAJ (D.P.R. Jan. 13, 2026) (Docket Nos. 5, 13). In the same vein, district courts have similarly rejected the adoption of a broad interpretation of 1225(b)(2) that would, consequently, generate overlap with Section 1226(a) as to erroneously deny the noncitizen's right to a bond hearing. *See generally Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59 (D.N.H. 2025); *Rodriguez v. Nessinger*, No. 25-CV-505, 2025 WL 3306576 (D.R.I. Oct. 17, 2025); *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025); *Loa Caballero v. Baltazar*, No. 25-CV-3120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025) (granting a preliminary injunction to release a Petitioner unless provided with a bond hearing compliant with *Hernandez-Lara*).

2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025). In each of those cases, federal district judges granted habeas relief and ordered the Government to comply with the well-established rule that a person detained under Section 1226(a) is entitled to a bond hearing. This Court will do the same. **Accordingly, the Court GRANTS 1 "Petition for Writ of Habeas Corpus."** Respondents are hereby **ORDERED** to provide Petitioner with a bond hearing under Section 1226(a) within 10 days of this Order. Respondents are further **ORDERED to release Petitioner immediately pending that bond hearing. The Government shall set minimal release conditions that will reasonably assure Petitioner's appearance at the bond hearing.** Respondents are further **ORDERED** to provide individualized reasons at the bond hearing as to why Petitioner is granted or denied bond. If Respondents do not provide Petitioner with a bond hearing under Section 1226(a) as hereby ordered, **or if said bond hearing is dismissed for lack of jurisdiction**, **Petitioner must be immediately released from detention.** No later than 1/29/2026 the Parties shall file a Joint Status Report concerning (1) the results of any bond hearing that was conducted or, if no hearing was held, advise the Court of the date Petitioner was released from custody; and (2) whether any additional proceedings in this matter are required. Signed by Judge Maria Antongiorgi-Jordan on 1/16/2026. (ao) (Entered: 01/16/2026)" (Emphasis added).

This case evidenced the futility of exhausting administrative remedies when immigration judges are ignoring court rulings, giving more importance to the instructions received from the Board of Immigration Appeals. In addition, because Mr. Fermin Fernandez is not a "prisoner" within the context of the Prisoners' Litigation Reform Act (PLRA) but a civil detainee, the requirement to exhaust administrative remedies does not apply as it would if he was considered an inmate.

In *Maldonado Bautista, infra,* the Court stated:

Courts may waive prudential exhaustion if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing,* 370 F.3d at 1000. Petitioners bear the burden of demonstrating at least one of these factors applies. *See Ortega-Rangel v. Sessions,* 313 F.Supp.3d 993, 1003 (9th Cir. 2018).

Petitioners argue that appeals to the BIA would be futile, further detention constitutes irreparable injury, and agency delay in adjudicating bond appeals warrants excusing exhaustion. [App. at 17–20]. Respondents contend Petitioners failed to carry their burden, signaling back to the exhaustion issue and characterizing BIA review as adequate. [Opp. at 25–26].

The Court finds Petitioners' futility argument persuasive, which positions itself as the inverse of Respondents' argument about the agency's ability to self-correct. The language of the DHS Guidance Notice, the IJs' practice of denying bond hearings based on that Notice, and the cited BIA decision in Petitioners' Application sufficiently demonstrate DHS and DOJ's commitment to the positions detailed in the Notice, which would render appellate review at the BIA inadequate or futile.

Having found exhaustion of remedies is not required and for the other reasons discussed above, the Court hereby **GRANTS** Petitioners' TRO. [Dkt. 5-1].

Additionally, the Court finds that Petitioners will be irreparably prejudiced if Respondents choose to relocate Petitioners outside of this judicial district pending final resolution of this litigation. Id., p. 12.

Finally, administrative judges of immigration have no authority to address the constitutional challenges to Mr. Fermin Fernandez arrest, detention, and transfer to a different jurisdiction. See Ozturk: (Neither the IJ nor the BIA has "jurisdiction to decide constitutional issues." *Rabiu v. Immigr. & Naturalization Serv*., 41 F.3d 879, 882 (2d Cir. 1994); see also *Hinds v. Lynch*, 790 F.3d 259, 262 (1st Cir. 2015) (citing *Matter of C*-, 20 I. & N. Dec. 529, 532 (BIA 1992)); *Arriaga v. Mukasey*, 521 F.3d 219, 222 (2d Cir. 2008) (same).)

Based on the merits of Petitioner's claim, it is requested that this Court deny the Respondents Memorandum and Opposition to Petition for Writ of Habeas Corpus. Moreover, when the Government has no valid arguments against the evident and irreparable harm that the Petitioner suffered and would continue to suffer if the writ of habeas corpus is not issued. The balance of interests must favor Petitioner's wellbeing.

B. Irreparable Harm:

Here, the "irremediable" injury would be multiple: detention; removal from this Court's jurisdiction pending the habeas corpus proceedings; and the imminent consequences that would have on his person and his rights. Without a bond, Mr. Fermin Fernandez faces a potential prolonged detention, depriving him of his liberty. *Ferrara v. United States*, 370 F. Supp. 2d 351, 360 (D. Mass. 2005) ("Obviously, the loss of liberty is a . . . severe form of irreparable injury."). During this time, the Petitioner would also face a substantial risk of confinement in facilities that courts have repeatedly found raise serious health, safety, and due process concerns. *See, e.g.*, *Mercado v. Noem*, 800 F. Supp. 3d 526, 545 (S.D.N.Y. 2025) (discussing allegations of "significant overcrowding, pervasive unsanitary conditions, lack of basic hygiene resources, insufficient food and water, inadequate sleeping conditions, substandard medical care, and extremely significant restrictions on attorney-client communications" in a New York immigration detention center).

Moreover, the Petitioner was struggling to avoid be transferred to an immigration detention facility in mainland United States and separated from his counsel – which raises grave concerns as to his constitutional right to access to counsel. (See Dkt. 3)

Respondents' erroneous argument that Mr. Fermin due process was not violated relies on a Supreme Court case, *Demore v. Kim*, 538 U.S. 510 (2003), that is materially different from the case before this court's

consideration. Therefore, the application is incorrect. In *Demore*, the noncitizen was a permanent resident who was placed in removal proceedings under section 236 of the INA, **after having committed a criminal offense**, which deemed him a "deportable alien". According to section 237, a "deportable alien" is someone who:1. at the time of entry is found inadmissible; 2. has committed certain criminal offenses; 3. has falsified documents; 4. has engaged in activities with security related grounds; 5. has become a public charge after being in the country for a certain amount of time, and; 6. is an unlawful voter. See 8 U.S.C § 1227. Mr. Fermin Fernandez as we have stressed from the beginning is not under any of these categories. In *Maldonado Bautista*, the Court stressed:

> "In the present matter, the Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a). *See Rodriguez Diaz*, 53 F.4th at 1202."

C. *JENNINGS V. RODRIGUEZ*:

In *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), the Supreme Court held that Section 1225 authorizes the Government "to detain certain [noncitizens] seeking admission into the country," while Section 1226 "authorizes the Government to detain certain [noncitizens] already in the country." 583 U.S. at 289. Regarding the mandatory detention of the Petitioner in Jennings, the Court considered the criminal conviction, something that is not present in this case.

> In sum, U.S. immigration law authorizes the Government to detain certain *aliens seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain *aliens already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, Id. (emphasis added). At page 297 (referring to "aliens seeking entry into the United States ('applicants for admission' in the language of the statute)").

D. THE PETITIONER IS PART OF *MALDONADO BAUTISTA* NATIONWIDE CLASSACTION:

To justify the detention of Fermin Fernandez, Respondents refer to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218 (BIA 2025). In *Yajure Hurtado*, the Board of Immigration Appeals (BIA) determined that immigration judges lacked jurisdiction to see bond hearings because, under section 1225, all noncitizens *seeking admission* were subjected to mandatory detention. But Respondents failed to apply a decision from the Central District Court of California, that on December 18, 2025, issued a Final Summary Judgment certifying a class

action, and determined that noncitizens present in the United States without admission **are not applicants for admission and cannot be subjected to mandatory detention**. See *Maldonado Bautista,* 5:25-cv-01873-SSS-BFM. The Court stated that to be part of the bond eligible class: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." Id. See also *Lopez-Lugo v. Bondi*, 2025 U.S. Dist. LEXIS 256892, *Francisco T. v. Bondi*, 2025 U.S. Dist. LEXIS 227338.

The Petitioner in the instant case is a beneficiary of the class and not a *mandatory detention case*. Mr. Fermin Fernandez is entitled to his bond hearing in Puerto Rico. See *Pablo Lora Salazar v. Garret J. Ripa et als*, Civil No. 26-cv-1014 (MAJ).

Considering the decision in *Maldonado Bautista, that certified a nationwide class of immigration detainees who are eligible for bond, Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al*, (C.D. of California, Case No. :25-cv-01873-SSS-BFM)[7], the posture of IJ's at this stage is reckless and arbitrary, urging the intervention of this Court.

As a matter of fact, during this month the ACLU of Puerto Rico and the undersigned counsels obtained 4 temporary restraining orders and an Order instructing for the return of one of our clients due to the continued challenge to the Court authority by the Department of Homeland Security (DHS) and the Immigration and Custom Enforcement (ICE) in Puerto Rico. See U.S. District Court for the District of Puerto Rico, Cases No. 26-1028 (GMM); 26-1036 (PAD); 26-1041 (RAM); 26-1045 (SCC). An additional Case, No. 26-1014 (MAJ) reflects also our statement. It is alarming that immigrants with no access to a lawyer would have to endure an arbitrary violation of their civil rights and liberties at the hands of ICE agents. And this is wrong!

[7] *Maldonado Bautista* is a nationwide class action with a final determination of the District Court, contrary to the arguments of the Government. The Petitioner and many other similarly situated in Puerto Rico complies with the definition of class members in this case.

The courts have a duty to apply the law to all class members, as determined in the binding, final judgment issued *in Maldonado Bautista*. See 2025 WL 3678485, at *1. The Executive Office for Immigration Review is a Defendant in *Maldonado Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs*., 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011). The pending appeal has no impact on the finality and effect of the declaratory judgment unless stayed, vacated, or reversed by an appellate court. See 18 Moore's Federal Practice – Civil § 131.30[2][c][ii] (2025); *United Tchr. Assocs. Ins. Co. v. Union Lab. Life Ins. Co*., 414 F.3d 558, 570–72 (5th Cir. 2005) (surveying cases).

In other words, the federal government—including EOIR—is bound by the *Maldonado Bautista* declaratory judgment granting Mr. Fermin the right for a bond hearing under § 1226(a). This understanding of declaratory judgments—and thus this court's compliance with the declaratory judgment in *Maldonado Bautista*—is consistent with the decisions of many courts. See, e.g., *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("[T]he discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court."), abrogated on other grounds by, *Schieber v. United States*, 77 F.4th 806 (D.C. Cir. 2023), cert. denied, 144 S. Ct. 688 (2024); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"); *Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay pending appeal."), rev'd on other grounds, 184 F.3d 900 (D.C. Cir. 1999).

E. Balance of Interests: The Public Interest

When the Government, as here, is acting contrary to the plain text of federal law, the balance of equities weighs against it. *See New York v. Trump*, 133 F.4th 51, 71 (1st Cir. 2025); *New Jersey v. Trump*, 131 F.4th 27, 40-41 (1st Cir. 2025). Therefore, there is patently "no public interest in the perpetuation of unlawful agency action." *Rhode Island v. Trump*, 155 F.4th 35, 50 (1st Cir. 2025) (citation omitted). See TRO issued in case number 26-1028 (GMM) (Dkt. 7)

V. The Immediate and Legal Custodian Rule:

Under 28 U.S.C. sec. 2242-2243, the proper respondent in a habeas petition is the immediate custodian over the detainee. *Rumsfeld v. Padilla*, 542 U.S. 426, at 442-43 (2004). However, not having an official Warden (federal official), the person with the legal custody of Mr. Fermin when the Petition was filed was Rebecca González Ramos and/or Roberto Vaquero. See *Roman v. Ashcroft*, 340 F.3d 314, 319 (6th Cir. 2003). The Petitioner has been cautious and included as Respondents not only the immediate custodian but also their direct supervisors as legal custodians.

Respondents' argument that Petitioners sued the incorrect custodian likewise fail. As a matter of fact, the immediate custodian rule invoked by the respondents is more flexible in immigration habeas corpus proceedings for obvious reasons. In *Ozturk v. Trump*, Case No. 25-cv-10695-DJC; (2nd Cir. 25-1019) the petitioner included as a proper respondent the ***Special Agent in Charge***. The Court validated compliance with the habeas requirements stating that the petition was filed in the district of confinement and that it names the petitioner's *immediate custodian* ***or*** *legal custodian*. In addition, *Ozturk* included the "Field Office Director" as a respondent. This was challenged by the Government and the Court validated Ozturk contention: "Öztürk's original petition named Patricia Hyde, who it identified as ICE's New England Field Office Director. Dist. Ct. Dkt. ECF No. 1 at 1–2. Because Öztürk was in transit when her petition was filed, Öztürk contends that Hyde was in fact her immediate custodian during that period. See Opp. at 12." (*Ozturk,* at p. 16) However, in our case, Mr. Fermin was not in transit when the petition was filed. Therefore, the proper respondent is Rebecca González, ***Special Agent in Charge*** of HIS and ICE operations in Puerto Rico and/or Roberto Vaquero.

For individuals in jail, "there is generally only one proper respondent to a given prisoner's habeas petition," who is the "immediate custodian." *Padilla v. Rumsfeld*, 542 U.S. 426, 434–35 (2004). The immediate custodian is generally "the person having a day-to-day control over the prisoner." *Robledo-Gonzales v. Ashcroft*, 342 F.3d 667, 673 (7th Cir. 2003) (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986)). For someone not in jail, the custodian can be someone else, even a court. *See*, *e.g.*, *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 495 (1973). The Seventh Circuit says courts should look for "someone (or some institution) who has both an interest in opposing the petition if it lacks merit, and the power to give the petitioner what he seeks if the petition has merit." *Reimnitz v. State's Att'y of Cook Cnty.*, 761 F.2d 405, 409 (7th Cir. 1985). In a recent case in this District, ***Case No. 26-1045*** (SCC), the Court ordered Rebecca Gonzalez, as the immediate custodian of the detainee to return the Petitioner to the jurisdiction of Puerto Rico: "Failure to comply with this Order shall result in Rebecca González Ramos, as Mr. Avila's designated custodian, being held in contempt of court." (Dkt. 16) Respondents complied with said order.

In this case ICE, and Homeland Security represented by Rebecca González where the legal and/or immediate custodian of Mr. Fermin since his detention until the filing of the Habeas Petition.

In particular, the Supreme Court has held that when a prisoner is held "in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules." *Padilla*, 542 U.S. at 450 n.18. Yet it cannot be the case that individuals are barred from seeking habeas corpus for hours or days until they reach a new destination; that would not only frustrate the purpose of the writ, but it would also be inconsistent with its history. 3 W. Blackstone, Commentaries *131 ("[T]he sovereign is at all times entitled to have an account, why the liberty of any of her subjects is restrained," "not only in term-time, but also during the vacation"); *Khalil v. Joyce*, 777 F. Supp. 3d 369, 410 (D.N.J. 2025) ("The implication of not applying the unknown custodian exception" in such circumstances would be that "the Petitioner, detained in the United States, would not have been able to call on any habeas court.").

In *Roman v. Ashcroft* the Sixth Circuit found that "historically, the question of who is the custodian, and therefore the appropriate respondent in a habeas suit, depends primarily on **who has power over the petitioner**

and on the convenience of the parties and the court." *Roman v. Ashcroft*, 340 F.3d 314, 319 (6th Cir. 2003) (Emphasis added).

A "detained [noncitizen] filing a habeas corpus petition ***should generally*** name as a respondent the person exercising daily control over his affairs." *Id.* at 320. (Emphasis added). The Court then went on to "conclude that although the warden of each detention facility technically has day-to-day control over [noncitizen] detainees, the INS District Director for the district where a detention facility is located 'has power over' [noncitizen] habeas corpus petitioners." *Id.* In this case the Special Agent in charge is Rebecca González; the proper respondent.

"The Supreme Court's decision in *Ex parte Endo*, 323 U.S. 283 (1944), 'stands for the important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to **any respondent** within its jurisdiction who has legal authority to effectuate the prisoner's release.'" Padilla, 542 U.S. at 441. (as cited in *Ozturk*, supra, pp. 12-13) (Vermont district court obtained jurisdiction at that time and retains it even in light of Öztürk's subsequent transfer to Louisiana, p. 13) In this case, the jurisdiction resides in the District of Puerto Rico and Rebecca González as the proper respondent within its jurisdiction.

CONCLUSION

In conclusion, Petitioner respectfully urges the Court to reach the same conclusion as legion federal courts by likewise holding that Petitioner's continued detention without a bond hearing violates the Immigration and Nationality Act and his right to due process. Additionally, his detention was racially motivated, based on national origin and discriminatory grounds. Petitioner respectfully requests that this Court grant his Petition for a Writ of Habeas Corpus.

PRAYER OF RELIEF:

WHEREFORE, the Petitioner very respectfully request from the Court to DENY the Government Memorandums in Opposition to *Petitioners' Writ of Habeas Corpus* (Dkt. 21) and Petitioners' *Urgent Motion* (Dkt. 24); and:

a) To issue the writ of habeas corpus and reaffirm the right to due process and to a bond hearing in this case;
b) To allow Petitioner a limited discovery encompassing the access to the Petitioner's complete immigration file, including but not limited to any agreement between ICE and the Municipal Police of San Juan to collaborate in immigration detentions;
c) To allow the Petitioner to take a deposition on the immediate supervisor of the ICE officers involved in the detention of the Petitioner;
d) Enjoin Respondents, their officers, agents, and employees from transferring or relocating Petitioner outside the District of Puerto Rico pending resolution of the Petition for Writ of Habeas Corpus;
e) Grant such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico on February 13, 2026.

s/ Fermín L. Arraiza-Navas
#215705 (US District Court Puerto Rico)

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Dated: February 13th, 2026

CERTIFICATE OF SERVICE : I hereby certify that, on February 13th, 2026, I electronically filed the foregoing document with the United States District Court of Puerto Rico by using the CM/ECF system, which will send notifications of such filing to all CM/ECF counsel of record.

Dated this February 13th, 2026.

s/ Fermín L. Arraiza-Navas
Attorney Name