UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSE ARNULFO GUERRERO ORELLANA, on behalf of himself and others similarly situated, Petitioner-Plaintiff, v. ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility, et al., Respondents-Defendants.	Case No. 25-12664-PBS

PETITIONER-PLAINTIFF'S RESPONSE TO RESPONDENTS-DEFENDANTS' STATEMENT OF UNCONTROVERTED FACTS

Petitioner-Plaintiff ("Plaintiff") hereby responds to Respondents-Defendants' ("Defendants") L.R. 56.1 Statement of Uncontroverted Facts (D.E. 166). For the Court's convenience, Defendants' Responses to Plaintiff's Statement of Uncontroverted Facts have been included below as well.

I. PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF FACTS

1. Petitioner/Plaintiff, Jose Arnulfo Guerrero Orellana, is a native and citizen of El Salvador. Declaration of Keith M. Chan ("Chan Decl.") (ECF No. 47) ¶ 6.

Plaintiff's Response: Not disputed solely for purposes of this motion.

2. Mr. Guerrero Orellana is not a citizen of the United States. Chan Decl. ¶ 6; *see also* Am. Petition (ECF No. 10) ¶ 26.

Plaintiff's Response: Not disputed solely for purposes of this motion.

3. Mr. Guerrero Orellana entered the United States without inspection, admission, or parole by an immigration officer. Am. Petition (ECF No. 10) ¶ 27; Declaration of Annelise Araujo ("Araujo Decl.") (ECF No. 16) ¶ 7; Chan Decl. ¶¶ 6-7.

Plaintiff's Response: Not disputed solely for purposes of this motion.

4. Mr. Guerrero Orellana has not been admitted to the United States. Chan Decl. ¶¶ 7-8.

Plaintiff's Response: Not disputed solely for purposes of this motion.

5. U.S. Immigration and Customs Enforcement (ICE) encountered Mr. Guerrero Orellana on September 18, 2025, in Everett, Massachusetts, determined he was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I), served him with a notice to appear in removal proceedings under 8 U.S.C. § 1229a, and detained him pursuant to its authority under 8 U.S.C. § 1225(b)(2). Chan Decl. ¶ 8; 8 U.S.C. § 1229(a); 8 C.F.R. §§ 239.1, 1239.1; Araujo Decl. Ex. A (Form I-862).

Plaintiff's Response: Not disputed that federal immigration agents encountered and arrested Mr. Guerrero Orellana in Everett, Massachusetts on September 18, 2025. Not disputed that Mr. Guerrero Orellana was served after arrest with a Notice to Appear charging him as subject to removal under INA 212(a)(6)(A)(i) and (a)(7)(A)(i)(I) and ordering him to appear for removal proceedings. Disputed that ICE "detained him pursuant to its authority under 8 U.S.C. § 1225(b)(2)" as a statement of law and, in all events, as not supported by the cited evidence. Any other assertions in this paragraph are disputed as not supported by the cited evidence.

6. The Notice to Appear explains: "[y]ou were not . . . admitted or paroled after inspection by an Immigration Officer." Araujo Decl. Ex. A (Form I-862).

Plaintiff's Response: Not disputed that the Notice to Appear contains those words. Disputed that this is the complete language in that document, as the ellipses omit the word "then," referring to the time Mr. Guerrero Orellana allegedly "entered." Any other assertions in this paragraph are disputed as not supported by the cited evidence.

7. On September 22, 2025, ICE filed the Notice to Appear with the immigration court in Chelmsford, Massachusetts. Chan Decl. ¶ 10.

Plaintiff's Response: Not disputed.

8. Mr. Guerrero Orellana is in removal proceedings under 8 U.S.C. § 1229a. Araujo Decl. ¶ 10 & Ex. A.

Plaintiff's Response: Not disputed.

9. Plaintiff's first hearing in his removal proceedings was held on October 2, 2025. *See id.*; Chan Decl. ¶ 10.

Plaintiff's Response: Not disputed.

10. Mr. Guerrero Orellana intends to seek discretionary cancellation of removal under 8 U.S.C. § 1229b(b), or other relief or protection from removal, in his removal proceedings. *See* Araujo Decl. ¶ 9.

Plaintiff's Response: Not disputed.

11. The 1997 regulations implementing Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) contemplated the application of § 1225(b)(2) to aliens who were present in the United States without admission and who were not amenable to expedited removal. *See* 8 C.F.R. § 235.3(b)(1)(ii), promulgated at 62 Fed. Reg. 10312, 10355 (Mar. 6, 1997). The regulations state: "An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act [8 U.S.C. § 1225(b)(2)] for a proceeding under section 240 of the Act [8 U.S.C. § 1229a]." 8 C.F.R. § 235.3(b)(1)(ii).

Plaintiff's Response: Not disputed that the text of 8 C.F.R. § 235.3(b)(1)(ii) contains those words. Disputed that "the regulations implementing [IIRIRA] contemplated the application of § 1225(b)(2) to aliens who were present in the United States without admission and who were not amenable to expedited removal" as statements of law and not supported by the cited evidence. The interim rule which promulgated 8 C.F.R. § 235.3(b)(1)(ii) expressly states that noncitizens present in the United States without admission or parole are entitled to bond hearings. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Section § 235.3(b)(1)(ii) appears in a provision governing expedited removal, whereas the regulation governing detention under 8 U.S.C. § 1225(b)(2) limits such detention to "arriving aliens." *See* 8 C.F.R. § 235.3(c)(1); *see also Guerrero Orellana v. Moniz*, — F. Supp. 3d —, 2025 WL 3687757, at *6 (D. Mass. Dec. 19, 2025).

12. Since the enactment of IIRIRA, there have not been any published regulations from the Executive Office for Immigration Review, the former Immigration and Naturalization Service (INS), or the Department of Homeland Security (DHS) stating that applicants for admission within the meaning of 8 U.S.C. § 1225(a)(1) who are placed in removal proceedings under 8 U.S.C. § 1229a are subject to detention under 8 U.S.C. § 1226(a). *See generally* 8 C.F.R. Chapter I, Subchapter B & Chapter V.

Plaintiff's Response: Disputed. *See* 8 C.F.R. §§ 236.1 (governing apprehension and detention of inadmissible and deportable aliens), 1236.1 (same); 1003.19(a)-(f) (governing custody and bond determinations made pursuant to 8 C.F.R. § 1236.1; *see also* 62 Fed. Reg. 10312, 10323 (promulgating 8 C.F.R. § 236.1 and stating: "Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and

bond redetermination."); *id.* ("[I]nadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not. This procedure maintains the status quo regarding release decisions for aliens in proceedings . . . ."). Legislative history and Supreme Court precedent reflect the understanding that 8 U.S.C. § 1226(a) governs detention for noncitizens who enter without inspection. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that the new § 1226(a) "restates the current provisions in [8 U.S.C. § 1252(a) (1994)]" permitting release on bond for noncitizens who are not "lawfully in the United States"); H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same); *Jennings v. Rodriguez*, 583 U.S. 281, 287-89 (2018).

13. Since the enactment of IIRIRA, there have not been any published regulations from the Executive Office for Immigration Review, the former Immigration and Naturalization Service (INS), or the Department of Homeland Security (DHS) stating that applicants for admission within the meaning of 8 U.S.C. § 1225(a)(1) who are placed in removal proceedings under 8 U.S.C. § 1229a are eligible for consideration for release on bond. *See generally* 8 C.F.R. Chapter I, Subchapter B & Chapter V.

Plaintiff's Response: Disputed. *See* Plaintiff's response to (12), *supra*.

II. DEFENDANTS' RESPONSE TO PLANTIFF'S STATEMENT OF UNCONTROVERTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT

I. Defendants' Historical Practice and New Policy[1]

1. The Immigration and Nationality Act (INA) provides for the detention of certain noncitizens, including, as relevant to this case, under 8 U.S.C. § 1226(a) and § 1225(b)(2)(A).

    a. 8 U.S.C. § 1226(a); *id.*, § 1225(b)(2)(A).

    Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, this statement is partially disputed. Defendants dispute that 8 U.S.C. § 1226(a) is relevant to this case, but admit that the Immigration and Nationality Act provides for the detention of certain aliens, including under 8 U.S.C. § 1226(a) and § 1225(b)(2)(A), and admit that 8 U.S.C. § 1225(b)(2)(A) is relevant to this case.

2. Detention under 8 U.S.C. § 1226(a) allows for release on bond by immigration authorities, *see* 8 C.F.R. 236.1(c)(8), and a "custody redetermination"—also known as a bond hearing—before an immigration judge (IJ) in the event the immigration authorities deny bond, *see* 8 C.F.R. § 1236.1(d).

[1] Defendants repeat Plaintiff's headings for ease of reference, but these require no response. To the extent a response is required, Defendants dispute the statements in the first heading.

a. 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(c)(8), 1236.1(d).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. Defendants respectfully direct the Court to the cited statutes for a true and accurate representation of their contents and deny to the extent Plaintiff's descriptions are inconsistent therewith. To the extent a response is required, Defendants admit.

3. By contrast, detention under 8 U.S.C. § 1225(b)(2)(A) is mandatory and provides no right to a bond hearing. A person detained pursuant to this subparagraph may only be released if an immigration officer grants humanitarian parole under 8 U.S.C. § 1182(d)(5).

a. 8 U.S.C. § 1225(b)(2)(A); *id*. § 1182(d)(5).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. Defendants respectfully direct the Court to the cited statutes for a true and accurate representation of their contents and deny to the extent Plaintiffs' descriptions are inconsistent therewith. To the extent a response is required, Defendants admit.

4. Prior to a May 22, 2025, unpublished Board of Immigration Appeals (BIA or Board) decision and a July 8, 2025 Immigration and Customs Enforcement's (ICE) detention directive, Defendants Department of Homeland Security (DHS) and ICE considered noncitizens who entered the United States without inspection and who were not apprehended while arriving at the border and continuously detained to be detained under 8 U.S.C. § 1226(a), unless that person was subject to the expedited removal provisions of 8 U.S.C. § 1225(b)(1) or the detention provisions of § 1226(c) or § 1231.

a. Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); 8 C.F.R. § 1003.19(h)(2); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 803-04 (B.I.A 2020); Exhibit A to Hart Decl. (unpublished BIA decisions applying § 1226(a) to persons who entered without inspection).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants dispute this statement. *See, e.g.*, 8 C.F.R. § 235.3(b)(1)(ii); Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10355 (Mar. 6, 1997); *Maldonado v. Bostick*, No. 2:23-cv-760-LK-BAT, 2023 WL 5804021, at *3-4 (W.D. Wash. Aug. 8, 2023) (rejecting DHS's prior position that "DHS may 'choose,' pursuant to its 'prosecutorial discretion,' to detain a noncitizen under Section 1226(a) by issuing an NTA and arrest warrant"). Defendants also dispute that the July 8, 2025, email was a "directive"; rather, it is interim guidance reflecting that DHS brought the Executive's practices in line with the statute's plain text.

5. This interpretation has been consistent during the nearly thirty years that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) has been in effect.

a. Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); 8 C.F.R. § 1003.19(h)(2); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 803-04 (B.I.A 2020); Exhibit A to Hart Decl. (unpublished BIA decisions applying § 1226(a) to persons who entered without inspection).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants dispute this statement. *See, e.g.*, 8 C.F.R. § 235.3(b)(1)(ii); Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10355 (Mar. 6, 1997); *Maldonado v. Bostick*, No. 2:23-cv-760-LK-BAT, 2023 WL 5804021, at *3-4 (W.D. Wash. Aug. 8, 2023) (rejecting DHS's prior position that "DHS may 'choose,' pursuant to its 'prosecutorial discretion,' to detain a noncitizen under Section 1226(a) by issuing an NTA and arrest warrant").

6. Under the law in effect prior to IIRIRA, any person physically inside the United States who faced removal (unless the person had been paroled at the border) was placed in "deportation" proceedings and was considered detained under 8 U.S.C. § 1252(a) (1994), which provided authority to release on bond. Separately, "exclusion" proceedings covered those who arrived at U.S. ports of entry and had never entered the United States These proceedings had their own detention scheme. *See* 8 U.S.C. § 1225 (1994); *id*. § 1226 (1994).

a. 8 U.S.C. § 1225 (1994); *id*. § 1226 (1994); 62 Fed. Reg. 10312; *Martinez v. Hyde*, No. 25-11613, 2025 U.S. Dist. LEXIS 141724, at *12 n.9 (D. Mass. July 24, 2025).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants admit, and further note that one purpose of IIRIRA was to fix this difference in treatment whereby people who surreptitiously cross the border receive more procedural protections in deportation proceedings than people who arrive at the port of entry and were subject to exclusion proceedings. *See, e.g.*, *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

7. IIRIRA's legislative history states that 8 U.S.C. § 1226(a) "restates the [then-] current provisions in [8 U.S.C. § 1252(a)(1) (1994)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, at 229 (1996).

a. H.R. Rep. No. 104-469, at 229 (1996).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants admit that the quoted language is contained in a House Report relating to the legislative process that culminated in IIRIRA, but dispute that this language is relevant, because one of the primary purposes of IIRIRA's amendments to the Immigration and Nationality Act was to render "whether or not the alien has been

lawfully admitted" the "pivotal factor in determining the alien's status" and thus to "treat[] persons present in the United States without authorization as not admitted." H.R. Rep. No. 104- 469, pt. 1 at 226.

8. Shortly after IIRIRA's enactment, the Immigration and Naturalization Service (INS) and Executive Office for Immigration Review (EOIR) stated: "Despite 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." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

    a. Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants admit that the quoted language appears in the preamble to regulations promulgated to implement IIRIRA shortly after IIRIRA's enactment, but the regulations state that aliens who are present without having been admitted or paroled are subject to expedited removal or shall be detained in accordance with 8 U.S.C. § 1225(b)(2) for a proceeding under 8 U.S.C. § 1229a. *See, e.g.*, 8 C.F.R. § 235.3(b)(1)(ii), Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10355 (Mar. 6, 1997).

9. On July 8, 2025, the Acting Director of ICE, Todd Lyons, issued a memorandum entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission" ("July 8, 2025 ICE Memorandum") which states: "This message services as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities."

    a. Ex. B to Hart Decl. (July 8, 2025 ICE Memorandum).

Defendants' Response: Defendants admit.

10. The July 8, 2025 ICE Memorandum further states: "An 'applicant for admission' is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA 212(d)(5) parole."

    a. Ex. B to Hart Decl. (July 8, 2025 ICE Memorandum).

Defendants' Response: Defendants admit.

11. The July 8, 2025 ICE Memorandum further states: "These aliens are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by

DHS. . . . The only aliens eligible for a custody and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)."

a. Ex. B to Hart Decl. (July 8, 2025 ICE Memorandum).

Defendants' Response: Defendants admit.

12. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision, *Matter of Yajure Hurtado* ("*Yajure Hurtado*"), which makes this policy legally binding on all IJs. 29 I. & N. Dec. 216 (B.I.A. 2025).

a. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025).

Defendants' Response: This is a statement of law, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants admit.

13. In *Yajure Hurtado*, the BIA stated that "aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." This decision mandates the classification of all "applicants for admission" as subject to mandatory detention without a right to a bond hearing.

a. *Matter of Yajure Hurtado* ("*Matter of Hurtado*"), 29 I. & N. Dec. 216 (B.I.A. 2025).

Defendants' Response: This is a statement of law and argument, not of fact, and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants admit first sentence. With respect to the second sentence, Defendants admit that *Yajure Hurtado* holds that aliens who are present without admission or parole are applicants for admission who are subject to mandatory detention under § 1225(b)(2)(A) and are not eligible to receive a bond hearing, but otherwise dispute the characterizations in this sentence.

II. Plaintiff Jose Arnulfo Guerrero Orellana

14. Mr. Guerrero Orellana resides in Massachusetts.

a. Declaration of Annelise Araujo, Esq. Dkt. 16 ("Araujo Decl."), ¶ 4.

Defendants' Response: Defendants have no basis to dispute.

15. Mr. Guerrero Orellana has resided in the United States since 2013.

a. Araujo Decl., ¶ 4.

Defendants' Response: Defendants have no basis to dispute, because Mr. Guerrero Orellana evaded detection by immigration authorities by entering without inspection and thus the government has no way of verifying how long Mr. Guerrero Orellana has been residing illegally in the United States.

16. Mr. Guerrero Orellana resides in Massachusetts with his family, including his one-year- old daughter who is a United States citizen.

    a. Araujo Decl., ¶ 4.

Defendants' Response: Defendants have no basis to dispute.

17. Mr. Guerrero Orellana has no criminal history.

    a. Araujo Decl., ¶ 8.

Defendants' Response: Defendants have no basis to dispute.

18. Mr. Guerrero Orellana had not had any contact with the immigration authorities prior to his most recent arrest.

    a. Araujo Decl., ¶ 7.

Defendants' Response: Defendants admit.

19. On or about September 18, 2025, Mr. Guerrero Orellana was arrested by immigration authorities inside the United States and taken into ICE custody at the Plymouth County Correctional Facility.

    a. Araujo Decl., ¶¶ 5-6.

Defendants' Response: Defendants admit.

20. The government alleged he entered the United States without inspection or parole.

    a. Araujo Decl., ¶ 10.

Defendants' Response: Defendants admit.

21. Thereafter, ICE issued him a Notice to Appear, charging him with being "present in the United States" without admission or parole.

    a. Araujo Decl., ¶ 10.

Defendants' Response: Defendants admit.

22. On September 18, 2025, Mr. Guerrero Orellana filed a habeas petition under 28 U.S.C. § 2241 challenging the legality of his ongoing detention without a bond hearing.

a. D.E. 1.

Defendants' Response: Defendants admit and note that Mr. Guerrero Orellana had been detained for less than one day at the time he filed the habeas petition.

23. On October 3, 2025, the Court issued a preliminary injunction requiring the government to release Mr. Guerrero Orellana unless he was provided with a bond hearing before an immigration judge within seven business days.

a. D.E. 54.

Defendants' Response: Defendants admit.

24. On October 9, 2025, an immigration judge held a bond hearing and ordered Mr. Guerrero Orellana released on bond of $3,500.

a. D.E. 68-1.

Defendants' Response: Defendants admit.

25. Mr. Guerrero Orellana posted bond the following day and was released from custody.

a. D.E. 68-1.

Defendants' Response: Defendants admit.

III. Developments Following this Court's Grant of Declaratory Relief

26. On December 19, 2025, this Court awarded a partial declaratory judgment in favor of Petitioner and declared, among other things, that "members of the certified class are not subject to detention under 8 U.S.C. § 1225(b)(2)" and "subjecting members of the certified class to detention [] without consideration for bond and a custody redetermination (i.e., bond) hearing is unlawful."

a. D.E. 112 at 26-27.

Defendants' Response: This is a statement of the procedural history of this case and is improperly included in this Local Rule 56.1 statement. To the extent a response is required, Defendants admit.

27. On January 13, 2026, Chief Immigration Judge Teresa L. Riley emailed all assistant chief immigration judges, stating: "Please provide the following guidance to all Immigration Judges forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore, *Yajure Hurtado* remains binding precedent on agency adjudicators."

a. D.E. 134-1.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants admit.

28. Judge Riley's January 13, 2026 email further stated: "For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party."

    a. D.E. 134-1.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants admit.

29. On January 14, 2026, Immigration Judge Melissa Garcia of the Laredo Immigration Court denied a bond hearing to a person seeking to assert their rights as a member of the certified class in this action, stating: "The Court finds that it has no jurisdiction to entertain the instant bond request. The Court does not understand the District Court Order in Guerrero-Orellano v. Munoz, No. 25-cv-12664-PBS, 2025 to be an injunction or to vacate, stay, or enjoin the ruling in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The court finds that Yajure Hurtado strips the immigration courts of jurisdiction to consider bonds for aliens determined to be applicants for admission. The Respondent entered without inspection and is an applicant for admission. Therefore, the Court is bound by the BIA and must follow Yajure Hurtado as binding precedent."

    a. D.E. 134-3.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants admit the existence of the cited January 14, 2026 Immigration Court Order, which speaks for itself and is the best evidence of its contents. To the extent the statement asserts that unnamed respondent who is the subject of the cited January 14, 2026 Immigration Court Order is a member of the class certified in this action, Defendants dispute that assertion as unsupported by the cited evidence.

30. On January 15, 2026, Immigration Judge Christine Olson of the Chelmsford Immigration Court denied bond hearings to two members of the class certified in this action, "rul[ing], in substance, that the Court did not have jurisdiction because of Matter of Yajure-Hurtado, and that this class action does not apply because this Court issued a declaratory judgment not an injunction."

a. D.E. 134-2 ¶¶ 2-6.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants lack any basis to dispute the contents of the cited rulings, but Defendants dispute that the cited evidence supports that the unnamed respondents were members of the class certified in this action.

31. On January 20, 2026, Immigration Judge Nina. J. Froes in the Chelmsford Immigration Court denied bond hearings to multiple class members based on the instructions contained in the Chief Immigration Judge's email.

a. Affidavit of Molly McGee ("McGee Aff."), D.E. 147 ¶¶4-5; Affidavit of Caroline Casey ("Casey Aff."), D.E. 148 ¶¶3-4.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants lack any basis to dispute that Immigration Judge Froes denied bond hearings on the cited date, but Defendants dispute the remainder of the statement. Defendants dispute the characterization of the Chief Immigration Judge's email, which speaks for itself and is the best evidence of its contents, and dispute that the cited evidence supports the statement that the unnamed respondents are members of the class certified in this action or that the rulings were based on the Chief Immigration Judge's email.

32. Immigration Judge Yulmi Cho was providing bond hearings to class members. On or around January 20, 2026, the Department of Justice reassigned her off of the detained docket.

a. Declaration of Robert M. Warren ("Warren Decl."), D.E. 149 ¶¶5-12; Declaration of Kira Gagarin ("Gagarin Decl."), D.E. 150; Declaration of Annelise Araujo (Jan. 23, 2026), D.E. 151 ("Araujo Jan. 23 Decl.") ¶¶3-5.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants dispute that the cited evidence supports the statement that Immigration Judge Cho was providing bond hearings to members of the certified class in this action. Defendants admit only that Judge Cho is no longer handling cases on the Chelmsford Immigration Court detained docket.

33. On January 27, 2026, Immigration Judge Huy Le, who has recently been assigned to handle bond cases previously assigned to Immigration Judge Cho, stated that he will be denying bond requests for lack of jurisdiction absent a habeas order for the specific case

ordering that a bond hearing be held. Individuals who did not have a habeas order were not able to proceed with the merits of the bond hearing, and Immigration Judge Le instructed these individuals to file a habeas petition if they wanted him to hold a bond hearing.

a. Declaration of Kira Gagarin (Jan. 27, 2026), ¶¶4-8.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants admit that Immigration Judge Le is handling cases on the Chelmsford Immigration Court docket, but dispute that the cited evidence supports the statement's recounting of the contents of Judge Le's announcement.

34. The government does not dispute that immigration judges have been instructed to ignore declaratory relief requiring bond hearings and, instead, to continue to follow *Yajure Hurtado*.

a. Jan. 20, 2026 Tr. at 9, 1-12.

Defendants' Response: This statement is irrelevant to the issues presented in the motion for summary judgment and is thus improperly included in this Local Rule 56.1 statement, which is meant to be a "concise statement of the *material* facts of record." To the extent a response is required, Defendants dispute that the characterization of the cited transcript and dispute that the statement is supported by the evidence cited, but admit that the Chief Immigration Judge has advised immigration judges that *Yajure Hurtado* remains binding authority.

Respectfully submitted,

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Dated: February 17, 2026

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be served on counsel for all parties through the Court's CM/ECF system.

Date: February 17, 2026

/s/ Gilleun Kang
Gilleun Kang