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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALVARADO GONZALEZ, EDUARDO,

Petitioner,
vs.

John Mattos, Warden of the Southern
Detention Center,

Jason Knight, Director of the Salt Lake City
U.S. Immigration and Customs Enforcement
Field Office,

Kristi Noem, Secretary of the U.S.
Department of Homeland Security; and

Pam Bondi, US Attorney General,

Respondents

Case No.: 2:25-cv-01599-JAD-NJK

**PETITIONER'S REPLY TO FEDERAL
RESPONDENTS' RESPONSE TO
MOTION FOR TEMPORARY
RESTRAINING ORDER, ECF NO. 27**

Petitioner, Eduardo Alvarado Gonzalez, by and through undersigned counsel, submit this

1 Reply to the Federal Respondents' Response to Motion for Temporary Restraining Order,
2 ECF No. 27.

3 **I. INTRODUCTION**

4 Petitioner has sought injunctive relief challenging the Department of Homeland
5 Security's ("DHS") detention authority. The government Respondents allege they may
6 continue to detain him under 8 U.S.C. § 1225(b)(2)(A) rather than 8 U.S.C. § 1226(a). The
7 Government relies on a misapplication of the law and thereby continues to violate Due Process
8 for Petitioner and thousands of similarly situated persons. This Court and Courts' all over the
9 country have critiqued the Matter of Yahure in the BIA's misinterpretation and erroneous
10 application of statutory provisions and precedents, leading to a decision that does not align
11 with the intended legal framework of the INA. Moreover, Petitioner has demonstrated the
12 likelihood of success on the merits, irreparable harm, or a basis for extraordinary injunctive
13 relief.
14

15 **II FACTUAL AND PROCEDURAL BACKGROUND**

16 On September 3, 2025, a bond hearing was conducted for the Petitioner before
17 Immigration Judge (IJ) Baker, who granted a bond of \$3,000. The judge determined that the
18 detainee did not pose a danger to the community, was not a flight risk, and had the ability to
19 pay the bond.
20

21 The following day, on September 4, 2025, the bond was presented at the ICE office in
22 Boise, but it was not accepted.

23 On September 11, 2025, the Board of Immigration Appeals issued a decision in Matter
24 of Hurtado, 29 I&N Dec. 216 (BIA 2025).

25 On September 15, 2025, the bond was again tendered at the ICE Boise office but was
26

1 not accepted because ICE placed an automatic stay without any adequate factual or legal basis.

2 A detained master calendar hearing took place on September 25, 2025, with IJ Baker
3 presiding. During this hearing, a written motion to terminate proceedings was submitted. The
4 motion cited improper service of the Notice to Appear (NTA), as no copy had been provided to
5 the client, and challenged the reliability of Form I-213, which contained untrue criminal
6 charges. Additionally, a pending Adjustment of Status (AOS) application with USCIS was
7 noted. IJ Baker denied the motion to terminate and inquired about the status of a habeas corpus
8 petition, ordering all filings for relief to be submitted by October 9, 2025. On the same day, a
9 motion to extend the time for the response to the habeas corpus petition was filed by
10 respondents, while the petitioners filed their opposition to this motion.

11
12 On September 26, 2025, Petitioner's Counsel sent a request to expedite the wife's AOS
13 case to Ian McElvy, the USCIS Boise Field Office Director.

14
15 The respondents' response to the habeas corpus petition was filed on September 30,
16 2025.

17 On October 8, 2025, submissions of Form E-42B and Form I-589 were made to the
18 Immigration Court.

19 During a detained master calendar hearing on October 9, 2025, IJ Baker heard an oral
20 motion for discretionary termination under 8 CFR 1003.18(d)(1)(ii)(B), citing the pending
21 AOS with USCIS. However, the motion was denied, with the judge stating that the custody
22 issue would remain unresolved. IJ Baker again inquired about the status of the habeas corpus
23 petition, and it was discussed on record that both the respondent and the Department of
24 Homeland Security (DHS) should request expedited processing of the wife's pending AOS
25 application. The IJ ordered a continuance until October 23, 2025. On the same day, Petitioner's
26 Counsel sent a request to expedite the wife's AOS case to the USCIS National Benefits Center

1 and emailed the request to DHS Counsel Bryan Martin and counsel in the habeas case. The
2 email to Virginia bounced back, and an auto-reply from Karissa indicated she was unable to
3 respond due to a shutdown.

4 On October 14, 2025, DHS Counsel Bryan Martin emailed Petitioner's Counsel,
5 indicating he would forward her request to the appropriate USCIS contacts. Petitioner's
6 Counsel subsequently provided Bryan Martin with the correct A# and I-485 Receipt Number
7 for the client's wife.
8

9 Petitioner's Counsel hand-delivered a request to expedite the wife's AOS case to a
10 USCIS Boise Immigration Service Officer Supervisor on October 22, 2025.

11 Finally, on October 23, 2025, during another detained master calendar hearing with IJ
12 Baker, further inquiries were made regarding the habeas corpus petition. IJ Baker ordered an
13 Individual Merits Hearing to be scheduled for November 24, 2025. On the same day, a TRO
14 was filed in the habeas case, documented as ECF No. 18. This case was transferred to the
15 Honorable Richard F. Boulware, II on October 23, 2025. ECF No. 19. Subsequently, the Court
16 ordered Federal Respondents to respond to the Motion for TRO by October 27, 2025. ECF
17 No. 20. On October 29, 2025, the Federal Respondents requested an extension of time till
18 October 29, 2025 by 3:00 p.m. A hearing on the Petition and Motion for TRO is scheduled for
19 October 30, 2025 ECF No. 20.
20
21

22 ARGUMENT

23 INA § 235(b)(1) excludes non-admitted aliens who have been physically present in the
24 U.S. continuously for the two years immediately preceding a determination of inadmissibility.
25 This interpretation is supported by the legal principle of *expressio unius est exclusio alterius*,
26

1 which suggests that the inclusion of one is the exclusion of others not mentioned, as explained
2 by Antonin Scalia and others in *Reading Law: The Interpretation of Legal Texts*.

3 According to INA § 235(b)(2)(A), all non-admitted aliens in the U.S. who are "not
4 clearly and beyond a doubt entitled to be admitted" are subject to mandatory detention.
5 However, INA § 235(b)(2)(B)(ii) specifies that this mandatory detention does not apply to
6 aliens covered by INA § 235(b)(1).
7

8 Despite this, the Board of Immigration Appeals (BIA) in *Matter of Yajure*, 29 I&N
9 Dec. 216 (BIA 2025), stated that INA § 235 requires mandatory detention for those "not
10 clearly and beyond a doubt entitled to be admitted," under what they describe as a "catchall
11 provision" applying to all applicants not covered by § 235(b)(1). This interpretation appears to
12 be a misstep, as the INA § 235(b)(2)(A) provision should not be viewed as a catchall for those
13 explicitly excluded under § 235(b)(1).
14

15 The BIA's use of the term "catchall provision" seems to improperly include those
16 excluded by INA § 235(b)(1). The BIA references the Supreme Court's statement in *Jennings*
17 *v. Rodriguez*, where it was stated that § 1225(b)(2) serves as a catchall for applicants not
18 covered by § 1225(b)(1). However, the context in *Jennings* was different, as it involved lawful
19 permanent residents and periodic bond hearings, not the specific exclusions under INA §
20 235(b)(1).
21

22 Moreover, the Supreme Court in *Jennings* noted that certain exclusions in the catchall
23 provision were not relevant to their case, highlighting the distinct context between *Jennings*
24 and *Yajure*. Therefore, the BIA's interpretation in *Yajure* seems inconsistent with the law,
25 particularly given the differences in the cases.
26

1
2 The Constitution leaves no doubt that due process protections extend to *all persons* within the
3 United States, “including aliens, whether their presence here is lawful, unlawful, temporary, or
4 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Fifth Amendment, therefore,
5 squarely entitles noncitizens to the fundamental guarantees of due process in both removal and
6 custody proceedings. *See Black v. Garland*, 103 F.4th 143, 147 (2d Cir. 2024) (citing *Reno v.*
7 *Flores*, 507 U.S. 292, 306 (1993)). *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.
8 2009).

9
10
11 In assessing whether due process has been afforded, courts in this Circuit apply the *Mathews v.*
12 *Eldridge* balancing test, which considers: (1) the individual’s private interest at stake; (2) the
13 risk of an erroneous deprivation of liberty under existing procedures; and (3) the government’s
14 interest. 424 U.S. 319, 335 (1976); *Black*, 103 F.4th at 151. Here, each of these factors weighs
15 heavily in favor of the petitioner. The individual’s interest in freedom from unlawful detention
16 is among the most compelling recognized by law, and the risk of erroneous deprivation in the
17 absence of judicial intervention is substantial. By contrast, the government’s interest is
18 minimal where detention serves no legitimate purpose or violates constitutional limits.
19
20

21
22 Given the constitutional magnitude of the liberty interests at stake, the ongoing harm to the
23 petitioner’s due process rights, and the minimal burden on the government in ensuring lawful
24 custody determinations, injunctive relief is not only appropriate—it is imperative.
25
26

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court enjoin Respondents from continuing to detain him unlawfully and order his release.

Respectfully submitted this 30th day of October 2025,

/s/Hardeep Sull

HARDEEP SULL

/S/ Nicole Derden

NICOLE DERDEN

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