UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Holger Euclides Tapuy Huatatoca,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Sirce Owen, Acting Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

Samuel Olson, Director, St. Paul Field Office, Immigration and Customs Enforcement,

and,

Joel Brott, Sheriff of Sherburne County.

Respondents.

0:25-cv-03433-PAM-JFD

REPLY MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

This Court has jurisdiction. The Supreme Court, Eighth Circuit, and at least 30 identically situated district courts have said so. The same 30 courts rejected Respondents' substantive arguments as well. Their reading would strike statutorily defined language from the act and depart from 29 years of agency practice and interpretation. It cannot stand.

I. EXHAUSTION IS FUTILE IN LIGHT OF *YAJURE HURTADO*

Respondents claim that a lack of administrative exhaustion precludes review rings hollow in light of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Supreme Court has noted that prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). The Board's decision in *Yajure Hurtado* binds the Board of Immigration Review, *see* 8 C.F.R. § 1003.1(g), and renders administrative appeal a futile exercise. In *Yajure Hurtado*, the same Department of Justice arguing this case on Respondent's behalf, held firm to their position that 8 U.S.C. § 1225(b)(2)(A) governs custody for aliens like Petitioner. Because *Hurtado* binds the underlying administrative proceedings, they are rendered entirely futile. Respondent's argument is predicated on giving the Board first crack, but the Board has spoken. Prudential exhaustion is not required.

II. THIS COURT HAS SUBJECT MATTER JURISDICTION

This Court has jurisdiction to review whether petitioner is in "custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Nothing at 8 U.S.C. § 1252 changes that and the Supreme Court has held as much clearly. Petitioner is not challenging the government's decision or action to "commence proceedings, adjudicate cases, or execute removal orders," so 8 U.S.C. § 1252(g) does not bar review. He is not challenging anything related to an action or proceeding brought to "remove him from the United States," so 8 U.S.C. § 1252(b)(9) is inapplicable. Nor does he challenge anything to do with a "final order of removal," so 8 U.S.C. § 1252(b)(5) cannot apply.

Once again, custody is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. 1003.19(d). *Compare also* 8 U.S.C. 1229(a), *with* 8 USC 1226(a). Custody is separate from the removal proceedings and has no bearing on those proceedings in any legally relevant manner. They are separate statutes, separate inquiries, and separate records.

Finding otherwise would contravene the express language of the Supreme Court and the Eighth Circuit. This is not a matter that requires "clarification" from the Circuit. It is a matter upon which the highest Court in the United States and the Eighth Circuit have already spoken to explicitly.

In *Reno v. Am.-Arab Anti-Discrimination Comm.*, the Supreme Court held that "§ 1252(g) applies to only a limited subset of deportation claims." 525 U.S. 471, 487 (1999). It is a "narrow[ ] … provision [that] applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Id.* at 482 (emphasis in original). "There are of course many other decisions or actions that may be part of the deportation process." *Id.* Custody is such a reviewable action.

This was spelled out with clarity in *I.N.S. v. St. Cyr* and *Zadvydas v. Davis*. 533 U.S. 289 (2001); 533 U.S. 678, 688 (2001). In *I.N.S. v. St. Cyr*, the Court held that "[t]he writ of habeas corpus has always been available to review the legality of Executive detention." 533 U.S. at 305. Then, in *Zadvydas*, the Court added that, despite the limitations on judicial review at 8 USC § 1252, "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." 533 U.S. at 688. While this case involves pre-removal detention, the logic remains the same. Detention is independent of removal and can be reviewed in a habeas action.

If that were not enough, the Court walked through the history of appellate review in removal cases and noted that the "statutory changes left habeas untouched as the basic method for obtaining review of continued *custody*," before adding that 8 U.S.C. § 1252(g) did not apply to strip jurisdiction where the

petitioner challenged custody. *Zadvydas*, 533 U.S. at 687–88 (emphasis in original). Once again, habeas remained as a vehicle to challenge detention.

If the fallacy of Respondent's position was not clear from *A.A.A.D.C.*, *St. Cyr*, and *Zadvydas*, the Court was emphatic as to jurisdiction in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In *Jennings*, the Court noted that it was charged with "decid[ing] … whether, … certain statutory provisions require detention without a bond hearing." *Id.* at 292. That is precisely what Petitioner requests here: a determination as to whether mandatory custody applies. Just as in *Jennings*, Petitioner is "not asking for review of an order of removal; [he is] not challenging the decision to detain [him] in the first place or to seek removal; and [he is] not even challenging any part of the process by which [his] removability will be determined." *Id.* at 294.

Notably, the broad reading of "arising from" proffered by Respondents was emphatically rejected by the Supreme Court. In *Jennings*, Court's plurality even acknowledged Respondent's current argument, noting that "[i]t may be argued that" detention arises from the decision to commence proceedings "in the sense that if those actions had never been taken, the aliens would not be in custody at all. But [rejected] this expansive interpretation of § 1252(b)(9) [as it] would lead to staggering results." *Id.* at 293. Thus, the Court explicitly "did not interpret this language to sweep in any claim that can technically be said to 'arise from' the three

listed actions of the Attorney General. Instead, **we read the language to refer to just those three specific actions themselves**." *Id.* at 294 (2018) (citing *A.A.A.D.C.*, 525 U.S. at 482-83).

A review of the concurring and dissenting opinions makes this even clearer. Respondents cite to Justice Thomas's concurrence for the proposition that "detention is an 'action taken ... to remove' an alien," *id.* at 318 (J. Thomas, concurring), but that portion of the concurrence was joined by just one other justice and Justice Thomas acknowledged that his position departed from the plurality as to jurisdiction. *See id.* ("I am of a different view."). Like the plurality, the dissent noted that "[j]urisdiction also is unaffected by 8 U.S.C. § 1252(b)(9) [because] … [t]he respondents challenge their detention without bail, not an order of removal." *Id.* at 355 (J. Breyer, dissenting). Three justices joined the dissent, and Justice Kagan did not participate in the decision, so simple arithmetic indicates that six justices agreed that habeas jurisdiction over the availability of bond remained unaffected by 8 U.S.C. §§ 1252(b)(9) and 1252(g). That binds this Court.

Even if that were not the case, the Eighth Circuit has expressly noted that "§ 1252(g) does not proscribe review over even the generality of deportation matters." *Sabhari v. Reno*, 197 F.3d 938, 942 (8th Cir. 1999). Expanding on this holding, the Court held that it has "carved out an exception to § 1252(g) for a **habeas claim raising a pure question of law**." *Silva v. United States*, 866 F.3d 938, 941 (8th Cir.

2017) (citing *Jama v. I.N.S.*, 329 F.3d 630 (8th Cir. 2003). In *Jennings*, the Supreme Court described issues concerning "detention without a bond hearing" as "questions of law." *Jennings*, 583 U.S. at 292. In this district, a "'pure' question of law" has been described "as "something the court of appeals could decide quickly and cleanly without having to study the record'—or 'an abstract issue of law ... suitable for determination by an appellate court without a trial record.'" *Nicholas L. L. v. Barr*, 2019 WL 4929795, at *4 (D. Minn. Oct. 7, 2019) (citing *Ahrenholz v. University of Illinois*, 219 F.3d 674, 676–77 (7th Cir. 2000).

In *Nicholas L. L.*, Judge Tostrud recognized that:

> Whether a T-visa applicant lawfully may be removed before a bona fide determination has been made seems to be a purely legal question. It is an abstract question and answering it does not require consideration of Nicholas's circumstances, apart from merely recognizing the fact (necessary for standing) that he is a T-visa applicant facing imminent removal. There is subject-matter jurisdiction over this claim.

Id. at *5. Here too, the only relevant facts are that Petitioner was, and remains, detained without bond after apprehension years after arriving in the United States and hundreds of miles from the border. As in *Nichoas L.L.*, these facts are necessary for standing, and the applicability of 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), is a purely legal concern. This court has jurisdiction.

Given this precedent, Respondent's arguments are expressly foreclosed. While it is true that noncitizens "cannot entertain challenges to the enumerated

executive branch decisions or actions," *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021), this is not a challenge to any of the enumerated provisions. It is a challenge to the denial of a statutory guaranteed right to a bond hearing. *See* 8 U.S.C. § 1226(a). That custody matter is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 CFR 1003.19(d). As such, it does not fit within the narrow confines of 8 U.S.C. § 1252(g), nor does it related to a removal order under 8 U.S.C. §§ 1252(b)(5) or (b)(9).

None of Respondent's caselaw is instructive. *E.F.L. v. Prim* and *Tazu v. Att'y Gen.* involved attempts to directly enjoin the execution of removal orders. 986 F.3d 959, 964 (7th Cir. 2021) (foreclosed "challenge [to] DHS's decision to execute her removal order while [the petitioner] seeks administrative relief."); 975 F.3d 292, 295 (3d Cir. 2020) (foreclosing "a stay of removal"). Those were direct challenges to the execution of orders, concerns completely unrelated to Petitioner's case.

Respondents' remaining cases involved *Bivens* and Federal Tort Claims actions seeking damages for the decision to detain plaintiffs in the first instance. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("at its core he 'challenges ICE's decision to lodge a detainer against him."); *Valencia-Mejia v. United States*, 2008 WL 4286979, at *1 (C.D. Cal. Sept. 15, 2008) (same); *Wang v. United States*, 2010 WL 11463156, at *1 (C.D. Cal. Aug. 18, 2010) (same). None of these cases sought to vitiate a statutory right to bond or

any sort of release. They sought monetary damages for the decision to detain in the first instance. That is not what Petitioner is seeking here. Instead, he seeks access to what the statute guarantees: a bond hearing.

Respondent's arguments also face Suspension Clause issues. This is because immigration custody is never reviewable on a petition for review, and even if it was it would be impossible for an applicant to obtain any meaningful relief. The Supreme Court noted as much in *Jennings*, holding that:

> Interpreting "arising from' in this extreme way would also make claims of prolonged detention effectively unreviewable. By the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place. And of course, it is possible that no such order would ever be entered in a particular case, depriving that detainee of any meaningful chance for judicial review.

Jennings, 583 U.S. at 293. As such, Respondent's channeling argument is disingenuous. While they claim 8 U.S.C. § 1252(b)(9) channels custody review to the applicable circuit, they are actually arguing that it be channeled into the dustbin of irrelevancy.

Ultimately, Respondents advance a reading of 8 U.S.C. § 1252(g) that the Supreme Court derided as "lead[ing] to staggering results." *Jennings*, 583 U.S. at 293. It is the reading that the Supreme Court has rejected time and again. *See Jennings*, 583 U.S. at 281; *Zadvydas*, 533 U.S. at 678; *St. Cyr*, 533 U.S. at 289; *A.A.A.D.*, 525 U.S. at 471.

This is why, of all courts, save for one, that Counsel is aware to have reviewed this issue, have found that they possessed subject matter jurisdiction. *See, e.g., J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) ; *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425

(E..D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025). *But see Acxel S.Q.D.C. v. Bondi*, 2025 U.S. Dist. LEXIS 175957 (D. Minn., September 10, 2025).

If this Court cannot review Petitioner's claim, then no court anywhere ever can. This court possesses habeas jurisdiction.

III. RESPONDENTS' SUBSTANTIVE ARGUMENTS FAIL.

a. Plain Language Clearly Limits 8 U.S.C. § 1225(b)(2)(A) to Those "seeking admission" at or near a Border or Port of Entry.

Respondents' substantive arguments are similarly meritless. Their textual efforts would strike "seeking admission" from the 8 U.S.C. § 1225(b)(2)(A) and ascribe a new meaning to the term "admission," which is specifically defined throughout the INA. *See* 8 U.S.C. § 1101(a)(13)(A).

Respondents' first substantive argument rests on the notion that "the specific governs over the general." Dkt. 12, at 18. *Karczewski v. DCH Mission Valley LLC*,

862 F.3d 1006, 1015 (9th Cir. 2017). Petitioner was initially charged as an "alien present in the United States who has not been admitted or paroled," not as an "arriving alien." *See* Dkt. 13, Ex. A. Respondents then "released [him] on [his] own recognizance" expressly "in accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations." *See* Dkt. 8, Ex. D. When they detained him again in July 2025, they did so "pursuant to a warrant." *See* Dkt. 8, Ex. G; Dkt. 13, Ex. D. Given that 8 U.S.C. § 1226(a) governs arrest and detention "on a warrant," and given that Respondents have expressly invoked 8 U.S.C. § 1226(a) as the bases for his detention, *see* Dkt. 8, Ex. D, 8 U.S.C. § 1226(a) seems to apply more squarely to the specific facts of this case.

Respondents next point to *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025). That poorly pled case sought release, not a bond hearing, relief the court could not grant, and it totally failed to account for the "seeking admission" language at 8 U.S.C. § 1225(b)(2)(A). In contrast, Petitioner would point to the 30 cases cited on pages 10 to 11. *Supra*. The weight of authority supports Petitioner.

The government then pivots to the text and structure of 8 U.S.C. § 1225(b), for the proposition that Petitioner is an "applicant for admission" as defined at 8 U.S.C. § 1225(a). Fair, but as previously argued, under the plain text of 8 U.S.C. § 1225(b)(2)(A), an applicant for admission is only subject to mandatory detention if

he is "seeking admission." Petitioner is not. In order to suggest that he is, Respondent's point to BIA precedent in *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012), the proposition "that people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." Dkt. 12, at 20. The problem, again, is that the term "admission" is statutorily defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A), and this definition applies throughout the "chapter." Notably, Respondents' cited administrative guidance acknowledged that "[i]n ordinary parlance, the phrase 'seeks admission' connotes a request for permission to enter," but then stretched to amend the definition provided by Congress, suggesting the Congressionally mandated verbiage was actually a "term of art." *Matter of Lemus-Losa*, 25 I. & N. Dec. at 743. Rather than engaging in such gymnastics, "[i]n construing a statute, we look first to the plain meaning of the words of the statute." *United States v. Smith*, 171 F.3d 617, 620 (8th Cir. 1999). Here, the Congressionally provided definition and the plain language militates towards Petitioner's reading–requiring an attempted entry from outside the United States.

The reference to 8 U.S.C. § 1225(a)(3) is also unavailing. Respondents cite to *United States v. Woods*, 571 U.S. 31, 45 (2013) for the proposition that "or" "introduce[s] an appositive–a word or phrase that is synonymous with what precedes

it ('Vienna or Wien,' 'Batman or the Caped Crusader')," Dkt. 12, at 20, but what that case actually says is that its ordinary use ["or"] is almost always disjunctive, that is, the words it connects are to 'be given separate meanings.'" Woods, 571 U.S. at 45 (2013) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). In other words, "or" is generally disjunctive and here, some "applicants for admission" are "seeking admission" and some who are not "applicants for admission" may be "otherwise seeking admission," and all those people are subject to inspection. However, only those who are both an "applicant for admission" and "seeking admission … shall be detained." 8 U.S.C. § 1225(b)(2)(A). This was explained beautifully in *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (illustrative graph).

Respondents next claim that Petitioner reads "applicant for admission" out of the statute. He does not. Under the plain language of 8 U.S.C. § 1225(b)(2)(A), an alien must be an "applicant for admission" and actively "seeking admission" for mandatory detention to apply. Petitioner is an applicant for admission, but he is not, and was not at the time of his apprehension, seeking admission. Respondent's position, on the other hand, would write the "seeking admission" requirement out of the statute by treating it identically to "applicant for admission." That is improper as the terms are separately defined. *Compare* 8 U.S.C. § 1225(a), *with* 8 U.S.C. § 1101(a)(13)(A). Mandary detention requires both, *see* 8 U.S.C. § 1225(b)(2)(A), yet Respondents would collapse them into one. That would render "seeking admission"

"inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009). That is improper.

Finally, *Florida v. United States* is completely inapposite. 660 F. Supp. 3d 1239, 1274 (N.D. Fla. 2023). There, the court limited its inquiry to "aliens arriving at the Southwest Border into the country *en masse*." 2025 WL 2108913, at 1249. In that case, where individuals were caught crossing the southwest border of the United States, that is "seeking entry" into the United States. Those people were properly categorized under 8 U.S.C. § 1225(b), but Petitioner was apprehended inside the country, hundreds of miles from any border. The case is totally dissimilar.

b. Specific Legislative Statements Are Probative.

Respondents urge the Court to ignore Congressional Reports specifically noting that 8 U.S.C. § 1226(a) permits aliens present in the United States without inspection to seek bond, *see* H.R. Rep. No. 104-469, pt. 1, at 229 (1996), in favor of general platitudes, from the same report, relating to an intent to "replace certain aspects of the [then] current 'entry doctrine.'" Dkt. 12, at 23 (citing *id.* at 225). If, as Respondents contend, the specific controls the general, then Respondents arguments related to Congressional intent must fail.

c. *Loper Bright* Did not Eviscerate Decades of Practice or Interpretation

Loper Bright Enters. v. Raimondo clarified that,

> "[T]he construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time.

Loper Bright Enters. v. Raimondo, 603 U.S. 369, 386 (2024) (citing *Edwards' Lessee v. Darby*, 25 U.S. 206 (1827)).

In 1996, Respondents explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323. That has been the position for 29 years. That is certainly meaningful under *Loper Bright*.

IV. IRREPERABLE HARM

Respondents contend that the delay in filing for a TRO somehow mitigates the harm from illegal detention. *See* Dkt. 12, at 27. By that logic, illegal detention becomes less problematic the longer it goes on. That is absurd. "Freedom from imprisonment lies at the heart of the liberty" *Zadvydas*, 533 U.S. at 679, and "a loss of liberty … is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018).

V. RELEVANT HARDSHIPS AND PUBLIC INTEREST

"There is generally no public interest in the perpetuation of unlawful agency action." *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025). Respondents claim a TRO would disturb the status quo and a "compelling interest in the steady enforcement of its immigration laws." Dkt. 12, at 28-29. This is nonsense. Petitioner was not detained, then Respondents detained him and departed from 29 years of agency practice to deny him a bond hearing. Respondents have turned the status quo on its head and deviated wildly from the consistent enforcement of the law. Moreover, treating ongoing illegal detention is a permissible status quo, would improperly sanction the deprivation of the most basic human liberty. Finally, the "institutional interest" in deciding these matters first was vitiated in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). These justifications cannot support the denial of this TRO.

CONCLUSION

Petitioner has demonstrated a strong likelihood of success on the merits and will suffer significantly and irreparably in the absence of a TRO. As such, a TRO must be granted ordering Respondents to permit Petitioner to post the ordered alternative bond and release him from custody forthwith.

Respectfully submitted,

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