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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Alejandro Garcia-Rosales,
Petitioner,

v.

Kristi Noem, Secretary of the United States Department of Homeland Security, in her official capacity; **U.S. Department of Homeland Security; Todd Lyons**, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **U.S. Immigration and Customs Enforcement; John Cantu**, Field Office Director for ICE’s Enforcement and Removal Operation’s (“ERO”) Phoenix, Arizona Field Office, in his official capacity; **Luis Rosa, Jr.**, Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **Sirce Owen**, Acting Director of EOIR, in her official capacity; **Executive Office for Immigration Review**,
Respondents.

Case No. 25-cv-03391-SHD-DMF

Agency No. 

**PETITIONER’S REPLY TO
RESPONSE TO RESPONSE
TO ORDER TO SHOW
CAUSE**

Petitioner Alejandro Garcia-Rosales respectfully submits this reply to the Respondents’ Response to Order to Show Cause [docket no. 18] (“Response”). As the Court has consolidated the merits review with the determination of injunctive relief, Petitioner renews his request for immediate release on bond under 8 U.S.C. § 1226(a), consistent with the Immigration Judge’s prior findings that Petitioner is not a danger or substantial flight risk.¹ This ruling would also be in accordance with the reasoning of this Court and others within this District.

¹ See, Order Granting Bond, filed as Exhibit 1 to the Petition for Writ of Habeas Corpus.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural History

Since Petitioner’s initial filing, the record below has developed further. On October 8, 2025, the Board of Immigration Appeals (“BIA”) issued a Remand Order,² which confirmed that Petitioner’s custody redetermination was conducted under INA § 236(a) [8 U.S.C. § 1226] and directing the Immigration Judge to make additional factual findings regarding jurisdiction in light of the intervening precedential decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).³

On October 14, 2025, the Immigration Judge issued a new custody order, determining that it did not have jurisdiction to set a bond based upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).⁴ Petitioner has reserved appeal, but because *Yajure Hurtado* is binding BIA precedent, no administrative remedy remains available.

Finally, Petitioner submitted a motion to continue his removal hearing before the Immigration Court because he had retained an expert witness, which has been granted. A copy of the order rescheduling Petitioner’s individual removal hearing to November 17, 2025, at 1:00 p.m. in Florence, Arizona is filed herewith as Exhibit 23.

These developments confirm that Petitioner remains detained under §1226(a), not §1225(b), and that any further administrative action would be futile. Judicial intervention is therefore both proper and necessary.

II. Recent Arizona Decisions Confirm §1226(a) Governs Petitioner’s Detention

Within the past two weeks, multiple Arizona federal courts—including one cited by this Court in its *Order to Show Cause*—have rejected the Respondents’ claim that long-term residents are

² A copy of that 10/8/2025 Remand Order from the BIA is filed herewith as Exhibit 17.

³ *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) was filed as Exhibit 12 to the Petition for Writ of Habeas Corpus.

⁴ A copy of that 10/14/2025 Order of the Immigration Judge Denying Bond is filed herewith as Exhibit 18.

1 subject to mandatory detention under §1225(b)(2)(A). In *Echevarria v. Bondi*, CV-25-03252-PHX-
2 DWL (D. Ariz. Oct. 3, 2025), the court held that interpreting §1225(b)(2)(A) to cover individuals
3 already inside the United States “stretches the statutory text beyond its breaking point,” because the
4 phrase “seeking admission” denotes a present-tense action at the border, not a status that persists
5 indefinitely.⁵

6
7 Likewise, in *Lopez-Melo v. Bondi*, CV-25-03394-PHX-DJH (D. Ariz. Oct. 9, 2025), Judge
8 Humetewa granted habeas relief and ordered the petitioner’s immediate release under §1226(a),
9 holding that “a noncitizen present in the United States without inspection is detained under §1226(a),
10 not §1225(b)(2)(A).”⁶ Indeed, this Court’s own Order to Show Cause [docket no. 18] adopted the
11 same reasoning, finding *Echevarria* persuasive and directing Respondents to show cause why
12 Petitioner’s detention under §1226(a) should not result in release on the Immigration Judge’s bond.
13

14 The consistency of these Arizona rulings confirms that Petitioner’s detention is governed by
15 §1226(a)—discretionary custody subject to bond—not §1225(b)(2)(A).

16 **III. Other Recent Federal Decisions Confirm §1226(a) Governs Petitioner’s Detention.**

17
18 On October 10, 2025, the U.S. District Court for the District of Southern Florida entered an
19 Order granting a TRO requiring the release of Petitioner within 48 hours, stating that “the Court
20 concludes that § 1226 governs Petitioner’s detention. Because the BIA’s decision to apply § 1225 and
21 revoke bond rested on an incorrect statutory interpretation, Petitioner is likely to succeed on his claim
22 that his detention is unlawful.” *See*, Order entered 10/10/2025 granting TRO in *Gil-Paulino v. Noem*,
23 *et al.*, Case 1:25-cv-24292-KMW [docket no. 41] (S.D.Fla.)⁷
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26 ⁵ *See*, 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL
27 (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 19.

28 ⁶ *See*, Order entered 10/9/2025 in *Hector Lopez-Melo v. Bondi, et al.*, Case No. Case 2:25-cv-03394-DJH--
JZB [docket no. 11] (D.C. Ariz.), filed herewith as Exhibit 20.

⁷ *See*, Order entered 10/10/2025 granting TRO in *Gil-Paulino v. Noem, et al.*, Case 1:25-cv-24292-KMW
[docket no. 41] (S.D.Fla.), filed herewith as Exhibit 21.

1 On October 1, 2025, the U.S. District Court for the Western District of Texas entered an Order
2 granting Petitioner's habeas petition, in part, and ordered the release of Petitioner, saying that, in
3 "recent weeks, courts across the country have held that this new, expansive interpretation of
4 mandatory detention under the INA is either incorrect or likely incorrect. *See Lopez-Campos v.*
5 *Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting
6 twelve such decisions); *see, e.g., Jimenez v. FCI Berlin, Warden*, --- F. Supp. 3d ----, 2025 WL
7 2639390, at *10 & n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *See Lopez*
8 *Santos*, 2025 WL 2642278, at *5; *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D.
9 La. Aug. 27, 2025)." *See*, Order entered 10/1/2025 in *Catalina Santiago Santiago v. Noem, et al.*,
10 Case No. 25-cv-00361-KC [docket no. 25] (W.D. Texas)⁸

11 Respondents cite to two District Court cases, *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL
12 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351
13 (D. Neb. Sept. 30, 2025), which they say "agreed with the government's argument". Response at
14 page 2, lines 3-9. In fact, in *Vargas Lopez*, the Court held that Vargas Lopez fails to meet his burden
15 to show that he falls under § 1226(a), so his Petition fails *regardless of the parties' arguments about*
16 *the scope of § 1225(b) and § 1226(a).*" *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis
17 added).

18 In *Chavez v. Noem*, the court denied a temporary restraining order on the grounds that the
19 petitioners had "not demonstrated serious questions about the application of Section 1225 to aliens
20 present in the United States." *Chavez v. Noem*, 2025 WL 2730228 at *4. However, the court spent
21 less than 2 pages analyzing the statutory language and caselaw before concluding that "Petitioners
22 have not shown either a likelihood of success or serious questions going to the merits [therefore] we
23 do not address the remaining *Winter* factors." *Chavez v. Noem*, 2025 WL 2730228 at *5.

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⁸ *See*, 10/01/25 Order granting in part petition for writ of habeas corpus in *Catalina Santiago Santiago v.*
Noem, et al., Case No. 25-cv-00361-KC [docket no. 25] (W.D. Texas), filed herewith as Exhibit 22.

1 Of course, neither *Vargas Lopez* nor *Chavez v. Noem* are binding precedent on this Court.

2 **IV. The BIA's Own Remand Confirms §1226(a) Jurisdiction.**

3 On October 8, 2025, the BIA in *Matter of Garcia-Rosales*, A220-939-296, explicitly
4 acknowledged that the Immigration Judge conducted the custody redetermination hearing “pursuant
5 to section 236(a) of the Immigration and Nationality Act [8 U.S.C. § 1226].” The Board remanded
6 solely for factual clarification on the respondent’s manner of entry and jurisdiction but affirmed the
7 Immigration Judge’s discretionary bond findings, noting that DHS had shown “no legal or factual
8 error” in the bond determination.
9

10 Thus, the BIA’s own decision undercuts DHS’s position here: the agency record itself
11 confirms that §1226(a)—not §1225(b)—governs Petitioner’s detention.
12

13 **V. The Subsequent IJ Order Creates an Agency Contradiction.**

14 Following the remand, on October 14, 2025, the Immigration Judge declined jurisdiction to set a
15 bond, citing *Matter of Yajure Hurtado* and concluding that Petitioner, as an individual who entered
16 without inspection, is an “alien seeking admission” under §1225(b)(2)(A). This procedural ruling
17 directly conflicts with both the BIA’s remand acknowledgment and the Arizona district court
18 decisions interpreting the same statutes.
19

20 Such inconsistency between the BIA and the IJ demonstrates the arbitrary nature of DHS’s
21 detention framework—further confirming the need for habeas relief.
22

23 **VI. Administrative Exhaustion And Futility**

24 Even if exhaustion were required, Petitioner has now fully exhausted all available
25 administrative remedies. The October 14, 2025 Immigration Judge’s order expressly denied
26 jurisdiction under *Matter of Yajure Hurtado*, foreclosing any possibility of bond relief. Both parties
27 reserved appeal, but *Yajure* is a binding BIA precedent that the Board cannot overturn.
28

1 Further administrative appeal would therefore be futile, satisfying the prudential exhaustion
2 requirement. *McCarthy v. Madigan*, 503 U.S. 140, 147–49 (1992); *Singh v. Holder*, 638 F.3d 1196,
3 1203 (9th Cir. 2011).

4 Accordingly, there are no remaining administrative remedies capable of addressing
5 Petitioner’s unlawful detention. His continued custody—after the IJ’s jurisdictional denial under
6 *Yajure Hurtado*—renders this habeas petition both ripe and procedurally proper.
7

8 **CONCLUSION**

9 For all the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of
10 habeas corpus, find that §1226(a) governs his custody, and order his immediate release on the
11 \$10,000 bond previously set by the Immigration Judge.
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13 DATED this 16th Day of October, 2025.

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LIST OF NEW EXHIBITS	
Exhibit 17	10/8/2025 Remand Order from the BIA
Exhibit 18	10/14/2025 Order of the Immigration Judge Denying Bond
Exhibit 19	10/3/2025 Order entered in <i>Francisco Echevarria v. Pam Bondi, et al.</i>, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)
Exhibit 20	10/9/2025 Order entered in <i>Hector Lopez-Melo v. Bondi, et. al.</i>, Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.)
Exhibit 21	10/10/2025 Order Granting TRO in <i>Gil-Paulino v. Noem, et al.</i>, Case 1:25-cv-24292-KMW [docket no. 41] (S.D.Fla.)
Exhibit 22	10/01/25 Order granting in part petition for writ of habeas corpus in <i>Catalina Santiago Santiago v. Noem, et al.</i>, Case No. 25-cv-00361-KC (W.D. Texas)
Exhibit 23	Notice of Hearing for 11-17-2025 Continued Hearing in Immigration Court⁹

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