

1 BILAL A. ESSAYLI
2 Acting United States Attorney
3 DAVID M. HARRIS
4 Assistant United States Attorney
5 Chief, Civil Division
6 DANIEL A. BECK
7 Assistant United States Attorney
8 Chief, Complex and Defensive Litigation Section
9 JASMIN YANG (Cal. Bar No. 255254)
10 Assistant United States Attorney
11 Federal Building, Suite 7516
12 300 North Los Angeles Street
13 Los Angeles, California 90012
14 Telephone: (213) 894-8827
15 Facsimile: (213) 894-7819
16 E-mail: jasmin.yang@usdoj.gov

17 Attorneys for Federal Respondents

18
19 UNITED STATES DISTRICT COURT
20
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 R.S.,

23 No. 5:25-cv-02594-MWC-SK

24 Petitioner,

25 **FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
APPLICATION FOR A TEMPORARY
RESTRANING ORDER¹**

26 v.

27 ERNESTO SANTACRUZ JR., et al.,

28 Honorable Michelle Williams Court

29 Respondents.

30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
7710
7711
7712
7713
7714
7715
7716
7717
7718
7719
7720
7721
7722
7723
7724
7725
7726
7727
7728
7729
7730
7731
7732
7733
7734
7735
7736
7737
7738
7739
7740
7741
7742
7743
7744
7745
7746
7747
7748
7749
7750
7751
7752
7753
7754
7755
7756
7757
7758
7759
7760
7761
7762
7763
7764
7765
7766
7767
7768
7769
77610
77611
77612
77613
77614
77615
77616
77617
77618
77619
77620
77621
77622
77623
77624
77625
77626
77627
77628
77629
77630
77631
77632
77633
77634
77635
77636
77637
77638
77639
77640
77641
77642
77643
77644
77645
77646
77647
77648
77649
77650
77651
77652
77653
77654
77655
77656
77657
77658
77659
77660
77661
77662
77663
77664
77665
77666
77667
77668
77669
77670
77671
77672
77673
77674
77675
77676
77677
77678
77679
77680
77681
77682
77683
77684
77685
77686
77687
77688
77689
77690
77691
77692
77693
77694
77695
77696
77697
77698
77699
776100
776101
776102
776103
776104
776105
776106
776107
776108
776109
776110
776111
776112
776113
776114
776115
776116
776117
776118
776119
776120
776121
776122
776123
776124
776125
776126
776127
776128
776129
776130
776131
776132
776133
776134
776135
776136
776137
776138
776139
776140
776141
776142
776143
776144
776145
776146
776147
776148
776149
776150
776151
776152
776153
776154
776155
776156
776157
776158
776159
776160
776161
776162
776163
776164
776165
776166
776167
776168
776169
776170
776171
776172
776173
776174
776175
776176
776177
776178
776179
776180
776181
776182
776183
776184
776185
776186
776187
776188
776189
776190
776191
776192
776193
776194
776195
776196
776197
776198
776199
776200
776201
776202
776203
776204
776205
776206
776207
776208
776209
776210
776211
776212
776213
776214
776215
776216
776217
776218
776219
776220
776221
776222
776223
776224
776225
776226
776227
776228
776229
776230
776231
776232
776233
776234
776235
776236
776237
776238
776239
776240
776241
776242
776243
776244
776245
776246
776247
776248
776249
776250
776251
776252
776253
776254
776255
776256
776257
776258
776259
776260
776261
776262
776263
776264
776265
776266
776267
776268
776269
776270
776271
776272
776273
776274
776275
776276
776277
776278
776279
776280
776281
776282
776283
776284
776285
776286
776287
776288
776289
776290
776291
776292
776293
776294
776295
776296
776297
776298
776299
776300
776301
776302
776303
776304
776305
776306
776307
776308
776309
776310
776311
776312
776313
776314
776315
776316
776317
776318
776319
776320
776321
776322
776323
776324
776325
776326
776327
776328
776329
776330
776331
776332
776333
776334
776335
776336
776337
776338
776339
776340
776341
776342
776343
776344
776345
776346
776347
776348
776349
776350
776351
776352
776353
776354
776355
776356
776357
776358
776359
776360
776361
776362
776363
776364
776365
776366
776367
776368
776369
776370
776371
776372
776373
776374
776375
776376
776377
776378
776379
776380
776381
776382
776383
776384
776385
776386
776387
776388
776389
776390
776391
776392
776393
776394
776395
776396
776397
776398
776399
776400
776401
776402
776403
776404
776405
776406
776407
776408
776409
776410
776411
776412
776413
776414
776415
776416
776417
776418
776419
776420
776421
776422
776423
776424
776425
776426
776427
776428
776429
776430
776431
776432
776433
776434
776435
776436
776437
776438
776439
776440
776441
776442
776443
776444
776445
776446
776447
776448
776449
776450
776451
776452
776453
776454
776455
776456
776457
776458
776459
776460
776461
776462
776463
776464
776465
776466
776467
776468
776469
776470
776471
776472
776473
776474
776475
776476
776477
776478
776479
776480
776481
776482
776483
776484
776485
776486
776487
776488
776489
776490
776491
776492
776493
776494
776495
776496
776497
776498
776499
776500
776501
776502
776503
776504
776505
776506
776507
776508
776509
776510
776511
776512
776513
776514
776515
776516
776517
776518
776519
776520
776521
776522
776523
776524
776525
776526
776527
776528
776529
776530
776531
776532
776533
776534
776535
776536
776537
776538
776539
776540
776541
776542
776543
776544
776545
776546
776547
776548
776549
776550
776551
776552
776553
776554
776555
776556
776557
776558
776559
776560
776561
776562
776563
776564
776565
776566
776567
776568
776569
776570
776571
776572
776573
776574
776575
776576
776577
776578
776579
776580
776581
776582
776583
776584
776585
776586
776587
776588
776589
776590
776591
776592
776593
776594
776595
776596
776597
776598
776599
776600
776601
776602
776603
776604
776605
776606
776607
776608
776609
776610
776611
776612
776613
776614
776615
776616
776617
776618
776619
776620
776621
776622
776623
776624
776625
776626
776627
776628
776629
776630
776631
776632
776633
776634
776635
776636
776637
776638
776639
776640
776641
776642
776643
776644
776645
776646
776647
776648
776649
776650
776651
776652
776653
776654
776655
776656
776657
776658
776659
776660
776661
776662
776663
776664
776665
776666
776667
776668
776669
776670
776671
776672
776673
776674
776675
776676
776677
776678
776679
776680
776681
776682
776683
776684
776685
776686
776687
776688
776689
776690
776691
776692
776693
776694
776695
776696
776697
776698
776699
776700
776701
776702
776703
776704
776705
776706
776707
776708
776709
776710
776711
776712
776713
776714
776715
776716
776717
776718
776719
776720
776721
776722
776723
776724
776725
776726
776727
776728
776729
776730
776731
776732
776733
776734
776735
776736
776737
776738
776739
7767340
7767341
7767342
7767343
7767344
7767345
7767346
7767347
7767348
7767349
7767350
7767351
7767352
7767353
7767354
7767355
7767356
7767357
7767358
7767359
77673510
77673511
77673512
77673513
77673514
77673515
77673516
77673517
77673518
77673519
77673520
77673521
77673522
77673523
77673524
77673525
77673526
77673527
77673528
77673529
77673530
77673531
77673532
77673533
77673534
77673535
77673536
77673537
77673538
77673539
77673540
77673541
77673542
77673543
77673544
77673545
77673546
77673547
77673548
77673549
77673550
77673551
77673552
77673553
77673554
77673555
77673556
77673557
77673558
77673559
77673560
77673561
77673562
77673563
77673564
77673565
77673566
77673567
77673568
77673569
77673570
7767

1 **I. INTRODUCTION**

2 Petitioner R.S. has filed a Petition for Writ of Habeas Corpus (Dkt. 1) challenging
3 his detention pending the resolution of removal proceedings. Dkt. 1 (“Petition” or
4 “Pet.”). Petitioner has filed an *ex parte* application for a Temporary Restraining Order
5 (Dkt. 2) requiring his immediate release. Dkt. 3 (the “TRO Application”). The TRO
6 Application should be denied because Petitioner is lawfully detained under 8 U.S.C.
7 § 1225(b)(2). To the extent that Petitioner disagrees and wishes to obtain a bond hearing
8 before an Immigration Judge, he can do that the same way numerous other litigants have
9 in this District: Seeking a bond hearing pursuant to Section 1226(a). Petitioner states that
10 the BIA’s September 5, 2025 order in *Matter of Jonathan Javier Yajure Hurtado*, 29
11 I&N Dec. 216 (BIA 2025) found that detainees like him were not entitled to such bond
12 hearings because they are detained under 8 U.S.C. § 1225(b)(2). Dkt. 1 ¶ 19. That is
13 indeed the government’s position. But Petitioner neglects to mention that District Judges
14 in the Central District of California have nonetheless ruled that detainees are entitled to a
15 bond hearing under § 1226(a), *Matter of Yajure* notwithstanding. *See e.g. Henberto*
16 *Arreola Armenta, et al. v. Kristi Noem, et al.*, 5:25-cv-02416-JFW-SP, Dkt. no. 7
17 (September 16, 2025 decision by Hon. Judge Walter granting TRO and ordering
18 §1226(a) bond hearing); *Moises Salomon Zaragoza Mosqueda et al. v. Kristi Noem et*
19 *al.*, 5:25-cv-02304-CAS-BFM (September 8, 2025 decision by Hon. Judge Snyder
20 granting TRO and ordering § 1226(a) bond hearing).

21 Remedies sought by preliminary injunctive relief must be narrowly tailored to the
22 harm at issue, rather than granting the requested ultimate relief by TRO at the very outset
23 of the case. *See e.g. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022)
24 (“And we note that even when there are deficiencies in individual § 1226(a) proceedings,
25 they may be redressable through means short of major changes to the burden of proof.”).
26 Here, if any relief would be appropriate, it would be determining whether Petitioner has
27 a right to a bond hearing in Immigration Court.

28 That point of basic remedy law is particularly critical here given that the Petitioner

1 was detained back on **June 30, 2025**. See Dkt. 1, ¶ 6. In filing an *ex parte* TRO
2 Application on **September 30, 2025**, he has waited well over three months after his
3 detention date to bring his application for a temporary restraining order. He facially does
4 not meet the demanding standard for seeking *ex parte* TRO relief relative to his
5 putatively unlawful detention.

6 Petitioner cites *Zadvydas v. Davis*, 533 U.S. 678 (2001), but that case involved
7 post-removal order detention, and held that up to six months of such detention was
8 presumptively reasonable. Here, Petitioner has been detained for far less time.

9 Petitioner appears to argue that ICE's decision, five or six days after he entered
10 the United States on December 22, 2022, to release him on his own recognizance
11 requires an extensive pre-arrest hearing if the government ever thereafter decided to
12 arrest him again. But the law does not impose such an elaborate pre-arrest proceeding,
13 nor would it make sense to impose such a negative consequence on ICE for deciding to
14 release somebody on their own recognizance. Petitioner was not previously ordered
15 released by an Immigration Court, over ICE's objection. Instead, he was released by
16 ICE, at its own discretion. The government has very broad authority to revoke release,
17 and it has broad authority to detain noncitizens pursuant to removal proceedings. There
18 does not appear to be any appellate authority authorizing the imposition of pre-detention
19 Immigration Court hearings, particularly when the noncitizen was not released by a
20 finding of an Immigration Judge, but rather by ICE's discretion.

21 Accordingly, the TRO Application should be denied.

22 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

23 Petitioner is a citizen of Iran (Dkt. 1 ¶ 19), who entered the United States on
24 approximately December 22, 2022, crossing the United States-Mexico border and
25 entering without inspection. *Id.* ¶ 2. Petitioner requested asylum and was detained for
26 five or six days and was released on December 27, 2022 on his own recognizance. *Id.*
27 ¶ 3. On February 22, 2023. Petitioner was served with a Notice to Appear and placed in
28 removal proceedings; ICE charged Petitioner with being inadmissible under 8 U.S.C.

1 § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *Id.* ¶ 4.
2 Petitioner alleges that, on June 30, 2025, he was detained by ICE at his home and was
3 taken to the Adelanto ICE Processing Center. *Id.* ¶ 6.

4 Petitioner filed the instant Petition and TRO Application on September 30, 2025.
5 Dkt. 1, 3.

6 **III. STATUTORY BACKGROUND**

7 **A. Detention under 8 U.S.C. § 1225**

8 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
9 present in the United States who [have] not been admitted” or “who arrive[] in the United
10 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
11 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
12 583 U.S. 281, 287 (2018).

13 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
14 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
15 documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject
16 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien
17 “indicates either an intention to apply for asylum . . . or a fear of persecution,” immigration
18 officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien
19 with “a credible fear of persecution” is “detained for further consideration of the
20 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to
21 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he
22 is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

23 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
24 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
25 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
26 removal proceeding “if the examining immigration officer determines that [the] alien
27 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C.
28 § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens

1 arriving in and seeking admission into the United States who are placed directly in full
2 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
3 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583
4 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole
5 discretionary authority to temporarily release on parole “any alien applying for admission
6 to the United States” on a “case-by-case basis for urgent humanitarian reasons or
7 significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806
8 (2022).

9 **B. Detention under 8 U.S.C. § 1226(a)**

10 Section 1226 provides for arrest and detention “pending a decision on whether the
11 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
12 government may detain an alien during his removal proceedings, release him on bond, or
13 release him on conditional parole.² By regulation, immigration officers can release aliens
14 if the alien demonstrates that he “would not pose a danger to property or persons” and “is
15 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
16 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
17 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R.
18 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

19 At a custody redetermination, the IJ may continue detention or release the alien on
20 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
21 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
22 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors
23 IJs consider, an alien “who presents a danger to persons or property should not be released
24 during the pendency of removal proceedings.” *Id.* at 38.

25
26 _____
27 ² Being “conditionally paroled under the authority of § 1226(a)” is distinct from
28 being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-
Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because
release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible
for adjustment of status under § 1255(a)).

1 **IV. ARGUMENT**

2 **A. The Court Lacks Jurisdiction under 8 U.S.C. § 1252.**

3 As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of
4 Petitioner's claim that he should have received a "pre-deprivation . . . hearing" prior to
5 being detained. Section 1252(g) deprives courts of jurisdiction, including habeas corpus
6 jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the
7 decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate
8 cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. §
9 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided
10 in this section and notwithstanding any other provision of law (statutory or nonstatutory),
11 including section 2241 of title 28, United States Code, or any other habeas corpus
12 provision, and sections 1361 and 1651 of such title."³ Except as provided in § 1252, courts
13 "cannot entertain challenges to the enumerated executive branch decisions or actions."
14

E.F.L. v. Prim, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by
which the DHS Secretary chooses to commence removal proceedings, including the
decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
(11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's
discretionary decisions to commence removal" and to review "ICE's decision to take
[plaintiff] into custody and to detain him during removal proceedings").

Here, Petitioner challenges the government's decision and action to detain him,
which arises from DHS's decision to commence removal proceedings, and is thus an
"action taken . . . to remove [him] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d

³ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the
2 petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-
3 00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no
4 judicial review of the threshold detention decision, which flows from the government’s
5 decision to “commence proceedings”). Moreover, Petitioner cannot show the exigency
6 required to obtain TRO relief, because Petitioner was detained over three months ago.
7 Thus, the Court should deny the TRO for lack of jurisdiction under § 1252(b)(9).

8 **B. Petitioner Is Lawfully Detained Pending the Resolution of His Removal
9 Proceedings.**

10 Petitioner should not obtain an order of immediate release, because he is lawfully
11 detained pending the resolution of his removal proceedings. The Supreme Court has
12 recognized that “detention during deportation proceedings [i]s a constitutionally valid
13 aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003).

14 **C. Detention Under § 1225(b)(2) and Detention Under § 1226(a)**

15 In response to Petitioner’s underlying request for a bond hearing, the government
16 reiterates here the legal position it stated in its opposition to the *ex parte* TRO application
17 filed in *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM, which the government filed on July
18 24, 2025 as Docket no. 8.⁴ The same legal issue has also been raised in this District in
19 other cases including *Henberto Arreola Armenta, et al. v. Kristi Noem, et al.*, 5:25-cv-
20 02416-JFW-SP, *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-
21 ADS, *Jorge Arrazola-Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-01789-ODW-DFM,
22 and *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS. In each case,
23 however, Respondents acknowledge that the court ordered the United States to provide a
24 bond hearing under 8 U.S.C. § 1226(a) within seven days, which the government then
25 provided, thereby mooting the habeas petitions at issue.

26
27 ⁴ The District Court granted the *ex parte* TRO application in *Bautista* via order
28 issued on July 28, 2025 [Dkt. 14]. Shortly thereafter, an amended complaint asserting
putative class claims for similarly situated petitioners was filed in *Bautista* [Dkt. 15].

Petitioner argues (Pet. ¶ 20) that the Board of Immigration Appeals (BIA) recently ruled the opposite way on this issue in its September 5, 2025 order in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission “because 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.” *Id.*

The Federal Respondents contend that Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), consistent with *Matter of Yajure*, and for the reasons stated therein. Should the Court disagree, however, the proper remedy would then be to order a prompt bond hearing pursuant to 8 U.S.C. § 1226(a), thereby mooting the Petition.

D. Petitioner’s Arguments that he is Entitled to a Pre-Arrest Hearing Are Defective

Petitioner was not previously ordered released by an Immigration Judge in an Immigration Court. Instead, as the Petition alleges, he was released by ICE, at its discretion, five or six days after he entered the country.

Petitioner argues that he thereby acquired a right to prevent the government from arresting and detaining him in the future absent a hearing. But no Immigration Court had ordered his release in the first place. That was ICE’s discretion. Section 1252 insulate the decision to arrest and detain Petitioner in connection with his removal proceedings. It does not provide that this right is instantly lost if the government, five days after the noncitizen is apprehended, elects not to keep him in immediate custody. Indeed, to impose such a consequence would threaten to eliminate such discretion.

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a pre-detention hearing. Petitioner appears to argue that

1 there does not appear to be good reason for his recent re-detention, given that he was
2 previously released on his own recognizance. But the government's authority to revoke
3 release and re-detain individuals previously released by ICE is discretionary, and it does
4 not require the type of intensive threshold evidentiary procedure that Petitioner suggests.
5 "While the regulation provides the detainee some opportunity to respond to the reasons
6 for revocation, it provides no other procedural and no meaningful substantive limit on
7 this exercise of discretion as it allows revocation "when, in the opinion of the revoking
8 official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or
9 *any other circumstance*, indicates that release would no longer be appropriate."

10 *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and*
11 *superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in
12 original).

13 Petitioner cites unpublished District Court decisions imposing barriers to
14 redetention, but those decisions generally (a) involve prior Immigration Court decisions
15 granting release prior to the government's decision to arrest the individual again; and (b)
16 are not supported by appellate law.

17 Other District Courts have recognized that an alleged lack of sufficient release
18 revocation and redetention process does not establish a right to habeas relief. In *Ahmad*
19 *v. Whitaker*, for example, the government revoked the petitioner's release but did not
20 provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D.
21 Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019).
22 The petitioner argued the revocation of his release was unlawful because, he contended,
23 the federal regulations prohibited redetention without, among other things, an
24 opportunity to be heard. *Id.* In rejecting his claim, the court held that although the
25 regulations called for an informal interview, petitioner could not establish "any
26 actionable injury from this violation of the regulations" because the government had
27 procured a travel document for the petitioner, and his removable was reasonably
28 foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of

1 Massachusetts held that even if the ICE detainee petitioner had not received a timely
2 interview following her return to custody, there was “no apparent reason why a violation
3 of the regulation … should result in release.” *Doe v. Smith*, 2018 WL 4696748, at *9 (D.
4 Mass. Oct. 1, 2018). The court elaborated, “[I]t is difficult to see an actionable injury
5 stemming from such a violation. Doe is not challenging the underlying justification for
6 the removal order.... Nor is this a situation where a prompt interview might have led to
7 her immediate release—for example, a case of mistaken identity.” *Id.*

8 To imply into existence a non-statutory requirement for an elaborate pre-arrest
9 hearing process simply because ICE (not an Immigration Court) had previously granted
10 the noncitizen release on their own recognizance is not adequately supported by law, and
11 it would set a poor precedent at a systematic level.

12 **V. CONCLUSION**

13 For these reasons, Federal Respondents respectfully request that the Court deny
14 the TRO. If the Court is inclined to rule in Petitioner’s favor, however, the appropriate
15 remedy would be to order a prompt bond hearing before an Immigration Judge under 8
16 U.S.C. § 1226(a), consistent with what other District Courts have done.

17

18 Dated: October 2, 2025

Respectfully submitted,

19 BILAL A. ESSAYLI
20 Acting United States Attorney
21 DAVID M. HARRIS
22 Assistant United States Attorney
23 Chief, Civil Division
24 DANIEL A. BECK
25 Assistant United States Attorney
26 Chief, Complex and Defensive Litigation Section

27

28 /s/ Jasmin Yang
29 JASMIN YANG
30 Assistant United States Attorney

31 Attorneys for Federal Respondents

CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Federal Respondents, certifies that this brief contains 3,060 words, which complies with the word limit of L.R. 11-6.1