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9 **SERVANDO TORRES HERNANDEZ**

10
11 UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF IDAHO

13 **SERVANDO TORRES HERNANDEZ,**

14 Petitioner,

15 v.

16 **PAMELA BONDI**, Attorney General;
17 **KRISTI NOEM**, Secretary of Homeland
18 Security; **TODD LYONS**, Acting Director,
19 U.S. Immigration and Customs Enforcement
20 (ICE); **JASON KNIGHT**, Field Officer
21 Director, ICE Salt Lake Field Office;
22 **KENNETH PORTER**, Field Officer Director,
23 ICE Boise Field Sub-Office; **STEVE**
24 **ANDERSON**, Sheriff, Jefferson County,
25 Idaho,

26 Respondents.

Case No. 1:25-CV-00615-BLW

**REPLY IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

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1 **I. LEGAL ARGUMENT**

2 **A. Respondents received effective service of all documents filed in this matter.**

3 Respondents have waived arguments related to effective service. In the alternative, they
4 have not presented any prejudice by the service issue, and the Court should not dismiss the case.

5 *1. Respondents’ consent to Electronic Case Filing (ECF) waives any arguments*
6 *related to effective service.*

7 The Respondents’ arguments regarding ineffective service of process fail for two reasons.
8 First, Local Rule 5.1(k) states in full:

9 Participation by a Registered Participant in the Court’s CM/ECF
10 [Case Management/Electronic Case Files] system by registration and
11 receipt of a login and password from the Clerk of Court will
12 constitute consent by that Registered Participant to the electronic
13 service of pleadings and other papers under applicable Federal Rules
14 of Civil, Criminal and/or Bankruptcy Procedure.

15 The Respondents’ consent to participate and active participation in CM/ECF procedures
16 should be sufficient on its own to waive the Respondents’ Federal Rule of Civil Procedure 12(b)(5)
17 argument. *See also* FED. R. CIV. P. 5(b)(2)(E) (“A paper is served under this rule by . . . sending it
18 to a registered user by filing it with the court’s electronic-filing system[.] . . . [S]ervice is complete
19 upon filing or sending[.]”).

20 Respondents further consented to the use of CM/ECF procedures when they responded to
21 both the petition and the motion in this matter, demonstrating they had full and unfettered access
22 to the filings made by Petitioner. Additionally, Respondents fail to indicate any prejudice or other
23 assertion that they were injured by electronic filing. Indeed, Respondents were able to submit their
24 response to both the petition and the motion because they received full copies of those documents
25 on CM/ECF. Accordingly, they waived any further personal jurisdiction arguments when they
26 responded to the filings.

27 This Court has previously explained that “Rule 4 is to be ‘liberally construed so long as a
28 party receives sufficient notice of the complaint[.]’ ” *Buchanan v. Ziegler*, No. 2:24-cv-00187-
BLW-REP, 2025 WL 1756728, at *3 (D. Idaho June 10, 2025) (citing *Direct Mail Specialists, Inc.*
v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988)). Again, Respondents make

1 no mention of receiving only partial copies of the filings or otherwise demonstrating any prejudice.
 2 *Cf. Buchanan*, 2025 WL 1756728, at *3 (“Defendant . . . then complains that service of process
 3 was insufficient because . . . he received only an incomplete and unfiled version of Plaintiff’s
 4 Complaint.”).

5 2. *Even if service was improper, this Court must not dismiss the action with prejudice.*

6 When a defendant alleges insufficient service of process, the burden then shifts to the
 7 plaintiff to establish that service was proper under FRCP 4. *Davis v. Mercier*, No. 4:24-cv-00160-
 8 BLW, 2025 WL 371085, at *1 (D. Idaho Feb. 3, 2025) (citing *Brockmeyer v. May*, 383 F.3d 798,
 9 801 (9th Cir. 2004)). A motion to dismiss based on untimely service “requires a two-step
 10 analysis[.]” *Larimore v. Heiss Invs., LLC*, No. 1:23-cv-00086-DCN, 2024 WL 943048, at *2
 11 (D. Idaho, Mar. 5, 2024). “First, upon a showing of good cause for the defective service, the court
 12 must extend the time period. Second, if there is no good cause, the court has the discretion to dismiss
 13 without prejudice or to extend the time period.” *Id.* (quoting *In re Sheehan*, 253 F.3d 507, 512 (9th
 14 Cir. 2001)) (internal quotation marks omitted). The Ninth Circuit has explained

15 that showing “good cause” means showing at least “excusable
 16 neglect,” and that, to establish good cause, a plaintiff may also be
 17 required to show “(a) the party to be served personally received
 18 actual notice of the lawsuit; (b) the defendant would suffer no
 19 prejudice; and (c) plaintiff would be severely prejudiced if his
 20 complaint were dismissed.”

21 *Id.* (quoting *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991)) (internal citation omitted).

22 Here, undersigned counsel’s staff erroneously interpreted the court’s order to refile the
 23 motion not to be bound by the October 30, 2025, deadline because it was not included in paragraph
 24 1 of the Court’s order discussing the refiling of the Emergency Motion for Temporary Restraining
 25 Order and Stay of Removal. (Vasquez Decl. ¶¶ 4–5.) Instead, she believed only the Petition was
 26 due to be served by October 30, 2025, at 1:00 PM, as noted in paragraph 4 of the Court’s order.
 27 (Vasquez Decl. ¶ 4.) At the very least, this is “excusable neglect” or “good cause” sufficient to
 28 extend the deadline for proper service.¹

¹ Service was effectuated according to the Court’s order on November 3, 2025, at 6:13 PM MST by emailing copies of the Petition, the original TRO Motion, the Court’s Order, and the refiled TRO Motion to Respondents’ attorneys, including Mr. Mike Mitchell, who entered his appearance also on November 3rd. He confirmed receipt via email on November 4, 2025, at 8:20 AM. (Vasquez Decl. ¶ 7.)

1 Even if this Court concludes that the “excusable neglect” described above is not good cause,
2 the plaintiff may otherwise demonstrate good cause by showing ““(a) the party to be served
3 personally received actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and
4 (c) plaintiff would be severely prejudiced if his complaint were dismissed.”” *Larimore*, 2024 WL
5 943048, at *2.

6 As described in the preceding section, Petitioner understands that the parties to be served
7 actually received notice of the habeas petition and the temporary restraining order (“TRO”) motion
8 because they timely responded to such filings. Additionally, they were able to access the filings on
9 CM/ECF. Because the Respondents were able to access the filings, they suffered no prejudice. The
10 Respondents make no assertion in their response that they were unable to access the filings or that
11 they suffered any kind of prejudice. Finally, in contrast, the petitioner here “would be severely
12 prejudiced if his complaint were dismissed.” *Id.* He has been in Immigration and Customs
13 Enforcement (“ICE”) custody, several hundred miles away from his family, for multiple weeks.
14 The very essence of his claim relates to his prolonged detention; therefore, dismissal of this matter
15 would severely prejudice him, particularly where the Respondents have alleged no prejudice with
16 respect to the service issue.

17 Given the Respondents’ lack of injury in this matter, and Petitioner’s continued injury of
18 prolonged detention, he respectfully requests the Court either extend the deadline and accept the
19 now properly filed documents or conclude that this issue is now moot because the Government’s
20 response waived the issue.

21 **B. 8 U.S.C. § 1252 does not bar this Court’s jurisdiction over this matter.**

22 This Court can exercise habeas jurisdiction to review Petitioner’s challenge to the
23 lawfulness of his detention. 28 U.S.C. § 2241. Contrary to the Respondents’ assertion, section 1252
24 of Title 8 of the United States Code has no bearing on these proceedings because Petitioner brings
25 his claim as a petition for writ of habeas corpus, not as a challenge to his removal proceedings.
26 Respondents’ attempts to apply the jurisdiction-stripping provisions of section 1252 are unavailing
27 because it is not clear from the record whether Petitioner is in removal proceedings and because
28 section 1252 does not apply to habeas litigation. Instead, habeas corpus proceedings have long

1 served as a mechanism by which to challenge the legality of immigration-related detention. *See*,
2 *e.g.*, *I.N.S. v. St. Cyr*, 533 U.S. 289, 316–26 (2001).

3 First, Respondents allege that the Department of Homeland Security (“DHS” or “the
4 Department”) has filed a Notice to Appear (“NTA”) for Petitioner, thereby initiating removal
5 proceedings. Callahan Decl. ¶ 12; Response, Dkt. No. 5, p. 8. However, since the alleged initiation
6 of removal proceedings on October 21, 2025, the Respondents have failed to produce an NTA
7 alerting Petitioner of the charges against him and of a purported hearing date.² The affidavit
8 provided in the Government’s response is not definitive proof that an NTA was filed. This is
9 important because until the NTA is properly serviced on the Petitioner *and* filed in immigration
10 court, removal proceedings are not initiated. 8 C.F.R. § 1003.14(a) (“Jurisdiction vests, and
11 proceedings before an Immigration Judge commence, when a charging document is filed with the
12 Immigration Court by the Service. The charging document must include a certificate showing
13 service on the opposing party[.]”). Because it is not clear from the record whether Petitioner is in
14 active removal proceedings, the jurisdiction-stripping provisions of section 1252 do not apply. *See*,
15 *e.g.*, *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *16-23 (D. Nev.
16 Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at *5 (D. Nev.
17 Sept. 23, 2025).

18 Respondents attempt to use the case law surrounding section 1252 to support its
19 jurisdiction-stripping arguments, but these cases discuss judicial review of detention surrounding
20 an order of removal. *See, e.g.*, *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).
21 Respondents’ characterization of *J.E.F.M.*, for example, not only misinterprets the law, but it also
22 omits the portion of the case that undermines its claim---“§ 1252(b)(9) ‘does not apply to federal
23 habeas corpus provisions that do not involve final orders of removal.’ ” *Id.* at 1032 (quoting
24 *Nadarajah v. Gonzales*, 443 F.3d 1069, 1076 (9th Cir. 2006)). Petitioner in this matter has no final
25 order of removal and has instead initiated a collateral habeas proceeding.

26 _____
27 ² Moreover, a search of Petitioner’s A-number in the Executive Office for Immigration Review (EOIR) Automated
28 Case Information website shows “[n]o case found for this A-Number.” ACIS, <https://acis.eoir.justice.gov/en/> (last visited Nov. 4, 2025). While failure to show up in the EOIR Automated Case Information may not be definitive proof of active removal proceedings, it is the next best thing---after an NTA---to alert a respondent of any upcoming hearing dates.

1 Second, and even if it is necessary to assess jurisdictional questions of section 1252, the
 2 Respondents' arguments miss the mark of habeas proceedings and misread the plain language of
 3 the statute. The filing of the instant petition is not, as Respondents contend, a challenge to the
 4 commencement of removal proceedings---that question is irrelevant to whether ICE may detain an
 5 individual. Response, Dkt. No. 5, p. 7. Instead, as plainly written in section 1252(g):

6 Except as provided in this section and notwithstanding any other
 7 provision of law . . . *including section 2241 of Title 28, or any other*
 8 *habeas corpus provision . . .* no court shall have jurisdiction to hear
 9 any cause or claim by or on behalf of any [noncitizen] arising from
 the decision or action by the Attorney General to commence
 proceedings, adjudicate cases, or execute removal orders against any
 [noncitizen] under this chapter.

10 *Id.* (emphasis added). Not only is there a carve-out provision for habeas matters, but also this instant
 11 action does not arise “under this chapter.” Therefore, even by its plain language, section 1252 does
 12 not preclude jurisdiction over this matter.

13 **C. 8 U.S.C. § 1226 governs Petitioner’s detention.**

14 As explained in great detail in Petitioner’s initial filing, several courts around the country,
 15 including many in the Ninth Circuit, have found that detention of noncitizens in non-expedited
 16 removal proceedings are detained pursuant to 8 USC § 1226.³ The plain language of the statute
 17 necessitates this result and renders unnecessary the Respondents’ discussion of the legislative
 18 history.

19 *I. Section 1225*

20 Section 1225(b)(2)(A) of Title 8 of the United States Code reads:

21 [I]n the case of a[] [noncitizen] who is an applicant for admission, if
 22 the examining immigration officer determines that a[] [noncitizen]
 23 seeking admission is not clearly and beyond a doubt entitled to be
 admitted, the [noncitizen] shall be detained for a proceeding under
 section 1229a of [Title 8].

24 An applicant for admission is defined as a “[noncitizen] present in the United States who
 25 has not been admitted or who arrives in the United States[.]” 8 U.S.C. § 1225(a)(1). All applicants
 26 for admission or those “otherwise seeking admission or readmission to or transit through the United
 27

28 ³ Respondents’ repeated assertions that Petitioner is in active removal proceedings before an immigration court support this point.

1 States *shall be inspected by immigration officers.*” 8 U.S.C. § 1225(a)(3) (emphasis added). This
 2 process generally begins at ports of entry or at the border. *See, e.g., Jennings v. Rodriguez*, 583
 3 U.S. 281, 286–87 (2018).

4 Some applicants for admission---those who are inadmissible for lack of a valid entry
 5 document, have not been continuously present in the U.S. for at least two years prior to the
 6 inadmissibility determination, and have been otherwise designated for expedited removal---are
 7 subject to expedited removal proceedings under section 1225. *Dep’t of Homeland Sec. v.*
 8 *Thuraissigiam*, 591 U.S. 103, 109 (2020); *see also* 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(I)–(II). In
 9 expedited removal proceedings, after an immigration officer has determined that the applicant for
 10 admission is inadmissible, then the officer “shall order the [noncitizen] removed from the United
 11 States without further hearing or review unless the [noncitizen] indicates . . . an intention to apply
 12 for asylum[.]” 8 U.S.C. 1225(b)(1)(A)(i).

13 2. Section 1226

14 Though section 1225 generally applies to those presenting themselves at the border or ports
 15 of entry, noncitizens in the United States do not have an absolute right to remain in the country and
 16 may still be subject to removal proceedings under section 1226.⁴ *Jennings v. Rodriguez*, 583 U.S.
 17 281, 297 (2018). Indeed, section 1226 “provides the general process for arresting and detaining
 18 [noncitizens] who are present in the United States and eligible for removal.” *Rodriguez Diaz v.*
 19 *Garland*, 53 F.4th 1189 (9th Cir. 2022). Unlike section 1225, where any immigration officer
 20 determines the applicant’s admissibility, ICE is responsible for the initial custody determination of
 21 those detained pursuant to section 1226(a). *Id.* at 1196 (citing 8 C.F.R. § 236.1(c)(8)). Thereafter,
 22 Respondents may release the detainee on bond or conditional parole. 8 U.S.C. § 1226(a)(2). The
 23 noncitizen may also seek release before an immigration judge, where he must prove “that he is not
 24 ‘a threat to national security, a danger to the community at large, likely to abscond, or otherwise a
 25 poor bail risk[.]’” *Rodriguez Diaz*, 53 F.4th at 1197 (quoting *Matter of Guerra*, 24 I. & N. Dec. 37,
 26 40 (BIA 2006)).

27 _____
 28 ⁴ They may also be subject to section 1225 proceedings from inside the country, away from the border and ports of
 entry, but only if they meet the criteria described in Section III.A. *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(I)–(II);
Thuraissigiam, 591 U.S. at 109.

1 3. *Section 1226 applies to Petitioner’s detention.*

2 In short, immigration officials may detain either applicants for admission (pursuant to
3 section 1225) or those who are already present in the United States and not described in section
4 1225 (pursuant to section 1226). The District Court for the Federal District of Hawaii summarized
5 this interplay as explained in *Jennings*, 583 U.S. 281:

6 This conclusion is supported not only by the plain text of those
7 statutes and the larger statutory scheme, but also the Supreme Court’s
8 analysis in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The *Jennings*
9 majority recognized the process of decision in which immigration
10 officials must engage on a daily basis in deciding “(1) who may enter
11 the country and (2) who may stay here after entering.” 583 U.S. at
12 285–86. When evaluating and describing this process, the *Jennings*
13 majority equated Section 1225 with [noncitizens] “seeking
14 admission into the country,” while associating Section 1226 with
15 [noncitizens] “already in the country pending the outcome of
16 removal proceedings.” *Id.* at 286–89.

17 *Rico-Tapia v. Smith*, Civ. No. 25-00379 SASP-KJM, 2025 WL 2950089, at *6 (D. Haw. Oct. 10,
18 2025).

19 Respondents argue that this interpretation places those who enter without inspection and
20 remain in the United States for more than two years at a more advantageous position than those
21 who present themselves at the border. However, that interpretation does not have the suggested
22 negative connotation. Instead, it demonstrates Congress’s positive intent to allow those noncitizens
23 with established lives, families, and employment in the United States an opportunity to remain with
24 their families while they have their day in court. In contrast, those presenting themselves at the
25 border for the first time generally do not have those same ties to the United States and are
26 understandably subject to the less rigorous section 1225 proceedings. Respondents’ reading
27 discounts the twenty-five-year period in which Petitioner has resided in the United States.⁵ In other
28 words, the plain language of section 1225(b) is inapplicable to him because, at the time of his arrest,
an immigration officer was not “examining” him and he was not “seeking” admission. This
interpretation comports with a recent multitude of federal precedent on the issue. *See, e.g., Barrera*
v. Tindall, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025) (“[E]very

⁵ This argument also brings Petitioner outside the scope of section 1225(b)(1)(A)(iii)(II), which applies to noncitizens who have not “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

1 court who has examined this novel interpretation of Section 1225 by the United States has rejected
2 their theory and adopted Petitioner’s.”)

3 Moreover, as of the date of filing, Petitioner has yet to see an NTA describing the charges
4 against him, describing any purported grounds of inadmissibility, as well as any other documents
5 to suggest that he is in either section 1225 or section 1226 proceedings. Absent any indication
6 otherwise, the plain language of the statutes and the facts of Petitioner’s case demonstrate that his
7 being held pursuant to section 1226.

8 **D. Continued detention violated Petitioner’s right to procedural due process.**

9 While this matter can and should be resolved on the statutory arguments in the preceding
10 section, Petitioner also succeeds as a result of the continued procedural due process violation. As
11 of the date of filing, no immigration judge has conducted a bond hearing for Petitioner in
12 accordance with section 1226. Each of the three factors in *Mathews v. Eldridge*, 424 U.S. 319
13 (1976), weigh in favor of Petitioner. First, his continued detention does not affect Respondents’
14 private interest in initiating removal proceedings against him. Second, Respondents’ position to
15 detain individuals pursuant to section 1225 leaves those like Petitioner without any procedural
16 options---absent a habeas petition---to seek release because *Matter of Yajure Hurtado*, 29 I. & N.
17 Dec. 216 (BIA 2025), binds all immigration judges in the country. Third, Respondents have made
18 no showing of why Petitioner’s continued detention makes their administrative duties less
19 burdensome. Therefore, Petitioner’s procedural due process rights have been violated.

20 **E. Requesting a bond hearing before an immigration judge is futile, and,**
21 **therefore, not required.**

22 When an administrative remedy proves to be futile, prudential exhaustion is not required.
23 *See Castillo-Villagra v. I.N.S.*, 972 F.2d 1017, 1024 (9th Cir. 1992) (citing *El Rescate Legal Servs.*
24 *v. E.O.I.R.*, 959 F.2d 742, 747 (9th Cir. 1992)) (“The prudential exhaustion requirement does not
25 apply where it would be futile.”). Despite Respondents’ arguments in this matter, filing a bond
26 request with an immigration judge would not merely present a “high probability of denial[.]” such
27 a request would be outright denied for lack of jurisdiction. Response, Dkt. No. 5, p. 15; *see also*
28 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I. & N. Dec. 66

1 (BIA 2025). These decisions from the Board of Immigration Appeals bind all immigration judges,
2 eliminating any discretion for an immigration judge to even consider the statutory arguments in this
3 petition. Accordingly, mandating Petitioner to seek bond in this matter would be futile.

4 **F. Release is the appropriate remedy in this case.**

5 As described in the preceding sections, it remains unclear from the record whether the
6 Department of Homeland Security has initiated removal proceedings against the Petitioner.
7 Accordingly, the Respondents' argument that Petitioner is somehow attempting "to bypass the
8 established immigration adjudication" of his matter is without merit. Response, Dkt. No. 5, p. 16.
9 He does not have "the opportunity to litigate his claims" until the NTA is properly served on him
10 and filed with the immigration court. *Id.* Even if the Department files Petitioner's NTA, he meets
11 the factors of *Matter of Guerra* and has extensive family ties and ties to the United States that
12 necessitate his release during the pendency of his removal proceedings.

13 **II. CONCLUSION**

14 For the foregoing reasons, Petitioner respectfully requests this Court grant his petition and
15 motion for a temporary restraining order and enjoin the Respondents from continuing his detention.

16 Dated: November 6th, 2025

Respectfully submitted,

FENNEMORE CRAIG, P.C.

19 By: /s/ Alycia T. Moss

Alycia T. Moss

21 Attorney for Petitioner
SERVANDO TORRES HERNANDEZ