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5 Attorney for Petitioner

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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA (LAS VEGAS)**  
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12 MARIO ERNESTO HERNANDEZ

Case No. \_\_\_\_\_

13 DURAN,

14 A#



15 Petitioner-Plaintiff,

**EMERGENCY MOTION FOR**  
**TEMPORARY RESTRAINING**  
**ORDER AND PRELIMINARY**  
**INJUNCTION**

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19 v.

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21 Michael V. Bernacke, Field Office

22 Director, U.S. Immigration and Customs

23 Enforcement;

24 John Mattos, Warden, Nevada Southern

25 Detention Center;

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27 Kristi Noem, Secretary, U.S. Department

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1 of Homeland Security;  
2 Rodney S. Scott, Commissioner, U.S.  
3 Customs and Border Protection; and  
4 Pam Bondi, Attorney General of the  
5 United States,  
6 Respondents–Defendants.  
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9       Petitioner **moves on an emergency basis for a TRO and preliminary injunction**  
10 directing Respondents to (1) **provide an individualized custody redetermination under 8**  
11 **U.S.C. § 1226(a) within seven (7) days**, at which DHS bears the burden by clear and  
12 **convincing evidence** and the IJ must issue **contemporaneous written findings** considering  
13 **ability to pay and alternatives to detention (ATDs)**; or (2) **release Petitioner forthwith** if they  
14 fail to provide such a hearing by the deadline. This motion is supported by the verified § 2241  
15 petition, Exhibits 1–4, and counsel’s **LR 7-4 declaration** below.  
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19 **INTRODUCTION & RELIEF REQUESTED**

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21       Mario is a long-time Las Vegas resident detained at NSDC. On **Sept. 29, 2025**, the IJ  
22 **categorically refused bond jurisdiction** under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216  
23 (BIA 2025), leaving Mario **without any individualized bond hearing**. (Ex. 1.) His **individual**  
24 **merits hearing is set for Nov. 19, 2025**, which makes expedited relief essential. Mario is the  
25 **primary caregiver and financial provider** for his U.S.-citizen child  detention has  
26 **eliminated his wages** and is causing **acute financial stress** on his children and household. (Ex.  
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1 2–4.) Consistent with recent **Las Vegas** orders granting similar relief, the Court should enter a 7-  
2 **day bond-hearing-or-release** injunction.

3 **FACTS (CONDENSED)**

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- 5 • **Categorical no-bond ruling:** On **Sept. 29, 2025**, IJ **Glen R. Baker** denied bond  
6 jurisdiction solely under *Yajure*, not based on any individualized risk assessment. (Ex. 1.)
  - 7 • **Deep ties, equities, and pending relief:** Mario has many years in Las Vegas with **work**  
8 **history** (restaurant and electrical trade) and **family/community support**. He has a  
9 pending **EOIR-42B cancellation** with strong equities. (Ex. 2.)
  - 10 • **Primary caregiving & financial support:** Affidavits confirm Mario is **Jakoby’s day-to-**  
11 **day caregiver** and **primary provider**. He tutors Jakoby nightly, anchors routines  
12 (church, sports, family activities), and stabilized the child’s health/education. (Ex. 3–4.)
  - 13 • **Financial stress on the children:** Since detention, **household income dropped to zero**  
14 **from Mario’s job**, creating **immediate financial strain** for rent, utilities, food, school  
15 needs, and transportation. The **children depend on his wages**; the ongoing detention is  
16 harming them **now**. (Ex. 3–4.)  
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22 **LEGAL STANDARD**

23 A TRO/PI issues when the movant shows **(1) likelihood of success, (2) irreparable harm, (3)**  
24 **equities favor relief, and (4) the public interest favors relief.** *Winter v. NRDC*, 555 U.S. 7, 20  
25 (2008). In this context, courts in **this District** have enjoined DHS’s reliance on §  
26 **1225(b)(2)/Yajure** to foreclose IJ bond hearings and have ordered § **1226(a)** hearings within  
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1 **seven days or release**, with the **clear-and-convincing** burden on DHS and **ability-to-pay/ATD**  
2 findings.

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5 **ARGUMENT**

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7 **I. Petitioner is likely to succeed on the merits.**

8 **Section 1226(a)** governs interior civil immigration detention during removal proceedings  
9 and provides for **bond** and **IJ custody redetermination**. The IJ here **categorically refused** to  
10 exercise bond jurisdiction solely because of *Yajure*—**not** because of individualized dangerousness  
11 or flight risk. District courts in Las Vegas have already held that **§ 1226(a)**, **not § 1225(b)(2)**,  
12 governs similarly situated detainees and have **enjoined** reliance on *Yajure* to block IJ bond  
13 authority, ordering **7-day hearings or release** and the **clear-and-convincing** standard with  
14 **ability-to-pay/ATDs** and **written findings**. The **statutory framework**, longstanding practice,  
15 and recent Nevada rulings thus favor Petitioner’s claim.

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18 **II. Petitioner faces irreparable harm absent immediate relief.**

19 Every day of **unlawful civil detention** is irreparable. Here, harm is heightened: Mario’s  
20 detention has **cut off his wages**, generating **immediate financial stress** on his **U.S.-citizen**  
21 **child(ren)**—threatening housing stability, food security, and school continuity. (Ex. 3–4.) Mario  
22 also provides **daily academic support and caregiving** that cannot be replaced by short-term  
23 arrangements. Without a prompt bond hearing, the household’s **financial crisis** and the child’s  
24 **well-being** will continue to deteriorate. Monetary damages cannot compensate for the **loss of**  
25 **liberty** or the **ongoing harm to the children**.

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28 **III. The equities and the public interest favor relief.**

1 The requested injunction **does not order release on the merits**; it ensures a lawful,  
2 **individualized custody hearing** under § 1226(a). That tailored process protects the  
3 government's interests in public safety and appearance at proceedings while safeguarding  
4 constitutional and statutory rights. Considering **ability-to-pay** and **less-restrictive alternatives**  
5 also advances the public interest by avoiding detention **solely because of poverty** and by using  
6 **ATDs** where appropriate.

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9 **REQUESTED REMEDY (MODELED ON RECENT D. NEV. ORDERS)**

10 The Court should **enjoin** Respondents from relying on § 1225(b)(2)/Yajure to foreclose an IJ  
11 bond hearing and should order that **within seven (7) days**:

- 12 1. Petitioner receive a § 1226(a) **bond hearing** before an IJ;
- 13 14 2. **DHS bears the burden by clear and convincing evidence** to establish danger or flight  
15 risk;
- 16 17 3. The IJ **consider ability to pay** and **alternatives to detention** and issue **written findings**;  
18 and
- 19 20 4. **If the hearing does not occur by the deadline, Petitioner shall be released**  
21 **immediately** on appropriate conditions.

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24 **PROPOSED BRIEFING / HEARING SCHEDULE**

25 Given the **Nov. 19, 2025** individual hearing, Petitioner requests: Government opposition in **48**  
26 **hours**, reply in **24 hours**, and the motion set **on the earliest available calendar** (or decided on  
27 the papers).  
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2 **Attorney Verification (28 U.S.C. §§ 2242, 1746)**

3 **I, Jon Eric Garde**, counsel for Petitioner, declare under penalty of perjury that the factual  
4 allegations in this Petition are true and correct to the best of my knowledge, information, and  
5 belief, based on my review of Petitioner's records, court filings, agency records, and the attached  
6 exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because  
7 Petitioner is detained and time is of the essence given the scheduled individual hearing on  
8 November 19, 2025, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.  
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12 Dated: 10/24/2025 at Las Vegas

/s/ Jon Eric Garde, Esq. \_\_\_\_\_

13 Jon Eric Garde, Esq. Counsel for Petitioner  
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3 **DECLARATION OF COUNSEL PURSUANT TO LR 7-4 (EMERGENCY MOTION)**  
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6 I, **Jon Eric Garde, Esq.**, declare:  
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8 1. **Nature of the emergency.** Petitioner's immigration merits hearing is set for **Nov. 19,**  
9 **2025.** He remains detained **without any individualized bond hearing** because the IJ  
10 refused bond jurisdiction under *Yajure*. Immediate district court action is necessary so an  
11 individualized **§ 1226(a)** bond hearing can occur **before** the immigration merits date.  
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15 2. **Efforts to resolve / meet-and-confer.** On **10/24/2025**, I notified the **United States**  
16 **Attorney's Office (District of Nevada)** and **ICE/OPLA Las Vegas** of this request and  
17 sought agreement to provide a **§ 1226(a)** bond hearing within **seven (7) days**. As of  
18 10/27/2025, no agreement has been reached.  
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21 3. **Notice to affected parties (contacts).**  
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23 • **USAO – District of Nevada (Las Vegas HQ)**, 501 Las Vegas Blvd. South, Suite 1100,  
24 Las Vegas, NV 89101; **(702) 388-6336.** *(No general civil-litigation intake email is*  
25 *publicly listed; notice will be via CM/ECF after case opening.)*  
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27 • **ICE/OPLA – Las Vegas Sub-Office**, 501 S. Las Vegas Blvd., Suite 200, Las Vegas,  
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1 NV 89101; (702) 433-7288; LVG.DutyAttorney@ice.dhs.gov.  
2 • NSDC (CoreCivic), 2190 E. Mesquite Ave., Pahrump, NV 89060; (775) 751-4500.

3 4. **Courtroom administrator.** I will promptly notify the courtroom administrator for the  
4 assigned judge with the ECF numbers after filing. (*Court ECF Helpdesk:*  
5 *nvd\_ecf\_helpdesk@nvd.uscourts.gov.*)  
6

7 I declare under penalty of perjury that the foregoing is true and correct. Executed on **10/24/2025**,  
8  
9 at **Las Vegas, Nevada.**

10 /s/ Jon Eric Garde, Esq.

11 **Jon Eric Garde, Esq.**

12 Counsel for Petitioner  
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