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

14 A# 
15
16 Petitioner-Plaintiff,

Case No. 2:25-cv-02105-RFB-EJY

**PETITIONER'S REPLY IN SUPPORT
OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

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21 v.

22 Michael V. Bernacke, et al.,
23 Respondents.
24

25 **INTRODUCTION**

26
27 Respondents' opposition doubles down on a categorical, no-hearing detention regime by
28 invoking 8 U.S.C. § 1225(b)(2) and sweeping jurisdictional bars in 8 U.S.C. § 1252(b)(9) and (g).

1 But this case is a straightforward habeas challenge to ongoing civil detention in § 1229a removal
2 proceedings where Congress supplied bond authority under § 1226(a), and where due process
3 requires, at minimum, a prompt individualized hearing with meaningful procedures. The Court has
4 already signaled that Petitioner’s circumstances “warrant the same relief” recently ordered in this
5 District—i.e., a seven-day § 1226(a) bond hearing (with clear-and-convincing burden on DHS,
6 ability-to-pay and ATD findings, and contemporaneous written reasons) or release.
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9 **I. The Government’s Opposition Misstates the Statute and This Court’s Role**

10 Respondents assert Petitioner is “subject to mandatory detention pursuant to 8 U.S.C. §
11 1225(b)(2)” and therefore not entitled to a bond hearing.
12

13 They also argue that § 1252(b)(9) and § 1252(g) divest this Court of jurisdiction over
14 challenges to detention.

15 Both positions are wrong.
16

17 **A. Section 1226(a), not § 1225(b)(2), governs interior custody in § 1229a**
18 **proceedings.**

19 Petitioner was not arrested at the threshold of the border and is litigating
20 removability in § 1229a proceedings. By its terms, § 1226(a) supplies custody
21 authority “pending a decision on whether the [noncitizen] is to be removed,” and this
22 Court has repeatedly ordered seven-day § 1226(a) bond hearings (or release) in
23 materially indistinguishable cases.
24

25 The Emergency Motion here seeks that same relief: an IJ bond hearing within seven days,
26 with DHS bearing a clear-and-convincing burden and findings addressing ability-to-pay
27 and ATDs, or release if the deadline is missed.
28

1 **B. This Court has habeas jurisdiction; § 1252’s “zipper” provisions do not bar**
2 **review of ongoing detention.**

3 A § 2241 petition challenging present civil custody is squarely within district-court
4 competence. Respondents’ reliance on § 1252(b)(9)/(g) to block all detention review
5 misreads those provisions. The Supreme Court has explained that § 1252(b)(9) is a
6 channeling rule, not a universal bar; it does not oust district courts from adjudicating non-
7 final-order detention claims. See *Jennings v. Rodriguez*, 583 U.S. 281, 293–95 (2018)
8 (claims challenging the authority and procedures for civil detention are not swallowed by §
9 1252(b)(9)); *Reno v. AADC*, 525 U.S. 471, 482–83 (1999) (§ 1252(g) targets three
10 discrete executive acts and does not cover everything that might occur during removal).
11 Respondents’ contrary argument—citing a concurring opinion to treat “detention” as an
12 “action taken to remove” that must be funneled to the court of appeals—should be
13 rejected, including because it would effectively nullify the historic availability of habeas to
14 test executive detention. See also *Demore v. Kim*, 538 U.S. 510, 517 (2003) (reviewing
15 detention under § 1226(c) in district court). The Supreme Court has described 8 U.S.C. §
16 1252(b)(9) as an “unmistakable ‘zipper’ clause” that channels review of removal-related
17 issues into a single action in the court of appeals. *Reno v. Am.-Arab Anti-Discrimination*
18 *Comm.*, 525 U.S. 471, 483 (1999); *INS v. St. Cyr*, 533 U.S. 289, 313 (2001).
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24 **II. The Due Process Clause Forbids Prolonged, No-Hearing Civil Detention**

25 **A. Prolonged detention without an individualized bond hearing violates the Fifth**
26 **Amendment.**
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1 Civil detention in immigration is non-punitive and must be narrowly tailored to its
2 purposes (appearance and public safety). When detention becomes prolonged, due
3 process requires an individualized determination with the government bearing a
4 meaningful burden. See *Zadvydas v. Davis*, 533 U.S. 678, 690–701 (2001) (indefinite
5 civil detention raises “serious constitutional problem”; liberty interest protected by the
6 Due Process Clause); *Demore*, 538 U.S. at 529–31 (upholding only “brief” detention
7 and recognizing constitutional concerns if detention becomes unreasonably long);
8 *Jennings*, 583 U.S. at 303–05 (recognizing serious constitutional questions about
9 prolonged detention and remanding constitutional claims). In this Circuit, due process
10 requires the government to prove danger or flight risk by clear and convincing
11 evidence at a bond hearing, with contemporaneous findings and consideration of non-
12 financial alternatives and ability to pay. *Hernandez v. Sessions*, 872 F.3d 976, 991–96
13 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

14 That is precisely the tailored relief Petitioner seeks—and that courts in this District
15 have been granting in analogous cases.

16
17 **B. Respondents’ attempt to avoid due process by labeling all interior arrestees as “§**
18 **1225(b)(2) applicants for admission” would constitutionalize prolonged,**
19 **categorical detention.**
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21

22 Stretching § 1225(b)(2) to interior arrests collapses the statute’s core
23 border/interior distinction, contradicts the text, and invites serious constitutional
24 problems. See *Jennings*, 583 U.S. at 287 (describing § 1225(b)’s operation at the
25 border/ports of entry); *Zadvydas*, 533 U.S. at 690 (constitutional avoidance triggered
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1 by serious liberty concerns). Petitioner’s Emergency Motion details why § 1226(a)
2 governs and what minimum procedures are required.

3 **C. The Mathews framework confirms the need for robust procedures.**

4 Applying *Mathews v. Eldridge*, 424 U.S. 319 (1976): (1) the private interest in
5 physical liberty is paramount; (2) the risk of erroneous deprivation is high without a
6 bond hearing placing a clear-and-convincing burden on the government and requiring
7 written findings with consideration of ATDs and ability to pay; and (3) the
8 government’s interests are fully served by a tailored hearing that safeguards public
9 safety and court appearance without resorting to categorical, wealth-based detention.
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13 **III. The Record Establishes Irreparable Harm; the Equities and Public Interest Favor**
14 **Tailored Relief**

15 Every extra day of unlawful civil confinement is irreparable. Petitioner’s detention has
16 eliminated his wages and destabilized his U.S.-citizen child’s caregiving, schooling, and basic
17 needs—harms money cannot remedy.
18

19 The injunction Petitioner seeks “does not order release on the merits; it ensures a lawful,
20 individualized custody hearing,” which advances public safety and equity by avoiding detention
21 solely because of poverty and by using ATDs where appropriate.
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24 **IV. Recent Nevada Orders Support the Narrow “Hearing-or-Release” Remedy Sought**

25 Petitioner’s requested terms mirror those repeatedly entered by Las Vegas judges in 2025:
26 a § 1226(a) hearing within seven days (or release), DHS’s clear-and-convincing burden, and
27 written findings addressing ability-to-pay and ATDs.
28

1 This Court vide its order dated 10/29/2025 has already ordered Respondents to show cause why
2 similar relief should not be issued here. The respondents have not done so nor reasonably and
3 adequately explained why.
4

5 **V. International Human Rights Norms Underscore the Constitutional Violation**

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7 The United States has long recognized under international law that arbitrary and
8 prolonged detention is impermissible. See *ICCPR* art. 9(1) (freedom from arbitrary detention) and
9 *UDHR* art. 9. While not self-executing in themselves, these norms inform constitutional
10 reasonableness and the non-punitive character of immigration detention. The categorical,
11 prolonged, no-hearing detention policy challenged here is an abuse of executive power and
12 inconsistent with the United States' human-rights commitments.
13

14 **VI. Respondents' Remaining Points Do Not Defeat Injunctive Relief**

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16 Respondents invoke general *Winter/Nken* factors and claim Petitioner cannot succeed
17 because he is "rightfully detained" under § 1225(b)(2).
18

19 But because § 1226(a) governs, and because due process requires individualized
20 procedures when detention extends beyond the brief period contemplated in *Demore*, Petitioner
21 has at least shown "serious questions" and irreparable harm—and, under *Hernandez* and *Singh*, a
22 likelihood of success on the process claim. The balance of equities and public interest favor a
23 narrowly tailored bond-hearing order over categorical detention. See also the Court's preliminary
24 determination that comparable relief is appropriate here.
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26

27 **Requested Relief**

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1 Petitioner respectfully asks the Court to grant the Emergency Motion and order that within seven
2 (7) days:

- 3 1. Petitioner receive an individualized § 1226(a) bond hearing before an IJ;
- 4 2. DHS must prove danger or flight risk by **clear and convincing evidence**;
- 5 3. The IJ must consider ability to pay, evaluate **alternatives to detention**, and issue
6 contemporaneous **written findings**; and
7
- 8 4. If the hearing does not occur by the deadline, Petitioner shall be **released forthwith on**
9 appropriate conditions.
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12 Dated: 11/11/2025 at Las Vegas

/s/ Jon Eric Garde, Esq. _____

13 Jon Eric Garde, Esq. Counsel for Petitioner
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