

1 Petitioner submits this Traverse and Memorandum to comply with the Court's order and the
2 habeas corpus procedure and to expedite the process.

3 As a threshold matter, petitioner agrees with respondent that none of the material facts are in
4 dispute. However, the Respondent's Return for some reason leapfrogs over and omits some of the
5 important facts. For instance, it neglects to mention that after the DHS first detained petitioner on
6 October 25, 2012, it released him on his own recognizance (OR). The Return also fails to mention
7 petitioner's family ties, work authorization, and many years of living in the United States without
8 incident after his OR release. Finally, the Return also omits the details surrounding petitioner's re-
9 detention by DHS. After the removal case was re-calendared, the DHS instructed petitioner to
10 appear at the downtown ERO office for a check in. Petitioner checked in, but he did not check out.
11 When he appeared for his check in, the DHS officers summarily detained him without any warning
12 or explanation and sent him to the Otay Mesa immigration jail—where he remains today. The DHS
13 officials generated the October 10, 2025 Warrant for Arrest after they re-detained petitioner without
14 explanation at the check in. It is unclear why the DHS needed a second Warrant for Arrest since
15 petitioner had already been in removal proceedings for 13 years. Attached to this Traverse are true
16 and correct copies of some of the DHS documents used to start this removal case.

17 So, there do not appear to be any factual issues in dispute. Therefore, what is left is to
18 simply apply the legal principles to these undisputed facts and decide the petition. The court should
19 immediately grant the petition because none of the arguments in the Return have any merit.

20 Respondent's Return urges the court to deny the petition and refuse any relief for three
21 reasons. First, it says the court has no jurisdiction to ever consider the petition. Second, it says that
22 petitioner should be compelled to exhaust the administrative remedies. Third, it says that the DHS
23 may lawfully re-detain petitioner under 8 U.S.C. § 1225 for any or no reason. None of these
24 arguments have any merit. Let us briefly examine each one of them.

25 **Jurisdiction**

26 Respondents first argue that 8 U.S.C. § 1252(g) prohibits this court from even considering
27 whether petitioner's detention because it lacks jurisdiction. This argument is belied by both the
28 statute and case law.

1 8 U.S.C. § 1252(g) divests the court of jurisdiction to review actions that the Attorney
2 General may take to *commence* proceedings, *adjudicate* cases, or *execute* removal orders. (emphasis
3 added). Here, petitioner is not asking the court to review any actions related to the *commencement*
4 of proceedings, the *adjudication* of cases, or the *execution* of a removal order. Petitioner challenges
5 the purely legal question of whether he is subject to mandatory re-detention without any change in
6 circumstances or explanation after the DHS released him on his own recognizance. So, the statute
7 does not apply to this habeas corpus petition by its own words.

8 Moreover, the case law reached the same conclusion. Section 1252(g) should be ready
9 narrowly to apply “only to three discrete actions that the Attorney General may take: her ‘decision
10 or action’ to ‘*commence* proceedings, *adjudicate* cases, or *execute* removal orders.’ ” *Reno v. Am.-*
11 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583
12 U.S. 281, 294 (2018) (holding that constitutional challenge to prolonged detention without bond-
13 hearing requirement is not barred by 8 U.S.C. § 1226(e)). “It is implausible that the mention of three
14 discrete events along the road to deportation was a shorthand way of referring to all claims arising
15 from deportation proceedings.” *Reno*, 525 U.S. at 482. Thus, Section 1252(g) does not “sweep in
16 any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney
17 General.” *Jennings*, 583 U.S. at 294. *See Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884-85
18 (C.D. Cal. 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Navarro*
19 *Sanchez v. Larose et al.*, 25-cv-2396 JES (MMP), 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26,
20 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose et al.*, 25-cv-1824
21 GPC (MSB), 2025 WL 2800149, at *7-8 (S.D. Cal. Oct. 1, 2025) (same).

22 **Exhaustion of Administrative Remedies**

23 Second, respondents argue that we must ensure that petitioner has exhausted the
24 administrative remedies. Petitioner did, to the extent necessary. The exhaustion requirement for
25 habeas claims under Section 2241 is prudential, rather than jurisdictional. *Singh v. Holder*, 638 F.3d
26 1196, 1203 n.3 (citing *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003)). Petitioner
27 requested a bond re-determination hearing with the immigration judge. The judge denied the request
28 concluding he had no jurisdiction based on the BIA’s recent decision in *Yajure Hurtado*, 29 I & N

1 Dec. 216 (BIA 2025).. It is pointless to appeal this decision to the Board of Immigration Appeals
2 (BIA) because it would be futile. The BIA would reach the same conclusion. Or, Respondents and
3 the BIA would argue that petitioner is subject to mandatory detention pending removal proceedings
4 under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A), The immigration judge and BIA will not consider the
5 primary basis of this habeas corpus petition: that petitioner was unlawfully re-detained and is not
6 subject to mandatory detention under 8 U.S.C. § 1225. So, petitioner had exhausted the
7 administrative remedies to the extent needed for a decision on the petition.

8 **Re-Detention**

9 Third, respondent's argue that petitioner is subject to mandatory detention under 8 U.S.C. §
10 1225 and the re-detention after the OR release was lawful. Once again, respondents are wrong. The
11 mandatory re-detention issue actually has two facets: (1) was the re-detention without a change in
12 circumstances or any explanation lawful; and (2) is petitioner detained under 8 U.S.C. § 1225 or 8
13 U.S.C. § 1226? Given the somewhat new and drastic change in DHS policy, this is developing case
14 law. However, multiple district courts have now been able to analyze and decide these issues.

15 First, multiple district courts have concluded that the DHS cannot just arbitrarily re-detain
16 an individual without any explanation or change in circumstances. For instance, in *Pinchi v. Noem*,
17 No. 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025),
18 the court reached this conclusion relying on the Due Process Clause:

19 **... even when ICE has the initial discretion to detain or release a noncitizen pending removal**
20 **proceedings, after that individual is released from custody she has a protected liberty interest**
21 **in remaining out of custody.** See *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
22 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district facing facts similar to the
23 present case and finds Petitioner raised serious questions going to the merits of his claim that due
24 process requires a hearing before an IJ prior to re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-
25 01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-
26 5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 (“Just as
27 people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen
28 released from immigration detention] have a liberty interest in remaining out of custody on bond.”).

1 *Id.* (emphasis added). Other courts, including this Court, have held similarly. *Doe v. Becerra*, No.
2 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *see also Padilla v.*
3 *U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“The Supreme
4 Court has consistently held that non-punitive detention violates the Constitution unless it is strictly
5 limited, and, typically, accompanied by a prompt individualized hearing before a neutral
6 decisionmaker to ensure that the imprisonment serves the government’s legitimate goals.”).

7 The DHS initially detained petitioner on October 25, 2012. After processing him, the DHS
8 released petitioner on his own recognizance pending a removal proceeding. Petitioner’s OR release
9 was obviously a conclusion that he was not a danger to the community or flight risk. Petitioner
10 hired an attorney and attended many court hearings. He obtained a work permit. He applied for
11 cancellation of removal and asylum. His removal case was closed for 13 years. During this time
12 petitioner had no problems with the law and otherwise complied with the terms of his OR release.
13 Petitioner was stunned when the DHS officers detained him at his “check in” without any
14 explanation and sent him to the immigration jail. He was given no warning or reason for the re-
15 detention. Petitioner simply travelled downtown to attend his “check in” and never returned home.

16 Notably, the respondent’s Return also provides no explanation or justification for the re-
17 detention after his OR release. This is because there is none. There was no change in circumstances
18 or law to justify the re-detention. This occurred based upon the whim of the respondents, apparently
19 in a strenuous effort to boost the President’s deportation numbers. The re-detention was an unlawful
20 violation of both the APA and Due Process.

21 Finally, Respondents argue that petitioner is subject to mandatory detention pending
22 removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the BIA’s
23 recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the government’s new
24 interpretation of § 1225. Multiple Courts, including this one, have rejected this argument.

25 As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no deference
26 by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that
27 while “agencies have no special competence in resolving statutory ambiguities,” “[c]ourts do”).

28 Multiple District Courts across the entire United States have recently concluded that the

1 government's proposed interpretation of the statute (a) disregards the plain meaning of section
2 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a
3 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior
4 statutory interpretation and practice. The following quote is a representative example:

5 "The Court follows other decisions in this Circuit finding that "seeking admission
6 requires an affirmative act such as entering the United States or applying for status,
7 and that it does not apply to individuals who, like [Petitioner], have been residing in
8 the United States and did not apply for admission or a change of status." *Mosqueda*
9 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
10 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
11 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1
12 ("Every district court to address this question has concluded that the government's
13 position belies the statutory text of the INA, canons of statutory interpretation,
14 legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-
15 CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025)
16 (finding that petitioner who was released on bond and rearrested was entitled to a
17 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner
18 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-
19 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)."

20 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,
21 2025).

22 Attorney Fees

23 Petitioner has requested costs and attorney's fees in this action pursuant to the Equal Access
24 to Justice Act ("EAJA"), 28 U.S.C. § 2412. The EAJA provides in part:

25 A party seeking an award of fees and other expenses shall, within thirty days of final
26 judgment in the action, submit to the court an application for fees and other expenses
27 which shows that the party is a prevailing party and is eligible to receive an award
28 under this subsection, and the amount sought, including an itemized statement from

1 any attorney ... representing or appearing in behalf of the party stating the actual time
2 expended and the rate at which fees and other expenses were computed. The party
3 shall also allege that the position of the United States was not substantially justified.
4 Whether or not the position of the United States was substantially justified shall be
5 determined on the basis of the record ... which is made in the civil action for which
6 fees and other expenses are sought.

7 28 U.S.C. § 2412(d)(1)(B).

8 In this case, it appears the unlawful re-detention of petitioner was arbitrary and unjustifiable,
9 if not intended to be punitive and malicious. A cynical or jaded mentality could conclude that the
10 recent mass re-detentions are a calculated plan to break the hope and spirit of persons in removal
11 proceedings leading them to give up the fight and abandon their cases in despair—thus leading to
12 more bodies deported from the United States. More importantly, it seems that these issues have
13 already been decided multiple times in the Southern District of California but respondents continue
14 to detain people and oppose habeas corpus petitions. Respondents actions are not justified.

15 **Conclusion**

16 So, to summarize: the court has jurisdiction to decide the petition and the administrative
17 remedies have been exhausted enough to ripen the case. Respondent's violated the APA and Due
18 Process by the summary and unexplained re-detention after the OR release. Petitioner was entitled
19 to a pre-deprivation of liberty hearing and an explanation as to why he is being sent to the
20 immigration jail. The court should order petitioner's immediate release from the jail; that he is not
21 subject to re-detention without a hearing where respondents must prove by clear and convincing
22 evidence that he is a danger or flight risk; and respondents to pay petitioner's attorney fees.

23 DATED: 7 November 2025

24 Respectfully submitted,

25 /s/ William Baker
26 William Baker (157 906)
27 MORENO & ASSOCIATES
28

**In the matter of
Ortiz Reyes, Marcos
AKA Reyes, Marcos Ortiz
A205 527 940**

EXHIBIT(S)

Exhibit A	Warrant for Arrest of Alien	1
Exhibit B	Notice of Custody Determination	2
Exhibit C	Order of Release on Recognizance	3