

1 WILLIAM BAKER, SBN 157 906
Moreno & Associates Law Firm, APC
2 2082 Otay Lakes Road, Ste. 102
Chula Vista, CA 91913
3 619-422-4885
william.baker@morenoandassociates.com
4

5 Attorney for petitioner
6

7 UNITED STATES DISTRICT COURT
8 Southern District of California
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10 SAUL ISAAC HERNANDEZ FLORES,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LaROSE ; *et al.*,

14 Respondents.
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) Case Number: 25-cv-3023-RBM-DDL

) **PETITIONER'S TRAVERSE AND**
) **MEMORANDUM IN SUPPORT OF**
) **PETITION**

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 notes that none of the material facts are in dispute. The
4 DHS detained petitioner and started a removal proceeding. Petitioner requested a bond from the
5 immigration judge. The immigration judge denied bond based on a lack of jurisdiction. The issue is
6 the purely legal issue of whether petitioner is detained under 8 U.S.C. § 1225 (mandatory detention)
7 or 8 U.S.C. § 1226 (not mandatory detention).

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

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

16 **Jurisdiction**

17 Respondents first argue that 8 U.S.C. § 1252(g) prohibits this court from even considering
18 whether petitioner’s detention because it lacks jurisdiction. This argument is belied by both the text
19 of the applicable statutes and established case law.

20 8 U.S.C. § 1252(g) divests the court of jurisdiction to review actions that the Attorney
21 General may take to *commence* proceedings, *adjudicate* cases, or *execute* removal orders. (emphasis
22 added). Here, petitioner is not asking the court to review any actions related to the *commencement*
23 of proceedings, the *adjudication* of cases, or the *execution* of a removal order. Petitioner challenges
24 the purely legal question of whether he is subject to mandatory re-detention without any change in
25 circumstances or explanation after the DHS released him on his own recognizance. So, the statute
26 does not apply to this habeas corpus petition by its own words.

27 Moreover, the case law reached the same conclusion. Section 1252(g) should be ready
28 narrowly to apply “only to three discrete actions that the Attorney General may take: her ‘decision

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

13 **Exhaustion of Administrative Remedies**

14 Second, respondents argue that we must ensure that petitioner has exhausted the
15 administrative remedies. Petitioner did, to the extent necessary. The exhaustion requirement for
16 habeas claims under Section 2241 is prudential, rather than jurisdictional. *Singh v. Holder*, 638 F.3d
17 1196, 1203 n.3 (citing *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003)). Petitioner
18 requested a bond re-determination hearing with the immigration judge. The judge denied the request
19 concluding he had no jurisdiction based on the BIA’s recent decision in *Yajure Hurtado*, 29 I & N
20 Dec. 216 (BIA 2025).

21 It is pointless to appeal this decision to the Board of Immigration Appeals (BIA) because it
22 would be futile. The BIA would reach the same conclusion. Or, Respondents and the BIA would
23 argue that petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C.
24 § 1225(a)(1), 1225(b)(2)(A). The immigration judge and BIA will not consider the primary basis of
25 this habeas corpus petition: that petitioner and is not subject to mandatory detention under 8 U.S.C.
26 § 1225. Petitioner does not have unlimited legal resources to squander on a futile over-exhaustion of
27 administrative appeals. So, petitioner had exhausted the administrative remedies to the extent
28 needed for a legal decision on the petition.

1 **1225 vs. 1226**

2 Third, respondent’s argue that petitioner is subject to mandatory detention under 8 U.S.C. §
3 1225. Once again, respondents are wrong. Given the somewhat new and drastic change in DHS
4 policy, this is developing case law. However, multiple district courts have now been able to analyze
5 and decide this issue.

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

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

13 Multiple District Courts across the entire United States have recently concluded that the
14 government’s proposed interpretation of the statute (a) disregards the plain meaning of section
15 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a
16 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior
17 statutory interpretation and practice. The following quote is a representative example:

18 “The Court follows other decisions in this Circuit finding that “seeking admission
19 requires an affirmative act such as entering the United States or applying for status,
20 and that it does not apply to individuals who, like [Petitioner], have been residing in
21 the United States and did not apply for admission or a change of status.” *Mosqueda*
22 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
23 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
24 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1
25 (“Every district court to address this question has concluded that the government’s
26 position belies the statutory text of the INA, canons of statutory interpretation,
27 legislative history, and longstanding agency practice.”); *Guzman v. Andrews*, No. 25-
28 CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025)

1 (finding that petitioner who was released on bond and rearrested was entitled to a
2 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner
3 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-
4 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same).”
5 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,
6 2025).

7 **Attorney Fees**

8 Petitioner has requested costs and attorney’s fees in this action pursuant to the Equal Access
9 to Justice Act (“EAJA”), 28 U.S.C. § 2412. The EAJA provides in part:

10 A party seeking an award of fees and other expenses shall, within thirty days of final
11 judgment in the action, submit to the court an application for fees and other expenses
12 which shows that the party is a prevailing party and is eligible to receive an award
13 under this subsection, and the amount sought, including an itemized statement from
14 any attorney ... representing or appearing in behalf of the party stating the actual time
15 expended and the rate at which fees and other expenses were computed. The party
16 shall also allege that the position of the United States was not substantially justified.
17 Whether or not the position of the United States was substantially justified shall be
18 determined on the basis of the record ... which is made in the civil action for which
19 fees and other expenses are sought.

20 28 U.S.C. § 2412(d)(1)(B).

21 **Conclusion**

22 So, to summarize: the court has jurisdiction to decide the petition and the administrative
23 remedies have been exhausted enough to ripen the case. Petitioner is detained under 1226 and is
24 entitled to a bond hearing and decision on the merits.

25 DATED: 18 November 2025

26 Respectfully submitted,

27 /s/ William Baker
28 William Baker (157 906)
Attorney for petitioner