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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Douglas Ernesto RAMIREZ

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents,

Case No.: 3:25-cv-3076-BAS-AHG

PETITIONER'S REPLY IN SUPPORT
OF PETITION FOR WRIT OF
HABEAS CORPUS AND MOTION
FOR TEMPORARY RESTRAINING
ORDER / ORDER TO SHOW CAUSE

Honorable Judge Cynthia Bashant
United States District Judge

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1 **PETITIONER’S REPLY IN SUPPORT OF PETITION FOR WRIT OF**
2 **HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING**
3

4 **ORDER / ORDER TO SHOW CAUSE**

5 Petitioner, Douglas Ernesto Ramirez, respectfully submits this Reply in
6 Support of Petition for Writ of Habeas Corpus and Motion for Temporary
7 Restraining Order / Order to Show Cause in response to Respondent’s Return to
8 Habeas Petition. Respondent’s filing fails to establish the lawfulness of Petitioner’s
9 continued detention and does not meet the government’s burden under the Due
10 Process Clause and controlling precedent. On November 13, 2025, the Government
11 was ordered to file a response to the Petition and Motion for Injunctive Relief and
12 “address the allegations in the Petition including any documents relevant to the
13 determination of the issues raised in the Petition”. *See 11/3/2025 Order in Case*
14 *3:25-cv-03076-BAS-AHG*. On November 20, 2025, the Government filed a Return
15 to Habeas Petition where it failed to address any of the allegations raised in the
16 Petition, other than jurisdiction, misstated the applicable legal standard Petitioner
17 relies on, failed to provide documents relevant to the determinations of the issues
18 raised, including medical documentation Respondent has access to in the detention
19 facility that Respondent is housed at showing the deterioration in his health, and does
20 not justify denying habeas relief.
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1 For the reasons below and those previously submitted, Petitioner requests that
2 the Court grant the TRO, issue an OSC, and order Petitioner’s immediate release (or
3 proceed with the Immigration Judges original bond order).
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7 **I. Introduction**

8 Respondent’s Return fails to show that Petitioner’s ongoing detention is
9 lawful or constitutionally permissible. Respondent relies on conclusory assertions,
10 incomplete records, and incorrect legal standards that are inconsistent with binding
11 precedent, including *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Jennings v. Rodriguez*,
12 583 U.S. 281 (2018).
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15 Respondent has not met its burden to justify ongoing civil detention, nor has
16 it shown that removal is reasonably foreseeable. Respondent further fails to provide
17 any competent evidence supporting the alleged danger or flight risk. As a result,
18 Petitioner’s continued deprivation of liberty violates the Fifth Amendment’s Due
19 Process Clause.
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23 **II. Argument**

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25 *A. Subject Matter Jurisdiction*
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1 Respondent's first argument is that this Court lacks subject matter jurisdiction.
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3 This Court has the authority to grant a writ of habeas corpus to a petitioner who
4 demonstrates that he is being held in custody in violation of federal law. 28 U.S.C.
5 § 2241(a), (c)(3); see *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (noting that 28
6 U.S.C. § 2241 habeas corpus proceedings are available to challenge the lawfulness
7 of immigration-related detention).
8

9
10 Congress has enacted several statutory provisions limiting judicial review of
11 deportation decisions. Respondent relies on jurisdiction stripping provisions of 8
12 U.S.C. §1252(g) as its basis for stating that this Court lacks subject matter
13 jurisdiction, however, Petitioner does not seek review from the decision or action by
14 the Attorney General to commence proceedings, adjudicate cases, or execute
15 removal orders. As raised in Petitioners TRO/OSC, the Supreme Court previously
16 characterized § 1252(g) as a narrow provision, applying “only to three discrete
17 actions that the Attorney General may take: his ‘decision or action’ to ‘*commence*
18 proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.-Arab Anti-*
19 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing
20 so, the Supreme Court found it “implausible that the mention of *three discrete events*
21 along the road to deportation was a shorthand way to referring to *all claims arising*
22 *from* deportation proceedings.” *Id.* (emphasis added). Petitioner's challenge to his
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1 detention does not fall within these discrete actions. *Maldonado Bautista et al. v.*
2 *Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), hence
3 an Order granting Temporary Restraining Order is appropriate in this case. *See* 3:23-
4 *cv-03076-BAS-AHG*, pg. 25, 1-15.
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7 Likewise, the “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels
8 “[j]udicial review of all questions of law . . . including interpretation and
9 application of constitutional and statutory provisions, arising from any action
10 taken . . . to remove an alien from the United States” to the appropriate federal
11 court of appeals, does not apply because that section applies only to review of
12 removal orders, and Petitioner does not seek review of orders of removal but of
13 custody. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-
14 BFM (C.D. Calif. July 28, 2025). In relying on it, the Government is misapplying
15 the law.
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20 Petitioner does not seek review of a discretionary decision by the Attorney
21 General or the Secretary of Homeland Security (8 U.S.C. § 1252(a)(2)(B)(ii)); he
22 does not challenge a final order of removal (8 U.S.C. § 1252(a)(2)(C)); nor does
23 he seek judicial review of a legal or factual question arising from removal
24 proceedings, the decision to commence removal proceedings, the adjudication of
25 his removal case, or the execution of a removal order (8 U.S.C. §§ 1252(b)(9) and
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1 1252(g)). See *Jennings v. Rodriguez*, 583 U.S. 281, 292 (2018) (Alito, J., joined
2 by Roberts, C.J. and Kennedy, J.); *id.* at 355 (Breyer, J., joined by Ginsburg and
3 Sotomayor, J.J., dissenting) (finding that § 1252(b)(9) did not bar judicial review
4 of a detention order); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
5 482 (1999) (concluding that § 1252(g) applies to “three discrete actions”:
6 commencing removal proceedings, adjudicating removal cases, and executing
7 removal orders). Because he does not seek review under those categories, this
8 Court is not precluded from considering this matter.
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13 Finally, this Court is not deprived of jurisdiction by 8 U.S.C. § 1252, INA §
14 242. See e.g., *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (finding that INA § 242
15 does not bar a claim challenging agency authority that does not implicate discretion).
16 Generally, a narrower construction of jurisdiction-stripping provision is favored over
17 the broader one, as reflected by the “familiar principle of statutory construction: the
18 presumption favoring judicial review of administrative action.” *Kucana v. Holder*,
19 558 U.S. 233, 251, 130 S. Ct. 827, 839 (2010). Absent “clear and convincing
20 evidence” of congressional intent specifically to eliminate review of certain
21 administrative actions, the above-cited principles of statutory construction support a
22 narrow reading of the jurisdiction-stripping language of 8 U.S.C. § 1252(a)(2)(B)(ii).
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24 *Id.*, at 251-252. See also, *Geneme v. Holder*, 935 F.Supp.2d 184, 192 (D.D.C. 2013)
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1 (discussing *Kucana's* citation to a presumption favoring judicial review of
2 administrative action when the statute does not specify discretion.)
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4 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,” Section
5 1252(a)(2) contains four subsections, which outlines categories of claims that are
6 not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections
7 preclude judicial review of this matter, as the specified statutory provisions do not
8 cite to § 1225(b)(2)(A) or § 1226(a), which are the two provisions Petitioner
9 challenges. Thus, no part of § 1252 deprives this Court of jurisdiction. *Maldonado*
10 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873- SSS-BFM (C.D. Calif. July
11 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6.
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15 As such, this Court has jurisdiction over Petitioners’ challenge to his detention.
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18 *B. Petitioner’s Continued Detention is Unlawful*
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20 Respondent argues that Petitioner’s continued detention is lawful. First,
21 Respondent fails to address the allegation that Petitioner was arrested in the interior
22 of the United States, 21 years¹ after his entry without inspection. Respondent
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27 ¹ Petitioner entered the United States without inspection on May 8, 2004. He was
28 arrested as part of a large-scale immigration enforcement action targeting carwashes
in Los Angeles county on June 14, 2025.

1 argues that Petitioner is lawfully detained and subjected to mandatory detention
2 under 8 U.S.C. §1225, further relying on *Matter of Yajure Hurtado*, 29 I&N Dec.
3 216. 225 (BIA 2025). The interpretation of the statutes by Respondents by the BIA
4 in *Yajure Hurtado, supra*, overlooks part of the language in 8 U.S.C. §
5 1225(b)(2)(A), and it ignores 8 U.S.C. § 1226. Section 1225(b)(2)(A) requires
6 mandatory detention of all applicants for admission if the examining immigration
7 officer determines that “an alien seeking admission is not clearly beyond a doubt
8 entitled to be admitted.” It narrows this mandatory detention to aliens who are
9 “seeking admission.” Had Congress intended for this subsection to apply to *all*
10 applicants for admission it would have specified “all applicants for admission”.
11 But this is not the language that Congress used, instead it distinguished between
12 aliens “seeking admission” versus “all applicants for admission”. Thus 8 U.S.C. §
13 1225(b)(2)(A) applies to aliens in the United States who are “applicants for
14 admission” *actively* attempting to “seek admission” at the time the examining
15 officer makes the determination that they are not clearly beyond a doubt entitled to
16 be admitted. Section 1225 focuses on “inspection” of aliens upon their arrival
17 and/or when they otherwise present themselves for admission.
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25 At the time of his arrest on June 14, 2025, Petitioner was an alien in the
26 United States who had not been lawfully admitted but was also *not* attempting to
27 be lawfully admitted as he was well within the in interior of the country and has
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1 already entered 21 years prior to his arrest. 8 U.S.C. § 1226(a) supports this
2 interpretation.
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4 As the Government points out, 8 U.S.C. § 1226 provides for arrest and
5 detention “pending a decision on whether the alien is to be removed from the
6 United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain
7 an alien during his removal proceedings, release him on bond, or release him on
8 conditional parole. By regulation, immigration officers can release an alien who
9 demonstrates that he “would not pose a danger to property or persons” and “is
10 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can
11 also request a custody redetermination (i.e., a bond hearing) by an immigration
12 judge (IJ) at any time before a final order of removal is issued. *See* 8 U.S.C. §
13 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1003.19. At a custody redetermination, the IJ
14 may continue detention or release the alien on bond or conditional parole. 8 U.S.C.
15 § 1226(a). IJs have broad discretion in deciding whether to release an alien on bond.
16 *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to
17 consider). But regardless of the factors IJs consider, an alien “who presents a
18 danger to persons or property should not be released during the pendency of
19 removal proceedings.” *Id.* at 38.
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26 According to IIRIRA’s legislative history, § 1226(a) was intended to
27 “restate[] the [then-]current provisions in section 242(a)(1) regarding the authority
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1 of the Attorney General to arrest, detain, and release on bond an alien who is not
2 lawfully in the United States.” See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260
3 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). It also reflected
4 nearly a century of law in the United States of allowing people inside the country to
5 seek release while the government decided whether or not to deport them. See 34
6 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to
7 have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917)
8 (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. §
9 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged
10 to have entered the United States without inspection).
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15 Section 1226(a) applies by default to all persons “pending a decision on
16 whether the [noncitizen] is to be removed from the United States.” These removal
17 hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of
18 a[] [noncitizen].”
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21 On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec.
22 216 (BIA 2025), adopting DHS’s position that noncitizens “present in the United
23 States without admission” are subject to mandatory detention under INA §
24 235(b)(2)(A) and that immigration judges lack bond jurisdiction even when ICE has
25 placed the case in § 240 proceedings. The Government now relies on *Yajure Hurtado*,
26 *supra*, to argue that the IJ never had authority to set bond and that continued
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1 detention—without judicial bond review—is required. This new precedent is
2 unlawful and cannot justify Petitioner’s ongoing confinement: it misreads the statute,
3 conflicts with binding regulations that limit expedited-removal custody to classes
4 designated by Federal Register notice, and raises grave constitutional concerns the
5 avoidance canon requires courts to steer away from. *See* INA § 235(b)(2)(A), 8
6 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(1)-(2); 62 Fed. Reg. 10,312, 10,314,
7 10,318 (Mar. 6, 1997); 69 Fed. Reg. 48,877, 48,880-81 (Aug. 11, 2004); 84 Fed.
8 Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018);
9 *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).
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14 *Yajure Hurtado* would categorically deny any bond hearing to noncitizens
15 arrested in the interior who are outside the published expedited-removal
16 designations—people whom Congress and the regulations routed into § 240 with §
17 236(a) custody. That construction raises serious due-process and Suspension Clause
18 questions: it authorizes prolonged civil detention with no neutral decision-maker
19 weighing flight risk or danger, despite settled law that civil detention must remain
20 closely tied to its purposes. *See Zadvydas*, 533 U.S. at 690-701. Under the
21 constitutional-avoidance canon, where a statute is susceptible of more than one
22 construction, courts must prefer the reading that avoids grave constitutional
23 problems. *See Clark*, 543 U.S. at 381382. The far better (and textually faithful)
24 reading is that § 235(b) governs the inspection track and the classes designated for
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1 expedited removal, while everyone else is detained—if at all—under § 236(a) with
2 IJ bond review. See *Jennings*, 583 U.S. at 287-99.

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4 Continuing to jail Petitioner by invoking *Yajure Hurtado*—after an IJ already
5 found he is neither a danger nor a flight risk and set bond—bears no reasonable
6 relation to any legitimate purpose and is arbitrary in violation of substantive due
7 process. See *Zadvydas*, 533 U.S. at 690. The BIA’s new interpretation would convert
8 a definitional label (“applicant for admission”) in the “inspection” statute into a
9 perpetual, interior no-bond regime untethered to Congress’s two-track structure and
10 the Federal Register limits that cabin expedited-removal custody. If § 235(b)(2)(A)
11 could be stretched that far, the Court should reject that construction under
12 constitutional avoidance; if accepted, it would invite precisely the kind of
13 unreviewable, prolonged civil detention the Constitution forbids. See *Clark*, 543 U.S.
14 at 381-82; *Jennings*, 583 U.S. at 300-01.

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19 Since Respondents adopted their new policies, dozens of federal courts have
20 uniformly rejected their newly invented misclassification as illegal and because it
21 defies the INA’s detention authorities. Courts have likewise rejected *Matter of*
22 *Yajure Hurtado*, which adopts the same reading of the statute as ICE, ruling that the
23 BIA’s decision is not entitled to any deference under *Loper Bright Enters. v.*
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1 *Raimondo*, 603 U.S. 369, 412-13 (2024).²

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4 C. *Exhaustion*
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8 ² See, e.g., *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK (S.D. Ind. Oct. 11,
9 2025); *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB (S.D. Ind. Oct. 8,
10 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL
11 2694763 (S.D. Ind. Sept. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25 C 10865, 2025
12 WL 2938779 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.), *H.G.V.U. v. Smith*, No. 25 C
13 10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2020) (Coleman, J.), *Mariano Miguel*
14 *v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025) (Alonso, J.),
15 and *G.Z.T. v. Smith*, No. 25 C 12802 (N.D. Ill. Oct. 21, 2025) (Ellis, J.), *Corona*
16 *Diaz v. Olson, et al.*, No. 25-cv-12141 (N.D. Illinois 2025), *Belsai v. Bondi, et al.*,
17 No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v.*
18 *Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal.
19 Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d --
20 -, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-
21 00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Vasquez Garcia*
22 *v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*,
23 No. 2:25- cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v.*
24 *Trump*, No. 3:25-cv-01093-JE, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-*
25 *Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,
26 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug.
27 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL
28 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142,
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12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v.*
Figueroa, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report
and recommendation adopted 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez*
Benitez v. Francis, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025);
Martinez v. Hyde, No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass.
July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8
(D. Mass. July 7, 2025).

1 Lastly, in a footnote, the Government raises the alternative basis for the
2 Court's lack of jurisdiction based on exhaustion. Exhaustion is not required of this
3 claim. *See Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). Moreover,
4 DHS's refusal to honor the Immigration Judges bond order leaves no administrative
5 avenue to secure release; additional agency steps would be futile. Exhaustion is not
6 required in four (4) circumstances: (1) When delay would cause undue prejudice;
7 (2) When the agency lacks the ability or competence to resolve the dispute; (3) When
8 exhaustion would be futile because the agency has already decided the issue; and (4)
9 When substantial constitutional questions are raised. *Id.* (citing *Iddir v. INS*, 301
10 F.3d 492, 498 (7th Cir. 2002)).
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15 This claim falls into three of the four exceptions to exhaustion. First, further
16 delay would cause undue prejudice to Petitioner as, per *Yajure Hurtado, supra*, the
17 BIA held that under the "plain language" of INA § 235(b)(2)(A), 8 U.S.C. §
18 1225(b)(2)(A), IJs categorically lack jurisdiction to conduct bond hearings for
19 noncitizens deemed "present in the United States without admission," even in cases
20 where the Department of Homeland Security (DHS) has elected to place such
21 individuals into removal proceedings under INA § 240. *Id.* at 229. The BIA's
22 decision recharacterizes § 235(b)(2)(A) as a sweeping "catch-all" detention mandate
23 for virtually all applicants for admission not subject to expedited removal under §
24 235(b)(1). *Id.* at 219-220. In doing so, the BIA selectively relies on *Jennings v.*
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1 *Rodriguez*, 583 U.S. 281, 299 (2018), to claim that detention under § 235(b)(2)(A)
2 must continue “until removal proceedings have concluded.” *Id.* at 225. It is under
3 this rationale DHS appealed the IJ’s grant of Petitioner’s release on bond.
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6 For the same reason explained above, this claim falls into two other
7 exceptions: (1) the agency lacks the ability or competence to resolve the dispute, and
8 (2) exhaustion would be futile because the agency has already decided the issue.
9 Accordingly, the Petitioner has no further recourse within the immigration court
10 system or the BIA. The exhaustion requirement is therefore satisfied. In light of the
11 BIA’s denial of IJ jurisdiction to hear custody redetermination requests, habeas
12 corpus is the only mechanism available to challenge Respondent’s ongoing detention
13 and to vindicate constitutional rights at stake. Because the Petitioner has exhausted
14 his administrative remedies to the extent required by law, his only remedy is by way
15 of this judicial action.
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20 **III. CONCLUSION**

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22 For the foregoing reasons, the Court should grant Petitioner’s TRO/OSC
23 Application.
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Dated: November 24, 2025

Respectfully Submitted,
S/ Mardy M. Sproule

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Email: Mardy.Sproule@att.net

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 24, 2025, I electronically filed the
3
4 foregoing Petitioners' REPLY IN SUPPORT OF PETITION FOR WRIT OF
5
6 HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING
7
8 ORDER / ORDER TO SHOW CAUSE with the Clerk of the Court using the
9
10 CM/ECF system, which will send notification of such filing to those attorneys of
11
12 record registered on the CM/ECF system. All other parties shall be served in
13
14 accordance with the Federal Rules of Civil Procedure.

15 Dated: November 24, 2025

16 Respectfully Submitted,
17 S/ Mardy M. Sproule

18 Attorney for Douglas E. Ramirez,
19 Email: Mardy.Sproule@att.net
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