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8 *Attorneys for the Federal Respondents*

9
10 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 ALEXIS ENRIQUE SILVA
HERNANDEZ,

12 Petitioner,

13 v.

14 KRISTI NOEM, in her official capacity as
15 Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
16 HOMELAND SECURITY; PAMELA
BONDI, in her official capacity as Attorney
17 General of the United States; U.S.
DEPARTMENT OF JUSTICE; TODD
18 LYONS, in his official capacity as Acting
Director and Senior Official Performing
19 Duties of the Director for U.S. Immigration
and Customs Enforcement; JASON
20 KNIGHT, in his official capacity as Acting
Field Office Director, Salt Lake City Field
21 Office Director, U.S. Immigration &
Customs Enforcement; U.S.
22 IMMIGRATION & CUSTOMS
ENFORCEMENT; JOHN MATTOS, in his
23 official capacity as Warden, Nevada
Southern Detention Center,

24 Respondents.
25

Case No. 2:25-cv-02304-RFB-EJY

**Federal Respondents' Response to
Court's Order to Show Cause, ECF
No. 5**

26 The Federal Respondents hereby submit this Response to the Court's Order to
27 Show Cause why Petitioner's Motion for Temporary Restraining should not be granted.
28 (ECF Nos. 2, 5).

1 **I. Introduction**

2 Petitioner seeks immediate relief challenging the Department of Homeland
3 Security’s (“DHS”) detention authority, contending that his custody is governed by 8
4 U.S.C. § 1226(a) rather than § 1225(b)(2)(A). This is not a novel question; identical
5 arguments have recently been litigated in parallel proceedings before this Court and other
6 district courts.

7 For the reasons stated below—and as set forth more fully in the government’s prior
8 filing in *Jefferson Dominguez-Lara, et al. v. Noem, et al.*, No. 2:25-cv-01553-RFB-BNW (D.
9 Nev. Sept. 27, 2025) as incorporated herein—Petitioner fails to demonstrate any
10 likelihood of success on the merits, irreparable harm, or a basis for extraordinary
11 injunctive relief.

12 **II. Factual and Procedural Background**

13 Petitioner is a native and citizen of Venezuela. ECF No. 1-2 at 2. He is currently
14 detained at the Nevada Southern Detention Center. ECF No. 1 at 1. On or about
15 September 11, 2023, Petitioner entered the United States at or near Eagle Pass, Texas and
16 was not then admitted or paroled after inspection by an Immigration Officer. ECF No. 1-2
17 at 8. Petitioner was issued a Notice to Appear at an initial immigration hearing on
18 September 27, 2024. *Id.* At the September 27, 2024 hearing, the matter was
19 administratively closed. *Id.* at 14. DHS moved to re-calendar the hearing and its motion
20 was granted on June 9, 2025. DHS also moved to dismiss Petitioner’s removal
21 proceedings under section 240 of the INA, which the Court granted. *Id.* at 17. Petitioner
22 filed an appeal to the BIA concerning the Court’s June 9, 2025 order which dismissed his
23 removal proceedings. *Id.* at 20. On August 6, 2025, Petitioner requested a bond
24 redetermination hearing. *Id.* at 5. On August 14, 2025, the IJ issued an order granting
25 Petitioner bond in the amount of \$5,000 and also imposed the condition that the Petitioner
26 not drive for any reason until obtaining a valid state-issued driver’s license. *Id.* at 6. DHS
27 filed a Notice of Intent to Appeal on August 15, 2025. *Id.* at 23. DHS filed its appeal to the
28 BIA of the Court’s bond order. The appeal was received by the BIA on or about August

1 21, 2025. *Id.* at 25. On November 19, 2025, the BIA sustained DHS’ appeal, finding that
2 Petitioner was an applicant for admission and, as such, the IJ lacked jurisdiction under
3 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) to order Petitioner released on
4 bond. *See* Exhibit “A.”

5 On November 19, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. ECF
6 No. 1. The same day, he filed a Motion for Temporary Restraining Order seeking
7 Petitioner’s immediate release from detention. ECF No. 2.

8 IV. Argument

9 *Incorporation By Reference of Government’s Prior Response*

10 Federal Respondents hereby incorporate by reference Federal Respondents’
11 Opposition to Petitioners’ Motion for Preliminary Injunction in *Jefferson Dominguez-Lara, et*
12 *al. v. Noem*, et al., No. 2:25-cv-01553-RFB-BNW (D. Nev. Sept. 27, 2025) (“Dominguez-
13 Lara Opposition”), as though fully set forth herein.¹ The Dominguez-Lara Opposition
14 addresses identical statutory and constitutional questions regarding DHS’s authority to
15 detain individuals under § 1225(b)(2)(A) who are not yet admitted and whose cases remain
16 in pending removal proceedings.

17 For efficiency and consistency, Respondents adopt the Dominguez-Lara Opposition
18 in full, except for Sections IV.C (“No Class Certification”) and IV.D (“Classwide Relief
19 Runs Afoul of § 1252(f)(1)”), which do not apply here as Petitioner has not sought class
20 certification in this matter.

21 The arguments in Sections I, II.A, III.C, and IV.A–B of the Dominguez-Lara
22 Opposition are equally applicable and incorporated by reference. Those sections
23 demonstrate that detention under § 1225(b)(2)(A) is mandatory by statute, not § 1226(a),
24 and that DHS’s custody determination therefore complies with both statutory and
25 constitutional requirements.

26 (See Dominguez-Lara Opposition, ECF No. 17, at 1-23, attached hereto as Exhibit
27 “B” and incorporated herein by reference, except Sections IV.C and IV.D.)

28 ¹ The Court has endorsed the incorporation by reference of prior government filings in related or substantively
identical immigration habeas petitions, recognizing the efficiency of unified briefing given the number of
overlapping cases presenting identical questions under 8 U.S.C. § 1225(b)(2)(A) and § 1226(a).

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V. CONCLUSION

For the reasons stated herein and in the Dominguez-Lara Opposition, Petitioner cannot satisfy the standards for such emergency relief. The Order to Show Cause should be discharged and the Motion for Temporary Restraining Order be denied in full.

Respectfully submitted this 25th day of November 2025.

SIGAL CHATTAH
First Assistant United States Attorney

/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney