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5 Attorney for Petitioner

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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA (LAS VEGAS)**
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11
12 JOSE GABRIEL HERNANDEZ

Case No. _____

13 ISIDORO,

14 A# 

15 Petitioner-Plaintiff,

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

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19 v.

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21 Michael V. Bernacke, Field Office

22 Director, U.S. Immigration and Customs

23 Enforcement;

24 John Mattos, Warden, Nevada Southern

25 Detention Center;

26
27 Kristi Noem, Secretary, U.S. Department
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1 of Homeland Security;
2 Rodney S. Scott, Commissioner, U.S.
3 Customs and Border Protection; and
4 Pam Bondi, Attorney General of the
5 United States,
6 Respondents–Defendants.
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10 Petitioner **moves on an emergency basis** for a **TRO and preliminary injunction**
11 directing Respondents to (1) **provide an individualized custody redetermination under 8**
12 **U.S.C. § 1226(a)** within **seven (7) days**, at which **DHS bears the burden by clear and**
13 **convincing evidence** and the IJ must issue **contemporaneous written findings** considering
14 **ability to pay and alternatives to detention (ATDs)**; or (2) **release Petitioner forthwith** if they
15 fail to provide such a hearing by the deadline. This motion is supported by the verified § 2241
16 petition, Exhibits, and counsel’s **LR 7-4 declaration** below.
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19 **INTRODUCTION & RELIEF REQUESTED**
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21 Petitioner **Jose Gabriel Hernandez Isidoro**, a long-time resident of Nevada, is currently
22 detained at **Nevada Southern Detention Center (NSDC)** while pursuing relief from removal. On
23 **November 6, 2025**, the Immigration Judge issued a written order expressly **refusing to exercise**
24 **bond jurisdiction**, stating that the Court “lacks jurisdiction to consider bond” based solely on
25 **Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025)**. The Immigration Judge made **no**
26 **individualized findings** regarding dangerousness, flight risk, ability to pay, or alternatives to
27 detention.
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2 **FACTS (CONDENSED)**

- 3 • **Categorical no-bond ruling:** On November 06, 2025, IJ **Glen R. Baker** denied bond
4 jurisdiction solely under *Yajure*, not based on any individualized risk assessment. (Ex. 1.)
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6 • **Deep ties, equities, and pending relief:** Jose has many years in Las Vegas with **work**
7 **history** and **family/community support**. He is in the process of filing **EOIR-42B**
8 **cancellation** with strong equities.
9
10 • **Primary caregiving & financial support:** At the same time, his U.S.-citizen children and
11 lawful-permanent-resident fiancée are suffering **severe and immediate hardship**,
12 including loss of financial stability, inability to pay household expenses, disruption of daily
13 caregiving, emotional deterioration, and academic decline among the children—as
14 documented in their affidavits. (Ex. 2–3.)
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18 **LEGAL STANDARD**

19 A TRO/PI issues when the movant shows **(1) likelihood of success, (2) irreparable harm, (3)**
20 **equities favor relief, and (4) the public interest favors relief.** *Winter v. NRDC*, 555 U.S. 7, 20
21 (2008). In this context, courts in **this District** have enjoined DHS’s reliance on §
22 **1225(b)(2)/Yajure** to foreclose IJ bond hearings and have ordered § **1226(a)** hearings within
23 **seven days or release**, with the **clear-and-convincing** burden on DHS and **ability-to-pay/ATD**
24 findings.
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28 **ARGUMENT**

1 **I. Petitioner is likely to succeed on the merits.**

2 **Section 1226(a)** governs interior civil immigration detention during removal proceedings
3 and provides for **bond** and **IJ custody redetermination**. The IJ here **categorically refused** to
4 exercise bond jurisdiction solely because of *Yajure*—**not** because of individualized dangerousness
5 or flight risk. District courts in Las Vegas have already held that **§ 1226(a), not § 1225(b)(2)**,
6 governs similarly situated detainees and have **enjoined** reliance on *Yajure* to block IJ bond
7 authority, ordering **7-day hearings or release** and the **clear-and-convincing** standard with
8 **ability-to-pay/ATDs** and **written findings**. The **statutory framework**, longstanding practice,
9 and recent Nevada rulings thus favor Petitioner’s claim.
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12 **II. Petitioner faces irreparable harm absent immediate relief.**

13 Every day of **unlawful civil detention** is irreparable. Here, harm is heightened: Jose’s
14 detention has **cut off his wages**, generating **immediate financial stress** on his **U.S.-citizen**
15 **child(ren)**—threatening housing stability, food security, and school continuity. (Ex. 3–4.) Jose
16 also provides **daily academic support and caregiving** that cannot be replaced by short-term
17 arrangements. Without a prompt bond hearing, the household’s **financial crisis** and the child’s
18 **well-being** will continue to deteriorate. Monetary damages cannot compensate for the **loss of**
19 **liberty** or the **ongoing harm to the children**.
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22 **III. The equities and the public interest favor relief.**

23 The requested injunction **does not order release on the merits**; it ensures a lawful,
24 **individualized custody hearing** under **§ 1226(a)**. That tailored process protects the
25 government’s interests in public safety and appearance at proceedings while safeguarding
26 constitutional and statutory rights. Considering **ability-to-pay** and **less-restrictive alternatives**
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1 also advances the public interest by avoiding detention **solely because of poverty** and by using
2 **ATDs** where appropriate.

3 **REQUESTED REMEDY (MODELED ON RECENT D. NEV. ORDERS)**

4 The Court should **enjoin** Respondents from relying on § 1225(b)(2)/**Yajure** to foreclose an IJ
5 bond hearing and should order that **within seven (7) days**:

- 6 1. Petitioner receive a § 1226(a) **bond hearing** before an IJ;
- 7 2. **DHS bears the burden by clear and convincing evidence** to establish danger or flight
8 risk;
- 9 3. The IJ **consider ability to pay and alternatives to detention** and issue **written findings**;
10 and
- 11 4. **If the hearing does not occur by the deadline, Petitioner shall be released**
12 **immediately** on appropriate conditions.
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18 **Attorney Verification (28 U.S.C. §§ 2242, 1746)**

19 **I, Jon Eric Garde**, counsel for Petitioner, declare under penalty of perjury that the factual
20 allegations in this Petition are true and correct to the best of my knowledge, information, and
21 belief, based on my review of Petitioner's records, court filings, agency records, and the attached
22 exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because
23 Petitioner is detained and time is of the essence given the irreparable harm being caused to the
24 Petitioner, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.
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28 Dated: 11/20/2025 at Las Vegas

/s/ Jon Eric Garde, Esq.

Jon Eric Garde, Esq. Counsel for Petitioner

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