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UNITED STATES DISTRICT COURT
FEDERAL DISTRICT COURT OF NEVADA

Macario Mijael LIVIA VICHARRA, Petitioner, v. Brian HENKEY, Field Office Director of Enforcement and Removal Operations, Salt Lake City Field Office, Immigration and Customs Enforcement; Michael BERNACKE, Acting Director of the Las Vegas U.S. Immigration and Customs Enforcement Field Sub-Office; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; John MATTOS, Warden, Nevada Southern Detention Center, Respondents.	Case No. 2:25-cv-02336 **REPLY TO RESPONSE FOR PETITION OF WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE**

Petitioner hereby submits this the following reply to Respondents' opposition to his Petition for a Writ of Habeas Corpus and their response to this Court's order to show cause.

I. PETITIONER'S DETENTION IS GOVERNED BY § 1226(a).

Respondents initially rely on a mischaracterization of the holding *Jennings v. Rodriguez*, 583 U.S. 281 (2018) to find solid ground for the proposition that any individual who entered without inspection and admission or parole is subjected to the mandatory detention provisions in 8 U.S.C. § 1225(b). While the Supreme Court in that matter did engage in some statutory analysis in *Jennings*, it did not conclude that all such noncitizens are subject to a mandatory detention 8 U.S.C. § 1225(b). *Jennings*, 583 U.S. at 289 ("U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens **already in the country** pending the outcome of removal proceedings under §§1226(a) and (c)") (emphasis added). The core issue in *Jennings* was whether there were time limits to how long an individual could be detained under 8 U.S.C. §§ 1225(b) and 1226(c) – *Jennings*, 583 U.S. at 302-03, 305-06.

Post-*Jennings*, Respondents rely solely on *Chavez v. Noem*, et. al., No. 3:25-cv-02325, 2025 WL 2730228 (S. D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, No. 8:25-cv-00526, WL 2780351 (D. Neb. September 30, 2025) for district court authority supporting their proposition that 8 U.S.C. § 1225(b) properly governs Petitioner's detention. These cases are not supportive of Respondents' position. The *Chavez* court has not resolved the issue at hand, and the *Vargas Lopez* court pithily disposed of the issue based on the petitioner's poor development of the record.

The *Chavez* court has not reached a decision on the merits of the legal argument as to whether § 1225 or § 1226 properly encapsulates individuals like Petitioner. Respondents rely on language from the court's order in that case denying an Ex Parte Application for a TRO. *Chavez*

v. Noem, 2025 WL 2730228. The *Chavez* Court's decision has only found that the petitioner had not met their burden to show that the case is likely to succeed on the merits, sufficient to be granted an injunction, but has not issued a decision denying the petition.[1]

Section 1226(c)(1)(E) does not remove such discretion for all noncitizens charged with such crimes; it only removes discretion for those who have entered the United States without inspection and admission or parole. 8 U.S.C. § 1226(c)(1)(E)(i) (referencing aliens inadmissible under paragraph (6)(A) . . . of § 1182(a)); 8 U.S.C. § 1182(a)(6)(A) (aliens inadmissible as "present in the United States without being admitted or paroled"). The *Chavez* court, and Respondents who rely upon it, seemed to misunderstand the petitioner's argument. See Resp. at 13 ("the addition of Section 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific crimes.")

Under Respondent's interpretation of the statutory scheme, all noncitizens who entered without inspection and admission or parole are subject to mandatory detention with no "discretion to release" which could be abrogated by section 1226(c)(1)(E), rendering the detention requirements specifically applied by Congress to individuals inadmissible under section1182(a)(6)(A), in enacting the Laken Riley Act, superfluous and without meaning.

Statutes should be construed as a whole, giving effect to all of their provisions, and amendments to a statute must be read in harmony with their agency's longstanding construction. *See Vazquez v. Bostock* et. *al.*, No. 3:25-cv-05240 at *37 (W.D. Wash. September 30, 2025).

The *Vargas Lopez* court disposed of proceedings based upon deficiencies in the pleadings. *Vargas Lopez,* 2025 WL 2780351, at *1-2. The court alternatively concluded that

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[1] While the court in *Chavez* has not decided the ultimate outcome of the case, it has found that it has jurisdiction pursuant to *Jennings v. Rodriguez*, and that exhaustion would be futile based on *Yajure Hurtado*.

Vargas Lopez was detained under § 1225(b)(2), but in addressing the overlapping nature of 8 U.S.C. § 1225 and 8 U.S.C. § 1226, the Court applied no canon of statutory construction in concluding that the statutes are not in conflict, writing that "[e]ven if Vargas Lopez might fall within the scope of § 1226(a), he certainly fits within the language of § 1225(b)(2) as well." *Id.* Because Respondent's interpretation of 8 U.S.C. §§ 1225 and 1226 renders the applicability of the discretionary detention statute and the exception to it in § 1226 superfluous and without effect, this Court should reject their interpretation.

Respondents' reliance on deference to *Hurtado* also does not save them. As Resondents' note, the weight owed to an agency interpretation in part depends on its "consistency with earlier and later pronouncements[.]" *Skidmore v. Swife & Co.*, 323 U.S. 134 (1944). But the novel interpretation of 8 U.S.C. §§ 1225(a) and 1226(b) propounded by the *Hurtado* decision dates only to July of this year.

Moreover, the Central District of California has issued a declaratory judgment and partial summary judgment for a national class of individuals similarly situated to Petitioner which contravenes Respondents' interpretation of the pertinent detention statutes. *Maldonado Bautista et. al. v. Santacruz Jr. et. al.*, Case No. 5:25-cv-01873, Dkt. 81 (C.D. Cal. November 20, 2025) (granting motion for partial summary judgment): *Maldonado Bautista et. al. v. Santacruz Jr. et. al.*, Case No. 5:25-cv-01873, Dkt. 82 (C.D. Cal. November 25, 2025) (granting class certification).

II. ADMINISTRATIVE EXHAUSTION IS FUTILE

Respondents claim that Petitioner has not given an Immigration Judge the opportunity to adjudicate his claim. This argument is disingenuous as Respondents are aware that there is no Immigration Court that will find jurisdiction for a Bond Argument without a District Court from

ordering them to do so. Binding immigration law in every district includes precedential BIA decisions, and Ninth Circuit Case law; however, decisions of the District Courts are not binding on the Immigration Court except with regard to named parties. 8 C.F.R. § 1003.1(g); *Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993) (the Board is not bound to follow the published decision of a United States district court in cases arising within the same district). *Yajure Hurtado* is therefore binding precedent and every single Immigration Judge in the Country is bound by law to follow it.

In fact, the Tacoma Immigration Court has continued to deny bond, citing *Matter of Yajure Hurtado*, despite a declaratory judgment by the Western District of Washington, barring Immigration judges at the Tacoma Immigration Court from finding they have no jurisdiction over such aliens as described in *Yajure Hurtado* as aliens encapsulated within 8 U.S.C. § 1225(b).[2]

Even those cases cited by Respondents in support of their position, *Chavez* and *Vargas Lopez,* have agreed that exhaustion would be futile for the reasons outlined, and concluded proceedings on the merits without addressing futility, respectively. *Chavez v. Noem*, et. al., No. 3:25-cv-02325, 2025 WL 2730228 at 6-7 (S. D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 8:25-cv-00526, WL 2780351 at (D. Neb. September 30, 2025). There is, therefore, no court which has agreed with Respondents that exhaustion should be required in this case.

III. RELEASE IS THE APPROPRIATE REMEDY

Respondents have not stated their specific interest in detaining Petitioner, only arguing that detention is required by statute. If their interest is solely to seek Petitioner's removal, that

[2] Ellen M. Banner, *Federal Court Ruling Doesn't Stop Washington State Immigration Judges' Bond Denials*, **The Chronicle** Oct. 28, 2025, https://www.chronline.com/stories/federal-court-ruling-doesnt-stop-washington-state-immigration-judges-bond-denials,389980

does not require detention, and absent an indication of flight risk or danger to the community, the interest in detention is insignificant.

Many district courts faced with the same issue in this action have in recent weeks determined to order the immediate release of immigration habeas petitioners. Santiago v. Noem, No. EP-25-CV-361-KC, 2025 LX 473521, at *39 (W.D. Tex. Oct. 1, 2025) *citing J.U. v. Maldonado,* No. 25-cv-4836, 2025 U.S. Dist. LEXIS 191630, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi,* No. 25-cv-14626, 2025 U.S. Dist. LEXIS 190052, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde,* No. 25-cv-11981, 2025 U.S. Dist. LEXIS 175513, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa,* No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); M.S.L. v. Bostock, No. 25-cv-1204, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025). In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. *Santiago,* 2025 LX473521 at *39 *citing J.U.,* 2025 U.S. Dist. LEXIS 191630, 2025 WL 2772765, at *10; *Zumba,* 2025 U.S. Dist. LEXIS 190052, 2025 WL 2753496, at *10; *Rosado,* 2025 WL 2337099, at *14, *18; Sepulveda Ayala v. Bondi ("Sepulveda Ayala II")*, 25-cv-1063, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025).

IV. EAJA FEES SHOULD BE GRANTED

Respondents' contention that fees should not be granted pursuant to § 2412 is unpersuasive. They cite to two cases in support of their argument that their position is "substantially justified," prohibiting an award of attorney fees and costs – *Vargas Lopez* and *Chavez* – which are each addressed above. Petitioner cites to over twenty cases in support of his interpretation of 8 U.S.C. §§ 1225 and 1226, none of which Respondents address directly. For

those reasons, Petitioner respectfully asks this Court to award him attorney fees and costs should he ultimately prevail.

V. CONCLUSION

Pursuant to the foregoing, Petitioner respectfully ask that this Court grant his requests for relief.

DATED: December 10, 2025

By: /s/ Casey Parsons
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Attorneys for Petitioner