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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF TEXAS**

RAJDEEP S. DHANOA

Petitioner, v.

MIGUEL VERGARA,
In his official capacity as the Field Office Director,
ERO Harlingen Field Office;

KRISTI NOEM, In her official capacity
as Secretary, U.S. Department of Homeland Security;

TODD M. LYONS, In his official capacity as
Acting Director Of Immigration & Customs
Enforcement; and,

PAMELA BONDI, In her official capacity as
Attorney General, U.S. Department of Justice,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION

INTRODUCTION

Petitioner respectfully submits this Reply in further support of his Petition for Writ of Habeas Corpus. Respondents' opposition rests on a fundamentally flawed understanding of both the statutory framework governing crewmen and the constitutional limits on civil detention. The Government's position would permit indefinite detention without charges, without a bond hearing, and without judicial review—an outcome that is plainly inconsistent with the Immigration and Nationality Act, controlling Supreme Court precedent, and the Due Process Clause of the Fifth Amendment.

Respondents attempt to characterize Petitioner as a “crewman” forever confined to a crew-only or “asylum-only” detention regime, outside the reach of INA section 236(a) and immigration-judge bond jurisdiction. But their own exhibits show that DHS (1) initially issued a crew-removal Form I-296; (2) then vacated the prior section 235(b)(1) order after a positive credible-fear finding; and (3) issued a Notice to Appear (“NTA”) placing Petitioner in removal proceedings “under section 240 of the Immigration and Nationality Act” on a section 237(a)(1)(B) overstay charge, ordered to appear at the Varick Street Immigration Court in New York. Having elected that path, DHS cannot deny the existence of the charging document to strip the Immigration Judge of bond jurisdiction and cannot toggle back to a vacated expedited-removal/crew-only posture simply to avoid custody review.

The question before this Court is not whether bond should be granted as a matter of discretion. Rather, the question is whether DHS may continue to detain Petitioner indefinitely while (a) refusing to acknowledge the NTA it issued; (b) insisting there is “no jurisdiction” for an

immigration-judge bond hearing; and (c) relying on statutes (INA §§ 1282 and 235) that its own NTA has effectively displaced in favor of section 240 and section 237(a)(1)(B). The answer is no.

BACKGROUND

Petitioner is a citizen and national of India who entered the United States on June 30, 2022, at Miami, Florida, as a C-1/D crewman (D2 classification) authorized to remain temporarily. He remained beyond the period of admission and later applied for asylum by filing Form I-589 with USCIS, which accepted jurisdiction and issued him an Employment Authorization Document.

On September 26, 2025, he was encountered at the Laredo-sector checkpoint near Laredo, Texas, where a Border Patrol agent documented that he had initially “lawfully entered the United States as a crew member” at Miami and remained beyond his permitted time. DHS prepared an I-213 and obtained a warrant for his arrest under INA section 236. On October 3, 2025, DHS issued a Notice to Alien Ordered Removed/Departure Verification (Form I-296), reflecting a crew-removal disposition and associated re-entry bars.

Crucially, however, Petitioner’s NTA tells a different story. On September 28, 2025, DHS issued and served a Form I-862 that:

1. States that the case is “in removal proceedings under section 240 of the Immigration and Nationality Act”;
2. Alleges that Petitioner “was admitted to the United States on or about June 30, 2022, at MIAMI, FLORIDA, as a D2 VISA HOLDER,” and that he “remained in the United States beyond [his] permitted time without authorization”;

3. Charges him as removable under INA section 237(a)(1)(B) “after admission as a nonimmigrant under section 101(a)(15) of the Act”; and
4. Orders him to appear at 201 Varick Street, New York, New York, on September 29, 2025, for a section-240 removal hearing.

The NTA further recites that it is being issued “You have been admitted to the United States but are *removable* for the reasons stated below...” The NTA further charges the Petitioner under INA section 237(b), and stated a date and time for the Petitioner to appear before an Immigration Judge in New York. Despite this, when Petitioner sought a custody redetermination, the Immigration Judge denied bond “because [there is] [n]o jurisdiction,” citing *Matter of A-W-* and stating that “there is no charging document issued or filed in this case.” That conclusion is flatly at odds with the NTA DHS itself issued and now offers as an exhibit.

It is preposterous how Respondents, on one hand, argue that Petitioner is lawfully held and that he will continue to be held in custody because he is not “in removal proceedings”, yet attaches as exhibit, Petitioner’s NTA document that they maliciously excluded during Petitioner’s bond proceedings. It is even more malicious that Respondents refuse to file the NTA document with the Immigration Court so that they can continue to justify Petitioner’s detention. It is unlawful and outrageous how Respondents claim that there is a final order of deportation issued against the Petitioner, when there is existence of a charging document and a pending asylum application. The fact that Petitioner did not appeal the Immigration Court's decision in the bond proceedings, has no bearing whatsoever and does not impact any maliciously obtained order of "deportation" or "removal".

Petitioner remains detained at the Rio Grande Processing Center in Laredo, Texas, with no effective bond jurisdiction recognized and no individualized assessment that his continued custody is necessary to effectuate removal or “protect the community.”

1. DHS's Own Actions Place Petitioner in Section 240 Proceedings Governed by Section 236(a), Rendering "No-Jurisdiction" and Crew-Only Detention Unlawful

The government's position rests on a false premise: that Petitioner is still, for all legal purposes, a crewman detained only under INA sections 1282 and 235, never admitted, and therefore never subject to section 240 or section 236(a) custody. The record shows otherwise. Once DHS vacated the section 235(b)(1) order and filed the I-862 initiating section 240 proceedings on a section 237(a)(1)(B) charge, Petitioner's detention became governed by section 236(a) and 8 C.F.R. § 1236.1(d), and the Immigration Judge's "no jurisdiction" conclusion became ultra vires.

INA section 236(a) authorizes DHS to arrest and detain a noncitizen "pending a decision on whether the alien is to be removed from the United States," and the regulations provide for custody redetermination in removal proceedings before an Immigration Judge. The crewman statute, section 1282, by contrast, permits conditional landing and removal of crew members without requiring section-240 procedures, and expressly states that nothing in section 1282 "shall be construed to require the procedure prescribed in section 1229a." That language preserves DHS's option not to use section 240; it does not prevent DHS from using section 240 when it chooses to do so, and it does not authorize DHS to ignore section 236(a) once it has taken that step.

The asylum-only regulations in 8 C.F.R. §§ 208.2(c) and 1208.2(c) similarly define a narrow jurisdictional track for certain categories, including some crewmen and Visa Waiver entrants, under which EOIR adjudicates only protection claims while DHS retains removal authority. Those provisions apply where DHS chooses to keep the person in that limited posture. They do not override a later DHS decision to vacate a section 235(b)(1) order and to file an NTA

explicitly placing the person into section 240 proceedings under section 237(a)(1)(B). Here, DHS did exactly that.

The NTA states on its face that:

- I. The proceedings are “in removal proceedings under section 240 of the Immigration and Nationality Act”;
- II. Petitioner was “admitted to the United States” as a D2 nonimmigrant at Miami;
- III. He is charged under section 237(a)(1)(B) for remaining beyond his authorized stay; and
- IV. The section 235(b)(1) order “was vacated” pursuant to 8 C.F.R. §§ 208.30 and 235.3(b)(5)(iv).

Those statements are fundamentally incompatible with the government’s assertion that Petitioner is not, in fact, in section-240 removal proceedings and that no charging document exists for purposes of section 236(a) bond jurisdiction. Once DHS chose to proceed under section 240 and section 237, Petitioner’s detention fell within section 236(a), and the IJ was required at minimum to recognize jurisdiction and conduct a custody redetermination under 8 C.F.R. § 1236.1(d).

2. MATTER OF YAJURE-HURTADO AND THE CREWMAN “NO BOND” REGIME DO NOT APPLY TO AN ADMITTED NONIMMIGRANT IN § 240 PROCEEDINGS ON A § 237(A)(1)(B) CHARGE

Respondents rely heavily on the Board’s recent decision in *Matter of Yajure-Hurtado* to argue that Immigration Judges lack bond jurisdiction over certain noncitizens treated as “applicants for admission” detained under section 235(b), including some crewmen. But

Yajure-Hurtado presupposes that DHS is in fact detaining the person under section 235(b)(2)(A) as an applicant for admission, with no admission in the United States and no placement in section 240 removal proceedings on a section 237 charge.

That is not this case. The government's own NTA charges Petitioner under INA section 237(a)(1)(B) "after admission as a nonimmigrant," expressly alleging a nonimmigrant admission at Miami and an overstay. That is the paradigmatic section-237 case Congress placed under section-236(a) detention, not under section-235(b)'s mandatory-detention scheme for arriving aliens who have never been admitted. And the NTA explicitly notes that any previous section 235(b)(1) order "was vacated," eliminating the foundation for treating Petitioner as held under section 235(b).

Yajure-Hurtado therefore does not control this posture. It does not stand for the proposition that DHS may vacate an expedited-removal order, file an NTA placing a person in section-240 proceedings under section 237(a)(1)(B), and then selectively ignore that NTA to deny bond jurisdiction by characterizing the person as a crewman or applicant-for-admission under section 235(b). To extend Yajure-Hurtado that far would create a de facto "bond-less" regime for any noncitizen whom DHS once touched with a crewman or expedited-removal classification, no matter how DHS later chooses to prosecute the case, and regardless of the statutory basis in the operative charging document.

Because DHS has elected to proceed under section 240 and section 237(a)(1)(B), Petitioner's detention must be justified, if at all, under section 236(a), and he is entitled to a custody redetermination where the government bears the burden of proving danger or flight risk by clear and convincing evidence.

3. RESPONDENTS LACK STATUTORY AUTHORITY TO CONTINUE PETITIONER'S DETENTION

Respondents' central point in their opposition is that Petitioner may be detained indefinitely under 8 U.S.C. § 1282 because he initially entered the United States as a C-1/D crewman. That argument fails as a matter of statutory interpretation and constitutional law.

Although Petitioner entered on a crewman visa, DHS does not dispute that he has since remained physically present in the United States for several years, has married a United States citizen, and has a pending application for asylum. DHS further does not dispute that Petitioner has committed no criminal offense, has no criminal history, and was arrested not pursuant to any criminal activity, but during a routine CBP checkpoint encounter. At the time of his arrest, Petitioner possessed valid employment authorization issued by USCIS and a valid commercial driver's license authorizing him to operate the vehicle he was driving. These facts are uncontested.

INA § 1282 governs the conditional landing of alien crewmen and permits immigration officers to summarily remove a crewman who fails to depart as required. The statute does not authorize prolonged civil detention, nor does it create an alternative detention regime outside the structure of the INA. Its text contemplates prompt departure, not incarceration pending indefinite administrative review. Nothing in § 1282 authorizes ICE to detain a noncitizen for months while awaiting adjudication of an asylum application, nor does it permit detention in the absence of removal proceedings.

Once DHS elected not to effectuate immediate removal and instead placed Petitioner into custody while his asylum application remained pending, the legal basis for detention shifted. At

that point, Petitioner's custody could only be justified under the general detention provisions of the INA, which are subject to constitutional constraints and judicial review. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Government cannot rely on § 1282 to evade those constraints.

Respondents' position would effectively create a category of noncitizens who may be detained indefinitely simply because DHS declines to issue a charging document. That result finds no support in the INA and directly contradicts Supreme Court precedent holding that civil detention must be reasonably related to its purpose and limited in duration. *Id.*; *Demore v. Kim*, 538 U.S. 510, 531 (2003).

4. THE ABSENCE OF A NOTICE TO APPEAR DOES NOT DEFEAT HABEAS JURISDICTION AND IN FACT CONFIRMS THE DUE PROCESS VIOLATION

Respondents frivolously assert that Petitioner is not eligible to be placed in removal proceedings, because no Notice to Appear has been issued. However, Petitioner is not in removal proceedings because Respondents are utilizing their discretion as the only loophole to continue Petitioner's detention. Assuming *arguendo* that petitioner does not indeed have a Notice to Appear, that in fact makes his position stronger.

The absence of a charging document does not deprive this Court of jurisdiction. To the contrary, habeas jurisdiction exists precisely to address unlawful executive detention where no other avenue of review is available. See 28 U.S.C. § 2241; *Zadvydas*, 533 U.S. at 688. The Government cannot insulate its detention decisions from judicial scrutiny by simply declining to initiate proceedings. In fact, we argue that Respondents are abusing their discretion by refusing to

file the Notice to Appear, likely from the awareness that it would lead to the Petitioner's immediate release from his baseless detention.

Here, the Immigration Judge expressly denied bond jurisdiction solely because DHS had not issued a charging document. This statement is inaccurate in its entirety, because as previously mentioned, Respondents intentionally did not disclose the evidence of Petitioner's NTA to the Immigration Court prior to his bond proceedings. That ruling did not validate Petitioner's detention; it exposed the legal vacuum in which DHS is operating. Under Respondents' theory, DHS may detain an individual indefinitely by refusing to file an NTA, thereby eliminating both immigration court jurisdiction and judicial review. The Constitution does not permit such a result.

The Fifth Circuit has repeatedly recognized that detention authority must be tethered to a statutory framework that provides meaningful process. See *Pierre-Paul v. Barr*, 930 F.3d 684, 692–93 (5th Cir. 2019). Where no such process exists, habeas relief is appropriate.

5. PETITIONER'S CONTINUED DETENTION VIOLATES DUE PROCESS

The Due Process Clause forbids civil detention that is indefinite, arbitrary, or unaccompanied by adequate procedural protections. *Zadvydas*, 533 U.S. at 690. Even where Congress has authorized detention, due process requires that the detention bear a reasonable relation to its purpose and that the detainee have an opportunity to contest custody before a neutral decisionmaker.

Petitioner has now been detained for months without a bond hearing, without removal proceedings, and without any mechanism to challenge his confinement. Petitioner is not an arriving alien, not subject to expedited removal, and not serving a criminal sentence. He has a pending I-

589 application for asylum, is married to a United States citizen, has no criminal history, and has been fully compliant with immigration requirements. These facts weigh heavily against detention.

The Immigration Judge explicitly declined jurisdiction. DHS acted in deceit and refused to file the NTA. No alternative forum exists. This is precisely the type of unchecked executive detention the Due Process Clause prohibits. Respondents cannot have their cake and eat it too.

Respondents argue that Petitioner waived his due process claim by failing to appeal the Immigration Judge's ruling. That argument fails for multiple reasons. First, the IJ did not deny bond on the merits; she found that she lacked jurisdiction altogether. There was therefore no substantive ruling to appeal. Second, exhaustion is not required where administrative remedies are unavailable or inadequate. *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992). Third, constitutional claims challenging the legality of detention are squarely within the scope of habeas review and need not be exhausted before an administrative body lacking jurisdiction.

The Government's position would permit detention without end, without review, and without accountability. That is irreconcilable with the Fifth Amendment.

6. RESPONDENTS' RULE 12(b)(6) ARGUMENT IS WITHOUT MERIT

Respondents' contention that the Petition must be dismissed because the warden was not named as a respondent is legally incorrect and procedurally improper.

The Supreme Court has made clear that habeas petitions are not defeated by technical defects in naming the custodian, particularly where the Government has notice and the Petitioner

is within the court's territorial jurisdiction. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Courts routinely permit substitution or amendment where necessary. Fed. R. Civ. P. 21.

Here, DHS and ICE are actively litigating the case, Petitioner is detained within the Southern District of Texas, and the Government does not dispute custody. Additionally, the warden of the detention center is directly employed by the Respondents, is following orders issued by the Respondents, and is NOT personally responsible in decision making that would impact Petitioner's detention in any way, shape or form. Respondents' argument is formulated as a mere procedural distraction, to delay these proceedings and impede the Petitioner from pursuing the relief he is lawfully warranted to seek. Dismissal on this basis would elevate form over substance and undermine the core purpose of habeas corpus.

Notwithstanding the above, Petitioner will amend the Habeas Complaint as a matter of right to add the Warden of the Rio Grande Processing Center as a party to this action.

7. DHS'S FAILURE TO PROVIDE MEDICAL CARE CONSTITUTES ADDITIONAL DUE PROCESS VIOLATIONS

Petitioner has repeatedly complained of serious medical issues during his detention. DHS has failed to provide timely or adequate medical care, despite knowledge of his condition. This prolonged neglect constitutes deliberate indifference in violation of the Due Process Clause.

Civil immigration detainees are entitled to at least the same level of medical care afforded to pretrial detainees under the Fifth Amendment. See *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976); *Hare v. City of Corinth*, 74 F.3d 633, 650 (5th Cir. 1996). Deliberate indifference to serious medical needs violates due process.

Here, Petitioner's medical needs have been ignored for months while DHS continues to detain him without justification. Each time Petitioner is taken to be examined by a doctor in the detention center, he is promised that he will be taken to the hospital for further diagnosis, but that day has yet to come. This further demonstrates that continued detention is punitive rather than administrative and independently warrants habeas relief.

8. PETITIONER IS ENTITLED TO A STAY OF REMOVAL PENDING ADJUDICATION OF HIS ASYLUM APPLICATION

Petitioner has a pending I-589 application for asylum. Removal prior to adjudication of that application would violate both statutory protections and due process. See 8 U.S.C. § 1158; 8 C.F.R. § 208.5; *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

Courts routinely grant stays of removal where an asylum application remains pending and the petitioner raises substantial constitutional claims. Removal at this stage would irreparably harm Petitioner and render his habeas petition moot.

Accordingly, the Court should issue a stay of removal pending final resolution of Petitioner's asylum application and this habeas proceeding.

CONCLUSION

Respondents ask this Court to approve a regime in which the Government may detain a person indefinitely, without charges, without a bond hearing, without removal proceedings, and without judicial oversight. That position is contrary to the Immigration and Nationality Act, Supreme Court precedent, and the Due Process Clause of the Constitution.

Because Petitioner's continued detention lacks statutory authorization and violates fundamental due process, the Court should grant the Petition for Writ of Habeas Corpus and order that Petitioner be released or, in the alternative, that DHS provide a prompt and meaningful custody hearing before an Immigration Judge.

Dated: December 30, 2025

New York, New York

Respectfully Submitted,

/s/ Dalbir Singh

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