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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

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**FLORENCIO PADILLA PEREZ,**

Petitioner,

v.

**KRISTI NOEM, in her official capacity as Secretary  
of the Department of Homeland Security (DHS);**

**TODD LYONS; in his official capacity as Acting  
Director of Immigration and Customs Enforcement  
(ICE);**

**FIELD OFFICE DIRECTOR, for Immigration and  
Customs Enforcement (ICE) for Southern Nevada;**

**JOHN MATTOS, in his official capacity as Warden  
of the Nevada Southern Detention Center;**

**PAMALA BONDI, in her official capacity as the  
United States Attorney General;**

**The Executive office for Immigration Review;**

**United States Immigration and Customs  
Enforcement (ICE).**

Respondents.

**PETITIONER’S REPLY TO  
RESPONDENTS’ RESPONSE TO ORDER  
TO SHOW CAUSE (ECF No. 12)**

**CASE NO: 2:25-cv-02399-CDS-DJA**

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Petitioner Florencio Padilla Perez (“Petitioner”), by and through counsel, respectfully submits this Reply to Respondents’ Response to the Court’s Order to Show Cause (ECF No. 12). Respondents’ filing

fails to identify any lawful basis for Petitioner’s continued detention, relies on jurisdictional theories that the Supreme Court has repeatedly rejected, misstates the statutory framework governing detention, and ignores the constitutional limits that bind every federal agency. Because Respondents have not—and cannot—certify any “true cause” of detention under 28 U.S.C. § 2243, the Petition should be granted and Petitioner should be released immediately.

**I. RESPONDENTS MISSTATE THE LAW: THIS COURT CLEARLY HAS HABEAS JURISDICTION.**

Respondents’ threshold argument—that § 1252(g) and § 1252(b)(9) bar district court review—is plainly incorrect and contradicts binding Supreme Court precedent. This Court **does** have jurisdiction to review the legality of immigration detention under 28 U.S.C. § 2241, and the Supreme Court has consistently reaffirmed that habeas review of detention, as opposed to removal, remains available.

**a. The Supreme Court Has Repeatedly Held That District Courts Retain Habeas Jurisdiction Over Detention Challenges**

Respondents’ assertions contradict repeated Supreme Court holdings:

- i. *Zadvydas v. Davis*, 533 U.S. 678 (2001) – District courts must review whether detention is lawful.
- ii. *Demore v. Kim*, 538 U.S. 510 (2003) – § 2241 jurisdiction remains available for challenges to the statutory basis of detention.
- iii. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018) – § 1252(b)(9) does not bar detention challenges, because detention authority is analytically distinct from challenges to removal proceedings.

Respondents ignore this precedent and instead cite dicta from Justice Thomas’s Jennings concurrence. However, Respondents are – or certainly should be – keenly aware that concurring opinions

do not override the majority opinion of the Court, especially given that the majority explicitly held that § 1252(b)(9) does not bar habeas challenges to detention authority.

**b. Respondents’ Expansive Reading of § 1252(b)(9) Would Eliminate Habeas Review Entirely—Violating the Suspension Clause**

Respondents’ arguments would funnel every detention challenge into the petition-for-review process, even where (as here) there is **no final order of removal**. That result is unconstitutional. As the Supreme Court held in *Boumediene v. Bush*, 553 U.S. 723, 779 (2008): “The writ of habeas corpus must be effective.” *Id.* Respondents’ interpretation would eliminate all judicial review of unconstitutional detention—an outcome the Suspension Clause forbids.

**II. RESPONDENTS’ “EXHAUSTION” ARGUMENT IS WRONG—NO ADMINISTRATIVE REMEDY EXISTS, AND EXHAUSTION IS NOT REQUIRED**

Respondents argue that Petitioner should have appealed the IJ’s bond decision to the BIA. That argument is not only legally incorrect—it is disingenuous.

The Ninth Circuit is unequivocal: “A habeas petitioner need not exhaust BIA custody procedures where the detention is unlawful, raises constitutional concerns, or where administrative remedies are unavailable.” *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011); *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011). A habeas petitioner need not exhaust BIA custody procedures where the detention is unlawful, it raises constitutional concerns, or where administrative remedies are unavailable.

Furthermore, as previously stated, there is no statutory exhaustion requirement for habeas petitions brought under 28 U.S.C. § 2241. The only exhaustion obligation is prudential, and courts have long recognized that exhaustion is excused when administrative remedies are unavailable, inadequate, or futile, or when pursuit of such remedies would cause irreparable harm. *See Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004).

Further, no administrative mechanism exists to challenge the legality or timeliness of DHS's Notice of Appeal from the Immigration Judge's October 22, 2025 grant of Petitioner's 42-B application. The Immigration Judge has no authority to revisit or assess the timeliness of a DHS appeal, and the BIA—being the very body that issued Yajure Hurtado and accepted DHS's untimely filing—does not provide a neutral or meaningful forum to contest jurisdiction or raise due-process objections. Because the BIA's own acceptance of a late appeal is the source of the harm, requiring Petitioner to seek relief from the BIA would be both futile and structurally incapable of providing redress.

Accordingly, habeas corpus under 28 U.S.C. § 2241 is the only available and adequate avenue for judicial review of Petitioner's detention, which now rests solely on an unlawful, untimely DHS appeal and an administrative framework that denies Petitioner any meaningful opportunity to contest the legality of that detention.

**III. RESPONDENTS DO NOT AND CANNOT CERTIFY ANY "TRUE CAUSE" OF DETENTION UNDER 28 U.S.C. § 2243**

The Court's Order to Show Cause required Respondents to "certify the true cause" of detention. Respondents did not—and cannot—do so.

**a. Respondents Fail to Identify a Statutory Basis for Detaining a Person Who Has Already Been Granted Cancellation of Removal**

Petitioner prevailed in his removal proceedings on October 22, 2025, when the IJ granted his 42-B Cancellation of Removal. The government's time to appeal expired on November 20, 2025. Yet, DHS filed nothing until November 24, 2025 – 4 days late.

Respondents' claim that the BIA "received" the appeal on November 18 is unsupported and contradicted by the record: There is no BIA timestamp, no mailroom log, no sworn declaration from EOIR, no filing fee receipt or anything supporting this ridiculous claim. Only an internally generated DHS form asserting a date with no evidentiary basis.

The burden to prove timeliness lies with DHS. They failed to meet it. Once the 30-day deadline expired, the IJ's decision became **final as a matter of law**, and DHS's continued detention of Petitioner has **no statutory authorization**.

**b. Respondents' Filing Was Untimely Under 8 C.F.R. § 1003.38(b)**

The regulation is clear: "The Notice of Appeal must be filed within 30 calendar days after the Immigration Judge's oral decision." The IJ issued his order on **October 22, 2025**. The deadline was **November 20, 2025**. Respondents filed—and admit filing—on **November 24, 2025**. Their attempt to backdate the filing is unsupported, unverified, and inconsistent with EOIR's own practices. An untimely appeal is a jurisdictional nullity. Without a timely appeal, DHS has no lawful detention authority. **This alone requires release.**

**IV. RESPONDENTS' § 1225(b) ARGUMENT IS WRONG AS A MATTER OF LAW AND CREATES SERIOUS CONSTITUTIONAL PROBLEMS**

Respondents insist Petitioner is an "applicant for admission" subject to mandatory detention under § 1225(b). This position is legally indefensible. Section 1225(b) applies to arriving noncitizens seeking admission—not long-term residents arrested in the interior. The Supreme Court in *Jennings* described § 1225(b) as applying primarily to "aliens seeking entry into the United States." Petitioner: (1) has lived in the U.S. since the early 1990s; (2) has five U.S. citizen children; (3) has deep community ties; (4) was arrested after a traffic stop in Utah, not at a border or port of entry.

Courts nationwide have rejected Respondents' attempt to stretch § 1225(b) to interior arrests. *See, Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). Congress did not authorize mandatory detention of people who have lived in the U.S. for decades and have been apprehended far from the border.

**a. Respondents' Reading Would Permit Indefinite Detention of Anyone Ever Unlawfully Present—Which *Jennings* Forbids**

Respondents' position has no limiting principle. Under their theory: (1) Anyone who ever entered without inspection; (2) At any time in their life, (3) Could be mandatorily detained under § 1225(b); (4) Even after winning their case. This is clearly unconstitutional and directly contrary to *Jennings*, *Zadvydas*, *Demore*, and *Boumediene*.

**b. *Yajure-Hurtado* Is Not Binding on Federal Courts, and Its Constitutionality Is Actively Being Challenged Nationwide**

*Yajure-Hurtado* is a recent, deeply controversial BIA decision that federal courts have already rejected as: (1) Ultra vires, (2) Contrary to decades of statutory interpretation, and (3) Constitutionally dubious. This Court is not bound by BIA interpretations in habeas cases, especially where the BIA's rule would extinguish any constitutional review.

**V. PETITIONER IS SUFFERING IRREPARABLE HARM; THE EQUITIES AND PUBLIC INTEREST DEMAND HIS IMMEDIATE RELEASE**

Respondents argue unlawful detention is not irreparable harm. That statement is both ridiculous and legally baseless. The Ninth Circuit has repeatedly held that Loss of Liberty is **Irreparable Harm**. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“prolonged detention is irreparable harm.”); *Opulent Life Church v. Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012). *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“any deprivation of constitutional rights is irreparable.”).

Petitioner has now been unlawfully detained for several months, and more than a month past IJ granting of his 42-B application and the expiration of the government's appeal deadline. **There is no more classic case of irreparable harm.**

The Public Interest favors release. Again, Petitioner:

- Has **no criminal history**;

- Was **granted bond by an IJ** after a full evidentiary hearing;
- Was found **not to be a danger or flight risk**;
- Was **granted 42-B cancellation of removal**;
- Is the father of **five U.S. citizen children**;
- Has lived in the U.S. for **over 30 years**.

There is no public interest whatsoever in detaining a long-term resident who has already prevailed in his removal case and whose detention now serves no lawful purpose.

## **VI. CONCLUSION**

Respondents have failed to comply with the Court's Order to Show Cause, failed to certify a lawful basis for detention, and failed to justify continuing to incarcerate a man whom the Immigration Judge has already granted relief. Their jurisdictional arguments contradict binding Supreme Court precedent, their statutory interpretation is flawed, and their factual assertions regarding the timeliness of the appeal are unsupported. Petitioner, Florencio Padilla Perez is being unlawfully detained. The Constitution does not permit this Court to look away.

THEREFORE, Petitioner respectfully requests that this Court grant the relief previously requested as set forth in the filings already before this Court, and for any further relief this honorable Court deems just and Proper.

Petitioner does not request oral argument at this time, as the legal and constitutional issues are fully briefed. However, Petitioner respectfully stands ready to appear for oral argument should the Court determine that further discussion would assist in the resolution of this matter.

Respectfully submitted this the 23rd day of December, 2025.

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