



1 Petitioner submits this Traverse and Memorandum to comply with the Court's order and the  
2 habeas corpus procedure and to expedite the process.

3 As a threshold matter, it seems that part of this petition has been resolved in another court  
4 case. For instance, petitioner appears to be a member of the Bond Eligible Class certified in  
5 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL  
6 3288403 (C.D. Cal. Nov. 25, 2025). The *Baustista* court has now entered a final judgment in that  
7 case. The final judgment essentially overrules the BIA case of *Yajure-Hurtado*. So, the Otay Mesa  
8 Immigration Court appears to accept that it now has jurisdiction to consider petitioner's bond  
9 request on the merits. Still, the Otay Mesa OPLA attorneys have apparently been ordered to defy  
10 the *Bautista* judgment by continuing to argue there is no bond jurisdiction and reserving appeal.  
11 This seems petty and spiteful, as well as apparent contempt of court.

12 Respondent's Return urges the court to deny the petition and refuse any relief for three  
13 reasons. First, it says the court has no jurisdiction to ever consider the petition. Second, it says that  
14 petitioner should be compelled to exhaust the administrative remedies. Third, it implicitly says that  
15 the petitioner is detained under 8 U.S.C. § 1225. None of these arguments have any merit. Let us  
16 briefly examine each one of them.

### 17 **Jurisdiction**

18 Respondents first argue that 8 U.S.C. § 1252(g) prohibits this court from even considering  
19 whether petitioner's detention because it lacks jurisdiction. This argument is wrong.

20 8 U.S.C. § 1252(g) divests the court of jurisdiction to review actions that the Attorney  
21 General may take to *commence* proceedings, *adjudicate* cases, or *execute* removal orders. (emphasis  
22 added). Here, petitioner is not asking the court to review any actions related to the *commencement*  
23 of proceedings, the *adjudication* of cases, or the *execution* of a removal order. Petitioner challenges  
24 the purely legal question of whether he is subject to mandatory re-detention without any change in  
25 circumstances or explanation after the DHS released him on his own recognizance. So, the statute  
26 does not apply to this habeas corpus petition by its own words.

27 Moreover, the case law reached the same conclusion. Section 1252(g) should be read  
28 narrowly to apply "only to three discrete actions that the Attorney General may take: her 'decision

1 or action' to 'commence proceedings, adjudicate cases, or execute removal orders.' ” *Reno v. Am-*  
2 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583  
3 U.S. 281, 294 (2018) (holding that constitutional challenge to prolonged detention without bond-  
4 hearing requirement is not barred by 8 U.S.C. § 1226(c)). “It is implausible that the mention of three  
5 discrete events along the road to deportation was a shorthand way of referring to all claims arising  
6 from deportation proceedings.” *Reno*, 525 U.S. at 482. Thus, Section 1252(g) does not “sweep in  
7 any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney  
8 General.” *Jennings*, 583 U.S. at 294. *See Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884-85  
9 (C.D. Cal. 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Navarro*  
10 *Sanchez v. Larose et al.*, 25-cv-2396 JES (MMP), 2025 WL 2770629, at \*2 (S.D. Cal. Sept. 26,  
11 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose et al.*, 25-cv-1824  
12 GPC (MSB), 2025 WL 2800149, at \*7–8 (S.D. Cal. Oct. 1, 2025) (same).

### 13 **Exhaustion of Administrative Remedies**

14 Second, respondents argue that we must ensure that petitioner has exhausted the  
15 administrative remedies. Petitioner did, to the extent necessary. The exhaustion requirement for  
16 habeas claims under Section 2241 is prudential, rather than jurisdictional. *Singh v. Holder*, 638 F.3d  
17 1196, 1203 n.3 (citing *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003)). Petitioner  
18 requested a bond re-determination hearing with the immigration judge. The judge allowed petitioner  
19 to withdraw the bond request after concluding he had no jurisdiction based on the BIA’s recent  
20 decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). It is futile to appeal this decision to the  
21 Board of Immigration Appeals (BIA). The decision came from the BIA. The BIA would obviously  
22 reach the same (wrong) conclusion that the immigration judge has no jurisdiction to consider a  
23 bond. Or, Respondents and the BIA would argue that petitioner is subject to mandatory detention  
24 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A), The immigration judge  
25 and BIA will also not consider the primary basis of this habeas corpus petition: that petitioner was  
26 unlawfully re-detained and is not subject to mandatory detention under 8 U.S.C. § 1225. So,  
27 petitioner had exhausted the administrative remedies to the extent needed for a decision on the  
28 petition.

1 1225 v. 1226

2 Third, respondent's argue that petitioner is subject to mandatory detention under 8 U.S.C. §  
3 1225. Once again, respondents are wrong. Given the somewhat new and drastic change in DHS  
4 policy, this is developing case law. However, multiple district courts have now been able to grapple  
5 with and decide these legal issues.

6 Respondents argue that petitioner is subject to mandatory detention pending removal  
7 proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the BIA's decision in  
8 *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the government's new interpretation of §  
9 1225. Multiple Courts, including *Bautista* and this one, have rejected this argument.

10 As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no deference  
11 by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that  
12 while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do").

13 Multiple District Courts across the entire United States have recently concluded that the  
14 government's proposed interpretation of the statute (a) disregards the plain meaning of section  
15 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a  
16 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior  
17 statutory interpretation and practice. The following quote is a representative example:

18 "The Court follows other decisions in this Circuit finding that "seeking admission  
19 requires an affirmative act such as entering the United States or applying for status,  
20 and that it does not apply to individuals who, like [Petitioner], have been residing in  
21 the United States and did not apply for admission or a change of status." *Mosqueda*  
22 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at \*5 (C.D. Cal. Sept. 8,  
23 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL  
24 2676082, at \*11-16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at \*1  
25 ("Every district court to address this question has concluded that the government's  
26 position belies the statutory text of the INA, canons of statutory interpretation,  
27 legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-  
28 CV-1015-KES-SKO (HC), 2025 WL 2617256, at \*4-5 (E.D. Cal. Sept. 9, 2025)

1 (finding that petitioner who was released on bond and rearrested was entitled to a  
2 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at \*8 (providing petitioner  
3 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-  
4 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same).”  
5 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,  
6 2025).

7 Respondents cite a string of cases where a scattering of district courts across the  
8 country have concluded a long-time resident of the United States is somehow subject to  
9 detention under 1225 instead of 1226, including one in the Southern District of California.  
10 This includes numerous decisions from the Southern District of California.

11 **Attorney Fees**

12 Petitioner has requested costs and attorney’s fees in this action pursuant to the Equal Access  
13 to Justice Act (“EAJA”), 28 U.S.C. § 2412. The EAJA provides in part:

14 A party seeking an award of fees and other expenses shall, within thirty days of final  
15 judgment in the action, submit to the court an application for fees and other expenses  
16 which shows that the party is a prevailing party and is eligible to receive an award  
17 under this subsection, and the amount sought, including an itemized statement from  
18 any attorney ... representing or appearing in behalf of the party stating the actual time  
19 expended and the rate at which fees and other expenses were computed. The party  
20 shall also allege that the position of the United States was not substantially justified.  
21 Whether or not the position of the United States was substantially justified shall be  
22 determined on the basis of the record ... which is made in the civil action for which  
23 fees and other expenses are sought.

24 28 U.S.C. § 2412(d)(1)(B).

25 In this case, it appears the unlawful re-detention of petitioner was arbitrary and unjustifiable,  
26 if not intended to be punitive and malicious. A cynical or jaded mentality could conclude that the  
27 recent mass re-detentions of non-citizens are a calculated plan to break the hope and spirit of  
28 persons in removal proceedings leading them to give up the fight and abandon their cases in

1 despair—thus leading to more bodies deported from the United States. More importantly, it seems  
2 that these issues have already been decided multiple times in the Southern District of California but  
3 respondents continue to detain people and oppose habeas corpus petitions.

4 **Conclusion**

5 So, to summarize: the court has jurisdiction to decide the petition and the administrative  
6 remedies have been exhausted enough to ripen the case. Petitioner needs an order that petitioner is  
7 detained under 1226 because the OPLA trial attorneys at Otay Mesa Immigration Court continue to  
8 argue that noncitizens like petitioner are detained under 1225.

9 DATED: 23 December 2025

10 Respectfully submitted,

11 */s/ William Baker*  
12 William Baker (157 906)  
13 MORENO & ASSOCIATES  
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