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6
7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 A.R.,

11 Petitioner,

12 v.

13 Kristi NOEM, Secretary, U.S.
14 DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S.
15 Attorney General, EXECUTIVE
OFFICE FOR IMMIGRATION
16 REVIEW; Todd LYONS, Acting
Director, IMMIGRATION AND
17 CUSTOMS ENFORCEMENT; Ernesto
Santacruz Jr., Acting Field Office
18 Director of Enforcement and Removal
Operations, Los Angeles Field Office,
19 IMMIGRATION AND CUSTOMS
ENFORCEMENT; Fereti SEMAIA,
20 Warden of DESERT VIEW ANNEX;
Joseph EDLOW, Director, U.S.
21 CITIZENSHIP AND IMMIGRATION
SERVICES; Rose KENDRICK, Acting
22 Director of National Benefits Center,
U.S. CITIZENSHIP AND
23 IMMIGRATION SERVICES,

24 Respondents.
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Case No. 5:25-cv-03565

**PETITIONER'S REPLY TO
RESPONDENTS' OPPOSITION
TO EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Petitioner hereby replies to the Federal Respondents' Opposition Brief (Docket #10) (hereinafter "Respondents' Opp."). The Respondents' argument that this Court lacks jurisdiction would mean that a recipient of Deferred Action with an approved humanitarian visa can be suddenly and without notice arrested, thrown in prison, and held in federal custody for months with no ability to raise constitutional and statutory challenges to the legality of their detention. This flies in the face of extensive caselaw establishing that (1) immigration detainees retain the right to raise constitutional and Administrative Procedure Act ("APA") claims through habeas, and (2) Deferred Action recipients have legally protected interests that cannot be summarily stripped without adequate process.

I. This Petition is Not a Request to Review the Bond Determination, and Therefore 8 U.S.C. § 1226(e) and 8 U.S.C. 1252(a)(2)(B)(ii) Do Not Apply.

Respondents argue that the Court lacks jurisdiction because of 8 U.S.C. § 1226(e), which strips federal courts of jurisdiction over discretionary bond determinations. But as R argued in his initial Memorandum of Points and Authorities ("MPA"), he is *not* asking this Court to reconsider the Immigration Judge's bond determination. The extensive legal framework Respondents describe, regarding the proper factors to be considered and procedures for requesting bond hearings, is beside the point. So, too, is Respondents' reference to 8 U.S.C. § 1252(a)(2)(B)(ii), which bars judicial review of discretionary determinations.

Through this Habeas Petition and accompanying *Ex Parte* Motion, R *does* request that the Court release him from custody because of the unlawful basis of his arrest and detention. But the Immigration Judge's discretionary bond determinations are not the subject of this motion. They are only relevant insofar as they are part of the procedural history. Put another way, R has no recourse but to seek release through habeas because the Immigration Judge has declined to release

1 him from custody. But it is not the bond determinations that R asks this Court to
2 review.

3 Federal courts in similar cases have consistently rejected Respondents’
4 arguments that § 1226(e) strips them of jurisdiction to consider constitutional
5 claims. The Second Circuit recently rejected the contention that § 1226(e) applies
6 when an immigrant in removal proceedings challenges the constitutionality of her
7 arrest and detention in a habeas petition:

8 To the extent the government maintains . . . that 8 U.S.C. § 1226(e)
9 bars jurisdiction over [the immigrant’s] detention, this argument is . . .
10 unlikely to succeed. Section 1226(e) provides that the Secretary of
11 Homeland Security’s “discretionary judgment” regarding . . . the
12 decision to arrest and detain a noncitizen pending a decision on
13 removal, “shall not be subject to review.” 8 U.S.C. § 1226(e). But
14 because § 1226(e) “contains no explicit provision barring habeas
15 review,” the Supreme Court has held that its “clear text” does not bar
16 jurisdiction over a constitutional challenge to detention under § 1226.
17 *Demore*, 538 U.S. at 517 Likewise, this Court has held that §
18 1226(e) does not foreclose jurisdiction over habeas petitions
19 challenging detention pursuant to § 1226(a). *Velasco Lopez v. Decker*,
20 978 F.3d 842, 850 (2d Cir. 2020) (holding that § 1226(e) does not
21 “limit habeas jurisdiction over constitutional claims or questions of
22 law” (quotation marks omitted)).

23 *Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025).¹ See also *Hernandez v. Sessions*,
24 872 F.3d 976, 987 (9th Cir. 2017) (concluding that § 1226(e) “does not . . . preclude
25 ‘habeas jurisdiction over constitutional claims or questions of law.’”) (internal
26 citations omitted); *Martinez v. Hyde*, No. CV 25-11909, 2025 WL 3152847, at *5
27 (D. Mass. Nov. 12, 2025) (Petitioner, a SIJS beneficiary, “does not challenge the
28 [Board of Immigration Appeals’] ultimate exercise of discretion—i.e., its

¹ In *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022), the Ninth Circuit disagreed with the *Velasco Lopez*’s analysis of the procedural protections constitutionally required in bond proceedings pursuant to § 1226(a). What is relevant for this motion is not that analysis. Rather, the *Rodriguez Diaz* court agreed with *Velasco Lopez* that it had jurisdiction over a habeas petitioner’s due process claims.

1 consideration of whether he poses a flight risk or a danger to his community. . .
2 Rather, Petitioner challenges the extent of the Government’s detention authority
3 under the statutory framework as a whole—i.e., the legal basis for his continued
4 detention.”) (internal quotation marks omitted).

5 To be sure, the fact that R does not challenge the Immigration Judge’s bond
6 decision does not mean the decision is constitutional. To the contrary, the
7 Immigration Judge’s treatment of R’s alleged statements on the Discord transcript
8 raises serious First Amendment concerns. Moreover, the minimal procedural
9 protections the Immigration Judge provided, in a bond hearing in which the
10 government has failed to allege a facially valid charge of removal, present
11 additional due process claims. Under the appropriate circumstances, R may amend
12 the Petition to pursue these claims. But this request for emergency relief is not
13 focused on the bond proceedings. Rather, R seeks judicial review of the illegal
14 agency actions that preceded these bond hearings – ICE detaining R without
15 establishing a lawful basis for removal, and USCIS terminating R’s Deferred
16 Action without notice or an opportunity to be heard. This Court has a clear
17 jurisdictional basis to review and remedy these unlawful agency actions.

18 Respondents have not raised administrative exhaustion, and it is therefore
19 waived. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 423 (2023) (concluding that
20 statutory limitations on judicial review in the Immigration and Nationality Act are
21 non-jurisdictional and therefore “subject to waiver and forfeiture”). Regardless, the
22 “exhaustion requirement is prudential, rather than jurisdictional, for habeas claims.”
23 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). The Court should waive
24 exhaustion here, where “administrative remedies are inadequate or not efficacious,
25 pursuit of administrative remedies would be a futile gesture, [or] irreparable injury
26 will result” *Id. quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)
27 (citation and quotation marks omitted). R could not raise his constitutional and
28 APA challenges to the actions of ICE and USCIS in his bond proceedings.

1 Therefore, it would be futile to await review by the Board of Immigration Appeals
2 of the Immigration Judge's bond decisions. As discussed in Petitioner's initial
3 MPA, the months of time awaiting appellate review would also result in irreparable
4 injury. *See also Casun v. Hyde*, No. 25-CV-427, 2025 WL 2806769, at *3 (D.R.I.
5 Oct. 2, 2025) (finding waiver of any exhaustion requirement warranted when
6 Petitioner, a recipient of SIJS Deferred Action, "is being detained against his will
7 without clear reason, a clear irreparable harm. Without judicial intervention, [the
8 SIJS Deferred Action recipient] will remain in detention for 90 days or until the
9 BIA issues a decision.").

10 **II. The Decision to Terminate R's Deferred Action was a Final Agency**
11 **Action and is Therefore Reviewable.**

12 Respondents' APA argument contains only general language regarding the
13 scope of federal review of agency actions, with no application to the facts at hand.
14 The sole issue they raise is that only final agency actions are reviewable. No one
15 disagrees on the applicable standard. The key fact that Respondents fail to address
16 is the "agency action" under review. Here, it is USCIS's termination of R's
17 Deferred Action that is at issue. This is clearly not an act "of a merely tentative or
18 interlocutory nature." Respondents' Opposition p. 6, *quoting Gallo Cattle Co. v.*
19 *U.S. Dep't of Agric.*, 159 F.3d 1194, 1198-99 (9th Cir. 1998). The USCIS
20 Termination Notice could not be more clear about its finality. *See* Exhibit 1 of the
21 Exhibits in Support of Petition for Writ of Habeas (Docket No. 1-1). It states that,
22 "You may not appeal or move to reopen/reconsider this decision." With regard to
23 the accompanying revocation of work authorization, the Termination Notice adds,
24 "Any decision to revoke your EAD is final, and no appeal shall lie from the
25 decision to revoke an EAD."

26 A final agency action must also be one "by which rights or obligations have
27 been determined, or from which legal consequences will flow." *Bennett v. Spear*,

1 520 U.S. 154 (1997) (internal quotation marks omitted). The USCIS Termination of
2 R's Deferred Action clearly meets this requirement as well. As a result of the
3 termination, R faces detention, removal proceedings, and the possibility of
4 deportation. He has lost his liberty, and beyond this, his ability to work legally in
5 the country. Without protection from removal afforded by Deferred Action, R also
6 faces the potential loss of his approved humanitarian visa, which requires his
7 presence in this country to pursue adjustment of status and obtain lawful permanent
8 residency. *See F.R.R. v. Rodriguez*, No. 25-CA-01564, 2025 WL 3654266, at *6
9 (W.D. Tex. Dec. 5, 2025) ("a noncitizen youth is eligible for SIJS only if he or she
10 is '*present* in the United States.' 8 U.S.C. § 1101(a)(27)(J) (emphasis added)"). *See*
11 *also* USCIS Policy Manual, Volume 7 - Adjustment of Status Part F - Special
12 Immigrant-Based Adjustment Chapter 7 - Special Immigrant Juveniles, *available at*
13 <https://www.uscis.gov/policy-manual/volume-7-part-f-chapter-7>. Thus, it is clear
14 that the USCIS Termination Notice has legal consequences that make it a final
15 agency action properly subject to judicial review under the APA.

16 Respondents raise no other arguments regarding the Court's jurisdiction over
17 the APA claim. Nor could they. Federal court decisions, including one recently in
18 this district, have repeatedly held that "APA and habeas review may coexist."
19 *Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 3713987, at *14 (C.D. Cal.
20 Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-
21 CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025), *citing R.I.L.-R*
22 *v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015); *J.G.G. v. Trump*, 772 F. Supp.
23 3d 18, 31 (D.D.C. 2025); *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 510 n.10
24 (D. Md. 2025); *Valez-Chavez v. McHenry*, 549 F. Supp. 3d 300, 305 (S.D.N.Y.
25 2021); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 140 (D.D.C. 2018); *cf.*
26 *Castaneda v. Garland*, 562 F.Supp.3d 545, 559–61 (C.D. Cal. 2021).

27 Allowing APA claims to proceed is especially important when the APA and
28 habeas claims "reach separate issues, and request distinct relief, despite relying on

1 the same underlying premise that the DHS Policy is unlawful.” *Bautista* at *15.

2 Remedial considerations support the same conclusion here. R has filed a
3 Petition for Habeas and Complaint, seeking not just release, but also vacatur of the
4 unlawful termination of his Deferred Action and work authorization. *See* Verified
5 Petition for Habeas Corpus and Complaint ([Docket No. 1](#)), Prayer for Relief #7. He
6 is likely to succeed on his claim that USCIS’s termination was arbitrary and
7 capricious, given the total lack of reasoning provided. The remedy is two-fold. He
8 must be released from detention, and his Deferred Action and work authorization
9 must be restored. In this way, he will be returned to the status quo ante – “the last
10 uncontested status which preceded the pending controversy.” *Pinchi v. Noem*, No.
11 25-CV-05632, [2025 WL 1853763](#), at *3 (N.D. Cal. July 4, 2025).²

12 Those district courts that have refrained from asserting jurisdiction under the
13 APA in the context of the detention of Deferred Action recipients were not asked to
14 review USCIS termination decisions. *See, e.g., Gamez Lira v. Noem*, No. 1:25-CV-
15 00855, [2025 WL 2581710](#), at *4 (D.N.M. Sept. 5, 2025) (finding jurisdiction over
16 constitutional but not APA claims); *Santiago v. Noem*, No. 25-CV-361, [2025 WL](#)
17 [2792588](#), at *6 (W.D. Tex. Oct. 2, 2025) (same). Rather, these cases challenged
18 ICE’s actions in placing Deferred Action recipients in detention in the course of
19 their removal proceedings. The courts’ concerns regarding finality in light of the
20 ongoing removal process are not applicable here, where the USCIS termination is
21 squarely the subject of judicial review.

22
23 **III. The Decision to Terminate R’s Deferred Action was Unlawful.**

24 Finally, Respondents argue that Deferred Action is simply “an act of
25 administrative grace,” and therefore provides no basis for preventing ICE from

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27 ² To that end, R requests that this Court consider an order that restores R’s Deferred
28 Action and work authorization during preliminary injunction proceedings. This was
not included in the Proposed Order on the TRO but is in the Prayer for Relief in the
Verified Petition for Habeas and Complaint.

1 changing its mind and pursuing removal against someone granted Deferred Action.
2 This is impossible to square with the extensive caselaw – from the Supreme Court,
3 the Ninth Circuit, and numerous district court opinions – holding that Deferred
4 Action “is not simply a non-enforcement policy.” *Dep’t of Homeland Sec. v.*
5 *Regents of the Univ. of California*, 140 S. Ct. 1891, 1906, 207 L. Ed. 2d 353
6 (2020). In the context of the Deferred Action for Childhood Arrivals (“DACA”)
7 Program, the Supreme Court referred to Deferred Action as a “two-year
8 forbearance,” an “affirmative act of approval,” and “a program for conferring
9 affirmative immigration relief.” *See also Inland Empire - Immigrant Youth*
10 *Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 4998230, at *20
11 (C.D. Cal. Apr. 19, 2018) (“the grant of DACA constitutes a conferred benefit that
12 requires procedural safeguards before it can be terminated”).

13 As a result of this unambiguous caselaw, “courts across the country
14 accordingly have granted recipients of deferred action relief from detainment and
15 removal.” *Intriago-Sedgwick v. Noem*, No. 1:25-CV-01065, 2025 WL 3688155, at
16 *5 (D.N.M. Dec. 19, 2025), *citing Enriquez-Perdomo v. Newman*, 54 F.4th 855,
17 863–64 (6th Cir. 2022) (concluding that a DACA recipient’s arrest and detention
18 were unauthorized and their removal order nonexecutable); *Gamez Lira*, 2025 WL
19 2581710, at *3 (granting a DACA recipient’s request for a temporary restraining
20 order enjoining his removal from New Mexico and ordering the government to
21 show cause why the petitioner should not be immediately released); *Santiago v.*
22 *Noem*, No. 25-CV-361, 2025 WL 2792588, at *14 (W.D. Tex. Oct. 2, 2025) (noting
23 the government’s concession that a removal order is inexecutable against a DACA
24 recipient and granting immediate release from detention); *Sepulveda Ayala v.*
25 *Bondi*, 794 F. Supp. 3d 901, 912–14 (W.D. Wash. 2025) (concluding that a
26 petitioner detained despite a grant of deferred action demonstrated a likelihood of
27 success that his detention is unlawful); *F.R.P. v. Wamsley*, No. 3:25-cv-01917,
28 2025 WL 3037858, at *3, *8 (D. Or. Oct. 30, 2025) (ordering a DACA recipient’s

1 immediate release after reasoning that “[l]egal precedent strongly suggests that” the
2 government does not “have free reign to detain a deferred action recipient without a
3 pre-detention hearing or individualized determination”); *Guerrero v. Noem*, No.
4 1:25-cv-1572, [2025 WL 3520407](#), at *1, *9 (W.D. Mich. Dec. 9, 2025); *Belsai D.S.*
5 *v. Bondi*, No. 25-cv-3682 (KMM/EMB), [2025 WL 2802947](#), at *2, *7 (D. Minn.
6 Oct. 1, 2025).

7 **CONCLUSION**

8
9 For the foregoing reasons, the Court should grant Petitioner’s Motion for a
10 TRO and Order to Show Cause; order Petitioner’s immediate release from
11 detention; bar Respondents from re-detaining Petitioner unless he receives due
12 process as required under the Due Process Clause of the Fifth Amendment; bar
13 Respondents from removing Petitioner from this judicial district and the United
14 States during the pendency of the underlying habeas corpus petition and complaint;
15 and vacate the unlawful termination of Petitioner’s Deferred Action and
16 employment authorization.³

17
18 DATED: January 8, 2026

Respectfully submitted,

19 By: /s/ Nina Rabin

20 Nina Rabin

21 UCLA Immigrant Family Legal Clinic

22 *Attorney for Petitioner*

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27 ³ Should the Court require a hearing, Petitioner respectfully requests any day but
28 Monday, January 12, at which time Petitioner’s counsel has a client’s asylum
interview in the morning and a training for new law students participating in the
UCLA Immigrant Family Legal Clinic in the afternoon.

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 11-6.2

The undersigned, counsel of record for Petitioner, certifies that this *Ex Parte* Motion for TRO and Order to Show Cause Re: Preliminary Injunction contains 2,535 words, which complies with word limit of Local Rule 11-6.1.

DATED: January 8, 2026

Respectfully submitted,

By: /s/ Nina Rabin

Nina Rabin, Attorney for Petitioner