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

JOSE ALFREDO BELTRAN ORELLANA,

Petitioner,

v.

Brian HENKEY, Field Office Director of Enforcement and Removal Operations, Salt Lake City Field Office, Immigration and Customs Enforcement; Kenneth PORTER, Acting Director of the Boise U.S. Immigration and Customs Enforcement Field Sub-Office; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Mike HOLLINSHEAD, Sheriff of Elmore County,

Respondents.

Case No. 1:26-CV-00013-AKB

**REPLY TO RESPONSE TO
PETITION FOR WRIT OF HABEAS
CORPUS (Dkt. 6)**

Petitioner Jose Alfredo Beltran Orellana (“Petitioner”) submits this Reply to Respondents’ answering brief (Dkt. 6) and the supporting declaration of Jared Callahan (Dkt. 6-1).

I. PETITIONER’S CASE IS NOT DISTINGUISHABLE WHERE HIS PRIOR REMOVAL WAS VACATED ON DUE PROCESS GROUNDS

Respondents seek to make hay of the Petitioner’s prior order of removal, and that his petition did not foreground his earlier immigration history. Dkt. 6, p. 2. Petitioner does not dispute the historical facts described in the Callahan Declaration concerning proceedings that began in 2012 and resulted in a 2019 removal order. Dkt. 6-1, ¶¶ 5–17.

However, the Immigration Court recently vacated the Petitioner’s prior removal order, finding that the prior Immigration Judge violated Petitioner’s rights to due process in summarily denying his applications for relief (the entire hearing lasted only nineteen minutes), and not advising the unrepresented Respondent that he could apply for voluntary departure. Exhibit A, Order Granting Motion to Reopen, p. 1.

Shortly before Petitioner was removed to El Salvador, his former spouse submitted a Petition for Alien Relative on his behalf. *See* Exhibit B, Form I-130 Receipt Notice. After Petitioner was removed to El Salvador, his former spouse withdrew the Petition for Alien Relative. *See* Exhibit C, Form I-130 Decision. Petitioner subsequently returned to the United States in 2021, and again took up residence with his spouse, who soon thereafter gave birth to the couple’s third child. Exhibit A, p. 2. This was his most recent entry.

Petitioner and his US citizen spouse divorced on October 10, 2023. *See* Exhibit D, Divorce Decree. A judge awarded 50-50 custody of the couple’s now three children between the parties (*Id.*); however, due to the U.S. Citizen ex-wife’s refusal to follow the court order, kidnapping the children, and removing them from the State, Petitioner was awarded sole legal and physical

custody of all three children on June 26, 2025. *See* Exhibit E, Order for Temporary Custody and Writ of Assistance for Return of Children.

His ex-wife was arrested and charged with felony custodial interference. *See* Exhibit F, Idaho Odyssey Portal, Case Summary. She was released on bond on June 25, 2025. Shortly thereafter, on August 5, 2025, ERO Boise received a tip that Petitioner had returned to the United States and had been living in Idaho illegally for three years. Dkt. 6-1, p. 4. On the morning of December 15, 2025, merely six days after Petitioner's wife's sentencing and conviction, Petitioner was apprehended by ICE in a targeted operation Dkt. 6-1, ¶ 21.

A motion to re-open was filed on his prior removal order, and this motion was granted on due process grounds, allowing Petitioner to return to immigration court to pursue his case, as if the first Order had never been entered. Exhibit A, Order of the Immigration Judge. The Immigration Judge noted that the Petitioner had submitted substantial evidence documenting his status as the victim of spousal abuse. *Id.*

The prior removal order has been vacated on due process grounds and is therefore void. A removal order that is no longer valid cannot serve as the predicate for criminal prosecution under 8 U.S.C. § 1326, which requires a valid order as an essential element. The government has not charged Petitioner with illegal reentry, and the Petitioner is not a criminal alien as alleged in the Callahan Declaration. Dkt. No. 6-1.

Likewise, detention under 8 U.S.C. § 1231 is unavailable absent a valid, final order of removal. Once the order was vacated, any authority to detain Petitioner under § 1231 was extinguished. Continued detention based on a vacated order exceeds statutory authority and violates due process.

Petitioner is therefore situated no differently than any other civil immigration detainee without a prior removal order. As the Petitioner was encountered within the United States, and is not removable on criminal grounds or pursuant to a final order of removal, his detention is governed by 8 U.S.C. § 1226(a).

II. RESPONDENTS DO NOT MEANINGFULLY CHALLENGE THE COURT'S JURISDICTION.

Petitioner maintains its position that this Court does have subject matter jurisdiction, as stated in the initial Petition for Writ of Habeas Corpus. Dkt. 1, ¶¶ 12—15. As stated on the response, the Respondent recognizes that this Court has previously ruled on the legal issues regarding detention authority. Dkt. 6, p. 2. Further, the Respondent does not cite to any authority to support their argument that this Court does not have subject matter jurisdiction over this case.

III. RELEASE IS THE APPROPRIATE RELIEF

Petitioner faces irreparable harm from continued unlawful detention and from transfer that would frustrate access to counsel and judicial review. He is the sole custodial parent for his three US Citizen children. The balance of equities and public interest favor enforcing statutory limits on detention and protecting constitutional due process. And Petitioner is likely to succeed on the merits because (1) the 2019 removal order has been vacated, eliminating § 1231 authority; and (2) § 1225(b) does not govern interior arrests of long-term residents pending removal proceedings, whereas § 1226(a) does.

Respondents have identified no individualized basis to detain Petitioner as a flight risk or danger, and they rely instead on a categorical statutory theory, and an inaccurate and dubious characterization of the Petitioner as a criminal based on his reentry into the United States. Dkt. 6 at 2–3. The government has not raised any actual interest in keeping the Petitioner detained, or any burden or injury which would result from his release.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus, grant the requested temporary restraining order, and order Petitioner's immediate release.

Respectfully submitted this 23rd day of January 2026.

/s/Nikki Ramirez-Smith
Nikki Ramirez-Smith
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on January 23, 2026, I served the foregoing document via electronic service to counsel for the Respondents at:

United States Attorney's Office
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/s/ Nikki Ramirez-Smith
Nikki Ramirez-Smith
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