DAVID E. WALTERS
STATE OF NEVADA BAR NO.: 7203
LAW OFFICE OF DAVID E. WALTERS
4060 E. RUSSELL RD., STE. 100
LAS VEGAS, NV 89120
702-405-6666
ATTORNEY FOR PETITIONER

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SERGIO GARCIA NICOLAS,

Plaintiff,

vs.

JOHN MATTOS, Warden, Nevada Southern Detention Center;
MICHAEL BERNACKE, Field Office Director, U.S. Immigration and Customs Enforcement,
PAMELA BONDI, Attorney General of the United States; and
KRISTI NOEM, Secretary of Homeland Security, in their official capacities,

Defendant

Case No.: 2:26-CV-00100

PETITIONER'S TRAVERSE TO FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Sergio Garcia Nicolas, by and through undersigned counsel, hereby submits this Traverse to the Federal Respondents' Response to Petition for Writ of Habeas Corpus. The Government's attempt to reclassify a long-time resident

of the United States as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2) ignores the plain text of the Immigration and Nationality Act ("INA"), binding Ninth Circuit precedent, and the recent rulings of this very Court. Furthermore, the record demonstrates that the Government possessed all necessary information to respond to this Court's Order to Show Cause days before they moved for an extension claiming otherwise.

I. The Federal Respondents' Motion for Extension Was Unjustified as the Notice to Appear and Notice of Hearing Were Issued Days Prior to the Request.

As a preliminary matter, Petitioner must address the Federal Respondents' representations to this Court regarding their need for additional time to respond to the Order to Show Cause. On January 23, 2026, the Government filed a "Motion for Extension of Time," asserting that the extension was "needed because Federal Respondents are waiting to receive pertinent information from the Agency that is necessary to provide a response". Counsel specifically represented that "[w]ithout such information Federal Respondents cannot prepare a response".

However, the exhibits attached to the Government's own Response demonstrate that the Agency had already fully processed Petitioner and generated the relevant "pertinent information" well before the motion was filed.

a. January 16, 2026: The Department of Homeland Security (DHS) issued the Notice to Appear (NTA), charging Petitioner with inadmissibility. This document, signed by SDDO Anna Aegerter, contains the factual allegations and legal charges the Government relies upon.
b. January 20, 2026: The Immigration Court issued the Notice of Hearing, scheduling Petitioner's master hearing for February 10, 2026.
c. January 23, 2026: Three days *after* the Notice of Hearing was issued, and a full week after the NTA was served, the Government filed its Motion for Extension claiming it was still "waiting to receive pertinent information".

The Government's claim on January 23 that it lacked information was contradicted by its own file. The Agency had already determined Petitioner's status, charged him, served him, and scheduled his hearing by January 20. The administrative record was complete enough to charge and detain Petitioner; it was certainly complete enough to respond to a habeas petition. This sequence suggests the motion for extension was less about gathering facts and more about delaying these proceedings while Petitioner remained detained without a bond hearing.

II. Petitioner is Subject to § 1226(a), Not § 1225(b)(2), as Consistently Held by This Court.

The core of the Government's argument is that Petitioner, who entered the United States in 2004, should be treated as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2), rather than under the discretionary bond framework of § 1226(a). This argument requires the Court to ignore the distinct

statutory framework Congress established for aliens apprehended *inside* the United States versus those arriving at the border.

The Government candidly admits that this Court has repeatedly rejected their interpretation in nearly identical recent cases. As the Response notes:

> "Despite the clear statutory text, this Court has held in prior cases before it that Petitioners are entitled to bond hearings, bond, and release. Torralba et al v. Wright et al, 2:25-cv-1366; Maldonado Vasquez v. Feely, 2:25-cv-01542; Berto Mendez v. Noem et al, 2:25-cv-02062..."

The Government argues that these decisions—and by extension, the relief sought by Petitioner—are "subversive of congressional intent". To the contrary, treating a resident of twenty-two years as an "arriving alien" subverts the historical distinction between exclusion and deportation. Petitioner was arrested in the interior of the country (Las Vegas), not at a port of entry.

Section 1226(a) governs the detention of an alien "on a warrant issued by the Attorney General" pending a decision on removal. The Government executed a "Warrant for Arrest of Alien" (Form I-200) for Petitioner on January 16, 2026. The existence of this warrant triggers § 1226(a). If Petitioner were truly being processed solely under § 1225(b)(2) as an applicant for admission at the border, no arrest warrant would be necessary or typical, as he would be in custody by virtue of his arrival.

This Court in *Yaky Howard Mejia Soto v. Radar*, Case No. 2:25-cv-02281-RFB-EJY (D. Nev. Dec. 11, 2025), explicitly rejected the exact arguments Respondents now recycle. As this Court noted in *Mejia Soto*, it has already granted relief in "forty-two similar challenges" where the Government attempted to apply mandatory detention under 8 U.S.C. § 1225(b)(2) to long-time residents. *See, e.g.*, *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY, 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *Herrera v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10, 2025); *see also infra* (citing full list of authority).

Respondents contend that Petitioner is subject to mandatory detention solely because he was never formally "admitted." They rely on the recent BIA decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to justify this position. However, this Court has already held that *Yajure-Hurtado* is "unlawful" and that the Government's new policy "subjects millions of undocumented U.S. residents to prolonged detention without the opportunity for release on bond, in contravention of decades of agency practice." *Mejia Soto*, at 2-3.

The law of this District is clear: Petitioner is subject to 8 U.S.C. §1226(a), not §1225. Continued detention without a bond hearing violates both the Immigration and Nationality Act ("INA") and the Due Process Clause.

III. *Matter of Yajure Hurtado* Is Unlawful and Not Entitled to Deference.

The Government relies heavily on the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to argue that all aliens who entered without inspection (EWI) are applicants for admission subject to mandatory detention.

First, under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), the Court must not defer to the agency's interpretation of the statute but must exercise its independent judgment.

Second, *Hurtado* attempts to rewrite history by claiming that IIRIRA intended to place settled undocumented immigrants on "equal footing" with those arriving at the border regarding detention. However, the text of § 1226(a) ("an alien may be arrested and detained pending a decision on whether the alien is to be removed") is the specific provision governing interior arrests. The Supreme Court in *Jennings v. Rodriguez* acknowledged that § 1225(b)(1) and (b)(2) apply to "applicants for admission," but *Jennings* did not abrogate the application of § 1226 to those apprehended in the interior.

IV. Mandatory Detention Violates Petitioner's Due Process Rights.

Even if the Government's statutory interpretation were correct, Petitioner's detention would still be unconstitutional. As this Court held in *Mejia Soto*, applying mandatory detention to a resident noncitizen fails the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976):

a. Private Interest: Petitioner has a "substantial" interest in freedom from imprisonment, which is "the most elemental of liberty interests".
b. Risk of Erroneous Deprivation: The risk of error is "extraordinarily high" because the current policy gives DHS officials "sole, unguided, and unreviewable discretion" to detain individuals without any process to challenge that decision.
c. Government Interest: The Government has no legitimate interest in the "unjustified deprivation of a person's liberty". The Government's interest in public safety and preventing flight is *better* served by the existing bond hearing process under § 1226(a), which allows for individualized determinations. Mandatory detention imposes staggering fiscal costs without adding any value to public safety that a bond hearing could not address.

Furthermore, Petitioner's detention violates substantive due process. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention is only constitutional where a "special justification" outweighs the individual's liberty interest. Respondents have articulated "absolutely no individualized justification—let alone a special or compelling justification—to continue to deprive Petitioner of his physical liberty". They have not alleged that Petitioner is a danger to the community or a flight risk. Absent such a showing, his mandatory detention is unconstitutional.

V. A Remand for a Bond Hearing Would Be Futile Due to Agency Non-Acquiescence

While a habeas court typically remands a matter to the Agency for a constitutionally compliant bond hearing, that remedy is unavailable here because the Agency has actively instructed its adjudicators to disregard this Court's declaratory rulings. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued a specific directive to all Immigration Judges titled "Guidance," addressing the precise legal conflict at issue in this petition.

In this directive, the Agency explicitly instructed that recent federal court rulings in this District are "not a nationwide injunction" and do "not purport to vacate, stay, or enjoin *Yajure Hurtado*". Instead, the Chief Immigration Judge commanded that "*Yajure Hurtado* remains binding precedent on agency adjudicators". The guidance draws a sharp distinction between injunctive relief and declaratory judgments, noting that the latter only "clarifies parties' legal rights... without ordering specific action". Consequently, the Agency has directed its judges to continue applying the mandatory detention holding of *Matter of Yajure Hurtado* unless a court issues a coercive order compelling specific action.

This creates a procedural deadlock: even if this Court declares that Petitioner is unlawfully detained under § 1225(b)(2), the Immigration Judge is under

administrative orders to deny jurisdiction over a bond hearing absent an injunction. Because the Executive Office for Immigration Review has predetermined that it will not adhere to judicial clarifications of the law that lack injunctive force, a remand for a bond hearing would be an exercise in futility. Accordingly, this Court must issue a Writ ordering Respondents to immediately release Petitioner.

VI. Conclusion

Federal Respondents ask this Court to disregard the plain text of the INA, the Constitution, and its own settled "law of the district". As this Court definitively held just last month in *Mejia Soto v. Radar*, the Government's attempt to apply the mandatory detention provisions of 8 U.S.C. §1225(b)(2) to longtime residents apprehended in the interior is "incorrect and unlawful". There is no factual or legal basis to distinguish Mr. Garcia Nicolas's case from the forty-two similar challenges where this Court has already granted relief. Furthermore, the record reveals that the Government's request for an extension was baseless, as the Agency had already processed and charged Petitioner days prior to the request.

However, a standard remand for a bond hearing is no longer a viable remedy due to the Agency's active resistance to judicial declaratory relief. As detailed above, the Executive Office for Immigration Review has instructed its judges to strictly adhere to *Matter of Yajure Hurtado* regardless of contrary declaratory judgments. Because

the Agency has predetermined that it will not exercise jurisdiction over a bond hearing absent a coercive order, a remand would be futile.

WHEREFORE, Petitioner respectfully requests that this Court:

(1) **GRANT** the Petition for Writ of Habeas Corpus;
(2) **DECLARE** that Petitioner's detention is governed by 8 U.S.C. § 1226(a); and
(3) **ISSUE A WRIT** ordering Respondents to **immediately release** Petitioner from custody, as a remand for a bond hearing would be futile given the Agency's predetermined refusal to exercise jurisdiction

Respectfully submitted,
Date: January 29, 2026

David E. Walters
State of Nevada Bar No.: 7203
Law Office of David E. Walters