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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF NEVADA**

8 Oscar GANDARA SIMENTAL,
9 *Petitioner,*

10 v.

11 Jason KNIGHT, Field Office Director, Salt
Lake City Field Office, U.S. Immigration and
12 Custom Enforcement, Enforcement and
Removal Operations Division;

13 John MATTOS, Warden, Nevada Southern
14 Detention Center;

15 Kristi NOEM, Secretary, United States
Department of Homeland Security;

16 Pamela BONDI, Attorney General of the United
17 States,

Respondents.

Case No. 2:26-cv-00205-RFB-NJK

**PETITIONER'S REPLY IN SUPPORT
OF WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Judge Richard Boulware

I. INTRODUCTION

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2 1. Petitioner Oscar Gandara Simental files the present reply in support of his Petition
3 for a Writ of Habeas Corpus, 28 U.S.C. § 2241, challenging his unlawful detention by
4 Respondents.

5 2. The entire reason for this dispute is the incorrect interpretation of which noncitizens
6 are subject to detention under 8 U.S.C. § 1225 reached by Respondents in *Matter of Yajure*
7 *Hurtado*, 29 I&N Dec. 216 (BIA 2025).

8 3. Mr. Gandara Simental’s unjustified, unlawful, and needlessly punitive civil
9 detention only harms the safety and wellbeing of himself, his U.S. Citizen family, and his
10 community. It is also a pointless waste of government resources. Despite this Court’s instruction
11 to Respondents to offer new arguments that have not already been addressed by this Court, (Dkt.
12 4, p. 2) Respondents filed a response under an interpretation of the immigration statute that this
13 Court and other courts around the country have overwhelmingly rejected¹.

14 4. This includes a nationwide class action and final order in *Maldonado Bautista et.*
15 *al. v. Ernesto Santacruz Jr. et. al.*, 5:25-cv-01873-SSS-BFM (U.S. Dist. Ct. Cen. D. CAL., Dec.
16 18, 2025), which binds Respondents, specifically Immigration Judges, to accept jurisdiction and
17 determine bond for noncitizens who find themselves similarly situated to Mr. Gandara Simental.

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20 ¹ This Court has already granted petitioners relief in over a dozen similar challenges. See, e.g., *Herrera v. Knight*,
21 No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-
22 RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL
23 2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev.
Oct. 10, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Perez*
Sanchez v. Bernacke, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); *Aparicio v. Noem*, No. 2:25-CV-
01919-RFB-DJA, 2025 WL 2998098 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-
RFB-EJY, 2025 WL 2998094 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, 2:25-CV-01987-RFB-BNW
(D. Nev. Oct 27, 2025); *Arce-Cervera v. Noem*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct.
28, 2025); *Alvarado Gonzalez v. Mattos*, No. 2:25-CV-01599-RFB-NJK (D. Nev. Oct. 30, 2025); *Rodriguez*
Cabrera v. Mattos, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687 (D. Nev. Nov. 3, 2025); *Berto Mendez v.*
Noem, No. 2:25-cv-02602-RFB-MDC (D. Nev. Nov. 7, 2025); among others.

1 Namely, the class was certified as to, “All noncitizens in the United States without lawful status
2 who (1) have entered or will enter the United States without inspection; (2) were not or will not be
3 apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. §
4 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial
5 custody determination.” *Id.*

6 5. This class action notwithstanding, Respondents continue to instruct Immigration
7 Judges to not accept jurisdiction for bond over noncitizens like Mr. Gandara Simental and follow
8 *Yajure Hurtado*.

9 6. As if this Court and other courts around the country had not determined differently,
10 Respondents claim that “there is no dispute that Petitioner is an applicant for admission under
11 Section 1225(a)...” Dkt. 6 p. 4.

12 7. Respondents then go on to essentially recycle arguments already rejected by this
13 Court and courts around the country in purportedly justifying Mr. Gandara Simental’s unjustified
14 detention. The arguments raised by Respondents in their Response, Dkt. 6, have been considered
15 and rejected by this Court.

16 8. Because Respondents cannot “show cause why the writ should not be granted,” Mr.
17 Gandara Simental asks that the Court “forthwith award the writ,” 28 U.S.C. § 2243, and order his
18 immediate release from Respondents’ custody.

19 9. As Respondents have not raised any new arguments not previously addressed by
20 the Court in other similar cases, and as Mr. Gandara Simental believes he still maintains a *prima*
21 *facie* case for relief, in response to the Court’s Order, Dkt. 4, **Mr. Gandara Simental is willing**
22 **to waive a hearing and would be amenable to a ruling on the papers.** However, he is ready to
23 defend his position via counsel at a hearing should the Court determine it necessary.

1 **II. ARGUMENT**

2 **a. Respondents Fail to Justify Mr. Gandara Simental’s Detention under 8**
3 **U.S.C. § 1225 (b)(2)**

4 9. Contrary to Respondents’ argument, 8 U.S.C. § 1225(b)(2) does not plainly
5 authorize the mandatory detention of individuals in Mr. Gandara Simental’s posture, who have
6 effectuated an entry into the United States and have resided in the U.S. for years. See e.g.,
7 *Maldonado Vazquez v. Feeley*, No. 25-cv-1542, 2025 WL 2676082, at *13 (D. Nev. Sept. 17,
8 2025); see also *Escobar Salgado v. Mattos*, No. 25-cv-01872-RFB-EJY, 2025 WL 3205356 (D.
9 Nev. Nov. 17, 2025). Respondents’ reliance on *Jennings v. Rodriguez*, 583 U.S. 281 (2018) for
10 the principle that any noncitizen who enters without admission is an “applicant for admission” and
11 thus subject to detention until whenever removal proceedings end is misplaced. Dkt. 6. Jennings
12 examined section 1226 and stated it as “generally governing the process of arresting and detaining
13 . . . [noncitizens] already in the country pending the outcome of removal proceedings,” including
14 noncitizens who are “present in the country” despite being “inadmissible at the time of entry.”
15 *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018). “[O]nce inside the United States . . . the
16 default rule” is set forth in § 1226. *Id.* at 288 (quoting § 1226(a)).

17 10. Additionally, this and other Courts have concluded that the decision issued by the
18 Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, is erroneous in its plain reading
19 of § 1225(b)(2) as it otherwise fails to correctly apply principles of statutory construction,
20 including invoking a faithful reading of the legislative history. *Maldonado Vazquez*, 2025 WL
21 2676082, pp.12.

22 11. Respondents ask the Court to accept a premise whereby the Illegal Immigration
23 Reform and Immigration Responsibility Act (“IIRIRA”), passed by Congress in 1996, “plainly”
intends the detention scheme envisioned by *Yajure Hurtado*. This asks this Court, and everyone

1 involved; to reject nearly 30 years of practice whereby noncitizens were able to seek and receive
2 bond redetermination hearings since that time.

3 12. If such a scheme were truly “subversive of congressional intent,” as Respondents
4 would have the Court believe, then Congress would certainly have taken steps to modify or clarify
5 said practice in the intervening 30 years.

6 **b. Mr. Gandara Simental Continues to Demonstrate the Injunctive Balance of**
7 **Factors Tip in His Favor**

8 13. Citing *Jennings*, Respondents either misstate or misunderstand 8 U.S.C. § 1225
9 (a)(1). “[A]n alien who arrives in the United States, *or* ‘is present’ in this country but ‘has not been
10 admitted,’ is treated as ‘an applicant for admission.’” *Id.* at 287 (emphasis on “or” added).” Dkt. 6
11 p. 11.

12 14. Like much of our understanding of the world, context matters. Justice Alito,
13 delivering his opinion in the above-mentioned citation, on the same page of Respondents citation
14 explains: “To implement its immigration policy, the Government must be able to decide (1) who
15 may enter the country and (2) who may stay here after entering. That process generally begins at
16 the Nation’s borders and ports of entry.” *Id.*

17 15. Respondents continue to ignore the plain realities at issue: Immigration law is civil
18 law. Any detention proscribed by Congress was meant to be undertaken for those at the border or
19 for those who present a risk to the community or a risk of flight from deportation or removal from
20 the country. A longstanding, long accepted interpretation or practice is not an attempt to “rewrite
21 or eviscerate” a statute. *See* Dkt. 6 p. 12. They ignore that many noncitizens have come to this
22 country in good faith, seeking to better their lives and the lives around them. Have worked hard,
23 paid taxes, improved their communities, raised families, and done everything right but have correct
paperwork. They seek to paint all noncitizens with a broad brush, maximizing every mistake and

1 minimizing their great contributions as parents, employees, husbands, family members,
2 community members, and more.

3 16. Respondents' arguments are both circular and contradictory. They at once ask that
4 Mr. Gandara Simental spend his days in unjustified and unlawful detention, all the while going
5 through the motions of pursuing bond in the name of exhausting his administrative remedies,
6 knowing full well that such an exercise is a foregone conclusion: Respondents have determined
7 that he must not be released under *Yajure Hurtado*. At the same time, Respondents take great pains
8 to explain that *Yajure Hurtado* is a published and binding opinion on DOJ, DHS, and perhaps even
9 more incredibly, binding on this Court. *See* Dkt. 6 pp. 5, 12.

10 17. They at once claim that Mr. Gandara Simental should accept his detention as
11 "temporary" *see* Dkt. 6 pp. 2, 3, 7, and 13, but ignore the plain truth that every day of unlawful
12 detention could permit a per se finding of irreparable harm. *See e.g., Conn. Dep't of Env'tl. Prot.*
13 *V. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) ("[W]e have held that the alleged violation of a
14 constitutional right triggers a finding of irreparable injury.") (internal citations and quotation
15 marks omitted); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("[An] alleged violation of a
16 constitutional right . . . triggers a finding of irreparable harm.") (emphasis in original).

17 18. Every day of every one of our lives is limited. Every day that Mr. Gandara Simental
18 spends away from his family and life and community is a day that cannot be returned to him. Even
19 one day spent unlawfully in federal custody is not some imaginary or "possibility" of irreparable
20 harm.

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III. CONCLUSION

19. For the foregoing reasons, Mr. Gandara Simental respectfully requests the Court grant his motion for a temporary restraining order and order his immediate release, or alternatively, order that a bond redetermination hearing be held by the Immigration Court within 7 days.

Respectfully submitted this 4th day of February, 2026.

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