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7 *Attorney for Petitioner*

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 HE, Dakun

11 Petitioner,

Case No. 3:26-cv-00680-DMS-VET

12 v.

**PETITIONER'S REPLY TO
RETURN TO HABEAS PETITION**

13
14 FIELD OFFICE DIRECTOR, Enforcement and
15 Removal Operations, San Diego Field Office,
16 Immigration and Customs Enforcement; Kristi
17 NOEM, Secretary, U.S. Department of
18 Homeland Security; U.S. DEPARTMENT OF
19 HOMELAND SECURITY; Pamela BONDI,
20 U.S. Attorney General; EXECUTIVE OFFICE
21 FOR IMMIGRATION REVIEW; ACTING
22 WARDEN, IMPERIAL REGIONAL
23 DETENTION FACILITY,

24 *Respondents.*

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PETITIONER’S REPLY TO RETURN TO HABEAS PETITION

I. Respondents Concede That the Binding Southern District Authority Governs This Case

Respondents acknowledge three critical points:

(a) Courts in the Southern District of California have “repeatedly reached the opposite conclusion” from the Government’s § 1225(b) theory;

(b) The material facts here are “not materially distinguishable” from those prior cases; and

(c) This Court’s prior decisions would control the result if followed.

Petitioner asserts that this concession is dispositive.

Respondents do not contend that Petitioner’s entry posture, procedural status, or placement into § 1229a proceedings differs in any meaningful respect from the numerous Southern District cases holding that detention is governed by § 1226(a). Instead, the Government preserves its disagreement solely for appellate review.

In materially indistinguishable cases, judicial consistency is not merely prudent—it is required absent superseding authority. See *United States v. AMC Entertainment, Inc.*, 549 F.3d 760, 770 (9th Cir. 2008). (recognizing the importance of consistency in district court)

Respondents identify no intervening Ninth Circuit authority that alters the governing legal framework.

II. Ninth Circuit Precedent Favors § 1226(a) Governance Once Full Removal Proceedings

Commence

1 The Government's theory rests on the premise that individuals who were not formally
2 admitted remain perpetually detained under § 1225(b), even after placement into full removal
3 proceedings under § 1229a.
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5 That position conflicts with Ninth Circuit detention jurisprudence, which distinguishes
6 between:
7

8 (1) arriving applicants for admission are subject to expedited removal, and
9

10 (2) noncitizens placed into standard § 1229a proceedings.
11

12 The Ninth Circuit has repeatedly emphasized that detention authority must be tied to the
13 statutory stage of proceedings. *See: Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008)
14 (analyzing detention under § 1226(a) during pending removal proceedings); *Casas-Castrillon v.*
15 *DHS*, 535 F.3d 942 (9th Cir. 2008) (recognizing transition between detention statutes depending
16 on procedural posture); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) (recognizing distinct
17 statutory detention schemes and declining to rewrite them).
18

19 Jennings is especially important for appellate framing. The Supreme Court made clear
20 that courts must interpret detention statutes as written - not expand one statute's reach into
21 another procedural context. If Congress intended § 1225(b) to govern all non-admitted
22 individuals throughout the entirety of § 1229a proceedings, it could have stated so explicitly. It
23 did not. Instead, § 1226(a) governs detention "*pending a decision on whether the alien is to be*
24 *removed from the United States.*" That language squarely applies to individuals in full removal
25 proceedings.
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1 **III. The Government’s Reliance Matter of *Yajure Hurtado* Does Not Override Ninth Circuit**

2 **Authority**

3
4 Respondents cite *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) to support
5 their position. However, BIA precedent cannot override controlling circuit law.

6
7 Under Brand X, deference to agency interpretation applies only where the circuit has not
8 already adopted a contrary statutory construction. *See Nat’l Cable & Telecomms. Ass’n v. Brand*
9 *X Internet Servs.*, 545 U.S. 967 (2005).

10
11 Within the Ninth Circuit, district courts remain bound by Ninth Circuit precedent—not
12 newly issued BIA interpretations that conflict with established detention principles.

13
14 Moreover, detention statutes implicate liberty interests of the highest order. The Ninth
15 Circuit has repeatedly construed immigration detention statutes narrowly to avoid constitutional
16 concerns. *See Casas-Castrillon*, 535 F.3d at 951–52.

17
18 **IV. Constitutional Avoidance Supports § 1226(a)**

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20 The Government suggests constitutional issues need not be reached if relief is granted.
21 Petitioner agrees. But constitutional avoidance cuts in Petitioner’s favor.

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23 Under the canon of constitutional avoidance, where two plausible statutory
24 interpretations exist, courts must adopt the interpretation that avoids serious constitutional
25 concerns.

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1 Indefinite mandatory detention without bond under § 1225(b) for individuals in full §
2 1229a proceedings raises significant Due Process concerns under *Zadvydas v. Davis*, 533 U.S.
3 678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003).

4
5 Section 1226(a), by contrast, provides for an individualized custody determination,
6 thereby avoiding the constitutional infirmity. Thus, even if ambiguity exists, the Ninth Circuit's
7 constitutional avoidance framework favors § 1226(a).

9 **V. The Government's Filing Preserves the Issue for Appeal**

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11 Respondents' Return is expressly abbreviated, incorporates arguments previously
12 rejected by this Court, and reserves all rights to appeal.

13
14 This confirms that the Government recognizes Southern District precedent controls at the
15 district court level. The Government merely preserves the issue for Ninth Circuit review and
16 does not argue that this case is factually distinguishable.

17
18 Where Respondents concede controlling authority and identify no distinguishing facts or
19 intervening precedent, adherence to existing rulings favoring Petitioner is warranted.

21 **VI. Relief Requested**

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23 For the foregoing reasons, consistent with this Court's prior decisions, Ninth Circuit
24 detention jurisprudence, the constitutional avoidance canon, and Respondents' concession that
25 the material facts are indistinguishable, the Petition should be granted.

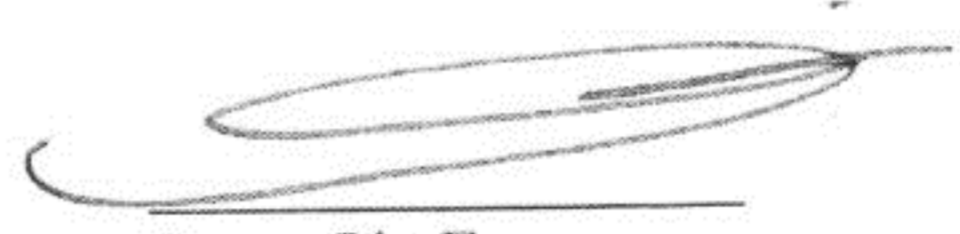
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27 Petitioner respectfully requests that the Court:

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- a. Grant the Writ of Habeas Corpus;
- b. Hold that detention is governed by 8 U.S.C. § 1226(a); and
- c. Order a prompt individualized bond hearing before an Immigration Judge.

Respectfully submitted

DATED: February 13, 2026.



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