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UNITED STATES DISTRICT COURT FOR THE

CENTRAL DISTRICT OF CALIFORNIA

JORGE GONZALO SAMANIEGO

Petitioner(s),

vs.

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; Todd BLANCHE, Acting U.S. Attorney General; David VENTURELLA, Acting Director, Immigration and Customs Enforcement; WARDEN, Adelanto ICE Processing Center / Desert View Facility; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; IMMIGRATION AND CUSTOMS ENFORCEMENT; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS); and U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondent(s).

Case No.: 5:26-cv-03709-KS

PETITIONER'S REPLY IN SUPPORT OF VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

Honorable Karen Stevenson
United States Magistrate Judge

I. INTRODUCTION

Respondents' Return (ECF 10) is most notable for what it does not contain. It never mentions INA § 235(b), 8 U.S.C. § 1225(b), or the phrase "arriving alien," and instead defends Petitioner's detention exclusively as an exercise of discretion under 8 U.S.C. § 1226(a). ECF 10 at 3. That is a concession of the First Cause of Action. The Return likewise does not deny, or even mention, a single allegation of the Second Cause of Action: the infected surgical site that was never once cleaned, the corrective surgery approved by Respondents' own medical staff that remains unperformed, the loss of sensation in Petitioner's palm, or the reported sexual assault by a guard. And the centerpiece of Respondents' procedural argument is a bond hearing that, on their own account, becomes available only after six months of detention, an admission that under Respondents' theory Petitioner faces five more months of custody with no process at all. The unrebutted record entitles Petitioner to relief.

II. RESPONDENTS HAVE ABANDONED THE "ARRIVING ALIEN" CLASSIFICATION, AND THE REMEDY THEY PROPOSE DOES NOT EXIST AS CHARGED

The Notice to Appear charges Petitioner as an "arriving alien" inadmissible under INA § 212(a)(2)(A)(i)(I), a classification that would subject him to detention under 8 U.S.C. § 1225(b). The Petition's First Cause of Action demonstrates that, as a returning lawful permanent resident, Petitioner may not be so classified and is, at most, subject to discretionary detention under 8 U.S.C. § 1226(a). The Return now agrees: it states that Petitioner's "detention is lawful pursuant to 8 U.S.C. §

1226(a)," that such detention "turns on the government's exercise of discretion," and that Petitioner "can request a Section 1226(a) bond hearing at any time." ECF 10 at 3, 6. Respondents' position is a judicial admission that Petitioner is not detained as an arriving alien, and they should be held to it. See American Title Ins. Co. v. Lacelaw Corp., 861 F.2d 224, 226–27 (9th Cir. 1988) (statements in briefs may be treated as judicial admissions); cf. New Hampshire v. Maine, 532 U.S. 742, 749–51 (2001).

The concession has two consequences. First, it resolves the First Cause of Action: Petitioner is entitled to a declaration that he is not subject to detention as an "arriving alien" under INA § 235(b). Second, it exposes the emptiness of the only remedy Respondents offer. A detainee whom DHS charges as an arriving alien cannot obtain a custody redetermination from an immigration judge at all. 8 C.F.R. § 1003.19(h)(2)(i)(B). Respondents cannot tell the Immigration Court that Petitioner is an arriving alien while telling this Court that he "can request a Section 1226(a) bond hearing at any time." Unless Respondents amend the charging document or stipulate on the record to the immigration judge's bond jurisdiction, the administrative remedy on which the entire Return rests does not exist. Petitioner has now been detained for more than five weeks with no custody hearing of any kind and, as charged, no forum in which to seek one.

The Return offers no response to the Petition's showing on the merits of the classification question: it does not address the clear-and-convincing burden the

Government must carry at the removal hearing, see Matter of Rivens, 25 I&N Dec. 623, 625–26 (BIA 2011); Blanche v. Lau, 609 U.S. ___, No. 25-429, slip op. (June 23, 2026) (holding that this burden governs the removal hearing rather than the border encounter), does not address United States v. Gomez, 165 F.4th 1199 (9th Cir. 2026) (en banc), and does not defend the premise that Petitioner's 2018 conviction is a crime involving moral turpitude, asserting only that the question "is presently before the Immigration Court." ECF 10 at 2. Petitioner agrees that removability is for the immigration courts; the legality of custody is for this Court, and on that question the Return concedes everything that matters.

Petitioner addresses one further authority in candor to the Court. In Blanche v. Lau, 609 U.S. ___, No. 25-429 (June 23, 2026), the Supreme Court held that the INA does not require a border officer to possess clear and convincing evidence that a returning lawful permanent resident has committed a § 212(a)(2) offense before treating him as an applicant for admission; the officer may make a "quick judgment on the spot," and the clear-and-convincing burden applies at the removal hearing. Lau resolves a statutory question about the border encounter. It does not address, much less authorize, the question presented here: whether a returning lawful permanent resident may be detained for weeks, with no custody hearing and no forum in which to seek one, while he awaits the removal hearing at which the Government must finally carry its burden. Lau did not diminish Petitioner's constitutional status: a returning resident retains the full protection of the Due Process Clause. Landon v. Plasencia, 459 U.S. 21, 32–34 (1982); Kwong Hai

Chew v. Colding, 344 U.S. 590, 596 (1953). Indeed, Justice Jackson's dissent describes precisely Petitioner's predicament: the "demotion" to applicant-for-admission status carries the power of immediate detention, leaving the resident in "immigration limbo" for the months that pass before the hearing at which the Government must prove its case. Lau, slip op. at 8 (Jackson, J., dissenting).

The consequence is that Respondents lose under either detention authority, and the Court need not resolve the classification to grant relief. If Petitioner is detained under § 1226(a), as the Return states, then Respondents have abandoned mandatory detention, and nothing justifies another day of custody without Respondents being put to their proof before this Court. If Respondents instead stand on the Notice to Appear and § 1225(b), then a returning lawful permanent resident has been confined for more than five weeks with no hearing and no available forum at all, the most acute form of the due process violation pleaded in the Petition, and one that Lau's statutory holding does nothing to justify. And under either statute, the unrebutted medical record independently requires release. Petitioner does not concede that the "arriving alien" classification is correct; he demonstrates that its correctness is irrelevant to the lawfulness of his custody.

III. THE MEDICAL-NEGLECT ALLEGATIONS ARE UNREBUTTED, AND THEY REQUIRE RELEASE

The Second Cause of Action rests on specific, verified allegations: Respondents confiscated Petitioner's post-surgical medications at the airport; withheld antibiotics for more than twelve hours; never once cleaned the surgical pin site, contrary to the operating surgeon's express instructions; allowed the site to become infected and to discharge pus; permitted a hospital physician to leave the wound uncovered for days and to dislodge a surgical pin; and, although Respondents' own medical and supervising staff approved corrective surgery, have refused to authorize or schedule it, while Petitioner has lost sensation in his palm. Verified Pet. ¶¶ 9–16, 50; Decls. of M. Samaniego, H. Gonzalez. The Return denies none of this. It submits a single exhibit, a Form I-213 addressing Petitioner's entry, and it nowhere contests the medical record. A verified petition based on personal knowledge functions as evidence, see Schroeder v. McDonald, 55 F.3d 454, 460 (9th Cir. 1995), and Respondents have submitted nothing to the contrary. On this record, the objective deliberate-indifference standard of Gordon v. County of Orange, 888 F.3d 1118, 1124–25 (9th Cir. 2018), is satisfied as a matter of undisputed fact. Events since the filing of the Petition confirm rather than cure the violation. On the morning of July 3, 2026, Respondents transported Petitioner to a hospital, where his hand was examined, the dressing was changed, and antibiotics were administered that day; the corrective surgery approved by Respondents' own medical staff was not performed and remains unperformed. In the three to four days after that visit, Petitioner again received no pain medication, and as of July

12, 2026, he is receiving neither pain medication nor antibiotics. When he asked for his medication, a nurse told him to go away, and he was told to stop bothering the staff; he responded that he kept asking because his hand hurt. Supplemental Decl. of M. Samaniego ¶¶ 3–7. A single day of wound care in the shadow of a federal filing, followed within days by the same withdrawal of prescribed medication, is the pattern of the last five weeks in miniature.

Respondents' own authority supplies the remedy. The Return quotes A.P.A. v. Arteta for the proposition that unconditional release is available where detention is "substantively (not merely procedurally) improper." ECF 10 at 5. A violation of the substantive component of the Due Process Clause, deliberate indifference to serious medical needs and punitive conditions of confinement, is precisely such a substantive defect. The comparison the Return invites to Franco v. U.S. Department of Justice, involving "bronchitis, coughing fits, and a nosebleed," ECF 10 at 7–8, only underscores the gulf: this case involves a failed surgical fixation, a spreading infection, the approved-but-unperformed corrective surgery of Respondents' own medical staff, and progressive loss of function in Petitioner's hand. Release is the appropriate remedy. See Roman v. Wolf, 977 F.3d 935, 941–44 (9th Cir. 2020) (per curiam) (affirming the district court's authority to order the release of Adelanto detainees where conditions of confinement violated due process); see also Hernandez v. Sessions, 872 F.3d 976, 990–91 (9th Cir. 2017).

IV. RESPONDENTS' PROCEDURAL ARGUMENT RESTS ON VACATED AND INAPPOSITE AUTHORITY

The Return repeatedly assures the Court that Petitioner "will then be eligible for a Rodriguez bond hearing" after six months, citing "Rodriguez, 715 F.3d at 1144." ECF 10 at 4, 6–7. On Respondents' own account, that remedy lies roughly five months in the future, in approximately December 2026. An assurance of process in December is not process now; it is an admission that Respondents propose to detain Petitioner for half a year before he receives the first hearing at which they would bear any burden. That is the violation, not the remedy. Rodriguez Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022), does not fill the gap: the petitioner there received a prompt bond hearing under § 1226(a) and sought a second one; the court's Mathews analysis turned on the process he had already received. Id. at 1207–11. Petitioner has received no hearing at all, and, as charged, none is available. The Return's reliance on Zadvydas' six-month presumption fares no better; that standard governs post-removal-order detention under 8 U.S.C. § 1231 and has no application to Petitioner. Where the Government detains a returning lawful permanent resident for weeks with no custody hearing and no available forum, due process requires a prompt hearing before a neutral decisionmaker at which the Government bears the burden of justifying detention by clear and convincing evidence. Singh v. Holder, 638 F.3d 1196, 1203–04 (9th Cir. 2011); Martinez v. Clark, 124 F.4th 775, 785–86 (9th Cir. 2024). Nor can Respondents answer that the immigration court should conduct that inquiry "in the first instance": deference to the immigration court presupposes an immigration forum

with jurisdiction, and Respondents' own charging document forecloses one. 8 C.F.R. § 1003.19(h)(2)(i)(B). The only neutral forum presently open to Petitioner is this Court.

V. THE UNSUPPORTED REFERENCE TO DRIVING-UNDER-THE-INFLUENCE OFFENSES IS NOT EVIDENCE AND CHANGES NOTHING

The Return asserts, without citation to any exhibit or record, that Petitioner has "repeated criminal convictions for violations of state law for driving under the influence." ECF 10 at 6. Argument of counsel is not evidence, and Respondents submitted none. In any event, the assertion is immaterial to every question before this Court. Driving under the influence, without more, is not a crime involving moral turpitude, Matter of Torres-Varela, 23 I&N Dec. 78 (BIA 2001), so it neither supports the § 212(a)(2) charge nor affects the petty offense analysis, which turns on the commission of a single crime involving moral turpitude. And if Respondents believe Petitioner's history bears on danger or flight risk, that is precisely what a constitutionally adequate custody hearing exists to weigh. It is a reason to hold a hearing, not a reason to deny one.

VI. THE COURT SHOULD MEMORIALIZE RESPONDENTS' CONCESSION REGARDING TRANSFER

The Return argues that no temporary restraining order is needed because General Order 26-05 ¶ 6 "requires Respondents to provide two court days' notice to Petitioner and the Court of its intent to remove him from this District." ECF 10 at 8. Petitioner welcomes that concession. For completeness of the record: on the

morning of July 3, 2026, counsel received notification, by email and through the ERO eFile portal, that Petitioner was being transferred, with no destination, purpose, or explanation identified. Counsel has since learned that the movement, which had already occurred before the Petition was filed that day, was transport to a hospital, from which Petitioner was later returned to Adelanto. Petitioner does not object, and has never objected, to medical transport; his proposed order expressly excepts transport to medical facilities for treatment. But the episode illustrates why the notice obligation matters: an unexplained, same-day "transfer" notification concerning a detainee with a pending habeas petition is indistinguishable, from counsel's vantage, from removal out of the District. Petitioner therefore asks that any order resolving the TRO Application expressly hold Respondents to the obligation their Return acknowledges: no transfer of Petitioner from this District absent two court days' written notice to counsel and the Court, with medical transport within the District unaffected. If the Court denies the Application as unnecessary, Petitioner respectfully requests that it do so in express reliance on Respondents' representation.

VII. CONCLUSION

The Return concedes that Petitioner is not detained as an arriving alien, leaves the medical-neglect record entirely unrebutted, and offers Petitioner a bond hearing that, as charged, no immigration judge has jurisdiction to conduct. The Court should grant the writ and order Petitioner's immediate release, on his own recognizance or on such conditions of supervision as the Court deems appropriate.

At minimum, the Court should order that Petitioner be released within seven days unless, before that date, Respondents justify his continued detention at a hearing before this Court, by clear and convincing evidence that he is a danger to the community or a flight risk, with his ability to pay and alternatives to detention considered. The Court should further declare that Petitioner is not subject to detention as an "arriving alien" under INA § 235(b), and should order that Petitioner not be transferred from this District absent the notice required by General Order 26-05 ¶ 6.

Respectfully submitted,

Dated: July 13, 2026

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Respondent(s).

Case No.: 5:26-cv-03709-KS

SUPPLEMENTAL DECLARATION OF MARGARITA SAMANIEGO REGARDING PETITIONER'S CURRENT MEDICAL CONDITION

Honorable Karen Stevenson
United States Magistrate Judge

I, Margarita Samaniego, declare as follows:

1. I am the mother of Petitioner Jorge Gonzalo Samaniego. I previously submitted a declaration in support of his petition. I make this supplemental declaration to update the Court on my son's condition, based on my telephone calls with him. If called as a witness, I could and would testify competently to the following.

2. This declaration was read and explained to me in Spanish, a language I speak and understand, before I signed it.

3. Jorge called me and told me about being taken to the hospital. He told me that early in the afternoon on July 3, 2026, that he was taken from the Adelanto facility to a hospital. He told me that at the hospital they examined his hand and changed the wrapping, and that he was given antibiotics and pain medication that day.

4. The corrective surgery on his hand was not performed at that visit. To my knowledge, the surgery that was approved by the facility's medical staff has still not been performed.

5. Jorge told me that in the three to four days after the hospital visit on July 3, 2026, he received pain medication and antibiotics. He told me that as of July 12, 2026, he is no longer receiving pain medication or antibiotics.

6. Jorge told me that when he asked for his medication, a nurse told him to go away, saying that the nurse could lose his or her license. Jorge stated that he was asked by the nurse why he was there and Jorge responded that he was there because his hand hurt.

7. Jorge told me that he is still in pain.

8. In these recent calls, Jorge did not report to me any new incident of harassment.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 13, 2026, at Los Angeles, California.



Margarita Samaniego

CERTIFICATE OF TRANSLATION

I, Edwar Hernandez, declare that I am fluent in the English and Spanish languages, that I accurately translated this declaration from English into Spanish for the declarant, Margarita Samaniego, and that she indicated she understood its contents before signing it. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 13, 2026.

Edwar Hernandez, Translator
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