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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EMMANUEL AGUILAR LAUREL
Petitioner,

v.

TONYA ANDREWS, et al.,
Respondents.

Case No.: 1:26-cv-05221-NW

PETITIONER'S REPLY IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS

Judge: Hon. Noël Wise

INTRODUCTION

Petitioner Emmanuel Aguilar Laurel respectfully submits this reply in support of his Petition for Writ of Habeas Corpus. Respondents filed their Response on July 10, 2026, and the Court permitted a reply within nine days of its July 7, 2026 Order.

The Response narrows this case to a single theory. Respondents do not contend that Petitioner is an applicant for admission detained under Section 1225(b), and they do not invoke Matter of Yajure Hurtado. Their sole argument is that Petitioner is subject to mandatory detention under 8 U.S.C. Section 1226(c)(1)(A) because, in their view, he is inadmissible under Section

1 1182(a)(2)(B) as a noncitizen convicted of two or more offenses whose sentences to confinement
2 aggregate five years or more. Resp. at 1.

3 Respondents' position would permit the Department to eliminate every form of custody
4 review, an ordinary bond hearing and any neutral check alike, simply by asserting that Section
5 1226(c) applies. Congress rejected that approach. It created the process by which such an
6 assertion is tested, and the Board created the *Joseph* hearing precisely because the Department is
7 not the final judge of its own detention authority. See *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA
8 1999). Respondents themselves concede that Petitioner may seek that hearing. Resp. at 1. The
9 narrow and dispositive question is whether Respondents have shown that they are substantially
10 likely to establish that Petitioner may be jailed with no bond hearing at all.

11 On this record they have not, and the Court need not resolve any disputed fact to say so.
12 The issue is not whether Petitioner should ultimately be released, nor whether any particular
13 conviction did or did not occur. It is whether the Government has carried its burden of justifying
14 the elimination of all custody review. It has not, for two reasons developed below. First, on the
15 record Respondents have submitted, which consists principally of a criminal history summary
16 rather than certified records of conviction, they have not shown that they are substantially likely
17 to establish the Section 1182(a)(2)(B) predicate, which requires two or more qualifying
18 convictions aggregating five years of confinement. Second, and in the alternative, the only charge
19 of record against Petitioner is inadmissibility under Section 212(a)(6)(A)(i) of the Immigration
20 and Nationality Act, codified at 8 U.S.C. Section 1182(a)(6)(A)(i), which is not a ground that
21 triggers mandatory detention.

22 RELEVANT CHRONOLOGY

23 The following chronology, drawn from Respondents' own Response and exhibits, frames
24 the issues.

Petitioner entered the United States without inspection and has lived here since childhood; his immigration record is otherwise negative, meaning he has no prior removal proceedings and no prior order of removal. Ex. A. This matters because it removes the Section 1225(b) and Section 1231 theories from the case and leaves only Section 1226.

As a minor, between roughly 2009 and 2012, Petitioner was the subject of juvenile delinquency proceedings in the Kern County juvenile court, resulting in wardship dispositions. Ex. B at 4 to 9. This matters because juvenile adjudications are not convictions and cannot count toward the Section 1182(a)(2)(B) predicate.

As an adult, Petitioner sustained a 2014 misdemeanor for possession of metal knuckles, for which imposition of sentence was suspended and a jail term was imposed as a condition of probation, together with minor driving related convictions in 2018 and 2019 that carried no jail term. Ex. B at 9 to 12. This matters because the 2014 disposition is the only conviction other than the 2023 offense that carries any confinement, so the Government's entire aggregate depends on it, and it must be proven with the actual record of conviction.

In 2023, Petitioner was convicted of one count of child abuse under California Penal Code Section 273a(a) and sentenced to five years in state prison; the accompanying torture and mayhem charges were dismissed. Ex. B at 13 to 15. This matters because it is the single conviction that plainly carries a substantial sentence to confinement, and a single conviction cannot satisfy a statute that requires two or more.

On June 10, 2026, after Petitioner completed his criminal custody, the Department took him into immigration custody, lodging a charge of inadmissibility under Section 212(a)(6)(A)(i) as a noncitizen present without admission or parole. Ex. A; Ex. B at 2; Resp. at 2. This matters because that is not a ground enumerated in Section 1226(c).

Petitioner is held at the Golden State Annex. He has appeared before the immigration

1 court and has a master calendar hearing set for July 27, 2026, before the Adelanto Immigration
2 Court. Ex. C at 1; Resp. at 2. No hearing has been held on whether Petitioner is properly subject
3 to mandatory detention. That absence of any custody review, while Petitioner remains confined
4 on the Government's untested assertion, is the injury this Petition addresses.

5 ARGUMENT

6 **I. This Court Has Jurisdiction, the Petition Is Not Premature, and the Court Need** 7 **Not Conduct a *Joseph* Hearing or Find Any Fact.**

8 Respondents may argue that the Court should stay its hand because Petitioner can ask the
9 immigration judge for a *Joseph* hearing. That is wrong on jurisdiction, and it mistakes the relief
10 Petitioner seeks.

11 This Court has jurisdiction under 28 U.S.C. Section 2241 to determine whether Petitioner
12 is held in violation of the laws of the United States, and whether Section 1226(c) authorizes his
13 detention is precisely such a question. The provision Respondents might invoke, 8 U.S.C. Section
14 1226(e), does not bar it. The Supreme Court has held that Section 1226(e) forecloses review of
15 discretionary custody judgments but not challenges to the statutory framework of detention,
16 including whether the detention statute applies at all. *Demore v. Kim*, 538 U.S. 510, 516 to 517
17 (2003). The distinction is important, and Petitioner stays on the correct side of it. He does not ask
18 the Court to review any discretionary judgment about danger or flight risk, which Section 1226(e)
19 commits to the agency and which is not the province of a habeas court. He raises only the legal
20 question whether Section 1226(c) authorizes withholding a bond hearing at all. That question is
21 reviewable.

22 The availability of a *Joseph* process does not divest the Court of jurisdiction. There is no
23 statutory exhaustion requirement for a Section 2241 challenge to immigration detention, and
24 prudential exhaustion is not required where the question is legal and the ongoing detention is
25 itself the injury. See *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The injury is present now: no

1 custody hearing has been held, Petitioner remains confined, and his first master calendar hearing
 2 is not until July 27, 2026. A rule that leaves him jailed while the parties debate whether he may
 3 even ask for a hearing is no remedy.

4 Two clarifications about the relief sought answer Respondents' likeliest objection directly.
 5 First, Petitioner does not ask this Court to conduct a *Joseph* hearing or to decide, in the first
 6 instance, whether he is subject to mandatory detention. The Court is not asked to decide whether
 7 Petitioner satisfies *Joseph*; it is asked to decide whether Respondents may dispense with *Joseph*
 8 altogether. Answering that question requires the Court to find no fact about Petitioner's
 9 convictions. Second, the proceedings that have occurred do not answer it, because a master
 10 calendar hearing is not a custody hearing. It concerns the course of the removal case; it decides
 11 nothing about whether Petitioner may be detained without bond. Federal courts routinely direct
 12 the Government, through habeas, to provide adequate custody hearings. See *Hernandez v.*
 13 *Sessions*, 872 F.3d 976, 990 to 991, 1000 to 1001 (9th Cir. 2017).

14 One further point bears on the reasonableness of the relief sought. Respondents do not
 15 explain why, if the statutory predicate is as clear as they assert, they resist a prompt hearing at
 16 which it can be confirmed. A hearing imposes little burden, and on Respondents' own account of
 17 the record it should resolve quickly in their favor if they are correct. Their resistance to the very
 18 process that would test their position is difficult to reconcile with their insistence that the answer
 19 is beyond dispute.

20 **II. Under *Matter of Joseph*, Mandatory Detention Cannot Stand Unless the**
 21 **Government Is Substantially Likely to Prevail on the Charge That Triggers It.**

22 Mandatory detention under Section 1226(c) is the exception. The default is Section
 23 1226(a), under which a noncitizen detained pending removal proceedings is entitled to an
 24 individualized bond hearing before an immigration judge. See 8 C.F.R. Sections 1236.1(d),
 25 1003.19. Section 1226(c) withdraws that hearing only for the enumerated categories Congress

defined, and only where a particular person falls within one of them.

Matter of Joseph supplies the test. The Board held that a noncitizen is not “properly included” in a mandatory detention category, and is therefore entitled to a bond hearing under Section 1226(a), where the immigration judge finds that the Government “is substantially unlikely to establish at the merits hearing, or on appeal, the charge or charges that would otherwise subject the alien to mandatory detention.” 22 I. & N. Dec. at 806. Mandatory detention, in other words, is not self-executing. It stands only if the Government can actually sustain the charge that produces it, and the purpose of the hearing is to test that proposition rather than accept it on the Government’s word.

This allocation is not a technicality. Respondents’ theory would permit immigration enforcement officers, rather than immigration judges, to become the final arbiters of mandatory detention, by the simple expedient of asserting that Section 1226(c) applies. *Matter of Joseph* exists because Congress and the Board recognized that such an assertion is not self-proving. Mandatory detention turns on legal and factual predicates, and those predicates must be established before a neutral adjudicator rather than presumed in the Government’s favor. Due process reinforces the point, because physical detention with no individualized hearing is a grave deprivation of liberty. *Zadvydas*, 533 U.S. at 690. The question here, then, is whether Respondents are substantially likely to establish that Petitioner is subject to mandatory detention. On this record they have not shown that they are.

III. On This Record, Respondents Have Not Shown That They Are Substantially Likely to Establish the Section 1182(a)(2)(B) Predicate.

Section 1182(a)(2)(B) applies only to a noncitizen “convicted of 2 or more offenses . . . for which the aggregate sentences to confinement were 5 years or more.” Two elements must be shown: two or more qualifying convictions, and aggregate sentences to confinement totaling five years or more. Respondents assert that Petitioner “accrued a series of criminal convictions,” Resp.

at 1, but their own Exhibit B does not bear that out. The following summarizes the criminal history record they submitted.

Date	Offense (Ex. B)	Status	Sentence to confinement	Counts under § 1182(a)(2)(B)?
2009 to 2012	Theft, gang, and related charges (Ex. B at 4 to 9)	Juvenile adjudications, Kern County juvenile court	Wardship; juvenile hall	No. Juvenile adjudications are not convictions.
2014	Possession of metal knuckles, Pen. Code 21810, misdemeanor (Ex. B at 9 to 10)	Adult; convicted	Imposition suspended; 6 months jail as a probation condition; 3 years probation	Only if the suspended jail term is counted; disputed.
2017 to 2018	Driving without a license (Ex. B at 11)	Adult; convicted of an infraction	Fine only; no confinement	No.
2019	Driving without a license, Veh. Code 12500(a), misdemeanor (Ex. B at 12)	Adult; convicted	3 years probation; no jail term	No confinement, so no.
2023	Child abuse, Pen. Code 273a(a) (Ex. B at 13 to 15); torture and mayhem dismissed	Adult; convicted	5 years prison	Yes, but a single conviction.
Various	Numerous other arrests (Ex. B, multiple cycles)	Dismissed, rejected, or released without charge	None	No.

The great majority of the entries are juvenile delinquency adjudications in the Kern County juvenile court. Ex. B at 4 to 9. A juvenile delinquency adjudication is not a criminal conviction for immigration purposes. The immigration laws draw a firm line between a criminal conviction and a juvenile delinquency adjudication, which is a civil disposition aimed at rehabilitation rather than punishment, and a delinquency adjudication cannot serve as a conviction under those laws. See *Matter of Devison*, 22 I. & N. Dec. 1362 (BIA 2000). Those adjudications are therefore legally incapable of counting under Section 1182(a)(2)(B). Many of the remaining entries are arrests that produced no conviction, having been dismissed in furtherance of justice or rejected for lack of sufficient evidence. Ex. B at 4 to 12. They cannot be counted either. Setting those aside, the record contains a single conviction that plainly carries a substantial sentence to confinement, the 2023 conviction under Penal Code Section 273a(a), for which Petitioner received five years in prison. Ex. B at 13 to 15. A single conviction cannot satisfy a statute that by

1 its terms requires “2 or more offenses.”

2 Petitioner does not contend that Respondents can never establish the predicate. A jail term
3 imposed as a condition of probation may count as a sentence to confinement under 8 U.S.C.
4 Section 1101(a)(48)(B), notwithstanding a suspended imposition of sentence, so if the record of
5 the 2014 metal knuckles conviction reflects a qualifying jail term, that term combined with the
6 2023 sentence could reach the five year aggregate. The point is not that Respondents will
7 inevitably fail. It is that they have not carried their burden on this record, and that *Matter of*
8 *Joseph* forbids continued mandatory detention, with no bond hearing, until they do.

9 Petitioner does not contend that the rap sheet is inadmissible. Hearsay is generally
10 admissible in immigration proceedings, and a criminal history record may be considered. See 8
11 C.F.R. Section 1003.41(d). The problem is one of weight, and of proof of the fact that actually
12 controls. The Section 1182(a)(2)(B) predicate does not turn on whether the 2014 and 2023
13 convictions exist, which Petitioner does not dispute. It turns on the precise sentence to
14 confinement imposed for each, because that is what determines whether the aggregate reaches
15 five years. On that decisive question the rap sheet is thin and ambiguous. The entry for the 2014
16 conviction is a coded notation reading, in relevant part, “IMP SEN SS,” reflecting a suspended
17 imposition of sentence, and it does not establish what term of confinement, if any, was actually
18 ordered as a condition of probation. Ex. B at 9 to 10. Because the entire five year aggregate
19 depends on that single sentence, the ambiguity is dispositive at this stage.

20 Compounding the problem, Respondents have submitted no abstract of judgment, minute
21 order, or other record from the sentencing court for either the 2014 or the 2023 conviction, and
22 they have never identified the two specific convictions they contend combine to reach five years.
23 They assert only a “series of criminal convictions,” Resp. at 1, most of which their own exhibit
24 shows to be juvenile adjudications and dismissals. A predicate that strips a noncitizen of any bond
25

1 hearing should not rest on an unspecified reference to a summary record whose one controlling
 2 entry is ambiguous. On this record, Respondents have not shown that they are substantially likely
 3 to establish the Section 1182(a)(2)(B) charge, and Petitioner is entitled to a *Joseph* hearing at
 4 which the question is decided on the record of conviction rather than on a rap sheet notation.

5 **IV. In the Alternative, the Only Charge of Record Is Inadmissibility Under Section**
 6 **212(a)(6)(A)(i), Which Does Not Trigger Mandatory Detention.**

7 There is a further and independent problem with the Government's theory, which the
 8 Court may reach if it does not resolve the case on Section III. Section 1226(c)(1)(A) requires
 9 custody of a noncitizen who is "inadmissible by reason of having committed any offense covered
 10 in section 1182(a)(2)." The phrase "by reason of" is deliberate. Congress did not write that
 11 mandatory detention attaches to anyone who "has committed" a Section 1182(a)(2) offense at
 12 some point in his life. It tied mandatory detention to the ground on which the noncitizen is
 13 charged as inadmissible, so that a person is subject to Section 1226(c) because his inadmissibility
 14 rests on a covered offense. Read otherwise, the words "by reason of" would do no work.

15 Here, Respondents' own exhibits reflect that the charge lodged against Petitioner is
 16 inadmissibility under Section 212(a)(6)(A)(i), as a noncitizen present without admission or
 17 parole. Ex. B at 2. That is a ground under Section 1182(a)(6), not Section 1182(a)(2), and it is not
 18 among the grounds that trigger mandatory detention. Petitioner acknowledges that Respondents
 19 may argue that custody authority under Section 1226 is independent of the charges in the Notice
 20 to Appear, and Petitioner does not ask the Court to resolve that question if it grants relief on
 21 Section III. But it cannot be resolved in Respondents' favor on this record, because the Notice to
 22 Appear is not before the Court. The Notice to Appear fixes the charges of removability, and
 23 therefore the statutory basis on which the Government seeks to remove Petitioner, and it is
 24 essential to determining whether a Section 1182(a)(2) ground is in this case at all. Respondents
 25 should be required to produce it and to identify the specific charges of removability. If, as their

exhibits suggest, the only charge is under Section 212(a)(6)(A)(i), that is a further reason the mandatory detention theory has not been established.

V. If Petitioner Is Not Properly Subject to Section 1226(c), He Must Receive a Bond Hearing Under Section 1226(a).

The relief that follows is narrow. If Respondents cannot establish, with competent evidence, that Petitioner is subject to Section 1226(c), he is a noncitizen detained under Section 1226(a) pending removal proceedings, and Section 1226(a) entitles him to an individualized bond hearing before an immigration judge, who determines whether detention is justified and, if release is warranted, sets conditions with consideration of alternatives to detention and ability to pay. See *Hernandez v. Sessions*, 872 F.3d at 990 to 991. Petitioner does not ask this Court to make that custody determination. He asks only that the hearing occur before the neutral decisionmaker the statute provides.

Petitioner further preserves, for any such hearing and for review, the contention that due process requires the Government, not the detained noncitizen, to bear the burden of justifying detention by clear and convincing evidence. See *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). Petitioner acknowledges that *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), presently holds that placing the burden on the noncitizen at a Section 1226(a) hearing does not violate due process in this Circuit, and he does not ask this Court to depart from that holding. He raises the point solely to preserve it.

VI. Petitioner Preserves, but Does Not Now Press, a Claim of Unconstitutionally Prolonged Detention.

Petitioner does not contend that his detention, at roughly five weeks, is yet prolonged in the constitutional sense, and he does not ask the Court to resolve that question now. He notes two points only to preserve the issue. First, *Demore v. Kim* approved mandatory detention under Section 1226(c) on the understanding that such detention is ordinarily brief, 538 U.S. at 529 to

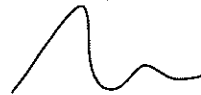
531, and as detention extends well beyond that brief period an as applied due process claim ripens. See *Zadvydas*, 533 U.S. at 690; *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021); *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 210 to 211 (3d Cir. 2020). Second, Petitioner does not rely on the timing of his transfer into immigration custody and does not argue that Section 1226(c) is inapplicable because he was not detained immediately upon release from criminal custody. See *Nielsen v. Preap*, 586 U.S. 392 (2019). Petitioner reserves the prolonged detention claim for a later stage.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition to the following extent: that the Court order Respondents, within seven days, to produce the Notice to Appear and the certified records of conviction on which they rely, and to afford Petitioner a hearing before an immigration judge at which the Government must establish that it is substantially likely to prevail on a charge that subjects Petitioner to mandatory detention under 8 U.S.C. Section 1226(c); that the Court further order that, if the Government does not make that showing, Petitioner receive an individualized bond hearing under Section 1226(a) within seven days thereafter; that the Court's order barring Petitioner's removal from this District remain in effect pending resolution; and that the Court grant such other and further relief as it deems just and proper.

Dated: July 16, 2026

Respectfully submitted,



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