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5 Attorney for Petitioner

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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA (LAS VEGAS)**
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12 JESUS GARCIA-HERNANDEZ,

Case No. 2:26-cv-00355

13 
14 Petitioner–Plaintiff,

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

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19 v.

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21 Michael V. Bernacke, Field Office
22 Director, U.S. Immigration and Customs
23 Enforcement;
24 John Mattos, Warden, Nevada Southern
25 Detention Center;
26
27 Kristi Noem, Secretary, U.S. Department
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1 of Homeland Security;
2 Rodney S. Scott, Commissioner, U.S.
3 Customs and Border Protection; and
4 Pam Bondi, Attorney General of the
5 United States,
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7 Respondents–Defendants.
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10 Petitioner **moves on an emergency basis** for a **TRO and preliminary injunction**
11 directing Respondents to (1) **provide an individualized custody redetermination under 8**
12 **U.S.C. § 1226(a)** within **seven (7) days**, at which **DHS bears the burden by clear and**
13 **convincing evidence** and the IJ must issue **contemporaneous written findings** considering
14 **ability to pay and alternatives to detention (ATDs)**. Alternatively, order immediate release on
15 \$1,500 bond with ATD/GPS; or (2) **release Petitioner forthwith** if they fail to provide such a
16 hearing by the deadline. This motion is supported by the verified § 2241 petition, Exhibits 1–4,
17 and counsel’s **LR 7-4 declaration** below.
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19 **Introduction & Relief Requested**
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- 21 1. On February 5, 2026, the Immigration Judge issued a written custody order denying
22 jurisdiction for a bond hearing pursuant to Matter of Yajure Hurtado, while also issuing an
23 alternative finding that, if jurisdiction existed, Petitioner would be eligible for release on
24 \$1,500 bond with Alternative-to-Detention (“ATD”) conditions including GPS
25 monitoring. Petitioner seeks a TRO/PI directing Respondents to: (1) provide an
26 **individualized § 1226(a) bond hearing within 7 days** with the procedures above, or (2)
27 **Order immediate release on \$1,500 bond with ATD/GPS.**
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Factual Background (Condensed Record)

2. **Interior arrest → ICE transfer (no wants/warrants).** Arrest **01/16/2026**; NTA issued with future EOIR date; **wants/warrants negative**.
3. **Proceedings posture.** DHS charged §§ **212(a)(6)(A)(i), 212(a)(7)(A)(i)(I)**; the NTA indicates issuance **after a credible-fear finding**, putting Mr. Reyes in § **1229a** proceedings.
4. **Categorical no-bond ruling.** IJ Roberts denied for **lack of jurisdiction** solely under **Yajure**;
5. **Petitioner supports five U.S.-citizen children. One child has partial paralysis and requires daily care, therapy, and transportation to medical appointments. Petitioner's detention has jeopardized housing, income, and the child's treatment. (Exhibit E).**
6. **Cancellation filing.** Mr. Jesus has already filed **non-LPR cancellation (INA § 240A(b))**; the record reflects **well over 10 years** of residence before NTA service and **exceptional hardship** to USC children.

Legal Standard and Argument

A. Likelihood of Success

Petitioner's detention is governed by INA § 236(a), which requires access to a bond hearing. Respondents' reliance on INA § 235(b)(2)(A) is legally erroneous. Independently, due process requires a hearing with the government bearing the burden by clear and convincing evidence. Singh; Hernandez.

1 **B. Irreparable Harm**

2 Unlawful detention is per se irreparable harm. Additionally, Petitioner's medically
3 vulnerable child suffers daily hardship from his absence, including missed therapy and
4 instability.
5

6 **C. Balance of Equities and Public Interest**

7 The equities favor Petitioner. Release under ATD/GPS mitigates any risk. The
8 public interest favors constitutional compliance and family stability.
9
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11 **REQUESTED REMEDY**

12 The Court should **enjoin** Respondents from relying on § 1225(b)(2)/Yajure to foreclose an IJ
13 bond hearing and should order that **within seven (7) days**:
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- 15 1. Issue a TRO requiring a bond hearing within 72 hours;
- 16 2. **DHS bears the burden by clear and convincing evidence** to establish danger or flight
17 risk;
- 18 3. Alternatively, order immediate release on \$1,500 bond with ATD/GPS
- 19 4. **If the hearing does not occur by the deadline, Petitioner shall be released**
20 **immediately** on appropriate conditions.
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24 **PROPOSED BRIEFING / HEARING SCHEDULE**

25 Given the **urgency**, Petitioner requests: Government opposition in **48 hours**, reply in **24 hours**,
26 and the motion set **on the earliest available calendar** (or decided on the papers).
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Attorney Verification (28 U.S.C. §§ 2242, 1746)

I, Jon Eric Garde, counsel for Petitioner, declare under penalty of perjury that the factual allegations in this Petition are true and correct to the best of my knowledge, information, and belief, based on my review of Petitioner's records, court filings, agency records, and the attached exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because Petitioner is detained and time is of the essence given the exceptional hardship on the petitioner and his family, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.

Dated: 02/11/2026 at Las Vegas

/s/ Jon Eric Garde, Esq._____

Jon Eric Garde, Esq. Counsel for Petitioner

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