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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

CESAR HERNANDEZ NAVARRO,

Petitioner,

v.

JOHN MATTOS, *et al.*,

Respondents.

)
) **Case No. 2:26-cv-359-RFB-BNW**
)
)
) **PETITIONER'S REPLY TO**
) **RESPONDENTS' OPPOSITION TO**
) **PETITION FOR WRIT OF**
) **HABEAS CORPUS TO 28 U.S.C. §**
) **2241 AND COMPLAINT FOR**
) **DECLATORY AND INJUNCTIVE**
) **RELIEF**
)

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. § 2241**

Petitioner Cesar Hernandez Navarro ("Mr. Hernandez Navarro"), by and through his undersigned counsel, respectfully submits this reply to address the misplaced arguments put forth in Respondents' reply to Mr. Hernandez Navarro's Habeas Petition. For the reasons discussed in both Mr. Hernandez Navarro's initial Habeas Petition and herein, Mr. Hernandez Navarro respectfully requests this Court conclude argument is not necessary in this matter and expeditiously grant Mr. Hernandez Navarro's Habeas Petition.

LEGAL ANALYSIS

I. BECAUSE MR. HERNANDEZ NAVARRO HAS APPEALED THE IMMIGRATION JUDGE’S DECISION, HE IS NOT SUBJECT TO A FINAL ORDER OF REMOVAL

The Immigration and Nationality Act commands that “[a] removal order ‘become[s] final upon the earlier of’ two critical, distinct events. *See* 8 U.S.C. § 1101(a)(47)(B). First: “a determination by the [BIA] affirming such order; or” second: “the expiration of the period in which the alien is permitted to seek review of such order by the [BIA].” *Id. See also Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021) (recognizing the undisputed language of section 1101(a)(47)(B)). And the implementing regulations leave no room for doubt. *See* 8 CFR § 1241.1(a) (“An order of removal made by the immigration judge at the conclusion of proceedings. . . shall become final [u]pon dismissal of an appeal by the Board of Immigration Appeals”). Thus, until one of the two events occur, a final removal order does not exist.

In the instant matter, Mr. Hernandez Navarro, who last entered the United States over twenty-five years ago, and was charged as removable for being *present* in the United States without having been admitted or paroled and lacking proper documentation, *see* 8 U.S.C. § 1182(a)(6)(A)(i), 8 U.S.C. § 1182(a)(7)(A)(i)(I), sought relief from in the form of cancellation of removal, pursuant to 8 U.S.C. § 1229b(b)(1). *See* Habeas Pet., Exh. A. On December 4, 2025, the Immigration Judge adjudicated and denied Mr. Hernandez Navarro’s application. *See* Resp’ts’ Opp., Exh. C. In doing so, the Immigration Judge concluded that although Mr. Hernandez Navarro maintained physical presence in the United States for over twenty-five years, maintained good moral character, and had three United States Citizen (“USC”) children, he did not establish his USC children would endure exceptional and extremely unusual hardship upon Mr. Hernandez Navarro’s removal. *See id.* While the Immigration Judge then ordered Mr. Hernandez Navarro

1 removed, Mr. Hernandez Navarro timely appealed the Immigration Judge’s decision to the Board
2 of Immigration Appeals. Mr. Hernandez Navarro’s appeal remains pending before the Board. Exh.
3 E, Pet’r’s Appeal to the Board.

4 Applying section 1101(a)(47)(B)’s definition to the instant set of facts leads to one
5 conclusion: Mr. Hernandez Navarro is not yet subject to a final order of removal. Contrary to
6 Respondents’ arguments, Mr. Hernandez Navarro cannot be subject to a final order of removal
7 while the Board’s review of the Immigration Judge’s review remains pending. Exh. E. 8 U.S.C. §
8 1101(a)(47)(B); *Cui*, 13 F.4th 996. It is not until “dismissal from the Board of Immigration
9 Appeals” that “[a]n order of removal made by the immigration judge at the conclusion of
10 proceedings. . . shall become final.” 8 CFR § 1241.1(a). And should the Board remand Mr.
11 Hernandez Navarro’s appeal, it certainly “cannot become final for any purpose when it depends
12 on the resolution of further issues by the IJ on remand.” *Abdisalan v. Holder*, 774 F.3d 517, 523
13 (9th Cir. 2014) (en banc), *as amended* (Jan. 6, 2015). To accept Respondents’ alternative
14 suggestion would contradict the plain language of both the INA and the Ninth Circuit’s precedent.

15 Because Mr. Hernandez Navarro is not yet subject to a final order of removal, his custody
16 determination is not governed by section 1231(a) as Respondents suggest; rather, it is governed by
17 section 1226(a) of the INA. Indeed, this fact is further underscored considering the Immigration
18 Judge’s custody determination that *Matter of Yajure Hurtado* strips the Immigration Judge of
19 jurisdiction over Mr. Hernandez Navarro’s bond request. *See Habeas Pet.*, Exh. C. Considering the
20 Immigration Judge’s custody redetermination decision was dated January 21, 2026—more than a
21 month *after* the Immigration Judge denied Mr. Hernandez Navarro’s application for cancellation
22 of removal and ordered Mr. Hernandez Navarro removed, and nearly a month *after* Mr. Hernandez
23 Navarro appealed to the Board—even the Immigration Judge concluded that section 1226(a), not
24

1 section 1231(a), applied to Mr. Hernandez Navarro’s custody proceedings. *Id.* Put differently, the
 2 Immigration Judge knew that Mr. Hernandez Navarro, who has an appeal pending before the
 3 Board, is not yet subject to a final order of removal. Exh. E.

4 **II. MR. HERNANDEZ NAVARRO IS ENTITLED TO IMMEDIATE RELEASE**
 5 **OR A CUSTODY REDETERMINATION HEARING WHERE THE**
 6 **GOVERNMENT BEARS THE BURDEN OF PROOF**

7 While section 1226(a) “authorizes the Government to detain certain [noncitizens] already
 8 in the country pending the outcome of removal proceedings,” *Jennings v. Rodriguez*, 583 U.S.
 9 281, 289 (2018), the ultimate decision is made under “a discretionary detention framework.” *Lepe*
 10 *v. Andrews*, 801 F. Supp. 1104, 1111 (E.D. Cal. 2025). Under this framework, all “evidence is
 11 considered . . . including evidence of a noncitizen’s ties to the U.S., their criminal history, and
 12 other factors relevant to whether they are a flight risk or a danger to the community.” *Escobar*
 13 *Salgado v. Mattos*, --F.Supp.3d--, No. 2:25-CV-01872, 2025 WL 3205356, at *12 (D. Nev. Nov.
 14 17, 2025). Put differently, under section 1226, the Immigration Judge must make a custody
 15 redetermination hearing depending on the facts of each specific case. *Id.*

16 But the record before this Court establishes that the Immigration Judge did not apply any
 17 discretionary framework required under section 1226. *See* Habeas Pet., Exh. C. Indeed, the
 18 Immigration Judge did not even mention Mr. Hernandez Navarro’s more than thirty pages of
 19 evidence demonstrating his more than twenty-five years of physical presence, ties to the United
 20 States with his three USC children, good moral character, and employment. *See* Exhs. C, D. Rather,
 21 the Immigration Judge simply concluded that he did not have jurisdiction over Mr. Hernandez
 22 Navarro’s request under *Matter of Yajure Hurtado*. *See* Habeas Pet., Exh. C. Such a routine,
 23 cursory determination certainly cannot comply with the standards outlined in section 1226—or the
 24 standards set by the Fifth Amendment’s Due Process Clause.

1 Because Mr. Hernandez Navarro has not been subject to a final order of removal, 8 U.S.C.
 2 § 1101(a)(47)(B), his detention and release is governed by INA section 1226(a). Therefore, Mr.
 3 Hernandez Navarro—who sufficiently established his eligibility for bond in his initial request—is
 4 entitled to release pursuant to the conditions outlined in section 1226(a). Alternatively, Mr.
 5 Hernandez Navarro is entitled to a custody redetermination hearing that complies with both section
 6 1226(a) and the Due Process Clause—one where “the government [should] bear the burden of
 7 proving by clear and convincing evidence that [Mr. Hernandez Navarro] poses a flight risk or a
 8 danger to the community.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022); *see*
 9 *also Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024) (“the government bore the burden to
 10 establish by clear and convincing evidence that Martinez is a danger to the community”).

11 For the foregoing reasons, Mr. Hernandez Navarro respectfully requests this Court grant
 12 his initial Petition for Habeas Corpus, and afford the relief requested therein.

13 CONCLUSION

14 Respectfully submitted on this 23rd day of February 2026.

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CERTIFICATE OF SERVICE

Pursuant to LCR 47-4, and 49-1, I, Maria Quiroga, counsel for Petitioner Cesar Hernandez Navarro, do hereby certify that on the 23rd day of February, 2026, a true and correct copy of the foregoing Writ of Habeas Corpus Complaint was served upon Respondents by Electronic Filing via the CM/ECF system.

Date: February 23rd, 2026

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