

1 JON ERIC GARDE, ESQ. (NV Bar No. 005961)

2 JEGRAW LTD

3 4455 S Pecos Rd, Las Vegas NV 89121

4 (702) 898-9540 | 4justice@jegraw.com

5 Attorney for Petitioner

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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA (LAS VEGAS)**
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11
12 VICTOR HUGO BAUTISTA-
13 COLORADO,



15 Petitioner-Plaintiff,
16

Case No. 2:26-cv-00379

17 **EMERGENCY MOTION FOR**
18 **TEMPORARY RESTRAINING**
19 **ORDER AND PRELIMINARY**
20 **INJUNCTION**

21 v.

22 Michael V. Bernacke, Field Office
23 Director, U.S. Immigration and Customs
24 Enforcement;
25 John Mattos, Warden, Nevada Southern
26 Detention Center;
27 Kristi Noem, Secretary, U.S. Department
28

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,
6 Respondents–Defendants.
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8

9 Petitioner moves on an emergency basis for a temporary restraining order (“TRO”) and
10 preliminary injunction directing Respondents to provide an individualized custody
11 redetermination (“bond”) hearing under INA § 236(a), 8 U.S.C. § 1226(a), within seven (7) days,
12 with constitutionally required procedures (including DHS bearing the burden by clear and
13 convincing evidence and consideration of ability to pay and alternatives to detention).
14 Alternatively, Petitioner requests immediate release on reasonable non-monetary conditions
15 pending such hearing. This motion is supported by the verified § 2241 petition, Exhibits, and
16 counsel’s **LR 7-4 declaration** below.
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19 **Factual Background (Condensed Record)**
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- 21 1. ICE custody. DHS records reflect that ICE took Petitioner into custody on January 7,
22 2026, after local law-enforcement arrest and transfer to ICE for processing. ICE served a
23 Notice to Appear and has held Petitioner at NSDC pending removal proceedings.
24
- 25 2. Bond denial. On January 30, 2026, the Immigration Judge denied bond for lack of
26 jurisdiction based on Matter of Yajure Hurtado and an EOIR policy that immigration
27 courts cannot issue bond for individuals who have not been admitted. The order also
28

acknowledges the Maldonado Bautista declaratory judgment but states EOIR does not view it as vacating Yajure Hurtado.

3. Equities. Petitioner's custody record includes humanitarian equities and the availability of protection-based relief and other remedies in removal proceedings. Plus the petitioner suffers from diabetes and also has old parents live in the United states who rely on him for support.

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.

B. Irreparable Harm

Unlawful detention is per se irreparable harm. Additionally, Petitioner's medical vulnerabilities due to his diabetes results in suffering and hardship due to prolonged detention.

C. Balance of Equities and Public Interest

The equities favor Petitioner. Release under ATD/GPS mitigates any risk. The public interest favors constitutional compliance and family stability.

REQUESTED REMEDY

1 The Court should **enjoin** Respondents from relying on § 1225(b)(2)/Yajure to foreclose an IJ
2 bond hearing and should order that **within seven (7) days**:

- 3 1. Issue a TRO requiring a bond hearing within 72 hours;
- 4
- 5 2. Requiring Respondents to provide a § 1226(a) bond hearing within seven (7) days, with
6 DHS bearing the burden by clear and convincing evidence and with consideration of
7 ability to pay and alternatives to detention; and
- 8
- 9 3. Providing that if the hearing does not occur by the deadline, Petitioner shall be released
10 immediately on appropriate conditions.
- 11

12 **PROPOSED BRIEFING / HEARING SCHEDULE**

13 Given the **urgency**, Petitioner requests: Government opposition in **48 hours**, reply in **24 hours**,
14 and the motion set **on the earliest available calendar** (or decided on the papers).
15

16 **Attorney Verification (28 U.S.C. §§ 2242, 1746)**

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18 **I, Jon Eric Garde**, counsel for Petitioner, declare under penalty of perjury that the factual
19 allegations in this Petition are true and correct to the best of my knowledge, information, and
20 belief, based on my review of Petitioner's records, court filings, agency records, and the attached
21 exhibits, and on communications with Petitioner, who is presently detained at NSDC. Because
22 Petitioner is detained and time is of the essence given the exceptional hardship on the petitioner
23 and his family, I am executing this verification on his behalf pursuant to 28 U.S.C. § 2242.
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27 Dated: 02/13/2026 at Las Vegas

/s/ Jon Eric Garde, Esq.

28 Jon Eric Garde, Esq. Counsel for Petitioner

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