Hernando De Cima, Esq. (SBN 361132)
DE CIMA LAW
105 N Rose st #109
Escondido, CA 92027
Tel: (858) 525-5578
Fax: (760) 418-6462
Email: hernando@decimalaw.com

Attorney for: Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE ELIAS ALVARADO-RODRIGUEZ (A-Number [redacted])
Petitioner,

vs.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security;
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
PATRICK DIVVER, San Diego Field Office Director, ICE;
WARDEN, OTAY MESA DETENTION CENTER; and
TODD BLANCHE, Attorney General of the United States

Respondents.

Case No. 26xv-4003 DMS (AHG)

Agency No [redacted]

PETITIONER'S TRAVERSE AND REPLY TO RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S TRAVERSE AND REPLY TO RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner Jose Elias Alvarado-Rodriguez, through counsel, respectfully submits this Traverse and Reply to Respondents' Return to Petition for Writ of Habeas Corpus.

Respondents attempt to evade constitutional review by engaging in an improper legal bait-and-switch. While Immigration Judge Eugene Robinson explicitly denied Petitioner a custody hearing on July 6, 2026, for a categorical "lack of jurisdiction" under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (*see* **ECF No. 1** [Petition Exhibit, IJ Denial Order]), Respondents now attempt to reframe his detention in federal court as mandatory under 8 U.S.C. § 1231(a) based on a 2014 *in absentia* removal order (*see* **ECF No. 4-3**).

This argument fails as a matter of law. Because Petitioner's 2014 order was predicated on a defective Notice to Appear issued to an unrepresented 15-year-old child (*see* **ECF No. 4-1** [Form I-213]; **ECF No. 4-2** [Defective NTA]) and is currently under active, non-frivolous appeal before the Board of Immigration Appeals ("BIA"), his status is fluid. Under binding Ninth Circuit precedent, Petitioner's custody is statutorily governed by 8 U.S.C. § 1226(a), conferring full authority on this Court to grant the Writ and order an individualized bond hearing where the **Government bears the burden of proof by clear and convincing evidence** and where any financial bond set must consider Petitioner's financial circumstances and non-monetary alternatives.

Furthermore, to dismantle Respondents' assertion in Footnote 1 that Petitioner has acquiesced to an unstayed, executable order, Petitioner formally submitted an **Emergency Motion for a Discretionary Stay of Removal** with the BIA (*see* BIA Stay Cover Sheet & Form EOIR-27, attached hereto as **Exhibit A**), dispatched via express overnight courier on July 21, 2026 (*see* Express Overnight Courier Tracking Receipt, attached hereto as **Exhibit B**), accompanied by telephonic notice to the Board's Emergency Stay Unit.

II. ARGUMENT

A. Petitioner's Detention is Governed by 8 U.S.C. § 1226(a), Not § 1231(a)

Respondents incorrectly assert that Petitioner is subject to a final, executable order of removal under 8 U.S.C. § 1231(a). Under established Ninth Circuit authority, when a noncitizen pursues non-frivolous administrative or judicial review challenging the legal validity of a removal order, the government's detention authority shifts back to 8 U.S.C. § 1226(a). *See Casas-Castrillon v. DHS*, 535 F.3d 942, 948 (9th Cir. 2008).

Because the underlying legality of Petitioner's notice and removal order remains an active, unresolved controversy before the agency on appeal, Respondents cannot treat his removal order as final for mandatory detention purposes.

To further defeat Respondents' footnote argument regarding execution, Petitioner shipped an **Emergency Motion for a Discretionary Stay of Removal** to the BIA Clerk's Office via express overnight courier on July 21, 2026 (*see* **Exhibit B**). Consequently, Petitioner is statutorily governed by § 1226(a) and is entitled to an individualized bond hearing.

B. The 2014 *In Absentia* Order Was Void *Ab Initio* Under Due Process

Respondents place heavy emphasis on a March 13, 2014 *in absentia* order (**ECF No. 4-3**). However, Respondents omit the critical fact that Petitioner was a 15-year-old child when immigration authorities served him with a defective Notice to Appear that omitted the date and time of his hearing (**ECF No. 4-1**; **ECF No. 4-2**).

Under *Niz-Chavez v. Garland*, 593 U.S. 155 (2021), a charging document that fails to specify the time and place of a hearing does not comply with statutory mandates. To strip a long-term interior resident of his physical liberty today based on a procedural default committed when he was an unrepresented minor navigating a foreign system violates the fundamental procedural protections of the Fifth Amendment.

C. Prolonged, Mandatory Detention Without a Hearing Violates the Eighth Amendment's Excessive Bail and Cruel and Unusual Punishments Clauses

Indefinite or mandatory civil detention without an individualized hearing to determine dangerousness or flight risk violates the **Eighth Amendment**.

1. **Excessive Bail Clause:** The Eighth Amendment's prohibition against Excessive Bail applies to civil immigration detention. *See Carlson v. Landon*, 342 U.S. 524, 545–46 (1952); *Galvan v. Press*, 347 U.S. 522, 530 (1954). Where the Executive categorically denies any opportunity for bail or bond review without demonstrating a compelling, individualized government interest (such as proven danger or dangerous flight risk), the complete denial of bail becomes unconstitutionally excessive *per se*. *See United States v. Salerno*, 481 U.S. 739, 754 (1987).
2. **Cruel and Unusual Punishment / Impermissible Punitive Detention:** Civil immigration detention is constitutionally permissible *only* as a regulatory measure to ensure appearance at proceedings or protect the community—it may never serve as punishment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). To subject an interior resident, business owner, and father of a U.S. citizen child (*see* **Exhibit C**) to mandatory, unreviewable confinement based on a 12-year-old defective minor proceeding transforms civil custody into an excessive, punitive sanction in violation of the Eighth Amendment.

D. This Court Possesses Unassailable Habeas Jurisdiction Under 28 U.S.C. § 2241

Respondents cite *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) to argue that habeas jurisdiction is lacking. This reliance is completely misplaced. *Pinson* addressed conditions-of-confinement claims brought by federal prisoners. Here, Petitioner is challenging the **executive branch's core authority to hold him in unreviewable civil custody** without a hearing.

The Ninth Circuit has repeatedly held that § 2241 is the proper vehicle to challenge statutory and constitutional defects in immigration detention. *See Singh v. Garland*, 20 F.4th 506, 512 (9th Cir. 2021). Requesting an individualized bond hearing where the Government must prove dangerousness or flight risk directly challenges the legality of restraint, placing this petition squarely within traditional habeas jurisdiction.

E. Due Process and Binding Ninth Circuit Precedent Require the Government to Bear the Burden of Proof and Require Consideration of Financial Ability and Non-Monetary Conditions

Under the Fifth Amendment's Due Process Clause, where a fundamental liberty interest is at stake, the burden of proof must fall squarely on the State. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

To continue detaining Petitioner—an interior resident, business owner, homeowner, and father of a U.S. citizen child (*see* **Exhibit C** [U.S. Citizen Child Birth Certificate; Texas Business Filing & Sponsor Letter])—the Government must establish, by clear and convincing evidence at an individualized hearing, that he poses a danger to safety or an unmanageable flight risk.

Furthermore, under binding Ninth Circuit law, any bond setting must meaningfully account for Petitioner's financial capacity and non-monetary release alternatives. *See Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017) ("A bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests."). A custody determination that ignores financial status or fails to evaluate alternative conditions of release (such as electronic monitoring or reporting requirements) results in the unconstitutional detention of individuals based solely on wealth, in direct violation of Due Process and the Eighth Amendment.

III. CONCLUSION AND PRAYER FOR RELIEF

For the reasons stated herein and in the Petition, Petitioner respectfully requests that this Court:

1. **Grant** the Petition for Writ of Habeas Corpus;
2. **Reject** Respondents' attempt to apply mandatory detention under § 1231(a) or *Matter of Yajure Hurtado*; and
3. **Order Respondents** to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days, wherein:
    - The **Government bears the burden of proof by clear and convincing evidence** to establish that Petitioner is a danger or flight risk; and
    - The Immigration Judge is required to consider **Petitioner's financial circumstances and non-monetary alternative conditions of release** (including reasonable conditions or bail set in accordance with his financial status) pursuant to *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

Dated: 7/22/2026

Respectfully submitted,

/s/Hernando De Cima
Hernando De Cima, Esq
105 N Rose St Ste 109
Escondido, Ca 92027

CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 7/22/2026, I filed the foregoing with the Clerk of the Court via CM/ECF and will serve the Respondents and the U.S. Attorney's Office for the Southern District of California.

Dated: 7/22/2026

Respectfully submitted,

/s/Hernando De Cima
Hernando De Cima, Esq
105 N Rose St Ste 109
Escondido, Ca 92027
hernando@decimalaw.com
858-525-5578
Attorney for
*Petitioner*hernando@decimalaw.com