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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Daniel Castellanos Lopez,

Petitioner,

vs.

Warden, Otay Mesa Detention Center, et al.,

Respondents.

Case No.: 25-cv-2527-RSH-SBC

TRAVERSE IN SUPPORT OF PETITION

I. Introduction

The Court has jurisdiction over Mr. Castellanos' petition for habeas corpus. Jurisdiction is not barred by 8 U.S.C. §1252(g) because the decision to detain Mr. Castellanos unlawfully does not arise from the decision to commence proceedings, adjudicate cases, or execute removal orders. This jurisdictional bar has been narrowly construed to only bar challenges to those three discrete events. Jurisdiction is also not barred by 8 U.S.C. §1252(b)(9). The legality of Mr. Castellanos' detention is a "now or never" claim that could not be reviewed later on petition for review of a removal order. Whether he should be detained is not even part of the removal proceeding, so it cannot be reviewed during judicial review of any removal order. To defer questions of the legality of his detention would allow the illegal detention to continue unchallenged, potentially for months or years.

On the merits, the government ignores the overall statutory scheme. The government's interpretation would make parts of the statutory scheme redundant. The government also fails to account for decades of consistent practice that permitted people to seek bond if they were encountered inside the United States without having been admitted.

Regarding remedy, it is within the Court's discretion to either release the petitioner from custody or grant a bond hearing. Habeas corpus is a flexible tool, and both remedies have been used by other courts in similar circumstances.

I. Argument

a. Jurisdiction is Not Barred by 8 U.S.C. §1252(g)

1. The government first argues that jurisdiction is barred by 8 U.S.C. §1252(g). ECF 5 at 1-3. However, this is incorrect. The Supreme Court has held that this statute performs a "narrow" function:

> The provision applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." (Emphasis added.) There are of course many other decisions or actions that may be part of the deportation process—such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order. It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings.

Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999); *see also Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255, at *4 (E.D. Va. Sept. 19, 2025) ("Section 1252(g) has a narrow reach.").

2. The Ninth Circuit has established that §1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, No. 24-631, at *18 (9th Cir. Aug. 27, 2025). *See also Garcia v. Noem*, No. 25-cv-02180-DMS-MMP at *5, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) ("§ 1252(g) does not limit the Court's jurisdiction").
3. Petitioner challenges his illegal detention during removal proceedings. He does not seek to enjoin the decision to place him into proceedings ("commence proceedings"), any decision made to adjudicate an application for relief ("adjudicate cases"), or to deport him ("execute removal orders.").
4. Therefore, Petitioner's detention claim is not barred by §1252(g).

b. Jurisdiction is Not Barred by 8 U.S.C. §1252(b)(9)

5. Jurisdiction is also not barred by 8 U.S.C. §1252(b)(9). This statute consolidates for judicial review all questions arising in removal proceedings. Review of such claims is only available "in judicial review of a final order

[of removal]." 8 U.S.C. §1252(b)(9).

6. "'[S]ection 1252(b)(9) has built-in limits,' specifically, 'claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9).'" *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). "[C]laims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process." *Id.*
7. Removal proceedings are separate from bond proceedings. *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020). The decision in Mr. Castellanos' removal proceedings will not contain any record or finding regarding whether he should be detained pending those proceedings.
8. It is impossible for his detention claim to be reviewed later on a petition for review to a circuit court. Accordingly, the Ninth Circuit has held that §1252(b)(9) does not bar review of claims of unlawful detention during removal proceedings. *See Garcia v. Noem*, No. 25-cv-02180-DMS-MMP at *4, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (" [Petitioner's] detention pursuant to § 1225(b)(2) may be during—but is nonetheless independent of—the removal proceedings. Accordingly, § 1252(b)(9) does not strip this Court of jurisdiction.")

c. <u>The Petitioner is Detained Under 8 U.S.C. §1226(a)</u>

9. On the merits, Petitioner is detained under the default detention statute, 8 U.S.C.§1226(a), not the provision that applies to arriving aliens, 8 U.S.C. §1225(b).
10. The government erroneously states Petitioner's detention is governed by 8 U.S.C. §1225(b). ECF 5 at 6. However, the warrant issued by the government for the petitioner's arrest was issued *specifically* under 8 U.S.C.

§1226. ECF 5-1 at 7. Since Petitioner was detained based on that warrant, he is detained subject to 8 U.S.C. §1226 and not 8 U.S.C. §1225(b).

11. Although the government's brief contains many references to prior court decisions, there is no real wrestling with the revolutionary impact of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). If the law really does require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing in the United States, why did it take 40 years of litigating under the current statutes for anyone to notice? Moreover, how did IIRIRA supposedly reverse a nearly century-long statutory tradition without anyone remarking on it when IIRIRA was passed? The fact that *Yajure Hurtado* changes so much for so many, and conflicts with such a long statutory and regulatory tradition, counsels extreme skepticism.[1]

12. The government's argument is based on the language in §1225(b)(2)(A) that defines anyone who has not been admitted as an "applicant for admission." ECF 5 at 6 (quoting 8 U.S.C. §1225(b)(2)(A)). From this, the government argues that Petitioner must be detained under §1225.

13. According to the government, Mr. Castellanos is an applicant for admission because he has not been admitted. ECF 5 at 6-9. According to the government, he is also actively seeking admission because he has not been admitted. ECF 5 at 6-9. However, merely being present in the U.S. without admission does not mean that someone is actively seeking admission. *Luna Quispe v. Crawford*, No. 1:25-CV-1471, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025) ("[A]s Respondents recognize, other federal courts around

[1] "The weight of [an administrative decision] will depend upon the thoroughness evident in its consideration, the validity of its reasoning**, its consistency with earlier and later pronouncements**, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (emphasis added).

the country have found that in order to be detained under § 1225(b)(2), applicants for admission must be actively 'seeking admission' and not be just 'present' in the U.S.").

14. Moreover, the government's argument fails to account for the role of §1225(b) in the overall statutory scheme. The Supreme Court has clarified that §1225(b) governs "aliens seeking admission into the country" whereas §1226(a) governs "aliens already in the country" who are subject to removal proceedings. *Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018).

15. The government's argument also fails to account for all parts of §1226. Section 1226(c) contains some exceptions that exclude from its reach noncitizens who have not been admitted and who have certain criminal convictions. The fact that they must be excluded from the reach of §1226 means that, absent the exceptions, they would have been included. The government's reading is incorrect because it would make these exceptions superfluous. "If an interpretation of one provision 'would render another provision superfluous, courts presume that interpretation is incorrect.'" *Hasan*, 2025 WL 2682255, at *8 (quoting *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010)).

16. Since DHS "attempts to upend decades of immigration practice" and its interpretation conflicts with Supreme Court precedent and renders parts of the detention statutes superfluous, its novel interpretation should be rejected. *Hasan*, 2025 WL 2682255, at *9.

d. <u>The Court Should Order Petitioner's Release from Custody</u>

17. Habeas corpus does not come with one single, pre-defined remedy. Rather, it adapts to meet the exigencies of the moment:

> [C]ommon-law habeas corpus was, above all, an adaptable remedy. Its

> precise application and scope changed depending upon the circumstances. See 3 Balckstone (describing habeas as "the great and efficacious writ, in all manner of illegal confinement"); see also *Schlup v. Delo,* 513 U.S. 298, 319, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v Cunningham,* 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285(1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose").

Boumediene v. Bush, 553 U.S. 723, 779-80 (2008); *see also Hamdi v. Rumsfeld* 542 U.S. 507, 506 (2004) (discussing "the flexibility of the habeas mechanism").

18. A constitutionally adequate habeas court "must have the power to order the conditional release of an individual unlawfully detained – though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene*, 553 U.S. at 779. However, "[t]he typical remedy [for unlawful detention] is of course, release." *Martinez v. McAleenan,* 385 F. Supp. 3d 349, 354-55 (S.D.N.Y. 2019) (quoting *Munaf v. Green,* 553 U.S. 674, 128 S.Ct. 2207, 2221 (2008)).

19. Not only may the Court order Mr. Castellanos' release as the final remedy, the Court may also order his release pending the Court's decision on the merits of the petition. *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001).

20. The remedy is entrusted to the Court's decision, and available remedies include both a bond hearing before an immigration judge and immediate release from detention.

21. Petitioner asks the Court to consider ordering his immediate release, followed by a bond hearing before an immigration judge within 14 days, as other courts have done in similar cases.[2] This remedy is fair to both sides: it

[2] *Gonzalez v. Lyons*, 1:25-cv-1583, Slip Op. at *6 (E.D. Va. Oct. 1, 2025) ("ORDERED that Gonzalez by released from custody…pending his bond hearing before the IJ. Gonzalez must live at the fixed address identified in his Proposed

provides some remedy for ICE having unlawfully detained Petitioner while still respecting the government's discretionary authority to detain people under 8 U.S.C. § 1226(a).

Dated October 17, 2025

Signature: */s/Alexandra Fuxa Ramirez*

Alexandra Fuxa Ramirez

Release Plan and appear at the bond hearing once the government notifies him of its date, time, and location; and it is further ORDERED that respondents provide Gonzalez with a standard bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a) within 14 days of the date of this Order."); *Bibiano v. Lyons*, 1:25-cv-1590, Slip Op. at *5-6 (E.D. Va. Oct. 1, 2025) (same); *Alonzo v. Simon*, 1:25-cv-1587, Slip Op. at *5-6 (E.D. Va. Oct. 1, 2025) (same).