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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FEDERICO NAVARRO PEREZ, Petitioner-Plaintiff, v. CHRISTOPHER J. LAROSE, et al. Respondents-Defendants.	Case No.: 25-cv-2620-RBM-JLB **PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Federico Navarro Perez replies to Respondents' Return in Opposition to Petition for Writ of Habeas Corpus, stating as follows:

A. <u>Mr. Navarro Perez' Habeas Claim is Not Barred by 8 U.S.C. § 1252</u>

Simply put, neither section 1252 or 1226(e) apply to bar jurisdiction because this action does not request the judicial review of a removal order, nor does it concern the commencement of removal proceedings or any aspect to removal proceedings – this action squarely concerns Mr. Navarro Perez's unlawful detention. Moreover, as Respondents effectively concede, challenges to the statutory framework permitting the

noncitizen's detention without bail are permitted to ensure any discretionary decision by Respondents is exercised within the bounds of the Constitution and laws of the U.S.

The alleged parole termination is Respondents' basis for his detention – the Respondents claim they properly exercised their discretion to terminate Mr. Navarro Perez's parole and as such, he is lawfully detained. This habeas action alleges the government violated the law in exercising its discretion to terminate his parole and he is thus unlawfully detained. "Although the INA precludes direct review of discretionary decisions, it does not bar [courts] from reviewing predicate legal questions." Gebhardt v. Nielsen, 879 F.3d 980, 985 (9th Cir. 2018). Such "predicate legal questions" include claims that the discretionary process itself was constitutionally or legally flawed. Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017). This is precisely what Mr. Navarro Perez alleges here, namely that his parole was terminated in violation of the Constitution, the INA, the APA and the agency's own regulations.

A "district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question...forms the backdrop against which the Attorney General later will exercise discretionary authority." United States v. Hovsepian, 359 F.3d 1144, 1155 (9th Cir. 2004). Here, Mr. Navarro Perez asks the Court to interpret the legal "backdrop" against which Respondents seek to continue detaining him – namely, to find that the detention of Mr. Navarro Perez without written notice of the individualized termination of his

parole is in contravention of the agency's own regulations, the INA, the APA and his Due Process rights under the Constitution.

Moreover, Mr. Navarro Perez is not making *any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders.* Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here. Nor does Mr. Navarro Perez make any *challenges to the method by which the government chooses to commence removal proceedings*. As set forth in the petition, Respondents already commenced removal proceedings almost a year ago. Mr. Navarro Perez is challenging the Respondents' wrongful arrest and detention of Mr. Navarro Perez given his status and due process rights as a parolee.

The government's contention that 8 U.S.C. § 1252(b)(9) bars jurisdiction of this Court is similarly unavailing. Mr. Navarro Perez is not seeking *"[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States.* Mr. Garcia is challenging his unlawful detention and the unlawful continuation thereof. Further, Mr. Navarro Perez is clearly not seeking *judicial review of a final order of removal.* Mr. Navarro Perez's removal proceedings continue to be pending before the Otay Immigration Court. The EOIR Online Case Information System corresponding to Petitioner's Agency (Alien Number), accessible at: https://acis.eoir.justice.gov/en/caseInformation

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B. Mr. Navarro Perez is not Subject to Mandatory Detention

As discussed above and in the habeas petition, Mr. Navarro Perez is not lawfully detained because his parole was not terminated in accordance with the INA, the APA or the agency's own regulations. See 8 U.S.C. § 1182(d)(5)(A); see also 8 C.F.R. § 212.5(e)(2)(i). Like the other CBPOne entrants, Mr. Navarro Perez received a mass email purporting to terminate his parole with no explanation or consideration of his individualized circumstances. As such, the purported termination of his parole was arbitrary and capricious, the parole was not lawfully terminated, and Mr. Navarro Perez is unlawfully detained.

Setting aside the unlawful termination of his parole, Mr. Navarro Perez is not mandatorily detained under section 1225 as Respondents contend. First, Respondent served Mr. Navarro Perez with a warrant. Warrants, however, are only issued if the noncitizen is detained under 8 U.S.C. § 1226, not 8 U.S.C. § 1225. See 8 U.S.C. § 1226(a). The existence of a warrant here belies Respondents' contention that Mr. Navarro Perez is currently mandatorily detained under 8 U.S.C. § 1225.

Respondents claim Mr. Navarro Perez is subject to mandatory detention because he is an applicant for admission. Yet that is only one part of the inquiry – the plain language of the statute specifies that mandatory detention only applies to someone who is an "applicant for admission" and "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Mr. Navarro Perez is not subject to mandatory detention because he is neither an applicant for admission nor is he seeking admission to the United States. Rather, Mr. Navarro Perez is a noncitizen who was paroled into the U.S. and who has been living within the United States. Mr. Navarro Perez was not arrested

at or near the border seeking admission to the U.S. – he was arrested at his court hearing after having lived here for almost a year. As such, he is subject to Section 1226.

The Supreme Court has explained that Section 1226 is the "default rule" and "applies to aliens already present in the United States." Jennings v. Rodriguez, 583 U.S. 281, 288, 301 (2018). Moreover, section 1225(b) "applies primarily to aliens seeking entry into the United States" and authorizes DHS to "detain an alien without a warrant at the border." Jennings, 583 U.S. at 297, 302.

In *Torres v. Barr,* 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held that "the phrase 'at the time of application for admission'...refers to the particular point in time when a noncitizen submits an application to physically enter into the United States." 976 F.3d at 924. The Ninth Circuit held that "inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." Torres v. Barr, 976 F.3d at 923. Under section 212(a)(7), a noncitizen only makes an application for admission when they seek permission to physically enter the United States. *Id.* at 924.

In short, Torres clarified there is a temporal limitation to a classification of applicant for admission. See United States v. Gambino-Ruiz, 91 F.4th 981, 989 (9th Cir. 2024) (stating that "Torres merely rejected the view that an alien remains in a perpetual state of applying for admission"). Someone like Mr. Navarro Perez —who has been physically present in the United States for almost a year – is not an applicant for admission. Again, an individual "detained near the border shortly after they crossed it" is an applicant for admission. Gambino-Ruiz, 91 F.4th at 990; see also *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025).

In sum, Mr. Navarro Perez is not detained under Section 1225 because she is not an applicant for admission per Supreme Court and Ninth Circuit precedent, nor is he "seeking admission" to the United States.

C. Mr. Navarro Perez has due process rights which have been violated

Mr. Navarro Perez's liberty from immigration custody is protected by the Due Process Clause. See Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Following his parole into the United States, Mr. Navarro Perez retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in not being incarcerated. Morrissey v. Brewer, 408 U.S. 471, 482-483 (1972). In Morrissey, the Supreme Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." 408 U.S. at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." Id.

At stake for Mr. Navarro Perez is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior parole decision with no consideration of his individualized circumstances and subsequently take away his freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011).

Under the test set forth in Mathews v. Eldridge, this Court must consider the following three factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural

safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." See Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

The Matthews v. Eldridge factors all favor Mr. Navarro Perez. The government's interest in keeping Mr. Navarro Perez in detention is very low, and when weighed against Mr. Navarro Perez' significant private interest in his liberty, the scale tips sharply in favor of releasing Mr. Navarro Perez from custody. Moreover, detention cannot have a punitive purpose. The Respondents cannot plausibly assert a sudden interest in detaining Mr. Navarro Perez at his July 30, 2025 court hearing. The Form I-213 arrest report is devoid of any mention of danger to the community or flight risk.

The government's interest in detaining Mr. Navarro Perez is extremely low at best. That ICE has a policy to make a minimum number of arrests each day under the new administration does not constitute a valid increase in the government's interest in detaining him. Moreover, the "fiscal and administrative burdens" that release from custody would provide are nil. In fact, release from custody is far less costly than keeping him detained. As the Ninth Circuit noted in 2017, which remains even more true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." Hernandez v. Session, 872 F.3d 976, 996 (9th Cir. 2017).

Dated: October 23, 2025,

By: /s/ Kirsten Zittlau
Kirsten Zittlau
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: October 23, 2025

/s/ Kirsten Zittlau
Kirsten Zittlau