Kirsten Zittlau (CA Bar No. 220809)
Zittlau Law
Bashir Ghazialam (CA Bar No. 212724)
P.O. Box 161139
San Diego, California 92176
Tel: (619) 252-6888
zittlaulaw@gmail.com
bg@lobg.net

Attorneys for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ADRIANA GONZALEZ SALAZAR,

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LAROSE, et al.

Respondents-Defendants.

Case No.: 25-cv-2784-JLS-VET

PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Adriana Gonzalez Salazar replies to Respondents' Return in Opposition to Petition for Writ of Habeas Corpus, stating as follows:

A. Ms. Gonzalez Salazar' Habeas Claim is Not Barred by 8 U.S.C. § 1252

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 Ms. Gonzalez Salazar's unlawful detention. Moreover, challenges to the statutory framework permitting the noncitizen's detention without

bail are expressly permitted in a habeas action 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 her detention – the Respondents claim they properly exercised their discretion to terminate Ms. Gonzalez Salazar's parole and as such, she is lawfully detained as an applicant for admission. This habeas action alleges the government violated the law in exercising its discretion to terminate her parole, that she is not an applicant for admission, and that she 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 Ms. Gonzalez Salazar alleges here, namely that her parole was terminated in violation of the Constitution, the INA, the APA and the agency's own regulations.

Moreover, Ms. Gonzalez Salazar 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 Ms. Gonzalez Salazar 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 over a year ago when Ms. Gonzalez Salazar presented at the border. Ms. Gonzalez Salazar is challenging the

Respondents' wrongful arrest and detention of Ms. Gonzalez Salazar given her 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. Ms. Gonzalez Salazar 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.* Again, Ms. Gonzalez Salazar is challenging her unlawful detention and the unlawful continuation thereof. Further, Ms. Gonzalez Salazar is clearly not seeking *judicial review of a final order of removal.* Ms. Gonzalez Salazar's removal proceedings continue to be pending before the Imperial Immigration Court. The EOIR Online Case Information System corresponding to Petitioner's Agency (Alien Number), accessible at: https://acis.eoir.justice.gov/en/caseInformation

Finally, while the Petition includes information regarding Ms. Gonzalez Salazar's mental health conditions (for which she requires treatment), the crux of the Petition concerns her unlawful detention, not the conditions of her confinement. As such, this Court has jurisdiction.

B. Ms. Gonzalez Salazar is not Subject to Mandatory Detention

As discussed above and in the habeas petition, Ms. Gonzalez Salazar is not lawfully detained because her 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 5 U.S.C.

§ 706(2)(A); see also 8 C.F.R. § 212.5(e)(2)(i). Like the other CBPOne entrants,[1] Ms. Gonzalez Salazar (indirectly through her cousin) received a mass email purporting to terminate her parole with no analysis or consideration of her individualized circumstances. As such, the purported termination of her parole was arbitrary and capricious and in violation of the parole statute and the agency's own regulations. It follows that because her parole was not lawfully terminated, Ms. Gonzalez Salazar is unlawfully detained.

Setting aside the unlawful termination of her parole, Ms. Gonzalez Salazar is not mandatorily detained under section 1225 as Respondents contend. First, it is worth noting that the Respondents served Ms. Gonzalez Salazar 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).

Respondents claim Ms. Gonzalez Salazar is subject to mandatory detention because she is an applicant for admission – yet she is not an applicant for admission per well-established Ninth Circuit law. 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

[1] Respondents' return incorrectly states Ms. Gonzalez Salazar was paroled into the country via the CHNV parole program, but this is not the case. The Form I 213 arrest report submitted by the Respondents accurately shows she was paroled into the U.S. pursuant to the CBPOne program.

"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 Ms. Gonzalez Salazar —who has been physically present in the United States for over 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).

Moreover, whether Ms. Gonzalez Salazar is an applicant for admission (which she is not) 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). Ms. Gonzalez Salazar is not subject to mandatory detention because she is neither an applicant for admission nor is she seeking admission to the United States. Rather, Ms. Gonzalez Salazar is a noncitizen who was paroled into the U.S. and who has been living within the United States. Ms. Gonzalez Salazar was not arrested at or near the border seeking admission

to the U.S. – she was arrested attending an ICE appointment in downtown San Diego after having lived in the U.S. for over a year. As such, she 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.

Respondents' reliance on *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) is misplaced. First, that decision addresses noncitizens who entered the country without inspection, which is not the case here. Moreover, the court's decision in *Chavez v. Noem* is cursory and offers no further analysis beyond the flawed analysis by the Board in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Matter of Yajure Hurtado*, the BIA defies decades of precedent and practice by Respondents stating that 8 U.S.C. § 1225 (b)(2)(A) divests jurisdiction from immigration judges to redetermine the custody of aliens who are present in the United States without admission. In short, both *Chavez v. Noem* and *Matter of Yajure Hurtado* are directly contrary to not only Ninth Circuit and Supreme Court precedent, but also to the plain language of the statutes themselves. It is for these reasons that *Chavez v. Noem* is in the small minority of all the decisions addressing Respondents' contention that suddenly almost every noncitizen in the U.S. is an

applicant for admission – whereas the vast majority of the district courts have agreed with the Ninth Circuit and Supreme Court.

In sum, Ms. Gonzalez Salazar is not detained under Section 1225 because she is not an applicant for admission per Supreme Court and Ninth Circuit precedent, nor is she seeking admission to the United States.

C. Ms. Gonzalez Salazar has due process rights which have been violated

Even if Respondents had properly terminated Ms. Gonzalez Salazar's parole (which they did not), she does not – as Respondents contend – revert back to being an applicant for admission at the border with minimal if any due process rights. As an individual who has resided within the United States for over a year, Ms. Gonzalez Salazar has accrued due process rights – and that is not undone because the Respondents wish it to be so. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001). Following her parole into the United States, Ms. Gonzalez Salazar retained a weighty liberty interest under the Due Process Clause 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 Ms. Gonzalez Salazar 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 her individualized circumstances and subsequently take away her 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 Mathews v. Eldridge factors all favor Ms. Gonzalez Salazar. The government's interest in keeping Ms. Gonzalez Salazar in detention is very low, and when weighed against Ms. Gonzalez Salazar' significant private interest in her liberty, the scale tips sharply in favor of releasing Ms. Gonzalez Salazar from custody. Moreover, detention cannot have a punitive purpose. The Respondents cannot plausibly assert a sudden interest in detaining Ms. Gonzalez Salazar at the recent ICE appointment. The Form I-

213 arrest report is devoid of any mention of Petitioner being a danger to the community or a flight risk.

The government's interest in detaining Ms. Gonzalez Salazar 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 her. 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 her 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 27, 2025,

By: /s/ Kirsten Zittlau
Kirsten Zittlau
Attorney for Petitioner
Email: zittlaulaw@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 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 27, 2025

/s/ Kirsten Zittlau
Kirsten Zittlau