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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROLANDO DAVID PINEDA PEREZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE; ET AL.,

Respondents.

Case No.: 25-CV-02820-LL-KSC

PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

With the government's Return in hand, this Court should grant the petition outright on all grounds. To do so, the Court need only follow recent decisions in this district and around the country. First, the Government contends that Mr. Pineda's claims are moot. However, Mr. Pineda remains detained in Respondent's custody and continues to have a live and legally cognizable interest in the outcome. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969). Second, the Government claims that Mr. Pineda's requests are barred by 8 U.S.C § 1252(g). However, Mr. Pineda is challenging the constitutionality of his detention, not the core proceedings involved in his removal. Finally, the Government claims that Mr. Pineda is lawfully detained as an "applicant

for admission" under 8 § U.S.C. 1225. On the contrary, Mr. Pineda is detained pursuant to 8 U.S.C. 1226(a), pending a decision on whether he can remain in the United States. This Court should therefore grant the petition on all grounds.

ARGUMENT

I. Petitioner's Claims are Not Moot

A case is moot and therefore falls outside the scope of Article III's case-or-controversy requirement, when the issues are no longer live or the parties no longer have a legally cognizable interest in the result. *Already, LLC v. Nike*, Inc., 568 U.S. 85, 91 (2013). A case can also become moot when an intervening event during the appeal deprives the court of the ability to provide any meaningful or effectual relief to the prevailing party. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). Respondents contend that because the automatic stay provision is no longer in place, Petitioner's claims are moot. Although the BIA did vacate the IJ's bond order during the pending of the instant petition, the invocation of the automatic stay under 8 C.F.R. § 1003.19(i)(2) was only one aspect of Petitioner's assertion that he is unlawfully detained. In fact, Petitioner pointed out that the reversal of the IJ's bond was inevitable because the BIA had since published a decision adopting the DHS' reading of 8 U.S.C. § 1225(b)(2). This, in turn, leads to the heart of the claim– that Respondents are wrongfully classifying Mr. Pineda's detention, precluding him for release on bond. Mr. Pineda remains detained in Respondents' custody. His claim is live and his interest in a favorable outcome increases each day. *Powell v. McCormick*, 395 U.S. at 496

II. This Court Has Proper Jurisdiction

The Court has authority to hear this case. Contrary to Respondent's arguments, § 1252(g) does not bar review of all claims arising from deportation proceedings. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). In fact, the Supreme Court expressly limited the jurisdictional bar to claims arising solely from "the decision or action of the Attorney General to commence proceedings, adjudicate cases, or execute removal orders" only. *Id.* Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6

(9th Cir. Aug. 27, 2025) (cleaned up). In *Ibarra-Perez*, the Ninth Circuit squarely held that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9. The same logic applies to all of Mr. Pineda's claims because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of Mr. Pineda's detention. *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country"). Therefore, this Court does have jurisdiction over Mr. Pineda's petition.

III. Mr. Pineda is Detained Under 8 U.S.C. § 1226(a)

In their response, Respondents erroneously contend that Mr. Pineda is mandatorily

detained under 8 U.S.C. § 1225(b)(2)(A). Respondents argue that Mr. Pineda remains an "applicant for admission," and that he must be detained for the duration of his removal proceedings. For the following reasons, Respondent' argument fails. Mr. Pineda's first and only arrival to the United States was November 10, 2018, when Mr. Pineda was only fifteen years old. Mr. Pineda arrived without his parents and was eventually reunited with only his mother. These circumstances classified Mr. Pineda as an "Unaccompanied Minor" at the time of his arrival. 6 U.S.C. § 279(g)(2).[1] Mr. Pineda is not an applicant for admission subject to the detention provisions of 8 U.S.C. §1225. As described in Form 1-213, ICE agents apprehended Mr. Pineda in San Bernadino, California on March 28, 2025, nearly seven years after Mr. Pineda's entry as an unaccompanied child. Respondents assert that the term "applicant for admission" encompasses any noncitizen in the U.S. who has not been admitted, no matter how long they have resided in the U.S. However, the Ninth Circuit has held that there is a temporal limitation on the phrase "applicant for admission," denoting a particular legal status. *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020). The Circuit Court has rejected the theory that any applicant for admission should be "treated as having made a continuing application for admission that does not terminate 'until it [is] considered by the [Immigration Judge (IJ)].'" *Id at* 922. In evaluating the detention statute of a noncitizen who was placed in removal proceedings 13 years after entry to the U.S., the Supreme Court explained that an immigrant submits "an application for admission" at a distinct point in time and "stretching the phrase" to continue for years or decades "would push the statutory text beyond its breaking point." *U.S. v. Gamino-Ruiz*, 91 F.4th 981, 988-89 (9th Cir. 2024) (citing *Torres*, 976 F.3d at 922-26 (*en banc*)). On the contrary, an individual "detained near the border shortly after he crossed it" is considered an applicant for admission. *Gambino-Ruiz*, 91 F.4th at 990; *see Q. Li*, 29 I&N Dec. at 69. However, these were not the circumstances in Mr. Pineda's case. Mr. Pineda was detained in the interior of the United States after several years of residing in and acquiring substantial ties to the community, including the birth of two United States Citizen children. Section 1226(a), entitled "Arrest, detention, and release" allows for the detention of a noncitizen during the pendency of their removal proceedings. As the

[1] Unaccompanied noncitizen children from non-contiguous countries are statutorily exempt from expedited removal 8 U.S.C. § 1232(a)(5)(D)(i).

Supreme Court summarized, it applies to "aliens already present in the United States" and "creates a default rule…by permitting–but not requiring– the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). This statute squarely describes Mr. Pineda's procedural posture. Therefore, Mr. Pineda is currently detained under section 1226(a), pending a final administrative decision in his immigration proceedings.

CONCLUSION

For the foregoing reasons, the Court should find that continued detention of Mr. Pineda is unlawful and order Mr. Pineda's release from Respondents' custody.

Respectfully submitted this 6 day of November 2025,

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