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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

N.A. Petitioner, v. CHRISTOPHER J. LAROSE, Senior Warden of the Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Office of Detention and Removal, U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, U.S. Immigration; and Customs Enforcement, U.S. Department of Homeland Security; and KRISTI NOEM, Secretary, U.S. Department of Homeland Security Respondents – Defendants.	Case No: 3:25-cv-02936-BTM-MMP Hearing Date/Time: Courtroom: 15B Judge: Hon. Barry Ted Moskowitz **PETITIONER'S TRAVERSE IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS**

PETITIONER'S TRAVERSE TO RESPONDENTS RETURN

Petitioner, N.A., through undersigned counsel, respectfully submit this Traverse to Respondents Return and in support of his Petition for Writ of Habeas Corpus.

I. INTRODUCTION

Petitioner remains detained in Immigration and Customs Enforcement (ICE) custody without a bond hearing, parole review, or any other mechanism to challenge the legality or length of detention. Respondents argue that this Court lacks jurisdiction under 8 U.S.C. §1252, that Petitioner is subject to mandatory detention under §1225(b)(2), and that any claims relating to expedited removal are unfounded. These arguments fail. Petitioner challenges only the legality and duration of civil detention, an inquiry squarely within traditional habeas jurisdiction. No administrative avenue exists for Petitioner to obtain custody review; therefore, exhaustion is complete or excused. The petition should be granted.

II. LEGAL STANDARD

Federal courts retain habeas jurisdiction over claims challenging the statutory authority for immigration detention and the constitutionality of that detention. *Jennings v. Rodriguez,* 583 U.S. 281 (2018). Courts also have jurisdiction to determine whether the Government is detaining a noncitizen under

the correct detention statute. *Demore v. Kim,* 538 U.S. 510 (2003). Habeas jurisdiction is not eliminated by §1252(g) or §1252(b)(9) where a petitioner challenges detention itself rather than removal. *Nielsen v. Preap,* 586 U.S. (2019); *J.E.F.M. v. Lynch,* 837 F.3d 1026 (9th Cir. 2016).

III. ARGUMENT

A. This court has Habeas Jurisdiction Over Petitioner's Detention

Respondents assert that §1252(g) and §1252(b)(9) deprive this Court of all jurisdictions. That position is contrary to binding precedent.

1. Section 1252(g) does not bar challenges to civil detention

The Supreme Court holds that §1252(g) applies only to three discrete actions: (1) the decision to commence proceedings, (2) the decision to adjudicate proceedings, and (3) the decision to execute removal orders. *Reno v. AADC, 525* U.S. 471, 482 (1999). Petitioner challenges none of those actions. The petition concerns only the statutory basis for his detention and the BIA's legal error in concluding that §1225(b)(2) applies. Courts have consistently found that detention challenges fall outside §1252(g). *See Jennings*, 583 U.S. at 295.

2. Section 1252(b)(9) does not bar constitutional and detention claim

The Ninth Circuit explains that §1252(b)(9) is a "judicial channeling provision," not a bar on claims. *J.E.F.M. v. Lynch*, 837 F.3d at 1032. And it does not apply to detention challenges. *Id.* at 1031 ("detention is not a final order of

removal nor part of the process by which removal orders are adjudicated"). The Supreme Court in Jennings likewise held that detention challenges are not subject to §1252(b)(9)'s channeling into a petition for review. Here, Petitioner seeks neither review of a removal order nor review of the merits of his immigration case. He challenges only his custody. This Court therefore retains jurisdiction.

3. Habeas jurisdiction is constitutionally required

Reading §1252 to eliminate habeas jurisdiction would violate the Suspension Clause. Courts reject such readings absent a clear statement from Congress, which is not present here. *See INS v. St. Cyr,* 533 U.S. 289 (2001). Respondents sweeping interpretation would strip jurisdiction from every district court considering ICE detention, a result repeatedly rejected by the Supreme Court.

B. <u>Petitioner Is Not Subject to Mandatory Detention Under 8 U.S.C. §1225(b)(2)</u>

Respondents argue that Petitioner is an "applicant for admission" and therefore mandatorily detained. This is incorrect.

1. Section §1225 applies to arriving aliens or those placed in expedited removal

Petitioner has lived in the interior of the United States since 2023, was not apprehended at or near the border, was not placed in expedited removal under

§1225(b)(1) and was placed directly into full §1229(a)a proceedings. The Government's own Notice to Appear places Petitioner firmly within §1226(a). Courts, including courts in this district, consistently hold that interior arrests of undocumented individuals fall under §1226(a), not §1225(b)(2). Respondents' reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is misplaced. That BIA case, decided in 2025, conflicts with *Jennings* 583 U.S. at 299 and long-standing Ninth Circuit precedent.

2. Statutory text does not support Respondents interpretation

Section §1225(b)(2)(A) applies only when an "examining immigration officer" determines an alien is "seeking admission." That determination occurs during an inspection, not years after an interior entry. Section §1225(a)(3)'s reference to inspection of individuals "seeking admission" further demonstrates that §1225 governs the admissions process, not interior apprehensions. If Respondents reading were correct, all undocumented individuals, even if present for decades, would be subject to mandatory detention without bond, a result Congress did not intend, and courts reject.

3. The BIA lacked authority to retroactively convert Petitioner into a §1225 detainee

Once the immigration judge exercised jurisdiction and granted bond under §1226(a), DHS could appeal, but the BIA could not alter the statutory detention

framework. The BIA may review discretionary bond decisions, but it cannot rewrite the statute.

C. Petitioner's Detention Has Become Unreasonably Prolonged and Violates Due Process

Even if §1225 applied, which it does not, Petitioner's detention violates the Due Process Clause. Prolonged civil detention requires individualized review. *See Demore v. Kim,* 538 U.S. 510 (2003); *Singh v. Holder,* 638 F.3d 1196 (9th Cir. 2011); *Rodriguez v. Robbins,* 715 F.3d 1127 (9th Cir. 2013). Petitioner has been detained for many months, with no end in sight, despite having been found suitable for release on bond by an Immigration Judge. Due process requires, at minimum, a new bond hearing at which the Government bears the burden of proof by clear and convincing evidence.

D. If the Court Finds § 1226(a) Applies, the Proper Remedy Is Release or a New Bond Hearing

If this Court finds that Petitioner is detained under §1226(a), the prior IJ bond order cannot simply be reinstated because §1226(e) limits review of discretionary decisions. The appropriate remedy is immediate release or a constitutionally adequate bond hearing within seven days.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court deny

Respondents Motion to Dismiss, find that 8 U.S.C. §1226(a) governs his detention, and order his immediate release or, alternatively, a bond hearing within seven days at which the Government bears the burden of demonstrating by clear and convincing evidence that continued detention is necessary.

Respectfully Submitted,

//S// John Wells

DATED: November 14, 2025

John Wells,
Attorney for Petitioner,
N.A.