JULIA V. TORRES
Law office of Andrew K. Nietor
750 B Street, Sute 2330
San Diego, California
Telephone: (619) 794-2386
Facsimile: (619) 794-2263
Julia@nietorlaw.com

Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARTURO GOMEZ RAMIREZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE; ET AL.,

Respondents.

Case No.: 25-cv-2988-TWR-BLM

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

INTRODUCTION

With the Respondent'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, Respondents claims that Mr. Gomez' requests are jurisdictionally barred by 8 U.S.C § 1252(g). However, Mr. Gomez is challenging the constitutionality of his detention, not the core proceedings involved in his removal. Next, the Respondents claim that Mr. Gomez is lawfully detained as an "applicant for admission" under 8 § U.S.C. 1225. On the contrary, Mr. Gomez 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. 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). 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").

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. Gomez' claims because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution.

Respondents cite to the eleventh Circuit, asserting that 8 U.S.C § 1252(g) bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016). However, Petitioner does not dispute the government's authority to initially detain him upon the commencement of removal proceedings. Petitioner solely disputes that his detention is "mandatory" and is not eligible for a bond hearing before an Immigration Judge. 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. Gomez' detention without a bond hearing. *Y.T.D.*, 2025 WL 2675760, at *5. Therefore, this Court does have jurisdiction over Mr. Gomez' petition.

II. Mr. Gomez is Detained Under 8 U.S.C. § 1226(a)

In their response, Respondents erroneously contend that Mr. Gomez is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). Respondents argue that Mr. Gomez 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. Gomez' last arrival to the United States was December 31, 2012, nearly 13 years ago. Mr. Gomez is not an applicant for admission subject to the detention provisions of 8 U.S.C. §1225.

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. Gomez' case. Mr. Gomez 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 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. Gomez' procedural posture. Therefore, Mr. Gomez 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. Gomez is unlawful and order Mr. Gomez' release from Respondents' custody.

Respectfully submitted this 12 day of November 2025,

/s/Julia V. Torres
Law Office of Andrew K. Nietor
750 B Street, Suite 2330
San Diego, California 92101
CA Bar #: 328301
Attorney for Petitioner