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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Cecilio Marino Jimenez Lopez,

Petitioner,

vs.

Gregory John Archambeault, San Diego Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); Christopher J. LaRose, Senior Warden, Otay Mesa Detention Center; Kristi NOEM, Secretary, United States Department of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, Attorney General of the United States; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR); Daren K. Margolin, Director, EOIR; OTAY MESA IMMIGRATION COURT,

Respondents.

Case No.: 3:25-cv-03029-DMS-BLM

**PETITIONER'S REPLY
RESPONDENTS' RETURN TO
HABEAS PETITION**

Judge: Hon. Dana M. Sabraw

**NO ORAL ARGUMENT
REQUESTED OR ORDERED**

1 Petitioner by and through undersigned counsel, respectfully submits this
2 Reply to Respondents' Return to Habeas Petition. Respondents argue that this
3 Court lacks jurisdiction and that Petitioner's detention is mandatory under 8 U.S.C.
4 § 1225(b)(2)(A). Both assertions are legally unsound and contradicted by the
5 record.
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9 **I. The Court Retains Habeas Jurisdiction Under 28 U.S.C. § 2241**
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11 Respondents' jurisdictional arguments relying on 8 U.S.C. §§ 1252(g) and
12 1252(b)(9) are both misplaced and contrary to controlling Supreme Court and
13 Ninth Circuit precedent. Those provisions do not strip this Court of jurisdiction to
14 review the legality of Petitioner's ongoing detention, which is a quintessential
15 habeas claim.
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18 Respondents contend that § 1252(g) bars review because Petitioner's claims
19 "arise from" removal proceedings. But the Supreme Court in *Reno v. American-*
20 *Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 482 (1999),
21 squarely rejected such an expansive reading. The Court held that § 1252(g) applies
22 only to "three discrete actions", the Attorney General's decision or action to
23 commence proceedings, adjudicate cases, or execute removal orders, and "does not
24 sweep in any claim tangentially related to deportation." *Id.* at 482. Petitioner
25 challenges none of those discrete actions; instead, he challenges his current
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1 detention without bond and the unlawful application of the detention statutes,
2 which lie outside § 1252(g)'s narrow scope.
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4 Similarly, Respondents' reliance on § 1252(b)(9), the so-called "zipper
5 clause", is also misplaced. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S.
6 281, 294 (2018), made clear that § 1252(b)(9) "does not present a jurisdictional
7 bar" to detention challenges independent of a final order of removal. *Jennings*
8 explicitly held that claims "not seeking review of a final order of removal" or "not
9 challenging the decision to remove" are not subject to § 1252(b)(9). *Id.* at 293–94.
10 Petitioner's claim contesting his unlawful and prolonged detention without a valid
11 bond determination is precisely the type of claim *Jennings* and its progeny found
12 to fall outside the reach of § 1252(b)(9).
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16 The Ninth Circuit has repeatedly reaffirmed this principle. In *Singh v.*
17 *Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011), the court held that "district courts
18 retain jurisdiction under § 2241 to review bond hearings and detention decisions,"
19 emphasizing that such claims "do not seek review of a removal order but rather the
20 statutory authority for detention itself." Similarly, in *Rodriguez v. Marin*, 909 F.3d
21 252, 256 (9th Cir. 2018), the court confirmed that § 1252(b)(9) does not bar habeas
22 review where the petitioner "does not seek review of any removal proceedings but
23 rather the lawfulness of his detention pending those proceedings."
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28 Nor does § 1252(f)(1) preclude this Court's jurisdiction, as Respondents

1 suggest. Section 1252(f)(1) limits only class-wide injunctions that enjoin “the
2 operation of” the immigration statutes, not individual habeas petitions seeking
3 release from unlawful detention. The Supreme Court’s decision in *Garland v.*
4 *Aleman Gonzalez*, 596 U.S. 543, 553 (2022), expressly reaffirmed that district
5 courts retain authority to “grant relief on individual habeas petitions” challenging
6 detention. *See also Padilla v. ICE*, 953 F.3d 1134, 1145 (9th Cir. 2020), vacated
7 on other grounds, 141 S. Ct. 1041 (2021) (district courts may order individualized
8 relief under § 2241 notwithstanding § 1252(f)(1)).
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12 In addition, the Suspension Clause of the U.S. Constitution guarantees the
13 continued availability of the writ of habeas corpus to test the legality of executive
14 detention. *See INS v. St. Cyr*, 533 U.S. 289, 300–01 (2001) (“Because of the
15 Suspension Clause, some judicial intervention in deportation cases is
16 unquestionably required by the Constitution.”); *Boumediene v. Bush*, 553 U.S. 723,
17 779 (2008) (holding that the writ cannot be suspended absent adequate alternative
18 procedures). To construe §§ 1252(g) or (b)(9) to preclude judicial review of
19 Petitioner’s detention would raise grave constitutional concerns under the
20 Suspension Clause, and such a construction must be avoided. *See Zadvydas v.*
21 *Davis*, 533 U.S. 678, 689 (2001) (applying the canon of constitutional avoidance
22 to interpret detention provisions in a manner preserving habeas review).
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28 Respondents’ position would lead to precisely the constitutional crisis the

1 Supreme Court has warned against: an individual detained indefinitely without
2 meaningful judicial review. Numerous courts have recognized that habeas
3 jurisdiction remains the proper mechanism to challenge unlawful or prolonged
4 immigration detention. *See, e.g., Sanchez-Perez v. Garland*, 2023 WL 5663021, at
5 3 (C.D. Cal. Aug. 29, 2023) (“Detention challenges under § 2241 remain within
6 the jurisdiction of the district courts after Jennings.”); *Santos v. Warden*, 965 F.3d
7 203, 210 (3d Cir. 2020) (same).

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11 Furthermore, Respondents’ argument fails to acknowledge that Petitioner
12 does not seek to interfere with, delay, or overturn his removal proceedings. Rather,
13 he seeks only to compel the government to honor the statutory and constitutional
14 limits on detention, both in its imposition of mandatory detention and in the
15 prolonged duration of that detention without meaningful review. Courts have
16 consistently recognized that such challenges fall within the core of the writ of
17 habeas corpus, which exists precisely to test the legality of executive confinement.
18 Courts have consistently permitted such claims under § 2241. *See Demore v. Kim*,
19 538 U.S. 510, 517 (2003) (entertaining § 2241 habeas petition challenging
20 mandatory detention under § 1226(c)); *Nadarajah v. Gonzales*, 443 F.3d 1069,
21 1075 (9th Cir. 2006) (reviewing habeas challenge to prolonged detention and
22 rejecting government’s jurisdictional defense); *Tijani v. Willis*, 430 F.3d 1241,
23 1242 (9th Cir. 2005).

1 Respondents’ sweeping reading of §§ 1252(b)(9) and (g) would not only
2 contradict this precedent but also effectively eliminate all meaningful judicial
3 review for individuals detained under color of immigration authority. *See*
4 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (noting that courts retain
5 jurisdiction over “non-discretionary” detention challenges precisely because “no
6 other forum provides review”).
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9 In sum, Petitioner’s claim falls squarely within the heartland of habeas
10 corpus: it challenges the fact and legality of executive detention, independent of
11 any removal adjudication. Neither § 1252(g) nor § 1252(b)(9) nor any other
12 provision of the INA deprives this Court of its traditional habeas jurisdiction under
13 28 U.S.C. § 2241 to ensure that detention remains lawful, constitutional, and within
14 statutory bounds.
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18 Accordingly, this Court properly retains jurisdiction to review and remedy
19 Petitioner’s unlawful detention under § 1226(a), the Administrative Procedure Act,
20 and the Fifth Amendment.
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23 **II. Petitioner Is Detained Under 8 U.S.C. § 1226(a), Not § 1225(b)(2)(A)**
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25 Respondents’ assertion that Petitioner is detained under 8 U.S.C. §
26 1225(b)(2)(A) as an “applicant for admission” is both factually unsustainable and
27 legally indefensible. The administrative record and governing precedent make
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1 clear that Petitioner’s custody falls squarely within 8 U.S.C. § 1226(a).

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3 Petitioner entered the United States without inspection in 2005, nearly
4 twenty years ago, and has since resided here continuously. He was not apprehended
5 at or near a port of entry, nor was he seeking admission or parole when taken into
6 ICE custody on May 27, 2025. Indeed, DHS did not issue an NTA until June 30,
7 2025, more than a month after Petitioner’s arrest. The timing and circumstances of
8 his arrest confirm that he was treated as a noncitizen already present in the United
9 States, not an “arriving alien” under § 1225(b).
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12 The Ninth Circuit has long held that § 1226(a) governs the detention of
13 noncitizens who have entered the United States and are later placed in removal
14 proceedings, not § 1225(b). *See Casas-Castrillon v. Dep’t of Homeland Sec.*, 535
15 F.3d 942, 948 (9th Cir. 2008) (“Once removal proceedings are initiated for an alien
16 who is already present in the country, his detention is governed by § 1226.”); *Preap*
17 *v. Johnson*, 831 F.3d 1193, 1199 (9th Cir. 2016), reversed on other grounds,
18 *Nielsen v. Preap*, 139 S. Ct. 954 (2019). This distinction flows directly from the
19 structure of the INA, which divides custody authority based on whether the
20 individual is seeking admission at the border (§ 1225) or has already entered the
21 country (§ 1226).
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26 The Supreme Court in *Jennings v. Rodriguez*, reinforced that § 1225(b)
27 applies to “arriving aliens” who are stopped at or near a port of entry and are still
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1 in the process of being “admitted” to the United States. By contrast, § 1226(a)
2 “generally governs the detention of aliens who are already in the country pending
3 the outcome of their removal proceedings.” Id. at 296. Nothing in the record
4 supports DHS’s attempt to reclassify Petitioner, who has lived in the United States
5 since 2005, as a recent “applicant for admission.”
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8 Respondents’ argument is thus a factual fiction and a legal overreach.
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10 Petitioner was never paroled under § 1182(d)(5), never treated as an “arriving alien”
11 in DHS custody, and was not detained at the border or while seeking entry. Instead,
12 DHS’s own conduct confirms its view that Petitioner was subject to the removal
13 procedures for individuals already inside the United States, consistent with §
14 1226(a). The belated issuance of an NTA, coupled with ICE’s initial determination
15 that he would be “held without bond,” demonstrates that DHS proceeded under the
16 § 1226 framework from the outset.
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19 To the extent Respondents now argue otherwise, their position contradicts
20 not only the record but also binding circuit law rejecting similar attempts to expand
21 § 1225(b). In *Padilla-Ramirez v. Bible*, 882 F.3d 826, 833 (9th Cir. 2018), the court
22 reaffirmed that § 1226 governs detention “after an alien’s entry into the United
23 States.” Similarly, in *Villegas v. Mukasey*, 523 F.3d 984, 987 (9th Cir. 2008), the
24 court rejected the government’s attempt to treat a long-term resident as an “arriving
25 alien,” emphasizing that § 1225(b) is limited to those stopped at the border or
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1 seeking admission.

2 Respondents' reliance on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and
3 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), does not cure this defect.
4 Those decisions attempt to reclassify broad categories of noncitizens as "arriving
5 aliens" merely because they were once inadmissible at entry. This reinterpretation
6 is inconsistent with the plain text of §§ 1225 and 1226, contradicts Ninth Circuit
7 precedent, and exceeds BIA's authority. Under *Loper Bright Enterprises v.*
8 *Raimondo*, 144 S. Ct. 2244, 2260 (2024), agency interpretations of ambiguous
9 statutes are no longer entitled to *Chevron* deference; courts must instead construe
10 statutes de novo using the traditional tools of statutory interpretation. When those
11 tools are applied here, the INA unambiguously places Petitioner's detention under
12 § 1226(a).
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18 Moreover, the government's position would produce absurd results and
19 serious constitutional problems. If every individual who once entered without
20 inspection could be deemed perpetually an "applicant for admission," DHS could
21 subject millions of long-term residents to indefinite mandatory detention without
22 bond. That interpretation not only conflicts with Congress's intent but also violates
23 constitutional avoidance principles and the Due Process Clause. *See Zadvydas v.*
24 *Davis*, 533 U.S. 678, 690 (2001) (holding that detention statutes must be construed
25 to avoid "serious constitutional problems").
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1 Courts have already rejected attempts to extend *Q. Li* and *Hurtado* beyond
2 their narrow factual contexts. See *Hernandez v. Garland*, 2025 WL 1984563, at 7
3 (S.D. Cal. Mar. 7, 2025) (finding *Q. Li* inconsistent with the INA and Ninth Circuit
4 precedent); *Cruz-Valenzuela v. Bondi*, 2025 WL 1420512, at 4–5 (C.D. Cal. Feb.
5 3, 2025)* (rejecting BIA’s reliance on *Q. Li* and reaffirming jurisdiction under §
6 1226(a)). These cases recognize what Congress intended: that § 1225(b) governs
7 only those seeking entry at the border, while § 1226(a) governs individuals like
8 Petitioner, who have long lived within the country and are now in removal
9 proceedings.
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13 For these reasons, Petitioner’s detention remains governed by 8 U.S.C. §
14 1226(a). The BIA’s invocation of § 1225(b)(2)(A) and its reliance on *Q. Li* and
15 *Hurtado* are legally erroneous, factually unsupported, and constitutionally infirm.
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17 This Court should accordingly find that Petitioner is entitled to the protections
18 afforded under § 1226(a), including reinstatement of the \$2,500 bond previously
19 granted by the Immigration Judge.
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CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court exercise jurisdiction under 28 U.S.C. § 2241 and grant the writ of habeas corpus to remedy his unlawful and prolonged detention.

/s/ Marcelo Gondim

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record at the following email addresses:

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Date: November 12, 2025

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