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7 *Attorney for Petitioner E.G.B.*

8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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13 **E.G.B** )

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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 )  
Respondent's – Defendants. )

) Case No: 3:25-cv-03089 CAB-MSB  
) Hearing Date/Time: N/A  
) Courtroom: 15A  
) Judge: Hon. Cathy Ann Bencivengo  
)  
)  
) **PETITIONER'S TRAVERSE IN**  
) **SUPPORT OF HIS PETITION**  
) **FOR WRIT OF HABEAS**  
) **CORPUS**

1                   **PETITIONER’S TRAVERSE TO RESPONDENT’S RETURN**

2                   Petitioner, E.G.B., through undersigned counsel, respectfully submit this  
3  
4 Traverse to Respondent’s Return and in support of his Petition for Writ of Habeas  
5 Corpus.

6   **I. INTRODUCTION**

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8                   Petitioner submits this Traverse in response to Respondent’s Opposition to  
9  
10 his Petition for Writ of Habeas Corpus. The Court is respectfully urged to grant  
11 the Petition because Petitioner’s detention lacks statutory basis, exceeds the  
12 authority of the Department of Homeland Security (“DHS”), and violates the  
13 procedural requirements established under 8 U.S.C. §1229a and applicable  
14 regulations.  
15

16                   Petitioner challenges only the lawfulness of his detention and does not seek  
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18 review of the underlying merits of removal proceedings. Success on this petition  
19 would directly result in release, satisfying the requirement that habeas relief under  
20 28 U.S.C. §2241 must alter custody. Accordingly, the Court has jurisdiction under  
21 §2241 to consider this Petition.  
22

23   **II. FACTUAL BACKGROUND**

24                   Petitioner is a noncitizen who was properly placed into removal  
25 proceedings under 8 U.S.C. §1229a. Those proceedings were initiated before an  
26 Immigration Judge (“IJ”) after DHS served Petitioner with a Notice to Appear.  
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1 While those proceedings were pending, Petitioner remained detained,  
2 appeared as required, and actively pursued his defenses before the IJ. DHS moved  
3 for the IJ to terminate Petitioner's §1229a proceedings. The IJ granted that motion  
4 and terminated the proceedings without prejudice, an action fully within the IJ's  
5 exclusive authority under 8 C.F.R. §1003.18(d).  
6  
7

8 Following termination, Petitioner was placed into §1225(b)(1) detention.  
9 Petitioner now remains detained under a statutory scheme invoked after  
10 proceedings were terminated without prejudice. These facts are undisputed for  
11 purposes of this habeas review and must be accepted as true at this stage.  
12  
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### 14 III. LEGAL STANDARD

15 A writ of habeas corpus under 28 U.S.C. §2241 permits a Court to inquire  
16 into the legality of detention. Relief is appropriate where a petitioner demonstrates  
17 that detention is unlawful because it lacks statutory basis, violated procedural  
18 requirements, or infringes on constitutional protections.  
19  
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21 The Court must accept the factual allegations as true unless contradicted by  
22 uncontested evidence and determine whether those facts establish that Petitioner is  
23 detained without legal justification. As established in *Thuraissigiam v. U.S. Dep't*  
24 *of Homeland Sec.*, 591 U.S. 103 (2020) and *Pinson v. Carvajal*, 69 F.4<sup>th</sup> 1059,  
25 1067, 991 F.3d 231 (9th Cir. 2023), and related authority, custody challenges are  
26 properly brought under §2241 even when the removal process itself is restricted  
27  
28

1 from review. Section 1252(b)(9) channels removal challenges to Courts of appeals  
2 but does not bar district Courts from reviewing the legality of detention itself. Due  
3 process principles remain applicable to ensure that detention authority is exercised  
4 as Congress intended.  
5

#### 6 7 **IV. ARGUMENT**

##### 8 **A. Petitioner's Detention Lacks Statutory Basis**

##### 9 **1. Misapplication of §1225(b)(1)**

10  
11 Respondent asserts that Petitioner is subject to mandatory detention under 8  
12 U.S.C. §1225(b)(1) but the Petition alleges, and the Court must accept, that  
13 Petitioner was placed into §1225(b)(1) detention after his §1229a proceedings were  
14 terminated without prejudice by the IJ. Because §1225(b)(1) detention requires  
15 proper placement in expedited removal, the statutory predicate is not satisfied.  
16  
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##### 18 **2. Termination Without Prejudice by the IJ**

19  
20 Petitioner's §1229a proceedings were properly initiated and pending before  
21 the IJ. DHS moved for termination, and the IJ granted that motion without prejudice,  
22 exercising exclusive adjudicative authority under 8 C.F.R. §1003.18(d).  
23 Termination without prejudice does not automatically authorize §1225(b)(1)  
24 detention, as the statutory framework requires specific criteria for expedited  
25 removal.  
26  
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1           **C. Statutory Limitations §1252 Do Not Deprive This Court of**  
2           **Jurisdiction**  
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4           **1. §1252(g) Does Not Bar Detention Challenges**

5           This provision concerns discretionary actions related to removal (commence,  
6 adjudicate, execute). It does not bar challenges to detention authority.  
7

8           **2. §1252(b)(9) Is a Challenging Provision, Not a Bar**

9           Section 1252(b)(9) channels review of removal orders to courts of appeals  
10 but does not eliminate district court jurisdiction over challenges to the legality of  
11 detention under §2241.  
12

13           **3. §1252(a)(2)(A) and (D) Does Not Foreclose All Challenges**

14           While §1252(a)(2)(A) limits judicial review over expedited removal  
15 proceedings, Petitioner’s claims concern the legality of detention and procedural  
16 compliance, both of which remain reviewable. Section §1252(a)(2)(D) expressly  
17 preserves constitutional and legal questions.  
18  
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21           **D. Petitioner’s Due Process Claims Are Meritorious**

22           **1. Due Process Ensures Statutory Procedures Are Followed**

23           Even as an arriving noncitizen, Petitioner retains the right not to be detained  
24 through procedures that violate statutory or regulatory mandates.  
25

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1                   **2. IJ Termination Without Prejudice Does Not Authorize**

2                                   **Automatic §1225(b)(1) Detention**

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4                   Placement into §1225(b)(1) detention following termination without  
5 prejudice exceeds the statutory bounds set by Congress and is therefore subject to  
6 challenge under §2241.  
7

8                   **E. APA Review Supports Relief**

9                   DHS’s placement of Petitioner into §1225(b)(1) detention after IJ  
10 termination without prejudice is final in the only sense that matters here: it  
11 immediately and definitively affected custody. Because this action directly  
12 governs detention and cannot be remedied administratively, habeas relief remains  
13 appropriate under 5 U.S.C. §704.  
14  
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16                   **F. Relief Would Directly Affect Custody**

17                   Petitioner seeks a declaration that his detention under §1225(b)(1) is  
18 unlawful and an order for release. Granting this relief would directly alter custody,  
19 satisfying the requirement under *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016),  
20 and *Pinson*, 69 F.4th at 1072, that habeas relief must affect custody.  
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23                   **V. CONCLUSION AND PRAYER FOR RELIEF**

24                   For the foregoing reasons, Petitioner respectfully requests that this Court  
25 deny Respondent’s Motion to Dismiss, grant the Petition for Writ of Habeas  
26 Corpus, declare that §1225(b)(1) detention following IJ termination without  
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1 prejudice is unlawful, and order Petitioner's immediate release or such other relief  
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3 as the Court finds just and proper.

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6 Respectfully Submitted,

7 /S/ John Wells

8 DATED: November 20, 2025

9 \_\_\_\_\_  
10 John Wells, Esq.  
11 Attorney for Petitioner,  
12 E.G.B.