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

10 NERY GODINEZ SALES,

11 Petitioner,

12 vs.

13 WARDEN, OTAY MESA
14 DETENTION CENTER, *et al.*,

15 Respondents.
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Case No.: 25-cv-03125-BAS-BJW

**Petitioner's Reply in Support of
Petition**

1 **I. Introduction**

2 The government’s opposition to the habeas corpus petition does not mention
3 even a single fact about this case. The brief consists entirely of stock arguments
4 that the government has asserted (and lost) in hundreds of similar cases.

5 Moreover, the government does not even mention the critical fact highlighted in
6 the opening paragraph of the petition: that the removal proceedings commenced
7 after petitioner’s arrival at the border concluded long ago. Since the government
8 does not address any facts or circumstances of this case, and the government has
9 already lost repeatedly on all these issues¹, the court should summarily grant the
10 habeas petition and order petitioner’s immediate release and/or a bond hearing.

11
12 **I. Argument**

13 **a. Jurisdiction is Not Barred by 8 U.S.C. §1252(g)**

14 1. The government first argues that jurisdiction is barred by 8 U.S.C. §1252(g).
15 ECF 5 at 5-9. However, this is incorrect. The Supreme Court has held that
16 this statute performs a “narrow” function:

17 The provision applies only to three discrete actions that the Attorney
18 General may take: her “decision or action” to “*commence*
19 proceedings, *adjudicate cases*, or *execute* removal orders.” (Emphasis
20 added.) There are of course many other decisions or actions that may
21 be part of the deportation process—such as the decisions to open an
22 investigation, to surveil the suspected violator, to reschedule the
23 deportation hearing, to include various provisions in the final order
24 that is the product of the adjudication, and to refuse reconsideration of
25 that order. It is implausible that the mention of three discrete events
26 along the road to deportation was a shorthand way of referring to all
27 claims arising from deportation proceedings.

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¹ See, e.g., *Vasquez Garcia v. Noem*, 3:25-cv-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.);
Chavez Valdovinos v. Noem, 3:25-cv-2439 (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Martinez Lopez v. Noem*, 3:25-
cv-2734 (S.D. Cal. Oct. 23, 2025) (Robinson, J.); *Beltran v. Noem*, No. 25-CV-2650, 2025 WL 3078837 (S.D. Cal.
Nov. 4, 2025) (Lopez, J.); *Esquivel-Ipina v. Larose*, No. 25-CV-2672, 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025)
(Sammartino, J.); *Castellanos Lopez v. Warden, Otay Mesa Det. Ctr.*, No. 25-CV-2527, 2025 WL 3005346 (S.D.
Cal. Oct. 27, 2025) (Huie, J.).

1 *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999);
2 *see also Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255, at *4
3 (E.D. Va. Sept. 19, 2025) (“Section 1252(g) has a narrow reach.”).

4 2. The Ninth Circuit has established that “§ 1252(g) does not prohibit
5 challenges to unlawful practices merely because they are in some fashion
6 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989,
7 997 (9th Cir. 2025). The Supreme Court has also explained that it did not
8 construe Section 1252(g) “to sweep in any claim that can technically be said
9 to ‘arise from’ the three listed actions of the Attorney General. Instead [the
10 language] refers to just those three specific actions themselves.” *Jennings v.*
11 *Rodriguez*, 583 U.S. 281, 294 (2018); *see also Castellanos Lopez v. Warden,*
12 *Otay Mesa Det. Ctr.*, No. 25-CV-2527, 2025 WL 3005346 (S.D. Cal. Oct.
13 27, 2025) (Huie, J.). Moreover, §1252(g) does not bar due process claims.
14 *Walters v. Reno*, 145 F.3d 1032, 1032 (9th Cir. 1998).

15 3. Petitioner challenges his illegal detention during removal proceedings. He
16 does not seek to enjoin the decision to place him into proceedings
17 (“commence proceedings”), any decision made to adjudicate an application
18 for relief (“adjudicate cases”), or to deport him (“execute removal orders.”)

19 4. “Petitioner [is] enforcing [his] constitutional right to due process in the
20 context of the removal proceedings – *not* the legitimacy of the removal
21 proceedings or any removal order.” *Vasquez Garcia et al. v. Noem et al.*, No.
22 25-cv-02180-DMS-MMP, 2025 WL 2549431(S.D. Cal. Sep. 3, 2025)
23 (Sabraw, J.) at *8.

24 5. Therefore, Petitioner’s detention claim is not barred by §1252(g).

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26 **b. Jurisdiction is Not Barred by 8 U.S.C. §1252(b)(9)**

27 6. Jurisdiction is also not barred by 8 U.S.C. §1252(b)(9). This statute
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1 consolidates for judicial review all questions arising in removal proceedings.
2 Review of such claims is only available “in judicial review of a final order
3 [of removal].” 8 U.S.C. §1252(b)(9).

- 4 7. Removal proceedings are separate from bond proceedings. *Matter of R-A-V-*
5 *P-*, 27 I&N Dec. 803, 804 (BIA 2020). The Southern District of California
6 has clarified that detention “may be during – but nonetheless independent of
7 – the removal proceedings. Accordingly, §1252(b)(9) does not strip this
8 Court of jurisdiction.” *Vasquez Garcia et al.*, 2025 WL 2549431 at *7. The
9 decision in Mr. Godinez’ removal proceedings will not contain any record or
10 finding regarding whether he should be detained pending those proceedings.
- 11 8. It is impossible for his detention claim to be reviewed later on a petition for
12 review to a circuit court. Accordingly, this Court has held that §1252(b)(9)
13 does not bar review of claims of unlawful detention during removal
14 proceedings. *See Vasquez Garcia et al.*, 2025 WL 2549431; *see also*
15 *Castellanos Lopez*, 2025 WL 3005346.

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17 **c. The Petitioner is Detained Under 8 U.S.C. §1226(a)**

- 18 9. On the merits, Petitioner is detained under the default detention statute, 8
19 U.S.C. §1226(a), not the provision that applies to arriving aliens, 8 U.S.C.
20 §1225(b).
- 21 10. The government erroneously states Petitioner’s detention is governed by 8
22 U.S.C. §1225(b). ECF 5 at 9-13. *See Castellanos Lopez*, 2025 WL 3005346
23 (“Respondents’ interpretation of “seeking admission” as used in the
24 mandatory detention provision of Section 1225(b)(2)(A) would seemingly
25 render that phrase mere surplusage [. . .] Respondents argue elsewhere that
26 ‘[o]ne of the most basic interpretative canon instructs that a statute should be
27 construed so that effect is given to all its provisions’ [. . .] (citing *Corely v.*
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1 *United States*, 556 U.S. 303, 314 (2009)) Respondents’ approach to the
2 mandatory detention provision at issue appears to run contrary to this
3 interpretive canon.”)

4 11. Although the government’s brief contains many references to prior court
5 decisions, there is no real wrestling with the revolutionary impact of *Matter*
6 *of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). If the law really does
7 require the mandatory detention of hundreds of thousands, if not millions, of
8 individuals currently residing in the United States, why did it take 40 years
9 of litigating under the current statutes for anyone to notice? Moreover, how
10 did IIRIRA supposedly reverse a nearly century-long statutory tradition
11 without anyone remarking on it when IIRIRA was passed? The fact that
12 *Yajure Hurtado* changes so much for so many, and conflicts with such a
13 long statutory and regulatory tradition, counsels extreme skepticism.²

14 12. The government’s argument is based on the language in §1225(b)(2)(A) that
15 defines anyone who has not been admitted as an “applicant for admission.”
16 ECF 5 at 2-3 (quoting 8 U.S.C. §1225(b)(2)(A)). From this, the government
17 argues that Petitioner must be detained under §1225.

18 13. According to the government, Mr. Godinez is an applicant for admission
19 because he has not been admitted. ECF 5 at 9-13. According to the
20 government, he is also actively seeking admission because he has not been
21 admitted. ECF 5 at 9-13. However, merely being present in the U.S. without
22 admission does not mean that someone is actively seeking admission.

23 14. Moreover, the government’s argument fails to account for the role of
24 §1225(b) in the overall statutory scheme. The Supreme Court has clarified
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26 ² “The weight of [an administrative decision] will depend upon the thoroughness evident in its consideration, the
27 validity of its reasoning, **its consistency with earlier and later pronouncements**, and all those factors which give it
28 power to persuade, if lacking power to control.” *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (emphasis
added).

1 that §1225(b) governs “aliens seeking admission into the country” whereas
2 §1226(a) governs “aliens already in the country” who are subject to removal
3 proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

4 15. The government’s argument also fails to account for all parts of §1226.
5 Section 1226(c) contains some exceptions that exclude from its reach
6 noncitizens who have not been admitted and who have certain criminal
7 convictions. The fact that they must be excluded from the reach of §1226
8 means that, absent the exceptions, they would have been included. “[I]f if §
9 1225(b)(2) already encompassed all inadmissible noncitizens, there would
10 be no need to pass an amendment that required mandatory detention for
11 those who are inadmissible under the same statutes and are being charged
12 with specific, violent crimes.” *Vasquez Garcia et al.*, WL 2549431 at *13.
13 The government’s reading is incorrect because it would make these
14 exceptions superfluous. *See Castellanos*, 2025 WL 3005346 (“There would
15 be no reason for Congress to further specify that some *subset* of those
16 noncitizens, who have committed enumerated crimes, are subject to
17 mandatory detention under Section 1226(c)(1)(E).”) “If an interpretation of
18 one provision ‘would render another provision superfluous, courts presume
19 that interpretation is incorrect.’” *Hasan*, 2025 WL 2682255, at *8 (quoting
20 *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010)).

21 16. Since DHS “attempts to upend decades of immigration practice” and its
22 interpretation conflicts with Supreme Court precedent and renders parts of
23 the detention statutes superfluous, its novel interpretation should be rejected.
24 *Hasan*, 2025 WL 2682255, at *9.

25 **d. The Court Should Order Petitioner’s Release from Custody**

26 17. Habeas corpus does not come with one single, pre-defined remedy. Rather, it
27 adapts to meet the exigencies of the moment:
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1 [C]ommon-law habeas corpus was, above all, an adaptable remedy. Its
2 precise application and scope changed depending upon the
3 circumstances. See 3 Balckstone (describing habeas as “the great and
4 efficacious writ, in all manner of illegal confinement”); see also
5 *Schlup v. Delo*, 513 U.S. 298, 319, 115 S.Ct. 851, 130 L.Ed.2d 808
6 (1995) (Habeas “is, at its core, an equitable remedy”); *Jones v*
7 *Cunningham*, 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285(1963)
8 (Habeas is not “a static, narrow, formalistic remedy; its scope has
9 grown to achieve its grand purpose”).

10 *Boumediene v. Bush*, 553 U.S. 723, 779-80 (2008); see also *Hamdi v.*
11 *Rumsfeld* 542 U.S. 507, 506 (2004) (discussing “the flexibility of the habeas
12 mechanism”).

13 18. A constitutionally adequate habeas court “must have the power to order the
14 conditional release of an individual unlawfully detained – though release
15 need not be the exclusive remedy and is not the appropriate one in every
16 case in which the writ is granted.” *Boumediene*, 553 U.S. at 779. However,
17 “[t]he typical remedy [for unlawful detention] is of course, release.”
18 *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 354-55 (S.D.N.Y. 2019)
19 (quoting *Munaf v. Green*, 553 U.S. 674, 128 S.Ct. 2207, 2221 (2008)).

20 19. Not only may the Court order Mr. Godinez’s release as the final remedy, the
21 Court may also order his release pending the Court’s decision on the merits
22 of the petition. *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001).

23 20. The remedy is entrusted to the Court’s decision, and available remedies
24 include both a bond hearing before an immigration judge and immediate
25 release from detention.

26 Dated November 26, 2025

27 Signature: /s/Alexandra Fuxa Ramirez

28 Alexandra Fuxa Ramirez