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UNITED STATES DISTRICT COURT

Southern District of California

EDGAR JOSUE SANCHEZ ALBA,

Petitioner,

v.

CHRISTOPHER J. LaROSE ; *et al.*,

Respondents.

Case Number: 25-cv-3135-AGS-(DEB)

PETITIONER'S TRAVERSE AND MEMORANDUM IN SUPPORT OF PETITION

Petitioner submits this Traverse and Memorandum to comply with the Court's order and the habeas corpus procedure and to expedite the process.

As a threshold matter, petitioner should remark that none of the material facts are in dispute. However, the Respondent's Return for some reason leapfrogs over and omits some of the important facts. For instance, it neglects to mention that after the DHS detained petitioner in May 2013 to start the current removal case, it released him on his own recognizance, conceding that petitioner was obviously not a danger or flight risk. The Return also fails to mention petitioner's attendance at several immigration court hearings before his case was closed in 2015. Finally, the Return also omits the details surrounding petitioner's re-detention by DHS. After the removal case was recalendared, DHS directed respondent to report to the ERO office for a check in. The DHS detained petitioner at the check in without any explanation and sent him to the Otay Mesa Detention Center. Anyway, there do not appear to be any material issues of fact in dispute. Therefore, what is left is to simply apply the legal principles to these undisputed facts and decide the petition. The court should immediately grant the petition because none of the arguments in the Return have any merit.

Respondent's Return urges the court to deny the petition and refuse any relief for three reasons. First, it says the court has no jurisdiction to ever consider the petition. Second, it says that petitioner should be compelled to exhaust the administrative remedies. Third, it says that the DHS may lawfully re-detain petitioner under 8 U.S.C. § 1225 for any or no reason. None of these arguments have any merit. Let us briefly examine each one of them.

Jurisdiction

Respondents first argue that 8 U.S.C. § 1252(g) prohibits this court from even considering whether petitioner's detention because it lacks jurisdiction. This argument is belied by both the statute and case law.

8 U.S.C. § 1252(g) divests the court of jurisdiction to review actions that the Attorney General may take to *commence* proceedings, *adjudicate* cases, or *execute* removal orders. (emphasis added). Here, petitioner is not asking the court to review any actions related to the *commencement* of proceedings, the *adjudication* of cases, or the *execution* of a removal order. Petitioner challenges

the purely legal question of whether he is subject to mandatory re-detention without any change in circumstances or explanation after the DHS released him on his own recognizance. So, the statute does not apply to this habeas corpus petition by its own words.

Moreover, the case law reached the same conclusion. Section 1252(g) should be ready narrowly to apply "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.' " *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (holding that constitutional challenge to prolonged detention without bond-hearing requirement is not barred by 8 U.S.C. § 1226(e)). "It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Reno*, 525 U.S. at 482. Thus, Section 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." *Jennings*, 583 U.S. at 294. *See Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884-85 (C.D. Cal. 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Navarro Sanchez v. Larose et al.*, 25-cv-2396 JES (MMP), 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose et al.*, 25-cv-1824 GPC (MSB), 2025 WL 2800149, at *7–8 (S.D. Cal. Oct. 1, 2025) (same).

Exhaustion of Administrative Remedies

Second, respondents argue that we must ensure that petitioner has exhausted the administrative remedies. Petitioner did, to the extent necessary. The exhaustion requirement for habeas claims under Section 2241 is prudential, rather than jurisdictional. *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (citing *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Petitioner requested a bond re-determination hearing with the immigration judge. The judge denied the request concluding he had no jurisdiction based on the BIA's recent decision in *Yajure Hurtado,* 29 I & N Dec. 216 (BIA 2025). It is futile to appeal this decision to the Board of Immigration Appeals (BIA). The decision came from the BIA. The BIA would obviously reach the same (wrong) conclusion that the immigration judge has no jurisdiction to consider a bond. Or, Respondents and the BIA would argue that petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C.

§ 1225(a)(1), 1225(b)(2)(A), The immigration judge and BIA will also not consider the primary basis of this habeas corpus petition: that petitioner was unlawfully re-detained and is not subject to mandatory detention under 8 U.S.C. § 1225. So, petitioner had exhausted the administrative remedies to the extent needed for a decision on the petition.

Re-Detention

Third, respondent's argue that petitioner is subject to mandatory detention under 8 U.S.C. § 1225 and the re-detention after the original release from detention was lawful. Once again, respondents are wrong. The mandatory re-detention issue actually has two facets: (1) was the re-detention lawful; and (2) is petitioner detained under 8 U.S.C. § 1225 or 8 U.S.C. § 1226? Given the somewhat new and drastic change in DHS policy, this is developing case law. However, multiple district courts have now been able to grapple with and decide these legal issues.

First, multiple district courts have concluded that the DHS cannot just arbitrarily re-detain an individual without any explanation or change in circumstances. For instance, in *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), the court reached this conclusion relying on the Due Process Clause:

... **even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody**. *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention."); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond."). *Id.* (emphasis added). Other courts, including this Court, have held similarly. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *see also Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme

Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.").

The DHS initially detained petitioner in 2013 but released him on his own recognizance. Petitioner's release on OR was a concession that he was not a danger to the community or flight risk. Petitioner hired an attorney and attended many court hearings. Petitioner was stunned when the DHS officers detained him in October 2025 and sent him to the immigration jail for no reason.

Notably, the respondent's Return also provides no explanation or justification for the re-detention after his OR release. This occurred based upon the whim of the respondents, apparently in a strenuous effort to boost the President's deportation numbers. The re-detention was a malicious and unlawful violation of Due Process.

Finally, Respondents argue that petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the BIA's decision in *Yajure Hurtado,* 29 I & N Dec. 216 (BIA 2025), affirming the government's new interpretation of § 1225. Multiple Courts, including this one, have rejected this argument.

As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do").

Multiple District Courts across the entire United States have recently concluded that the government's proposed interpretation of the statute (a) disregards the plain meaning of section 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior statutory interpretation and practice. The following quote is a representative example:

> "The Court follows other decisions in this Circuit finding that "seeking admission requires an affirmative act such as entering the United States or applying for status, and that it does not apply to individuals who, like [Petitioner], have been residing in the United States and did not apply for admission or a change of status." *Mosqueda v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,

> 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1 ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025) (finding that petitioner who was released on bond and rearrested was entitled to a bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)."

Esquivel-Pina v. LaRose, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24, 2025).

Respondents cite a string of cases where a scattering of district courts across the country have concluded a long-time resident of the United States is somehow subject to detention under 1225 instead of 1226, including one in the Southern District of California. This includes numerous decisions from the Southern District of California.

Attorney Fees

Petitioner has requested costs and attorney's fees in this action pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. The EAJA provides in part:

> A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney ... representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record ... which is made in the civil action for which

fees and other expenses are sought.

28 U.S.C. § 2412(d)(1)(B).

In this case, it appears the unlawful re-detention of petitioner was arbitrary and unjustifiable, if not intended to be punitive and malicious. A cynical or jaded mentality could conclude that the recent mass re-detentions of non-citizens are a calculated plan to break the hope and spirit of persons in removal proceedings leading them to give up the fight and abandon their cases in despair—thus leading to more bodies deported from the United States. More importantly, it seems that these issues have already been decided multiple times in the Southern District of California but respondents continue to detain people and oppose habeas corpus petitions. Respondents actions are not justified.

Conclusion

So, to summarize: the court has jurisdiction to decide the petition and the administrative remedies have been exhausted enough to ripen the case. Respondent's violated the APA and Due Process by the re-detention after his release. Petitioner was entitled to a pre-deprivation of liberty hearing and an explanation as to why he is being sent to the immigration jail. The court should order the following: (1) petitioner's immediate release from the jail; (2) that he is not subject to re-detention without a hearing where respondents must prove by clear and convincing evidence that he is a danger or flight risk; and (3) respondents to pay petitioner's attorney fees.

DATED: 12 December 2025

Respectfully submitted,

/s/ *William Baker*
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MORENO & ASSOCIATES