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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

R.M., *Detainee, Otay Mesa Detention Center*,

Petitioner,

v.

CHRISTOPHER J. LAROSE, *as Senior Warden, Otay Mesa Detention Center*; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, *as Secretary of the United States Department of Homeland Security*; TODD LYONS, *as Acting Director of U.S. Immigration and Customs Enforcement*; DOE 1, *ICE Enforcement and Removal Office Field Operations Director for San Diego*; and DOES 2–10.

Respondents.

Case No: 25-cv-3186-AGS-DEB

PETITIONER'S REPLY IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Judge: Hon. Andrew G. Schopler

I. INTRODUCTION AND FACTUAL BACKGROUND

Petitioner R.M. ("Petitioner" or "R.M."), files this reply in support of his Petition for Writ of *Habeas Corpus*. Dkt. No. 1 ("Petition") and Motion for a Temporary Restraining Order and Preliminary Injunction, Dkt. No. 7. R.M. filed his Petition on November 17, 2025, after more than four months of unlawful detention, alleging violations of his Fifth Amendment Due Process rights and the Administrative Procedure Act ("APA"). Petition ¶¶ 37–54. He subsequently filed a Motion for a Preliminary Injunction and Temporary Restraining Order on November 24, 2025, to which Respondents filed an Opposition. Dkts. No. 7, 9.

R.M. is an Azerbaijani man who entered the United States on or around March 6, 2024, without inspection but with no criminal history. Petition ¶ 1. After initial contact with immigration officials, he was issued a Notice to Appear before an immigration and placed in removal proceedings pursuant to INA § 240 (8 U.S.C. § 1229a, "Section 240 Proceedings"), but was released into the United States without detention. *See id.* ¶ 5; Dkt. No. 9-2 at 3.[1] Within one year of his entry into the United States, R.M. applied for asylum. Petition ¶ 5. At a mandatory immigration hearing before an immigration judge on June 25, 2025,[2] Respondent Department of Homeland Security ("DHS") orally moved to dismiss his case without notice, and the immigration judge granted that motion. Dkt. No. 9-2 at 15–17. Respondent Immigration and Customs Enforcement ("ICE") arrested R.M. in the hallway of the immigration court in San Diego and R.M. has been detained ever since. Petition ¶¶ 22–26. Notably, ICE arrested him under an I-200 warrant—a warrant issued under INA § 236 (8 U.S.C. § 1226). Doc. No. 9-2 at 10.

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[1] All pagination within corresponds to CM/ECF pagination stamps.

[2] Having further reviewed the relevant documents, Petitioner clarifies a previous inconsistency with the relevant dates: Petitioner was arrested at an immigration hearing on June 25, 2025, and placed into expedited removal proceedings on that same day, following his arrest. *See* Dkt. No. 9-2 at 10, 12.

After his arrest, Respondent Department of Homeland Security ("DHS") placed R.M. in "expedited removal" proceedings under INA § 235 (8 U.S.C. § 1225(b)) ("Section 235 proceedings"). *See* Doc. No. 9-2 at 12. On September 4, 2025, R.M. received a positive finding of credible fear during a credible fear interview and was placed back in standard Section 240 proceedings. *See* Doc. No. 9-2 at 19. Despite this, R.M. remains detained. Petition ¶¶ 22–26.

II. LEGAL ARGUMENT

In their Opposition, Respondents present arguments that are either incorrect or nonresponsive to R.M.'s arguments. The Court should grant the Petition and Motion for a Temporary Restraining Order and Preliminary Injunction because: (A) Petitioner is still detained, and thus his claims are not moot; (B) *habeas corpus* proceedings are the proper vehicle for R.M.'s claims; (C) the Court has jurisdiction to hear the claims; and (D) both the preliminary and ultimate relief sought are proper.

A. As he remains detained, Petitioner's claims are not moot.

Because R.M. remains in immigration detention, his Petition for writ of *habeas corpus*—which seeks only his release from immigration detention—is not moot. Provided there is a "cognizable legal interest" in the outcome of the case and an "actual controversy about the [Petitioner's] particular legal rights," a case is not moot. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90–91. Though Respondents argue that R.M.'s placement back into 240 Proceedings moots his claim, the actual controversy is obvious: Petitioner filed a petition for writ of *habeas corpus* alleging that he is unlawfully detained. *See generally* Petition. The relief he seeks is release from this unlawful detention. *See id.* ¶ 61. As he remains incarcerated and that relief remains a type that the Court may grant, the case is still live and not moot.

District courts have rejected Respondents' argument before. For example, considering a nearly identical *habeas* petition in *Noori v. LaRose*:

> Respondent argues that "Petitioner's causes of action arise from his placement in expedited removal proceedings,"

> and because he is now in new 240 proceedings rather than expedited removal proceedings, the petition is moot. However . . . the petition asks the Court to "determine if his detention was lawful and, if not, that he be released." The issue is "not whether [Petitioner] can file his asylum claim." As Petitioner is still detained and contests the lawfulness of the expedited removal proceedings that led to his detainment, the petition[] . . . [is] not moot.

Noori v. LaRose, No. 25-cv-1824-GPC-MSB, *5 (S.D. Cal. Oct. 1, 2025) (record citations omitted).

Here, Petitioner alleges only that he is held in detention in violation of the Fifth Amendment and the APA, and seeks only that he be released from detention. *See generally* Petition. Respondents' arguments about the likelihood of his deportation, therefore, are wholly nonresponsive to the case he brings. Accordingly, the petition is not moot.

B. *Habeas corpus* is the proper vehicle for this action

Though Defendants argue that this case is an improper use of *habeas corpus* proceedings because, they assert, R.M. seeks to challenge his placement into expedited removal proceedings, R.M. in fact seeks *only* to challenge the lawfulness of his custody and does not seek to collaterally attack his removal proceedings or the termination of his original Section 240 proceedings. *See* Petition at ¶ 25 n.2 ("Petitioner asserts that placing him in expedited proceedings was unlawful and thus invalid, but *that issue is not raised in this petition*." (emphasis added)). Petitioner therefore uses the writ of *habeas corpus* for its traditional purpose: to challenge the legality and validity of his ongoing detention. *See* 28 U.S.C. § 2241(c); *see also Nettles v. Grounds*, 830 F.3d 922, 927–34 (9th Cir. 2016) (discussing the difference between 42 U.S.C. § 1983 claims and *habeas* claims, generally). To the extent Petitioner discusses 8 U.S.C. §§ 1225, 1226, or 1229a in his Petition, he does so to explain the government's anticipated justifications for detention and why they are

insufficient to justify it on a constitutional or statutory level. The Petition does not challenge his removal proceedings and is therefore proper.

As with Respondents' mootness argument, district courts have rejected their nearly identical arguments other *habeas* cases. *See, e.g.*, *Noori*, 2025 WL 2800149 at *5–6; *Garcia v. Noem*, ---F. Supp. 3d ----, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 *3 (S.D. Cal. Sept. 3, 2025). Furthermore, unlike other cases dismissed as improper *habeas* petitions, Petitioner does not allege quality of confinement issues, medical treatment issues, or other ancillary civil rights claims related to his confinement. *Cf., e.g. Giron Rodas v. Lyons*, No. 25CV1912-LL-AHG, 2025 WL 2300781 (S.D. Cal. Aug. 1, 2025) (alleging failure to provide medical care); *Guselnikov v. Noem*, No. 3:25-CV-1971-BTM-KSC, 2025 WL 2300783 (S.D. Cal. Aug. 8, 2025) (challenging the government's refusal to provide a credible fear interview). As he challenges only the lawfulness of his detention, his Petition is properly one for *habeas corpus*.

C. The Court has jurisdiction to hear Petitioner's claims

Though Respondents invoke 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a)(2)(A) and 1252(e)to argue that the Court lacks jurisdiction to hear Petitioners' claims, each of their arguments relies on a misunderstanding of the relevant facts or applicable law.

1. Because Petitioner does not challenge an enumerated discretionary action, 8 U.S.C. § 1252(g) does not deprive the Court of jurisdiction.

As district courts find regularly, 8 U.S.C. § 1252(g) does not bar Petitioner's claim for *habeas* relief. That section insulates from judicial review only "three discrete actions . . . [by] the Attorney General . . . : 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) (emphasis original).

Here, Petitioner does not challenge his underlying removal case. Nor does he challenge any decision to commence removal proceedings, any adjudication of his case, or the execution of any removal order.[3] Instead, he challenges only the unlawful revocation of the parole he was granted upon release into the country. Thus, as the courts in the Southern District of California agree, § 1252(g) does not bar his claims. *See, e.g.*, *Noori*, 2025 WL 2800149 at *6–7; *Garcia v. Noem*, --- F. Supp. 3d ----, 2025 WL 2549431 at *4 ("Petitioners do not contest the charges brought against them or the initiation of removal proceedings. Instead, Petitioners argue that they should be provided a bond hearing in accordance with § 1226(a), to determine their detention status during the removal proceedings.") (internal citations omitted); *Beltran v. Noem*, No. 25-cv-2650-LL-DEB, 2025 WL 3078837 *2 (S.D. Cal. Nov. 4, 2025); *Sanchez v. LaRose*, No. 25-cv-3136-JLS-JLB, 2025 WL 3268590 *2 (S.D. Cal. Nov. 24, 2025). The Court therefore has jurisdiction to adjudicate the Petition.

2. 8 U.S.C. § 1252(b)(9) does not bar the Petition because it challenges only issues ancillary to R.M.'s removal proceedings

Turning to Respondents' next argument, 8 U.S.C. § 1252 (b)(9) does not bar the Petition because the claims here do not directly "arise" from or challenge Petitioner's removal proceedings. While § 1252(b)(9) bars review of "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States," the Supreme Court has definitively determined that "§ 1252(b)(9) 'does not present a jurisdictional bar' where those bringing suit 'are not asking for review of an order of removal,' 'the decision . . . to seek removal,' or 'the process by which . . . removability will be determined.'" *D.H.S. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (quoting *Jennings v. Rodriguez* 583 U.S. 281, 294 (2018)); *see also Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (Alito, J., plurality portion). As specifically applied in *Jennings v. Rodriguez*, § 1252 (b)(9)

[3] It is undisputed that Petitioner has not received a final order of removal.

does not bar proceedings merely because a removal proceeding was a but-for cause of the claims. 583 U.S. at 292–93.

Indeed, where a Petition raises claims only ancillary to the underlying immigration removal proceedings, and does not challenge removal, § 1252(b)(9) is inapplicable. *See Gonzalez v. I.C.E.*, 975 F.3d 788, 810–11 (9th Cir. 2020). Applying Supreme Court precedent, district courts in this district have recognized that this provision does not prevent them from reviewing *habeas* petitions like that filed here. *See, e.g.*, *Noori*, 2025 WL 2800149 at *7; *Beltran*, 2025 WL 3078837 at *3; *Sanchez*, 2025 WL 3268590 at *2; *Garcia v. Noem*, --- F. Supp. 3d ----, 2025 WL 2549431 at *3–4. As discussed above, Petitioner challenges only his detention, not his removal proceedings themselves. Thus, § 1252(b)(9) does not bar his Petition.

3. 8 U.S.C. §§ 1252(a)(2)(A) and 1252(e) do not bar Petitioner's claims because he does not challenge the decisions those provisions insulate, and was not subject to expedited removal upon detention

Finally, neither 8 U.S.C. §§ 1252(a)(2)(A) nor 1252(e) bar Petitioner's claims here. As a preliminary matter, these provisions only preclude judicial review of certain issues involving expedited removal processes under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a), (e); *Noori*, 2025 WL 2800149 * 7–8. However, relevant to Petitioner's claims, he was not subject to expedited removal until after his arrest and detention. As discussed above, Petitioner was initially placed into standard Section 240 removal proceedings upon entry into the country. Though DHS dismissed his proceedings on the day of his arrest, ICE continued to treat him as subject standard removal proceedings, rather than expedited removal, by arresting him under an I-200 warrant issued pursuant to INA § 236 (8 U.S.C. § 1226). Dkt. No. 9-2 at 10. As such, expedited removal proceedings were not initiated at the time of his arrest or the decision to detain him. *See Pablo Sequen v. Kaiser*, No. 25-CV-06487-PCP, --- F. Supp. 3d. ----, 2025 WL 2650637 at *7 (N.D. Cal, Sept. 16, 2025) (determining that the petitioner could not be detained under 8 U.S.C. § 1225 because "interpreting § 1225(b)(2) to cover noncitizens arrested on a warrant would render superfluous

much of § 1226(c), including a subsection added by Congress in 2025.");. Likewise, Petitioner is no longer in expedited removal proceedings—which Respondents admit. *See* Opp'n at 6–7. Thus, these provisions are irrelevant.

Even entertaining the provisions' relevance, Respondents are incorrect as to their application. Neither §§ 1252(a)(2)(A) nor 1252(e) applies because, again, Petitioner does not seek to challenge the decision to place him in *removal proceedings* pursuant to Section 235 (8 U.S.C. § 1225). *See Noori*, 2025 WL 2800149 at *8 ("Rather than questioning the exercise of discretion in selecting the expedited removal process, Petitioner is challenging the way Respondents revoked his . . . parole . . . and detained him, all in violation of the Constitution and the laws of this country.") (collecting cases); *accord De Andrade v. Moniz*, --- F. Supp. ---- No. 25-CV-12455-FDS, 2025 WL 2841844 *2 (D. Mass. Oct. 7, 2025); *see also E.V. v. Raycraft*, No. 4:25-CV-2069, 2025 WL 3122837 *6 (N.D. Ohio Nov. 7, 2025) (collecting cases). Much like § 1252 (b)(9), Petitioner's claims are, at most, ancillary to his placement in expedited removal proceedings, and are not barred.

Some courts have gone further, finding that "the jurisdiction-stripping provisions of 8 U.S.C. § 1252 apply over final orders of removal." *Noori*, 2025 WL 2800149 at *8 (collecting sources). Thus "[w]here a petitioner does not challenge any final order of removal, but challenges his detention prior to the issuance of any such order[,] the jurisdiction-stripping provisions do not apply." *Id.* (internal quotation marks omitted). Here there is no removal order. Regardless of approach, this Court has jurisdiction.

D. Both interim and final release are proper

As Petitioner set forth in his Petition and Motion for Temporary Restraining Order and Preliminary Injunction, he is entitled to release from custody immediately. First, Petitioner is likely to succeed on the merits of his Fifth Amendment and APA claims. As the Court noted in its Order Requiring Response, "[f]unctionally identical cases across California have been found to have a 'likelihood of success on the

merits' or have resulted in the writ being issued." Dkt. No. 6 at 4. Petitioner sets forth straightforward allegations: that, after initially releasing him on his own recognizance, the government re-arrested and re-detained him without any notice or opportunity for pre-detention hearing, thus violating his Fifth Amendment rights and the mandatory procedures set forth in the INA and implementing regulations. As the Court stated, district courts have granted identical claims frequently over the last year, on the same grounds alleged now. *Id.* (collecting cases); *see also Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123 (D. Or. 2025) (APA claims); *Lopez Benitez*, 2025 WL 2371588 (Fifth Amendment); *Garcia v. Noem*, --- F. Supp. 3d ----, 2025 WL 2549431. With one immaterial discrepancy as to the date of arrest, even the evidence Respondents submit in opposition bears out Petitioner's claims.

The government, however, argues their case only with novel interpretations of the Fifth Amendment and by waving away the APA. First, the government overreads *D.H.S. v. Thuraissigiam* to argue that, by virtue of his means of entry and regardless of how long he remains in the country, Petitioner could never hold Fifth Amendment rights (unless, one assumes, he wins his asylum case). Opp'n at 17. *Thuraissigaim*, of course, does not support this proposition. While the Supreme Court there held that the Fifth Amendment Due Process right did not attach to an individual who made it 25 yards into the country before detention, this was because individuals detained upon "initial entry"—literally crossing the border—had not truly meaningfully "entered the country," and were thus in materially the same position as someone with a slower split pace. 591 U.S. 103, 139 (2020). The Court recognized, however, a meaningful difference between individuals apprehended immediately upon entry at the border and those who "acquire[] domicil[e] or residence within the United States . . ." when it comes to the attachment of constitutional rights. *Id.* at 138.

Courts applying *Thuraissigaim* likewise have recognized that its rationale does not extend to those who have lived in the U.S. for an extended period. *See*

Noori, 2025 WL 2800149 at *9–10; *Pablo Sequen*, --- F. Supp. 3d ----, 2025 WL 2650637 at *5–6; *Salcedo Aceros*, 2025 WL 2637503 at *6; *Y-Z-L-H*, 792 F. Supp. 3d at 1146. For that category of individuals, the Fifth Amendment guarantee of Due Process attaches. *Id.* Here, R.M. entered the United States over one year before his arrest, during which time he lived free from detention. *See* Dkt. No. 9-2 at 3, 10.

Regardless, Petitioner is afforded a constitutional Due Process right by virtue of DHS's decision to release him on his own recognizance upon his initial entry. *Pablo Sequen*, --- F. Supp. 3d. ----, 2025 WL 2650637 at *5 ("Even when the government has discretion to detain an individual, its subsequent decision to release the individual creates 'an implicit promise' that she will be re-detained only if she violates the conditions of her release."); *Noori*, 2025 WL 2800149 at *11; *Salcedo Aceros*, 2025 WL 2637503 at *7 (In this case, [Petitioner] gained a liberty interest in her continued freedom when the DHS elected to release her on her own recognizance."). Thus, Petitioner is entitled to Fifth Amendment rights, which Respondents violated. Their reliance on the INA to nullify those rights is fruitless.

As to Petitioner's APA claim, Respondents muster only the argument that "it is not altogether clear what final agency action Petitioner seeks review over." Opp'n at 19. The claim, however, is clear: as in *Noori*, Petitioner argues that the decision to detain him, without the notice or hearing required by the INA and implementing regulations, constituted a final agency action that he now challenges. *See Noori*, 2025 WL 2800149 at *12–13. Such claims are not novel, and district courts in the Ninth Circuit have granted *habeas* relief on identical grounds. *See, e.g.*, *id.*; *Y-Z-L-H*, 792 F. Supp. 3d at 1144–46.

Finally, courts have regularly rejected Respondents' interpretations of the interplay between 8 U.S.C. §§ 1226 and 1225, consistently holding that this reading would obviate § 1226 when applied to individuals in R.M.'s circumstances. *See, e.g.*, *Pablo Sequen*, --- F. Supp. 3d.---- *6–8; *Salcedo Aceros*, 2025 WL 2637503 at *7–12; *Beltran*, 2025 WL 3078837.

Turning to Petitioner's irreparable harm, Respondents cannot escape that "[d]eprivation of physical liberty by detention constitutes irreparable harm" or that "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Arevalo v. Hennessy*, 882 F.3d 763, 766–67 (9th Cir. 2018) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). At best, Respondents find one case that supports a proposition that civil detention is not so irreparable as to warrant waiving administrative exhaustion—a different issue. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659 *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 854 Fed. Appx. 190 (Mem.) (9th Cir. July 21, 2021). Second best, a case from the Northern District of California that, without citing any authority, found that "[b]ecause this type of irreparable harm is essentially inherent in detention, the Court cannot weigh this strongly in favor of Petitioner . . . ." *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861 *11 (N.D. Cal. Dec. 24, 2018).[4] These cases do not weigh against relief here.

As to the remaining considerations, "[a] plaintiff's likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors [for preliminary relief] decisively in his favor." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023). Petitioner has shown a likelihood of success and is entitled to all relief.

III. CONCLUSION

For these reasons, the Court should grant Petitioner's Motion and Petition.

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[4] That court backed away from this approach in a subsequent order, distinguishing between mere detention and detention without bond hearing:

> Although Petitioner has alleged harms that are essentially inherent in detention, his argument is that his detention is no longer justified. If Petitioner can demonstrate that he is not a current danger to society, then every day he remains in custody without an opportunity to make this showing at a bond hearing causes him irreparable harm.

Lopez Reyes v. Bonnar, 362 F. Supp. 3d 762, 778 (N.D. Cal. 2019).

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Respectfully submitted,

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