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10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **VICENTE SALAZAR-OSORIO,**
 13 **Petitioner,**

14 **v.**

15 **KRISTI NOEM, Secretary of the**
 16 **Department of Homeland Security,**
 17 **PAMELA JO BONDI, Attorney General,**
 18 **TODD M. LYONS, Acting Director,**
 19 **Immigration and Customs Enforcement,**
 20 **JESUS ROCHA, Acting Field Office**
 21 **Director, San Diego Field Office,**
 22 **CHRISTOPHER LAROSE, Warden at**
 23 **Otay Mesa Detention Center,**
 24 **Respondents.**

CIVIL CASE NO.: 25-cv-03296-JES

**Traverse
 in Support of
 Petition for a Writ
 of Habeas Corpus**

25 **INTRODUCTION**

26 Vicente Salazar-Osorio's habeas petition explained that ICE (1) failed to
 27 comply with § 241.4(l) before redetaining him, and (2) wrongfully revoked his IJ-
 28 issued bond order under § 1226(b) without any changed circumstances justifying
 that decision. The government does not dispute that ICE failed to follow § 241.4(l)
 and had no justifying changed circumstances for a § 1226(b) revocation. But the

1 government argues that neither § 241.4(l) nor § 1226(b) apply to Mr. Salazar
2 Osorio. These arguments do not help the government avert release.

3 First, Mr. Salazar-Osorio falls squarely within the plain language of
4 § 241.4(l)(1), the regulation mandating immediate notice and a prompt hearing.
5 That section applies to “[a]ny alien described in paragraph (a) . . . of this section”—
6 including an inadmissible person, *see* 241.4(a)(1)—“who has been released under
7 an order of supervision.” 8 C.F.R. § 241.4(l)(1). ICE paperwork and an attachment
8 to this traverse show that (1) Mr. Salazar Osorio is inadmissible, and (2) he was
9 released on an order of supervision. The regulation therefore applies to him. The
10 government makes no reasoned argument why his status as an *Aleman* bond
11 recipient would alter that conclusion.

12 Second, the suggestion that § 1226(b) does not apply to Mr. Salazar-Osorio
13 only strengthens the case for release. Section 1226(b) provides the statutory
14 authority that lets ICE revoke a bond. If § 1226(b) does not apply to this bond, then
15 ICE has no authority to revoke it. Thus, either § 1226(b) does apply, in which case
16 ICE must identify changed circumstances prior to revocation, or it doesn’t, in which
17 case ICE has no authority to revoke at all. Either way, ICE violated Mr. Salazar-
18 Osorio’s due process rights by unlawfully revoking bond.

19 **ARGUMENT**

20 **I. Count 1: Section 241.4(l)(1) applies to Mr. Salazar-Osorio by its plain**
21 **terms.**

22 Mr. Salazar Osorio’s petition pointed out that the government had not
23 complied with 8 C.F.R. § 241.4(l) before redetaining him. Doc. 1 at 3–6. The
24 government does not dispute that ICE failed to comply with § 241.4(l) but argues
25 that § 241(l) does not apply to Mr. Salazar-Osorio. Doc. 6 at 6–7. The regulation’s
26 plain language disproves that argument.

27 Section 241(l)(1) states that its requirements apply to “[a]ny alien described
28 in paragraph (a) or (b)(1) of this section who has been released under an order of

1 supervision.” 8 C.F.R. § 241.4(l)(2). Section 241(a), in turn, lists four categories of
2 immigrants, including “[a]n alien ordered removed who is inadmissible under
3 section 212 of the Act.” 8 C.F.R. § 241(a)(1). Putting that together, § 241(l)(1)’s
4 requirements apply to noncitizens made inadmissible under INA § 212 who are
5 released on an order of supervision.

6 Mr. Salazar-Osorio is inadmissible under INA § 212. Specifically, according
7 to the government’s paperwork, he is inadmissible under “212a6ai – ALIEN
8 PRESENT WITHOUT ADMISSION OR PAROLE.” Doc. 6-1 at 4.

9 He was also subject to an order of supervision. It is attached as Exhibit A.

10 Therefore, by § 241(l)(1)’s plain terms, that section applies to him.

11 The government’s only contrary argument relies on the vehicle for
12 Mr. Salazar-Osorio’s release. The government points out that he was released on
13 an *Aleman* bond, not after a custody review. Doc. 6 at 6–7. But the government
14 does not point to any part of § 241(l)(1)’s language that makes that distinction
15 relevant. In fact, the government makes no reasoned argument at all. It simply
16 asserts, without citation, that “Petitioner was not previously released on an order of
17 supervision under 8 C.F.R. § 241.4; therefore, ICE was under no obligation to
18 comply with 8 C.F.R. § 241.4(l) upon re-detention.” Doc. 6 at 6. This Court should
19 reject that bare assertion in favor of the regulation’s plain terms.

20 The government also points out that Mr. Salazar-Osorio is in withholding-
21 only proceedings, and therefore, the government may detain him under § 1231(a).
22 Doc. 6 at 5–6. But Mr. Salazar-Osorio’s Count 1 claims do not contest the
23 government’s general authority to detain him. They are based on the government’s
24 failure to follow its own regulations when exercising detention authority. The
25 government’s points therefore “confuse[] [Mr. Salazar-Osorio’s] right to an order
26 of supervision, which ICE indeed has discretion to grant or deny, with his right not
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1 to be detained without adequate—in fact, without *any*—process.” *Ceesay v.*
2 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025).¹

3 Because § 241.4(l)’s requirements apply to Mr. Salazar-Osorio, this Court
4 must release him. Many courts have held—and the government does not here
5 dispute—that that section requires notice upon revocation and a prompt informal
6 interview. *See, e.g., Truong v. Noem*, 25-cv-2597-JES, Dkt. 13 at 10 (S.D. Cal. Oct.
7 22, 2025); *Ghafouri v. Noem*, 25-cv-2675-RBM, Dkt. 11 at 7–8 (S.D. Cal. Nov. 4,
8 2025); *Martinez v. Noem*, 25-cv-2740-BJC, Dkt. 13 at 5 (S.D. Cal. Nov. 13, 2025).
9 And it is uncontested that Mr. Salazar-Osorio received neither.

10 Finally, the government’s prejudice arguments and claims that these
11 regulations do not protect due process have both been repeatedly rejected. *See, e.g.,*
12 *Ghafouri v. Noem*, 25-cv-2675-RBM, Dkt. 11 at 9–12 (S.D. Cal. Nov. 4, 2025); 25-
13 cv-2740-BJC, Doc. 13 at 8 (S.D. Cal. Nov. 13, 2025); *Soryadvongsa v. Noem*, 25-
14 cv-2663-AGS, Dkt. 11 at 4–5 (S.D. Cal. Nov. 8, 2025). That is because no prejudice
15 showing is required when a regulation protects due process rights, as these
16 regulations do. *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019); *Ceesay*,
17 781 F. Supp. 3d at 165 n.26. In any case, Mr. Salazar-Osorio can show prejudice.
18 He has been a model releasee, and there is no reason to detain him at taxpayer
19 expense while his withholding proceedings remain pending. Doc. 1-2 at ¶¶ 8, 16.
20 That is especially true because he has severe mental health issues that have
21 deteriorated in custody. *Id.* at ¶ 2. Thus, if he were provided notice of the reasons
22 for re-detention and a hearing to contest it, a reasonable interviewer very well may
23 have chosen not to detain him.

24 On this ground alone, then, this Court must grant the petition.

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26 ¹ Count 2 argues that the valid bond order in Mr. Salazar-Osorio’s case limits ICE’s
27 discretion to revoke release. But even if the bond order did not exist, ICE still would
28 have violated due process because it did not follow its own regulations before doing
redetaining him. Thus, this Court does not need to decide for purposes of this Count
whether the bond order modifies ICE’s discretion.

1 **II. Count 2: If indeed § 1226(b) does not apply to Mr. Salazar-Osorio, then**
2 **ICE lacks any statutory authority to revoke Mr. Salazar-Osorio’s bond.**

3 Additionally, the petition explained that ICE violated the IJ’s bond order by
4 cancelling Mr. Salazar-Osorio’s bond under § 1226(b) without changed
5 circumstances justifying cancellation.² Doc. 1 at 6–7. The government’s response
6 only reinforces the illegality of ICE’s actions.

7 According to the government, Mr. Salazar-Osorio’s *Aleman* bond was not
8 issued under § 1226(a) or subject to § 1226(b). Doc. 6 at 6–7. Thus, says the
9 government, case law cases enforcing the changed circumstances requirement does
10 not apply to Mr. Salazar-Osorio, because those cases interpret 8 U.S.C. §§ 1226(a),
11 (b). *Id.*

12 If that is true, however, so much the worse for the government. That’s
13 because ICE’s authority to cancel bonds arises under § 1226(b). That section
14 provides that “[t]he Attorney General at any time may revoke a bond or parole
15 authorized under [§ 1226](a), rearrest the alien under the original warrant, and
16 detain the alien.” 8 U.S.C. § 1225(b). But if § 1226(b) does not apply because
17 Mr. Salazar-Osorio’s bond was not “authorized under [§ 1226](a),” that just means
18 that ICE lacked *any* statutory authority to unilaterally revoke the bond.

19 Thus, if this Court does not resolve the petition on Count 1, the government’s
20 response leaves this Court with two possible reasons to grant the petition on Count
21 2. Either ICE did have discretion to revoke the bond under § 1226(b), in which case
22 the Board of Immigration Appeals’ limitations on those revocations apply. *See dos*
23 *Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988, at *9 (D. Mass. Aug.
24 14, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). Or ICE
25 did not have discretion to revoke the bond under § 1226(b), in which case the
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28 ² The government does now provide evidence that the bond was cancelled.

1 cancellation was *ultra vires*. Either way, ICE exceeded their statutory authority,
2 requiring Mr. Salazar-Osorio’s release on the original bond.

3 Finally, the government says that there was no prejudice. Doc. 6 at 6–7. But
4 of course there was. Under BIA precedent, ICE may not revoke a bond absent
5 changed circumstances. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal.
6 2019). Here, the Return does not claim that there were any changed circumstances
7 justifying revocation. Therefore, if ICE had followed the rules, Mr. Salazar-
8 Osorio’s bond would not have been revoked. That is doubly true if, as the
9 government’s arguments imply, § 1226(b) is inapplicable and ICE had no authority
10 to revoke bond at all.

11 This Court should therefore grant the petition on both counts.

12 **III. The government’s jurisdictional arguments are meritless.**

13 Finally, the government’s jurisdictional arguments lack merit.

14 Contrary to the government’s claims, Doc. 7 at 3-4, § 1252(g) does not bar
15 review of “all claims arising from deportation proceedings.” *Reno v. Am.-Arab*
16 *Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts “have
17 jurisdiction to decide a purely legal question that does not challenge the Attorney
18 General’s discretionary authority.” *Ibarra-Perez v. United States*, __ F.4th __, 2025
19 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up). “[Section] 1252(g) does
20 not prohibit challenges to unlawful practices merely because they are in some
21 fashion connected to removal orders.” *Id.* Instead, 1252(g) is “limited . . . to actions
22 challenging the Attorney General’s discretionary decisions to initiate proceedings,
23 adjudicate cases, and execute removal orders.” *Arce v. United States*, 899 F.3d 796,
24 800 (9th Cir. 2018). It does not apply to arguments that the government “entirely
25 lacked the authority, and therefore the discretion,” to carry out a particular action.
26 *Id.* at 800. Thus, § 1252(g) applies to “discretionary decisions that [the Secretary]
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1 actually has the power to make, as compared to the violation of his mandatory
2 duties.” *Ibarra-Perez*, 2025 WL 2461663, at *9.

3 That means that § 1252(g) does not apply to Mr. Salazar-Osorio’s claims, as
4 they challenge only violations of ICE’s mandatory duties under statutes,
5 regulations, and the Constitution. Accordingly, “[t]hough 8 U.S.C § 1252(g),
6 precludes this Court from exercising jurisdiction over the executive’s decision to
7 ‘commence proceedings, adjudicate cases, or execute removal orders against any
8 alien,’ this Court has habeas jurisdiction over the issues raised here, namely the
9 lawfulness of [Mr. Salazar-Osorio’s] continued detention.” *Y.T.D.*, 2025 WL
10 2675760, at *5. Many courts agree. *See, e.g., Kong*, 62 F.4th at 617 (“§ 1252(g)
11 does not bar judicial review of Kong’s challenge to the lawfulness of his detention,”
12 including ICE’s “fail[ure] to abide by its own regulations”); *Cardoso v. Reno*, 216
13 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts from
14 reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954, 957 (7th
15 Cir. 1999) (1252(g) did not apply to a “claim concern[ing] detention”); *J.R. v.*
16 *Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June
17 30, 2025) (1252(g) did not apply to claims that ICE was “failing to carry out non-
18 discretionary statutory duties and provide due process”).

19 The government’s argument that § 1252(b)(9) bars review is even weaker. In
20 *Jennings v. Rodriguez*, the Supreme Court held that “§ 1252(b)(9) d[id] not present
21 a jurisdictional bar” to “decid[ing] ‘questions of law,’ specifically,
22 whether . . . certain statutory provisions require detention without a bond hearing.”
23 583 U.S. 281, 292, 294–95 (2018). A Supreme Court plurality in *Nielsen v. Preap*
24 soon reiterated the point, holding that the Court had jurisdiction to review a bond
25 hearing issue because petitioners were not “challenging any part of the process by
26 which their removability will be determined.” 586 U.S. 392, 402 (2019) (plurality
27 opinion). The year after that, the Ninth Circuit held that “[s]ection 1252(b)(9) [was]
28 also not a bar to jurisdiction over noncitizen class members’ claims . . . challenging

1 the legality of detention pursuant to an immigration detainer,” because such claims
2 “are independent of the removal process.” *Gonzalez v. United States Immigr. &*
3 *Customs Enft*, 975 F.3d 788, 810 (9th Cir. 2020). These cases all stand for the
4 proposition that detention-based claims, wholly independent of any challenge to
5 removal, are not within § 1252(b)(9)’s ambit. *See Garcia v. Noem*, No. 25-CV-
6 02180-DMS-MMP, 2025 WL 2549431, at *3 (S.D. Cal. Sept. 3, 2025).

7 Thus, no jurisdictional bars prevent this Court from granting the petition and
8 ordering release.

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Respectfully submitted,

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s/ Katie Hurrelbrink

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