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DETAINED

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of: **RODRIGUEZ RODRIUGEZ, Rodolfo** Petitioner, 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 Respondents – Defendants.	File No.: 3:25-cv-03306-AGS-AHG [redacted] **PETITIONER'S TRAVERSE IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS** Hearing Date: 01/07/2026 Hearing Time: 2:00 PM Judge: Hon. Andrew G. Schopler Courtroom: 5C

PETITIONER'S TRAVERSE IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Rodolfo Rodriguez Rodriguez, through undersigned counsel, respectfully submit this Traverse to Respondent's Return and in support of his Petition for Writ of Habeas Corpus.

I. INTRODUCTION

Petitioner submits this Traverse in response to Respondent's Opposition to his Petition for Writ of Habeas Corpus. The Court is respectfully urged to grant the Petition because Petitioner's detention, which followed his placement into removal proceedings under 8 U.S.C. § 1229a, lacks a valid statutory basis, rests on an unlawful and retroactive expansion of 8 U.S.C. § 1225(b)(2)(A), and violates the Due Process Clause and the *Administrative Procedure Act* ("APA").

Petitioner challenges only the lawfulness and duration of his detention. He does not ask this Court to adjudicate the merits of his underlying removal case. Success on this habeas petition would result in Petitioner's immediate release, or at a minimum a prompt custody redetermination hearing, and therefore directly alters the fact and length of custody. This is precisely the type of claim that falls within the core of 28 U.S.C. § 2241 as recognized in longstanding Supreme Court and Ninth Circuit authority.

Since the filing of the Petition and Return, the legal landscape regarding 8

U.S.C. § 1225(b)(2)(A) and *Matter of Yajure Hurtado* has shifted significantly. On November 20, 2025, the United States District Court for the Central District of California, in *Maldonado Bautista v. Santacruz,* granted partial summary judgment and certified a nationwide "Bond Eligible Class," issuing declaratory relief rejecting the government's new interpretation of § 1225(b)(2)(A) and *Matter of Yajure Hurtado* as contrary to the INA and confirming that class members are detained under 8 U.S.C. § 1226 and entitled to bond consideration. Petitioner is himself a member of that class; the court's statutory analysis and declaratory judgment substantially undermine Respondent's reliance on *Matter of Yajure Hurtado* and their assertion that § 1225(b)(2)(A) mandates his detention without bond.

II. FACTUAL BACKGROUND

Petitioner is a 26-year-old citizen and national of Venezuela. Petitioner entered on March 11, 2024, through the CBP One App, and he received humanitarian parole and issued an I-94 valid for two (2) years. On or about March 11, 2024, he was served a Notice to Appear charging him as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i). On or about February 11, 2025, Petitioner filed his Form I-589, Application for Asylum, Withholding of Removal, and C.A.T. Since his arrival on March 11, 2024, Petitioner has remained in the United States.

DHS initiated full removal proceedings under 8 U.S.C. § 1229a. Petitioner

complied with all requirements, appeared for hearings, and on or about August 9, 2025, he was detained by ICE.

In the Petition, Petitioner alleges that DHS detained him not because of any individualized concern about danger or flight, but as part of a broader policy to leverage detention and expanded expedited-removal powers to pressure asylum seekers. He alleges that DHS's sudden invocation of § 1225(b) and mandatory detention is unlawful, retroactive as applied to his 2024 entry, and inconsistent with longstanding statutory and regulatory practice under 8 U.S.C. § 1226(a). He further alleges that DHS failed to provide notice, an opportunity to be heard, or any individualized determination before revoking his release, in violation of his due process rights and the APA.

III. LEGAL STANDARD

A writ of habeas corpus under 28 U.S.C. § 2241 permits a federal court to inquire into the legality of an individual's detention. Relief is appropriate where a petitioner demonstrates that he is "in custody" under the authority of the United States and that such custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c). The Supreme Court has repeatedly recognized that noncitizens may invoke § 2241 to challenge immigration detention. In *Demore v. Kim*, the Court acknowledged habeas jurisdiction over a lawful permanent resident who contested his detention under the INA. *In Zadvydas v.*

Davis, the Court similarly reviewed the lawfulness of post-removal-order detention and construed the statute to avoid serious constitutional questions.

The Ninth Circuit has explained that the key inquiry in determining whether a claim sounds in habeas is whether success on the claim would necessarily result in "immediate or speedier release" from custody. *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016). In *Pinson v. Carvajal,* 69 F.4th 1059, 1072 (9th Cir. 2023), the court reaffirmed that § 2241 is the proper vehicle where the petitioner challenges the legality or duration of confinement, as opposed to conditions that would not alter custody. That principle applies equally in the immigration context: habeas remains available to test whether detention is authorized by statute and comports with due process, even when judicial review of the underlying removal order is channeled to the courts of appeals. See *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020).

In resolving a habeas petition, the Court accepts Petitioner's factual allegations as true unless contradicted by uncontested evidence, and then determines whether, under those facts, detention is authorized by a valid statute and implemented in a constitutionally permissible manner. Where detention lacks a statutory basis, exceeds lawful authority, or is imposed in violation of due process, the Great Writ provides a remedy.

IV. ARGUMENT

A. Habeas Jurisdiction Is Proper Under 28 U.S.C. § 2241

1. Petitioner Challenges Detention, Not Removal

Petitioner's habeas petition challenges only the legality of his present detention. He does not seek review of any final order of removal, any merits determination on his asylum claim, or any discretionary decision regarding commencement or adjudication of removal proceedings. Instead, he contends that Respondents lack authority to detain him under 8 U.S.C. § 1225(b)(2)(A), that their reliance on *Matter of Yajure Hurtado* and the January 2025 policy is unlawful, and that his ongoing incarceration without access to a bond hearing violates the Constitution and the APA.

Success on these claims would directly result in Petitioner's release from custody or, at minimum, a prompt bond/custody redetermination hearing that could lead to his release. Under *Nettles* and *Pinson*, that is sufficient to bring the case within habeas. Respondents' reliance on cases such as *Guselnikov v. Noem* and *Giron Rodas v. Lyons* is misplaced, because those decisions involved petitions that did not genuinely contest the legality of custody or that sought relief which, even if granted, would not necessarily shorten detention. Here, Petitioner's challenge goes to the heart of his confinement.

Moreover, there is no serious dispute that Petitioner satisfies Article III

standing. He is currently "in custody" in ICE detention, which constitutes a concrete and ongoing injury in fact. That injury is fairly traceable to Respondent's decision to detain him under 8 U.S.C. § 1225(b)(2)(A) and their refusal to provide access to a bond hearing, and it is redressable by the relief sought, an order declaring his detention unlawful and directing his release or a prompt custody redetermination hearing. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Because Petitioner remains detained and continues to suffer the very harm he challenges, this case has not "lost its character as a present, live controversy" and is not moot. See, e.g., *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

Respondent's characterization of the Petition as asserting "improper and inconsistent" factual allegations is also incorrect. The Petition consistently alleges a single, ongoing injury, Petitioner's continued detention without access to bond, and advances alternative legal theories under which that detention is unlawful. That is fully consistent with habeas pleading and Article III.

2. Sections 1252(g) and 1252(b)(9) Do Not Strip This Court of Jurisdiction

Respondents contend that 8 U.S.C. §§ 1252(g) and 1252(b)(9) deprive this Court of jurisdiction. But those provisions do not bar traditional habeas review of detention. Section 1252(g) limits jurisdiction over claims arising from "the decision or action by the Attorney General to commence proceedings, adjudicate cases, or

execute removal orders." The Supreme Court has emphasized that § 1252(g) is narrow and applies only to "three discrete actions," not to every circumstance tangentially related to removal. *Reno v. American-Arab* Anti-Discrimination Comm., 525 U.S. 471, 482–83 (1999). Petitioner does not ask this Court to stop DHS from commencing proceedings, to adjudicate his removal case, or to enjoin execution of a removal order. He challenges only the basis and constitutionality of his current detention. That type of claim falls outside § 1252(g)'s narrow scope.

Section 1252(b)(9) is likewise a channeling provision, not an across-the-board jurisdictional bar. It provides that judicial review of all questions of law and fact "arising from any action taken or proceeding brought to remove an alien" shall be available only upon judicial review of a final removal order. The Ninth Circuit has described § 1252(b)(9) as "breathtaking in scope and vise-like in grip," but nonetheless recognized that it channels removal challenges, not pure detention challenges, into petitions for review. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031–32 (9th Cir. 2016). Reading § 1252(b)(9) to extinguish all habeas review of detention would render *Demore, Zadvydas,* and numerous recent district court decisions hearing § 2241 immigration detention cases inexplicable and would raise serious Suspension Clause concerns. Congress preserved judicial review of constitutional claims and questions of law in 8 U.S.C. § 1252(a)(2)(D), further confirming that federal courts retain authority to adjudicate whether detention comports with the

statute and the Constitution.

To the extent Respondents argue that Petitioner was required to exhaust some further administrative remedy, such as additional bond requests or appeals, that argument is unavailing. Petitioner's ability to seek bond has been effectively foreclosed by the government's legal position that immigration judges lack bond jurisdiction under § 1225(b)(2)(A) and *Matter of Yajure Hurtado*. In these circumstances, the exhaustion requirement is prudential, not jurisdictional, and is excused where resort to administrative processes would be futile or inadequate to prevent ongoing unlawful detention.

B. Petitioner's Detention Lacks a Valid Statutory Basis Under 8 U.S.C. § 1225(b)(2)(A)

1. Petitioner's Custody Is Properly Governed by 8 U.S.C. § 1226(a)

Respondents assert that Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A) as an "applicant for admission," pointing to 8 U.S.C. § 1225(a)(1), which deems certain non-admitted individuals "applicants for admission." They argue that, under *Matter of Yajure Hurtado* and *Matter of Q. Li,* immigration judges lack bond authority over such individuals. That position ignores the posture of Petitioner's case and decades of statutory and regulatory practice.

Petitioner was placed directly into full removal proceedings under 8 U.S.C. § 1229a. For many years, DHS and EOIR understood that individuals in this posture,

even those who had entered without inspection, were detained, if at all, under 8 U.S.C. § 1226(a), not under § 1225(b). EOIR's 1997 regulations implementing IIRIRA explicitly treated noncitizens in § 240 proceedings as detained under § 1226(a), with the availability of bond hearings before immigration judges. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). It was only in 2025, via an ICE memorandum and *Matter of Yajure Hurtado*, that the government attempted to collapse this structure and invoke § 1225(b)(2)(A) as a mandatory detention authority for virtually everyone who had not been "admitted," regardless of their placement into § 240 proceedings and prior release.

Once DHS elected to process Petitioner through § 1229a proceedings, and Petitioner filed an Form I-589, Application for Asylum, Withholding of Removal, and Convention Against Torture (C.A.T.), the detention statute that governs his custody pending a decision on removal is § 1226(a). That statute authorizes arrest and detention "pending a decision on whether the alien is to be removed from the United States," and by regulation provides for custody redetermination hearings before immigration judges. 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1(d), 1003.19. Respondent's effort to retroactively reclassify Petitioner's custody as mandatory under § 1225(b)(2)(A) is inconsistent with the statutory scheme and the regulatory framework long recognized by EOIR itself.

2. The January 2025 Expedited Removal Designation Cannot Be Applied Retroactively

Petitioner's habeas petition also challenges Respondent's attempt to apply the January 2025 expedited removal designation to his July 2024 entry and ongoing § 240 proceedings. That designation dramatically expanded the class of noncitizens who could be placed into expedited removal, but it did not state that it would apply retroactively to individuals already in § 240 proceedings prior to the effective date.

Under *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), and *INS v. St. Cyr*, 533 U.S. 289 (2001), rules and statutes must not be given retroactive effect unless Congress, or the agency speaks in unmistakably clear terms. A new measure that attaches new legal consequences to past events, such as stripping a noncitizen already in § 240 proceedings of the rights to a full asylum hearing, to present evidence, and to pursue appeals, cannot be applied retroactively absent a clear statement. Neither 8 U.S.C. § 1225(b)(1)(A)(iii) nor the January 2025 designation contains such a statement. Applying the designation to Petitioner would therefore impermissibly attach new adverse legal consequences

3. Maldonado Bautista and Subsequent Orders Reject the Government's *Yajure*-Based Theory

Since Respondents filed their Return, the government's reliance on *Matter of Yajure Hurtado* and its expansive reading of § 1225(b)(2)(A) has been squarely

rejected in federal court. In *Maldonado Bautista v. Santacruz*, a nationwide class action challenging the new mandatory detention policy, the Central District of California considered DHS and EOIR's position that individuals who entered without inspection and were later arrested in the interior are "applicants for admission" subject to mandatory no-bond detention under § 1225(b)(2)(A), with immigration judges lacking bond authority. On November 20, 2025, the court issued a partial summary judgment order concluding that individuals who are present in the United States and have not been inspected and authorized by an immigration officer are subject to detention under § 1226, not § 1225(b)(2)(A). On November 25, 2025, the court granted class certification and extended that declaratory relief to a nationwide "Bond Eligible Class," defined as noncitizens without lawful status who entered without inspection, were not apprehended upon arrival, and are not subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time of the initial custody determination.

As of November 25, 2025, the district court "granted nationwide class certification and partial summary judgment on behalf of the class, rejecting *Matter of Yajure Hurtado* and the predecessor ICE policy applying 235(b)(2)(A) detention without bond to all persons who entered without admission/inspection," and class members now have a binding judgment declaring that they are detained under INA § 236 and are entitled to be considered for release on bond.

Petitioner falls within the class definition because he did enter without inspection. However, *Maldonado Bautista's* legal reasoning and declaratory judgment are highly persuasive here. The court examined the same statutory text, structure, and history relied upon by Petitioner and concluded that the government's recent attempt to use § 1225(b)(2)(A) as a broad mandatory detention authority, implemented through *Yajure*, is unlawful and incompatible with the INA. Respondents may no longer credibly characterize *Yajure* as the unquestioned controlling interpretation of § 1225(b)(2)(A); a federal district court has now rendered a contrary interpretation and issued nationwide declaratory relief limiting DHS and EOIR's reliance on that decision.

4. Constitutional Avoidance and Due Process Require Applying § 1226(a)

Even if there were ambiguity about whether § 1225(b)(2)(A) could be stretched to cover someone in Petitioner's position, who was inspected, placed into § 240 proceedings, and then re-detained after release, constitutional avoidance and due process principles would compel this Court to reject Respondent's expansive reading.

The Supreme Court has explained that "freedom from imprisonment, from government custody, detention, or other forms of physical restraint, lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas,* 533 U.S. at 690. Noncitizens physically present in the United States, regardless of status, are entitled

to due process protections. Id. at 693; *Reno v. Flores,* 507 U.S. 292, 306 (1993). Once DHS released Petitioner into the community and allowed his life to be structured around that liberty, he acquired a substantial liberty interest in remaining out of custody. Recent district court decisions, including *Pinchi v. Noem* and *Garcia v. Andrews*, recognize that individuals released from immigration detention possess a protected interest in remaining free and that the government must provide adequate process, including notice and an opportunity to be heard, before re-detaining them.

Respondent's interpretation of § 1225(b)(2)(A) would allow the government to revoke that liberty interest at any time, without individualized findings of danger or flight risk, based solely on a broad and retroactive legal theory. That is the kind of arbitrary, categorical detention that due process forbids. To avoid serious constitutional doubts, § 1225 should not be construed to authorize Petitioner's prolonged no-bond detention. The more plausible and constitutionally sound reading is that § 1226(a), with its provisions for individualized custody redetermination, governs his detention.

5. Respondent's "Entry Fiction" and IIRIRA "Anomaly" Arguments Do Not Justify Petitioner's Detention Under § 1225(b)(2)(A)

Respondents invoke the "entry fiction" doctrine and IIRIRA's goal of eliminating an "anomaly" in prior law to justify applying § 1225(b)(2)(A) to

Petitioner. But those principles do not support the sweeping mandatory detention theory they advance here. The entry fiction historically applies to "arriving" aliens at the threshold of the country and to individuals paroled into the United States who remain, for limited purposes, as if at the border, not to noncitizens who have been inspected, placed into full removal proceedings under § 240, released into the interior, and allowed to organize their lives and families in the community. Even *Thuraissigiam*, on which Respondents rely, recognized that noncitizens physically present in the United States possess due process protections, particularly outside the narrow expedited-removal context. 591 U.S. at 139–40.

Similarly, properly reading § 1226(a) to govern detention of individuals like Petitioner, who have been in § 240 proceedings and living in the community, does not recreate the pre-IIRIRA "anomaly" in which some EWIs had more procedural protections than arriving aliens at ports of entry. It simply preserves the basic distinction Congress drew: § 1225 regulates initial inspection and detention of "applicants for admission" at the threshold, while § 1226 governs interior arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Once DHS elected to place Petitioner in § 240 proceedings and release him into the community, his subsequent custody falls within § 1226, not § 1225(b)(2)(A).

C. Petitioner's Detention Violates the Fifth Amendment and the Administrative Procedure Act

Petitioner's continued detention, beyond lacking a statutory basis, also violates the Due Process Clause and the APA. As alleged in the Petition, Petitioner was not provided notice that DHS intended to detain him, nor was he given an opportunity to contest his detention on the basis of his individual circumstances. There is no indication that DHS made any findings that he is dangerous or a flight risk, and Respondent's Return does not identify any such findings.

Under Mathews v. Eldridge, 424 U.S. 319 (1976), due process requires, at a minimum, notice and a meaningful opportunity to be heard before a legally protected interest is taken away. Here, Petitioner's interest in remaining out of custody after being released is substantial. The risk of erroneous deprivation is high when detention is imposed categorically based on a new statutory theory, without considering an individual's history of compliance with court appearances, family ties, or other equities. The government's interest in detaining Petitioner without individualized assessment is comparatively weak, particularly where there has been no showing of danger or flight risk. On balance, the Mathews factors favor a finding that the procedures used to re-detain Petitioner were constitutionally deficient.

Respondent's reliance on cases such as *Demore v. Kim*, *Carlson v. Landon*, and *Banyee v. Garland* does not cure the defects in Petitioner's detention. Those

decisions upheld particular detention schemes in significantly different contexts, most notably brief, categorical detention of certain criminal noncitizens under 8 U.S.C. § 1226(c), where Congress expressly mandated custody during removal proceedings and the Court emphasized the relatively short duration of confinement. They did not endorse prolonged, retroactive, no-bond detention of members of the community who have lived by American laws for many years, complied with proceedings, and are later detained without individualized findings of danger or flight risk. Petitioner does not dispute that Congress may authorize detention during removal proceedings, he challenges the way Respondents have applied their newly minted § 1225(b)(2)(A) theory to him, in a manner that is inconsistent with the INA, deprives him of a meaningful opportunity to seek release, and ignores basic due process and APA requirements.

The APA independently requires that agency action not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," and that agencies provide a reasoned explanation when changing course. 5 U.S.C. § 706(2)(A)–(D). As the Petition explains, recent district court decisions in immigration detention cases have recognized that categorical revocations of release and new detention policies implemented without individualized consideration or acknowledgment of reliance interests are arbitrary and capricious.

Because Petitioner's detention and continued incarceration lack a valid

statutory foundation, violate due process, and reflect arbitrary and capricious agency action, the APA and the Constitution both support habeas relief.

D. Relief Sought Would Directly Affect Custody

Finally, Respondents suggest that some of Petitioner's claims and requested relief are improper in habeas. To the contrary, Petitioner seeks relief that directly affects the fact and duration of his confinement, a declaration that his detention under § 1225(b)(2)(A) is unlawful, an order recognizing that § 1226(a) governs his custody, and either immediate release or a prompt custody redetermination (bond) hearing with appropriate procedural protections. Granting this relief would terminate or shorten his detention and thus fully satisfies the requirement that habeas relief under § 2241 must alter custody.

To be clear, Petitioner does not ask this Court to second-guess any discretionary bond determination insulated by 8 U.S.C. § 1226(e). He asks the Court to decide the antecedent questions of statutory authority and due process, and, if § 1226(a) governs, to order the government to provide a custody redetermination hearing with minimally adequate procedures. That is squarely within the scope of habeas review recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, as well as those set forth in the underlying Petition, Petitioner respectfully requests that this Court assume jurisdiction, reject

Respondent's jurisdictional defenses, and grant the Petition for Writ of Habeas Corpus.

Petitioner asks the Court to declare that his current detention is not authorized by 8 U.S.C. § 1225(b)(2)(A), to hold that his custody is governed by 8 U.S.C. § 1226(a), and to order his immediate release from DHS custody. In the alternative, Petitioner requests that the Court order Respondents to provide him with a prompt bond and custody redetermination hearing within fourteen days before an Immigration Judge, at which the government must bear the burden of justifying continued detention based on danger or flight risk, and to enjoin his transfer from this District without prior Court approval. Petitioner further prays for such other and further relief as this Court deems just and proper.

Respectfully Submitted,

//s// Mario Portugal

DATED: December 23, 2025

Mario Portugal,
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