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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NESTOR ANDRES ARRIETA PATERNINA

Petitioner,

v.

SERGIO ALBARRAN, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No. 4:25-cv-10378-YGR

PETITIONER'S TRAVERSE

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I. INTRODUCTION

Petitioner is an asylum seeker from Colombia who has done everything the law has asked of him. He surrendered himself to Border Patrol—who determined that he presented neither a flight risk nor a danger—and complied with every requirement imposed on him for a year and a half. Pet. for Writ of Habeas Corpus ("Pet.") at ¶ 1. Still, when he presented himself to Immigration and Customs Enforcement ("ICE") as instructed, ICE suddenly and without notice arrested him.

Respondents fail to contend with the due process violation at the core of this case and merely recycle statutory arguments that this Court and hundreds of others have rejected. Respondents' jurisdictional objections are also unavailing. Consistent with this Court's prior rulings and the Due Process Clause, the Court should grant the modest relief that Petitioner seeks: the right to a hearing in front of a neutral adjudicator before the government may again restrain his liberty.

II. ARGUMENT

A. All Respondents Are Properly Named in This Action

Respondents' request that "all Respondents other than Petitioner's immediate custodian to be dismissed from this case" should be rejected. Return at 9. As a procedural matter, "a request for court order must be made by motion" not raised for the first time in an opposition. *See Ortega v. Kaiser*, 2025 WL 2243616, at *4 (N.D. Cal. Aug. 6, 2025). As a substantive matter, Respondents' reliance on *Rumsfeld v. Padilla* 542 U.S. 426 (2004) is misplaced. Return at 9. Petitioner's request is not limited to release from the officer having custody of him, but rather encompasses an injunction against his re-detention, absent process, by the Department of Homeland Security ("DHS"). Pet. at 10. Thus, all Respondents are properly named and should not be dismissed from the case.

B. Petitioner Is Not Subject to Mandatory Detention Under Section 1225(b)(2)

Respondents assert that Petitioner is subject to mandatory detention because he "falls squarely within the [8 U.S.C.] § 1225(b)(2) framework". Return at 10. Respondents' arguments

rely on the claim that an individual who has "not been admitted" is subject to mandatory detention as an "applicant for admission" regardless of how long they have lived in the United Sates. *Id.* Consistent with this Court's previous rulings and hundreds of rulings by other federal courts, the Court should reject the government's newfound statutory argument.

1. Respondents Released Petitioner Pursuant to Section 1226(a)

Respondents cannot credibly claim that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) when the government *released him* in on May 24, 2024 under 8 U.S.C. § 1226(a). *See* Decl. of Andrea Reyes Corena at ¶ 4, Exhibit 1, Form I-220A dated May 24, 2024. ICE's own paperwork issued to Petitioner at his release cited only INA § 236, 8 U.S.C. § 1226. *Id.* Moreover, following Petitioner's release pursuant to this Court's Temporary Restraining Order, Respondents re-issued Petitioner a new Order of Release on Recognizance again citing the same authority, 8 U.S.C. § 1226. *Id.* at ¶ 10, Exhibit 4, Form I-220A dated January 15, 2026.

These documents produced by Respondents confirm that the government does not treat Petitioner as subject to mandatory detention, but rather to the discretionary detention statute at § 1226. *See Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025 WL 3500767, at *2 (N.D. Cal. Aug 29, 2025)(taking judicial notice of the fact that Form I-220A Order of Release cites release subject to 8 U.S.C. § 1226); *see also Ortega-Cervantes v. Gonzales,* 501 F.3d 1111, 1115 (9th Cir. 2007) (noting that per the language in the Order of Release on Recognizance stating that release is in accordance to § 1226, "the INS used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)"). Respondents do not meaningfully address these internal contradictions. Nor do they cite to any authority permitting them to retroactively recharacterize their immigration enforcement decisions, particularly where that recharacterization contradicts contemporaneous charging and custody records. Instead, they claim that even if they previously released Petitioner pursuant to Section 1226(a), they can now, during litigation, apply their new interpretation of Section 1225(b)(2) to presumably correct their own error. Return at 21. If that were true, Respondents would not have once again issued Petitioner a new Order of Release on Recognizance pursuant to INA § 236, 8 U.S.C. § 1226(a) on January 15, 2026. Reyes

Corena Decl. at ¶ 11, Exhibit 4.

Even if Respondents were correct that Section 1225(b)(2) subjects Petitioner to mandatory detention and his release under Section 1226(a) was a mistake, the Due Process Clause still prevents Respondents from re-detaining him because Petitioner now has a protected liberty interest based on the government's release. *See infra* section II.C..; *see also Johnson v. Williford*, 682 F.2d 868, 873 & n.3 (9th Cir. 1982) (holding that it would be "inconsistent with fundamental principles of liberty and justice" to re-incarcerate a mistakenly released prisoner who had readjusted to society and complied with the terms of release). To allow the government to switch tracks would be to "jettison long-standing due process principles" and "authorize an impermissible *post hoc* rationalization for the government's attempt to detain" him. *Garcia v. Kaiser,* 4:25-cv-06916-YGR, 2025 WL 3500767, at *5 (internal citations omitted).

In short, Respondents released Petitioner under Section 1226(a), as the Notice to Appear and two Orders of Release on Recognizance indicate, and now seek to justify his re-detention via post-hoc rationalizations that hundreds of courts across the nation have already rejected. *Barco Mercado v. Francis*, 2025 WL 3295903, at *3 (S.D.N.Y. Nov. 26, 2025) (documenting over 300 cases in which courts have rejected the government's new interpretation of § 1225).

2. <u>Respondents' New Re-Characterization of Section 1225(b)(2) Fails</u>

Respondents argue that Petitioner remains subject to mandatory detention under § 1225(b)(2)(A) as an "applicant for admission" who is "seeking admission," notwithstanding his release into the interior and years of presence here. Return at 10. These sweeping claims have already been rejected by numerous courts in this Circuit and across the country that concluded § 1225(b)(2)(A) does not apply to noncitizens released into the interior under § 1226(a). *See, e.g.*, *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025); *see also Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938 at *26-29 (N.D. Cal. Dec. 19, 2025) (identifying "numerous problems with DHS's interpretation of § 1225(b)(2)"). *Accord Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025) (rejecting argument that "an 'applicant for admission' is synonymous with a

person 'seeking admission'").

Still, Respondents spend large part of their Return trying to justify their expansive reading of Section 1225(b)(2) by claiming that the language of the statute is "clear" and that their *new* expansive interpretation was what Congress intended all along. *See generally* Return. These arguments cannot measure to the well-reasoned decisions of the courts. In analyzing Section 1225(b)(2), the Court in *Bernal v. Albarran*, No. 25-CV-09772-RS, 2025 WL 3281422 (N.D. Cal. Nov. 25, 2025) described "Congress's choice of words [as] odd" and "the textual question [ ] knotty." *Id.* at *4. That Court ultimately rejected Respondents' arguments and the Court here should do the same. Like in *Bernal*, Respondents concede that the recently amended mandatory detention provision at Section1226(c)(1)(E) via the Laken Riley Act would overlap with noncitizens like Petitioner who, in their view, are covered by Section 1225(b)(2). Return at 17. They claim, however, that the redundancy is merely to be "double sure" that those noncitizens were not released from detention. *Id.* at 18. Yet, the legislative history of Laken Riley cuts against Respondents' new reading of Section 1225(b)(2) because in adding the amendment, Congress showed it believed it was "*necessary* to constrain executive discretion" to release these noncitizens. *Bernal v. Albarran*, 2025 WL 3281422, at *4 (emphasis added). This constraint "would only be necessary if the executive previously *had* discretion [to release these noncitizens], a position at odds with Respondents' current construction of section 1225(b)(2)(A)." *Id.* (emphasis in original).

Similarly relevant to rebutting Respondents' arguments, is that the contemporaneous implementing regulations of Section 1225(b)(2) located at 8 C.F.R. § 235.3 are also at odds with the government's new reading of the statute. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024) (implementing regulations may provide a "useful reference point for understanding a statutory scheme" when issued "contemporaneously"). These implementing regulations effectively limit Section 1225(b)(2) to "arriving aliens", *i.e.*, not noncitizens who are already inside the United States. *See* 8 C.F.R. § 235.3 (describing Section 1225(b)(2) as applying to "any arriving alien who appears to the inspecting officer to be inadmissible."); *see also* 8 C.F.R. § 1.2 (defining "arriving aliens" as

applicants for admission "coming or attempting to come into the United States at a port-of-entry."). Indeed, during the 30 years since the passage of the Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA"), the shared understanding and practice of the government was that Section 1226(a), not 1225(b), governed the detention of noncitizens arrested within the interior of the United States. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination."). It was not until the Board of Immigration Appeals' ("BIA") decision in *Matter of Yajure Hurtado*, 29I & N Dec. 216 (BIA 2025) that Respondents began to embrace en masse this extended recharacterization of the statute. Nevertheless, following *Loper Bright*, the Court has no obligation to defer to the BIA's view, particularly when the agency's view and practice has not "remained consistent over time." *Loper Bright*, 603 U.S. at 386, 144 S.Ct. 2244.

Against this three-decade long backdrop, Respondents cannot convincingly argue that their recharacterization of the statute has anything to do with clarity or consistency with Congressional intent. For these reasons and those articulated by other courts in this District, the Court should reject Respondents' newfound interpretation of the statue.

C. The Due Process Clause Protects Petitioner From The Government Depriving Him of His Liberty Without a Hearing

Respondents avoid the crux of Petitioner's due process argument and offer no persuasive argument as to why the Due Process Clause permits them to detain Petitioner without a hearing after he has enjoyed conditional liberty for over a year and a half. Instead, Respondents argue that the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335(1976), does not apply here and then proceed to recycle the same statutory argument that, under their new reading of § 1225(b)(2), Petitioner is only entitled to rights provided by the statute. Return at 20 (citing *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020)). The Court should reject these arguments. In opposing this claim, Petitioner hereby incorporates and preserves all arguments presented in support of his motion for temporary restraining order and

preliminary injunction, including the analysis of each of the *Mathews* factors as applied to him. *See* ECF 4-1. Petitioner's rebuttal here will focus on the threshold issue of the applicability of the *Mathews* factors to Petitioner and the Respondents' erroneous reliance on *Thuraissigiam*.

1. The *Mathews* Factors Apply Here and Weigh Heavily in Petitioner's Favor

This Court and many others in this Circuit regularly apply the *Mathews* factors to evaluate due process claims like Petitioner's. *See, e.g., Garcia v. Kaiser,* 4:25-cv-06916-YGR, 2025 WL 3500767; *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 (N.D. Cal. 2025) (citing to *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-8 (9th Cir. 2022) which explained that *Mathews* "remains a flexible test")); *see also, R.A.N.O. v. Wofford*, No. 1:25-CV-01535-KES-EPG (HC), 2026 WL 40507, at *6 (E.D. Cal. Jan. 6, 2026) (collecting cases). These courts applied *Mathews* because they concluded that noncitizens like Petitioner, who the government has conditionally released and now seeks to re-detain, are entitled to a least the same pre-deprivation protections available to the parolees contemplated in *Morrissey v. Brewer*, 408 U.S. 471 (1972). *See Pinchi*, 792 F. Supp. 3d 1025, 1033. In *Morrissey,* The Supreme Court held that revocation of conditional liberty requires "an informal hearing" because the "liberty of the parolee, although indeterminate, includes many of the core values of unqualified liberty." *Morrissey*, 408 U.S. at 482. As a holding rooted in constitutional guarantees rather than statutory details, *Morrissey* is broadly applicable in the immigration context. *See, e.g.*, *Id.*; *David G.M. v. Chestnut*, No. 1:26-CV-00369-TLN-CSK, 2026 WL 127613, at *3 (E.D. Cal. Jan. 17, 2026); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). In fact, it has been found that its conclusions may be even *more* compelling in a civil immigration case than for criminal parolees. *Id.*

Nevertheless, in a footnote, Respondents make the unsupported claim that *Morrissey* is inapplicable to Petitioner because the goal of integration into society present in the criminal parole system is not present with unlawfully present aliens. Return at 21, fn. 7. Not only is that claim devoid of any authority, it is factually inconsistent with the regulatory scheme that grants employment authorization to noncitizens Respondents now claim Congress intended to indefinitely detain. *See* 8 C.F.R. § 274a.12(c)(11), and (c)(8) (authorizing employment

authorization to noncitizens released on humanitarian parole under I.N.A. 212(d)(5), 8 U.S.C. § 1182(d)(5)(A), as well as those with pending asylum applications.). Indeed, when Respondents re-detained Petitioner on December 3, 2025, Petitioner had already "integrated to society"; he had applied for immigration relief, obtained employment authorization and worked lawfully in his community. ECF 13-1, Dec. of Petitioner at ¶ 7. These actions were made possible only by Petitioner's freedom, which is "the most elemental of liberty interests[.]" *Rumsfeld*, 542 U.S. at 529. Respondents cannot now claim that the liberty interests Petitioner acquired *because of* the government's very actions (releasing him from custody in 2024 pursuant Section 1226(a) and issuing him an employment authorization document) are somehow irrelevant to the Court's analysis of whether he is owed due process before the government can re-detain him. This cannot be. Like the parolees in *Morrissey*, Petitioner relied on "an implicit promise" that his conditional parole would only be revoked "if he fails to live up to the parole conditions", and the revocation of the parole by re-detention indisputably "inflicts a grievous loss." *Morrissey*, 408 U.S. at 481–84. This harm is compounded when the detention is likely unconstitutional, as it is here, for "the deprivation of constitutional rights unquestionably constitutes irreparable injury." *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 740 (E.D. Cal. Apr. 29, 2025) (internal citations omitted).

2. *Thuraissigiam* is Inapplicable

This Court has already rejected Respondents' attempt to extend *Thuraissigiam* based on the obvious fact that "*Thuraissigiam* bears little resemblance factually" to noncitizens like Petitioner as the noncitizen in that case "was apprehended at the border [and] never released from detention[.]" *Garcia v. Kaiser*, No. 4:25-CV-06916-YGR, 2025 WL 3500767, at *5 (internal citations omitted). *Thuraissigiam* dealt with the due process rights regarding *admission* into the United States, and is therefore inapposite to Petitioner's challenge to his re-detention without a hearing. *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390 at * 3 (E.D. Cal. Aug. 21, 2025) (citing *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170-72 (W.D. Wash. 2023) (discussing *Thuraissigiam* and explaining the distinction between a challenge to admission

and a challenge to detention). Indeed, it was the government that released Petitioner into the United States pursuant to Section 1226(a), allowing him to settle in the United States, gain employment authorization, and build the community connections that contribute to Petitioner's liberty interest. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *see also Hernandez v. Sessions*, 872 F.3d 976, 981(9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process").

Thus, for the reasons explained here and in Petitioner's memorandum of points and authorities, Petitioner has a protected liberty interest—freedom from detention after a year and a half of compliance with release conditions—and the application of *Mathews* demonstrates that he warrants at least a hearing where the government bears the burden to justify re-detention.

3. A Hearing Before Re-Detention at Which The Government Bears The Burden is Consistent with Due Process

Respondents contend that even if Petitioner was subject to Section 1226(a), that the remedy due would be a post-detention hearing at which Petitioner, not the government, would bear the burden of proof. Return at 23 (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210-12). The Respondents' arguments fail.

First, *Rodriguez Diaz* is factually inapposite. That case dealt with a noncitizen already deemed by a judge to present "a danger to the community due to his gang affiliation", who had already received one bond hearing, but argued that the Due Process Clause entitled him to a second. *Rodriguez Diaz*, 53 F.4th at 1193. The Ninth Circuit's holding that burden-shifting was not "constitutionally necessary" under *those* distinct facts does not establish a general rule applicable to all detention challenges. *Id.* at 1212. Second, a "post-detention" hearing is moot because Petitioner has already been released from detention following this Court's December 3, 2025 Order.

ECF 6. Third, Petitioner's release from ICE custody on May 24, 2024, on his own recognizance necessarily required DHS to make an initial assessment of flight risk and dangerousness. Thus, where the government already previously determined that Petitioner is not a danger or flight risk by releasing him in the first instance, Respondents cannot later override that determination unless they show "change of circumstances" by clear and convincing evidence. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017) ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the *federal agents must be able to present evidence* of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk….").

Thus, absent the exceptional circumstances present in *Rodriguez Diaz*, "the 'consensus view' among District Courts conclud[es] that after *Jennings* where the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified." *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (cleaned up); *see also Garro Pinchi,* 792 F. Supp. 3d at 1038; *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *5 (N.D. Cal. Aug. 22, 2025).

4. Respondents May Not Impose Additional Electronic Monitoring

In its order granting Petitioner's preliminary injunction, the Court declined to take a position on whether Respondents may impose electronic monitoring without further briefing. ECF 15 at 6. The Court explained that it lacked "sufficient information to determine whether petitioner was subject to electronic monitoring as a condition of his initial release." *Id.* Concurrently with his Traverse, Petitioner submits to the Court a copy of both of his Orders of Release on Recognizance (Form I-220A) and a declaration by his Counsel outlining Petitioner's electronic requirements prior to his December 3, 2025 detention. *See* Reyes Corena Decl., Exhibits 1 and 4.

Enjoining Respondents from imposing additional restrictions on Petitioner is appropriate here. Respondents rely entirely on statutory arguments that Petitioner is subject to mandatory detention; they do not contend that Petitioner poses any flight risk or danger to the community. In the absence of any argument or evidence that Petitioner poses a risk to justifying such restrictions, the Court should also enjoin Respondents from escalating any electronic monitoring, GPS tracking,

or increased reporting requirements unless the government makes a showing of necessity at a hearing. District courts in this Circuit have enjoined such conduct in analogous cases. *See Espinoza v. Kaiser*, No. 1:25-cv-01101-JLT-SKO, 2025 WL 2675785, at *14 (E.D. Cal. Sept. 18, 2025) (ordering that "DHS SHALL NOT impose any additional restrictions on [petitioners], such as electronic monitoring, unless that is determined to be necessary at a future pre-deprivation/custody hearing"); *N.Y.V.D. v. Santracruz*, No. 5:25-cv-03404-WLH-SP, 2026 WL 45268, at *3 (C.D. Cal. Jan. 6, 2026) ("Respondents are enjoined from detaining N.Y.V.D., or significantly restraining N.Y.V.D.'s liberty, including but not limited to using a 24/7 ankle monitor or other similar restraints, including, but not limited to, requiring N.Y.V.D to be within 75 miles of her home, unless they provide her with a pre-detention hearing before a neutral decisionmaker where Respondents bear the burden of demonstrating by clear and convincing evidence that N.Y.V.D. is a flight risk or a danger such that her physical custody is required.").

Accordingly, Respondents should be enjoined from re-detaining Petitioner and from imposing any new restrictions on his liberty without first demonstrating, at a hearing before a neutral arbiter and by clear and convincing evidence, that such restrictions are necessary.

D. This Court is Not Prohibited from Granting Petitioner's Requested Relief

1. Respondents' Speculative Contentions About a Hypothetical Future Removal Order Are Unripe and Irrelevant to Petitioner's Due Process Right to a Hearing

Respondents argue that a pre-deprivation hearing before a neutral arbiter would prevent the government from detaining Petitioner if he is subject to a final order. Return at 24 (citing § 1231(a)(2)(A). Respondents' concern is unripe, speculative, and unresponsive to the constitutional injury giving rise to this case. Petitioner has no final removal order as his case remains pending before the San Francisco Immigration Court. *See* Reyes Corena Decl. at ¶ 12. Petitioner is challenging his detention without certain minimal procedural safeguards, a due process claim entirely independent of the validity of a hypothetical removal order that may not ever issue.

The Ninth Circuit has held that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders," and has

"specifically held § 1252(g) did not bar due process claims." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025); *see also*, *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070-JSC, 2025 WL 2998169, at *3 (N.D. Cal. Oct. 24, 2025) ("Petitioner does not seek to enjoin, or even challenge, his removal; instead, he seeks a hearing prior to his re-detention on the grounds he has a vested liberty interest in his current conditional release. Section 1252(g) does not bar due process claims.") (cleaned up). Courts throughout the Ninth Circuit routinely issue permanent injunctions requiring pre-detention hearings without limiting such relief to the period preceding a final removal order. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d at 970; *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025); *Faizyan v. Casey*, No. 3:25-CV-02884-RBM-JLB, 2025 WL 3208844, at *8 (S.D. Cal. Nov. 17, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025); *Chaudhry v. Bondi*, No. 2:25-CV-02339-DGE, 2025 WL 3706534, at *7 (W.D. Wash. Dec. 22, 2025). Should a final removal order eventually issue, Respondents may move to set a hearing and demonstrate to a neutral arbiter that circumstances have changed such that detention is warranted.

2. Section 1252(g) Does Not Apply

Respondents' argument that 8 U.S.C. § 1252(g) strips this Court of jurisdiction to grant Petitioner relief is similarly inapplicable because Petitioner does not have a final order and his request for relief in this habeas action would not terminate, stay, or otherwise interfere with, his ongoing removal proceedings.

Federal district courts retain habeas jurisdiction under 28 U.S.C. § 2241 for challenges to immigration detention regardless of section 1252(g). The Ninth Circuit has explained that the REAL ID Act's amendments to § 1252 were "not intended to preclude habeas review over challenges to detention that are independent of challenges to removal orders." *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (cleaned up); *see also Ibarra-Perez*, 154 F.4th at 997 (addressing § 1252(g) specifically and emphasizing that it "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders"). Thus, in "cases that do not involve a final order of removal, federal habeas corpus jurisdiction remains in the district court . . .

pursuant to 28 U.S.C. § 2241." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1076 (9th Cir. 2006).

District courts throughout the Ninth Circuit have repeatedly rejected the government's argument that § 1252(g) bars them from issuing injunctive relief entitling noncitizens in removal proceedings to a pre-detention hearing, recognizing that such challenges are due process claims independent of removal proceedings. *See, e.g.*, *Aguilar Garcia*, 2025 WL 2998169 at *3 ("Petitioner does not seek to enjoin, or even challenge, his removal; instead, he seeks a hearing prior to his re-detention on the grounds he has a vested liberty interest in his current conditional release. Section 1252(g) does not bar due process claims.") (cleaned up); *Phakeokoth v. Noem*, No. 3:25-cv-02817-RBM-SBC, 2025 WL 3124341, at *3 (S.D. Cal. Nov. 7, 2025) ("Here, Petitioner does not challenge the legitimacy of his September 2004 order of removal. Rather, Petitioner challenges the legality of his present detention which does not require judicial review of ICE's discretionary authority to decide 'when' or 'whether' to execute a removal order."); *Lam v. Noem*, No. 5:25-cv-03344-CV (RAO), 2025 WL 3763372 (C.D. Cal. Dec. 18, 2025) ("[B]ecause Petitioner challenges the lawfulness of his detention during the pendency of his removal proceedings, it is not a challenge to one of the three discrete events along the road to deportation that § 1252(g) applies to.") (cleaned up).

Here, Petitioner remains in regular removal proceedings and has no final order of removal. *See* Reyes Corena Decl. at ¶ 12. Further, Petitioner does not challenge any of the three discrete decisions enumerated in § 1252(g): he does not challenge the government's 2024 decision to commence removal proceedings; he does not challenge any past adjudications; and he does not challenge the execution of any removal order. He brings only a due process challenge to the government's detention procedures. Section 1252(g) therefore does not apply.

III. CONCLUSION

For the foregoing reasons, this Court should permanently enjoin Respondents from re-detaining Petitioner or imposing new restrictions on his liberty, including additional electronic reporting, unless such detention or restrictions are ordered at a properly noticed custody hearing before a neutral arbiter, in which the government bears the burden of proving, by clear and

convincing evidence, that he is a flight risk or danger to the community.

DATED: January 30, 2026

Respectfully Submitted,

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