Susan von Posern, Attorney at Law
265 Santa Helena, #120
Solana Beach, CA 92075
858- 229-4054 (mobile)

Attorney for Petitioner EDGAR MAYORAL GARCIA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT, CALIFORNIA

EDGAR MAYORAL GARCIA

Petitioner,

v.

DANIEL BRIGHTMAN, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; CHRISTOPHER LAROSE, Warden of OTAY MESA DETENTION FACILITY, EOIR.

Respondents.

. Case No. 3:25-cv-03466-JES-MMP

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

Honorable Judge James Simmons
U.S. District Judge

INTRODUCTION

Upon review of the Respondent's return, this Court should grant the petition outright on all grounds, as no viable basis for dismissal has been set forth. In fact, the Respondents fail to even mention the pivotal case of *Maldonado Bautista*, upon which the Petition for writ is primarily founded. The California District Court's declaratory judgment is simply ignored.

Rather, amidst a lengthy string of case citations and quotations, Respondents raise two points. The first asserts that Mr. Mayoral's claim is jurisdictionally barred by 8 U.S.C. 1252(g). However, Petitioner challenges the constitutionality of his detention, not the core proceedings involved in his removal. Second, the Respondents assert that Mr. Mayoral is lawfully detained per 8 U.S.C. 1225(b). This goes to the heart of the issue, as Mr. Mayoral is not an arriving alien, and rather is detained pursuant to 8 U.S.C.1226(a) pending a decision on whether he can remain in the United States. The Court should thus grant the petition on all grounds.

ARGUMENT

1. This Court Has Proper Jurisdiction

This Court has jurisdiction to decide this case. Contrary to Respondents' arguments, section 1252(g) does not bar review of any issue related to deportation proceedings. *Reno v. Am-Arab Anti-Discrimination Comm. 525 U.S. 471, 482 (1999).* The Supreme Court specifically limited the jurisdictional bar to claims arising solely from the "decision or action of the Attorney General to Commence proceedings, adjudicate cases, or execute removal orders." *Id.* Courts retain jurisdiction to address a purely legal question that does not challenge the Attorney General's discretionary authority, *Ibarra-Perez v. United States _ 4th _, 2025 WL 2461663 @6 (9th Cir. 2025).* See also *Kong, 62 F.4th at 617* "section 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention." The case included ICE's failure to abide

by its own regulations; *Cardoso v. Reno 216 F.3d 512, 516 (5th Cir. 2000)* "Section 1252(g) does not bar courts from reviewing an alien detention order": *Parra v. Perryman, 172 F.3d 954, 957(7th Cir. 1999)* (1252(g) did not apply to a "claim concerning detention."); *J.R. Bostock, o. 2:25-CV-01161-JNW, 2025 WL 1810210, at 3 (WD Wash. June 2025)* section 1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and prove due service) Clearly, the holding is widely followed throughout the country.

Here in the 9th Circuit, the *Ibarra-Perez* Court stated "section 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *_ 4th _, 2025 WL 2461663 @6 (9th Cir. 2025).* Instead, 1252(g) is "limited....to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders. *Arce v. United States, 889 F.3d 796, 800 (9th Cir. 2018).* It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion, to carry out a particular action. *Id. At 800.* It is clear that section 1252(g) applies to decisions the government has the explicit power to make, such as commencing proceedings, adjudicating cases and executing removal orders, but not to violations of mandatory duties to apply the appropriate statutory provisions and act within due process of the law. The provision thus does not deprive this Court of jurisdiction, as Mr. Mayoral challenges only violations of Respondents' duties under statutes, regulations, case precedent and the constitution.

The Respondent's reliance on the 11th Circuit decision in *Alvarez v. ICE* is misplaced. Alvarez held that Section 1252(g) bars district courts from hearing challenges to the method by which the government chooses to begin removal proceedings, including whether to detain an alien. *818 F.3d 1194, 1203 (11th Cir. 2016).* But Petitioner does not dispute the government's authority to detain at the time of arrest, but rather whether his continued detention is mandatory or whether

he is eligible for a bond hearing before an immigration judge. Accordingly, section 1252 precludes the District Court from exercising jurisdiction over the Respondents' decision to "commence proceedings, adjudicates cases, or execute removal orders against any alien," but does not foreclose this Court's jurisdiction over the issues raised herein, namely the lawfulness of Mr. Mayoral's detention without a bond hearing.*Y.T.D. 2025 WL 2675760 at 5.*

2. Mr. Mayoral is Entitled to a Bond Hearing as he is Detained under 8 U.S.C. section 1226(a)

The Respondent's second contention is that Petitioner is subject to mandatory detention per 8 U.S.C. section 1225(b). Section 1225(b) (2)(A) requires mandatory detention of "an arriving alien who is an applicant for admission..." Respondent's argument fails, as Mr. Mayoral's last entry to the U.S. was 17 years ago in 2008. He is thus neither an arriving alien, nor subject to the detention provisions set forth in 8 U.S.C. section 1225(b).

Respondents assert the term "applicant for admission" encompasses any noncitizen in the U.S. who has not been admitted, not matter how long they have resided in the country. However, the 9th Circuit has held that there is a temporal limitation of the phrase, denoting a particular legal status, and rejecting the view that an aliens remains in a perpetual state of applying for admission. *Torres v. Barr, 976 F.3d 918, 927 (9th Cir 2020).* One applies for admission at a finite point in time and "stretching the phrase" to continue for years or decades "would push the statutory text beyond its breaking point." *U.S. v. Gamino-Ruiz, 91 F.4th 981, 988-989* (9th Cir. 2024)(citing Torres, 976 F.3d at 922-26).

Alternatively, an individual "detained near the border shortly after he crossed it" is without doubt an applicant for admission. *See Gamino-Ruiz, supra, at 990.* But this is not the situation presented. Mr. Mayoral was detained in the interior while on route to work, 17 years after his

entry. Those 17 years were spent creating significant ties to the country, including marriage to a U.S. Citizen wife with whom he raises their 3 children. Section 1226(a) entitled, "Arrest, detention, and release" allows for the detention of such noncitizens during the pendency of their removal proceedings. As the Supreme Court described, it applies to "aliens already present in the United States" and "creates a default rule...by permitting-*but not requiring*-the Attorney General to issue warrants for their arrest and detention pending removal proceedings." [emphasis added] *Jennings v. Rodriguez, 583 U.S. 281, 303 (2019).* Mr. Mayoral falls squarely within the parameters of section 1226(a).

The Respondent's return makes no mention of the recent decision in *Maldonado Bautista v. Garland*, wherein the Court was unequivocal in its order: it certified a nationwide class and explicitly extended "the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." The declaratory relief established that class members are detained under the discretionary framework of 8 U.S.C. 1226(a), not the mandatory detention provision of 8 U.S.C. section 1225(b). As set forth in the original petition for writ of habeas corpus, Petitioner satisfies the criteria as a class member under *Maldonado Bautista.* He entered in 2008 without inspection and without being apprehended, has no criminal record that would subject him to section 236(c), is not subject to expedited removal nor does he have a final order of removal. [8 U.S.C.1225(b)(1); 1231] Respondent has made no claim to the contrary. As a class member, he is detained under 8 U.S.C. 1226(a) and eligible for a bond hearing.

It is notable that the Respondent's argument that Petitioner is detained under section 1225 conflicts with its own Notice of Custody Determination, issued at the time of arrest on December 2, 2025, and included as Exhibit 2 with the Petition. The Notice of Custody Determination indicates that Edgar Mayoral Garcia is being detained per the authority contained

in section 236 of the INA, and part 236 of title 8 of the Code of Federal Regulations. 8 C.F.R. 236 correlates to INA section 1226, not 1225. Government prepared records carry a presumption of reliability. *Smith v. Garland, No. 22-954 (9th Cir. 2024).* If, as the government contends, the petitioner is subject to 1229(b) as an arriving alien, his detention would be pursuant to 8 C.F.R. 235 which governs the inspection of persons applying for admissions, aka arriving aliens.

CONCLUSION

Respondents iterate that detention is mandatory based on the plain language of the statute. Yet since its enactment in 1997, aliens already within the U.S. have *not* been considered to be seeking admission. For well over 2 decades, aliens arrested within the U.S. have been eligible for bond hearings. Only with the current administration has the "plain language" been reinterpreted to misclassify those who have resided for decades within the boundaries of our country.

The *Maldonado Bautista* decision on its face would appear to cure the misclassification, yet Respondents have instructed immigration judges to not apply the decision, resulting in immediate and severe deprivation of Petitioner's fundamental rights. As a result, *Maldonado Bautista* establishes that Petitioner's detention is unlawful, but it does not provide the key to unlock his cell. That has become the exclusive province of the writ of habeas corpus.

Petitioner respectfully urges the Court to deny Respondents' motion to dismiss and order his immediate release to avoid an impartial bond hearing in light of the growing lack of independence between the respective agencies, or alternatively, to order that a bond hearing be conducted within 7 days.

DATED : December 12, 2025 //S// SUSAN VON POSERN

CERTIFICATE OF ELECTRONIC SERVICE

EDGAR MAYORAL GARCIA

NO. 3:25-cv-3466-JES-MMP

I, SUSAN VON POSERN, CONFIRM THAT ON DECEMBER 12, 2025, I UPLOADED THE ATTACHED TRAVERSE INTO THE PACER SYSTEM, AND THAT NO SEPARATE SERVICE IS REQUIRED AS ALL PARTIES ARE PARTICIPATING IN THE SYSTEM.

//S//SUSAN VON POSERN