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UNITED STATES DISTRICT COURT

Southern District of California

JULIETH MAYERLY DURAN ROMERO, Petitioner, v. CHRISTOPHER J. LaROSE ; *et al.*, Respondents.	Case Number: 25-cv-3567-AGS-VET **PETITIONER'S TRAVERSE AND MEMORANDUM IN SUPPORT OF PETITION**

1 Petitioner submits this Traverse and Memorandum to comply with the Court's order and the
2 habeas corpus procedure and to expedite the process.
3 The Return to the Petition is useful in that it clarifies a few of the facts. Namely, petitioner
4 did originally enter the USA in January 2023 and was released under conditional parole. She left the
5 USA in February 2025. She returned to the USA in November 2025, by unlawfully entering through
6 the hills. She was apprehended by the Border Patrol and sent to the Otay Mesa Detention Center,
7 where she remains today.
8 Still, the DHS did not place petitioner into expedited removal proceedings. They simply
9 continued with the pending removal proceedings that started with the 2023 NTA. The controlling
10 NTA still charges petitioner with removability under INA § 212(a)(6)(A)(i) as an alien present in
11 the USA without being admitted or paroled.
12 Respondent's Return urges the court to deny the petition and refuse any relief for a couple
13 of reasons. First, it says the court has no jurisdiction to ever consider the petition. Second, it says
14 that petitioner is lawfully detained under 8 U.S.C. § 1225 as an arriving alien. Neither of these
15 arguments are persuasive. Let us briefly examine each of them.
16 **Jurisdiction**
17 Respondents first argue that 8 U.S.C. § 1252(g) prohibits this court from even considering
18 whether petitioner's detention because it lacks jurisdiction. This argument is belied by both the text
19 of the applicable statutes and established case law.
20 8 U.S.C. § 1252(g) divests the court of jurisdiction to review actions that the Attorney
21 General may take to *commence* proceedings, *adjudicate* cases, or *execute* removal orders. (emphasis
22 added). Here, petitioner is not asking the court to review any actions related to the *commencement*
23 of proceedings, the *adjudication* of cases, or the *execution* of a removal order. Petitioner challenges
24 the purely legal question of whether he is subject to mandatory re-detention without any change in
25 circumstances or explanation after the DHS released him on his own recognizance. So, the statute
26 does not apply to this habeas corpus petition by its own words.
27 Moreover, the case law reached the same conclusion. Section 1252(g) should be ready
28 narrowly to apply "only to three discrete actions that the Attorney General may take: her 'decision

1 or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.' " *Reno v. Am.-*
2 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583
3 U.S. 281, 294 (2018) (holding that constitutional challenge to prolonged detention without bond-
4 hearing requirement is not barred by 8 U.S.C. § 1226(e)). "It is implausible that the mention of three
5 discrete events along the road to deportation was a shorthand way of referring to all claims arising
6 from deportation proceedings." *Reno*, 525 U.S. at 482. Thus, Section 1252(g) does not "sweep in
7 any claim that can technically be said to 'arise from' the three listed actions of the Attorney
8 General." *Jennings*, 583 U.S. at 294. *See Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884-85
9 (C.D. Cal. 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Navarro*
10 *Sanchez v. Larose et al.*, 25-cv-2396 JES (MMP), 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26,
11 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose et al.*, 25-cv-1824
12 GPC (MSB), 2025 WL 2800149, at *7–8 (S.D. Cal. Oct. 1, 2025) (same).

13 **1225 vs. 1226**

14 Second, respondents argue that petitioner is subject to mandatory detention under 8 U.S.C. §
15 1225 as an arriving alien subject to expedited removal proceedings. Once again, respondents are
16 wrong. Multiple district courts, including many in the Southern District of California, have now
17 been able to analyze and decide this issue.

18 Respondents argue that petitioner is subject to mandatory detention pending removal
19 proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the BIA's recent
20 decisions in *In re Matter of Q. Li*, 29 I & N Dec. 66 (BIA 2025); and *Yajure Hurtado,* 29 I & N
21 Dec. 216 (BIA 2025), affirming the government's new interpretation of § 1225. Multiple Courts,
22 including this one, have rejected this argument.

23 As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no deference
24 by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that
25 while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do").

26 Multiple District Courts across the entire United States have recently concluded that the
27 government's proposed interpretation of the statute (a) disregards the plain meaning of section
28 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a

1 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior
2 statutory interpretation and practice. The following quote is a representative example:

3 "The Court follows other decisions in this Circuit finding that "seeking admission
4 requires an affirmative act such as entering the United States or applying for status,
5 and that it does not apply to individuals who, like [Petitioner], have been residing in
6 the United States and did not apply for admission or a change of status." *Mosqueda*
7 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
8 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
9 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1
10 ("Every district court to address this question has concluded that the government's
11 position belies the statutory text of the INA, canons of statutory interpretation,
12 legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-
13 CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025)
14 (finding that petitioner who was released on bond and rearrested was entitled to a
15 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner
16 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-
17 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)."

18 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,
19 2025). Multiple other district courts across the country have reached the same conclusion.

20 Still, the somewhat unique facts of this case do somewhat muddle the analysis. That is, on
21 the one hand, petitioner was re-detained by the DHS in November 2025 when she attempted to re-
22 enter the USA. Since she was apprehended upon arrival to the USA, petitioner does not appear to be
23 a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-
24 01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025. The *Baustista*
25 court has now entered a final judgment in that case. The final judgment essentially overrules the
26 BIA case of *Yajure-Hurtado*. An alien present in the USA is not detained under 1225.

27 Still, on the other hand, according to the NTA, petitioner does appear to be a *Maldonado*
28 *Baustista* class member. That is, she is not charged as an arriving alien. The NTA charges her as an

alien present in the USA without being inspected or admitted. An alien present in the USA is detained under section 1226. Since the defendants in immigration court have alleged that petitioner is not an arriving alien, she is not subject to expedited removal proceedings. Indeed, she is not in expedited removal proceedings; she is in a standard INA § 240 removal proceeding. Consequently, she is entitled to a bond hearing under 1226.

Conclusion

Unlike petitioner, the respondents and their attorneys have access to gargantuan monetary and legal resources. So, the respondents should be held to a consistent, coherent legal position. That is, the respondents cannot have one legal position in the District Court and a completely contrary legal position in immigration court. Since the respondent's legal pleadings in immigration court do not allege the petitioner is an arriving alien, she is detained under section 1226. The court has jurisdiction to decide the petition and the administrative remedies have been exhausted enough to ripen the case. Petitioner is detained under 1226 and is entitled to a bond hearing and decision on the merits. Petitioner requests that the court issue an order that the immigration court accept bond jurisdiction and conduct a bond hearing for her based on section 1226.

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Respectfully submitted,

/s/ *William Baker*
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