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UNITED STATES DISTRICT COURT
FEDERAL DISTRICT COURT OF WESTERN WASHINGTON

Jose Guadalupe Ibarra Preciado, Petitioner, v. Laura HERMOSILLO, *et al.*, Respondents.	Case No. 2:25-cv-2561-TMC Agency No. [redacted] **PETITIONER TRAVERSE** **Noted for Consideration: January 6, 2026**

Petitioner hereby submits this reply to Federal Respondents' Return Memorandum. The core of Petitioner's habeas claim is that 8 U.S.C. § 1226 of the Immigration and Nationality Act ("INA"). Petitioner reiterates his requires that the Court order the Respondents to release him or at a minimum to provide a prompt bond hearing.

I. COURT JURISDICTION

Respondents argue that this Court lacks jurisdiction over Mr. Ibarra's petition, under the INA. Respondents point to 8 U.S.C. § 1252(g) for this assertion. This provision states:

> Except as provided in this section and notwithstanding any other provisions of law (statutory or nonstatutory), **including section 2241 of Title 28, or any other habeas corpus provision**, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g)(emphasis added). This jurisdictional bar is narrow. "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original); see also *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret this language to sweep in any claim that technically can be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."); *see also, Ibarra-Perez v. USA,* 154 F.4th 989 (9th Cir. 2025)("we have been clear that § 1252(g) does not prohibit challendges to unlawful practices merely because they are in some fashion connected to removal orders").

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Respondents point to no caselaw of any kind to support their theory that INA § strips this Court of jurisdiction to hear Mr. Ibarra's habeas claim.

Respondents also invoke the INA's "zipper clause," which states:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the Unted States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court should have jurisdiction, by habeas corpus under section 2241 or title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such question of law or fact.

8 U.S.C. § 1252(b)(9). Specifically, Respondents assert that Petitioner is challenging "the decision and action to detain him", which they assert "arises from the government's decision to commence removal proceedings" and is thus "an action taken … to remove an alien from the United States." This interpretation runs county to Supreme Court precedent. The zipper clause applies only to claims requesting review of a removal order; here, Mr. Ibarra is not "asking for review of an order of removal"; is not "challenging the decision to detain [him] in the first place or to seek removal"; and is "not even challenging any part of the process by which [his] removability will be determined." *Jennings,* 583 U.S. at 294. Claims independent of or collateral to the removal process are outside the scope of § 1252(b)(9). *See, J.E.G.M. v. Lynch,* 837 F.3d 1026, 1032 (9th Cir. 2016)(citing *Torres-Tristan v. Holder,* 656 F.3d 653, 658 (7th Cir. 2011)); *Gonzalez v. U.S. Immigr. & Customs Enf't,* 975 F.3d 788, 810 (9th Cir. 2020)("§ 1252(b)(9) is a 'targeted' and 'narrow' provision that 'is certainly not a bar where, as here, the parties are not challenging any removal proceedings.'" (quoting *Dep't of Homeland Sec. v. Regents of Univ. of Cal.,* 591 U.S. 1, 19 (2020))). Again, Respondents point to no caselaw – precedential or persuasive – to support their assertion.

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Finally, Respondents assert that the Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(e)(3), asserting that the "plain language" of the statute precludes judicial review for noncitizens determined to be detained pursuant to Section 1225(b)(2). The Supreme Court has cautioned against an "expansive" interpretation of the bars that would lead "absurd" results make certain claims "effectively unreviewable." *See Jennings* at 293-94. It is well established that courts retain jurisdiction to determine their own jurisdiction. *See, e.g., Ye v. INS,* 214 F.3d 1128, 1131 (9th Cir. 2000). Here, Mr. Ibarra contends that he is detained under § 1226 and is therefore entitled to a bond hearing. If so, then Section 1252(e)(3) does not apply, as that statute only addresses determinations under section 1225(b). Furthermore, Section 1252(e)(3) specifically relates to INA section 1225(b)(1), not (b)(2), to limit review of orders of expedited removal. Respondents do not argue that Mr. Ibarra has been ordered removed pursuant to Section 1225(b)(1), and Mr. Ibarra is not seeking review of an order of expedited removal here. As with the above jurisdictional assertions, Respondents cite to no case law supporting their assertions that the Court lacks jurisdiction over this habeas petition, regarding his unlawful detention, pursuant to § 1252(e)(3).

II. PETITIONER'S DETENTION IS GOVERNED BY §1226(a)

Respondents do not argue that Mr. Ibarra was apprehended at his arrival in the United States, or that he is subject to detention under 8 U.S.C. § 1225(b)(1), § 1226(c), or § 1231. Nor do they dispute that he is currently being detained and subjected to mandatory detention under § 1225(b)(2). This Court has declared application of § 1225(b)(2) unlawful under the Immigration and Nationality Act as applied to persons similarly situation to Mr. Ibarra. *See Rodriguez*

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Vazquez v. Bostock, --- F.Supp.3d ----, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025).

On November 25, 2025, the U.S. District Court of the Central District of California certified a nationwide class of noncitizens who are in immigration detention and have been denied access to a bond hearing based on the government's allegation that they entered without admission or inspection, like Mr. Ibarra. *See, Maldonado Bautista et al v. Santacruz Jr. et al,* No. 5:25-cv-01873-SSS-BFM. Dkt. No. 41 (C.D. Cal. Nov. 25, 2025) (order granting plaitiff petitioners' motion for class certification).

Like the members of the *Rodriguez Vazquez* Bond Denial Class and the *Maldonado Bautista* Bond Eligible Class, Mr. Ibarra is not "seeking admission" and thus cannot be subject to mandatory detention under § 1225(b)(2). *Rodriguez Vazquez v. Bostock* at *16-*27; *Maldonado Bautista v. Santacruz Jr.* at page 1447. Instead, he is subject to detention under § 1226(a), which permits release on bond. *Rodriguez Vazquez v. Bostock* at *16-*27.

Respondents acknowledge the Courts' holdings in *Rodriguez Vazquez* and *Maldonado Bautista.* However, they continue to insist that Mr. Ibarra is subject to mandatory detention, relying on two cases and ignoring the plethora of cases holding to the contrary. Respondents rely on *Vargas Lopez v. Trump,* --- F. Supp. 3d ---, No. 8:25-cv-00526, WL 2780351 (D. Neb. September 30, 2025) and *Chavez v. Noem,* et. al., --- F. Supp. 3d ---, No.. 3:25-cv-02325, 2025 WL 2730228 (S. D. Cal. Sept. 24, 2025) for district court authority supporting their proposition that 8 U.S.C. § 1225(b) properly governs Petitioner's detention. In spite of Respondents' continued citation to these two cases, these cases do not support Respondents' position.

The *Vargas* petition was dismissed by the Nebraska District Court due to that petitioner's failure to provide evidence and develop the record. *Vargas Lopez,* 2025 WL 2780351

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The *Chavez* court has not reached a decision on the merits of the legal argument as to whether § 1225 or § 1226 properly applies to individuals such as Petitioner, who physically entered the United States more than two years ago. Respondents rely on language from the *Chavez* court's order denying an Ex Parte Application for a temporary restraining order. *Chavez v. Noem,* 2025 WL 2730228, Doc. No. 2. The *Chavez* court found only that the petitioner did not meet their burden for a temporary restraining order or preliminary injunction, but has not issued a decision denying the underlying habeas petition. The *Chavez* court did find jurisdiction to consider the petition pursuant to *Jennings v. Rodriguez,* 583 U.S. 281, 294 (2018), and that exhaustion would be futile based on *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025).

Numerous districts courts throughout the country have held that people like Mr. Ibarra – who entered the United States over twenty years ago without inspection – are properly detained under § 1226 and not subject to the mandatory detention provisions of § 1225(b*). See, e.g., Cruz Vega v. Larose, et al,* 3:25-cv-2725-CAB-MSB (S.D. Cal. Nov. 20, 2025) (order issuing preliminary injunction); *Delgado Avila v. Crowley,* No. 2:25-cv-00533-MPB-MJD, (S.D. Ind. Nov. 13, 2025); *Hyppolite v. Noem*, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Guerrero Orellana v. Moniz*, —— F. Supp. 3d ——, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Lepe v. Andrews*, —— F. Supp. 3d ——, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, —— F. Supp. 3d —— –, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, —— F. Supp. 3d ——, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025). By contrast, it appears that to date only the two district courts cited by Respondents have followed *Hurtado*'s reasoning to find that noncitizens already in the county are covered by

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section 1225(b)(2). *See Vargas Lopez v. Trump*, — F. Supp. 3d —, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). This Court should similarly reject Respondents' interpretation.

III. PETITIONER COULD NOT PREVAIL IN A BOND DETERMINATION HEARING UNDER BINDING BIA CASE LAW

Respondents assert that the petition is not ripe for consideration because there has been no initial bond determination in the case. However, Respondents do concede that Mr. Ibarra could be considered a member of the Bond Denial Class for purposes of this litigation.

Respondents make no arguments regarding exhaustion. As Respondents are aware, the Tacoma Immigration Court continues to deny jurisdiction for bond hearings under *Matter of Yajure Hurtado*, in spite of district court orders to the contrary. Thus, requesting a bond determination before the Immigration Judge, without a habeas grant, would be an exercise in futility on the part of Petitioner.

IV. RELEASE IS THE APPROPRIATE REMEDY

On the other hand, Respondents do not oppose Petitioner being considered a member of the *Rodriguez Vasquez* Bond Denial Class for purposes of this litigation. Resp. Return Memo at 3. Respondents request that if the habeas petition is granted, that the Court order the Immigration Judge to provide Mr. Ibarra with a bond hearing pursuant to 8 U.S.C. § 1226(a).

Petitioner continues to seek release from detention. Courts apply the balancing test in *Mathews v. Edlridge* to determine whether a noncitizen's detention violates the Due Process Clause. 424 U.S. 319, 335 (1976); *see E.A.T.-B. v. Wamsley,* 795 F. Supp. 3d 1316, 1321 (W.D.

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Wash. Aug. 19, 2025)(collecting cases applying *Mathews* to similar immigration detention contexts). Under *Mathews,* a court balances three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous depritication of such interest the rough the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335. Here, the *Mathews* factors weigh in favor of Mr. Ibarra and support his release.

First, Mr. Ibarra has a private interest under the *Mathews* test. Mr. Ibarra was deprived of his liberty when he was arrested on November 15, 2025; he has been detained since then. "Freedom from imprisonment … lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). Liberty is the norm in the United States; detention "is the carefully limited exception." *United States v. Salerno,* 481 U.S. 739, 755 (1987). The Ninth Circuit has confirmed that noncitizens retain liberty interests protected by the Fifth Amendment. *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1205-07 (9th Cir. 2022). Here, Mr. Ibarra has a substantial interest in being free from detention, arguably the "most elemental" liberty interest. *Hamdi v. Rumseld,* 542 U.S. 507, 529 (2004); *see also Padilla v. U.S. Immigr. & Customs Enf't,* 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.").

Second, there is a high risk of erroneous deprivation of liberty. INA § 1226(a) provides procedures, including an individualized hearing by an Immigration Judge, that work to reduce the risk of erroneous deprivation of liberty. *See, Rodriguez Diaz,* 55 F.4th at 1210. However,

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here Respondents continue to claim that Mr. Ibarra is not held pursuant to § 1226; and continue to claim he is subject to mandatory detention in defiance of court orders arising from two separate class actions. By refusing to follow the court orders of *Rodriguez Vazquez* and *Maldonado Bautista*, Respondents erroneously deprive Mr. Ibarra of his liberty. The Due Process Clause protects Mr. Ibarra from this reckless abuse of authority.

The third *Mathews* factor also weights in Mr. Ibarra's favor. While the Government has an interest in enforcing laws, including "protecting the public from dangerous criminal aliens" and "securing an alien's ultimate removal". *Rodriguez Diaz,* 53 F. 4th at 1208-09. However, these interests are best served by following the existing, well-established procedures provided in § 1226. Here, the Government has chosen to erroneously deny Mr. Ibarra the right to an individualized hearing, instead choosing to continue to follow a DHS policy of mandatory detention that has been specifically overruled by the *Maldonado Bautista* court. Petitioner questions whether his detention "is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore v. Kim,* 538 U.S. 510, 532-33 (2003)(Kenndy, J. concurring). "Detention for its own sake, to meet an administrative quota … is not a legitimate government interest." *See, Pinchi v. Noem,* 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025).

The *Mathews* factors favor Mr. Ibarra and support finding a violation of due process from his continue detention. In light of Respondents' deliberate choices to continue to subject Mr. Ibarra to mandatory detention, the appropriate remedy is his release.

Many district courts faced with the same issue in this action have determined to order the immediate release of immigration habeas petitioners. *Pichard Medina v. Hermosilla* [sic], No. 3:25-cv-02233-MC (D. Or. Dec. 22, 2025); *B.D.A.A. v. Bostock,* No. 6:25-cv-02062-AA (D.Or.

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Dec. 4, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 473521, at *39 (W.D. Tex. Oct. 1, 2025) *citing J.U. v. Maldonado,* No. 25-cv-4836, 2025 U.S. Dist. LEXIS 191630, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025)*; Zumba v. Bondi,* No. 25-cv-14626, 2025 U.S. Dist. LEXIS 190052, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025)*; Sampiao v. Hyde,* No. 25-cv-11981, 2025 U.S. Dist. LEXIS 175513, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025)*; Rosado v. Figueroa,* No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025)*; M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025*).* In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. *Santiago,* 2025 LX473521 at *39 *citing J.U.,* 2025 U.S. Dist. LEXIS 191630, 2025 WL 2772765, at *10; *Zumba,* 2025 U.S. Dist. LEXIS 190052, 2025 WL 2753496, at *10*; Rosado,* 2025 WL 2337099, at *14*, 18; Sepulveda Ayala v. Bondi ("Sepulveda Ayala II")*, 25-cv-1063, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025).

Respondents have not argued that Mr. Ibarra is a flight risk or that he presents a danger to society. On the contrary, Mr. Ibarra has a pending family petition and a pending T visa, and has lived in the United States for over twenty years. He has now been detained for six weeks, missing both Thanksgiving and Christmas holidays with his family. Thus, Petitioner requests that he be released from detention or, at a minimum, granted a bond hearing within a short period of time.

V. CONCLUSION

Pursuant to the foregoing, Petitioner respectfully asks that the Court grant his requests for relief.

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DATED this 3rd day of January, 2026.

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I certify that this memorandum contains 2,870 words, in compliance with the Local Civil Rules.

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