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**I. INTRODUCTION**

Respondents’ Return asks this Court to endorse continued civil detention without statutory authority, without a custody determination, and in direct contradiction of Respondents’ own charging documents. The Government repeatedly invokes mandatory detention under 8 U.S.C. § 1225(b) while omitting the dispositive fact that DHS vacated Petitioner’s expedited removal order, issued a Notice to Appear under INA § 240, and placed Petitioner into full removal proceedings. Once expedited removal was vacated, § 1225(b) ceased to apply as a matter of law. Respondents never identify any statute authorizing detention after that point—because none exists. Rather than confront this statutory vacuum, Respondents rely on labels (“arriving alien”), an Immigration Judge’s jurisdictional refusal that made no custody findings whatsoever, and a jurisdiction-stripping argument under 8 U.S.C. § 1252(g) that has no application to a challenge to ongoing physical detention. The Return thus defends custody not by pointing to lawful authority, but by reciting generalized detention principles divorced from the actual procedural posture of this case. That approach cannot survive habeas review. This case is not a challenge to removal proceedings, admissibility, or asylum eligibility. It is a straightforward challenge to ultra vires civil detention. DHS vacated expedited removal, initiated § 240 proceedings, and then continued to detain Petitioner as if mandatory detention still applied—without invoking § 1226, without providing a bond hearing, and without making any individualized findings of danger or flight risk. Civil detention requires a valid statutory basis and meaningful process. Respondents offer neither. Because Petitioner is currently detained without statutory authorization, under a vacated detention framework, and in violation of the Due Process Clause, the Petition should be granted and Respondents ordered to provide immediate custody review or release.

1 Respondents’ position is especially untenable in light of *Maldonado Bautista v. Noem*, No. 5:25-cv-  
2 01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), in which a federal district court held that similarly  
3 situated noncitizens are detained under 8 U.S.C. § 1226(a)—not § 1225(b)—and expressly vacated  
4 DHS’s detention guidance as unlawful under the Administrative Procedure Act. Respondents filed  
5 their Return after that judgment issued, yet failed to cite or distinguish it. Their continued reliance  
6 on § 1225(b) therefore rests on a detention theory that has already been rejected.  
7

## 8

## 9 II. FACTUAL AND PROCEDURAL BACKGROUND

10 Petitioner Manvel Zakinyan is a native and citizen of Armenia who presented himself for inspection  
11 at the San Ysidro Port of Entry on or about January 13, 2025, and applied for admission to the  
12 United States.  
13

### 14 A. Initial Processing and Credible Fear Determination

15 Upon arrival, the Department of Homeland Security (“DHS”) initially processed Petitioner under  
16 expedited removal pursuant to INA § 235(b)(1) after determining that he lacked valid entry  
17 documents. During processing, Petitioner expressed a fear of return to Armenia and requested  
18 protection.  
19

20 On or about January 31, 2025, a USCIS asylum officer conducted a credible fear interview and  
21 issued a positive credible fear determination, finding that Petitioner established a credible fear of  
22 persecution and torture if returned to Armenia.

### 23 B. Vacatur of Expedited Removal and Initiation of § 240 Proceedings

24 Following the positive credible fear determination, DHS vacated the expedited removal order.  
25 DHS’s own Notice to Appear expressly states:

26 “Section 235(b)(1) order was vacated pursuant to 8 C.F.R. §§ 208.30; 235.3(b)(5)(iv).”  
27  
28

1 After vacating expedited removal, DHS issued a Notice to Appear under INA § 240, charging  
2 Petitioner as inadmissible under INA § 212(a)(7)(A)(i)(I) and placing him into full removal  
3 proceedings before the Immigration Court.

4 As a result of DHS’s vacatur of expedited removal and issuance of a § 240 Notice to Appear,  
5 Petitioner was no longer subject to detention under INA § 235(b).  
6

7 **C. Continued Detention and Request for Custody Redetermination**

8 Despite the vacatur of expedited removal and the initiation of § 240 proceedings, Petitioner  
9 remained in ICE custody at the Otay Mesa Detention Center.

10 On or about December 1, 2025, Petitioner timely filed a request for custody redetermination with  
11 the San Diego Immigration Court, seeking a bond hearing. In support of his request, Petitioner  
12 submitted a complete custody evidence packet, including documentation demonstrating:

- 13 A. the availability of a U.S. citizen sponsor,
- 14 B. stable housing and financial support,
- 15 C. supervision and transportation for court appearances,
- 16 D. and the absence of any criminal history or security concerns.

17  
18 **D. Immigration Judge’s Jurisdictional Refusal**

19 On December 2, 2025, the Immigration Judge did not conduct a custody hearing and did not  
20 evaluate any bond factors. Instead, the Immigration Judge denied Petitioner’s request solely on  
21 jurisdictional grounds, stating that the court “lacked jurisdiction” because DHS had classified  
22 Petitioner as an “arriving alien.”  
23

24 The Immigration Judge made no findings regarding danger to the community, risk of flight,  
25 conditions of release, or alternatives to detention. The denial was a jurisdictional refusal, not a  
26 custody adjudication.  
27  
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1 **E. Pending Removal Proceedings and Ongoing Detention**

2 Petitioner's removal proceedings remain pending. His individual merits hearing is currently  
3 scheduled for March 18, 2026.

4 Petitioner has no criminal history, no adverse security indicators, and DHS has identified no danger  
5 or flight risk. DHS has not alleged that Petitioner is subject to mandatory detention under INA §  
6 236(c).  
7

8 Nevertheless, Respondents continue to detain Petitioner without a bond hearing, without an  
9 individualized custody determination, and without identifying any statutory authority authorizing  
10 his continued detention following the vacatur of expedited removal.  
11

12 **F. Habeas Proceedings Before This Court**

13 On December 22, 2025, Petitioner filed the instant Petition for Writ of Habeas Corpus pursuant to  
14 28 U.S.C. § 2241, challenging his continued detention.  
15

16 After reviewing the Petition, this Court issued an Order to Show Cause, expressly finding that  
17 summary dismissal was unwarranted and ordering Respondents to file a response justifying  
18 Petitioner's detention. The Court further ordered that Petitioner not be transferred outside the  
19 Southern District of California pending resolution of this action.  
20

21 Petitioner remains detained at Otay Mesa Detention Center without statutory authority and without  
22 meaningful custody review.  
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1 **III. STATUTORY BACKGROUND**

2 **A. Detention Authority Under the Immigration and Nationality Act**

3 The Immigration and Nationality Act (“INA”) authorizes the civil detention of noncitizens only  
4 pursuant to specific statutory provisions. The government’s authority to detain is not inherent and  
5 must be grounded in an express statute. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

6 The INA provides two primary detention frameworks relevant to this case: detention of applicants  
7 for admission under INA § 235, codified at 8 U.S.C. § 1225, and detention of noncitizens in  
8 removal proceedings under INA § 236, codified at 8 U.S.C. § 1226.  
9

10  
11 **B. Detention Under INA § 235(b)**

12 INA § 235(b) governs the inspection and detention of certain applicants for admission who are  
13 encountered at the border or port of entry.

14 Under § 235(b)(1), certain noncitizens determined to be inadmissible may be placed into expedited  
15 removal. If such a noncitizen expresses a fear of persecution, DHS must refer the individual for a  
16 credible fear interview. If a positive credible fear determination is made, the statute provides that  
17 the individual “shall be detained for further consideration of the application for asylum.” 8 U.S.C. §  
18 1225(b)(1)(B)(ii).  
19

20 Section 235(b)(1) detention is thus tethered to expedited removal proceedings. The statute does not  
21 contain language authorizing continued detention once expedited removal is vacated or once DHS  
22 initiates full removal proceedings under INA § 240.  
23

24 Separately, § 235(b)(2) governs certain applicants for admission who are not subject to expedited  
25 removal and authorizes detention pending removal proceedings, subject to limited exceptions.

26 **C. Vacatur of Expedited Removal and Transition to § 240 Proceedings**  
27  
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1 DHS regulations expressly contemplate that expedited removal proceedings may be terminated or  
2 vacated following a positive credible fear determination. See 8 C.F.R. §§ 208.30, 235.3(b)(5)(iv).

3 When expedited removal is vacated and DHS issues a Notice to Appear under INA § 240, the  
4 noncitizen is placed into full removal proceedings governed by 8 U.S.C. § 1229a.

5 The INA does not provide that detention under § 235(b) continues indefinitely after expedited  
6 removal is vacated. Instead, once DHS elects to proceed under § 240, detention authority must be  
7 reassessed under the applicable provisions of INA § 236.

8 This statutory transition has been confirmed by at least one federal district court. In *Maldonado*  
9 *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), the court held that  
10 applicants for admission whose expedited removal proceedings were terminated and who were  
11 placed into removal proceedings under INA § 240 are detained pursuant to 8 U.S.C. § 1226(a) and  
12 are not subject to mandatory detention under § 1225(b). The court further vacated DHS's contrary  
13 detention guidance as not in accordance with law under the Administrative Procedure Act.  
14  
15

#### 16 17 **D. Detention Under INA § 236**

18 INA § 236 governs the arrest and detention of noncitizens pending a decision on removal.

19 Under § 236(a), DHS may arrest and detain a noncitizen pending removal proceedings but may also  
20 release the individual on bond or conditional parole. 8 U.S.C. § 1226(a). Immigration Judges are  
21 authorized to conduct custody redetermination hearings under this provision.

22 Mandatory detention under § 236(c) applies only to a narrowly defined category of noncitizens with  
23 specified criminal convictions. DHS has not alleged that § 236(c) applies in this case.

24 Thus, where expedited removal has been vacated and a noncitizen is placed in § 240 proceedings  
25 without falling within § 236(c), detention—if authorized at all—is governed by § 236(a).  
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- 1 b. the adjudication of removability,
- 2 c. or the execution of a removal order.

3 Petitioner challenges continued civil detention without statutory authority. Courts have consistently  
4 held that § 1252(g) is narrow, not a blanket bar on detention habeas claims. If Respondents'  
5 interpretation were correct, no immigration detention habeas claim could ever be heard, a result the  
6 Supreme Court has repeatedly rejected.

7  
8 The Court's Order to Show Cause already reflects this understanding by exercising jurisdiction and  
9 requiring Respondents to justify detention. Respondents' jurisdictional argument should be rejected.

10 **B. RESPONDENTS MISIDENTIFY THE STATUTE GOVERNING PETITIONER'S**  
11 **DETENTION**

12 Respondents' central argument is that Petitioner is subject to mandatory detention under 8 U.S.C. §  
13 1225(b)(1)(B)(ii). That argument collapses on the facts.

14 Respondents' own Notice to Appear states that the expedited removal order was vacated pursuant to  
15 governing regulations. Once DHS vacated expedited removal, § 1225(b)(1) ceased to apply. The  
16 statute authorizes detention only during expedited removal proceedings; it does not authorize  
17 continued detention after DHS affirmatively abandons that process.

18 Respondents never address this vacatur. Instead, they proceed as though § 1225(b) applies  
19 indefinitely, even after DHS initiates full removal proceedings under INA § 240. Nothing in the  
20 statute permits that result.

21 Civil detention must be grounded in current statutory authority, not a statute DHS has already  
22 vacated out of the case.

23 That statutory conclusion has already been confirmed by a federal district court. In *Maldonado*  
24 *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), the court held that  
25 applicants for admission whose expedited removal proceedings were terminated and who were  
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1 placed into removal proceedings under INA § 240 are detained pursuant to 8 U.S.C. § 1226(a)—not  
2 § 1225(b)—and are therefore entitled to custody redetermination hearings. The court further vacated  
3 DHS’s contrary detention guidance as not in accordance with law under the Administrative  
4 Procedure Act. Respondents’ continued reliance on § 1225(b) here mirrors the very detention  
5 framework invalidated in *Maldonado*.  
6

7 **C. RESPONDENTS FAIL TO IDENTIFY ANY VALID DETENTION STATUTE**  
8 **AFTER VACATUR**

9 After vacating expedited removal and issuing a § 240 Notice to Appear, detention authority—if it  
10 exists at all—must arise under 8 U.S.C. § 1226.

11 Respondents’ Return is conspicuously silent on § 1226. They do not argue:

- 12 a. that Petitioner is subject to mandatory detention under § 1226(c),
- 13 b. that discretionary detention under § 1226(a) is unavailable,
- 14 c. or that bond jurisdiction is barred by statute.  
15

16 This omission is fatal. Detention without statutory authorization violates the INA and the Due  
17 Process Clause. As the Supreme Court has made clear, “the Government’s detention authority is  
18 limited by statute.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

19 Respondents’ inability—or refusal—to identify a detention statute confirms that Petitioner is being  
20 held ultra vires.  
21

22  
23 **D. “ARRIVING ALIEN” IS A REGULATORY LABEL, NOT A SOURCE OF**  
24 **DETENTION AUTHORITY**

25 Respondents repeatedly rely on Petitioner’s classification as an “arriving alien” as though that  
26 designation independently mandates detention and eliminates bond jurisdiction.

27 It does not.  
28

1 “Arriving alien” is a regulatory classification, not a detention statute. The INA authorizes detention  
2 only under § 1225 or § 1226. A regulatory label cannot expand statutory detention authority or  
3 override statutory limits.

4 Respondents’ attempt to elevate “arriving alien” status into a detention mandate is legally  
5 unsupportable and directly conflicts with the structure of the INA.  
6

7 **E. THE IMMIGRATION JUDGE’S ORDER CONFIRMS PETITIONER NEVER**  
8 **RECEIVED A CUSTODY DETERMINATION**

9 Respondents assert that Petitioner received adequate process because an Immigration Judge “denied  
10 bond.” The record proves otherwise.

11 The Immigration Judge did not:

- 12 a. evaluate danger,
- 13 b. assess flight risk,
- 14 c. weigh evidence,
- 15 d. or consider conditions of release.  
16

17 Instead, the Immigration Judge denied the request solely on jurisdictional grounds, stating that the  
18 court lacked jurisdiction because DHS classified Petitioner as an arriving alien.

19 A jurisdictional refusal is not a custody determination. It is the absence of one. Respondents cannot  
20 bootstrap a non-decision into constitutionally sufficient process.

21 That jurisdictional refusal is legally suspect in light of *Maldonado Bautista v. Noem*, No. 5:25-cv-  
22 01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). There, the court rejected DHS’s interpretation that  
23 Immigration Judges lack custody jurisdiction over applicants for admission placed into removal  
24 proceedings under INA § 240, holding instead that such individuals are detained under 8 U.S.C. §  
25 1226(a) and are entitled to custody redetermination hearings. The Immigration Judge’s refusal here  
26 mirrors the same DHS framework that *Maldonado* held unlawful.  
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1           **F. RESPONDENTS’ RELIANCE ON *JENNINGS* AND *THURAISSIGIAM* IS**  
2 **MISPLACED**

3 Respondents rely heavily on *Jennings v. Rodriguez* and *DHS v. Thuraissigiam*. Neither case  
4 authorizes detention without statutory authority.

5 *Jennings* addressed whether § 1225(b) and § 1226(c) contain implicit bond hearing requirements. It  
6 did not authorize detention where § 1225(b) no longer applies.

7 *Thuraissigiam* addressed limits on habeas review of credible fear determinations, not challenges to  
8 ongoing detention after expedited removal has been vacated.

9 Neither case permits DHS to detain someone after abandoning the statutory framework that  
10 originally authorized detention.  
11

12           **G. RESPONDENTS IGNORE CONTROLLING CONTRARY AUTHORITY**

13 Respondents’ Return omits any discussion of *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-  
14 SSS-BFM (C.D. Cal. Dec. 18, 2025), despite its direct relevance to the detention theory advanced  
15 here. In *Maldonado*, the court held that applicants for admission whose expedited removal  
16 proceedings were terminated and who were placed into removal proceedings under INA § 240 are  
17 detained pursuant to 8 U.S.C. § 1226(a)—not § 1225(b)—and are therefore entitled to custody  
18 redetermination hearings. The court further vacated DHS’s detention guidance under the  
19 Administrative Procedure Act. Respondents filed their Return after *Maldonado* issued, yet failed to  
20 cite, distinguish, or acknowledge it, and instead continue to rely on the very detention framework  
21 *Maldonado* declared unlawful.  
22

23 Respondents’ Return fails to address the federal district court decision in *Maldonado Bautista v.*  
24 *Noem*, which held that similarly situated noncitizens are detained under § 1226(a) and are not  
25 subject to mandatory detention under § 1225(b), and which vacated DHS’s detention guidance  
26 under the APA.  
27  
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1 Respondents filed their Return after that judgment yet failed to cite or distinguish it. Continued  
2 detention under a vacated policy is unlawful and underscores the lack of substantial justification for  
3 Respondents' position.

4 **H. RESPONDENTS' DUE PROCESS ANALYSIS IS DEFECTIVE**

5 Respondents argue that Petitioner's detention is not unconstitutionally prolonged and that arriving  
6 aliens have no due process rights beyond those conferred by statute.

7 That argument fails for two reasons.

8 First, there is no statute authorizing Petitioner's detention, rendering the due process analysis  
9 academic.

10 Second, even civil detention authorized by statute must serve a regulatory purpose and be  
11 accompanied by meaningful process. Here:

- 12
- 13 a. DHS identifies no danger,
  - 14 b. alleges no flight risk,
  - 15 c. submitted no rebuttal to Petitioner's custody evidence,
  - 16 d. and offers no custody review mechanism.
- 17

18 Indefinite civil detention without individualized findings violates due process.

19 **I. RESPONDENTS' "NOT PROLONGED" ARGUMENT IS DISINGENUOUS**

20 Respondents argue that detention is not prolonged because it has not yet exceeded one year, while  
21 simultaneously asserting that:

- 22
- 23 a. no bond hearing is available,
  - 24 b. parole is discretionary and unreviewable,
  - 25 c. proceedings will continue well into 2026.
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1 Detention with no end point and no review is the definition of prolonged detention. The  
2 Constitution does not permit the Government to warehouse individuals indefinitely while  
3 disclaiming responsibility for custody review.

4 **J. RESPONDENTS' POSITION EXPOSES EAJA LIABILITY**

5 Respondents:

- 6
- 7 a. ignored DHS's vacatur of expedited removal,
  - 8 b. relied on a detention statute that no longer applies,
  - 9 c. failed to identify any alternative statutory authority,
  - 10 d. omitted controlling contrary authority,
  - 11 e. and defended detention under a vacated policy.

12 Should the Court grant relief, Respondents' position cannot be deemed "substantially justified"  
13 under the Equal Access to Justice Act.

14 **K. SUMMARY**

15 Respondents ask this Court to uphold detention that:

- 16
- 17 a. has no statutory basis,
  - 18 b. rests on a vacated framework,
  - 19 c. lacks a custody determination,
  - 20 d. and violates due process.

21 The INA does not permit detention by inertia. When DHS vacated expedited removal, it forfeited §  
22 1225(b) detention authority. Having failed to invoke § 1226, Respondents are detaining Petitioner  
23 without lawful authority, Habeas relief is required.

24 **V. CONCLUSION**

25 Respondents ask this Court to ratify civil detention that is untethered from any statute Congress  
26 enacted. They invoke mandatory detention under 8 U.S.C. § 1225(b) while conceding—through  
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1 their own charging documents—that expedited removal was vacated and that Petitioner was placed  
2 into § 240 removal proceedings. Once that occurred, § 1225(b) ceased to supply detention authority.

3 Respondents never identify an alternative statutory basis for custody, because none exists.

4 This case does not require the Court to extend or reinterpret the immigration statutes. It requires the  
5 Court to enforce them. The Immigration and Nationality Act authorizes detention only where  
6 Congress has expressly permitted it. Here, DHS abandoned the only statute it now relies upon,  
7 declined to invoke § 1226, and refused to provide a custody determination through the Immigration  
8 Court. The result is detention by inertia—continued confinement without statutory authorization,  
9 without individualized findings, and without meaningful process.

10 The Constitution does not tolerate such detention. Nor does the INA. Habeas corpus exists precisely  
11 to prevent executive imprisonment that persists after legal authority has lapsed. Respondents’  
12 Return offers policy arguments, labels, and jurisdictional distractions, but it never answers the  
13 dispositive question before this Court: what law authorizes Petitioner’s continued detention today?  
14 Because Respondents cannot identify such authority, the Petition must be granted. The Court should  
15 declare that Petitioner is not subject to mandatory detention, order immediate custody review under  
16 8 U.S.C. § 1226(a), or, in the alternative, order Petitioner’s release under reasonable conditions. No  
17 lesser relief cures the statutory and constitutional violations presented here.

## 21 VI. PRAYER FOR RELIEF

22 WHEREFORE, Petitioner Manvel Zakinyan respectfully requests that this Court grant the  
23 following relief forthwith:

- 24 1. Grant the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and declare that  
25 Respondents are unlawfully detaining Petitioner without statutory authority;

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2. **ORDER PETITIONER’S IMMEDIATE RELEASE** from ICE custody under reasonable conditions set by this Court, should Respondents be unable or unwilling to provide the immediate custody hearing ordered above;
3. **ENJOIN RESPONDENTS** from continuing to detain Petitioner absent compliance with the Court’s order and the statutory and constitutional requirements governing civil immigration detention;
4. **RETAIN JURISDICTION** to enforce and supervise compliance with the relief granted herein;
5. **AWARD PETITIONER ATTORNEY’S FEES AND COSTS** pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, upon a showing that Petitioner is a prevailing party and that Respondents’ position was not substantially justified; and
6. **GRANT SUCH OTHER AND FURTHER RELIEF** as the Court deems just and proper.

**Date: December 29, 2025**

**Respectfully Submitted,  
/s/ Jacqueline M. Sale Esq.  
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Attorney For Petitioner**

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**CERTIFICATE OF SERVICE**

**I hereby certify that on this 29<sup>th</sup> day of December, 2025, I electronically filed the foregoing  
Petitioner’s Traverse to Respondents’ Return in Support of Petition for Writ of Habeas  
Corpus with the Clerk of the Court using the CM/ECF system.**

**Date: December 29, 2025**

**Respectfully Submitted,  
/s/ Jacqueline M. Sale Esq.  
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