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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

VALDEMAR TZINTZUN-HERNANDEZ,

Petitioner,

v.

KRISTI NOEM, Secretary for the Department
of Homeland Security; TODD LYONS, Acting
Director, Immigration and Customs
Enforcement; LAURA HERMOSILLA, Field
Office Director, Immigration and Customs
Enforcement Seattle Field Office; BRUCE
SCOTT, Warden, Northwest ICE Processing
Center,

Respondents.

Case No. 2:25-cv-02752-TMC

**PETITIONER'S TRAVERSE TO
RESPONDENTS' RETURN ON
HABEAS PETITION**

Petitioner, Mr. Valdemar Tzintzun-Hernandez, submits a traverse to the Respondents' January 7, 2026 return on his petition for writ of habeas corpus, initially filed with this Court on December 31, 2025. Petitioner has sought relief as a member of the Bond Denial Class certified in *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept 30, 2025), and the Bond Eligible Class in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 2670875 (C.D. Cal. Nov. 25, 2025).

As alleged in Petitioner's writ, he is a clear member of each class for the following reasons:

- a. He does not have lawful status in the United States and is currently held in administrative detention at the Northwest ICE Processing Center.
- b. Last entered the United States without inspection over seventeen years ago, and was not apprehended upon arrival, *cf. id.*; and
- c. Is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

Respondents have not denied that Petitioner is a member of the certified classes – in fact, they do not oppose his being considered a member of the *Rodriguez Vazquez* Bond Denial Class and recommend the remedy of a bond hearing in the event his petition is granted. *See* Federal Respondent's Ret., Doc. Entry 8 at p. 4. Despite their disagreement with the *Maldonado Bautista* and *Rodriguez Vazquez* decisions, a District Court decision nonetheless remains in full force and effect until a stay is issued by the Ninth Circuit. *Nat'l Grange of the Order of Patrons and Husbandry v. Cal. State Grange*, 182 F. Supp. 3d 1065, 1074 (E.D. Cal. 2016); *in re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1364 (9th Cir. 1987) ("Absent a stay, all orders and

1 judgments of courts must be complied with promptly”). It is immaterial at this point that
2 appellate review is being sought by the government.

3 Regarding 8 U.S.C. § 1252(g), the statute strips jurisdiction over claims “arising from the
4 decision or action by the Attorney General to commence proceedings, adjudicate cases, or
5 execute removal orders against any alien under this chapter.” *Id.* Respondents argue that
6 Petitioner’s claims “arise from the government’s decision to commence removal proceedings,”
7 but 8 U.S.C. 1252(g) should be read “narrowly” as to apply only to three discrete actions the
8 Attorney General may take: its decision or action to “(1) commence proceedings, (2) adjudicate
9 cases, or (3) execute removal orders.” *See Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th
10 Cir. Aug. 27, 2025) (quoting *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S.
11 471, 482, 486 (1999)). The statute does not “prohibit challenges to unlawful practices merely
12 because they are in some fashion connected to removal orders,” nor does it bar due process
13 claims. *Ibarra-Perez*, at 997; *Walters v. Reno*, 145 F.3d 1032, 1052– 53 (9th Cir. 1998) (finding
14 that the petitioners’ objective was not to review the merits of their proceeding, but rather “to
15 enforce their constitutional rights to due process in the context of those proceedings”).

16 Petitioner is not challenging a decision to commence his removal proceedings, address
17 legal issues ruled upon by EOIR, or execute a removal order. Instead, he is challenging the
18 legality of his unlawful detention and the violation of due process. Petitioner is enforcing his
19 “constitutional rights to due process in the context of removal proceedings—not the legitimacy
20 of the removal proceedings or any removal order.” *See Garcia v. Noem*, No. 25-cv-2180-DMS-
21 MMP, 2025 WL 2549431, at *11 (S.D. Cal. Sept. 3, 2025). Accordingly, § 1252(g) does not
22 strip this Court of jurisdiction.

1 A similar response is warranted regarding 8 U.S.C. § 1252(b)(9). That section of code
2 requires that judicial review of all legal and factual questions be “consolidated” into a single
3 petition for review with the appropriate court of appeals; here, a challenge to the legality of
4 Petitioner’s custody cannot be addressed through the administrative or appellate process, and the
5 immigration court will direct that it lacks bond jurisdiction under *Matter of Yajure Hurtado*, 29
6 I&N Dec. 216 (BIA Sept. 5, 2025). Section 1252(b)(9) may appear to preclude the review of
7 issues “arising from any action taken or proceeding brought to remove an alien from the United
8 States,” but claims that are independent or collateral to the removal process are excluded. *See*
9 *Gonzalez v. United States Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir.
10 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). Petitioner does not
11 contest the DHS’ decision to commence removal proceedings or adjudicate removability – he is
12 instead arguing that his custody is unlawful, which would not strip this Court of jurisdiction
13 under § 1252(b)(9). *See, e.g., Noori v. Larose et al.*, 25-cv-1824-GPC-MSB, 2025 WL 2800149,
14 at *18-19 (S.D. Cal. Oct. 1, 2025) (holding that the “zipper clause” cannot be stretched to
15 preclude jurisdiction over claims of unlawful detention; finding both constitutional and APA
16 violations).

17 Since the Ninth Circuit has not issued a stay on *Rodriguez Vazquez* or *Maldonado*
18 *Bautista*, the holdings ought to be considered extremely persuasive – if not binding – upon this
19 Court. Petitioner thus requests that the Court grant relief and find that he is eligible for a release
20 from custody pursuant to 8 U.S.C. § 1226(a).

Respectfully submitted,

Dated: January 11, 2026

s/ Benjamin Cornell
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Pursuant to LCR (7)(e)(4), this reply conforms with the local rules as it is 996 words in length.