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DETAINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Berthnell Anthoney Hall Petitioner, vs. CHRISTOPHER J. LAROSE, et al., Respondents.	Case No.: 26-cv-01850-BAS-DDL **PETITIONER'S TRAVERSE IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS**

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

Petitioner, Berthnell Anthoney Hall, through undersigned counsel, respectfully submit this Traverse to Respondent's Return and in support of his Petition for the Writ of Habeas Corpus.

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I. INTRODUCTION

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Petitioner has filed a habeas petition under 28 U.S.C. § 2241. DHS placed Petitioner in removal proceedings under 8 U.S.C. § 1229(a) and charged him as removable under 8 U.S.C. § 1227(a)(1)(B), as a noncitizen who was admitted for a definite period and remained beyond the authorized period. Petitioner is not charged under a criminal mandatory-detention ground, and the government's position in the bond proceedings has treated his custody as governed by 8 U.S.C. § 1226(a).

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Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. On February 12, 2026, Petitioner appeared for a bond hearing before an Immigration Judge under § 1226(a). Petitioner was ultimately denied bond. Based on the arguments set forth below, the Court should grant Petitioner's requests for relief and grant the petition.

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II. FACTUAL BACKGROUND

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Petitioner is a native and citizen of Jamaica. He first arrived in the United States on or about March 7, 2015, through Atlanta, Georgia. He was inspected and admitted using an H-2B nonimmigrant visa that was valid until April 1, 2016.

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Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. On February 12, 2026, Petitioner appeared for a bond hearing

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1 before an Immigration Judge under § 1226(a). The Immigration Judge denied
2 bond based on danger and flight-risk findings. Petitioner did not appeal that bond
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4 denial to the Board of Immigration Appeals.
5 Petitioner's removal charge is a civil immigration overstay charge. The
6 available record does not show violent conduct, weapons-related conduct, drug
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8 trafficking, or harm to persons or property. The issues reflected in the immigration
9 filings are traffic-related driving-without-a-license matters and a probation-related
10 matter of unknown disposition. Those matters do not establish that Petitioner is a
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12 danger to the community.
13 Petitioner has significant family and community ties in the United States.
14 His brother, Leroy Anthony Gunning, is a U.S. citizen and has agreed to serve as
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16 Petitioner's sponsor in custody redetermination proceedings. Mr. Gunning has
17 provided letters of support, identity documentation, proof of residence, utility and
18 tax documentation, and income documentation. Mr. Gunning will provide
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20 Petitioner with housing and financial support and will assist Petitioner in
21 complying with all immigration and court obligations. If released, Petitioner will
22 reside with his U.S. citizen brother and lawful permanent resident mother, Susan
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24 A. Hall. Prior to detention, Petitioner took care of his mother as she suffers from
25 various medical conditions. Petitioner's two U.S. citizen nieces also reside in the
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United States with Mr. Gunning and Ms. Hall. These family ties provide Petitioner with a stable release plan and strong incentives to appear for all future proceedings.

Petitioner also has a documented employment history in Florida. Petitioner worked at the Hilton Sandestin Beach Golf Resort & Spa as a Lobby Attendant in the Housekeeping Department from February 20, 2024, until January 6, 2026, and was described to have a positive attitude and serve as a valuable addition to the team.

Petitioner is actively pursuing relief in immigration court. Counsel submitted Petitioner's Form EOIR-42B application for cancellation of removal and adjustment of status for certain nonpermanent residents. Petitioner and his brother are also actively working on a I-130 Petition for Alien Relative with the United States Citizenship and Immigration Services.

Petitioner's pending removal proceedings and pending relief application give him a strong incentive to comply with all future hearings. His sponsor, fixed address in Florida, family support, and release plan further mitigate any risk of nonappearance.

III. ARGUMENT

A. Petitioner's Continued Detention Is Not Adequately Justified Under 8 U.S.C. §1226(a) or the Due Process Clause.

Respondents' assertion that Petitioner is "lawfully detained", (Opp. at 4), under 8 U.S.C. § 1226(a) is unavailing for two reasons that, when considered in tandem, compel the conclusion that Petitioner's continued detention cannot stand.

First, detention under § 1226(a) is discretionary, not mandatory. The statute expressly provides that the Attorney General "*may*" detain an alien pending removal proceedings, or alternatively "*may* release" the alien on bond or conditional parole. 8 U.S.C. § 1226(a) (emphasis added). This permissive language stands in contrast to § 1226(c), which mandates detention for certain criminal aliens using the word "shall." 8 U.S.C. § 1226(c). Congress's choice of different language in the two subsections must be given effect. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."). Because § 1226(a) is discretionary, an invocation of that statute alone as authority for detention is not self-justifying.

Detention under § 1226(a) is not automatic; it must be justified through an

1 individualized custody determination. *See Matter of Guerra,* 24 I&N Dec. 37, 40
2 (BIA 2006). That framework requires consideration of whether the noncitizen
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4 presents a danger to persons or property, a threat to national security, or a risk of
5 flight, with nonexclusive factors including: fixed address, length of residence,
6 family ties, employment history, court-appearance record, criminal record,
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8 immigration history, attempts to flee authorities, and manner of entry. *Id.*

9 Second, the government must affirmatively demonstrate, with particularized
10 evidence, that continued detention is warranted over release on bond or
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12 conditional supervision. The Supreme Court has recognized that civil immigration
13 detention implicates fundamental liberty interests, and that deprivation of liberty
14 without adequate justification raises serious constitutional concerns. *Zadvydas v*
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16 *Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment -- from
17 government custody, detention, or other forms of physical restraint -- lies at the
18 heart of the liberty that [the Due Process] Clause protects.") (internal citations
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20 omitted). Even where, as here, Petitioner has received some form of bond process,
21 due process still requires meaningful, individualized consideration. Courts have
22 consistently required that bond determinations rest on individualized evidence
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24 rather than generalized assumptions. *See e g , Singh v. Holder*, 638 F.3d 1196,
25 1203 (9th Cir. 2011).
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1 Respondents have not met that burden here. The Immigration Judge's
2 February 12, 2026, bond denial allegedly rested on findings of "danger to the
3 community" and "flight risk" that were conclusory and untied to any specific
4 evidence in the record.
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6 **a. Petitioner Is Not a Danger to The Community.**
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8 With respect to danger, Petitioner is detained solely based on a civil
9 immigration violation: a visa overstay under 8 U.S.C. § 1227(a)(1)(B). A visa
10 overstay carries no criminal penalty, involves no element of violent conduct, and
11 by itself provides no basis whatsoever for concluding that Petitioner poses a threat
12 to persons or property. The bond record contains no evidence of assaultive
13 conduct, threats, possession of weapons, or controlled-substance trafficking. The
14 traffic-related matters reflected in the record, driving-without-a-license matters
15 and a probation-related matter of unknown disposition, are not violent offenses
16 and do not demonstrate danger to persons or property. To the extent the
17 Immigration Judge treated these matters as dispositive of the dangerousness
18 inquiry, that was legal error. Where the record reflects no history of violence and
19 no conduct suggesting public safety concerns, a danger finding is not just
20 unsubstantiated; it is both substantiated and arbitrary.
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b. Petitioner Is Not a Flight Risk.

With respect to flight risk, the Immigration Judge identified no facts that would affirmatively indicate Petitioner is unlikely to appear for future proceedings. The *Guerra* factors strongly favor release. *See Matter of Guerra,* 24 I&N Dec. 37, 40 (BIA 2006). Petitioner entered the United States lawfully, has resided here for approximately ten years, maintains a fixed release address in Florida, and has a U.S. citizen brother willing to serve as sponsor. His lawful permanent resident mother and other family members reside in the United States. His sponsor has provided identity, housing, financial, and support documentation and has agreed to assist Petitioner with compliance. Petitioner also has an active relief application and a strong incentive to appear for all future proceedings. The record does not reflect any history of fleeing authorities or failing to appear in the immigration court.

In sum, because § 1226(a) confers discretionary, not mandatory, detention authority, and because the Immigration Judge's bond denial rested on conclusory findings, Petitioner's continued detention is not lawfully justified. Respondents have failed to carry their burden of demonstrating that detention, rather than release on appropriate conditions, is warranted in this case. Petitioner respectfully requests that this Court order Petitioner's release on appropriate conditions of

supervision. Alternatively, Petitioner requests an order for a renewed bond hearing at which Respondents bear the burden and must come forward with substantiated, individualized evidence supporting any finding of danger or flight risk, and at which the adjudicator applies the correct legal framework and meaningfully considers whether bond or conditions can mitigate any identified risk.

B. Administrative Remedies Need Not Be Fully Exhausted for Petitioner to Bring this Petition.

While administrative exhaustion is not a jurisdictional requirement for habeas petitions filed under 28 U.S.C. § 2241, courts typically "require that habeas petitioners exhaust all available judicial and administrative remedies before seeking relief under § 2241" as a prudential matter. *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012) (internal citations omitted). "Courts may require prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal citations and quotations omitted). Because exhaustion is not jurisdictional, courts "have discretion to waive a prudential

requirement." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Courts may waive the exhaustion requirement when administrative remedies are inadequate or their exercise would be futile, or irreparable injury would result without immediate judicial intervention. *Id.* at 1000–01.

Here, Petitioner has not fully exhausted administrative remedies because he did not appeal his previous bond denial. However, Petitioner is not required to exhaust all administrative remedies before seeking relief from federal district court as exhaustion is a discretionary, not jurisdictional, requirement. *Id.* at 998. Under these circumstances, Petitioner asks the Court to waive the exhaustion requirement and proceed with ordering relief the Court finds appropriate.

C. Petitioner's Habeas Claims Are Proper.

Respondents improperly characterize Petitioner's claims for relief. (Opp at 4–5.) While Respondents selectively focus on ancillary claims regarding the commencement of removal proceedings and conditions of detention, they disregard Petitioner's first and primary cause of action: a direct constitutional challenge to the legality and duration of his confinement under the Fifth Amendment Due Process Clause. (Pet. at 6.) This is precisely the type of claim that the writ of habeas corpus was designed to address. *See Dep't of Homeland Security v Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus

historically "provide[s] a means of contesting the lawfulness of restraint and securing release.").

Respondents' own legal standard confirms that Petitioner's claim is cognizable. The Ninth Circuit instructs courts to ask "whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested." *Pinson v. Carvajal,* 69 F.4th 1059, 1072 (9th Cir. 2023) (emphasis in original). Here, the answer is yes. Petitioner contends that Respondents have failed to establish by clear and convincing evidence that he is either a danger to the community or a flight risk, the only two grounds that can legally justify continued detention under § 1226(a). If Petitioner is correct, release is not merely a possible remedy; it is legally required. That is the hallmark of a cognizable habeas claim. *See Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (finding habeas jurisdiction exists where success would "necessarily lead to immediate or speedier release").

This case is fundamentally unlike the district court decisions Respondents cite. In *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300783 (S.D. Cal. Aug. 8, 2025), and *Giron Rodas v. Lyons*, No. 25-cv-1912-LL-AHG, 2025 WL 2300781 (S.D. Cal. Aug. 1, 2025), the courts declined habeas jurisdiction specifically because the petitioners were not arguing that they were unlawfully in

custody and the requested relief would not have entitled them to release. Those cases involved challenges to conditions or procedural aspects of proceedings, not to the constitutional validity of detention itself. *See Guselnikov*, 2025 WL 2300783 at *1; *see also Giron Rodas*, 2025 WL 2300781 at *3. Here, Petitioner's primary claim is that his detention is unconstitutional because the government has not carried its burden of justifying it. A favorable ruling on that claim would compel his release. *Pinson* and *Nettles* therefore support jurisdiction here, not its denial.

Respondents' attempt to reframe this petition as something other than a custody challenge also cannot be reconciled with the nature of § 1226(a) detention. That statute, as stated previously, is expressly discretionary: the Attorney General "may" detain or "may release" an alien pending removal proceedings. 8 U.S.C. § 1226(a)(1)-(2). Because detention is not mandatory, it requires affirmative justification. The adequacy of that justification is a legal question properly resolved through habeas.

Petitioner alleges that the government has failed to sustain its burden with particularized evidence. He is challenging the lawfulness of the imprisonment itself. This challenge, therefore, falls squarely within the parameters of 28 U.S.C. § 2241.

1 Accordingly, the Court should not dismiss Petitioner's request for relief.

2 **D. 8 U.S.C. § 1252(g) Does Not Bar Habeas Review of The Legality of**
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4 **Petitioner's Detention-Legality Claim.**

5 Respondents argue that this Court lacks jurisdiction under 8 U.S.C. §
6 1252(g) and 1252(b)(9) because Petitioner's detention "arises from" DHS's
7 decision to commence removal proceedings. (Opp. at 7.) Both arguments read
8 those provisions far more broadly than controlling authority permits.
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10 Section 1252(g) applies only to claims arising from three discrete
11 government actions: the decision to commence proceedings, adjudicate cases, or
12 execute removal orders. *Reno v. Am -Arab Anti-Discrimination Comm.*, 525 U.S.
13 471, 482 (1999). The Supreme Court was explicit that § 1252(g) is not a
14 "catchall" jurisdiction-stripping provision and does not bar review of every claim
15 factually related to immigration enforcement. *Id.* at 485 n.9. Petitioner does not
16 challenge DHS's authority to commence proceedings or prosecute his case. (*See*
17 *generally* Pet.) He challenges the constitutional adequacy of his continued civil
18 detention: the Immigration Judge's failure to apply the correct legal standard and
19 the absence of particularized evidence supporting danger or flight-risk findings.
20 That claim arises from an ongoing custodial determination that the Constitution
21 independently limits. Respondents' theory would effectively insulate the entire
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civil immigration detention system from habeas review, a result the Supreme Court has squarely rejected. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *see also Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Both cases involved detention arising from pending removal proceedings, yet the Supreme Court recognized no § 1252(g) bar. *See generally Demore*, 538 U.S. 510; *see also Zadvydas*, 533 U.S. 678.

Section 1252(b)(9) is not much stronger for Respondents. That section is "a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). The Ninth Circuit agrees: §§ 1252(a)(5) and (b)(9) "limit *how* immigrants can challenge their removal proceedings" but "are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original). The provisions channel claims to the courts of appeals through the petition-for-review process, but that process applies only where a final order of removal exists. No final order exists here, making that channel legally unavailable. Petitioner continues to pursue his Form EOIR-42B application for cancellation of removal, his I-589 application for asylum and related relief, and adjustment of status for certain nonpermanent residents.

Respondents' interpretation of § 1252(b)(9) would retroactively invalidate

1 the statutory authority underlying every habeas grant in immigration detention
2 cases decided before a final order of removal, including the substantial body of §
3 1226(a) decisions routinely adjudicated in this District. Courts in this District have
4 repeatedly exercised § 2241 jurisdiction to grant relief in this exact posture, and
5 neither Congress nor any circuit court has suggested those decisions exceeded the
6 courts' authority. *See generally Rodriguez Rodriguez v. Larose*, No. 25-cv-3306-
7 AGS-AHG, Doc. No. 16 (S.D. Cal. Jan. 27, 2026); *see also Reyes Rubio v*
8 *Larose*, No. 26-cv-144-JO-KSC, Doc. No. 12 (S.D. Cal. Mar. 6, 2026). If §
9 1252(b)(9) meant what Respondents claim, that entire line of cases would have
10 been decided without any jurisdiction. The reading consistent with the practice of
11 the federal courts is that § 1252(b)(9) monitors review of claims tied to final
12 removal orders to the courts of appeals, while leaving intact district court habeas
13 jurisdiction over constitutional challenges to pre-removal detention.
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15 Finally, Petitioner's claim falls squarely within § 2241. Because § 1226(a)
16 detention is discretionary, continued confinement requires affirmative
17 justification, and the adequacy of that justification is a legal question habeas is
18 designed to resolve. Success on Petitioner's claim would compel his release, the
19 defining characteristic of a cognizable habeas claim. *Pinson v. Carvajal*, 69 F.4th
20 1059, 1072 (9th Cir. 2023). Neither § 1252(g) nor § 1252(b)(9) deprives this
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Court of jurisdiction.

IV. CONCLUSION AND PRAYER FOR RELIEF

For the reasons stated above, Respondents' request to dismiss the Petition for lack of jurisdiction should be denied.

Petitioner respectfully requests that this Court order his immediate release from immigration detention. In the alternative, Petitioner requests that the Court order a prompt individualized custody hearing within ten to fourteen days at which the Government must justify continued detention by clear and convincing evidence, and the adjudicator must meaningfully consider alternatives to detention.

Petitioner further requests that the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
Dated: April 24, 2026

//s// John Wells
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Berthnell Anthoney Hall