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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

B.R.F.,

Case No.: 3:25-cv-02154-AN

Petitioner,

Agency Case No.: 

v.

**PETITIONER'S REPLY TO
RESPONDENTS' RETURN TO
PETITION FOR WRIT OF
HABEAS CORPUS**

LAURA HERMOSILLO, Seattle Field Office Director,
Immigration and Customs Enforcement and
Removal Operations ("ICE/ERO"); TODD LYONS,
Acting Director of Immigration Customs
Enforcement ("ICE"); U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; KRISTI NOEM,
Secretary of the Department of Homeland
Security ("DHS"); U.S. DEPARTMENT OF
HOMELAND SECURITY; AND PAMELA BONDI,
U.S. Attorney General;

Respondents.

I. INTRODUCTION

Petitioner, B.R.F., is the beneficiary of an approved I-130 petition, an approved I-601A Provisional Waiver Application, and is scheduled for his immigrant visa interview at the U.S. Embassy in Guatemala City, Guatemala on January 14, 2026, where, if approved, will grant him permanent resident status. On November 20, 2025, without warning or advance notice, Petitioner was detained by Immigration and Customs Enforcement officers (ICE) while driving his employer's vehicle for work.

Respondents have erroneously determined that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) and he is therefore (according to Respondents) not eligible for release from custody.

Because Petitioner is unlawfully detained under the laws and Constitution of the United States, the Court should issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody. *See* 28 U.S.C. § 2241(c)(3).

II. FACTUAL BACKGROUND

Petitioner, B.R.F., is a citizen of Guatemala who was detained by ICE officers on November 20, 2025. Petitioner is the beneficiary of an I-130 petition that was filed on June 12, 2020, by his United States citizen spouse. Department of Homeland Security approved the I-130 petition on October 8, 2020. Petitioner then applied for a Provisional Unlawful Presence Waiver which Department of Homeland Security approved on April 15, 2025.

Contrary to Respondents allegation, prior to being detained by ICE, Petitioner in fact already had an existing alien registration number, as indicated on the I-601A approval notice Department of Homeland Security issued to him. Dkt 8, at p. 2.

Petitioner submitted his Immigrant Visa application to the U.S. Department of State and his Immigrant Visa interview is scheduled at the U.S. Embassy in Guatemala City, Guatemala, on January 14, 2026, at 7:00 AM. Petitioner is registered for the interview and making travel plans to Guatemala City to attend his interview.

Petitioner disclosed his 2020 harassment arrest and conviction to the Department of Homeland Security (DHS) when he applied for the I-601A Provisional Unlawful Presence Waiver in 2022 and to the Department of State in connection with his Immigrant Visa application he submitted in May 2025. DHS, reviewed the record of conviction, took Petitioner's fingerprints, and performed a background check, prior to exercising its discretion and approving his I-601A Waiver application in April 2025.

Respondents released Petitioner on November 20, 2025, after the Court granted Petitioner's Motion for a Temporary Restraining Order. Respondents placed Petitioner on an order of supervision and put a GPS-monitored ankle bracelet on him.

On November 21, 2025, ICE filed a Notice to Appear with the Immigration Court in Portland, Oregon, charging Petitioner with being inadmissible for being present in the U.S. without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). On November 26, 2025, Petitioner filed a motion to terminate removal proceedings with the Immigration Court. The Immigration Judge granted Petitioner's motion and terminated removal proceedings on December 3, 2025, pursuant to 8 C.F.R. § 1003.18(d)(1)(ii)(D) ("USCIS has granted the noncitizen's application for a provisional unlawful presence waiver").

3 PETITIONER'S REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

III. JURISDICTION

“The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. art 1, § 9, cl. 2. The Court has subject matter jurisdiction over this case. The United States Supreme Court in *St. Cyr* explained that issuance of the Writ “encompasses detentions based on errors of law, including the erroneous application or interpretation of statutes.” *INS v. St. Cyr*, 533 U.S. 289 (2001).

“Where Congress intends to preclude judicial review of constitutional claims its intent to do so much be clear.” *Demore v. Kim*, 538 U.S. 510, 517 (2003) (citing *Webster v. Doe*, 486 U.S. 592, 603 (1988)). “And, where a provision precluding review is claimed to bar habeas review, the Court has required a particularly clear statement that such is Congress’ intent.” *Id.*

However, here, Respondents argue that the Court lacks subject matter jurisdiction under 8 U.S.C. § 1252(b)(9), 1252(a)(5), and 1252(g). Dkt. 8, at p. 3-5.

A. 1252(b)(9)

This position was squarely addressed in *Jennings v. Rodriguez*, where the United States Supreme Court held that “questions of law” regarding whether “certain statutory provisions require detention without a bond hearing” do not “arise from” the decision to remove an alien from the country as set forth in section 1252(b)(9). *Jennings*, 583 U.S. 281, 292–294 (2018). The Supreme Court rejected an “expansive interpretation of § 1252(b)(9),” explaining that even if “[t]he ‘questions of law and fact’ ... could be said to ‘aris[e] from’ actions taken to remove the aliens in the sense that the aliens’ injuries would never have occurred if they had not been placed in detention,” this “expansive interpretation of § 1252(b)(9) would lead to staggering results.” *Id.*

Moreover, section 1252(b)(9) “does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). Here, Petitioner is not bringing any such challenge. Petitioner is challenging his mandatory detention under section 1225(b).

As the U.S. Court of Appeals for the Ninth Circuit described, 8 U.S.C. § 1252(b)(9) consolidates requests for review of various kinds of agency action which are heard in petitions for review, but it does not affect petitions for habeas corpus. *Flores Miramontes v. INS*, 212 F.3d 1133 (9th Cir. 2000).

For these reasons, section 1252(b)(9) does not divest the Court of its jurisdiction to consider the Petition.

B. 1252(a)(5)

Section 1252(a)(5) states “a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for *judicial review of an order of removal* entered or issued under any provision of this chapter” 8 U.S.C. § 1252(a)(5) (emphasis added).

Section 1252(a)(5) is inapplicable to this case because Petitioner is not seeking review of a removal order. *See Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007). “The legislative history of the REAL ID Act is consistent with this conclusion. According to the House Conference Report on the REAL ID Act, “[u]nlike AEDPA and IIRIRA, which attempted to eliminate judicial review of criminal aliens’ removal orders, section 106 would give every alien one day in the court of appeals, satisfying constitutional concerns [expressed in *St. Cyr*].” H.R.Rep. No. 109-72, at 175, 2005

U.S.C.C.A.N. 240, 299. "The House Report concluded, "[m]oreover, section 106 *would not preclude habeas review over challenges to detention* that are independent of challenges to removal orders. Instead, the bill would eliminate habeas review only over challenges to removal orders." *Id.* (emphasis added).

C. 1252(g)

Section 1252(g) bars judicial review over "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[.]" 8 U.S.C. § 1252(g). It "is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999). However, 1252(g) is not to be construed broadly as a 'zipper' clause applying to the full universe of deportation-related claims, but instead as applying narrowly to only the three 'discrete' governmental actions enumerated in that subsection. *Id.*

The Court has jurisdiction to decide a "purely legal question" that "does not challenge the Attorney General's discretionary authority." *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (citing *Ali v. Ashcroft*, 346 F.3d 873, 878-79 (9th Cir. 2003), vacated on other grounds sub nom., *Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005)); see *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002); *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119-21 (9th Cir. 2001); *Cath. Soc. Servs., Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000) (*en banc*).

Here, Petitioner's claim does not implicate the Attorney General's decision to commence proceedings, adjudicate cases, or execute removal orders. Rather, Petitioner challenges the legality of his detention. Such claim is reviewable. See *Canal A Media Holding, LLC*, 964 F.3d 1250, 1257–

58 (claim was not barred by § 1252(g) where action did not fall into one of three categories as “[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.”); *see also Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (petitioner’s due process challenge was not barred by § 1252(g) as it did not “challenge the actions of Respondents in commencing proceedings, adjudicating cases, or executing removal orders.”); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025) (“[B]ecause Petitioner challenges the lawfulness of his detention during the pendency of his removal proceedings, it is not a challenge to one of the ‘three discrete events along the road to deportation’ that § 1252(g) applies to.”); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL 2430025, at *5 (D. Md. Aug. 24, 2025) (“Petition[er] mounts a challenge solely to his continued custody.”).

Respondents cite to *S.Q.D.C. v. Bondi*, No. 25-cv-3348, 2025 WL 2617973 (D. Minn. Sept. 9, 2025, to support their argument that 8 U.S.C. § 1252(g) precludes judicial review. Dkt. 8 at p. 5. However, this decision does not appear to follow U.S. Supreme Court or Ninth Circuit Court of Appeals precedent.

Respondents also cite to *Buriev v. Warden*, 25-cv-60459, 2025 WL 2763202 (S.D. Fla. Sept. 26, 2025) to support the argument that a writ of habeas should be denied. Dkt. 8 at p. 5. In that case, Buriev had been ordered removed and was in the 90-day post-removal order period where detention is mandatory. *Id.* at *9-10. That is not the case here.

In accordance with Supreme Court precedent and the plain language of the text, § 1252(g) does not bar [jurisdiction].”); *Sanchez v. LaRose*, No. 25-cv-2396, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (“Petitioner seeks only review of the legality of her detention, which does not require judicial intervention into the Attorney General’s decisions to commence proceedings,

7 PETITIONER’S REPLY TO RESPONDENTS’ RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

adjudicate cases, and execute removal orders. . . . Adopting [the government’s] interpretation of 8 U.S.C. § 1252(g) . . . would eliminate judicial review of immigration detainee’s claims of unlawful detention[.]”); *Campos Leon v. Forestal*, No. 25-cv-01774, 2025 WL 2694763, at *1–2 (rejecting respondents’ § 1252(g) argument and concluding that the court had jurisdiction to hear a habeas petition challenging DHS’ refusal to abide by the IJ’s bond order).

Here, Petitioner is not seeking review of an order of removal or of Respondents’ decision to initiate removal proceedings. Petitioner is seeking review of the lawfulness of his detention. Accordingly, section 1252(g) does not prevent this Court from exercising jurisdiction over the Petition.

IV. ARGUMENT

A. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b).

Respondents claim that Petitioner is being detained pursuant to 8 U.S.C. § 1225(b). Dkt #8 at p. 5.

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado*, in which it reasoned that all individuals who enter the United States without inspection or admission, regardless of how long the person has been in the United States, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that immigration judges do not have jurisdiction to conduct bond proceedings or grant bond to a person who is present without admission. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025). In so holding, the BIA misconstrued the Supreme Court’s analysis in *Jennings v. Rodriguez*, 583 U.S. 281, 287–288 (2018), and failed to address the temporal component of the statutory term “seeking admission.” See 8 U.S.C. § 1225(b)(2)(A); *Lopez-Campos v. Rayfield*, et al., Case No. 2:25-cv-

12486, Opinion and Order Granting Writ of Habeas Corpus, 2025 WL 2496379 *15-18 (E.D. Mich. Aug.29, 2025). This drastic new interpretation of the immigration statute would render superfluous multiple statutory provisions enacted by Congress, including 8 U.S.C. § 1226(c) (mandatory detention for aggravated felony convictions) and portions of the recently passed Laken Riley Act. *Laken Riley Act ("LRA")*, Pub. L. No. 119-1, 139 Stat 3 (2025), codified at 8 U.S.C. § 1226(c)(1)(i) and (ii).

The BIA's flawed analysis, while binding on immigration judges, has been squarely rejected by district courts throughout the country. *See, e.g., Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *1 (N.D. Cal. Sept. 12, 2025); *Rodriguez Vasquez v. Bostock, et al.*, 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Aguilar Merino v. Ripa*, 25-23845-CIV (S.D. Fla. Oct. 15, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Estrada Elias v. Knight*, No. 1 :25-CV-00594-BLW, 2025 WL 3228262, at *1 (D. Idaho Nov. 19, 2025) ("Dozens of district courts across the nation-with more each day-have rejected DHS's expansion of § 1225(b)(2)(A)'s mandatory detention to noncitizens already residing here.") (collecting cases across the country); *but see, Cabanas v. Bondi*, 2025 WL 3171331 at *6 (S.D. Tex. Nov. 13, 2025) (reasoning § 1225(b)(2)(A) applies to all applicants for admission regardless of length of residence in US).

Because § 1225(b)'s mandatory detention scheme does not apply to Petitioner, Petitioner's detention under § 1225(b) is unlawful and the appropriate remedy is to grant this Petition. *See Perez Camacho v. Hollinshead*, Case No. 1:25-cv-00593-BLW, Dkt. #13 at 23-24 (D. Idaho Nov. 19, 2025).

9 PETITIONER'S REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

B. Petitioner's substantive and procedural due process rights were violated by Respondents when they detained him on November 20, 2025.

"No person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The right to due process of law applies to all persons in the United States regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

"Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause [Due Process] protects." *Zadvydas*, 533 U.S. at 590.

As Judge Reinhardt explained,

In the context of immigration detention, it is well-settled that "due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any detention incidental to removal must "bear [a] reasonable relation to [its] purpose." *Zadvydas*, 533 U.S. at 690, quoting, *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

Hernandez v. Sessions, 872 F.3d 976, 990 (9th Cir. 2017).

Immigration detention may not be used as punishment. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). Fulfilling a daily arrest quota is not a valid purpose for detaining a noncitizen. See *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035 (N.D. Cal. 2025). Respondents are violating Petitioner's due process rights by detaining him without a valid purpose and without a pre-detention procedure to determine flight risk or danger to the community. *Id.* at 1034-1035.

To determine what procedures are constitutionally necessary to protect a liberty interest, courts generally apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *3 n.1 (W.D. Wash. Aug. 19, 2025) (collecting cases). The *Mathews* test requires balancing the private interest affected by

government action; the risk of an erroneous deprivation through the procedures used and the probable value of additional safeguards; and finally, the government interest, including the function and the burden of additional measures. *Mathews*, 424 U.S. at 335.

Under *Mathews*, the private interest at stake is personal liberty – the most elemental of liberty interests. “The interest in freedom from physical detention is “the most elemental of liberty interests.”” *Perez Camacho v. Hollinshead*, Case No. 1:25-cv-00593-BLW, Dkt. #13 at 20 (D. Idaho Nov. 19, 2025), quoting, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

Second, the risk of an erroneous deprivation through the procedures used is high – frontline ICE officers are under enormous pressure to detain as many noncitizens as possible; they are not neutral arbiters.

Finally, the agency’s interest lies in ascertaining that Petitioner is not a danger to the community and will appear at future immigration proceedings. Nothing more. “[D]ue process requires the government to identify some interest beyond its own administrative practices to justify depriving an individual of her liberty without any pre-deprivation protections. Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035 (N.D. Cal. Jul 24, 2025).

Petitioner is not a flight risk. Petitioner has been in the process of applying for lawful status in the U.S. for over five years now. Petitioner would like to comply with the Department of States’ scheduling of his Immigrant Visa interview next month at the U.S. Embassy in Guatemala City. Petitioner is not a danger to the community. Department of Homeland Security would not have exercised its discretion and approved Petitioner’s I-601A Provisional Unlawful Presence Waiver application if it believed Petitioner was a danger to the community.

In short, Respondents' custody of Petitioner pursuant to 8 U.S.C. § 1225(b) is unlawful and Respondents have no legal justification for his detention.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court issue a writ of habeas corpus, declaring the detention of Petitioner pursuant to 8 U.S.C. § 1225(b) to be unlawful.

Respectfully submitted this 3rd day of December 2025.

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