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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IVAN SALAZAR ARROYO,

Petitioner,

vs.

CHRISTOPHER J. LAROSE, *WARDEN, OTAY MESA DETENTION CENTER*; GREGORY J. ARCHAMBEAULT, *FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT*; TODD M. LYONS, *ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT*; KRISTI NOEM, *SECRETARY OF UNITED STATES DEPARTMENT OF HOMELAND SECURITY*; PAM BONDI, *ATTORNEY GEENRAL OF THE UNITED STATES*, IN THEIR OFFICIAL CAPACITIES,

Respondents.

Case No.: 3:25-cv-02190-LL-MMP

PETITIONER'S REPLY BRIEF

I. INTRODUCTION

Petitioner, who is detained in the custody of the Department of Homeland Security ("DHS"), has issued a Writ of Habeas Corpus. Counsel for Petitioner submits the instant Reply Brief in response to the Government's opposition.

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II. ARGUMENT

A. The Government's Argument that Petitioner's Requests are barred by 8 U.S.C. § 1252 is invalid.

The Respondent contends that the court lacks subject-matter jurisdiction. Specifically, stating "courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders." 8 U.S.C. § 1252(g).

The courts have jurisdiction over constitutional and statutory claims brought by individuals like Petitioner in immigration custody when those claims are collateral to the Government's discretionary decision to commence, adjudicate, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). A bond redetermination is separate from removal proceedings. The BIA has noted that "bond and removal are distinctly separate proceedings." *In re R-S-H-*, 23 I. & N. Dec. 629, 630 n.7 (B.I.A. 2003) (citing 8 C.F.R. § 1003.19(d)); *see also Bobb v. United States AG*, 458 F.3d 213, 216 (3d Cir. 2006) (noting an IJ's decision, affirmed by the BIA, that a determination at the bond hearing that an alien's conviction was not an aggravated felony was not controlling in the removal hearing); *Pina v. Horgan*, No. 07-11036, 2007 U.S. Dist. LEXIS 86912, at *3-4 (D. Mass. Nov. 27, 2007) (noting that bond and removal hearings are separate). *Joseph v. Holder*, 600 F.3d 1235, 1241 (9th Cir. 2010).

Moreover, Petitioner asserts that Section 1252(g) does not bar jurisdiction because he doesn't seek review of a removal order or challenge the Attorney General's decision to commence proceedings or adjudicate cases. Further, he maintains that the Court has jurisdiction because his claims fall under the exception to § 1252(g)'s jurisdictional bar as he presents "a pure question of law." *See Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017). *S.Q.D.C. v. Bondi*, No. 25-

3348 (PAM/DLM), 2025 LX 394321, at *5 (D. Minn. Sep. 9, 2025). In fact, the Supreme Court held in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018), that § 1252(b)(9) did not bar review of claims by detainees who were denied bond hearings and subjected to mandatory detention under 8 U.S.C. § 1226. *Id.* at 295.

Courts have consistently interpreted § 1252(g) narrowly, finding jurisdiction where a Petitioner challenges unconstitutional practices or detention conditions rather than the removal order itself. The Supreme Court first addressed the narrow reach of § 1252(g) and held that, "§ 1252(g) prohibited attacks on such refusals because Congress had 'directed' the statute against a particular evil…the Supreme Court observed that there was "good reason" for Congress to proscribe judicial review of the Attorney General's "discrete acts of 'commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders,'" as they constituted "the initiation or prosecution of various stages in the deportation process." *Id.* at 483 (quoting § 1252(g)). *Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 LX 349096, at *14-15 (D. Minn. Aug. 15, 2025). In comparison with these three discrete categories, however, the Supreme Court noted that there are "many other decisions or actions that may be part of the deportation process," such as "the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *Reno v. AADC*, 525 U.S. 471 at 482 (1999).

The Supreme Court rejected the notion that § 1252(g) "covers the universe of deportation claims," finding it "implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id. Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 LX 349096, at *15-16

(D. Minn. Aug. 15, 2025). The Supreme Court has since reaffirmed its narrow construction of § 1252(g), observing in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018), that *Reno* "did not interpret [the phrase 'arising from' in § 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [*Reno*] read the language to refer to just those three specific actions themselves." *Id.* at 841. Moreover, the majority in *Jennings* discounted the argument, proposed in Justice Thomas's concurrence, that: "The concurrence contends that 'detention is an 'action taken . . . to remove' an alien' and that therefore 'even the narrowest reading of "arising from" must cover' the claims raised by respondents. We do not follow this logic." *Id.* at 841 n.3 (quoting Thomas, J., concurring in part and concurring in judgment). The First Circuit's opinion in *Kong v. United States* is consistent with this authority, as the court stated, "Section 1252(g)'s bar on judicial review of claims arising from the government's decision to execute removal orders does not preclude jurisdiction over the challenges to the legality of the detention at issue here." *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023).

Petitioner's claims do not challenge the actions of the Respondents in commencing proceedings, adjudicating cases, or executing removal orders. Instead, Petitioner contends that his continued detention pursuant to an automatic stay regulation violates the Fifth Amendment. His claim is not tied to a decision to "commence" removal proceedings. Furthermore, custody proceedings are independent of "commencing" removal proceedings under § 1226, for which a separate jurisdictional provision applies, 1226(e). Respondents' position that detention is mandatory for all who enter without inspection would effectively remove discretion and render § 1226(e) inapplicable and § 1252(g) irrelevant. Congress would not have enacted § 1226(e) if § 1252(g) already broadly barred review of custody determinations.

Likewise, §1252(b)(9) does not take away the court's jurisdiction because it "applies only to those claims seeking judicial review of orders of removal," and does not preclude "claims that are independent or collateral to the removal process." *J.E.F.M. v. Whitaker*, 913 F.3d 777, 784 (9th Cir. 2019). The Ninth Circuit agrees that [Section] 1252(b)(9) has built-in limits, specifically, claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020). Specifically, "claims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process." *Id.* Petitioner does not challenge ICE's authority to charge Petitioner, place him in custody initially, or commence removal proceedings. Instead, Petitioner challenges his continued unlawful detention and due-process violations, rather than the validity or execution of his removal order. Therefore, this court should find it has jurisdiction over Petitioner's claim.

B. The Government's Argument that the Petitioner is Subject to Mandatory Detention is not Valid.

The Respondents state that the court should reject Petitioner's argument that 8 U.S.C. § 1226(a) governs his detention instead of 8 U.S.C. § 1225. However, this argument is not valid as nearly every district court to address this issue has found that individuals who entered the United States without admission are eligible for bond hearings pursuant to 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225 (b)(2) does not apply to individuals who have made a physical entry into the interior of the United States without inspection. *See, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC,

2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *accord Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *5 (D. Colo. Oct. 17, 2025) (noting that "[o]nly three of the thirty-eight decisions . . . citing the BIA's decision in *Yajure Hurtado*, have denied the relief requested by the noncitizen.").

Congress established two statutes that principally govern the detention of noncitizens pending removal proceedings. 8 U.S.C. §§ 1225 and 1226. The first — Section 1225 - is a mandatory detention provision that states, in relevant part: subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title. 8 U.S.C. § 1225(b)(2)(A).

(i) The detention statute at 8 USC 1225(b)2 can only apply where Petitioner is "seeking admission"; which he is not.

Section 1225 applies to "applicants for admission," who are noncitizens present in the United States yet not admitted. 8 U.S.C. § 1225(a)(1). For section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an examining immigration officer must determine that the individual is: (1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. *Hernandez v. Baltazar*, Civil Action No. 1:25-cv-03094-CNS, 2025 LX 416077, at *1 (D. Colo. Oct. 24, 2025). For a noncitizen to be deemed seeking admission, they must be currently taking active steps or some kind of present-tense action to seek lawful entry into the U.S. *Id.* The phrase seeking admission is undefined in the statute but necessarily implies some sort of present-tense action. *Id.* The term seeking in § 1225(b)(2)(A) implies action — something that is currently occurring, and in this instance, would most logically occur at the border

upon inspection. The plain meaning of the phrase seeking admission requires that the applicant must be presently and actively seeking lawful entry into the United States. *Id.* Here, individuals who are within the United States are not actively seeking admission, and therefore cannot be detained pursuant to 1225(b)(2).

The second statutory provision — Section 1226 – provides for a discretionary detention framework. It states, in relevant part: (a) arrest, detention, and release on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General: (1) may continue to detain the arrested alien; and (2) may release the alien on—(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General ...8 U.S.C. § 1226(a).

Relevant here, noncitizens arrested and detained under Section 1226 have a right to request a custody redetermination (i.e. a bond hearing) before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1). The IJ evaluates whether there is a risk of nonappearance or danger to the community. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 at *7-9 (E.D. Mich. Aug. 29, 2025).

(ii) The Government's Position Ignores 30 Years of Case Law

This Court should reject the claim that the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 432-33 (2024), shows that prior agency practice is irrelevant. Dkt. 9 at 13. Respondents overlook that nearly thirty years of consistently interpreting the INA in a manner directly opposite to their novel interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324

(2014) ("When an agency claims to discover in a long-extant statute an unheralded power," courts "typically greet its announcement with a measure of skepticism."). Notably, Respondents do not contest that their own regulations require them to afford Petitioner a bond hearing, reflecting the long-held understanding that noncitizens are entitled to consideration for release on bond.

Petitioner has resided in the United States for over twenty years and has deep family and community ties. Because Petitioner has lived in the United States for over twenty years, section 1226(a) applies. "That express exception" to Section 1226(a)'s discretionary framework "implies that there are no *other* circumstances under which" detention is mandated for noncitizens who are subject to Section 1226(a). *Jennings*, 583 U.S. at 300 (citing A. SCALIA & B. GARNER, READING LAW 107 (2012)); *see Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400, 130 (2010) ("that Congress has created specific exceptions" to the applicability of a statute or rule "proves" that the statute or rule generally applies absent those exceptions). That is because Section 1225(b) applies only to "arriving aliens" or those *seeking admission* at the border, whereas § 1226(a) governs the arrest and detention of individuals who have already been admitted and are now placed in removal proceedings. See *Matter of M-S-*, 27 I&N Dec. 509, 512 (A.G. 2019) ("Section 1225(b) applies to arriving aliens, while section 1226 governs detention of aliens already present in the United States."); *Preap v. Johnson*, 831 F.3d 1193, 1198 (9th Cir. 2016). Because Petitioner has long been a resident of the United States and was taken into custody by ICE while in the United States, rather than being apprehended at the border or seeking admission, he is not subject to the mandatory detention framework under § 1225(b).

(iii) Congress's Recent Amendments to 1226(a) Indicate Petitioner is Detained Under that Section

Additionally, the Court cannot ignore Congressional intent. If Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens to be exempt from the discretionary bond framework. The Laken Riley Act added a subsection to Section 1226 that specifically mandated detention for noncitizens who are inadmissible under Sections 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled like Lopez-Campos), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) *and* have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E).

(iv) Petitioner's Substantive Due Process Requires The Immigration Judge's Bond Determination Remain in Place

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner has a fundamental interest in liberty and being free from official restraint. The government's detention of Petitioner after a neutral arbiter determined him not to be a flight risk nor a danger violates his right to due process. *Id.*, at 690. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Id.* at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003). *see also Alves v. United States DOJ*, 2025 U.S. Dist. LEXIS 180676, at *11 (W.D. Tex. Sep. 12, 2025) (analyzing Third

Circuit opinion and finding "persuasive" the argument that "[i]f detention has become unreasonable, the government must hold a bond hearing where it must show by clear and convincing evidence that the detainee would likely flee or pose a danger to the community if released").

Immigration detentions do not meet the standards of due process when they do not further the government's legitimate goals of ensuring the noncitizen's appearance at removal proceedings and preventing harm to the community. *Id.* Substantive due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Specifically, an Immigration Judge found that he was not a danger nor a flight risk and granted him a bond. Therefore his continued confinement serves no valid purpose but to punish him and violates his due process rights.

IV. CONCLUSION

For the foregoing reasons we respectfully request this court grant Petitioner's Writ of Habeas Corpus.

Date: 11/6/25

Respectfully Submitted

Mitchell H. Shen, Esq.
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Certified Mail / Return Receipt to:

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