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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Jose Guadalupe SIXTOS CHAVEZ; Juan Manuel HERNANDEZ DIAZ; and Jesus HERRERA TORRES;

Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security; Pam BONDI, Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Todd LYONS, Executive Associate Director of ICE Enforcement and Removal Operations (ERO); Gregory J. ARCHAMBEAULT, Director, San Diego Filed Office, Immigration and Customs Enforcement; Christopher J. LAROSE, Warden, Otay Mesa Detention Center.

Respondents.

No. 3:25-cv-02325-CAB-SBC

PETITIONERS' SIXTOS CHAVEZ AND HERRERA TORRES' REPLY TO *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres hereby reply to Respondents' September 11, 2025 Opposition to their *Ex Parte* Application for Temporary Restraining Order. Dkt # 5.

I. ARGUMENT

A. THE IMMIGRATION JUDGE IS REQUIRED BY PRECEDENT TO DENY PETITIONER HERRERA TORRES' BOND DUE TO LACK OF JURISDICTION, AS IS THE BOARD, AND THEREFORE THEIR CLAIMS ARE PROPERLY BEFORE THIS COURT

First, Respondents argue that the Court should not consider Petitioner Herrera Torres' application because he is not yet the subject of a denial of bond. Dkt # 5 at 5. But Respondents do not argue that the immigration judge has the authority to find jurisdiction in Petitioner Herrera Torres' case, only that the denial has not yet occurred. In fact, there is no question that the immigration judge will be required to find that he lacks jurisdiction to consider bond based on *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), just as the judge did for Petitioner Sixtos Chavez. In Petitioner Sixtos Chavez's case, the judge initially granted bond, and then reissued a second decision because *Matter of YAJURE HURTADO* was issued while the judge was on the bench considering the other bond cases for Petitioners. Tolchin Dec. Exh. B. The immigration judge will be required to find that he lacks jurisdiction to consider bond over Petitioner Herrera Torres because, like Petitioner Sixtos Chavez, he is charged with having entered the United States without inspection. Tolchin Dec. Exh. C. *Matter of YAJURE HURTADO*, 29 I&N Dec. at 220 ("Under the plain reading of the INA, we affirm the Immigration Judge's determination that he did not have authority over the bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal

proceedings."). Hence, he presents a case or controversy because he is scheduled for an upcoming bond hearing and, absent court intervention, the immigration judge will be required to deny bond based on *Matter of YAJURE HURTADO*, just as he did for Petitioner Sixtos Chavez. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991) ("where the agency's position on the question at issue 'appears already set,' and it is 'very likely' what the result of recourse to administrative remedies would be, such recourse would be futile and is not required.") In fact, *El Rescate* addresses this precise issue. There, the Ninth Circuit held that the plaintiff was not required to wait for an agency decision before resorting to federal court, because Board precedent already established that the claim regarding the legal requirements of exhaustion would be denied, and therefore proceeding before the agency would be entirely futile. Hence, because the immigration judge is required to deny Petitioner Herrera Torres' bond due to lack of jurisdiction, his claim is properly before this Court.

For these same reasons, Respondents' exhaustion arguments fail. Dkt # 5 at 10. Petitioners are not required, as a matter of prudential exhaustion, to appeal to the Board once the Board has issued a precedent decision precisely on topic. Respondents cite to *El Rescate* and then fail to actually note the decision's holding that exhaustion is not required when Board precedent requires a denial of the claim. Respondents state that exhaustion is required because "agency expertise is required." Dkt # 5 at 11. That statement turns a blind eye to the Board's precedent decision in *Matter of YAJURE HURTADO*, which is the agency's interpretation of the statute itself on the exact facts of these cases. It is absolutely futile for Petitioners to appeal to the Board. In fact, all of the cases to address this issue prior to *Matter of YAJURE HURTADO*, when the Board had not yet issued a precedent decision, held that *even then* that prudential exhaustion was not required on such a legal challenge because of delay alone. *Reyes v. Raycraft,* No. 25-CV-12546, 2025

WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *3 (E.D. Cal. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1254 (W.D. Wash. 2025).

B. CASELAW IS CLEAR THAT THIS COURT HAS JURISDICTION TO CONSIDER PETITIONERS' CHALLENGE

Next, Respondents argue that the Court lacks jurisdiction to consider *the Ex Parte* Application for Temporary Restraining Order. Dkt # 5 at 6-10. However, every court to address the issue of whether 8 U.S.C. 1252(b)(2)(A) bars jurisdiction over habeas review has rejected the government's jurisdictional arguments.

As asserted in Petitioners' initial application, 8 U.S.C. 1252(g) does not apply to legal claims or custody claims. The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear "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 under this chapter." The Supreme Court previously characterized § 1252(g) as a narrow provision, applying "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to *all claims arising from* deportation proceedings." *Id.* (emphasis added). It is clear that § 1252(g) does not apply to a legal custody challenge. *See Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025) ("Petitioners' challenge to their

detention does not fall within these discrete actions. Since petitioners' bond denial claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders, the Court finds that section 1252(g) does not present a jurisdictional bar to judicial review."); *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025) ("Petitioners are enforcing their constitutional rights to due process in the context of the removal proceedings—*not* the legitimacy of the removal proceedings or any removal order. Therefore, § 1252(g) does not limit the Court's jurisdiction in the present case."); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025) ("§ 1252(g) does not deprive the Court of jurisdiction to consider the narrow legal question of whether a non-citizen detained under authority of § 1226 is entitled to a bond hearing under § 1226's discretionary detention framework."). Respondents conspicuously fail to address the uniform law that § 1252(g) does not apply to custody challenges at all, and expressly not those that are purely legal in nature. See *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret [section 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.").

Similarly, it is clear that 8 U.S.C. § 1252(b)(9) does not preclude review, as Petitioners do not challenge their removal proceedings before this Court. Once again, Respondents ignore the other cases addressing the same issue and finding that § 1252(b)(9) does not apply which, in turn, rely on Supreme Court precedent. In *Jennings,* the Supreme Court determined that the "arising from" language of section 1252(b)(9) did not apply to challenges to the lawfulness of custody during a removal proceeding. *Jennings*, 583 U.S. at 292-95. *See also Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) "[C]laims

challenging the legality of detention pursuant to an immigration detainer are independent of the removal process."); *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025) ("Their detention pursuant to § 1225(b)(2) may be during—but is nonetheless independent of—the removal proceedings. Accordingly, § 1252(b)(9) does not strip this Court of jurisdiction.").

C. PETITIONERS ARE LIKLEY TO SUCCEED ON THE MERITS

Respondents' arguments that Petitioners are not likely to succeed on the merits of their claim is disingenuous, given that 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). *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz,* 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock,* 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

All of these decisions have held 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. *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP * 6 (SD. Cal. Sept. 3, 2025) ("Respondents argue that Petitioners, as inadmissible

noncitizens, qualify as 'applicants for admission' 'seeking admission' and, therefore, are subject to mandatory under § 1225(b)(2). (*Id.* at 15–16). Not so."); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025) ("The Court finds that the conflict is avoided by interpreting sections 1225(b)(2) and 1226(a) to apply to different sets of noncitizens—those "seeking admission" compared to those already in the country who are arrested and detained"); *Pizarro Reyes v.* Noem, No. 25-CV-12546, 2025 WL 2609425, at *1 (E.D. Mich. Sept. 9, 2025) ("Because Pizarro Reyes arrived decades ago and has since then lived in the United States without seeking lawful admission, he instead falls within § 1226(a)'s catchall provision for the removal of noncitizens").

While Respondents argue that reading § 1225(b)(2) to exclude those noncitizens who came to the United States would place them in a better position than the person who sought admission at the border, that reading, in fact, is consistent with precedent restricting due process rights of parolees to the statutory rights afforded by Congress. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140, 140 S. Ct. 1959, 1983, 207 L. Ed. 2d 427 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32, 103 S. Ct. 321, 329, 74 L. Ed. 2d 21 (1982). Conversely, full due process rights apply to those who have entered the United States without inspection. *Zadvydas v. Davis,* 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."); *Plyler v. Doe,* 457 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) (rejecting argument that undocumented aliens, because of their immigration status, are not covered by the Fourteenth Amendment, and observing that "[w]hatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of the term. Aliens, even aliens

whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

As such, Petitioners establish that they are likely to succeed on the merits of their claim.

D. AN INJUNCTION IS OTHERWISE WARRANTED.

Next, Respondents argue that Petitioners' detention without a bond hearing does not meet the standard for irreparable harm. Dkt # 5 at 17. Respondents cite *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021), a case that discusses the requirements of prudential exhaustion to the Board of Immigration Appeals, and not whether detention meets the standard for injunctive relief. The law of this Circuit is clear that detention without the right to apply for bond meets the standard for irreparable injury. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Further, once again, every court to address this legal issue has held that detention without the right to a bond hearing meets the irreparable injury standard for injunctive relief. *Mosqueda v. Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *2 (C.D. Cal. Sept. 8, 2025); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *12 (E.D. Cal. Sept. 5, 2025); *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *7 (S.D. Cal. Sept. 3, 2025).

Last, Respondents argue that the government's interest in the enforcement of immigration laws is paramount. Dkt # 5 at 18. However, Petitioners do not ask the Court to order that the government stop enforcing immigration laws. Rather, they ask the Court to enforce them as Congress intended. And, ultimately, it is the immigration judge who will make a decision on Petitioners' applications for bond, after determining whether they are a danger to others or a flight risk. 8 U.S.C. § 1226(a). Petitioners only ask that they be provided a bond hearing that comports with the statute and due process.

II. CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' Application for a Temporary Restraining Order and Order to Show Cause and order that Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres be provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO, with instructions that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

Dated: September 13, 2025

Respectfully Submitted,

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