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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Bernardino BENITEZ-CORNEJO, Petitioner, v. John E. CANTU, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Fred FIGUEROA, Warden of Eloy Detention Center; Todd LYONS, Acting Director, Immigration and Customs Enforcement and Removal Operations. Respondents.	Case No. 2:25-cv-03672-JJT--ESW **PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Respondents raise three principle arguments to defend Petitioner's continued unlawful detention.[1] First, Respondents raise the novel proposition that Petitioner's claims are barred by 8 U.S.C. § 1252(g) and § 1252(b)(9). Second, they assert that Petitioner is an "arriving alien" subject to mandatory detention. Third, Respondents argue that Petitioner has not lodged a proper habeas complaint. Each of these arguments fails.

I. Section 1252(g) does not bar habeas jurisdiction.

Respondents first assert that because Petitioner challenges his detention pending removal proceedings, this Court is stripped of jurisdiction under the INA's jurisdiction-stripping provisions, specifically 8 U.S.C. § 1252(g) and § 1252(b)(9). Section 1252(g) provides that, unless another law provides jurisdiction, no court may hear "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). As interpreted by the Supreme Court, the provision applies "only to three discreet 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). Thus, § 1252(g) does not apply to "all claims arising from deportation proceedings." *Id.*

As recently affirmed by the Ninth Circuit, this Court retains "jurisdiction to decide a 'purely legal question' that 'does not challenge the Attorney' General's discretionary authority…even if the answer to that legal question forms the backdrop against which the Attorney General later will exercise discretionary authority." *Ibarra-Perez v. United States*, 2025 U.S. App. LEXIS 22089,

[1] On July 17, 2025, the immigration judge presiding over Petitioner's case denied his request for a custody redetermination. The judge concluded that she lacked jurisdiction to consider Petitioner's bond request based on the BIA's decision in Matter of Q.Li, 29 I&N Dec. 66 (BIA 2025). In the alternative, she found that, if she did have jurisdiction, she would have granted Petitioner a $5,000 bond, noting his many positive equities in the U.S.

2025 WL 2461663 (9th Cir. Aug. 27, 2025) (*quoting United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004). Here, Petitioner does not challenge ICE's decision to "commence" removal proceedings against him, nor the continued "adjudication" by the Attorney General of his removability, and there is no removal order to execute. He challenges is to detention without a bond hearing pending the resolution of his removal proceedings. Section 1252(g) does not apply.

Respondents' breathtakingly broad reading of § 1252(g) Respondents' breathtakingly broad reading of § 1252(g)—that it insulates the lawfulness of detention from judicial review because detention "aris[es] from the decision to commence proceedings" (see Dkt. 8, p. 4)—"would lead to a result that is not contemplated in the statute and that has been disavowed by the Supreme Court." *Ibarra-Perez*, 2025 WL 2461663, at *7.

II. Section 1252(b)(9) does not bar review of detention claims.

Respondents similarly argue that § 1252(b)(9) deprives this Court of jurisdiction over Petitioner's challenge to detention without a bond hearing. Dkt. 8, p. 4. That argument has been expressly rejected by the Supreme Court. Section 1252(b)(9) channels "[j]udicial review of all questions of law…including interpretation of constitutional and statutory provisions, arising from any action taken…to removal an alien from the United States" to the court of appeals. But the Supreme Court has clarified that Section 1252(b)(9) does not apply where where a petitioner is not "asking for review of an order of removal;" not "challenging the decision to detain them in the first place or seek removal;" and not "challenging any part of the process by which their removability will be determined," *Nielsen v. Preap*, 586 U.S. 392, 402 (2019).

Petitoner's challenge to his continued detention as unlawful under the INA and U.S. Constitution falls outside all three categories. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("Section 1259(b)(9) does not present a jurisdictional bar

where those bringing the 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."

Bond proceedings are separate and apart from removal proceedings, and one plays no part in the other. In *Joseph v. Holder*, 600 F.3d 1235, 1240-43 (9th Cir. 2010), the Ninth Circuit emphasized that, under the regulations, "bond and removal are distinctly separate proceedings." The regulations mandate that "consideration by the immigration judge of...custody or bond...shall be separate and apart from, and shall form no part of, any...removal hearing or proceeding." 8 C.F.R. § 1003.19(d). Accordingly, "Section 1259(b)(2) is also not a bar to jurisdiction...because claims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process." *Gonzalez v. U.S. Immig. And Cust.Enf't*, 975 F.3d 788, 810 (9th Cir. 2020).

Respondents' overreaching interpretation of § 1252(b)(9) would render prolonged detention claims unreviewable. The Supreme Court has warned against this result: "By the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place. And of course, it is possible that no such order would ever be entered in a particular case, depriving that detainee of any meaningful chance for judicial review." *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).

III. Petitioner is not an "arriving alien" subject to § 1225(b)(2)(A).

Respondents' contention that Petitioner is an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is in direct conflict with the structure of the INA, the Supreme Court's interpretation of §§ 1225 and 1226, and basic canons of statutory construction. The government urges this Court to ignore the voluminous number of decisions finding that Section 1226(a), not Section 1225(b)(2)(A), detention applies here. To date, dozens of federal district

judges have either outright rejected the government's novel interpretation,[2] or found that noncitizens challenging the government's interpretation were substantially likely to prevail on the merits.[3]

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[2] *Belsai D.S. v. Bondi*, No. 25-3682 (D. Mn. Oct. 1, 2025) (Menendez, J.) (granting habeas petition); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tx. Oct. 1, 2025) (Cardone, J.) (granting habeas petition); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tx. Sept 26, 2025) (Hittner, J.) (granting habeas petition); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. Sept. 24, 2025) (Johnson, J.) (granting habeas petition); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.) (granting habeas petition); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.) (granting habeas petition); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.) (granting habeas petition); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.) (granting habeas petition); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.) (granting habeas petition); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.) (granting habeas petition); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.) (granting habeas petition); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.) (granting habeas petition); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.) (granting habeas petition); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.) (granting habeas petition); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.) (granting habeas petition); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.) (granting habeas petition); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.) (granting habeas petition); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.) (granting habeas petition); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.) (granting habeas petition); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.) (granting habeas petition); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.) (granting habeas petition); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.) (granting habeas petition); *Diaz Martinez v. Hyde*, No. 25-11613, __F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.) (granting habeas petition); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.) (granting habeas petition).

[3] *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Ca Sept. 23, 2025) (Sherriff, J.) (granting preliminary injunction); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.) (granting preliminary injunction); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.) (granting preliminary injunction); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.) (granting temporary restraining order); *Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.) (granting preliminary injunction); *Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw. J.) (granting temporary restraining order); *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.) (granting preliminary

At the outset, Petitioner here agrees that he is an "applicant for admission." He contests whether he is an "applicant for admission . . . *seeking admission*" within the scope of 1225(b)(2), a group Respondents argue subsumes both applicants and those seeking admission. Dkt. 8, p. 11 ("Respondents respectfully argue that the phrase "applicants for admission" carves out a subset of those who are "seeking admission.")

By its terms, 8 U.S.C. § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," and Congress defined "admission" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Accordingly, "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (citing 8 U.S.C. 1101(a)(13)(A)).

Thus, Petitioner prevails regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission." This is because classification as an "applicant for admission" is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Petitioner.

Again, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. Section 1226(a) permits the release of noncitizens who are detained "pending a decision on

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injunction); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.) (granting temporary restraining order and preliminary injunction); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.) (granting temporary restraining order); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.) (granting preliminary injunction); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.) (granting temporary restraining order); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.) (granting temporary restraining order); *Maldonado Bautista v. Santacruz*, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025) (granting temporary restraining order); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.) (granting preliminary injunction).

whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens—including certain categories of noncitizens who are inadmissible under 8 U.S.C. § 1182(a)—and subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C). If § 1226(a) could never apply to inadmissible noncitizens, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, § 1226(c) would only have needed to address people who are deportable for certain offenses under 8 U.S.C. § 1227(a).

The government's response addresses this distinction simply by arguing that applicants seeking admission are a broad class, with a "subset" of applicants for admission. Respondents rely on § 1225(a)(3), which states that "all aliens who are applicants for admission or otherwise seeking admission…shall be inspected." They argue this language shows that "applicants for admission" is only a subset of a broader "seeking admission" category, and that Petitioner falls into the latter. 8 U.S.C. § 1225 defines its scope by reference to "inspections"—a term not defined in the INA, but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); §§ 1225(b)(1)–(2) (referring to "inspections" in their titles); § 1225(b)(2)(A), (b)(4) (referring to "examining immigration officers'); § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"); *see also Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Many statutory provisions, various regulations, and agency precedent also discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)); *see also King v.*

Burwell, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

The statutory and regulatory text's use of the present and present progressive tenses further excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. *See* 8 U.S.C. § 1225(b)(2)(C) (addressing the "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e. those who are "*arriving* on land") (emphasis added). As the Supreme Court recognized, this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible," and § 1225 is concerned "primarily [with those] seeking entry." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

Moreover, the Justice Department's own regulations only preclude immigration judges from granting bond to "[a]rriving aliens," 8 C.F.R. 1003.19(h)(1)(B)(ii), as distinct from noncitizens who previously entered the country and are merely present without admission. When the Justice Department created these regulations following notice and comment, it specifically stated that "'aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'" *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. April 24, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)). And, "an administrative agency may not slip by the notice and comment rule-making requirements needed to amend a rule by merely adopting a de facto amendment to its regulation through adjudication." *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003) (Silberman, J.) (citing cases). *See also Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980) (rejecting BIA decision that imposed additional requirement that the INS declined to impose during notice and comment rulemaking).

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports the conclusion that § 1226(a) applies to Petitioner. In passing IIRIRA, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important because prior to IIRIRA, people like Petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest and release noncitizens physically present in the United States pending a determination of deportability). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a [] [noncitizen] *who is not lawfully in the United States*." H.R. Rep. No. 104- 469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

The agency's interpretation of IIRIRA soon after its enactment is consistent with this history. As noted in a recent decision from this judicial district, "a 1997 interim rule issued 'to implement the provisions of [IIRIRA],' which had passed six months earlier . . . explained that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond

and bond redetermination.'" *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

The BIA acknowledged that reading 8 U.S.C. § 1225(b)(2)(A) to apply to individuals who entered without inspection would create a redundancy in the statute by subjecting such individuals to mandatory detention under two separate provisions. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 222. The BIA dismissed such redundancy as permissible and posited that the Laken Riley Act (LRA) did not purport to "overrule" 8 U.S.C. § 1225(b)(2)(A). *Id.* at 219, 222. But once again, in reaching this conclusion, the BIA did not address the requirement of 8 U.S.C. § 1225(b)(2)(A) that an individual must be "seeking admission" to be subject to § 1225(b)(2)(A). To give substance to the phrase "seeking admission" would both ensure fidelity to the plain language of the statute and eliminate concerns about redundancies between § 1226(c) and § 1225(b)(2)(A): individuals who entered without inspection and have been present in the United States for more than two years would not be subject to detention, *unless* they were subject to one of the mandatory detention provisions of the LRA. Petitioner is thus likely to succeed on the merits of his petition.

IV. Petitioner's habeas petition may invoke APA principles.

Finally, Respondents argue that Petitioner's habeas improperly seeks judicial review under the Administrative Procedure Act (APA). Dkt. 8, p. 16. That is incorrect. A habeas petition under 28 U.S.C. § 2241 squarely encompasses challenges to the legality, duration, and procedures of immigration detention. The Ninth Circuit has repeatedly entertained legal claims within habeas petitions in detention cases that sound in APA principles. In *Casas-Castrillon v. DHS*, 535 F.3d 942, 949-52 (9th Cir. 2008), the Court held that detention beyond the removal period without adequate procedural safeguards violated the statute and ordered a new bond hearing as habeas relief. In *Singh v. Holder*, the court reviewed whether the government applied the correct burden of proof in a bond hearing. 638 F.3d 1196, 1203-04 (9th Cir. 2011). These cases were not presented

as freestanding APA actions but rather applied the core principle that agency action must confirm to law and rational procedure.

The Supreme Court has confirmed that "the question whether the detention is statutorily authorized is a proper issue to raise in a habeas." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Labeling a claim as an APA violation does not remove it from habeas jurisdiction. Rather, APA principles inform the Court's determination as to whether the agency acts "contrary to law."

If the government could detain individuals based on an unlawful BIA decision, and courts could not review their detention through habeas, then no forum would exist to challenge agency abuses. But "Congress cannot suspend or eliminate habeas review of executive detention." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001). The Constitution does not permit the result Respondents seek. Their arguments should be rejected.

V. Conclusion

In light of the above, Petitioner respectfully requests the Court grant Petitioner's Petition for Writ of Habeas Corpus.

Respectfully submitted on October 16, 2025.

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