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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Sergio SOLIS-BECERRIL,

11 Petitioner,

12 v.

13 Kristi NOEM, Secretary, U.S. Department of
14 Homeland Security; Pamela BONDI, U.S.
15 Attorney General; Todd LYONS, Acting
16 Director, Immigration and Customs
17 Enforcement; Gregory J. ARCHAMBEAULT,
18 Director, San Diego Field Office, Immigration
19 and Customs Enforcement, Enforcement and
20 Removal Operations; Christopher J. LAROSE,
21 Warden, Otay Mesa Detention Center;
22 U.S. DEPARTMENT OF HOMELAND
23 SECURITY; IMMIGRATION AND
24 CUSTOMS ENFORCEMENT and
25 EXECUTIVE OFFICE FOR IMMIGRATION
26 REVIEW,

27 Respondents.

Case No. 3:25-cv-02002-JES-JLB

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE
IN OPPOSITION TO
HABEAS PETITION AND
APPLICATION FOR
TEMPORARY
RESTRAINING ORDER**

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1 Respondents' opposition brief acknowledges that courts in this district have recently
2 rejected Respondents' arguments that Petitioner and similarly situated individuals are subject to
3 mandatory detention under 8 U.S.C. § 1225(b)(2)(A). See ECF 5 at 13. In fact, a substantial
4 and growing number of courts have found that Respondents' new bond policy and new
5 interpretation of the Immigration and Nationality Act is or is likely unlawful and that 8 U.S.C.
6 § 1226(a), not § 1225(b), applies to noncitizens who are present without admission within the
7 United States and placed under removal proceedings. See ECF 1 at 8-10, ¶ 40. Respondents
8 understandably reference one district court decision from this district which has rejected
9 Petitioner's arguments. See ECF 6 at 10-12, citing to *Sixtos Chavez v. Noem*, No. 3:25-cv-
10 2325-CAB-SBC (S.D. Cal. Sept. 24, 2025). But the vast majority of courts to consider this
11 issue have found that the interpretation advanced by Respondents is contrary to the plain text
12 of the statute and the overall statutory scheme.
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14 JURISDICTION

15 Respondents argue that Petitioners' claims are barred by different jurisdictional
16 provisions in 8 U.S.C. § 1252, but Supreme Court and Ninth Circuit precedent squarely
17 foreclose those arguments.
18

19 Respondents argue that 8 U.S.C. § 1252(g) bars Petitioner's claim because his detention
20 "arises from the Attorney General's decision to commence [removal] proceedings" against
21 him. ECF 5 at 6-7. However, Petitioner does not challenge any decision or action to
22 "commence proceedings" within the meaning of 1252(g).
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24 Accepting Respondents' interpretation would bar nearly all detention challenges
25 brought by noncitizens, which is at odds with the narrow interpretation of § 1252(g) that courts
26 have consistently adopted. As the Supreme Court has explained, § 1252(g) is "much narrower"
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1 than what Respondents claim. *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525
2 U.S. 471, 482 (1999). Rather than encompass “all deportation-related cases,” *id.* at 478, §
3 1225(g) insulates from litigation the immigration authorities’ “exercise of [their] *discretion*,”
4 *id.* at 484 (emphasis added), with respect to the three specified actions: “commenc[ing],
5 adjudicat[ing] cases, [and] execut[ing] removal orders,” *id.* at 483. (alterations in original).
6 The subsection was “directed against a particular evil: attempts to impose judicial constraints
7 upon prosecutorial discretion.” *Id.* at 485 n.9; *see also id.* at 485 (providing as an example of
8 such prosecutorial discretion “‘no deferred action’ decisions and similar discretionary
9 determinations”). Indeed, the *AADC* Court found it “implausible” that “the mention of three
10 discrete events along the road to deportation was a shorthand way of referring to all claims
11 arising from deportation proceedings.” *Id.* at 482. Subsequent Supreme Court precedent has
12 affirmed § 1252(g)’s narrow scope and its focus on discretionary decisions. *See, e.g., Dep’t of*
13 *Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (noting § 1252(g) is
14 “narrow”).
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17 With these principles in mind, § 1252(g) does not “sweep in any claim that can
18 technically be said to ‘arise from’ the three listed action,” including challenges to the proper
19 interpretation of the INA’s detention provisions. *Jennings v. Rodriguez*, 583 U.S. 281, 294
20 (2018). In fact, although the Supreme Court has reviewed several cases involving the
21 government’s application of immigration detention authorities, it has never held that such
22 *claims* might be barred by § 1252(g) – including cases concerning § 1226. *See Jennings*, 583
23 U.S. 281 (§§ 1226 & 1225); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (§ 1231); *Demore v. Kim*,
24 538 U.S. 510 (2003) (§ 1226); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) (§§ 1226 &
25 1231); *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (§ 1231). That omission is
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1 significant, because “courts, including th[e] [Supreme] Court, have an independent obligation
2 to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from
3 any party.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Moreover, in *Jennings*, the
4 Court expressly reiterated that § 1252(g) must be “read...to refer just to those three specific
5 actions themselves.” 583 U.S. at 294.

6
7 Petitioner does not challenge any discretionary action to “commence proceedings.”
8 Rather, he challenges the Respondents’ conclusion that he is subject to *mandatory* detention
9 while his removal proceedings are taking place. *Cf.* 8 C.F.R. § 1003.19(d) (noting IJ
10 consideration of requests for “custody or bond...shall be separate and apart from, and shall
11 form no part of, any deportation or removal proceeding”). Determining the detention provision
12 under which Petitioner is detained is not discretionary, nor does resolving that question
13 challenge Respondents’ discretionary decision to place Petitioner in removal proceedings. *See*
14 *United States v. Hovesebian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (clarifying § 1252(g) does
15 not prevent district court jurisdiction over “a purely legal question that does not challenge the
16 Attorney General’s discretionary authority, even if to answer that legal question – a description
17 of the relevant law – forms the backdrop against which the Attorney General later will exercise
18 discretionary authority”). As a result, § 1252(g) does not bar Petitioner’s claim.¹
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23 ¹ The cases Respondents cite in support of their position are unavailing, *see* ECF 5 at 6-7,
24 as they concern *Bivens* actions in which the respective petitioners sought damages for the
25 government’s discretionary threshold decisions to detain them during their removal proceedings.
26 *See Alvaez v. ICE*, 818 F.3d 1194 (11th Cir. 2016) (seeking damages for detention during removal
27 proceedings because it breached the terms of a criminal plea agreement); *Herrera-Correa v.*
United States, No. 08-2941 DSF (JCx), 2008 WL 11336833 (C.D. Cal. Sept. 11, 2008) (seeking
damages for detention during removal proceedings for “false imprisonment,” but declined an
opportunity for bond redetermination by an immigration judge while proceedings were pending);
Sissoko v. Rocha, 509 F.3d 947 (9th Cir. 2007) (seeking damages for detention during removal

1 Respondents’ argument with respect to §§ 1252(a)(5) and 1252(b)(9) is similarly and
2 directly foreclosed by binding Supreme Court precedent. Section 1252(a)(5) directs that
3 judicial review of final orders of removal is limited to petition for review before the court of
4 appeals and §1252(b)(9) is a “zipper clause” that channels review of final order of removal into
5 petitions for review before a federal court of appeals, *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031
6 (9th Cir. 2016) (en banc) (quoting *AADC*, 525 U.S. at 483). Respondents contend that §
7 1252(b)(9) applies here because “Petitioner challenges the government’s decision and action to
8 detain, which arises from the DHS’s decision to commence removal proceedings, and is thus
9 ‘an action taken...to remove [him/her] from the United States.’” ECF 5 at 8.
10

11 Despite Respondents’ reliance on *Jennings*, *Jennings* squarely refutes this argument.
12 There, similar to here, the Court addressed a statutory interpretation question regarding bond
13 hearings under § 1226 and § 1225. Before reaching the merits, the Court first addressed
14 whether such detention could be said to “aris[e] from’ the actions taken to remove” the
15 noncitizen class members in *Jennings*, thus barring the claims under § 1252(b)(9). 583 U.S. at
16 293 (alternation in original). The Court rejected that proposition – i.e., the same one
17 Respondents now make – as “absurd.” *Id.*
18

19 As the Court explained: Interpreting “arising from” in this extreme way would also
20 make claims of prolonged detention effectively unreviewable. By the time a final order of
21 removal was eventually entered, the allegedly excessive detention would have already taken
22 place. And of course, it is possible that no such order would ever be entered in a particular
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27 proceedings for “false arrest” but failed to seek habeas relief that was available under 8 U.S.C. § 1252(e)(2)).

1 case, depriving that detainee of any meaningful chance for judicial review.” *Id.* Here it is no
2 different. In fact, Respondents’ position is now even *more* extreme. Petitioner asserts that he
3 is detained under § 1226(a) and thus is entitled to a bond hearing at the outset of his detention,
4 rather than after a prolonged detention, as in *Jennings*. Forcing him to wait years for a petition
5 for review to resolve that claim would “depriv[e] [him]...of any meaningful chance for judicial
6 review.” *Id.* Once again, it is notable that the Supreme Court has never demanded that
7 noncitizens like Petitioner raise their challenges to detention in a petition for review in any of
8 the immigration detention challenges the Court has heard. *See supra* p. 2 (citing cases).

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10 Furthermore, in a similar context, the Ninth Circuit held that § 1252(b)(9) does not bar
11 review. *See Gonzalez v. United States Immigr. & Customs Enf’t*, 975 F.3d 788, 810 (9th Cir.
12 2020) (“Section 1252(b)(9) is not a bar to jurisdiction over noncitizen class members’ claims
13 because claims challenging the legality of detention pursuant to an immigration detainer are
14 independent of the removal process.”). Respondents do not address this case.²

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21 ² The cases the Respondent does cite do not support its position. In *Velasco Lopez v.*
22 *Decker*, 978 F.3d 842, 850 (2nd Cir. 2020), the Court held that jurisdiction was not barred under
23 8 U.S.C. § 1226(e) because the petitioner, like Petitioner here, did not challenge his initial
24 detention, but rather challenged his continued detention on constitutional grounds. The Court in
25 *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106 (W.D. Pa. Mar. 12, 2024) found
26 jurisdiction was barred under § 1252(g) because, the petitioner, *unlike* Petitioner in the present
27 matter, challenged the government’s threshold decision to detain him during his removal
proceedings. *See also Jennings*, 583 U.S. at 294-95 (concluding that “§ 1252(b)(9) does not
present a jurisdictional bar” when petitioners “are not asking for review of an order of removal;
they are not challenging the decision to detain them in the first place or to seek removal; [or] . . .
challenging any part of the process by which their removability will be determined” (emphasis
added)).

1 MERITS

2 The plain text of § 1225(b)(2)(A) does not support Respondents’ contention that it
3 applies to any noncitizen present in the United States who has not been admitted. “The terms,
4 title, and context indicate a narrower application.” *Beltran v. Noem*, 3:25-cv-02650-LL-DEB
5 at 10.
6

7 As the Supreme Court has recognized, § 1225 is concerned “primarily [with those]
8 seeking entry,” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases “at the Nation’s
9 borders and ports of entry, where the Government must determine whether a [] [noncitizen]
10 seeking to enter the country is admissible,” *id.* at 287. Paragraphs (b)(1) and (b)(2) in § 1225
11 reflect this understanding.
12

13 To begin with, paragraph (b)(1) – which concerns “expedited removal of inadmissible
14 arriving [noncitizens]” – encompasses only the “inspection” of certain “arriving” noncitizens
15 and other recent entrants the Attorney General designates, and only those who are
16 “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8 U.S.C. § 1225(b)(1)(A)(i).
17 These grounds of inadmissibility are for those who misrepresent information to an examining
18 immigration officer or do not have adequate documents to enter the United States. Thus,
19 subsection (b)(1)’s text demonstrates that it is focused only on people arriving at a port of entry
20 or who have recently entered the United States and not those already residing here.
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22 Paragraph (b)(2) is similarly limited to people applying for admission when they arrive
23 in the United States. The title explains that this paragraph addresses the “[i]nspection of other
24 [noncitizens],” i.e., those noncitizens who are “seeking admission,” but who (b)(1) does not
25 address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those “seeking admission,”
26 Congress confirmed that it did not intend to sweep into this section individuals like Petitioner,
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1 who have already entered and are now residing in the United States. An individual submits an
2 “application for admission” only at “the moment in time when the immigrant actually applies
3 for admission into the United States.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en
4 banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1)
5 means that anyone who is presently in the United States without admission or parole is
6 someone who is “deemed to have made an actual application for admission.” *Id.*

8 Respondents rely on *Torres* for the proposition that Congress’ elimination of the “entry
9 doctrine” with the passage of IIRIRA in 1996, to afford persons who presented themselves at
10 the port of entry for inspection with the same “procedural and substantive rights” available to
11 persons in deportation proceedings³, must also necessarily subject persons who are present in
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15 ³ See *Landon v. Plasencia*, listing some of the differences between the former exclusion
16 and deportation proceedings, which Congress merged into a single proceeding, i.e., the
“removal” proceeding, with the passage of IIRIRA in 1996:

17 An exclusion proceeding is usually held at the port of entry, while a deportation hearing
18 is usually held near the residence of the [noncitizen] within the United States...The
19 regulations of the Attorney General...require in most deportation proceedings that the
20 alien be given seven days’ notice of the charges against him...while there is
21 no requirement of advance notice of the charges for a[] [noncitizen] subject to exclusion
22 proceedings....[I]f the INS prevails in a deportation proceeding, the [noncitizen] may
23 appeal directly to the Court of Appeals, while the [noncitizen] can challenge an exclusion
24 order only by a petition for a writ of habeas corpus...Finally, the [noncitizen] who loses
25 his right to reside in the United States in a deportation hearing has a number of
26 substantive rights not available to the [noncitizen] who is denied admission in an
27 exclusion proceeding: he can, within certain limits, designate the country of
deportation...; he may be able to depart voluntarily... avoiding both the stigma of
deportation...and the limitations on his selection of destination...or he can seek
suspension of deportation.

459 U.S. 21, 25-26 (internal citations and quotation marks omitted).

1 the U.S. without inspection to mandatory detention, in order place them on equal footing with
2 persons “seeking admission” at the port of entry. ECF 5 at 11. Respondents’ reliance on *Torres*
3 is misplaced. First, the Court in *Torres* held that persons present in the U.S. without inspection
4 are *not* “seeking admission” within the meaning of § 1225(a)(1), *see Torres v. Barr*, 976 F.3d at
5 927 (rejecting the idea that § 1225(a)(1) means that anyone who is presently in the United
6 States without admission or parole is someone who is “deemed to have made an actual
7 application for admission”), which directly contradicts Respondents’ position that such persons
8 should be “deemed to be ‘seeking admission,’” ECF 5 at 12. Second, deportation/removal
9 proceedings and custody determination proceedings are entirely separate matters, *see* 8 C.F.R.
10 § 1003.19(d) (noting IJ consideration of requests for “custody or bond...shall be separate and
11 apart from, and shall form no part of, any deportation or removal proceeding”); the procedural
12 and substantive rights available in removal proceedings remain the same regardless of custody
13 status. Thus, Respondents’ reliance on *Torres* is inapposite.

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16 Petitioner does not argue that the “plain language” of § 1225(b)(2) “contradicts” §
17 1226(a) or “renders it superfluous” as Respondents aver. ECF 5 at 11. Rather, as the above
18 demonstrates, § 1225(b)(2) is not applicable to Petitioner because, as someone physically
19 present in the United States without admission, he cannot be deemed to be “seeking
20 admission,” which “necessarily implies some sort of present-tense action.” *Beltran v. Noem*,
21 No. 3:25-cv-02650-LL-DEB at 11.

22
23 Petitioner further argues that recent amendments to § 1226(c) under the Laken Riley
24 Act would be rendered superfluous under Respondents’ reading of the statute, because “if – as
25 Respondent’s urge—all noncitizens present without admission were already subject to
26 mandatory detention under § 1225(b)(2), there would be no need for an amendment that
27

1 mandates detention for all noncitizens ‘present without admission or parole’ *and* who have
2 been charged with certain crimes.” *Beltran v. Noem*, No. 3:25-cv-02650-LL-DEB at 13 (“The
3 Court will not find that Congress passed the Laken Riley Act to add an amendment that
4 performs the same function as § 1226(b)(2).”).

5
6 In regard to the Respondents’ contention that the phrase “seeking admission” means
7 nothing other than falling under the broad definition of “application for admission” at §
8 1225(a)(1), Respondents argue that “many people who are not *actually* requesting permission
9 to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking
10 admission’ under the immigration laws.” ECF 5 at 12-13. (Quoting *Matter of Lemus-Losa*, 25
11 I. & N. Dec. 734, 743 (BIA 2012).) But Lemus was in fact seeking admission – he was
12 applying for adjustment of status to be admitted as a lawful permanent resident. *See* 25 I. & N.
13 Dec. at 735. Thus, the statutory references to “seeks admission” at § 1182(a)(9)(B)(i) are
14 readily distinguished from persons in Petitioner’s situation and directly undermine
15 Respondents’ contention that the phrase “seeking admission” means nothing other than falling
16 under the broad definition of “applicant for admission at § 1225(a)(1).
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18 For the foregoing reasons, the Court should grant Petitioner’s Application for a
19 Temporary Restraining Order and Order to Show Cause.
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21
22 DATED: November 13, 2025

s/ Jan Joseph Bejar
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For: JAN JOSEPH BEJAR,
A Professional Law Corp.

Attorneys for Petitioner