Niels W. Frenzen (CA 139064)
nfrenzen@law.usc.edu
Jean E. Reisz (CA 242957)
jreisz@law.usc.edu
USC Gould School of Law
Immigration Clinic
699 Exposition Blvd.
Los Angeles, CA 90089-0071
213-740-8933; 213-821-3108

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Eleazar Esau AVALOS FLORES,

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security, *et al.*,

Respondents.

Case No. 3:25-cv-03011-BAS-BLM

PETITIONER'S REPLY TO RESPONDENTS' RETURN TO HABEAS PETITION AND RESPONDENTS' OPPOSITION TO MOTION FOR INJUNCTIVE RELIEF WITH DETERMINATION ON MERITS

Hearing
Date: November 21, 2025
Time: 2:30 PM
Courtroom: 12B
Chief Judge: Hon. Cynthia Bashant

Respondents' opposition to Petitioner's TRO application ignores the ever-growing number of recent district court decisions which have addressed the new DHS and Department of Justice policy used to detain Petitioner without bond pursuant to 8 U.S.C. § 1225(b)(2)(A). Multiple courts have found that Respondents' new bond policy and new interpretation of the Immigration & Nationality Act is or is likely unlawful and that 8 U.S.C. § 1226(a), not § 1225(b), applies to noncitizens who are present without admission within the United States and placed under removal proceedings. *See* ECF No. 1 at 11-15, ¶¶ 40, 42; *see also, Maldonado Bautista v. Noem*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), Notices of Supplemental Authority In Support of Plaintiffs-Petitioners' Motions for Partial Summary Judgment and Class Certification, Dkt. No. 76 (Nov. 10, 2025) and Dkt. No. 79 (Nov. 18, 2025) (containing lists of over two hundred forty district court cases rejecting Respondents' statutory interpretation). Respondents understandably reference one district court decision from this district which has rejected Petitioner's arguments. *See* ECF No. 6 at 11 citing to *Sixtos Chavez v. Noem*, No. 3:25-cv-2325-CAB-SBC (S.D. Cal. Sept. 24, 2025). But virtually every other court to consider this issue has found that the interpretation advanced by the Respondents is contrary to the plain text of the statute and the overall statutory scheme.

Respondents argue that Petitioner's claims are barred by different jurisdictional provisions in 8 U.S.C. § 1252, but Supreme Court and Ninth Circuit

precedent squarely foreclose those arguments. Respondents argue that Petitioner's claims are barred because his detention throughout the removal hearing process "'arises from the … decision to commence [removal] proceedings' and review of claims arising from such detention is barred under [8 U.S.C.] § 1252(g)." ECF No. 6 at 7-8. But Petitioner does not challenge any decision to "commence proceedings" within the meaning of § 1252(g). Accepting Respondents' interpretation would bar nearly all detention challenges brought by noncitizens, at odds with the narrow interpretation of this subsection that courts have consistently adopted.

As the Supreme Court has explained, § 1252(g) is "much narrower" than what Respondents claim. *Reno v. Am.-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 482 (1999). Rather than encompass "all deportation-related cases," *id.* at 478, § 1252(g) insulates from litigation the immigration authorities' "exercise of [their] *discretion*," *id.* at 484 (emphasis added), with respect to the three specified actions: "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders," *id.* at 483 (alterations in original). The subsection was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Id.* at 485 n.9; *see also id.* at 485 (providing as an example of such prosecutorial discretion "'no deferred action' decisions and similar discretionary determinations"). Indeed, the Court found 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.* at 482. Subsequent Supreme Court precedent has affirmed § 1252(g)'s narrow scope and focus on discretionary decisions. *See, e.g.*, *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (noting § 1252(g) is "narrow"). With these principles in mind, 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions," including challenges to the proper interpretation of the INA's detention provisions. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In fact, although the Supreme Court has reviewed several cases involving the government's application of immigration detention authorities, it has never held that such *claims* might be barred by § 1252(g)—including in cases concerning § 1226. *See Jennings*, 583 U.S. 281 (§§ 1226 & 1225); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (§ 1231); *Demore v. Kim*, 538 U.S. 510 (2003) (§ 1226); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) (§§ 1226 & 1231); *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (§ 1231). That omission is significant because "courts, including th[e] [Supreme] Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Moreover, in *Jennings*, the Court expressly reiterated that § 1252(g) must be "read . . . to refer to just those three specific actions themselves." 583 U.S. at 294.

Petitioner does not challenge any discretionary action to "commence

proceedings." Rather, he challenges Respondents' conclusion that he is subject to mandatory detention while those proceedings take place. *Cf.* 8 C.F.R. § 1003.19(d) (noting IJ consideration of requests for "custody or bond . . . shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding"). Determining the detention provision under which Petitioner is detained is not discretionary, nor does resolving that question challenge Respondents' discretionary decision to place Petitioner in removal proceedings. *See United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (clarifying § 1252(g) does not prevent district court jurisdiction over "a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority"). As a result, § 1252(g) does not bar Petitioner's claims.

Respondents' argument with respect to § 1252(b)(9) is similarly and directly foreclosed by binding Supreme Court precedent. Section 1252(b)(9) is a "zipper clause" that channels review of final orders of removal into petitions for review before a federal court of appeals. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (en banc) (quoting *AADC*, 525 U.S. at 483). Respondents contend that § 1252(b)(9) applies here because "Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings, and is thus 'an action taken … to remove [him] from the United

States'." ECF No. 6 at 9.

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

As the Court explained: interpreting "arising from" in this extreme way would also make claims of prolonged detention effectively unreviewable. 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. *Id.* Here it is no different. In fact, Respondents' position is now even *more* extreme. Petitioner asserts that he is detained under § 1226(a) and thus is entitled to a bond hearing at the outset of his detention, rather than after prolonged detention, as in *Jennings*. Forcing him to wait years for a petition for review to resolve that claim would "depriv[e] [him] . . . of any meaningful chance for judicial review." *Id.* Once again, it is notable that the Supreme Court has never demanded that noncitizens like Petitioner raise their

challenges to detention in a petition for review in any of the immigration detention challenges the Court has heard. *See supra* p. 3 (citing cases).

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

The cases Respondents do cite provide them no support. Many do not even involve detention. *See, e.g.*, ECF No. 6 at 9 (citing out-of-circuit cases involving challenges related to removal orders or other immigration actions).

Petitioner does not challenge DHS's authority to detain him. Instead, he challenges the new DHS and Department of Justice bond policy which deems Petitioner to be detained under § 1225 rather than § 1226(a). For all the reasons above, § 1252(b)(9) plainly does not bar his claims.

In regard to the Respondents' contention that the phrase "seeking admission" means nothing other than falling under the broad definition of "applicant for admission" at § 1225(a)(1), Respondents argue that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." ECF No. 6 at 13. (Quoting *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA

2012).) But Lemus was in fact seeking admission—he was applying for adjustment of status to be admitted as a lawful permanent resident. *See* 25 I. & N. Dec. at 735. Thus, the statutory references to "seeks admission" at § 1182(a)(9)(B)(i) are readily distinguished from persons in Petitioner's situation and directly undermine Respondents' contention that the phrase "seeking admission" means nothing other than falling under the broad definition of "applicant for admission" at § 1225(a)(1).

For the foregoing reasons, the Court should grant the motion for injunctive relief and the petition for writ of habeas corpus and order Respondents to release Petitioner from their custody or provide Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the Court's Order and further declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a) and that his detention under 8 U.S.C. § 1225(b)(2) is unlawful.

Dated: November 18, 2025

Respectfully submitted,

s/ Niels W. Frenzen
NIELS W. FRENZEN
JEAN REISZ
USC GOULD SCHOOL OF LAW,
IMMIGRATION CLINIC
699 Exposition Blvd
Los Angeles, CA 90089-0071
Telephone: (213)740-8933
Email: nfrenzen@law.usc.edu

Attorneys for Petitioner