

FABIAN SERRATO (Cal. Bar No. 202792)
SERRATO LAW FIRM, PC
217 North Main Street, Suite 300
Santa Ana, CA 92701
fabian@serratolaw.com
T: +1 (714) 775-6654
email: fabian@serratolaw.com

Attorney for *Petitioner*

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ABELINO RAMOS DIAZ

Petitioner,

vs.

CHRISTOPHER J. LAROSE , Senior
Warden of Otay Mesa Detention Center,
et al.,

Respondents.

Case No. 25-cv-03105-BJC-MSB

**PETITIONER’S TRAVERSE TO
RESPONDENTS’ RETURN TO
WRIT OF HABEAS CORPUS**

MEMORANDUM OF POINTS AND AUTHORITIES

Respondents contend that (A) Petitioner’s claim and requested relief is jurisdictionally barred, and (B) Petitioner is lawfully detained. Yet in defense of such contentions, Respondents raise no argument that has not already been rejected by this Court and several others across the United States.

A. The jurisdictional bars of 8 U.S.C. § 1252 are inapplicable to a noncitizen claimant’s challenge to the Government’s detention authority under the statutory framework of the INA.

Consistent with a flurry of recent holdings in this District and across the country, this Court maintains jurisdiction over Petitioner’s statutory and

1 constitutional claims as they neither challenge nor necessarily arise from the
2 discretionary enforcement activity described by the jurisdictional bar of § 1252.

3
4 **1. 1252(g)**

5 Respondents first argue that this Court lacks jurisdiction over Petitioner’s
6 claims because § 1252(g) bars judicial review of “any cause or claim by or on behalf
7 of any alien arising from the decision or action by the Attorney General to
8 commence proceedings, adjudicate cases, or execute removal orders against any
9 alien under this chapter.” (Resp’ts’ Return 5, Dkt. No. 2). Respondents are
10 employing a straw-man argument. Petitioner’s challenge does not arise from any of
11 the three discretionary actions the Attorney General may take as described in §
12 1252(g)—the commencement of enforcement proceedings, adjudication of cases, or
13 execution of removal orders against any alien under 8 U.S. Code Chapter 12.

14 First, Petitioner does not contest the Department’s decision to initiate removal
15 proceedings against him. In fact, Petitioner has conceded removability before the
16 Immigration Court. Second, Petitioner does not oppose adjudication of his case.
17 Petitioner has filed applications for asylum and withholding of removal as well as
18 cancellation of removal and adjustment of status, all of which are set to be
19 adjudicated by the Immigration Court at the end of proceedings. Third, the
20 Immigration Court has issued no removal order against Petitioner. Instead, at the
21 heart of Petitioner’s challenge is Respondents’ statutory authority to classify all
22 noncitizen unlawful entrants as applicants for admission subject to mandatory
23 detention under § 1225—a classification that renders Petitioner ineligible for bond.

24 Still, Respondents insist that Congress has “explicitly foreclosed district court
25 jurisdiction over claims that *necessarily* arise” from the discretionary action immune
26 to judicial review under § 1252(g). ((Resp’ts’ Return 6, Dkt. No. 2).) (emphasis
27 added). The basis for such an assertion is unclear as the sentence containing it ends
28 with a dependent clause followed only by a citation to the statute itself. *Id.*

1 Petitioner is left to presume that Respondents meant to cite to *Reno* and *Limpin*,
2 which Respondents reference in the same paragraph. (Resp'ts' Return 5-6, Dkt. No.
3 2). Yet even so, Respondents fail to articulate how *Reno* or *Limpin* support the
4 conclusion that Petitioner's challenge to his custody classification under § 1225
5 constitutes a claim necessarily arising from the Department's commencement or
6 adjudication of removal proceedings against him.

7 In *Reno*, the noncitizen claimants were eight lawful permanent residents who
8 alleged the then-Immigration and Naturalization Service ("INS") had initiated
9 deportation proceedings against them in an act of selective enforcement based on
10 their affiliation with a politically unpopular group. *Reno v. Am.-Arab Anti-*
11 *Discrimination Comm.*, 525 U.S. 471, 119 S. Ct. 936 (1999). In that case, the
12 Supreme Court held that § 1252(g) deprived federal courts of jurisdiction over the
13 noncitizens' selective-enforcement claim because it was inextricable from the
14 Attorney General's decision to commence proceedings. *Id.* ("Respondents'
15 challenge to the Attorney General's decision to 'commence proceedings' against
16 them falls squarely within § 1252(g) . . . and nothing elsewhere in § 1252 provides
17 for jurisdiction.").

18 In contrast, in the instant case, Petitioner makes no such challenge or
19 allegation. Petitioner does not contest the Department's initiation of removal
20 proceedings but rather Respondents' classification of his custody status as
21 mandatory under § 1225 rather than discretionary under § 1226. All other of
22 Petitioner's claims derive from this challenged classification and the actions taken
23 by Respondents to defend it. Therein lies the distinction between the instant case
24 and *Reno*; Petitioner acknowledges that regardless of this Court's ultimate decision
25 as to the correct statutory classification of his custody status, he will nevertheless
26 remain in removal proceedings before the Immigration Court. Moreover, Petitioner
27 does not dispute that he is subject to detention during the pendency of his removal
28 proceedings. Instead, Petitioner contests he is subject to mandatory detention under

1 § 1225 as opposed to discretionary detention under § 1226, and his habeas corpus
2 challenge falls within the scope of this Court’s jurisdiction under 28 U.S.C. § 2241.
3 *See, e.g., Sanchez v. LaRose*, No. 25-cv-2396-JES-MMP, 2025 LX 439015, at *6
4 (S.D. Cal. Sep. 26, 2025) (finding the Government’s argument that the noncitizen
5 claimant’s § 2241 habeas corpus challenge “necessarily arises” from the
6 commencement of removal proceedings); *Lopez v. Larose*, No. 25-cv-2717-JES-
7 AHG, 2025 LX 438186, at *5-6 (S.D. Cal. Oct. 30, 2025) (finding the
8 Government’s § 1252(g) jurisdictional bar argument “has no bearing” because the
9 noncitizen claimant’s challenge to his mandatory custody determination does not
10 equate to a petition for relief from a decision to execute a removal order).

11 Still, Respondents draw a false equivalence between Petitioner’s Fifth
12 Amendment claims and the Fourth Amendment and Federal Tort Claims
13 Act (“FTCA”) challenges previously addressed by the Ninth Circuit in *Sissoko v.*
14 *Rocha*, 509 F.3d 947 (9th Cir. 2007), *replacing withdrawn opinion at*, F.3d 1145
15 (2006). As to *Limpin*, Respondents cite to an unpublished decision by the Ninth
16 Circuit Court of Appeals affirming this Court’s dismissal of the noncitizen
17 claimant’s action. (Resp’ts’ Return 6, Dkt. No. 2); *see Limpin v. United States*, 828
18 F. App’x 429 (9th Cir. 2020) (“The district court properly dismissed Limpin’s action
19 for lack of subject matter jurisdiction because claims stemming from the decision to
20 arrest and detain an alien at the commencement of removal proceedings are not
21 within any court’s jurisdiction.”) (internal citations omitted). In deciding on *Limpin*,
22 however, both the Ninth Circuit Court of Appeals and this Court looked to *Sissoko*,
23 509 F.3d at 947, to decide whether the noncitizen’s claims arose from the
24 Government’s decision to commence proceedings. *See Limpin v. United States*, No.
25 17-CV-1729 JLS (WVG), 2019 U.S. Dist. LEXIS 49604, at *6-7 (S.D. Cal. Mar. 25,
26 2019).

27 As was the case in *Limpin*, the noncitizen claimant in *Sissoko* brought a
28 Fourth Amendment-based money damages claim for false arrest. *Id.*; *see Sissoko v.*

1 *Rocha*, 509 F.3d 947, 948 (9th Cir. 2007) (adopting the factual and procedural
2 background from the court’s opinion at 440 F.3d 1145). Critically, in *Limpin*, this
3 Court recognized that “[t]he Ninth Circuit has held a Fourth Amendment challenge
4 to confinement during removal proceedings falls under Section 1252(g) because it
5 ‘directly challenges’ the Attorney General’s ‘decision to commence expedited
6 removal proceedings.’” *Limpin v. United States*, No. 17-CV-1729 JLS (WVG), 2019
7 U.S. Dist. LEXIS 49604, at *6 (S.D. Cal. Mar. 25, 2019) (citing *Sissoko*, 509 F.3d at
8 950). Accordingly, because the noncitizen claimant in *Limpin* brought a Fourth
9 Amendment claim challenging his arrest, this Court ultimately held that “Mr.
10 Limpin’s seizure and detention arose from the Attorney General’s decision to
11 commence removal proceedings” such that his claim was barred by Section 1252(g).
12 *Limpin v. United States*, No. 17-CV-1729 JLS (WVG), 2019 U.S. Dist. LEXIS
13 49604, at *6 (S.D. Cal. Mar. 25, 2019).

14 Lastly, regarding § 1252(g), Respondents assert that district courts are
15 jurisdictionally barred “from hearing challenges to the method by which the
16 government chooses to commence removal proceedings, including the decision to
17 detain an alien pending removal.” (Resp’ts’ Return 6, Dkt. No. 2). To support this
18 position, Respondents primarily rely on a case, *Herrera-Correra*, that also draws
19 heavily from this Court’s decision in *Sissoko*. (*Id.*); see *Herrera-Correra v. United*
20 *States*, No. CV 08-2941 DSF (JCx), 2008 U.S. Dist. LEXIS 127169 (C.D. Cal. Sep.
21 11, 2008); see also *Sissoko*, 509 F.3d 947. However, unlike the noncitizen
22 claimants in *Limpin* and *Sissoko*, Petitioner is not raising a Fourth Amendment
23 challenge against his arrest and detention. Instead, Petitioner is alleging
24 Respondents have violated his Fifth Amendment procedural due process rights by
25 classifying his custody as mandatory under § 1225, thereby precluding him from
26 being released on bond. Put another way, Petitioner is challenging the
27 Government’s detention authority under the statutory framework of the INA as
28 opposed to alleging a false arrest under the Fourth Amendment.

1 For this reason, Respondents erroneously conflate the distinct and complex
2 circumstances of *Limpin* and *Sissoko* with Petitioner’s case. Consequently,
3 Respondents’ contention, (Resp’ts’ Return 8, Dkt. No. 2), that Petitioner’s claims
4 necessarily arises from activity described by § 1225(g) remains unsupported. *See,*
5 *e.g., Faizyan v. Casey*, No. 3:25-cv-02884-RBM-JLB, 2025 LX 532795, at *7 (S.D.
6 Cal. Nov. 17, 2025) (rejecting the Government’s § 1225(g) jurisdictional bar
7 because the noncitizen claimant is “enforcing his ‘constitutional rights to due
8 process in the context of the removal proceedings—not the legitimacy of the
9 removal proceedings or any removal order.’”) (quoting *Garcia v. Noem*, Case No.:
10 25-cv-02180-DMS-MMP, 2025 U.S. Dist. LEXIS 171714, 2025 WL 2549431, at *4
11 (S.D. Cal. Sept. 3, 2025) (emphasis in original).

12 Respondents’ reliance on unanalogous cases is especially notable given the
13 existence of a controlling, on-point decision by the Ninth Circuit—*Arce v. United*
14 *States*, 899 F.3d 796 (9th Cir. 2018) (holding that the lower court erred in
15 concluding it lacked jurisdiction under § 1252(g) over the noncitizen claimant’s
16 FTCA claim for damages resulting from his unlawful removal); *see Sanchez v.*
17 *LaRose*, No. 25-cv-2396-JES-MMP, 2025 LX 439015, at *5 (S.D. Cal. Sep. 26,
18 2025) (“In interpreting ‘arising under’ in both [§§ 1252(g) 1252(b)(9)], the Supreme
19 Court has cautioned against ‘expansive interpretations’ that would cause ‘staggering
20 results’ like rendering prolonged detention claims unreviewable.”) (quoting
21 *Jennings*, 583 U.S. at 294) (additional citations omitted).

22 In *Arce*, the noncitizen claimant was removed from the United States in
23 violation of the Ninth Circuit’s stay of removal order. *Arce*, 899 F.3d at 799. As
24 Respondents have done here, the Government in *Arce* argued “the jurisdiction-
25 stripping language of § 1252(g) extends to any action taken in connection with a
26 removal order.” *Id.* The Ninth Circuit disagreed. *Id.* In fact, the Ninth Circuit
27 clarified “[t]he Supreme Court has not ‘interpret[ed] [the statute’s] language to
28 sweep in any claim that can technically be said to “arise from” the three listed

1 actions of the Attorney General.” *Arce*, 899 F.3d at 800 (quoting *Jennings v.*
2 *Rodriguez*, 138 S. Ct. 830, 841, 200 L. Ed. 2d 122 (2018)); accord *Barahona-*
3 *Gomez v. Reno*, 236 F.3d 1115, 1118 (9th Cir. 2001) (“We specified that ‘[§
4 1252(g)] applies only to the three specific discretionary actions mentioned in its
5 text, not to all claims relating in any way to deportation proceedings.”) (quoting
6 *Catholic Social Services, Inc. v. Reno*, 232 F.3d 1139, 1150 (9th Cir. 2000) (*en*
7 *banc*)); see also *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 LX 484516, at *8
8 (S.D. Cal. Nov. 4, 2025) (finding that “§ 1252(g) does not bar Petitioners’ claims”
9 because they “are not challenging the commencement of removal proceedings but
10 are instead claiming a lack of legal authority to subject them to mandatory detention
11 under 8 U.S.C. § 1225(b)(2) during proceedings.”) (internal citations omitted).

12 Importantly, in *Arce*, even if the noncitizen claimant’s challenge had arisen
13 tangentially from the execution of his removal order, the Ninth Circuit nevertheless
14 “retain[ed] jurisdiction because the Attorney General entirely lacked the authority,
15 and therefore the discretion, to remove him.” 899 F.3d at 800. Accordingly, under
16 *Arce*, this Court maintains jurisdiction over Petitioner’s claims even if they
17 tangentially arise from the Department’s initiation of removal proceedings because
18 Respondents lacked the statutory authority—and therefore the discretion—to apply
19 a blanket classification to all noncitizen unlawful entrants in the United States as
20 applicants for admission subject to mandatory detention under § 1225.

21
22 **2. 1252(b)(9) & 1225(a)(5)**

23 Respondents additionally assert this Court is jurisdictionally barred from
24 reviewing Petitioner’s claims under §§ 1252(b)(9) and 1252(a)(5). (Resp’ts’ Return
25 6, Dkt. No. 2). More specifically, Respondents cite *Jennings*, 583 U.S. at 294-295,
26 to argue that “these provisions divest district courts of jurisdiction to review both
27 direct and indirect challenges to removal orders, including decisions to detain for
28 purposes of removal or for proceedings.” (*Id.*). To bring this action under the reach

1 of §§ 1252(b)(9) and 1252(a)(5), Respondents construe Petitioner’s claims as
2 “challeng[ing] the government’s decision and action to detain, which arises from
3 DHS’s decision to commence removal proceedings, and is thus an “action taken . . .
4 to remove [him/her] from the United States.” (*Id.*) (alterations in the original).

5 Ironically, the Supreme Court in *Jennings* dispenses of this very argument:

6 “[R]espondents are not asking for review of an order of removal; they
7 are not challenging the decision to detain them in the first place or to
8 seek removal; and they are not even challenging any part of the process
9 by which their removability will be determined. Under these
10 circumstances, §1252(b)(9) does not present a jurisdictional bar.”

11 *Jennings*, 583 U.S. at 294-95.

12
13 Moreover, as to the zipper clause of § 1252(b)(9), the Ninth Circuit has
14 clarified that “what [§ 1252(b)(9)] ‘zips’ are requests for review of various kinds of
15 agency action which are heard by means of petitions for ‘judicial review,’” and that
16 § 1252(b)(9) “does not affect petitions for habeas corpus.” *Flores-Miramontes v.*
17 *INS*, 212 F.3d 1133, 1139 (9th Cir. 2000); *accord Noori v. Larose*, No. 25-cv-1824,
18 2025 LX 410576, at *18-19 (S.D. Cal. Oct. 1, 2025); *see also J. E. F.M. v. Lynch*,
19 837 F.3d 1026, 1032 (9th Cir. 2016) (holding that the noncitizen claimants’ right-to-
20 counsel claims must be raised through the vehicle for judicial review prescribed by
21 1252(b)(9) and 1225(a)(5) because they “arise from” removal proceedings). Citing
22 its decision in *Jennings*, the Supreme Court, too, has ruled that § 1252(b)(9) does
23 not present a jurisdictional bar to a noncitizen claimant’s challenge to “the extent of
24 the statutory authority that the Government claims.” *Nielsen v. Preap*, 586 U.S. 392,
25 402, 139 S. Ct. 954, 962 (2019) (citing *Jennings*, 583 U.S. at 294-95.)

26 In fact, for several noncitizen claimants similarly situated to Petitioner, this
27 Court, too, has held § 1252 does not divest it of jurisdiction. *E.g., Sanchez v. LaRose*
28 (holding that the noncitizen claimant’s petition to review the legality of her

1 detention does not “necessarily arise” from the Attorney General’s discretionary
2 enforcement action); *Garcia v. Larose*, No. 25cv2936-BTM-MMP, 2025 LX
3 502177, at *3-4 (S.D. Cal. Nov. 20, 2025) (same); *Lucas-Miguel v. LaRose*, No. 25-
4 cv-3022-RSH-JLB, 2025 LX 527603, at *3-4 (S.D. Cal. Nov. 21, 2025) (same);
5 *Torres v. Bondi*, No. 25-cv-02457-BAS-MSB, 2025 LX 527133, at *5 (S.D. Cal.
6 Nov. 18, 2025) (same); *Araujo v. Larose*, No. 25cv2942, 2025 LX 530682, at *3
7 (S.D. Cal. Nov. 24, 2025) (same); *Lopez v. Warden, Otay Mesa Det. Ctr.*, No. 25-
8 cv-2527-RSH-SBC, 2025 LX 467758, at *5 (S.D. Cal. Oct. 27, 2025) (same);
9 *Santos v. Larose*, No. 25-cv-3009, 2025 LX 502658, at *4 (S.D. Cal. Nov. 21, 2025)
10 (same); *see Silva v. Larose*, No. 25-cv-2329-JES-KSC, 2025 LX 438147, at *6-7
11 (S.D. Cal. Sep. 29, 2025) (“Following a plain language analysis of the implicated
12 statutes, the Court finds that that this provision means that only judicial review of
13 final orders of removal is reserved to the courts of appeals, not every order issued in
14 a removal proceeding.”).

15
16 **B. Respondents fail to establish why their widely rejected application of 8**
17 **U.S.C. § 1225 should supplant contrary rulings of district courts across**
18 **the United States.**

19 Respondents argue Petitioner’s claims of statutory and constitutional
20 violations fail because he is properly detained under § 1225. (Resp’ts’ Return 9-13,
21 Dkt. No. 2). Yet “Respondents acknowledge that courts in this district have recently
22 rejected similar arguments in other habeas matters”—a true statement, though it
23 would be more accurate to say that this Court as well as several others in this
24 District and across the country have recently rejected the exact arguments raised by
25 Respondents. *See, e.g., Ruiz v. Larose*, No. 25-cv-02714-BAS-SBC, 2025 LX
26 536826, at *10 (S.D. Cal. Nov. 18, 2025) (“Statutory interpretation supports that
27 Section 1226(a), not Section 1225(b)(2)(A), applies to Petitioner’s immigration
28 detention. Because the BIA’s decision binding Immigration Judges incorrectly

1 provides that Petitioner is subject to mandatory detention with no individualized
2 bond determination, Petitioner is being held in violation of Federal Law.”); *Calel v.*
3 *Larose*, No. 3:25-cv-02883, 2025 LX 568789 (S.D. Cal. Nov. 13, 2025) (same);
4 *Velasquez v. LaRose*, No. 25-CV-3137 JLS (MSB), 2025 LX 538873 (S.D. Cal.
5 Nov. 21, 2025) (same); .

6 In addition to this Court’s reasoning in the above-referenced cases, in reply to
7 Respondents’ contention that Petitioner is lawfully detained under § 1225, Petitioner
8 restates and realleges his claims for relief as set forth in his original petition. (Pet. ¶¶
9 38-64, Dkt. No. 1). Moreover, of special significance is the November 25, 2025,
10 order from a federal district court extending declaratory judgment to the certified
11 class in *Maldonado Bautista v. Santacruz*. No. 5:25-CV-01873-SSS-BFM, --- F.
12 Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting
13 partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v.*
14 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403,
15 at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed
16 nationwide Bond Eligible Class, incorporating and extending declaratory judgment
17 from Order Granting Petitioners’ Motion for Partial Summary Judgment). (Attached
18 as EXH. 1). More specifically, the Central District of California defines the class
19 certified as follows:

20 **Bond Eligible Class:** All noncitizens in the United States without
21 lawful status who (1) have entered or will enter the United States
22 without inspection; (2) were not or will not be apprehended upon
23 arrival; and (3) are not or will not be subject to detention under 8
24 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department
25 of Homeland Security makes an initial custody determination.

26 ///

27

28

1 Contrary to Respondents' insistence on Petitioner's custody status as subject
2 to § 1225, (Resp'ts' Return 9-13, Dkt. No. 2), Petitioner is a member of the
3 *Maldonado Bautista* class—and thus eligible for bond—as he (1) entered the United
4 States without inspection, (Pet. at ¶¶ 16, 20-21, Dkt. No. 1); (2) was not
5 apprehended at arrival (*id.*), and; (3) is not otherwise subject to mandatory detention
6 (Pet. ¶¶ 38-64, Dkt. No. 1).

7 Respectfully submitted this December 4, 2025.

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9 SERRATO LAW FIRM, PC

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11 By: /S/ Fabian Serrato, Esq.
12 Fabian Serrato (CA SBN 202792)
13 217 Main Street, 3rd Fl
14 Santa Ana, CA 92701
15 Tel: (714) 775-6654
16 Fax: (714) 775-6654
17 Email: fabian@serratolaw.com
18 Attorney for Petitioner
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21
22
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24
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