UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PARDEEP SHARMA
aka PARDEEP SINGH

Petitioner,

v.

JEREMY CASEY, Warden, Imperial Regional Detention Facility, et al.,

Respondents.

Case No.: 3:25-cv-3335-BAS-DDL

PETITIONER'S REPLY TO RESPONDENTS' RETURN TO PETITION

I. Introduction

Petitioner, Pardeep Sharma (aka Pardeep Singh), by and through undersigned counsel and hereby submits this Reply to Respondents' Return to Petition for Writ of Habeas Corpus. The absence of any rebuttal in this Reply is not a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus.

This Reply addresses several issues raised in Respondents' Return to Petition. First, Respondents' jurisdictional objections under 8 U.S.C. §§ 1252(g) and 1252(b)(9) fail because this Petition challenges detention classification independent of removal proceedings. Second, prudential exhaustion should be waived because *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) forecloses any administrative relief and renders further agency review futile. Third, DHS initially classified Petitioner under Section 1226(a), confirming that he was not treated as an arriving alien subject to Section 1225(b)(2), and Respondents' current position contradicts statutory text, regulatory practice, and judicial precedent. Finally, denying access to individualized custody review violates due process because unwarranted conversion of Section 1226(a) detainees into Section 1225(b) mandatory detention extinguishes meaningful process without statutory authority.

II. Argument

A. This Court Has Jurisdiction over the Petition

Respondents contend that 8 U.S.C. §§ 1252(g) and 1252(b)(9) strip the Court of

jurisdiction over the petition. Section 1252(g) states that "no court shall have 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 general rule is to "'resolve any ambiguities in a jurisdiction-stripping statute [such as Section 1252(g)] in favor of the narrower interpretation,' and by the 'strong presumption in favor of judicial review.'" *Ibarra-Perez v. United States*, 154 F.4th 989, 995 (9th Cir. 2025) (quoting *Arce v. United States*, 899 F.3d 796, 801 (9th Cir. 2018)). Thus, the Supreme Court has ruled Section 1252(g) applies only to three discrete actions: commencing proceedings, adjudicating cases, or executing removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). "Instead of 'sweep[ing] in any claim that can technically be said to arise from the three listed actions,' the provision 'refers to just those three specific actions themselves.'" *Ibarra-Perez*, 154 F.4th at 995 (alteration in original) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)). "There are of course many other decisions or actions that may be part of the deportation process . . ." that are not one of these three. *See Reno*, 525 U.S. at 482 (listing possibilities). Section 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez*, 154 F.4th at 997.

Here, Petitioner is not contesting the commencement or adjudication of removal proceedings brought against him. Likewise, he is not raising any issue with any execution

of removal orders that may or may not exist against him. While Petitioner's detention has been and is currently taking place during removal proceedings, the detention itself is independent of the removal proceedings. As such, this Court does not lack jurisdiction by virtue of 8 U.S.C. § 1252(g).

The relevant portion of 8 U.S.C. § 1252(b)(9) says: "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States . . . shall be available only in judicial review of a final order under this section." "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). In *Nielsen v. Preap*, 586 U.S. 392 (2019), the Supreme Court held 8 U.S.C. § 1252(b)(9) inapplicable when the petitioners were not asking for review of an order of removal, were not challenging the decision to detain them in the first place or to seek removal, and were not challenging any part of the process by which removability would be determined. *Id.* at 402 (citing Jennings, 583 U.S. at 294).

Here, Petitioner is not challenging the Government's authority to initiate removal proceedings against him or its decision to remove him from the United States in his Petition. Instead, Petitioner is challenging his classification under Section 1225(b)(2) instead of Section 1226(a) and the Board of Immigration Appeal's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) that immigration judges lack authority to

provide a bond under Section 1225(b)(2). Thus, Section 1252(b)(9) is not a jurisdictional bar.

B. The Exhaustion Requirement Should Be Waived for Futility

In footnote 2 of its return, Petitioners ask that this Court ensure that Petitioner "properly exhausts administrative remedies." Petitioner contends that prudential exhaustion requirements should be waived for futility.

The Ninth Circuit requires "as a prudential matter, that habeas petitioners exhaust available judicial . . . remedies before seeking relief under § 2241." *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004) (citation omitted). A court has discretion to waive a prudential exhaustion requirement. *Id.* Such exceptions include situations "where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). A petitioner seeking to waive the prudential exhaustion requirement must show that at least one of the *Laing* factors applies. *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003 (N.D. Cal. 2018).

Here, Petitioner argues that he has met his burden to show that pursuit of administrative remedies would be futile. The BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025 as a precedential decision, which "serve[s] as precedent[] in all proceedings involving the same issue or issues." 8 C.F.R. §

1003.1; *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216. The BIA decision found that noncitizens who are present in the United States without admission are deemed to be "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond hearing. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225. Therefore, requesting a bond hearing with an immigration judge and subsequently appealing to the BIA would be futile because both those bodies will find Petitioner subject to mandatory detention pursuant to *Matter of Yajure Hurtado* under the very statute that Petitioner is challenging here. *See Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *4, 7 (C.D. Cal. Sept. 8, 2025) (finding appeals to BIA would be futile for petitioners challenging their detention under §1225(b)(2) instead of § 1226(a)). As such, Petitioner asks that this Court waive the prudential exhaustion requirement.

C. Petitioner Is Subject to § 1226(a), Not § 1225(b)(2), Because He Was Released on Recognizance and Later Arrested in the Interior.

Petitioner was not "seeking admission" when DHS initially released him on I-220A nor when he was later arrested in Riverside, placing him squarely under § 1226(a)'s discretionary custody regime. Respondents claim that Petitioner is subject to "mandatory detention under 8 U.S.C. § 1225." *See* Return to Petition at 11. As such, the disagreement between the parties is whether Petitioner is subject to discretionary release as he originally was when he was classified under Section 1226(a) and released on his

own recognizance pursuant Section 1226, or, as the BIA has ruled in *Yajure Hurtado*, 29 I&N Dec. 216, subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Numerous cases have concluded that applying Section 1225 to a case like Petitioner's "(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Lepe v. Andrews*, __F. Supp. 3d__, 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) (citing cases).

Section 1225(b)(2)(A) applies to an applicant "seeking admission" to the United States, whereas Section 1226(a) applies to individuals who have been arrested "on a warrant issued by the Attorney General." 8 U.S.C. §§ 1225(b)(2)(A), 1226(a). "Seeking," as noted by other courts, "means 'asking for' or 'trying to acquire or gain.'" *Lepe*, 2025 WL 2716910, at *5 (citing Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking). "And the use of a present participle, 'seeking,' necessarily implies some sort of present-tense action." *Id.* (citation modified). As noted by the Southern District of New York:

> [S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater . . . . Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission."

Lopez Benitez v. Francis, __F. Supp. 3d__, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025). Respondents highlight Section 1225(a)(1), which states, "[a noncitizen] present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." But if Section 1225 was intended to apply to all applicants for admission, "there would be no need to include the phrase 'seeking admission' in the statute." *Lopez Benitez*, 2025 WL 2371588, at *6; *see also Vasquez-Garcia v. Noem*, No. 25-cv-2180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025) ("Only those who take affirmative acts, like submitting an application for admission, are those who can be said to be 'seeking admission' within § 1225(b)(2)(A).").

Furthermore, Respondents' interpretation ignores the statutory scheme. "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Lepe*, 2025 WL 2716910, at *6 (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)). "Section 1225 'authorizes the Government to detain certain aliens seeking admission into the country,' whereas section 1226 'authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.'" *Id.* (quoting Jennings, 583 U.S. at 287). This is reinforced by the title of Section 1225: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." 8 U.S.C. § 1225. "'Inspection' is a process that occurs at the border

or other ports of entry." *Lepe*, 2025 WL 2716910, at *6 (citing Posos-Sanchez v. Garland, 3 F.4th 1176, 1183 (9th Cir. 2021)).

Here, Petitioner, under the plain meaning of the statute, was not and is not seeking admission to the United States. He initially entered the United States on or about December 3, 2022, was detained, and subsequently released from detention via an Order of Release on Recognizance under Section 1226(a) on December 6, 2022. (*See* Petition for Habeas Corpus, Ex. A "In accordance with section 236 of the Immigration and Nationality Act[1] and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance…); *see Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (noting that "release on recognizance" can be used as another name for "conditional parole" under Section 1226). At time of his entry and arrival into the United States in 2022, Petitioner was decidedly *not* "seeking admission" pursuant to § 1225(b)(2), as he was released from custody under Section 1226(a).

On or about November 11, 2025, in Riverside, California, Petitioner was arrested by immigration agents and is now detained at the Imperial Regional detention Facility. His recent arrest by immigration officials did not occur at the border or a port of entry where he was subject to inspection or otherwise seeking admission as an arriving alien. Instead, he was arrested while already in the United States, and thus, is subject to Section

[1] Section 236 of the INA is codified in Section 1226.

1226(a). DHS's initial classification of Petitioner under Section 1226(a) confirms that he was not treated as an "arriving alien" requiring inspection, but as a removable noncitizen entitled to bond and discretionary release. If Section 1225(b)(2) truly governed Petitioner's situation, DHS would not have invoked Section 1226(a), issued an I-220A, or otherwise treated him as subject to routine custody review mechanisms. DHS's indisputable classification of Petitioner under Section 1226(a) squarely contradicts Respondents' newly asserted Section 1225 theory.

Section 1226 carves out a statutory category of non-citizens who, despite being arrested while already in the country, may not be released because of their criminal or terrorist activities. 8 U.S.C. § 1226(c). If, as Respondents argue, all non-citizens arrested while already in this country are subject to mandatory detention under § 1225, there would be no need to carve out an exception for those who had committed criminal or terrorist activities. *See Rosado v. Figueroa*, No. CV 25-2157-DHX-DLR (CDB), 2025 WL 2337099, at *9 (D. Ariz. Aug. 11, 2025) (reasoning that if Section 1225's "mandatory detention provisions apply to all noncitizens present in the United States who have not been admitted, it would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens"); *Rodriguez*, 779 F. Supp. 3d at 1258 (noting that if the court were to adopt a reading of Section 1225 advanced by the BIA, it would render significant portions of Section 1226(c) meaningless). To avoid rendering Section 1226(c) completely meaningless, the Court finds non-citizens arrested on a

warrant in the interior of the United States are subject to discretionary release on bond under Section 1226(a), not mandatory detention under Section 1225(b)(2)(A).

In addition, "the longstanding practice of the government—like any other interpretive aid—can inform a court's determination of what the law is." *Rosado*, 2025 WL 2337099, at *10 (citation modified) (quoting *Loper Bright*, 603 U.S. at 386). "Until this year, DHS has applied section 1226(a) and its regime of discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation—a practice codified by regulation." *Valencia Zapata v. Kaiser*, __F. Supp. 3d __, 2025 WL 2741654, at *4 (N.D. Cal. Sept. 26, 2025) (citation modified); *see also* Inspection & Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Against this backdrop, Congress adopted the Laken Riley Act, adding Section 1226(c)(1)(E), which mandates detention for additional categories of criminal aliens. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Rodriguez*, 779 F. Supp. 3d at 1259 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995), abrogated on other grounds by *Riley v. Bondi*, 606 U.S. 259, 261 (2025)). "When Congress adopts a new law against the backdrop of a 'longstanding administrative construction,' courts 'generally presume the new provision should be understood to work in harmony with what has come before.'" *Id.* (quoting *Monsalvo Velazquez v. Bondi*, 604 U.S. 712, 725 (2025)).

The longstanding practice of DHS applying Section 1226 to those arrested in the interior of the United States supports the finding that this practice was the best reading of the statute. This conclusion is particularly true because adopting Respondents' interpretation would result in the recently enacted Laken Riley Act being completely meaningless and unnecessary.

Statutory interpretation supports that Section 1226(a), not Section 1225(b)(2)(A), applies to Petitioner's immigration detention. Because the BIA's decision binding Immigration Judges incorrectly provides that Petitioner is subject to mandatory detention with no individualized bond determination, Petitioner is being held in violation of federal law and his petition should be granted.

III. Conclusion

Respondents' Return confirms the core defects in their position: jurisdiction exists because Petitioner challenges his detention classification, not the initiation or execution of removal proceedings; prudential exhaustion is waived because immigration judges and the BIA have no authority to grant relief under *Matter of Yajure Hurtado*; and the statutory text, structure, agency practice, and recent case law all confirm that Section 1226(a), not Section 1225(b)(2), governs Petitioner's custody.

The government's effort to convert a noncitizen already present and released on recognizance into a mandatory-detention "arriving alien" is incompatible with the plain meaning of the INA and with decades of DHS interpretation. It also extinguishes any

meaningful opportunity for individualized custody review, implicating the Constitution and warranting immediate habeas relief.

For the foregoing reasons, and those set forth in the Petition, the Court should grant the writ, order Petitioner's release, or at minimum require DHS to provide a bond hearing before an impartial adjudicator under Section 1226(a), award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law, and grant any other and further relief that this Court deems just and proper.

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Respectfully submitted:

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