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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jose Ernesto Bermudez De Eugenio

Petitioner,

v.

Kristi NOEM, Secretary, Department of Homeland Security; Todd LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; Pam BONDI, Attorney General of the United States; Jaime RIOS, Director, Los Angeles ICE Field Office; and Fereti SEMAIA, Warden, Adelanto ICE Processing Center.

Respondents.

No. 5:25-cv-03313-JAK (Ex)

PETITIONERS' REPLY TO *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

Hon. Kronstadt
United States District Judge

Petitioner hereby replies to Respondents' December 11, 2025 Opposition to their *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction. Dkt # 5. For the reasons set forth below and in Petitioners' Application for Temporary Restraining Order, the Court should grant the Application and order that Petitioners be provided a bond hearing before an immigration judge under 8 U.S.C. § 1226(a) within seven days.[1]

I. ARGUMENT

A. *MALDONADO BAUTISTA* IS CONTROLLING

Respondents state to this Court, which issued *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), that the "issue is not yet resolved" yet. Dkt # 9 at 1. Respondents state that this action should be stayed or dismissed because class certification was issued in *Bautista*, while at the same time argue that there is no final judgment that is binding for purposes of declaratory relief. Dkt # 7 at 1. Respondents cannot have it both ways- they cannot claim that there is no authority for Petitioners to file this action because of the class certification while at the same argue that the order on partial summary judgment has no biding effect because final judgment has not been entered. This Court should either find that *Maldonado Bautista* is controlling after class certification and the entry of partial summary judgment or independently find that a bond hearing before an immigration judge is required within seven days, just as it did in the merits of the *Maldonado Bautista* litigation.

B. CASELAW IS CLEAR THAT THIS COURT HAS JURISDICTION TO CONSIDER PETITIONER'S CHALLENGE

Respondents argue that the Court lacks jurisdiction to consider *the Ex Parte*

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[1] Respondents appear to concede that such an order is required under *Maldonado Bautista*. Dkt # 9 at 2. Notably, that is all the relief that Petitioners requested. They have not requested an order of direct release from the Court.

Application for Temporary Restraining Order. Dkt # 7 at 6-9.

As asserted in Petitioner's initial application, 8 U.S.C. § 1252(g) does not apply to legal claims or custody claims. The bar to review at 8 U.S.C. § 1252(g) strips all courts of 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 Supreme Court previously characterized § 1252(g) as a narrow provision, applying "only to three discrete 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). In doing so, the Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to *all claims arising from* deportation proceedings." *Id.* (emphasis added). It is clear that § 1252(g) does not apply to a legal custody challenge. *See Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025) ("we have been clear that § 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders."); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025) ("Petitioner's challenge to their detention does not fall within these discrete actions. Since petitioner's bond denial claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders, the Court finds that section 1252(g) does not present a jurisdictional bar to judicial review."); *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025) ("Petitioners are enforcing their constitutional rights to due process in the context of the removal proceedings—*not* the legitimacy of the removal proceedings or any removal order. Therefore, § 1252(g) does not limit the Court's jurisdiction in the present case."); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *7 (D. Minn. Aug. 27,

2025) ("§ 1252(g) does not deprive the Court of jurisdiction to consider the narrow legal question of whether a non-citizen detained under authority of § 1226 is entitled to a bond hearing under § 1226's discretionary detention framework."). Respondents conspicuously fail to address the uniform law that § 1252(g) does not apply to custody challenges at all, and expressly not those that are purely legal in nature. See *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret [section 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.").

Similarly, it is clear that 8 U.S.C. § 1252(b)(9) does not preclude review, as Petitioner does not challenge their removal proceedings before this Court. Once again, Respondents ignore the other cases addressing the same issue and finding that § 1252(b)(9) does not apply which, in turn, rely on Supreme Court precedent. In *Jennings,* the Supreme Court determined that the "arising from" language of section 1252(b)(9) did not apply to challenges to the lawfulness of custody during a removal proceeding. *Jennings*, 583 U.S. at 292-95. *See also Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) "[C]laims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process."); *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025) ("Their detention pursuant to § 1225(b)(2) may be during—but is nonetheless independent of—the removal proceedings. Accordingly, § 1252(b)(9) does not strip this Court of jurisdiction.").

C. PETITIONER IS LIKLEY TO SUCCEED ON THE MERITS

Respondents' arguments that Petitioner is not likely to succeed on the merits of their claim is disingenuous, given that almost every district court to address this issue has found that individuals who entered the United States without admission

are eligible for bond hearings pursuant to 8 U.S.C. § 1226(a). *Ding v. Janecka*, No. 5:25-CV-03184-DOC-JDE, 2025 WL 3453957, at *3 (C.D. Cal. Nov. 28, 2025); *Estrada v. Lyons,* No. CV 25-11002-KK-KSX, 2025 WL 3438562, at *3 (C.D. Cal. Nov. 26, 2025); *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock,* 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025). These line of cases reach the same conclusion after the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See Guerrero Lepe v. Andrews,* No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Sanchez Roman v. Nguyen*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at *6 (D. Nev. Sept. 23, 2025); *Beltran Barrera v. Tindal,* No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *6 (W.D. Ky. Sept. 19, 2025); *Maldonado Vasquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *10 (D. Nev. Sept. 17, 2025).

All of these decisions have held that 8 U.S.C. § 1225(b)(2) does not apply to individuals who have made a physical entry into the interior of the United States without inspection. *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP * 6 (SD. Cal. Sept. 3, 2025) ("Respondents argue that Petitioners, as inadmissible noncitizens, qualify as 'applicants for admission' 'seeking admission' and, therefore, are subject to mandatory under § 1225(b)(2). (*Id.* at 15–16). Not so.");

Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025) ("The Court finds that the conflict is avoided by interpreting sections 1225(b)(2) and 1226(a) to apply to different sets of noncitizens—those "seeking admission" compared to those already in the country who are arrested and detained"); *Pizarro Reyes v.* Noem, No. 25-CV-12546, 2025 WL 2609425, at *1 (E.D. Mich. Sept. 9, 2025) ("Because Pizarro Reyes arrived decades ago and has since then lived in the United States without seeking lawful admission, he instead falls within § 1226(a)'s catchall provision for the removal of noncitizens").

Respondents argue that the Court should rely on *Florida v. United States*, 660 F.Supp.3d 1239 (N.D.Fla. 2023), to support the Board's decision that § 1225(b) applies. Dkt # 9 at 12. This argument has also been uniformly rejected by the district courts to address the argument, as *Florida* did not address individuals that were already inside the United States. *Garcia v. Noem*, No. 5:25-CV-02771-ODW (PDX), 2025 WL 2986672, at *5 (C.D. Cal. Oct. 22, 2025); *Patel v. Crowley,* No. 25 C 11180, 2025 WL 2996787, at *6 n.6 (N.D. Ill. Oct. 24, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *21 (W.D. Wash. Sept. 30, 2025).

While Respondents argue that reading § 1225(b)(2) to exclude those noncitizens who came to the United States would place them in a better position than the person who sought admission at the border, that reading, in fact, is consistent with precedent restricting due process rights of parolees to the statutory rights afforded by Congress. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140, 140 S. Ct. 1959, 1983, 207 L. Ed. 2d 427 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32, 103 S. Ct. 321, 329, 74 L. Ed. 2d 21 (1982). Conversely, full due process rights apply to those who have entered the United States without inspection. *Zadvydas v. Davis,* 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) ("[A]liens who have once passed through our gates, even illegally, may be

expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."); *Plyler v. Doe,* 457 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) (rejecting argument that undocumented aliens, because of their immigration status, are not covered by the Fourteenth Amendment, and observing that "[w]hatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of the term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

As such, Petitioner establishes that he is likely to succeed on the merits of his claim.

D. AN INJUNCTION IS OTHERWISE WARRANTED.

Next, Respondents rest their analysis of injunctive relief only on the ground that the balance of hardships favors the government. Dkt # 7 at 14-15. Respondents argue that the government has a compelling interest in the steady enforcement of its immigration laws. *Id*. However, Petitioner does not ask the Court to order that the government stop enforcing immigration laws. Rather, they ask the Court to enforce them as Congress intended. And, ultimately, it is the immigration judge who will make a decision on Petitioners' applications for bond, after determining whether they are a danger to others or a flight risk. 8 U.S.C. § 1226(a). Petitioners's only ask that they be provided a bond hearing that comports with the statute and due process.

II. CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's Application for a Temporary Restraining Order and Order to Show Cause and order that they be provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO, with instructions that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

Dated: December 12, 2025

Respectfully Submitted,

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Plaintiff certifies that this Memo complies with the word limit of L.R. 11-6.1.

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