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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

J.M.G., *Detainee, Otay Mesa Detention Facility*,

Petitioner,

v.

CHRISTOPHER J. LAROSE, *as Senior Warden, Otay Mesa Detention Center*; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, *as Secretary of the United States Department of Homeland Security*; TODD LYONS, *as Acting Director of U.S. Immigration and Customs Enforcement*; DOE 1, *ICE Enforcement and Removal Office Field Operations Director for San Diego*; and DOES 2–10.

Respondents.

Case No: 25-cv-3562-LL-MMP

PETITIONER'S REPLY

Judge: Hon. Linda Lopez

I. INTRODUCTION

Petitioner J.M.G. ("Petitioner") is poised to spend his Christmas detained in the Otay Mesa Detention Center. But this Court can now vindicate the constitutional rights that Respondents deny him with every new day he spends unlawfully detained. Respondents do not dispute the material facts at hand, instead relying on routinely rejected legal theories to justify his detention. Having filed his Petition for Writ of *Habeas Corpus* on December 12, 2025, J.M.G. now files his reply to Respondents' Return to Petition.

II. FACTUAL BACKGROUND

Respondents do not dispute the material facts. *See generally* Dkt. No. 7 ("Respondents' Return"). J.M.G. entered the United States on or around October 7, 2024. Petition ¶ 17. After initial contact with immigration officials, he was issued a Notice to Appear before an immigration judge, placed in immigration proceedings under INA § 240 (8 U.S.C. § 1229a) ("Section 240 Proceedings), and paroled into the United States free from detention. *See id.* ¶ 18–19; Doc. No. 1-2 ("Ex. B.") at 6.[1]

At a mandatory immigration hearing on June 25, 2025, Respondent Department of Homeland Security ("DHS") orally moved to dismiss J.M.G.'s immigration case. *Id.* ¶ 20, 22. Respondent Immigration and Customs Enforcement ("ICE") then immediately arrested J.M.G. in the hallway of the immigration court in San Diego, and J.M.G. has been detained ever since. *Id.* ¶¶ 23–24. After his arrest, DHS placed J.M.G. in "expedited removal" proceedings under INA § 235 (8 U.S.C. § 1225(b)) ("Section 235 proceedings") to justify his detention. *Id.* ¶ 25.

Under that guise, DHS continues to detain J.M.G. under 8 U.S.C. § 1225 and no hearing has been held in in which an immigration judge examines individualized

[1] Record citations are to ECF pagination.

reasons supporting his detention. *Id.* ¶ 27. J.M.G.'s Section 240 Proceedings, however, were not dismissed until July 23, 2025, long after DHS detained him. *Id.* ¶ 26. Further, J.M.G. appealed the dismissal on August 20, 2025, and that appeal remains pending. *Id.* Nevertheless, Respondents continue to unlawfully detain J.M.G.

III. LEGAL ARGUMENT[2]

Respondents assert that the Court should deny J.M.G.'s Petition, arguing that the Court lacks jurisdiction, that J.M.G. did not exhaust administrative remedies as required, and that he is lawfully detained. *See generally* Respondents' Return. Respondents, however, are incorrect, and the Court should instead grant the Petition because: (A) As J.M.G. challenges only his detention and does not challenge the underlying immigration removal actions, the Court has jurisdiction to hear his Petition; (B) As Respondents detain him pursuant to administratively binding Board of Immigration Appeals ("B.I.A.") precedent, seeking administrative relief would be futile and waiving administrative exhaustion is proper; and (C) J.M.G.'s detention violates his Fifth Amendment rights and the Administrative Procedure Act ("APA"), and Respondents' legal theory in support of detention is incorrect. J.M.G. addresses each point in turn.

A. Because he challenges only his detention, not his immigration proceedings, the Court has jurisdiction to hear J.M.G.'s Petition

Though Respondents invoke 8 U.S.C. §§ 1252(g) and 1252(b)(9) to argue that the Court lacks jurisdiction to hear J.M.G.'s Petition, both arguments rely on a flawed application of the law. While both enumerated sections prevent individuals

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[2] Respondents did not respond to J.M.G.'s Motion to Proceed Under Pseudonym. *See* Dkt. No. 6 at 2; *see generally* Respondents' Return. As such, any opposition to the Motion is waived, and the Court should grant it for the reasons stated therein. *See Geadau v. Evans*, No. 25-CV-0335-MMA-JLB, 2025 WL 1457081, at *9 (S.D. Cal. May 21, 2025) (discussing failure to oppose arguments).

from challenging underlying immigration removal proceedings in district court, they do not prevent individuals from bringing *habeas* actions challenging the lawfulness of ancillary immigration detention.

1. Because J.M.G. does not challenge an enumerated discretionary action, 8 U.S.C. § 1252(g) does not deprive the Court of jurisdiction.

8 U.S.C. § 1252(g) does not bar J.M.G.'s claim for *habeas* relief because J.M.G. challenges only his detention, not discretionary actions taken in his underlying removal proceedings. Section 1252(g) insulates from judicial review only "three discrete actions . . . [by] the Attorney General . . . : 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). J.M.G. does not challenge any decision to commence removal proceedings, any adjudication of his immigration case, or the execution of any removal order.[3] Instead, he challenges only the unlawful revocation of the parole he was granted upon release into the country. Thus, as the courts in the Southern District of California have found in other *habeas* cases, § 1252(g) does not bar his claims. *See, e.g.*, *Noori v. LaRose*, --- F. Supp. 3d. ----, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *6–7 (S.D. Cal. Oct. 1, 2025); *Garcia v. Noem*, --- F. Supp. 3d ----, 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4; *Beltran v. Noem*, No. 25-cv-2650-LL-DEB, 2025 WL 3078837, at *2 (S.D. Cal. Nov. 4, 2025); *Sanchez v. LaRose*, No. 25-cv-3136-JLS-JLB, 2025 WL 3268590, at *2 (S.D. Cal. Nov. 24, 2025). The Court therefore has jurisdiction to adjudicate the Petition.

2. 8 U.S.C. § 1252(b)(9) does not bar the Petition because the Petition challenges only issues ancillary to J.M.G.'s removal proceedings

Turning to Respondents' next argument, 8 U.S.C. § 1252 (b)(9) does not bar judicial review because the claims here do not directly "arise" from or challenge J.M.G.'s removal proceedings. While § 1252(b)(9) bars review of "all questions of

[3] J.M.G. has not received a final order of removal.

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," the Supreme Court has definitively determined that "§ 1252(b)(9) 'does not present a jurisdictional bar' where those bringing suit 'are not asking for review of an order of removal,' 'the decision . . . to seek removal,' or 'the process by which . . . removability will be determined.'" *D.H.S. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (quoting *Jennings v. Rodriguez* 583 U.S. 281, 294 (2018)); *see also Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (Alito, J., plurality portion). As specifically applied in *Jennings v. Rodriguez*, § 1252 (b)(9) does not bar proceedings merely because existence of a removal proceeding was a but-for cause of the claims. 583 U.S. at 292–95.

Indeed, where a petition raises claims only ancillary to the underlying immigration removal proceedings, and does not challenge removal, § 1252(b)(9) is inapplicable. *See Gonzalez v. I.C.E.*, 975 F.3d 788, 810–11 (9th Cir. 2020). As such, district courts in this district have recognized that this provision does not prevent them from reviewing *habeas* petitions like that filed here. *See, e.g.*, *Noori*, --- F. Supp. 3d ----, 2025 WL 2800149 at *7; *Beltran*, 2025 WL 3078837, at *3; *Sanchez*, 2025 WL 3268590, at *2–3; *Garcia v. Noem*, --- F. Supp. 3d ----, 2025 WL 2549431, at *3–4. As discussed, Petitioner challenges only his detention, not his removal proceedings. Thus, § 1252(b)(9) does not bar his Petition.

B. J.M.G. does not need to exhaust administrative remedies, as seeking administrative relief would be futile

Respondents also argue, in a footnote, that the Court should deny J.M.G.'s petition because he "fail[ed] to exhaust administrative remedies" Respondents' Return at 6. However, administrative exhaustion is not mandatory for the claims J.M.G. brings, and thus the Court may rightly waive them upon a showing that J.M.G.'s claims fall within exceptions to the general rule requiring administrative exhaustion prior to judicial relief. *See, e.g.*, *Garcia v. Noem,* --- F. Supp. 3d.----,

2025 WL 2549431, at *4–5. Here "administrative remedies are inadequate or not efficacious [and] pursuit of administrative remedies would be a futile gesture . . . ," and thus waiving administrative exhaustion requirements is appropriate. *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

First, Respondents justify J.M.G.'s detention as required by law, pursuant to the B.I.A. decision in *Matter of Yajure Hurtado*, 29 I. & N. 216 (B.I.A. 2025), which holds binding precedential value over agency decisions concerning similar issues. *See* 8 C.F.R. § 1003.1(d)(1). There, the B.I.A. held that any person in the United States without admission is considered an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and thus subject to mandatory detention. *Yajure Hurtado*, 29 I. & A. at 225; *see also Beltran*, 2025 WL 3078837, at *4. Respondents accordingly assert that they are "required" to detain J.M.G. because of his immigration status and alleged manner of entry into the United States, and do not have discretion to release him. *See* Respondents' Return at 7.

Due to *Yajure Hurtado*'s binding future agency interpretation and action, should J.M.G. seek administrative relief, the B.I.A. will find his detention rightful under the very procedures and statutory interpretations he challenges. *See Beltran*, 2025 WL 3078837, at *4. Thus, seeking administrative relief would be futile, and the Court should waive exhaustion requirements.

C. The facts are undisputed and the law requires J.M.G.'s release

Respondents do not dispute the material facts in this case, instead relying on a flawed interpretation of 8 U.S.C. §§ 1225(b) and 1226. Courts in this district and across the country have refused to apply the interpretation that Respondents advance, and this Court should follow suit. Under the correct legal interpretation, J.M.G. clearly demonstrates that Respondents violated his Fifth Amendment rights and the Administrative Procedure Act ("APA") by detaining him as they did.

Turning to his Fifth Amendment claim, DHS's decision to release J.M.G. on his own recognizance upon his initial entry, Dkt. No. 1-2 at 5, vests J.M.G. with a constitutional right to due process before any re-detention. *See Pablo Sequen v. Kaiser*, --- F. Supp. 3d ----, No. 25-cv-06487-PCP, 2025 WL 2650637, at *5 (N.D. Cal. Sept. 16, 2025); *Noori*, --- F. Supp. ----, 2025 WL 2800149, at *11; *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 WL 2637503, at *7 (N.D. Cal. Sept. 12, 2025) ("In this case, [Petitioner] gained a liberty interest in her continued freedom when the DHS elected to release her on her own recognizance."). "[I]f DHS has exercised its discretion to release a noncitizen pending civil removal proceedings, the noncitizen has a protected liberty interest in remaining out of immigration custody." *Pablo Sequen*, --- F. Supp. 3d ----, 2025 WL 2650637, at *5. As such, J.M.G.'s strong liberty interest in his continued freedom, coupled with the likelihood of erroneous deprivation of his rights absent a pre-detention hearing and the minimal burden such a hearing places on the government, entitles him to a pre-detention hearing in which the government must assess his risk of flight or danger to the community. *See Pablo Sequen*, --- F. Supp. 3d ----, 2025 WL 2650637, at *5, 8–9 (citing *Morrissey v. Brewer*, 408 U.S. 471, 482, (1972)); *Garcia v. Andrews*, No. 1:25-cv-01006 JLT SAB, 2025 WL 2420068. at *3–7, 9 (E.D. Cal. Aug. 21, 2025). J.M.G. had no such hearing, pre- or post-detention, and thus Respondents violated his Fifth Amendment rights by detaining him anyway.

Additionally, J.M.G.'s substantial time living in the United States free from detention provides a source for his right to due process. Unlike an individual detained while actively crossing the border, he has "passed through our gates" and lived in the United States for a substantial period. Accordingly, he "may be expelled" or re-detained "only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Noori*, --- F. Supp. 3d. ----, 2025 WL 2800149, at *9 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)); *see Pablo Sequen*, --- F. Supp. 3d ----, 2025 WL 2650637, at *5. Examining

Petitioner's private liberty interests, the risk of erroneous deprivation in the procedures used, and the value of other safeguards, individuals in J.M.G.'s position are constitutionally entitled to, at minimum: (1) a pre-detention hearing on bond at which the immigration judge assesses his individualized risk of flight or danger to the community; and (2) notice and reason for his detention and for terminating his Section 240 Proceedings prior to arresting him, as various district courts have held. *Pablo Sequen*, --- F. Supp. 3d ----, 2025 WL 2650637, at *5, 8–9; *Noori*, No., 2025 WL 2800149, at *11 ("Denying Petitioner notice and reasoning on the termination of his 240 removal proceedings, his placement into expedited removal proceedings, and revocation of his parole . . . violated due process.").

As to Petitioner's APA claim, "[u]nder the APA, a court must 'hold unlawful and set aside agency action . . . found to be—arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,' or 'without observance of procedure required by law.'" *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1143–44 (D. Or. 2025). Here, the agency took final action by deciding to detain J.M.G. indefinitely and without prior notice or hearing. Because Respondents provided no individualized rationale for revoking J.M.G.'s previous release, nor any prior notice with a statement of reasons for doing so, they acted arbitrarily and capriciously, violating the APA, as the INA and implementing regulations require this procedure prior to re-detention. *See, e.g. id.* at 1143–47; *Noori*, ---F. Supp. 3d ----, 2025 WL 2800149, at *13; *Garcia v. Andrews*, 2025 WL 2420068, at *6 (providing a survey of recent case law).

Finally, relevant to both claims, district courts nationwide have thoroughly rejected Respondents' interpretations of the interplay between 8 U.S.C. §§ 1226 and 1225. *See, e.g.*, *Pablo Sequen*, --- F. Supp. 3d.----, 2025 WL 2650637, at *6–8; *Beltran*, 2025 WL 3078837, at *4–7. Respondents argue that "Petitioner is an 'alien present in the United States who has not been admitted,'" and that thus he is "an applicant for admission" to the United States subject to mandatory detention

provisions of 8 U.S.C. § 1225(b)(2)(A). Respondents' Return at 6–7. This interpretation of § 1225(b)(2)(A), however, clearly conflicts with its text. That section clearly states that an "alien who is an applicant for admission" and subject to mandatory detention is someone who is also "seeking admission" from an examining officer. 8 U.S.C. § 1225(B)(2)(A). As "other courts have found, the use of the present participle 'seeking' 'necessarily implies some sort of present-tense action.'" *Beltran*, 2025 WL 3078837 at *6 (collecting cases); *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484–91 (S.D.N.Y. 2025). Thus, the section covers only those who are actively and presently seeking entry into the United States before an examining officer, not those already within—especially not those who have remained free for months after entry. *See Beltran*, 2025 WL 3078837, at *6 ("The plain text of § 1225(b)(2)(A) requires a noncitizen present without admission to be actively seeking lawful entry.").

Respondents' statutory interpretation also nullifies recent congressional action expanding the scope of mandatory detention under 8 U.S.C. § 1226, the other statute governing immigration detention. With the Laken Riley Act, Congress expanded those subject to mandatory detention under § 1226 to include certain individuals "present without admission or parole," who were charged with, arrested for, or convicted of certain crimes. Pub. L. No. 119-1, 139 Stat 3 (2025). If such individuals "present without admission or parole" were already subject to mandatory detention under § 1225(b)(2)(A), as Respondents argue, the Laken Riley Act provision is surplusage, and Congress's action was superfluous. *See Beltran*, 2025 WL 3078837, at *6; *Lopez Benitez*, 795 F. Supp. 3d at 489–90. Adopting this interpretation would therefore violate the interpretive canon against surplusage, which "is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013). Instead, the Court should read the statute as written and give full effect to Congress's actions.

Here, J.M.G. was not seeking entry into the United States when he was arrested and detained under § 1225(b)(2)(A). Indeed, he had lived free for months in the United States at that point, having been paroled after his entry in October 2024. Section 1225(b)(2)(A) therefore cannot justify his detention. Instead, he may only be detained pursuant to 8 U.S.C. § 1226, the other statute governing immigration detention for individuals already within the United States. *See Beltran*, 2025 WL 3078837, at *6–7. Section 1226's appropriateness is especially apparent when considering that DHS treated J.M.G. as subject to that section until the very moment of arrest. Upon his entry, as all agree, he was paroled into the country on his own recognizance. "Such a release on recognizance is not 'humanitarian' or 'public benefit' 'parole into the United States' under §§ 1225 and 1182(d)(5)(A), but rather a form of 'conditional parole' from detention, authorized under § 1226." *Lopez Benitez*, 795 F. Supp. 3d at 485. Regardless of whether Respondents ever *could* have applied § 1225(b)(2)(A) to J.M.G. upon entry to the United States, when he was "seeking admission," they did not. As such, § 1225(b)(2)(A) is no longer available and J.M.G. can therefore only be re-arrested and detained under § 1226. Respondents' legal theory is therefore incompatible with the statutes they cite.

IV. CONCLUSION

Respondents have no justification for continuing to detain J.M.G. For the foregoing reasons, the Court should order his immediate release.

DATED: December 22, 2025

Respectfully submitted,

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