

Respondents contend that 8 U.S.C. § 1252(a)(2)(B)(ii), (b)(9), and (g) deprive the Court of jurisdiction to review Petitioner’s claims that his detention is unlawful. Doc 3 at 6-10. The “touchstones” of the Third Circuit’s jurisdictional analysis are “two presumptions”: “the usual strong presumption in favor of judicial review of administrative action” and that the “narrower construction of a jurisdiction-stripping provision is favored.” *E.O.H.C. v. Sec’y U.S. DHS.*, 950 F.3d 177, 184 (3d Cir. 2020) (citing *INS v. St. Cyr*, 533 U.S. 289, 298 (2001)). These presumptions are reinforced by the interpretative canon requiring a “clear statement of congressional intent to repeal habeas jurisdiction” and “clear indication of congressional intent” when a proposed interpretation would “push the outer limits of Congress’ power.” *DHS v. Thuraissigiam*, 591 U.S. 103, 137 (2020) (cleaned up). These presumptions can “only be overcome by clear and convincing evidence of congressional intent to preclude judicial review.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (cleaned up). Respondents do not meet this burden here.

A. 8 U.S.C. § 1252(g) does not bar review because Petitioner does not challenge an action to commence proceedings, adjudicate a case, or execute a removal order.

8 U.S.C. § 1252(g) states that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any noncitizen under this chapter.” 8 U.S.C. § 1252(g). The

Supreme Court has read § 1252(g) narrowly to foreclose only challenges to discretionary decisions to commence or adjudicate removal proceedings or to execute removal orders. Specifically, the Court has held that the provision is “narrow[ly]” tethered to exercises of discretion by the Attorney General and “applies only to three distinct actions”: “To ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.* (“*AADC*”), 525 U.S. 471 , 482 (1999) (quoting 8 U.S.C. § 1252(g)). Other “decisions or actions that may be part of the deportation process” do not fall within 1252(g)’s limited scope because they do not interfere with the Attorney General’s, or DHS Secretary’s prosecutorial discretion—the “particular evil” that 1252(g) was directed against. *Id.* at 482, 485 n. 9. Since *AADC*, the Supreme Court has reaffirmed 1252(g)’s “narrow” reach. *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 18 (2020); *see Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). The Third Circuit has similarly state that Section 1252(g) does not sweep broadly[.]” *Tazu v. Att’y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020).

Here, none of Petitioner’s claims challenge Respondents’ substantive use of discretion to commence proceedings, adjudicate cases, or execute removal orders. Instead, Petitioner challenges whether the way Respondents acted accords with the Constitution and the text of the INA. That is whether Respondents violated Mr. Seija Aquino’s due process rights under the Fifth Amendment when they failed to

make any individualized determination into whether Mr. Seijas Aquino was a danger to the community or flight risk prior to taking him into custody. *See* Doc 1 at 13-15. And secondly, Petitioner brings claims under the INA and regulations based on the unlawful denial of his right to a bond hearing. *See id.* at 15-18; 20-21. Finally, Petitioner's claim that Respondents failed to present changed circumstances justifying the cancellation of the 2025 bond order, Doc 1 at 18-20, does not implicate the agencies' authority to commence proceedings, adjudicate case, or execute removal orders.

Moreover, none of the factual groundings for Mr. Seijas Aquino's claims occurred in the context of removal proceedings. At the time of Mr. Seijas Aquino's January 21, 2026 detention, removal proceedings had already been commenced against Mr. Seijas Aquino so this action is also not a challenge to a decision to commence proceedings. Doc 1-1 (Notice to Appear scheduling Mr. Seijas Aquino's initial immigration court hearing for October 31, 2023). Nor has Mr. Seijas Aquino been ordered removed, so there is no rationale for finding that he is challenging the execution of a removal order.

Accordingly, Petitioner's claims do not involve the three distinct actions covered by Section 1252(g). *See AADC*, 525 U.S. at 482.

B. 8 U.S.C. § 1252(b)(9) does not bar review because these claims cannot be brought in a petition for review of a final order of removal.

Respondents contend that section 1252(b)(9) bars review of Petitioner's claims. Doc 3 at 7-10. The purpose of the provision is "[t]o prevent piecemeal litigation" in both district court actions as well as petitions for review before the court of appeals of claims arising from removal proceedings. *E.O.H.C.*, 950 F.3d at 184.

The Supreme Court has described Section 1252(b)(9) as a "zipper clause" that "channels" certain claims from the district courts to the circuit courts. *AADC*, 525 U.S. at 482-83. Habeas review of Petitioner's claims of unlawful detention is required to provide "meaningful" relief. *Jennings*, 583 U.S. at 293. "[T]he applicability of 1252(b)(9) turns on whether the legal questions that [a court] must decide 'aris[e] from' the actions taken to remove" noncitizens, and the phrase must be construed narrowly to avoid "extreme" results. *Id.* In *Jennings*, Justice Alito explained that "arising from" is not self-defining, but instead a technical term when used in jurisdictional statutes and that courts must "eschew [] uncritical literalism", which could lead to "extreme" and "staggering results" that "no sensible person intended.". *See* 53 U.S. at 293; *see also E.O.H.C.*, 950 F.3d at 185.

The Third Circuit has utilized a straightforward now-or-never principle that informs how it construes the phrase "arising from". "When a detained [noncitizen] seeks relief that a court of appeals cannot meaningfully provide on petition for review of a final order of removal, § 1252(b) does not bar consideration by a district court." *E.O.H.C.*, 950 F.3d at 180, 186.

Mr. Mr. Seijas Aquino's raises quintessentially "now-or-never" claims. In *Jennings* the Supreme Court held that the petitioner's claim to periodic bail hearings was not the type of claim that could have been brought in a petition for review of his removal proceedings. *Jennings*, 138 S. Ct. at 838-39. And here, Mr. Seijas Aquino's claims that he was not afforded pre-deprivation due process nor a statutory bond hearing are of the kind that "cannot be redressed at the end of removal proceedings." *E.O.H.C.*, 950 F.3d at 188. Bond proceedings are separate and distinct from removal proceedings. 8 C.F.R. § 1003.19(d); *Matter of R-S-H-*, 23 I&N Dec. 629, 630 n. 7 (BIA 2003). As such, Mr. Seijas Aquino's claims that he was denied pre-detention due process and unlawfully denied a bond hearing cannot be brought through a petition for review.

Respondents contend that Section 1252(b)(9) bars any claims challenging the decision to detain a noncitizen because "the habeas claim here requires a court to answer 'legal questions' that arise from 'an action taken to remove an alien'". Doc 3 at 8-9 (citing *Jennings*, 583 U.S. at 295, n. 3). In theory any detention related claim could be swept into Section 1252(b)(9)'s ambit, but this is the type of "uncritical literalism" that Justice Alito foreclosed in *Jennings*. 53 U.S. at 293. The Third Circuit has also rejected this type of "but-for causation" in interpreting Section 1252(b)(9). *E.O.H.C.*, 950 F.3d at 185. And the footnote from Justice Alito's plurality opinion in *Jennings* cited by Respondents recognized that the "legal

questions”, including specifically in *Jennings*, whether the INA entitled the petitioners to a bond hearing, were “too remote from the actions taken” to remove a noncitizen from the country to be within the scope of Section 1252(b)(9). Doc 3 at 8-9 (citing *Jennings*, 583 U.S. at 295, n. 3).

Finally, the Third Circuit’s recent decision in *Khalil* does not divest the Court of jurisdiction because Petitioner’s claims are not “inextricably linked” to his removal proceedings. *Khalil v. President*, Nos. 25-2162, 25-2357, 2026 U.S. App. LEXIS 1089, at *27 (3d Cir. Jan. 15, 2026) (“Though Khalil also challenges his detention, his arguments against it are identical to his arguments against removal.”). While Khalil challenged the legal justifications under which the government sought to remove him from the United States – asserting that the Government’s policies were violative of his First Amendments rights; *Khalil*, Nos. 25-2162, 25-2357, 2026 U.S. App. LEXIS 1089, at *56; Mr. Seijas Aquino challenge’s Respondents authority to detain him without a bond hearing. Unlike Mr. Khalil’s claims, Petitioners’ contentions that he was subject to an unlawful denial of pre-deprivation due process and the statutory right to a bond hearing under Section 1226(a) are “unfit to be later raised in a PFR”, as they do not challenge the legal or factual basis for the government’s basis in seeking a removal order against him. *Giyosov v. Jamison*, No. 26-0298, 2026 U.S. Dist. LEXIS 14489, at *8 (E.D. Pa. Jan. 27, 2026). As the government notes, the conclusion that *Khalil* is distinguishable aligns with recent

decisions in this District. Doc 3 at 2, n. 2 (citing *Kourouma v. Jamison*, No. 26-0182, 2026 WL 120208, at *3 (E.D. Pa. Jan. 15, 2026); *Montes Restrepo v. Jamison*, No. **25-6518**, 2026 WL 141803, at *5 (E.D. Pa. Jan. 20, 2026)); *see also Givoysov*, 2026 U.S. Dist. LEXIS 14489, at * 8.

Accordingly, the Court should find that Section 1252(b)(9) does not bar review of Mr. Seijas Aquino's claims.

C. 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar review because Petitioner does not challenge a discretionary determination.

Finally, Respondents invocation of 8 U.S.C. § 1252(a)(2)(B)(ii) as a potential bar to the Court's jurisdiction is similarly unavailing. The Third Circuit has stated that Section 1252(a)(2)(B)(ii) does not apply to all discretionary decisions, "but to a narrower category of decisions where Congress has taken the additional step to specify that the sole authority for the action is in the Attorney General's discretion." *Alaka v. Att'y Gen.*, 456 F.3d 88, 96 (3d Cir. 2006) (overruled on other grounds by *Bastardo Vale v. Att'y Gen.*, 934 F.3d 255 (3d Cir. 2019)); *see also Khan v. Att'y Gen.*, 338 F.3d 226, 232 (3d Cir. 2006) ("The statutory language is uncharacteristically pellucid on this score: it does not allude generally to 'discretionary authority' or to 'discretionary authority exercised *under this statute*,' but specifically to 'authority for which it is *specified under this subchapter* to be in the discretion of the Attorney General.") (quoting *Zhao v. Gonzales*, 404 F.3d 295, 303 (5th Cir. 2005).

Petitioner’s due process claim that he was not provided with an individualized custody determination does not question the agencies’ discretion, but rather is a challenge to Respondents failure to make any determination that circumstances had changed since Mr. Seijas Aquino and his family were released from DHS custody in 2023. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (1981) (“[W]here a previous bond determination has been made by an immigration judge, no change should be made ... absent a change of circumstance.”); *Saravia for A.H. v. Sessions*, 905 F.3d 1137 , 1145 n. 10 (9th Cir. 2018). Tellingly, Respondents do not submit any documentation that ICE officials individually considered Mr. Seijas Aquino’s circumstances prior to taking him into custody. That absence of any process is what Mr. Seijas Aquino challenges with his due process and statutory claims—not an exercise of discretion.

Similarly, the denial of a bond hearing required by both statute and regulation is a pure question of law—not a challenge to a discretionary determination. In either case, the resolution of which is not “specified under” the relevant subchapter to be in the discretion of the Attorney General or the Secretary of the Department of Homeland Security. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(c)(8); 1236.1(c)(8). Nor, do Respondents contend that the Attorney General has the discretion to deny a bond hearing to a noncitizen who should be afforded one under Section 1226. *See generally* Doc 3. Therefore, the Court retains jurisdiction over Mr. Seijas Aquino’s claims.

II. Petitioner is detained pursuant to 8 U.S.C. § 1226(a), not § 1225(b)(2).

Respondents rely on a decision by the District of Nebraska's decision in *Vargas Lopez v. Trump* for the proposition that Sections 1225(b)(2) and 1226(a) "overlap and are not mutually exclusive." Doc 3 at 15-16 (citing *Vargas Lopez v. Trump*, 2025 WL 2780351, at *7 (D. Neb. Sept. 30, 2025)). Yet this conflicts with the Supreme Court's interpretation of the INA as containing distinct detention authorities. *Jennings*, 583 at 287-89.

For multiple reasons, the Court should give pause before adopting the reasoning from *Vargas Lopez*. First in *Vargas Lopez*, the district court conceded that "mistakes in the Petition....prevent[ed] Vargas Lopez from meeting his burden to show he is entitled to habeas relief." *Vargas-Lopez*, at *2. Second, the *Vargas Lopez* Court also did not grapple with the import and meaning of Section 1225(b)(2)(A)'s "seeking admission" admission language in the statute. *See generally, Vargas Lopez*, 2025 WL 2780351.

Finally, the *Vargas Lopez* court did not attempt to grapple with the impracticalities of a reading of the INA that would simultaneously make many noncitizens bond eligible and subject to mandatory detention. *See generally 2025 WL 2780351 id.* For these reasons, the Court should not adopt the reasoning of the *Vargas Lopez* court.

Untethering the concept of seeking admission from the act of presently seeking physical entry into the United States, as *Yagure Hurtado* does, will disrupt the complex immigration system created by Congress. 29 I&N Dec. at 221 (stating that only those who have been “admitted to the United States” are “eligible for a bond hearing”.) If only those who have been admitted to the United States are eligible for bond under Section 1226(a), then the Government would have the ability to subject noncitizens to indefinite detention without a possibility of a bail who have already been granted legal statuses such as asylum and temporary protected status, as the granting of those applications does not constitute an admission under the INA. *Matter of V-X-*, 26 I&N Dec. 147, 150-52 (BIA 2013) (parolee granted asylum has not been admitted and is subject to grounds of inadmissibility); *Sanchez v. Mayorkas*, 593 U.S. 409, 314 (2021) (“The TPS program gives foreign nationals nonimmigrant status, but it does not admit them.”). Surely, Congress did not intend for asylees and TPS holders to be subject to indefinite detention AFTER being granted humanitarian protection.

Lastly, Respondents misstep in dismissing the import of the Laken Riley Act. Doc 3 at 14. Just last year Congress amended the text of Section 1226, creating a carve out of an additional category of noncitizens from Section 1226(a)’s discretionary detention authority who now are subject to mandatory detention under Section 1226(c). *Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025). This

category now includes those noncitizens who are deemed inadmissible, including for being “present in the United States without being admitted or paroled,” and who have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); *see* Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1182(a)(6)(A)(i). These exceptions for inadmissible noncitizens who are arrested, charged, or convicted of certain enumerated crimes logically leaves those noncitizens who have not been implicated in those offenses bond eligible under § 1226(a)’s discretionary detention authority. The BIA’s interpretation of the detention framework from *Yagure Hurtado*, would make these amendments to § 1226(c) superfluous. “When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995).

For these reasons, the Court should find that Mr. Seijas Aquino is presently detained under Section 1226(a).

III. Petitioner should be released immediately from custody because he was unlawfully detained without due process, previously released on bond, and Respondents have not sought to cancel that bond.

If the Court grants the Petition, it should order that Mr. Seijas Aquino be released from detention, rather than a bond hearing, because Respondents deprived Mr. Seijas Aquino of two distinct forms of due process under the law prior to detaining him. As his detention was unlawful from its inception, he must be released. *Kashranov*

v. Jamison, No. 2:25-cv-05555-JDW, 2025 U.S. Dist. LEXIS 224644, at *20 (E.D. Pa. Nov. 14, 2025) (“Because the Government detained Mr. Kashranov without the bond hearing that Section 1226(a) and the Due Process Clause require, Mr. Kashranov should not now be in custody.”)

First, Respondents did not make any individualized determination as to whether Mr. Seijas Aquino was a danger to the community or a flight risk as required by the DHS’s own regulations. *See* Doc 1 at 7, 13-15. The remedy for when ICE neglect to provide these procedural protections prior to taking a noncitizen into custody is release. *See Kashranov*, 2025 U.S. Dist. LEXIS 224644, at *20

Second, Respondents have not provided any indication that changed circumstances or a breach of the conditions of Mr. Seijas Aquino’s bond provided a justification for re-detaining him. As set forth in the Petition, Mr. Seijas Aquino was previously detained and released on bond in early 2025. Doc 1 at 11; Doc 1-3 (Immigration Court granting bond). The Board of Immigration Appeals, has stated that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance." *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *see also Saravia v. Sessions*, 28 F.3d 1168, 1997 (N.D. Cal. 2017). Respondents have not submitted any documentation to either this Court or the Immigration Court indicating that Mr.

Seijas Aquino's circumstances have somehow changed such that it is now appropriate to re-detain him and cancel the outstanding bond.

Moreover, under DHS's regulations a bond is only breached upon a formal DHS determination of a "substantial violation of the stipulated conditions." 8 C.F.R. § 103.6(e). Without an official breach notice, the original bond remains valid and enforceable, and DHS may not treat the bond as extinguished. DHS must provide immediate notice to the Immigration Court when a person previously released on bond is taken back into custody. *See* 8 C.F.R. § 1003.19(g). Since taking Mr. Seijas Aquino back into custody over one week ago, Respondents have not made any filing in the Immigration Court indicating that Mr. Seijas Aquino is in breach of his bond. Respondents failure to comply with their own regulatory requirements, demonstrates that Mr. Seijas Aquino should be released pursuant to the *Accardi* doctrine. *N-N v. McShane*, No. 25-5494, 2025 U.S. Dist. LEXIS 220871, at *10 (E.D. Pa. Nov. 6, 2025) ("When presented with a habeas petition, courts may invalidate an agency action in violation of the *Accardi* doctrine.") (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)).

The remedy for when DHS re-detains an individual subject to an existing bond order absent a showing of changed circumstances is release from detention. *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *23-24 (D. Mass. Aug. 14, 2025) ("The government has, accordingly, failed to carry its

burden to show that a change in circumstances supported its decision to revoke the Immigration Judge's 2018 bond order. *See Matter of Sugay*, 17 I. & N. Dec. at 640. Unless and until ICE carries that burden at a hearing before an Immigration Judge, dos Santos must be released from custody subject to the 2018 bond order.”); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

Lastly, Mr. Seijas Aquino does not have a criminal record and there is no indication that he would be either a danger to the community or flight risk upon his release. Doc 1 at 12. Respondents do not claim that Mr. Seijas Aquino has a criminal record or is otherwise a bail risk in their Opposition to the Petition. Doc 3 at 3-4.

For these reasons too, a new bond hearing is unnecessary and the Court should order his immediate release. *Giyosov*, 2026 U.S. Dist. LEXIS 14489, *9 (“The government does not dispute Giyosov's assertion that he has no criminal history, and there is no record evidence to suggest that Giyosov is likely to flee or endanger the safety of others. Accordingly, a bond hearing is unnecessary, and the Court will order Giyosov's immediate release.”).

CONCLUSION

For the preceding reasons, Petitioner’s Petition for Writ of Habeas Corpus should be granted and Petitioner should be released from custody.

Dated: January 29, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

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