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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **EASTERN DIVISION**
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Alma Lucero SANDOVAL
HERNANDEZ, et al.,

Petitioners,

v.

Kristi NOEM, Secretary, U.S.
Department of Homeland Security, et al.,

Respondents.

Case No. 5:25-cv-2563-FMO-AGR

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

Judge: Hon. Fernando M. Olguin

1 Respondents' opposition to Petitioners' TRO application (Dkt. 9) ignores the
2 growing number of district court decisions which have addressed the DHS and
3 Department of Justice no-bond policy – now re-endorsed by the Board of
4 Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept.
5 5, 2025) - used to detain Petitioners without bond pursuant to 8 U.S.C. §
6 1225(b)(2)(A).
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9 Multiple courts have found that Respondents' new bond policy and new
10 interpretation of the Immigration & Nationality Act is unlawful or is likely
11 unlawful and that 8 U.S.C. § 1226(a), not § 1225(b), applies to noncitizens who are
12 present without admission within the United States and placed under removal
13 proceedings.
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16 On September 30, 2025, the U.S. District Court for the Western District of
17 Washington issued a partial summary judgment order concluding that such persons
18 are subject to detention under 8 U.S.C. § 1226(a) and are not subject to mandatory
19 detention under 8 U.S.C. § 1225(b)(2)(A). *Rodriguez Vazquez v. Bostock*, No.
20 3:25-cv-0524-TMC (W.D. Wash. Sept. 30, 2025), Order Granting Plaintiffs'
21 Partial Motion for Summary Judgment and Denying Defendants' Motion to
22 Dismiss, Dkt. 65. With a few exceptions, dozens of other courts have found that
23 the interpretation advanced by the Respondents is contrary to the plain text of the
24 statute and the overall statutory scheme. These cases are listed in Petitioners'
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1 Memorandum of Points and Authorities in Support of Ex Parte Application for
2 TRO at 11, Dkt. 4-1 at 18.

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4 Respondents argue that Petitioners' claims are barred by different
5 jurisdictional provisions in 8 U.S.C. § 1252, but Supreme Court and Ninth Circuit
6 precedent squarely foreclose those arguments. Respondents argue that 8 U.S.C. §
7 1252(g) bars Petitioners' claims because their "detention arises from the decision to
8 commence [removal] proceedings against them." Opp. to TRO at 6, Dkt. 9 at 12.
9 But Petitioners do not challenge any decision to "commence proceedings" within
10 the meaning of § 1252(g). Accepting Respondents' interpretation would bar nearly
11 all detention challenges brought by noncitizens, at odds with the narrow
12 interpretation of this subsection that courts have consistently adopted.
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16 As the Supreme Court has explained, § 1252(g) is "much narrower" than
17 what Respondents claim. *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*,
18 525 U.S. 471, 482 (1999). Rather than encompass "all deportation-related cases,"
19 *id.* at 478, § 1252(g) insulates from litigation the immigration authorities' "exercise
20 of [their] discretion," *id.* at 484 (emphasis added), with respect to the three
21 specified actions: "commenc[ing] proceedings, adjudicat[ing] cases, [and]
22 execut[ing] removal orders," *id.* at 483 (alterations in original). The subsection was
23 "directed against a particular evil: attempts to impose judicial constraints upon
24 prosecutorial discretion." *Id.* at 485 n.9; *see also id.* at 485 (providing as an
25 example of such prosecutorial discretion "'no deferred action' decisions and similar
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1 discretionary determinations”). Indeed, the Court found it “implausible” that “the
2 mention of three discrete events along the road to deportation was a shorthand way
3 of referring to all claims arising from deportation proceedings.” *Id.* at 482.

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5 Subsequent Supreme Court precedent has affirmed § 1252(g)’s narrow scope
6 and focus on discretionary decisions. *See, e.g., Dep’t of Homeland Sec. v. Regents*
7 *of the Univ. of California*, 591 U.S. 1, 19 (2020) (noting § 1252(g) is “narrow”).

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9 With these principles in mind, 1252(g) does not “sweep in any claim that can
10 technically be said to ‘arise from’ the three listed actions,” including challenges to
11 the proper interpretation of the INA’s detention provisions. *Jennings v. Rodriguez*,
12 583 U.S. 281, 294 (2018). In fact, although the Supreme Court has reviewed several
13 cases involving the government’s application of immigration detention authorities,
14 it has never held that such *claims* might be barred by § 1252(g)—including in cases
15 concerning § 1226. *See Jennings*, 583 U.S. 281 (§§ 1226 & 1225); *Zadvydas v.*
16 *Davis*, 533 U.S. 678 (2001) (§ 1231); *Demore v. Kim*, 538 U.S. 510 (2003) (§
17 1226); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) (§§ 1226 & 1231);
18 *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (§ 1231). That omission is
19 significant because “courts, including th[e] [Supreme] Court, have an independent
20 obligation to determine whether subject-matter jurisdiction exists, even in the
21 absence of a challenge from any party.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514
22 (2006). Moreover, in *Jennings*, the Court expressly reiterated that § 1252(g) must
23 be “read . . . to refer to just those three specific actions themselves.” 583 U.S. at
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1 294.

2 Petitioners do not challenge any discretionary action to “commence
3 proceedings.” Rather, they challenge Respondents’ conclusion that they are subject
4 to mandatory detention while those proceedings take place. *Cf.* 8 C.F.R.
5 § 1003.19(d) (noting IJ consideration of requests for “custody or bond . . . shall be
6 separate and apart from, and shall form no part of, any deportation or removal
7 hearing or proceeding”). Determining the detention provision under which
8 Petitioners are detained is not discretionary, nor does resolving that question
9 challenge Respondents’ discretionary decision to place Petitioners in removal
10 proceedings. *See United States v. Hovsepien*, 359 F.3d 1144, 1155 (9th Cir. 2004)
11 (clarifying § 1252(g) does not prevent district court jurisdiction over “a purely legal
12 question that does not challenge the Attorney General’s discretionary authority,
13 even if the answer to that legal question—a description of the relevant law—forms
14 the backdrop against which the Attorney General later will exercise discretionary
15 authority”). As a result, § 1252(g) does not bar Petitioners’ claims.

16 Respondents’ argument with respect to § 1252(b)(9) is similarly and directly
17 foreclosed by binding Supreme Court precedent. Section 1252(b)(9) is a “zipper
18 clause” that channels review of final orders of removal into petitions for review
19 before a federal court of appeals. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir.
20 2016) (en banc) (quoting *AADC*, 525 U.S. at 483). Respondents contend that §
21 1252(b)(9) applies here because “Petitioners challenge the government’s decision
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1 and action to detain them, which arises from DHS’s decision to commence removal
2 proceedings, and is thus ‘an action taken ... to remove [them] from the United
3 States’.” Opp. to TRO at 8, Dkt. 9 at 14.

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5 Despite Respondents’ reliance on *Jennings*, *Jennings* squarely refutes this
6 argument. There, similar to here, the Court addressed a statutory interpretation
7 question regarding bond hearings under § 1226 and § 1225. Before reaching the
8 merits, the Court first addressed whether such detention could be said to “‘aris[e]
9 from’ the actions taken to remove” the noncitizen class members in *Jennings*, thus
10 barring the claims under § 1252(b)(9). 583 U.S. at 293 (alteration in original). The
11 Court rejected that proposition—i.e., the same one Respondents now make—as
12 “absurd.” *Id.*

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16 As the Court explained: Interpreting “arising from” in this extreme way
17 would also make claims of prolonged detention effectively unreviewable. By the
18 time a final order of removal was eventually entered, the allegedly excessive
19 detention would have already taken place. And of course, it is possible that no such
20 order would ever be entered in a particular case, depriving that detainee of any
21 meaningful chance for judicial review. *Id.* Here it is no different. In fact,
22 Respondents’ position is now even *more* extreme. Petitioners assert that they are
23 detained under § 1226(a) and thus are entitled to a bond hearing at the outset of
24 their detention, rather than after prolonged detention, as in *Jennings*. Forcing them
25 to wait years for a petition for review to resolve that claim would “depriv[e] [them]
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1 . . . of any meaningful chance for judicial review.” *Id.* Once again, it is notable that
2 the Supreme Court has never demanded that noncitizens like Petitioners raise their
3 challenges to detention in a petition for review in any of the immigration detention
4 challenges the Court has heard. *See supra* p. 3 (citing cases).

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6 Furthermore, in a similar context, the Ninth Circuit held that § 1252(b)(9)
7 does not bar review. *See Gonzalez v. United States Immigr. & Customs Enf’t*, 975
8 F.3d 788, 810 (9th Cir. 2020) (“Section 1252(b)(9) is also not a bar to jurisdiction
9 over noncitizen class members’ claims because claims challenging the legality of
10 detention pursuant to an immigration detainer are independent of the removal
11 process.”). Respondents do not address this case.

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13 The cases Respondents do cite provide them no support. Many do not even
14 involve detention. *See, e.g.*, Opp. to TRO at 7, Dkt. 9 at 13 (citing out-of-circuit
15 cases involving challenges related to removal orders or other immigration actions).
16 Lacking any directly relevant authority, Respondents cite to Justice Thomas’s
17 concurrence in judgment in *Jennings*. Opp. to TRO at 9, Dkt. 9 at 15. But that
18 concurrence is more accurately described as a dissent regarding the majority’s
19 jurisdictional conclusion as to § 1252(b)(9). *See* 583 U.S. at 314–23 (Thomas, J.,
20 concurring in judgment). Of course, “[t]his view is not the law.” *Smith v.*
21 *McCormick*, 914 F.2d 1153, 1163 (9th Cir. 1990) (rejecting argument that relied on
22 a Supreme Court dissent).

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28 Respondents further mischaracterize Petitioners’ claims by asserting that

1 Petitioners’ challenge to the basis for their detention is actually “a challenge to
2 DHS’s decision to detain them in the first instance.” Opp. to TRO at 8-9, Dkt. 9 at
3 14-15. But Petitioners do not challenge DHS’s authority to detain them. Instead,
4 they challenge the DHS and Department of Justice bond policy and the immigration
5 judge orders – now re-endorsed by the BIA in *Matter of Yajure Hurtado*, 29 I. & N.
6 Dec. 216 (BIA Sept. 5, 2025) - considering Petitioners detained under § 1225 rather
7 than § 1226(a). For all the reasons above, § 1252(b)(9) plainly does not bar such
8 claims.
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12 In regard to Respondents’ contention that the phrase “seeking admission”
13 means nothing other than falling under the broad definition of “applicant for
14 admission” at § 1225(a)(1), Respondents argue that “many people who are not
15 *actually* requesting permission to enter the United States in the ordinary sense are
16 nevertheless deemed to be ‘seeking admission’ under the immigration laws.” Opp.
17 to TRO at 10, Dkt. 9 at 16. (Quoting *Matter of Lemus-Losa*, 25 I. & N. Dec. 734,
18 743 (BIA 2012).) But Lemus was in fact seeking admission—he was applying for
19 adjustment of status to be admitted as a lawful permanent resident. *See* 25 I. & N.
20 Dec. at 735. Thus, the statutory references to “seeks admission” at
21 § 1182(a)(9)(B)(i) are readily distinguished from persons in Petitioners’ situation
22 and directly undermine Respondents’ contention that the phrase “seeking
23 admission” means nothing other than falling under the broad definition of
24 “applicant for admission” at § 1225(a)(1).
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1 Relatedly, Respondents' reliance on *Florida v. United States* (Opp. to TRO at
2 11, Dkt. 9 at 17) is misplaced as that case addressed only persons arrested while
3 entering the southwest border, and thus "[a]ll parties agree[d], and the Court ha[d]
4 found, that the [noncitizens] at issue in this case meet the statutory definition for
5 applicants for admission and are subject to inspection under § 1225." 660 F. Supp.
6 3d 1239, 1273 (N.D. Fla. 2023).
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9 For the foregoing reasons, the Court should grant Petitioners' Application for
10 a Temporary Restraining Order and Order to Show Cause.
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13 Dated: October 2, 2025

Respectfully submitted,

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Memo contains
1,813 words, which complies with the word limit of L.R. 11-6.1.

s/ Niels W. Frenzen

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