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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Lazaro MALDONADO BAUTISTA, et al., on behalf of themselves and others similarly situated,

Plaintiffs-Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security; et al.

Defendants-Respondents.

Case No. 5:25-cv-01873-SSS-BFM

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Hearing
Date: October 17, 2025
Time: 2:00 p.m.
Courtroom: 2
Judge: Sunshine S. Sykes

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I. INTRODUCTION

Defendants' novel interpretation of the civil immigration detention statutes, as laid out in the July 8, 2025, ICE Memorandum (ICE Memo), and Board of Immigration Appeals' (BIA's) precedential decision, *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), contravenes the plain language and statutory framework of the Immigration and Nationality Act (INA). As the Supreme Court explained in *Jennings v. Rodriguez*, § 1226(a)—and its authority to seek release on bond—governs the detention of those, like Plaintiffs, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018). In contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" primarily to noncitizens "seeking to enter the country." *Id.* at 287. Courts across the country—more than two dozen to date—have uniformly rejected Defendants' radical reinterpretation of the statute. *See* Dkt. 56 (collecting decisions). As this case presents a pure legal issue, Plaintiffs ask this Court to declare the law for thousands of class members across the country (many of whom have been living in the U.S. for decades) who are deprived of their liberty, have no opportunity to seek bond, and lack the resources to obtain relief through individual habeas petitions.

II. ARGUMENT

A. This Court Has Jurisdiction Over Plaintiffs' Claims.

1. Section 1252(b)(9) does not apply.

Defendants' argument that 8 U.S.C. § 1252(b)(9) bars this Court's jurisdiction is foreclosed by Supreme Court precedent. Despite the Court already rejecting this threshold argument, Dkt. 14 at 4, Defendants again contend § 1252(b)(9) applies to Plaintiffs' challenge to detention because it "arises from DHS's decision to commence removal proceedings and is thus an action taken to remove them from the United States." Opp. 9 (citation modified). The Supreme Court squarely rejected

this argument in *Jennings* (whose analysis Defendants never address), where the Court addressed statutory interpretation questions regarding bond hearings under § 1225 and § 1226. 583 U.S. at 292. Before reaching the merits, a plurality of the Court first addressed whether such detention could be said to "'aris[e] from' actions taken to remove" the noncitizen class members in *Jennings*, thus channeling those claims into the petition for review process under § 1252(b)(9). 583 U.S. at 293.[1]

Like in *Jennings*, Plaintiffs do not "challeng[e] the decision to detain them in the first place or to seek removal," nor do they "challeng[e] any part of the process by which their removability will be determined." *Id*. at 294. Instead, as in *Jennings,* they challenge Defendants' interpretation of the detention statutes, and assert that they are properly detained under § 1226(a) and thus are entitled to a bond hearing over their *ongoing* detention and an opportunity to be released before the conclusion of the proceedings. Because relegating these challenges to a petition for review process years later to resolve that claim would "depriv[e] [them] . . . of any meaningful chance for judicial review," § 1252(b)(9) does not apply. *Id.* at 293; *see also Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) ("Section 1252(b)(9) is also not a bar to jurisdiction over noncitizen class members' claims because claims challenging the legality of detention . . . are independent of the removal process."). The cases Defendants cite are inapposite, as most do not even involve detention. *See, e.g.*, Opp. 8–9.[2]

[1] The three dissenting justices agreed that § 1252(b)(9) did not bar plaintiffs' challenge to "detention without bail," reasoning that the provision applies only where plaintiffs challenge an order of removal. *Jennings*, 583 U.S. at 355 (Breyer, J., dissenting).

[2] The sole detention case involved a different statute and, as Defendants admit, challenged the "threshold detention decision." Opp. 9 (citing *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024)). While Plaintiffs do not concede that (b)(9) applies to challenges to initial detention, the Court need not reach this issue here.

2. Section 1252(e)(3)(A) does not apply.

Defendants err in asserting that § 1252(e)(3)(A) bars this Court's review. First, Plaintiffs contend they are detained under § 1226 and are therefore entitled to bond hearings. If correct, then Defendants cannot invoke § 1252(e)(3)(A), as that statute only addresses "determinations under section 1225(b) of this title and its implementation." 8 U.S.C. § 1252(e)(3)(A). It is well established that courts retain jurisdiction to determine their own jurisdiction. *See, e.g.*, *Ye v. INS*, 214 F.3d 1128, 1131 (9th Cir. 2000). In this case, determining whether the jurisdiction-limiting provision at § 1252(e)(3)(A) applies first requires the adjudicator to resolve whether Plaintiffs, as a legal question, are detained pursuant to § 1225 or § 1226. Thus, "the jurisdictional question and the merits collapse into one." *Id*.

Second, Defendants misconstrue § 1252(e). By its plain terms, § 1252(e) is a *grant* of jurisdiction to certain challenges involving "orders under section 1225(b)(1)" in the District of Columbia. However, § 1252(e) does not require that challenges involving § 1225*(b)(2)*—the detention statute at issue in this case—be brought exclusively in D.C. It is true that a different provision of § 1252—§ 1252(a)(2)(A)—bars challenges to the expedited removal process at § 1225*(b)(1)*, "except as provided in subsection (e)"—making § 1252(e) the exclusive avenue for *those* challenges. *See Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 620–21, 626–27 (D.C. Cir. 2020). But that channeling requirement for expedited removal challenges does not apply to challenges to (b)(2), which concerns cases outside of the expedited removal process. Moreover, "[t]he challenges that are subject to the circumscribed jurisdiction in subsection (e)(3) must . . . target the process of removal directly, not target other circumstances incidental to removal." *Al Otro Lado, Inc. v. McAleenan*, 423 F. Supp. 3d 848, 867 (S.D. Cal. 2019); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 666 (9th Cir. 2021). Thus, at most, "§ 1252(e)(3) addresses challenges to the removal process itself, not to detentions attendant upon that

process." *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) (citation modified).

B. Plaintiffs' detention is governed by § 1226(a), not § 1225(b)(2).

1. Defendants have no response to § 1226(a)'s plain text.

Defendants almost entirely ignore 8 U.S.C. § 1226(a). However, § 1226 provides the "default rule" for the detention of those who, like Plaintiffs, are "already in the country." *Jennings*, 583 U.S. at 288–89. Section 1226(a) states that, "[e]xcept as provided in subsection (c)," detained noncitizens may be released on bond pending a decision in their removal proceedings. 8 U.S.C. § 1226(a). And subsection (c) specifically exempts from § 1226(a)'s default rule individuals who are "inadmissible under paragraph (6)(A) . . . of section 1182(a)"—i.e., those who entered the U.S. without admission or parole, and who also have been arrested for, charged with, or convicted of certain crimes. *Compare id.* § 1226(c)(1)(E), *with id.* § 1182(a)(6)(A). The statute also identifies certain other classes of inadmissible noncitizens. *See id.* § 1226(c)(1)(A), (D). These references demonstrate that, by default, § 1226(a) must cover inadmissible persons like Plaintiffs. This is because "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

Defendants do not contest that the references in § 1226 to inadmissible persons necessarily mean the statute covers persons who have not been admitted and who are charged in removal proceedings on grounds of inadmissibility. Nor could they: the statute explicitly states that removal proceedings determine deportability for those previously admitted, and inadmissibility for those not admitted. *See* 8 U.S.C. § 1229a(a)(3), (e)(2); *see also* Dkt. 42 at 11–12. Yet despite § 1226's clear application to inadmissible persons, under Defendants' new policy, *all* persons

charged with inadmissibility must instead be detained under § 1225(b)(2). *See* Response to Statement of Genuine Disputes (RSGD) ¶¶ 9, 12–13. That view simply cannot be squared with the text.

Defendants further urge the Court to accept their view that § 1226(c) and § 1225(b)(2) are redundant and that § 1226(c) makes "doubly sure" that certain people who entered without inspection are subject to mandatory detention. Opp. 18. But § 1225(b)(2) and § 1226 are "mutually exclusive—a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226." *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), --- F. Supp. 3d ----, 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025). It would make little sense for Congress in enacting the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996 to mandate the detention of a group of noncitizens and at the same time provide for discretionary detention of the very same group. But under Defendants' view, this is exactly what Congress did.[3]

Even worse, Defendants' view of § 1226(a) renders meaningless a statute that Congress *just* passed. In the Laken Riley Act (LRA), Congress amended § 1226(c), specifying that certain persons who entered without admission or parole and who were arrested for, charged with, or convicted of certain crimes are subject to mandatory detention. 139 Stat. 3, 3 (2025). Under Defendants' view, Congress merely duplicated an existing mandatory detention authority for people already subject to mandatory detention. But statutory amendments are presumed to "have

[3] Ever since its enactment in IIRIRA, the statute has always applied to inadmissible persons (including those who have not been admitted or paroled), as demonstrated by § 1226(c)(1)(A), (D). The LRA forcefully reaffirms that § 1226(c) encompasses Plaintiffs, as it expressly references persons who are inadmissible for having entered without admission or parole. *See* 8 U.S.C. § 1226(c)(1)(E)(i); *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (the LRA "mandates detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) . . . , 1182(a)(6)(C) . . . , or 1182(a)(7)").

real and substantial effect." *Ross v. Blake*, 578 U.S. 632, 642 (2016) (citation omitted). By contrast, under the longstanding reading of the statute, the LRA has a direct effect: it denies bond to noncitizens to whom bond was previously available. Moreover, Defendants' view ignores that, although limited redundancy may occasionally occur, it is also a "cardinal rule of statutory interpretation that no provision should be construed to be *entirely* redundant." *United States v. $133,420.00 in U.S. Currency*, 672 F.3d 629, 643 (9th Cir. 2012) (emphasis added) (citation omitted). Yet Defendants' interpretation does exactly that—renders § 1226(c)(1)(E) "entirely redundant." *Id*.

Defendants' response to § 1226's text amounts to nothing more than a "naked policy appeal[]." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 680 (2020). Specifically, Defendants assert that applying § 1226(a) to those who enter without inspection and have since resided here places them in a better position than those who are arrested at a port of entry. Opp. 15–16. But such "policy preferences are not a source of . . . statutory authority," *ACA Connects v. Bonta*, 24 F.4th 1233, 1243 (9th Cir. 2022), and courts "[can]not alter the text in order to satisfy the policy preferences of the [agency]," *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002).

Moreover, Plaintiffs' position is entirely consistent with Congress's stated intent. In passing IIRIRA, Congress focused on the perceived problem of recent arrivals to the U.S. who do not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). Yet those who are apprehended immediately upon entering *are* treated as being on the "threshold" of entry and subject to mandatory detention, placing them on the very same footing as other arriving noncitizens. *See Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 140 (2020) ("[A noncitizen] who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'" (citation omitted)); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (individual "detained

shortly after unlawful entry" and "just inside the southern border, and not at a point of entry, on the same day they crossed into the United States" subject to § 1225(b)(2)(A) (citation modified)). Furthermore, this aligns with Congress's explanation that the new § 1226(a) in IIRIRA preserved "the authority of the Attorney General to arrest, detain, *and release on bond* a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).[4] Defendants' view disregards this important history.

Defendants' reliance on *Thuraissigiam* and caselaw addressing the constitutional right to admission of noncitizens apprehended immediately upon entry is misplaced. *See* Opp. 16–17. By definition, putative class members were *not* apprehended upon arrival to the United States; instead, they have typically resided here months, years, or even decades. *See* Dkt. 41 at 3 (proposed class definitions); RSGD ¶¶ 25.a, 33.a, 41.a, 48.a. Accordingly, cases concerning the rights of people who are apprehended at the border or immediately after entry to challenge their admission or removal have no application to this case. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) (noncitizen held on Ellis Island who represented security risk to the United States); *Kaplan v. Tod*, 267 U.S. 228 (1925) (noncitizen who was stopped at border, issued an exclusion order, and who was allowed to reside until her deportation could be effectuated).

Defendants are also wrong to state that the Due Process Clause provides no protection against *unlawful detention* to noncitizens who have long resided here. Opp. 17. The very cases Defendants cite make clear that with respect to detention, "once a[] [noncitizen] enters the country, the legal circumstance changes, for the

[4] The BIA's discussion of legislative history in *Yajure-Hurtado* is thus unavailing, as it similarly misconceived what *actually* concerned Congress. *See* 29 I. & N. Dec. at 222–25.

Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mezei*, 345 U.S. at 212 (acknowledging those who enter "illegally" are entitled to due process).

1. Subparagraph 1225(b)(2) is limited in scope and does not apply to Plaintiffs.

Defendants assert that because Plaintiffs may be considered "applicants for admission" under § 1225(a)(1), they must fall under § 1225(b)(2)'s mandatory detention provision. Opp. 10–11 (citing *Yajure-Hurtado*, 29 I. & N. at 220). But § 1225(b)(2) says no such thing: instead, the statute encompasses only those "applicants for admission" who are "seeking admission" at the border. Defendants disregard this limiting language, averring that all "[a]pplicants for admission" should automatically be "understood to be 'seeking admission,'" and arguing at length that the presumption against surplusage is not conclusive. Opp. 12–13.

But "seeking admission" is not surplusage. Instead, this language fits within the overall structure of § 1225(b)(2), which is focused on the processing, inspection, and detention scheme "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287; *see also generally* 8 U.S.C. § 1225; Dkt. 42 at 16–20. District courts have resoundingly agreed: as numerous courts have explained, the plain meaning of "seeking admission" means that the applicant must be "*doing* something." *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025); *see also Lopez Benitez*, 2025 WL 2371588, at *7 ("This understanding accords with the plain, ordinary meaning of the words 'seeking' and 'admission.'").[5]

[5] Defendants' critique of the *Lopez Benitez* court's analogy regarding seeking admission to a movie theater is wholly dependent on the very premise that "seeking

Defendants argue that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." Opp. 11–12 (quoting *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012)). However, Mr. Lemus was in fact seeking admission—he was applying for a family visa from within the U.S., and had to demonstrate he was admissible. *See Lemus-Losa*, 25 I. & N. Dec. at 735. This separate statutory reference to "seeks admission" does not demonstrate that § 1225(b)(2)(A), which addresses the inspection of persons seeking admission into the country, encompasses other persons already residing in the U.S. Instead, it further demonstrates that "seeking admission" is not "synonymous," Opp. 12, with the broader definition of "applicant for admission" at § 1225(a)(1).[6]

Nor do any Plaintiffs' decisions to defend against their removal proceedings somehow convert them into "applicants for admission" who are "seeking admission" under § 1225(b)(2)(A). *See* Opp. 14. Again, the statute must be read in its context and in a way that gives meaning to all its terms. Subparagraph 1225(b)(2)(A) addresses inspections by examining immigration officers, authorizing them to make determinations to place persons in removal proceedings who are not "clearly and beyond a doubt entitled to be admitted." This is clearly inapplicable to noncitizens who are not being inspected at the border and are already in removal proceedings, as there is no need for the determination at issue in § 1225(b)(2)(A).

Defendants also suggest that reading "seeking admission" to require an affirmative act renders the phrase "applicant for admission" in § 1225(b)(2)

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admission" is redundant, which it is not. *See* Opp. 13–14. They simply assert—in a conclusory manner and without any authority—that "'[s]eeking admission' does not have a different meaning from applicant for admission ('requesting admission'); the terms are synonymous." *Id.* at 12.

[6] Defendants' citation to *Matter of Jean* is similarly unavailing. 23 I. & N. Dec. 373 (A.G. 2002). That case involved the adjustment application of a refugee and did not purport to interpret any of the provisions at issue in the case.

redundant. Opp. 12. This is incorrect. Under Plaintiffs' view, "applicants for admission" does not include U.S. citizens and nationals, nor those who are admitted at the border, all of whom fall outside the reach of § 1225(b)(2). "[S]eeking admission" further narrows which applicants for admission fall under § 1225(b)(2). The two phrases are not co-extensive, as the statutes and regulations recognize. For example, just as some "applicants for admission" seek admission, so too can some "applicants for admission" withdraw their application for admission, *see* 8 C.F.R. § 1235.4, or seek voluntary departure, *see* 8 U.S.C. § 1229c(a), when an inspecting officer advises that their admission papers are lacking. Similarly, Defendant BIA, in announcing its new rule, erred in reasoning that the traditional interpretation "leaves unanswered which applicants for admission would be covered by [§ 1225(b)(2)(A)], if . . . applicants for admission who have been living for years in the United States without admission . . . are somehow exempt from by [§ 1225(b)(2)(A)] and instead fall under [§ 1226]." *Yajure-Hurtado,* 29 I. & N. Dec. at 221. The obvious rejoinder is that § 1225(b)(2)(A) applies to all those applicants for admission arriving at the border, where the inspecting officer is not satisfied they are entitled to be admitted.[7]

In sum, Defendants' new interpretation contradicts the plain language of § 1226 and the overarching statutory framework.

III. CONCLUSION

The Court should grant Plaintiffs' motion for partial summary judgment.

[7] Defendants' final argument is that *Loper Bright* shows that prior agency practice is irrelevant. Opp. 18–19. But Defendants overlook that nearly thirty years of consistently interpreting the INA in a manner directly *opposite* of their novel interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) ("When an agency claims to discover in a long-extant statute an unheralded power," courts "typically greet its announcement with a measure of skepticism."). Notably, Defendants do not contest that their own regulations require them to afford bond hearings to class members, which reflect the long-held understanding that Plaintiffs are entitled to consideration of release on bond. *See* Dkt. 42 at 22–23.

Respectfully submitted this 19th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

I, Aaron Korthuis, certify that this brief does not exceed 10 pages and complies with the page limit of Civil Standing Order, VII.D.

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