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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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1 **I. INTRODUCTION**

2 Defendants’ novel interpretation of the civil immigration detention statutes,
3 as laid out in the July 8, 2025, ICE Memorandum (ICE Memo), and Board of
4 Immigration Appeals’ (BIA’s) precedential decision, *Matter of Yajure-Hurtado*,
5 29 I. & N. Dec. 216 (BIA 2025), contravenes the plain language and statutory
6 framework of the Immigration and Nationality Act (INA). As the Supreme Court
7 explained in *Jennings v. Rodriguez*, § 1226(a)—and its authority to seek release on
8 bond—governs the detention of those, like Plaintiffs, who are “already in the
9 country” and are detained “pending the outcome of removal proceedings.” 583 U.S.
10 281, 289 (2018). In contrast, § 1225(b)(2)’s mandatory detention scheme applies “at
11 the Nation’s borders and ports of entry” primarily to noncitizens “seeking to enter
12 the country.” *Id.* at 287. Courts across the country—more than two dozen to date—
13 have uniformly rejected Defendants’ radical reinterpretation of the statute. *See* Dkt.
14 56 (collecting decisions). As this case presents a pure legal issue, Plaintiffs ask this
15 Court to declare the law for thousands of class members across the country (many
16 of whom have been living in the U.S. for decades) who are deprived of their liberty,
17 have no opportunity to seek bond, and lack the resources to obtain relief through
18 individual habeas petitions.

19 **II. ARGUMENT**

20 **A. This Court Has Jurisdiction Over Plaintiffs’ Claims.**

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

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

1 this argument in *Jennings* (whose analysis Defendants never address), where the
2 Court addressed statutory interpretation questions regarding bond hearings under
3 § 1225 and § 1226. 583 U.S. at 292. Before reaching the merits, a plurality of the
4 Court first addressed whether such detention could be said to “‘aris[e] from’ actions
5 taken to remove” the noncitizen class members in *Jennings*, thus channeling those
6 claims into the petition for review process under § 1252(b)(9). 583 U.S. at 293.¹

7 Like in *Jennings*, Plaintiffs do not “challeng[e] the decision to detain them in
8 the first place or to seek removal,” nor do they “challeng[e] any part of the process
9 by which their removability will be determined.” *Id.* at 294. Instead, as in *Jennings*,
10 they challenge Defendants’ interpretation of the detention statutes, and assert that
11 they are properly detained under § 1226(a) and thus are entitled to a bond hearing
12 over their *ongoing* detention and an opportunity to be released before the conclusion
13 of the proceedings. Because relegating these challenges to a petition for review
14 process years later to resolve that claim would “depriv[e] [them] . . . of any
15 meaningful chance for judicial review,” § 1252(b)(9) does not apply. *Id.* at 293; *see*
16 *also Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 810 (9th Cir. 2020)
17 (“Section 1252(b)(9) is also not a bar to jurisdiction over noncitizen class members’
18 claims because claims challenging the legality of detention . . . are independent of
19 the removal process.”). The cases Defendants cite are inapposite, as most do not
20 even involve detention. *See, e.g.*, Opp. 8–9.²

21
22 ¹ The three dissenting justices agreed that § 1252(b)(9) did not bar plaintiffs’
23 challenge to “detention without bail,” reasoning that the provision applies only
24 where plaintiffs challenge an order of removal. *Jennings*, 583 U.S. at 355 (Breyer,
J., dissenting).

25 ² The sole detention case involved a different statute and, as Defendants admit,
26 challenged the “threshold detention decision.” Opp. 9 (citing *Saadulloev v. Garland*,
27 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.

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

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

12 Second, Defendants misconstrue § 1252(e). By its plain terms, § 1252(e) is a
13 *grant* of jurisdiction to certain challenges involving “orders under section
14 1225(b)(1)” in the District of Columbia. However, § 1252(e) does not require that
15 challenges involving § 1225(b)(2)—the detention statute at issue in this case—be
16 brought exclusively in D.C. It is true that a different provision of § 1252—
17 § 1252(a)(2)(A)—bars challenges to the expedited removal process at § 1225(b)(1),
18 “except as provided in subsection (e)” —making § 1252(e) the exclusive avenue for
19 *those* challenges. *See Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 620–21, 626–27
20 (D.C. Cir. 2020). But that channeling requirement for expedited removal challenges
21 does not apply to challenges to (b)(2), which concerns cases outside of the expedited
22 removal process. Moreover, “[t]he challenges that are subject to the circumscribed
23 jurisdiction in subsection (e)(3) must . . . target the process of removal directly, not
24 target other circumstances incidental to removal.” *Al Otro Lado, Inc. v. McAleenan*,
25 423 F. Supp. 3d 848, 867 (S.D. Cal. 2019); *see also E. Bay Sanctuary Covenant v.*
26 *Biden*, 993 F.3d 640, 666 (9th Cir. 2021). Thus, at most, “§ 1252(e)(3) addresses
27 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

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

4 Defendants further urge the Court to accept their view that § 1226(c) and
5 § 1225(b)(2) are redundant and that § 1226(c) makes “doubly sure” that certain
6 people who entered without inspection are subject to mandatory detention. Opp. 18.
7 But § 1225(b)(2) and § 1226 are “mutually exclusive—a noncitizen cannot be
8 subject to both mandatory detention under § 1225 and discretionary detention under
9 § 1226.” *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), --- F. Supp. 3d ---,
10 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025). It would make little sense for
11 Congress in enacting the Illegal Immigration Reform and Immigrant Responsibility
12 Act (IIRIRA) in 1996 to mandate the detention of a group of noncitizens and at the
13 same time provide for discretionary detention of the very same group. But under
14 Defendants’ view, this is exactly what Congress did.³

15 Even worse, Defendants’ view of § 1226(a) renders meaningless a statute that
16 Congress *just* passed. In the Laken Riley Act (LRA), Congress amended § 1226(c),
17 specifying that certain persons who entered without admission or parole and who
18 were arrested for, charged with, or convicted of certain crimes are subject to
19 mandatory detention. 139 Stat. 3, 3 (2025). Under Defendants’ view, Congress
20 merely duplicated an existing mandatory detention authority for people already
21 subject to mandatory detention. But statutory amendments are presumed to “have
22

23 ³ Ever since its enactment in IIRIRA, the statute has always applied to inadmissible
24 persons (including those who have not been admitted or paroled), as demonstrated
25 by § 1226(c)(1)(A), (D). The LRA forcefully reaffirms that § 1226(c) encompasses
26 Plaintiffs, as it expressly references persons who are inadmissible for having entered
27 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)”).

1 real and substantial effect.” *Ross v. Blake*, 578 U.S. 632, 642 (2016) (citation
2 omitted). By contrast, under the longstanding reading of the statute, the LRA has a
3 direct effect: it denies bond to noncitizens to whom bond was previously available.
4 Moreover, Defendants’ view ignores that, although limited redundancy may
5 occasionally occur, it is also a “cardinal rule of statutory interpretation that no
6 provision should be construed to be *entirely* redundant.” *United States v.*
7 *\$133,420.00 in U.S. Currency*, 672 F.3d 629, 643 (9th Cir. 2012) (emphasis added)
8 (citation omitted). Yet Defendants’ interpretation does exactly that—renders §
9 1226(c)(1)(E) “entirely redundant.” *Id.*

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

18 Moreover, Plaintiffs’ position is entirely consistent with Congress’s stated
19 intent. In passing IIRIRA, Congress focused on the perceived problem of recent
20 arrivals to the U.S. who do not have documents to remain. *See* H.R. Rep. No. 104-
21 469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf.
22 Rep.). Yet those who are apprehended immediately upon entering *are* treated as
23 being on the “threshold” of entry and subject to mandatory detention, placing them
24 on the very same footing as other arriving noncitizens. *See Dep’t of Homeland Sec.*
25 *v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (“[A noncitizen] who is detained shortly
26 after unlawful entry cannot be said to have ‘effected an entry.’” (citation omitted));
27 *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (individual “detained

1 shortly after unlawful entry” and “just inside the southern border, and not at a point
2 of entry, on the same day they crossed into the United States” subject to
3 § 1225(b)(2)(A) (citation modified)). Furthermore, this aligns with Congress’s
4 explanation that the new § 1226(a) in IIRIRA preserved “the authority of the
5 Attorney General to arrest, detain, *and release on bond* a[] [noncitizen] who is not
6 lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis
7 added); *see also* H.R. Rep. No. 104-828, at 210 (same).⁴ Defendants’ view
8 disregards this important history.

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

21 Defendants are also wrong to state that the Due Process Clause provides no
22 protection against *unlawful detention* to noncitizens who have long resided here.
23 Opp. 17. The very cases Defendants cite make clear that with respect to detention,
24 “once a[] [noncitizen] enters the country, the legal circumstance changes, for the
25

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

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

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

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

15 But “seeking admission” is not surplusage. Instead, this language fits within
16 the overall structure of § 1225(b)(2), which is focused on the processing, inspection,
17 and detention scheme “at the Nation’s borders and ports of entry, where the
18 Government must determine whether a[] [noncitizen] seeking to enter the country is
19 admissible.” *Jennings*, 583 U.S. at 287; *see also generally* 8 U.S.C. § 1225; Dkt. 42
20 at 16–20. District courts have resoundingly agreed: as numerous courts have
21 explained, the plain meaning of “seeking admission” means that the applicant must
22 be “*doing something*.” *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.
23 3d ----, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025); *see also Lopez Benitez*,
24 2025 WL 2371588, at *7 (“This understanding accords with the plain, ordinary
25 meaning of the words ‘seeking’ and ‘admission.’”).⁵

26 ⁵ Defendants’ critique of the *Lopez Benitez* court’s analogy regarding seeking
27 admission to a movie theater is wholly dependent on the very premise that “seeking

1 Defendants argue that “many people who are not actually requesting
2 permission to enter the United States in the ordinary sense are nevertheless deemed
3 to be ‘seeking admission’ under the immigration laws.” Opp. 11–12 (quoting *Matter*
4 *of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012)). However, Mr. Lemus was in
5 fact seeking admission—he was applying for a family visa from within the U.S., and
6 had to demonstrate he was admissible. *See Lemus-Losa*, 25 I. & N. Dec. at 735. This
7 separate statutory reference to “seeks admission” does not demonstrate that
8 § 1225(b)(2)(A), which addresses the inspection of persons seeking admission into
9 the country, encompasses other persons already residing in the U.S. Instead, it
10 further demonstrates that “seeking admission” is not “synonymous,” Opp. 12, with
11 the broader definition of “applicant for admission” at § 1225(a)(1).⁶

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

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

23 _____
24 admission” is redundant, which it is not. *See* Opp. 13–14. They simply assert—in a
25 conclusory manner and without any authority—that “[s]eeking admission’ does not
26 have a different meaning from applicant for admission (‘requesting admission’); the
27 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.

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

17 In sum, Defendants’ new interpretation contradicts the plain language of
18 § 1226 and the overarching statutory framework.

19 **III. CONCLUSION**

20 The Court should grant Plaintiffs’ motion for partial summary judgment.

21 ⁷ Defendants’ final argument is that *Loper Bright* shows that prior agency practice
22 is irrelevant. Opp. 18–19. But Defendants overlook that nearly thirty years of
23 consistently interpreting the INA in a manner directly *opposite* of their novel
24 interpretation “is powerful evidence that interpreting the Act in [this] way is natural
25 and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J.,
26 dissenting); *see also Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (“When
27 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.

/s/ Aaron Korthuis*

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