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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 Bo Li,

11  
12 Petitioner

13 v.

14 John E. Cantu, et al.,

15  
16 Respondents.

No. CV-25-02989-PHX-SPL(CDB)


**ANSWER TO PETITION FOR A  
WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

17 **I. INTRODUCTION.**

18 Respondents, John Cantu, Arizona Field Office Director, U.S. Immigration and  
19 Customs Enforcement (“ICE”), Todd M. Lyons, Director, ICE, Kristi Noem, Secretary of  
20 the Department of Homeland Security, and Pamela Bondi, Attorney General of the United  
21 States, by and through counsel, hereby answer the Petition for Writ of Habeas Corpus (Doc.  
22 1). Petitioner is currently in removal proceedings under INA § 240, 8 U.S.C. § 1229a and  
23 is detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.  
24 § 1225(b)(2)(A). While Petitioner’s habeas petition seeks release and a pre-detention bond  
25 hearing, and broadly asserts that his detention is unlawful, his habeas petition also attacks  
26 decisions that have not occurred yet, namely termination of his INA § 240, 8 U.S.C. §  
27 1229a proceedings and commencement of expedited removal proceedings under INA §  
28 235(b)(1), 8 U.S.C. § 1225(b)(1). As Petitioner is challenging actions that have not  
happened, his claims present no controversy, and he lacks standing. Apart from the fact

1 that many of the challenged actions have not yet occurred, Petitioner's habeas petition  
2 should also be denied because: (1) the claims presented are not proper habeas claims, and  
3 (2) multiple provisions of 8 U.S.C. § 1252 unambiguously strip federal courts of  
4 jurisdiction over challenges to the commencement of removal proceedings, claims arising  
5 from removal proceedings, and the application of expedited removal proceedings.  
6 Petitioner is an arriving alien as defined by the statute. As such, Petitioner is subject to  
7 mandatory detention without bond, under 8 U.S.C. § 1225(b)(2)(A), which the Supreme  
8 Court has held comports with due process. Further, because he is an applicant for admission  
9 as defined by the statute, his due process rights are limited to those proscribed by Congress.  
10 For all these reasons, the habeas petition should be denied.

## 11 II. FACTUAL AND PROCEDURAL BACKGROUND.

12 Petitioner Bo Li is a native and citizen of China, born on  See Doc.  
13 11, Exhibit A, Declaration of ICE Deportation Officer Kelly Bisher ¶ 3. On November 13,  
14 2023, Petitioner entered the United States without being admitted, inspected or paroled by  
15 an immigration officer. *Id.* ¶ 4. On the same date, Petitioner was encountered near San  
16 Diego, California by Border Patrol. *Id.* ¶ 5. Generally, arriving aliens found at or near the  
17 border who have not been admitted or paroled are found to be inadmissible and processed  
18 under expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225, and subject  
19 to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b). However, Petitioner was  
20 issued an order of release on recognizance and a Notice to Appear in general removal  
21 proceedings under INA § 240, 8 U.S.C. § 1229a. *Id.* The NTA charged Petitioner with  
22 removability pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

23 On April 16, 2024, Petitioner filed a Form I-589, Application for Asylum, Withholding  
24 of Removal and Protection under the Convention Against Torture. Doc. 11, Exhibit A ¶ 6.  
25 On July 31, 2025, Petitioner appeared for his initial master calendar hearing before an  
26 Immigration Judge (IJ) in San Francisco, California. *Id.* ¶ 7. During the initial master  
27 calendar hearing, the Department of Homeland Security (DHS) made an oral motion to  
28 dismiss Petitioner's INA § 240, 8 U.S.C. § 1229a removal proceedings, so that he could be

1 re-processed and placed in expedited removal proceedings pursuant to INA § 235, 8 U.S.C.  
2 § 1225. *Id.* ¶ 8. The IJ provided the respondent ten (10) days to respond to DHS’ motion  
3 to dismiss the INA § 240, 8 U.S.C. 1229a removal proceedings. *Id.* On July 31, 2025, ICE  
4 officers arrested Petitioner after his immigration hearing and took him into custody. *Id.* ¶  
5 9. On August 2, 2025, Petitioner was transferred to Central Arizona Florence Correctional  
6 Center in Florence, Arizona. *Id.* ¶ 10.

7 On August 8, 2025, Petitioner filed a motion for custody redetermination before the IJ  
8 in Florence, Arizona. Doc. 11, Exhibit A ¶ 11. On August 13, 2025, the IJ in Florence  
9 denied Petitioner’s request for a bond redetermination finding that Petitioner was an  
10 applicant for admission detained under INA § 235, 8 U.S.C. § 1225, and therefore subject  
11 to mandatory detention under INA § 235(b), 8 U.S.C. § 1225b). *Id.* ¶ 12. On the same  
12 date, Petitioner appeared for his master calendar hearing before the IJ in Florence and  
13 requested additional time to respond to DHS’s motion to dismiss his INA § 240, 8 U.S.C.  
14 § 1229a proceedings. *Id.* ¶ 13. The IJ granted Petitioner’s request for additional time and  
15 advised the parties that DHS must submit a written motion to dismiss Petitioner’s INA §  
16 240, 8 U.S.C. § 1229a proceedings by August 20, 2025, and that Petitioner’s response  
17 would be due August 27, 2025. *Id.*

18 On August 14, 2025, DHS filed a written motion to dismiss the INA § 240, 8 U.S.C. §  
19 1229a removal proceedings to pursue expedited removal proceedings under INA § 235,  
20 8 U.S.C. § 1225. Doc. 11, Exhibit A ¶ 14. On August 27, 2025, Petitioner filed his response  
21 to DHS’ motion to dismiss. *Id.* ¶ 15. Petitioner’s INA § 240, 8 U.S.C. § 1229(a)  
22 proceedings have not been dismissed, and his case is still pending before the IJ.

### 23 **III. THE HABEAS PETITION SHOULD BE DENIED.**

#### 24 **A. No Case or Controversy.**

25 No case or controversy exists to the extent Petitioner challenges DHS’s dismissal of his  
26 INA § 240, 8 U.S.C. § 1229a removal proceedings to pursue expedited removal  
27 proceedings under INA § 235, 8 U.S.C. § 1225. *See* Pet. at 21-22. The Constitution limits  
28 federal judicial power to designated “cases” and “controversies.” U.S. Const., Art. III, § 2;

1 *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts  
2 may only entertain matters that present a “case” or “controversy” within the meaning of  
3 Article III). “Absent a real and immediate threat of future injury there can be no case or  
4 controversy, and thus no Article III standing for a party seeking injunctive relief.” *Wilson*  
5 *v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at \*3 (S.D. Cal. Dec. 11, 2015)  
6 (citing *Friends of the Earth, Inc. v. Laidlow Env’t Servs., Inc.*, 528 U.S. 167, 190 (2000)).  
7 At the “irreducible constitutional minimum,” standing requires that Plaintiff demonstrate  
8 the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the  
9 United States and (3) likely to be redressed by a favorable decision. *See Lujan v. Defenders*  
10 *of Wildlife*, 504 U.S. 555, 560-61 (1992).

11 The Court should deny the habeas petition to the extent Petitioner is challenging  
12 actions that have not yet occurred. Petitioner is currently in proceedings under INA § 240,  
13 8 U.S.C. § 1229a and is not in expedited removal proceedings pursuant to INA § 235,  
14 8 U.S.C. § 1225. As such, there is currently no controversy concerning his INA § 240  
15 proceedings or placement in expedited removal proceedings for the Court to resolve. This  
16 is true to the extent he challenges such a decision in this case or at large. Federal courts  
17 simply do not have jurisdiction “to give opinion upon moot questions or abstract  
18 propositions, or to declare principles or rules of law which cannot affect the matter in issue  
19 in the case before it.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992).  
20 The Court therefore lacks jurisdiction with respect to any challenge to DHS’s motion to  
21 dismiss INA § 240, 8 U.S.C. § 1229(a) proceedings to pursue INA § 235, 8 U.S.C. § 1225  
22 proceedings because it is premature and there is no live case or controversy. *See Powell v.*  
23 *McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

24 **B. This Court lacks subject matter jurisdiction under 8 U.S.C. § 1252.**

25 The habeas petition should also be denied because the Court lacks jurisdiction over  
26 Petitioner’s claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79  
27 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioner brings his  
28 habeas action under 28 U.S.C. § 2241, but jurisdiction over his claims is plainly barred

1 under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), § 1252(g), and § 1252(b)(9).

2 In general, courts lack jurisdiction to review a decision to commence or adjudicate  
3 removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall  
4 have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the  
5 decision or action by the Attorney General to commence proceedings, adjudicate cases, or  
6 execute removal orders.”); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,  
7 483 (1999) (“There was good reason for Congress to focus special attention upon, and  
8 make special provision for, judicial review of the Attorney General’s discrete acts of  
9 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—  
10 which represent the initiation or prosecution of various stages in the deportation process.”);  
11 *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly  
12 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest  
13 and detain an alien at the commencement of removal proceedings are not within any court’s  
14 jurisdiction”).

15 In other words, § 1252(g) removes district court jurisdiction over “three discrete  
16 actions that the Attorney may take: [his] ‘decision or action’ to ‘commence proceedings,  
17 adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed).  
18 Here, Petitioner’s claims necessarily arise “from the decision or action by the Attorney  
19 General to commence proceedings [and] adjudicate cases,” over which Congress has  
20 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). Accordingly, to the  
21 extent the habeas petition challenges the Government’s decision to commence expedited  
22 removal proceedings—which again, has not yet happened—such a claim is squarely  
23 prohibited by the plain language of 8 U.S.C. § 1252(g).

24 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law  
25 and fact . . . arising from any action taken or proceeding brought to remove an alien from  
26 the United States under this subchapter shall be available only in judicial review of a final  
27 order under this section.” Further, judicial review of a final order is available only through  
28 “a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5).

1 The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable ‘zipper’ clause,”  
2 channeling “judicial review of all” “decisions and actions leading up to or consequent upon  
3 final orders of deportation,” including “non-final order[s],” into proceedings before a court  
4 of appeals. *Reno*, 525 U.S. at 483, 485; see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th  
5 Cir. 2016) (noting § 1252(b)(9) is “breathtaking in scope and vise-like in grip and therefore  
6 swallows up virtually all claims that are tied to removal proceedings”). “Taken together, §  
7 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from  
8 any removal-related activity can be reviewed only through the [petition for review] PFR  
9 process.” *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit how immigrants can  
10 challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by  
11 their terms, foreclose all judicial review of agency actions. Instead, the provisions channel  
12 judicial review over final orders of removal to the courts of appeal.”) (emphasis in  
13 original); see *id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims,  
14 including policies-and-practices challenges . . . whenever they ‘arise from’ removal  
15 proceedings”). Petitioner’s challenges to the administrations practice of dismissing INA §  
16 240 proceedings to pursue INA § 235 proceedings are foreclosed by sections 1252(a)(5)  
17 and (b)(9) in addition to section 1252(g). Even if the IJ had issued an order dismissing  
18 Petitioner’s INA § 240 proceedings, which again, has not yet happened, such a decision  
19 could not be challenged in U.S. District Court but only to the Board of Immigration  
20 Appeals and then on petition for review in the relevant Federal Circuit Court of Appeal.  
21 8 U.S.C. § 1252(a)(5).

22 Moreover, even if Petitioner had already been placed in expedited removal  
23 proceedings, which again, has not yet happened, “[s]ection 1252(a)(2)(A) is a jurisdiction-  
24 stripping and channeling provision, which bars review of almost ‘every aspect of the  
25 expedited removal process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024  
26 WL 687442, at \*1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th  
27 1146, 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These  
28 jurisdiction-stripping provisions cover “the ‘procedures and policies’ that have been

1 adopted to ‘implement’ the expedited removal process; the decision to ‘invoke’ that  
2 process in a particular case; the ‘application’ of that process to a particular alien; and the  
3 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Lineras*, 51  
4 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review expedited  
5 removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) (finding that the  
6 Supreme Court abrogated any “colorable constitutional claims” exception to the limits  
7 placed by § 1252(a)(2)(A)); see *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103  
8 (2020) (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension  
9 Clause). “Congress has chosen to explicitly bar nearly all judicial review of expedited  
10 removal orders concerning such aliens, including ‘review of constitutional claims or  
11 questions of law.’” *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A),  
12 (D)); see *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020) (explicitly  
13 rejecting Ninth Circuit’s holding that an arriving alien has a “constitutional right to  
14 expedited removal proceedings that conform to the dictates of due process”).

15 “Congress could scarcely have been more comprehensive in its articulation of the  
16 general prohibition on judicial review of expedited removal orders.” *Mendoza-Lineras*, 51  
17 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

18  
19 (2) Matters not subject to judicial review

20 (A) Review relating to section 1225(b)(1)

21 Notwithstanding any other provision of law (statutory or nonstatutory), including  
22 section 2241 of Title 28, or any other habeas corpus provision, and sections 1361  
23 and 1651 of such title, no court shall have jurisdiction to review-

24 (i) except as provided in subsection (e), any individual determination or to entertain  
25 any other cause or claim arising from or relating to the implementation or operation  
26 of an order of removal pursuant to section 1225(b)(1) of this title,

27 (ii) except as provided in subsection (e), a decision by the Attorney General to  
28 invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination  
made under section 1225(b)(1)(B) of this title, or

(iv) except as provided in subsection (e), procedures and policies adopted by the  
Attorney General to implement the provisions of section 1225(b)(1) of this title.

1 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of jurisdiction  
2 to hear a ‘cause or claim arising from or relating to the implementation or operation of an  
3 order of removal pursuant to section 1225(b)(1),’ which plainly includes [Petitioner’s]  
4 collateral attacks on the validity of the expedited removal order.” *Azimov*, 2024 WL  
5 687442, at \*1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M. v. Lynch*, 837  
6 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from” language in  
7 neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards and process of  
8 expedited removal proceedings, Petitioner necessarily asks the Court “to do what the  
9 statute forbids [it] to do, which is to review ‘the application of such section to him.’”  
10 *Mendoza-Linares*, 51 F.4th at 1155. Most notably, a determination made concerning  
11 inadmissibility “is not subject to judicial review.” *Gomez-Cantillano v. Garland*, No. 19-  
12 72682, 2021 WL 5882034 (9th Cir. Dec. 13, 2021) (citing 8 U.S.C § 1252(a)(2)(A)(iii)).  
13 “And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction to review ‘procedures and policies  
14 adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this  
15 title,’ which plainly includes [Petitioner’s] claims regarding how [Respondents may]  
16 implement[.]” § 1225(b)(1). *Azimov*, 2024 WL 687442, at \*1 (citing *Mendoza-Linares*, 51  
17 F.4th at 1154–55).

18 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal  
19 orders, Congress expressly limited available relief: “Without regard to the nature of the  
20 action or claim and without regard to the identity of the party or parties bringing the action,  
21 no court may” “enter declaratory, injunctive, other equitable relief in any action pertaining  
22 to an order to exclude an alien in accordance with section § 1225(b)(1) of this title except  
23 as specifically authorized in a subsequent paragraph of this subsection.” 8 U.S.C. §  
24 1252(e)(1)(A). Congress delineated two limited avenues for judicial review concerning  
25 expedited removal orders: (1) narrow habeas corpus proceedings under § 1252(e)(2); and  
26 (2) challenges to the validity of the system under § 1252(e)(3). Any permissible challenge  
27 to the validity of the system “is available [only] in an action in the United States District  
28 Court for the District of Columbia . . . .” 8 U.S.C. § 1252(e)(3).

1  
2 Narrow habeas corpus proceedings are expressly “limited to determinations” of  
3 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was  
4 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove by  
5 a preponderance of the evidence that the petitioner is an alien” who has been granted status  
6 as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C). “In  
7 determining whether an alien has been ordered removed under section 235(b)(1) [8 U.S.C.  
8 § 1225(b)(1)], the court’s inquiry shall be limited to whether such an order in fact was  
9 issued and whether it relates to the petitioner. There shall be no review of whether the alien  
10 is actually inadmissible or entitled to any relief from removal.” 8 U.S.C. § 1252(e)(5)  
11 (emphasis added). To the extent Petitioner is challenging the expedited process, each of  
12 Petitioner’s claims fall outside the limited habeas corpus authority provided within §  
13 1252(e)(2).

14 The habeas petition should be denied to the extent this Court lacks jurisdiction over  
15 the issues raised in the petition under the aforementioned provisions of 8 U.S.C. § 1252.

16 **C. Petitioner brings improper habeas claims.**

17 An individual may seek habeas relief under 28 U.S.C. § 2241 if she is “in custody”  
18 under federal authority “in violation of the Constitution or laws or treaties of the United  
19 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge *only* the legality  
20 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);  
21 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*  
22 *Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically  
23 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The  
24 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas  
25 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the  
26 relevant question is whether, based on the allegations in the petition, release is legally  
27 required irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072; *see also Nettles v.*  
28 *Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the

1 petitioner's claim would "necessarily lead to immediate or speedier release.").

2 Notably, seeking judicial review under the Administrative Procedure Act (APA) is not  
3 properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133,  
4 1140 (9th Cir. 2000) ("For purposes of immigration law, at least, "judicial review" refers  
5 to petitions for review of agency actions, which are governed by the Administrative  
6 Procedure Act, while habeas corpus refers to habeas petitions brought directly in district  
7 court to challenge illegal confinement."). Here, Petitioner's APA attack on the Trump  
8 Administration's policy regarding the expansion of expedited removals fall outside the  
9 scope of relief provided for in a habeas petition particularly where it fails to challenge the  
10 legality or duration of Petitioner's confinement. *Giron Rodas v. Lyons*, No. 25cv1912-LL-  
11 AHG, 2025 WL 2300781, at \*3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks  
12 jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as  
13 attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065).  
14 Thus, Petitioner is unlikely to succeed on the merits of her claims because they are not  
15 properly raised where they do not arise under § 2241.

16 **D. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)**  
17 **which comports with his procedural and substantive due process rights.**

18 Section 1225 applies to "applicants for admission," such as Petitioner, who are  
19 defined as "alien[s] present in the United States who [have] not been admitted" or "who  
20 arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into  
21 one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)."  
22 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

23 Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially  
24 determined to be inadmissible due to fraud, misrepresentation, or lack of valid document."  
25 *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited  
26 removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an  
27 intention to apply for asylum . . . or a fear of persecution," immigration officers will refer  
28 the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible

1 fear of persecution” is “detained for further consideration of the application for asylum.”  
2 *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express  
3 a fear of persecution, or is “found not to have such a fear,” they are detained until removed  
4 from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

5 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583  
6 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*  
7 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a  
8 removal proceeding “if the examining immigration officer determines that [the] alien  
9 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §  
10 1225(b)(2)(A); see *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving  
11 in and seeking admission into the United States who are placed directly in full removal  
12 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates  
13 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).  
14 However, DHS has the sole discretionary authority to temporarily release on parole “any  
15 alien applying for admission to the United States” on a “case-by-case basis for urgent  
16 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v.*  
17 *Texas*, 597 U.S. 785, 806 (2022).

18 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. §  
19 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate  
20 detention of applicants for admission until certain proceedings have concluded.” 583 U.S.  
21 at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on  
22 the length of detention” and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything  
23 whatsoever about bond hearings.” *Id.* The Court added that the sole means of release for  
24 noncitizens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United  
25 States is temporary parole at the discretion of the Attorney General under 8 U.S.C. §  
26 1182(d)(5). *Id.* at 300. The Court observed that because aliens held under § 1225(b) may  
27 be paroled for “urgent humanitarian reasons or significant public benefit,” “[t]hat express  
28 exception to detention implies that there are no other circumstances under which aliens

1 detained under 1225(b) may be released.” *Id.* (citations and internal quotation omitted)  
2 (emphasis in the original). Courts thus may not validly draw additional procedural  
3 limitations “out of thin air.” *Id.* at 312. The Supreme Court concluded: “In sum, §§  
4 1225(b)(1) and (b)(2) mandate detention of [noncitizens] throughout the completion of  
5 applicable proceedings.” *Id.* at 302.

6 As Petitioner is subject to mandatory detention and lawfully detained under 8 U.S.C.  
7 § 1225(b)(2)(A), DHS was not required to show changed circumstances to detain him, nor  
8 did due process require a bond hearing prior to his detention. Moreover, due process did  
9 not prohibit ICE from re-detaining Petitioner. There is no statutory or regulatory  
10 requirement that entitles Petitioner to a “pre-detention” hearing. For this Court to read one  
11 into the immigration custody statute would be to create a process that the current statutory  
12 and regulatory scheme do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573,  
13 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process  
14 protections attach, particularly where Petitioner is subject to mandatory detention under  
15 8 U.S.C. § 1225(b)(2) .

16 Petitioner’s reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny is  
17 misplaced. See Mot. at 13. *Morrissey* arose from the due process requirement for a hearing  
18 for revocation of parole. *Id.* at 472–73. It did not arise in the context of immigration.  
19 Moreover, in *Morrissey*, the Supreme Court reaffirmed that “due process is flexible and  
20 calls for such procedural protections as the particular situation demands.” *Id.* at 481. In  
21 addition, the “[c]onsideration of what procedures due process may require under any given  
22 set of circumstances must begin with a determination of the precise nature of the  
23 government function.” *Id.* With respect to the precise nature of the government function,  
24 the Supreme Court has long held that “Congress regularly makes rules” regarding  
25 immigration that “would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S.  
26 67, 79-80 (1976). Under these circumstances, Petitioner does not have a cognizable liberty  
27 interest in a pre-detention hearing.  
28

1           The Supreme Court has long recognized that due process is limited when it comes  
2 to noncitizens seeking admission. Understanding the statutory interpretation of 8 U.S.C. §  
3 1225(b) and the rights it affords to “arriving aliens” like Petitioner, is critical because, for  
4 “more than a century” now, the Supreme Court has held that the rights of such noncitizens  
5 are confined exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at  
6 131; *see also Nishimura Ekiu*, 142 U.S. 651, 660 (1892) (holding that with regard to  
7 “foreigners who have never been naturalized, nor acquired any domicile or residence  
8 within the United States, nor even been admitted into the country pursuant to law,” “the  
9 decisions of executive or administrative officers, acting within powers expressly conferred  
10 by Congress, are due process of law.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This  
11 Court has long held that an alien seeking initial admission to the United States requests a  
12 privilege and has no constitutional rights regarding his application, for the power to admit  
13 or exclude aliens is a sovereign prerogative”); *Shaugnessy v. United States ex rel. Mezei*,  
14 345 U.S. 206, 212 (1953) (rejecting noncitizens’ habeas petitions premised on their claim  
15 that their detention without a bond hearing violated their Fifth Amendment Due Process  
16 rights because “an alien on the threshold of initial entry stands on a different footing:  
17 ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien  
18 denied entry is concerned.’”).

19           The Supreme Court’s holding on this topic was reinforced most recently in  
20 *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry  
21 to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment  
22 Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court “reiterated  
23 th[e] important rule,” *id.* at 138, that a noncitizen seeking initial entry to the United States  
24 “has no entitlement” to any legal rights, constitutional or otherwise, other than those  
25 expressly provided by statute. *Id.* at 107 (“Congress is entitled to set the conditions for an  
26 alien’s lawful entry into this country and [] as a result [] an alien at the threshold of initial  
27 entry cannot claim any greater rights under the Due Process Clause.”); *id.* (holding that a  
28 noncitizen seeking initial entry “has no entitlement to procedural rights other than those

1 afforded by statute”); *id.* at 140 (A noncitizen seeking initial entry to the United States “has  
2 only those rights regarding admission that Congress has provided by statute” and “the Due  
3 Process Clause provides nothing more[.]”).

4 **E. Petitioner’s arrest did not violate his fourth amendment rights.**

5 The legality of an arrest of an alien based upon a civil immigration violation is well  
6 established. *See Abel v. United States*, 362 U.S. 217, 230 (1960)(“Statutes authorizing  
7 administrative arrest to achieve detention pending deportation have the sanction of time.”).  
8 The statute authorizing the warrantless arrest of an alien by an ICE officer does not  
9 expressly require probable cause but authorizes the arrest if the officer “has reason to  
10 believe” that the alien is in the United States in violation of a law governing admission or  
11 removal of aliens and is likely to escape before a warrant is issued. 8 U.S.C. § 1357(a)(2).  
12 ICE had reason to believe Petitioner was unlawfully present in the United States without  
13 having been admitted. Therefore, his re-arrest did not violate his fourth amendment rights.

14 RESPECTFULLY SUBMITTED October 2, 2025.

15 TIMOTHY COURCHINE  
16 United States Attorney  
17 District of Arizona

18 *s/Theo Nickerson*  
19 THEO NICKERSON  
20 Assistant United States Attorney  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing:

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