

District Judge Thomas S. Zilly
Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENETH MENA TORRES,

Petitioner,

v.

CAMMILLA H. WAMSLEY, *et al.*,

Respondents.

Case No. 3:25-cv-05772-TSZ-MLP

FEDERAL RESPONDENTS'¹ RETURN
MEMORANDUM

Noted for Consideration:
October 31, 2025

I. INTRODUCTION

This Court should deny Petitioner Keneth Mena Torres's habeas petition. Dkt. No. 1. Petitioner contends that his mandatory detention and ineligibility for bond under 8 U.S.C. § 1225(b)(2) is unlawful because his detention should be governed by 8 U.S.C. § 1226(a). He is wrong. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2) and he is subject to mandatory detention.²

¹ Respondent Bruce Scott is not a federal official or employee and is not represented by the U.S. Attorney's Office.

² A court in this District recently issued an order finding that mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful for the certified class. *Rodriguez Vasquez v. Bostock*, No. 3:25-cv-05240-TMC, Dkt. No. 65 (W.D. Wash. Sept. 30, 2025). The relevant class is defined as "all noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the

1 The plain language of the Immigration and Nationality Act (“INA”) mandates that
2 Petitioner – who is present in the United States without having been admitted – is correctly
3 considered an “applicant for admission” and therefore subject to detention under 8 U.S.C. §
4 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“Read most naturally, §§ 1225(b)(1)
5 and (b)(2) thus mandate detention of applicants of admission until certain proceedings have
6 concluded.”). The best reading of the statute is that Congress insured that all noncitizens would
7 be inspected by immigration authorities by treating noncitizens who are present in the United
8 States without having been inspected and admitted as applicants for admission. Noncitizens who
9 are present without having been inspected and admitted have the benefit of full removal
10 proceedings and are not subject to expedited removal. But they are subject to detention during
11 their removal proceedings.

12 Accordingly, Federal Respondents respectfully request that the Court deny the habeas
13 petition.

14 II. BACKGROUND

15 A. Legal Background

16 1. Applicants for Admission

17 “The phrase ‘applicant for admission’ is a term of art denoting a particular legal status.”
18 *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

- 19 (1) Aliens treated as applicants for admission. – An alien present in the United
20 States who has not been admitted or who arrives in the United States (whether
21 or not at a designated port of arrival ...) shall be deemed for the purposes of
22 this Act an applicant for admission.

23
24 time the noncitizen is scheduled for or requests a bond hearing.” *Id.*, at 58. Here, Petitioner is not a member of the
class because he was apprehended upon arrival.

1 8 U.S.C. § 1225(a)(1).³ Section 1225(a)(1) was added to the INA as part of the Illegal Immigration
2 Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. No. 104-208, § 302, 110
3 Stat. 3009-546. “The distinction between an alien who has effected an entry into the United States
4 and one who has never entered runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S.
5 678, 693 (2001).

6 Before IIRIRA, “immigration law provided for two types of removal proceedings:
7 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999)
8 (en banc). A deportation hearing was a proceeding against a noncitizen already physically present
9 in the United States, whereas an exclusion hearing was against a noncitizen outside of the United
10 States seeking admission. *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an
11 applicant was eligible for “admission” was determined only in exclusion proceedings, and
12 exclusion proceedings were limited to “entering” noncitizens – those noncitizens “coming ... into
13 the United States, from a foreign port or place or from an outlying possession.” *Plasencia*, 459
14 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]on-citizens who had entered without
15 inspection could take advantage of greater procedural and substantive rights afforded in
16 deportation proceedings, while noncitizens who presented themselves at a port of entry for
17 inspection were subjected to more summary exclusion proceedings.” *Hing Sum v. Holder*, 602
18 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to IIRIRA,
19 noncitizens who attempted to lawfully enter the United States were in a worse position than
20 noncitizens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also H.R.*
21 *Rep. No. 104-469*, pt. 1, at 225-229 (1996). IIRIRA “replaced deportation and exclusion
22 proceedings with a general removal proceeding.” *Hing Sum*, 602 F.3d at 1100.

23
24 ³ Admission is the “lawful entry of an alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13).

1 IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants who have not been
2 lawfully admitted, regardless of their physical presence in the country, are placed on equal footing
3 in removal proceedings under the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt.
4 1, at 225 (explaining that Section 1225(a)(1) replaced “certain aspects of the current ‘entry
5 doctrine,’” under which noncitizens who entered the United States without inspection gained
6 equities and privileges in immigration proceedings unavailable to aliens who presented themselves
7 for inspection at a port of entry). The provision “places some physically-but not-lawfully present
8 noncitizens into a fictive legal status for purposes of removal proceedings.” *Torres*, 976 F.3d at
9 928.

10 2. Detention Under 8 U.S.C. § 1225

11 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
12 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
13 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
14 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims
15 and expeditiously removing the aliens making such claims from the country.”). Section 1225
16 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
17 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
18 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
19 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
20 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287.

21 a. Section 1225(b)(1)

22 Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially
23 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.”
24 *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of

1 any noncitizen “described in” Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney
 2 General or Secretary of Homeland Security – that is, any noncitizen not “admitted or paroled into
 3 the United States” and “physically present” fewer than two years – who is inadmissible under
 4 Section 1182(a)(7) at the time of “inspection.” See 8 U.S.C. § 1182(a)(7) (categorizing as
 5 inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry
 6 or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen
 7 for admission under Section 1225(a)(3), that noncitizen lacks entry documents and so is subject to
 8 Section 1182(a)(7). The Attorney General’s or Secretary’s authority to “designate” classes of
 9 noncitizens as subject to expedited removal is subject to his or her “sole and unreviewable
 10 discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); see also *American Immigration Lawyers Ass’n v. Reno*,
 11 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

12 The Secretary (and earlier, the Attorney General) has designated categories of noncitizens
 13 for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring
 14 the expedited removal scope to “the fullest extent authorized by Congress.” *Designating Aliens*
 15 *for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables DHS “to place
 16 in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8
 17 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States
 18 and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have
 19 been physically present in the United States continuously for the two-year period immediately
 20 preceding the date of the determination of inadmissibility,” who were not otherwise covered by
 21 prior designations. *Id.*, at 8139-40.

22 //

23 //

24 //

1 Expedited removal proceedings under Section 1225(b)(1) include additional procedures if
2 a noncitizen indicates an intention to apply for asylum⁴ or expresses a fear of persecution, torture,
3 or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If
4 the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed
5 from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
6 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum
7 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal
8 proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. §
9 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

10 Expedited removal under Section 1225(b)(1) is a distinct statutory procedure from removal
11 under Section 1229a. Section 1229a governs full removal proceedings initiated by a notice to
12 appear and conducted before an immigration judge, during which the noncitizen may apply for
13 relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower,
14 statutorily defined circumstances – typically to individuals apprehended at or near the border who
15 lack valid entry documents or commit fraud upon entry – and allows for their removal without a
16 hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS
17 has discretion to pursue expedited removal under Section 1225(b)(1) or removal under
18 Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

19 **b. Section 1225(b)(2)**

20 Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S.
21 at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under Section
22 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention

23 ⁴ Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except
24 if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.*
§ 1558(a)(2)(D).

1 pending full removal proceedings “if the examining immigration officer determines that [the] alien
2 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
3 1225(b)(2)(A). While Section 1225 does not provide for noncitizens to be released on bond, DHS
4 has the sole discretionary authority to release any applicant for admission on a “case-by-case basis
5 for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v.*
6 *Texas*, 597 U.S. 785, 806 (2022).

7 **2. Detention Under 8 U.S.C. § 1226(a)**

8 Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision on
9 whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under Section
10 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release
11 him on bond, or release him on conditional parole.⁵ By regulation, immigration officers can release
12 a noncitizen if he demonstrates that he “would not pose a danger to property or persons” and “is
13 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). A noncitizen can also request
14 a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final
15 order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

16 **B. Factual Background**

17 Petitioner is a native and citizen of the Honduras who entered the United States without
18 inspection on or around August 16, 2016, in Texas. Dkt. No. 11 Declaration of Christopher Sica
19 (“Sica Decl.”), ¶ 3; Pet., ¶ 23; Supplemental Declaration of Michelle Lambert (“Supp. Lambert
20 Decl.”), Ex. B, Form I-213; Ex. C, Warrant for Arrest; Ex. D, Notice of Custody Determination.
21 He was 11 or 12 years old at the time and an unaccompanied minor. Pet., ¶ 11.

22

23 ⁵ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States
24 under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding
that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment
of status under § 1255(a)).

1 The U.S. Department of Homeland Security (“DHS”) issued a Notice to Appear, charging
2 Petitioner with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). Sica Decl., ¶ 5; Supp. Lambert
3 Decl., Ex. E, Notice to Appear. While he was initially in custody of the Department of Health and
4 Human Services’ (“HHS”) Office of Refugee Resettlement, Petitioner was released to the custody
5 of his mother the following month. Sica Decl., ¶ 6; Supp. Lambert Decl., Ex. F, Verification of
6 Release.

7 Petitioner filed an asylum application with U.S. Citizenship and Immigration Services in
8 May 2017. Sica Decl., ¶ 7; Pet., ¶ 23. The petition remains pending. Shortly after the asylum
9 application was filed, the IJ administratively closed Petitioner’s removal proceedings. Sica Decl.,
10 ¶ 7; Pet., ¶ 25; Supp. Lambert Decl., Ex. G, Order of the IJ. He asserts that he also has a Form I-
11 730, Petition for Refugee/Asylee Relative, pending based on his mother’s asylee status. Pet.,
12 ¶¶ 26, 27.

13 On June 27, 2025, ICE filed a motion to recalendar Petitioner’s removal proceedings
14 pursuant to the President’s Executive Order 14159. Sica Decl., ¶ 8. The IJ did not grant the
15 motion. *Id.*; Pet., ¶ 28; Supp. Lambert Decl., Ex. H, Order of the IJ.

16 On August 12, 2025, the U.S. Drug Enforcement Agency (“DEA”) in San Francisco
17 conducted a search warrant of premises that Petitioner asserts is his home. Sica Decl., ¶ 9; Pet.,
18 ¶ 29. ICE was present at the search to assist the DEA. Sica Decl., ¶ 9. During the execution of
19 the search warrant, ICE took Petitioner into its custody. *Id.*; Supp. Lambert Decl., Ex. I, Form I-
20 213; Ex. J, Warrant for Arrest. He was transferred to the Northwest ICE Processing Center that
21 same day. *Id.*

22 On August 29, 2025, an IJ denied Petitioner’s request for bond. Sica Decl., ¶ 10; Pet., ¶ 30.
23 The IJ found that the court lacked jurisdiction to issue bond as Petitioner was detained pursuant to
24 8 U.S.C. § 1225(b). Dkt. No. 12, Lambert Decl., Ex. A, Order of the IJ. In the alternative, and if

1 it was later determined that the immigration court had jurisdiction, the IJ ordered that Petitioner
2 be released from custody on \$5,000 bond. *Id.*; Pet., ¶ 31.

3 On September 10, 2025, the San Francisco Immigration court granted DHS's motion to
4 recalendar Petitioner's immigration proceedings. Supp. Lambert Decl., Ex. K. Two days later,
5 the venue of his immigration proceedings was transferred Tacoma Immigration Court. *Id.*, Ex. L.

6 III. ARGUMENT

7 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible
8 and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed
9 from the United States. "[D]etention necessarily serves the purpose of preventing deportable []
10 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if
11 ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528
12 (2003). The Supreme Court has long held that deportation proceedings "would be in vain if those
13 accused could not be held in custody pending the inquiry" of their immigration status. *Wong Wing*
14 *v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to
15 be detained during the course of their removal proceedings. *See Jennings*, 583 U.S. at 299
16 (interpreting the "plain meaning" of sections 1225(b)(1) and (2) to mean that applicants for
17 admission be mandatorily detained for the duration of their immigration proceedings).

18 **A. Under the statutory text, noncitizens present in the United States without having been**
19 **admitted are applicants for admission.**

20 The plain language of the statute is clear; Petitioner is subject to detention under Section
21 1225(b)(2) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec.
22 216, 220 (BIA 2025); *but see Rodriguez Vasquez v. Bostock*, No. 3:25-cv-05240-TMC, Dkt. No.
23 65, 34-37 (W.D. Wash. Sept. 30, 2025). Section 1225(b)(2)(A) requires mandatory detention of
24 "an alien who is an applicant for admission, if the examining immigration officer determines that

1 an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C.
 2 § 1225(b)(2)(A). The INA specifies that “[a]n alien present in the United States who has not been
 3 admitted . . . shall be deemed for purposes of this Act an applicant for admission.” 8 U.S.C. §
 4 1225(a)(1). Petitioner does not dispute that he is a noncitizen who is present in the United States
 5 who has not been admitted. Thus, Petitioner is an “applicant for admission” and thus subject to
 6 mandatory detention under Section 1225(b)(2).

7 Petitioner’s argument that the phrase “seeking admission” limits the scope of Section
 8 1225(b)(2)(A) is unpersuasive. Pet., ¶ 42. He incorrectly argues that Section “1225(b)(2) does
 9 not apply to people like [him].” *Id.* Courts “interpret the relevant words not in a vacuum, but with
 10 reference to the statutory context, ‘structure, history and purpose’.” *Abramski v. United States*,
 11 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The Board of
 12 Immigration Appeals (“BIA”) has long recognized that “many people who are not actually
 13 requesting permission to enter the United States in the ordinary sense are nevertheless deemed to
 14 be ‘seeking admission’ under immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743
 15 (BIA 2012).

16 Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36
 17 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)).
 18 The phrase “seeking admission” in Section 1225(b)(2)(A) must be read in the context of “applicant
 19 for admission” in Section 1225(a)(1). Applicants for admission include arriving noncitizens and
 20 noncitizens present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be
 21 “seeking admission” under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made clear that
 22 all noncitizens “who are applicants for admission or otherwise seeking admission” are to be
 23 inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an
 24

1 appositive – a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’
2 ‘Batman or the Caped Crusader’).” *See United States v. Woods*, 571 U.S. 31, 45 (2013).

3 Petitioner’s limiting interpretation reads “applicant for admission” out of Section
4 1225(b)(2)(A). “[O]ne of the most basic interpretive canons” instructs that a “statute should be
5 construed so that effect is given to all its provisions.” *Corley v. United States*, 556 U.S. 303, 314
6 (2009). “Applicant” is defined as “[s]omeone who requests something; a petitioner, such as a
7 person who applies for letters of administration.” *Black’s Law Dictionary* (12th ed. 2024).
8 Applying the definition of “applicant” to “applicant for admission,” an applicant for admission is
9 a noncitizen “requesting” admission, defined by statute as “the lawful entry of the alien into the
10 United States after inspection.” 8 U.S.C. § 1101(a)(13)(A). “Seeking admission” does not have a
11 different meaning from applicant for admission (“requesting admission”); the terms are
12 synonymous.

13 Petitioner incorrectly asserts that Section 1226(c)(1)(E) demonstrates that noncitizens
14 being charged as inadmissible are subject to detention pursuant to Section 1226. Pet, ¶ 41. Section
15 1226(c) applies to “detention of criminal aliens,” which does not apply to Petitioner. His citation
16 to Section 1226(c)(E)(i) (including aliens who are inadmissible under certain provisions of 8
17 U.S.C. § 1182) ignores that those inadmissible noncitizens must also be “charged with,” “arrested
18 for,” “convicted of,” or admitted to having committed certain criminal acts. 8 U.S.C.
19 § 1226(c)(1)(E)(ii).

20 The fact that 8 U.S.C. § 1226(c) mandates detention of a subset of the category of aliens
21 that are also subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is not a basis on which
22 to determine that Section 1225(b)(2)(A) is null and void. *See Barton v. Barr*, 590 U.S. 222, 239
23 (2020) (holding that because “redundancies are common in statutory drafting – sometimes in a
24 congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack

1 of foresight, or sometimes simply because of the shortcomings of human communication,” —
2 “[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of
3 the statute contrary to its text”).

4 **B. Under *Loper Bright*, the statute controls, not prior agency practices.**

5 Any argument that prior agency practice applying Section 1226(a) to applicants for
6 admission is unavailing because under *Loper Bright*, the plain language of the statute and not prior
7 practice controls. *Yajure-Hurtado*, 29 I. & N. Dec. at 225-26. In overturning *Chevron*, the
8 Supreme Court recognized that courts often change precedents and “correct[] our own mistakes.”
9 *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v.*
10 *Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency
11 interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself
12 predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Therefore,
13 longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given
14 to agency interpretations “must always ‘depend upon their thoroughness, the validity of their
15 reasoning, the consistency with earlier and later pronouncements, and all those factors which give
16 them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore v.*
17 *Swift Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

18 Petitioner points to 62 Fed. Reg. at 10323 to assert that the Immigration and Naturalization
19 Service’s (“INS”) rule applied Section 1226 to “individuals who had entered without inspection.”
20 Pet., ¶¶ 35-36. But the INS provided no analysis of its reasoning. In contrast, the BIA’s recent
21 precedent decision in *Matter of Yajure-Hurtado* includes thorough reasoning. 29 I. & N. Dec. at
22 221-22. In *Yajure*, the BIA analyzed the statutory text and legislative history. *Id.*, at 223-25. It
23 highlighted congressional intent that noncitizens present without inspection be considered
24 “seeking admission.” *Id.*, at 224. The BIA concluded that rewarding noncitizens who entered

1 unlawfully with bond hearings while subjecting those presenting themselves at the border to
2 mandatory detention would be an “incongruous result” unsupported by the plain language “or any
3 reasonable interpretation of the INA.” *Id.*, at 228.

4 To be sure, “when the best reading of the statute is that it delegates discretionary authority
5 to an agency,” the Court must “independently interpret the statute and effectuate the will of
6 Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§ 1225(b)(1)
7 and (b)(2) mandate detention for applicants for admission until certain proceedings have
8 concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support a position
9 other than Petitioner’s detention is mandated by Section 1225(b)(2).

10 **C. Petitioner’s status as an unaccompanied child (“UAC”) does not prohibit his current**
11 **detention pursuant to Section 1225(b).**

12 Petitioner incorrectly asserts that because of his UAC status that he is “immune” from
13 Section 1225(b) mandatory detention. Dkt. No. 13, Reply, at 1. He argues that 8 U.S.C.
14 § 1232(c)(2)(B) required DHS to consider his placement in the least restrictive setting considering
15 individualized danger/flight risk when he was detained earlier this year. *Id.*, at 2. However, the
16 plain language of the statute applies to noncitizens transferred from HHS custody to DHS custody
17 when they turn 18 years old. 8 U.S.C. § 1232(c)(2)(B) (“If a minor described in subparagraph (A)
18 reaches 18 years of age and is transferred to the custody of [DHS] . . .”). Petitioner’s current
19 detention did not arise from a custody transfer from HHS to DHS due to him aging out. HHS had
20 already transferred him to his mother’s custody. Supp. Lambert Decl., Ex. F (stating that HHS
21 “has released the above named minor from Federal custody” to the care of his mother). And he
22 does not allege that he was in HHS custody when he turned 18.

23 Petitioner relies on a decision from a class action for his argument that he is entitled to “age
24 out” UAC custody treatment. Reply, at 5 (citing *Garcia Ramirez v. ICE*, No 18-508 (D.D.C)).

1 However, the facts in *Garcia Ramirez* materially differ from Petitioner's circumstances in that
2 *Garcia Ramirez* analyzed DHS policies and procedures concerning the direct transfer of UACs in
3 custody of HHS's Office of Refugee Resettlement to DHS upon their eighteenth birthday. *Ramirez*
4 *v. U.S. Immigr. & Customs Enft*, 471 F. Supp. 3d 88, 95 (D.D.C. 2020) (class definition), *judgment*
5 *entered*, 568 F. Supp. 3d 10 (D.D.C. 2021). Thus, *Garcia Ramirez* is inapposite here.

6 Furthermore, this Court should require Petitioner to exhaust his administrative remedies by
7 presenting his argument to an IJ that he cannot be detained pursuant to 8 U.S.C. § 1225(b) because
8 of his former UAC status. Although exhaustion of administrative remedies is not a jurisdictional
9 prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas
10 petitioners exhaust available judicial and administrative remedies before seeking [such] relief."
11 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by
12 *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to
13 waiver because it is not a "'jurisdictional' prerequisite." *Id.*

14 Courts may require prudential exhaustion where: "(1) agency expertise makes agency
15 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of
16 the requirement would encourage the deliberate bypass of the administrative scheme; and (3)
17 administrative review is likely to allow the agency to correct its own mistakes and to preclude the
18 need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). In sum, district
19 courts should require administrative exhaustion where it would aid in developing a more complete
20 factual record for federal judicial review, prevent forum shopping, and conserve federal judicial
21 resources by permitting agencies to correct their own mistakes where they are likely to do so. *Id.*

22 Each of the three *Puga* factors weigh in favor of exhaustion in this case. First,
23 consideration by an IJ and the BIA would provide agency expertise that "makes agency
24 consideration necessary to generate a proper record and reach a proper decision." *Puga*, 488 F.3d

1 at 815. Petitioner raises a statutory challenge to the basis for his detention. Instead of asking the
2 immigration court or the BIA – the experts on the INA – to interpret whether the age out protections
3 include this type of detention first, he asks this Court to make that determination. *See INS v.*
4 *Aguirre-Aguirre*, 526 U.S. 415, 424-25 (1999) (explaining the role of the Attorney General and
5 the BIA as primary interpreters of the Immigration and Nationality Act); *see also Aden v. Nielsen*,
6 18-cv-1441-RSL, 2019 WL 5802013 at *2 (W.D. Wash. Nov. 7, 2019) (recognizing expertise of
7 the BIA).

8 The remaining *Puga* factors also favor the requirement for administrative exhaustion here.
9 Allowing a “relaxation of the exhaustion requirement” would promote the avoidance of raising
10 fact specific statutory questions to the IJ or an appeal of similar IJ orders to the BIA. Finally, the
11 outcome of a bond redetermination hearing before an IJ or a subsequent BIA appeal may provide
12 Petitioner with the relief sought here – his release.

13 Petitioner has not demonstrated grounds for excusing the exhaustion requirement for this
14 issue. In the habeas petition, he argues that this Court should not require Petitioner to wait for a
15 BIA decision on his appeal of the IJ’s order. Pet., ¶ 8. He claims that “the BIA does not provide
16 timely review of detention decisions.” *Id.*, ¶¶ 46-52, 61. But Petitioner does not assert that raising
17 this issue to the IJ would be futile. Nor does he explain why this issue was not raised to the IJ at
18 the bond determination hearing in August or anytime since. In short, he has raised an argument in
19 this habeas litigation that the administrative process has never been given the opportunity to
20 review.

21 This Court should not waive the prudential administrative exhaustion requirement
22 concerning Petitioner’s claim that he cannot be detained pursuant to Section 1225(b) because of his
23 former UAC status.

24

1 **D. Petitioner has failed to state a claim that the BIA's review of detention orders violates**
2 **his due process rights.**

3 Petitioner asserts that the BIA's review process of detention orders violates due process.
4 Pet., ¶¶ 60-61. He specifically claims – without legal support – that “[b]y not adjudicating
5 appeals within sixty days of the filing of a notice of appeal, the BIA does not provide timely
6 review of detention decisions.” *Id.*, ¶ 61. But he does not assert that he has even filed an
7 administrative appeal or that such an appeal has been pending for more than sixty days.
8 Therefore, he has not stated a claim that the BIA's review of detention orders violates his due
9 process rights.

10 **IV. CONCLUSION**

11 Congress intended for noncitizens present without inspection, including Petitioner, to be
12 treated as applicants for admission. Thus, Petitioner is lawfully detained pursuant to 8 U.S.C.
13 § 1225(b)(2) and subject to mandatory detention. For the foregoing reasons, Federal Respondents
14 respectfully request that this Court deny the habeas petition.

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1 DATED this 3rd day of October, 2025.

2 Respectfully submitted,

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16 I certify that this memorandum contains 4,809
17 words, in compliance with the Local Civil Rules.