

1 TIMOTHY COURCHAIINE
 2 United States Attorney
 District of Arizona
 3 LINDSEY E. GILMAN
 4 Assistant U.S. Attorney
 Arizona State Bar No. 034003
 5 Two Renaissance Square
 6 40 North Central Avenue, Suite 1800
 Phoenix, Arizona 85004-4449
 7 Telephone: (602) 514-7500
 Facsimile: (602) 514-7760
 8 Email: Lindsey.Gilman@usdoj.gov
 9 *Attorneys for Respondents*

10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF ARIZONA**

12 Erlan Moldogaziev,

13 Petitioner,

14 v.

15 John Cantu, et al.,

16 Respondents.

No. CV-25-03265-PHX-MTL-JFM


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

18 Respondents Fred Figueroa, Warden, Eloy Detention Center, John Cantu, Arizona
 19 Field Office Director, U.S. Immigration and Customs Enforcement (ICE), Todd M. Lyons,
 20 Director, Kristi Noem, Secretary of the Department of Homeland Security, and Pamela J.
 21 Bondi, Attorney General of the United States, (Respondents), through undersigned
 22 counsel, answers the Amended Petition for Writ of Habeas Corpus (Doc. 4). The Court
 23 should dismiss the Amended Petition because Petitioner is currently in removal
 24 proceedings under INA § 240, 8 U.S.C. § 1229, as an inadmissible arriving alien subject
 25 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). While Petitioner’s claims are
 26 structured around allegations of unlawful detention authority, his claims attack the decision
 27 rendered by immigration judges (IJs) during immigration bond hearings, denying bond,
 28 which is explicitly barred by statute. He also challenges 8 C.F.R. § 1003.19(i)(2))

1 authorizing Petitioner's detention through an automatic stay, but critically, that automatic
2 stay merely implements detention Congress authorized under 8 U.S.C. § 1225(b)(2).
3 Through multiple provisions of 8 U.S.C. § 1252, Congress has unambiguously stripped
4 federal courts of jurisdiction over challenges to the commencement of removal proceedings,
5 including detention pending removal proceedings. For these reasons, Petitioner's request
6 for habeas relief should be denied. This Response is supported by the following
7 Memorandum of Points and Authorities and attached declaration.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 I. FACTUAL BACKGROUND.

10 Erlan Moldogaziev (Petitioner) is a native and citizen of Kyrgyzstan, born on
11 , in Balykchy, Kyrgyzstan. *See* Declaration of David A. Sandoval,
12 Deportation Officer, attached as Exhibit A, at ¶ 4. On September 21, 2022, the United
13 States Customs and Border Protection (CBP) encountered the Petitioner at the San Ysidro,
14 California, Port of Entry. *Id.* at ¶ 5. He did not possess valid legal documents to enter the
15 United States. *Id.* After processing, the Petitioner was found to be inadmissible pursuant
16 section 212(a)(6)(A)(i)(I) of Immigration and Nationality Act (INA) and processed for
17 removal. *Id.* On September 21, 2022, the Petitioner was personally served with a Notice to
18 Appear and placed into removal proceedings in Chicago, Illinois. *Id.* at ¶ 6.

19 On October 22, 2022, a Notice to Appear was filed with the Executive Office for
20 Immigration Review placing the Petitioner in removal proceedings under section
21 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA). *Id.* at ¶ 7. On July 16,
22 2025, the immigration court in Chicago, Illinois scheduled the Petitioner removal hearing
23 to occur on February 3, 2027. *Id.* at ¶ 8. On August 26, 2025, about three years later,
24 Petitioner was encountered at a CBP checkpoint in Blythe, Arizona, and CBP determined
25 the Petitioner did not have proper documents to legally remain in the United States. *Id.* at
26 ¶ 9. He was transferred to Eloy, Arizona, a few days later. *Id.* at ¶ 10.

27 On September 8, 2025, the immigration court in Eloy, Arizona, denied the
28 Petitioner's bond because the immigration court lacked jurisdiction *Id.* at ¶ 12; *see also*

1 Immigration Judge’s Written Order Denying Bond, attached as Exhibit B. On September
2 9, 2025, the Petitioner filed an appeal with the Board of Immigration Appeals (BIA)
3 appealing the bond denial. *Id.* at ¶ 13. On September 18, 2025, the immigration court in
4 Chicago, Illinois changed venue to Eloy, Arizona. *Id.* at ¶ 16. Petitioner remains in custody
5 in Eloy, Arizona, as the process unfolds. *Id.* at ¶ 17. On October 1, 2025, the immigration
6 court in Eloy, Arizona scheduled the Petitioner’s removal hearing to occur on October 17,
7 2025, his next removal hearing. *Id.* at ¶¶ 18-19.

8 The U.S. Attorneys’ Office for the District of Arizona was served with a copy of the
9 Amended Petition on September 19, 2025, making the Respondents’ 20-day deadline to
10 respond to the petition as October 9, 2025. Petitioner raises several claims for relief, such
11 as unlawful denial of release on bond, violation of his due process rights under the Fifth
12 Amendment, and various APA violations. Doc. 4.

13 **II. Standard of Review.**

14 In a petition for a writ of habeas corpus, the petitioner is challenging the legality the
15 restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show
16 the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941).
17 Specifically, here, Petitioner challenges his temporary civil immigration detention pending
18 his removal proceeding.

19 Judicial review of immigration matters, including of detention issues, is limited.
20 *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-*
21 *Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420,
22 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292,
23 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over
24 aliens is of a political character and therefore subject only to narrow judicial review”). The
25 Supreme Court has thus “underscore[d] the limited scope of inquiry into immigration
26 legislation,” and “has repeatedly emphasized that over no conceivable subject is the
27 legislative power of Congress more complete than it is over the admission of aliens.”
28

1 *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82
2 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

3 The plenary power of Congress and the Executive Branch over immigration
4 necessarily encompasses immigration detention, because the authority to detain is
5 elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy*
6 *v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to
7 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's
8 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.
9 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*
10 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would
11 be vain if those accused could not be held in custody pending the inquiry into their true
12 character, and while arrangements were being made for their deportation.”); *Demore v.*
13 *Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a
14 constitutionally permissible part of that process.”)

15 **III. This Court Lacks Subject Matter Jurisdiction Under 8 U.S.C. § 1252(g).**

16 Petitioner, who is currently in general removal proceedings, is challenging his
17 mandatory detention under 8 U.S.C. § 1225(b)(2) that does not allow for bond. Doc. 4 at
18 14. Courts lack subject matter jurisdiction to review a decision to commence or adjudicate
19 removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall
20 have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
21 decision or action by the Attorney General to commence proceedings, adjudicate cases, or
22 execute removal orders.”); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
23 483 (1999) (“There was good reason for Congress to focus special attention upon, and
24 make special provision for, judicial review of the Attorney General’s discrete acts of
25 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—
26 which represent the initiation or prosecution of various stages in the deportation process.”);
27 *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
28 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest

1 and detain an alien at the commencement of removal proceedings are not within any court's
2 jurisdiction").

3 Specifically, 8 U.S.C. § § 1252(g) removes district court jurisdiction over "three
4 discrete actions that the Attorney General may take: [the] 'decision or action' to
5 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at
6 482 (emphasis removed). Here, Petitioner's claims necessarily arise "from the decision or
7 action by the Attorney General to commence proceedings [and] adjudicate cases," over
8 which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). As
9 such, for these reasons, his Petition should be dismissed.

10 **IV. Sections 1252(b)(9) and 1252(a)(5) Are Also Subject Matter Stripping Statutes.**

11 Under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . .
12 arising from any action taken or proceeding brought to remove an alien from the United
13 States under this subchapter shall be available only in judicial review of a final order under
14 this section."

15 Judicial review of a final order is available only through "a petition for review filed
16 with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made
17 clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review
18 of all" "decisions and actions leading up to or consequent upon final orders of deportation,"
19 including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S.
20 at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting §
21 1252(b)(9) is "breathhtaking in scope and vise-like in grip and therefore swallows up
22 virtually all claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5)
23 and § 1252(b)(9) mean that any issue—whether legal or factual—arising from any
24 removal-related activity can be reviewed only through the [petition for review] PFR
25 process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit how immigrants can
26 challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by
27 their terms, foreclose all judicial review of agency actions. Instead, the provisions channel
28 judicial review over final orders of removal to the courts of appeal.") (emphasis in

1 original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims,
 2 including policies-and-practices challenges . . . whenever they ‘arise from’ removal
 3 proceedings”). The Petition should also be dismissed under these grounds.

4 **V. Petitioner is an arriving alien subject to mandatory detention which comports**
 5 **with his due process rights under the Fifth Amendment.**

6 An arriving alien is “an applicant for admission coming or attempting to come into
 7 the United States at a port-of-entry, or an alien seeking transit through the United States at
 8 a port-of-entry, or an alien interdicted in international or United States waters and brought
 9 into the United States by any means, whether or not to a designated port-of-entry, and
 10 regardless of the means of transport. *See* 8 C.F.R. § 1.2.

11 Here, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)’s
 12 mandatory detention as Petitioner is an “applicant for admission” to the United States,
 13 which includes undocumented aliens presented in the United States. Ex. A at ¶¶ 5, 9, 12;
 14 *see also* Ex. B. Petitioner is an arriving alien subject to mandatory detention under 8 U.S.C.
 15 § 1225(b)(2)(A), and detention throughout the remainder of those proceedings are lawful.
 16 Noncitizens in pre-final-removal-order civil immigration detention generally fall within
 17 two categories: 8 U.S.C. § 1225, which consists of noncitizens seeking an initial entry, and
 18 8 U.S.C. § 1226, which consists of noncitizens who entered the United States. Petitioner
 19 falls under 8 U.S.C. § 1225 because he was found to be an inadmissible arriving alien. The
 20 difference between the noncitizens in these two categories is significant for due process
 21 purposes. *See Thuraissigiam*, 591 U.S. 103, 117 106–07, 138–40 (2020); *Mendoza-Linares*
 22 *v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the “unique constitutional status
 23 of arriving aliens with no ties to the United States”).¹

24
 25 ¹ The United States District Court for the District of Nebraska recently denied a
 26 similar Petition for Writ of Habeas Corpus filed by a Petitioner, who came to the U.S. in
 27 2013, and detained under § 1225(b)(2) without bond, holding that Petitioner was properly
 28 detained under § 1225(b)(2) as an alien within the “catchall” scope of § 1225(b)(2), and
 that remaining in the country for years did not mean he was suddenly not an “applicant for
 admission.” *Luciano Vargas Lopez v. Trump, et al.*, 8:25-cv-00526-BCB-RCC (D. Neb.
 Sept. 30, 2025), at Doc. 35. The United States District Court for the Southern District of
 California also issued a favorable ruling denying Petitioner’s Request for a TRO who was
 similarly detained under § 1225(b)(2) despite already being in the U.S. *See Jose Guadalupe*

1 Respondents are aware of a prior ruling in this District rejecting these arguments,
2 *see e.g., Francisco Cerritos Echevarria v. Pam Bondi, et al.*, 2:25-cv-03252-DWL-ESW,
3 (D. Ariz. October 3, 2025), but Respondents respectfully maintains that Petitioner has not
4 been deprived of due process, and falls within the definition of an “arriving alien”
5 warranting mandatory detention as the removal process unfolds. This case is also
6 distinguishable from *Francisco Cerritos Echevarria* in that CBP encountered the Petitioner
7 at the San Ysidro, California, Port of Entry on September 21, 2022, clearly as an arriving
8 alien. Ex. A at ¶ 5. He did not possess valid legal documents to enter the United States. *Id.*
9 After processing, the Petitioner was found to be inadmissible pursuant section
10 212(a)(6)(A)(i)(I) of Immigration and Nationality Act (INA) and processed for removal.
11 *Id.* On September 21, 2022, the Petitioner was personally served with a Notice to Appear
12 and placed into removal proceedings in Chicago, Illinois. *Id.* at ¶ 6. On August 26, 2025,
13 about three years later, Petitioner was encountered at a CBP checkpoint in Blythe, Arizona,
14 as opposed to being arrested outside his home 24-years later as Echevarria, and CBP
15 subsequently determined the Petitioner did not have proper documents to legally remain in
16 the United States. *Id.* at ¶ 9. These facts demonstrate that he is an arriving alien.

17 The Supreme Court considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
18 the length of detention and whether such noncitizens detained under this statutory authority
19 have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 296-303. The Supreme
20 Court held that “nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on
21 the length of detention” nor “says anything whatsoever about bond hearings.” *Id.* at 842.
22 The sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is
23 temporary parole at the discretion of DHS under 8 U.S.C. § 1182(d)(5). *Id.* at 844.

24 Furthermore, the applicable statutory and regulatory provisions regarding
25 humanitarian parole vest full discretion for humanitarian parole in the Attorney General,
26 the Secretary of the Department of Homeland Security (DHS), and various DHS officials.
27 *See* 8 U.S.C. § 1182(d)(5)(A) (“The Attorney General may . . . in his discretion parole into

28 _____
Sixtos Chavez, et al. v. Noem, et al., 3:25-cv-02325-CAB-SBC (S.D. Cal. Sept. 24, 2025).

1 the United States temporarily under such conditions as he may prescribe only on a case-
2 by-case basis for urgent humanitarian reasons or significant public benefit any alien
3 applying for admission to the United States. . . .”); *see also* 8 C.F.R. § 212.5(a). This is
4 precisely the type of discretionary decision that the district court is precluded from
5 reviewing pursuant to 8 U.S.C. § 1252(a)(2)(B). *See United States v. Leal-Del Carmen*,
6 697 F.3d 964, 975 (9th Cir. 2012) (“[T]he federal government had exclusive authority to
7 parole [an alien lacking a lawful immigration status] into the country” (citing 8 U.S.C.
8 § 1182(d)(5)(A)); *Hassan v. Chertoff*, 593 F.3d 785, 789-90 (9th Cir. 2008) (whether to
9 grant or revoke parole is decided by the Attorney General or certain DHS officials); *Acosta*
10 *v. United States*, No. C14-420 RSM, 2014 WL 2216105, at *4 n.1 (W.D. Wash. May 29,
11 2014) (court lacked authority to grant parole under 8 U.S.C. § 1182(d)(5)(A)); *United*
12 *States v. Li*, No. CV-12-482-PHX-DGC, 2013 WL 6729895, at *2 (D. Ariz. Dec. 19, 2013)
13 (there is no authority under which the court could compel the Attorney General to grant
14 humanitarian parole); *Torres v. Barr*, 976 F.3d 918, 931 (9th Cir. 2020) (“Neither we nor
15 the agency has jurisdiction over [the decision to grant or deny parole.]”); *Rodriguez v.*
16 *Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (“The parole process is purely discretionary
17 and its results are unreviewable”). Therefore, the Court does not have jurisdiction to
18 grant Petitioner the parole he seeks—which is the only form of release he can obtain as an
19 arriving alien subject to mandatory detention under section 1225(b).

20 Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it
21 affords to “arriving aliens” like Petitioner, is critical because, for “more than a century”
22 now, the Supreme Court has held that the rights of such noncitizens are confined
23 exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also*
24 *Nishimura Ekiu*, 142 U.S. at 660 (holding that with regard to “foreigners who have never
25 been naturalized, nor acquired any domicile or residence within the United States, nor even
26 been admitted into the country pursuant to law,” “the decisions of executive or
27 administrative officers, acting within powers expressly conferred by Congress, are due
28 process of law.”); *Landon*, 459 U.S. at 32 (“This Court has long held that an alien seeking

1 initial admission to the United States requests a privilege and has no constitutional rights
2 regarding his application, for the power to admit or exclude aliens is a sovereign
3 prerogative”); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)
4 (rejecting noncitizens’ habeas petitions premised on their claim that their detention without
5 a bond hearing violated their Fifth Amendment Due Process rights because “an alien on
6 the threshold of initial entry stands on a different footing: ‘Whatever the procedure
7 authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”).

8 The Supreme Court’s holding on this topic was reinforced most recently in
9 *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry
10 to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment
11 Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court “reiterated
12 th[e] important rule,” *id.* at 138, that a noncitizen seeking initial entry to the United States
13 “has no entitlement” to any legal rights, constitutional or otherwise, other than those
14 expressly provided by statute. *Id.* at 107 (“Congress is entitled to set the conditions for an
15 alien’s lawful entry into this country and [] as a result [] an alien at the threshold of initial
16 entry cannot claim any greater rights under the Due Process Clause.”); *id.* (holding that a
17 noncitizen seeking initial entry “has no entitlement to procedural rights other than those
18 afforded by statute”); *id.* at 140 (A noncitizen seeking initial entry to the United States “has
19 only those rights regarding admission that Congress has provided by statute” and “the Due
20 Process Clause provides nothing more[.]”).

21 More broadly, the Supreme Court has long recognized that the political branches’
22 broad power over immigration is “at its zenith at the international border.” *United States v.*
23 *Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a
24 sovereign prerogative vested in the political branches, and “it is not within the province of
25 any court, unless expressly authorized by law, to review [that] determination.” *United*
26 *States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v.*
27 *Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court’s “general
28 reaffirmations” of the political branches’ exclusive authority to admit or exclude aliens

1 “have been legion”). Control of the Nation’s borders is vested in the political branches
2 because that authority is “vital and intricately interwoven with contemporaneous policies
3 in regard to the conduct of foreign relations,” matters “exclusively entrusted to the political
4 branches of government.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).
5 Preserving the political branches’ authority to control the border serves “the obvious
6 necessity that the Nation speak with one voice” on such matters. *Zadvydas v. Davis*, 533
7 U.S. 678, 711 (2001).

8 In addition to the sovereign, largely unreviewable prerogative of Congress and the
9 Executive to admit or exclude aliens, *see Knauff*, 338 U.S. at 543 (1950), the Supreme
10 Court also has recognized that aliens seeking admission to the United States do not have
11 the same constitutional protections as individuals who have entered the United States.
12 “[O]ur immigration laws have long made a distinction between those aliens who have come
13 to our shores seeking admission . . . and those who are within the United States after an
14 entry, irrespective of its legality. In the latter instance, the Court has recognized additional
15 rights and privileges not extended to those in the former category who are merely ‘on the
16 threshold of initial entry.’” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting
17 *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the detention of aliens at
18 the border, even for prolonged periods of time, and such detention does not deprive aliens
19 “of any statutory or constitutional right.” *See Mezei*, 345 U.S. at 212 (upholding detention
20 of lawful permanent resident returning from trip abroad detained for over a year and a half).

21 Here, as an arriving alien, Petitioner has no due process protections beyond those
22 afforded by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990)
23 (Aliens “receive constitutional protections when they have come within the territory of the
24 United States and developed substantial connections with this country.”); *Landon*, 459 U.S.
25 at 32 (“[A]n alien seeking initial admission to the United States requests a privilege and
26 has no constitutional rights regarding his application.”); *Mezei*, 345 U.S. at 212 (“[A]n
27 alien on the threshold of initial entry stands on a different footing: ‘Whatever the procedure
28 authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”);

1 *Thuraissigiam*, 591 U.S. at 131. Petitioner has and continues to receive all the protections
2 allowed by the relevant statutes. Since Petitioner was mandatorily detained under 8 U.S.C.
3 § 1225(b), the IJ properly found that he lacked jurisdiction to issue bond. Ex. A at ¶ 12.
4 Because Petitioner is subject to mandatory detention without bond under the statute, and
5 because the Supreme Court has held that such detention comports with due process for
6 those subject to 8 U.S.C. § 1225(b), the Court should deny the habeas petition.
7 *Thuraissigiam*, 591 U.S. at 131.

8 **VI. Petitioner Brings Improper Habeas Claims.**

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

22 Notably, seeking judicial review under the Administrative Procedure Act (APA) is
23 not properly sought through a habeas petition. Doc. 4 at 15-17. *See Flores-Miramontes v.*
24 *INS.*, 212 F.3d 1133, 1140 (9th Cir. 2000) (“For purposes of immigration law, at least,
25 “judicial review” refers to petitions for review of agency actions, which are governed by
26 the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought
27 directly in district court to challenge illegal confinement.”); *see also Giron Rodas v. Lyons*,
28 No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in

1 *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it cannot
2 be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69
3 F.4th at 1065).

4 Here, without identifying a policy, Petitioner claims that “Respondents have a
5 policy and practice of applying § 1225(b)(2) to Petitioner.” Doc. 4 at 16, ¶ 72. In other
6 words, Petitioner is ultimately challenging his detention authority under § 1225(b)(2),
7 which is appropriately challenged in a habeas petition, not through an additional attack
8 under the APA. To the extent Petitioner is challenging the “auto-stay” provision of 8 C.F.R.
9 § 1003.19(i)(2), his confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which
10 requires detention throughout the entire removal proceedings.

11 Ultimately, challenges to 8 U.S.C. § 1225(b) are limited to the United States District
12 Court for the District of Columbia (“D.D.C.”). 8 U.S.C. § 1252(e)(3)(A). The DC Circuit
13 has held that challenges to implementation and policies related to § 1225(b) must be
14 brought in the D.D.C. *See Make The Rd. New York v. Wolf*, 962 F.3d 612, 625 (D.C. Cir.
15 2020). The Ninth Circuit recognized that the limitation of challenges to policies under
16 1225(b) must be filed in the D.D.C. *See Singh v. Barr*, 982 F.3d 778, 783 (9th Cir. 2020).
17 Thus, Petitioner’s APA claims fail.

18 **VII. Conclusion.**

19 In light of the above, Respondents respectfully request the Court deny Petitioner’s
20 Petition for Writ of Habeas Corpus.

21 Respectfully submitted on October 9, 2025.

22
23 TIMOTHY COURCHAINED
24 United States Attorney
25 District of Arizona

26 /s/ Lindsey E. Gilman
27 LINDSEY E. GILMAN
28 Assistant United States Attorney
Attorneys for the Respondents