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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Bernardino Benitez-Cornejo, Petitioner, v. John Cantu, et al., Respondents.	No. CV-25-03672-JJT (ESW) **ANSWER TO PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Respondents Fred Figueroa, Warden, Eloy Detention Center, John Cantu, Arizona Field Office Director, U.S. Immigration and Customs Enforcement (ICE), Todd M. Lyons, Director, Kristi Noem, Secretary of the Department of Homeland Security (DHS), and Pamela J. Bondi, Attorney General of the United States, (Respondents), through undersigned counsel, responds to the merits of the underlying Petition for Writ of Habeas Corpus, as directed under this Court's Order to Show Cause dated October 6, 2025. Doc. 6. Petitioner is currently in removal proceedings under INA § 240, 8 U.S.C. § 1229, as an inadmissible arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Multiple provisions of 8 U.S.C. § 1252 unambiguously strip federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Petitioner seeks to circumvent the detention statute under which he

is rightfully detained to secure a bond hearing to which he is not entitled. For these reasons, Petitioner's request for habeas relief should be denied along with his request for a bond hearing. This Response is supported by the following Memorandum of Points and Authorities and attached declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND.

Bernardino Benitez-Cornejo (Petitioner) is a native and citizen of Mexico, born on [redacted] in Hidalgo, Mexico. *See* Declaration of Brandy Berghouse, Deportation Officer, attached as Exhibit A, at ¶ 4. U.S. Customs and Border Protection (CBP) encountered Petitioner on June 30, 2025, in Los Angeles, where he admitted to his illegal status.[1] *Id.* at ¶ 5. After processing, the Petitioner was found to be inadmissible pursuant to sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the INA and processed for removal. *Id.* On July 3, 2025, the Petitioner was personally served with a Notice to Appear and placed into removal proceedings in Eloy, Arizona. *Id.* at ¶ 6. On July 10, 2025, a Notice to Appear was filed with the Executive Office for Immigration Review placing the Petitioner in removal proceedings under sections 212(a)(6)(A)(i) and 212(a)(7(A)(i)(I) of the INA. *Id.* at ¶ 7. On July 17, 2025, the immigration court denied the Petitioner's bond because the court lacked jurisdiction. *Id.* at ¶ 8. On July 18, 2025, the Petitioner filed an appeal with the Board of Immigration Appeals (BIA) because the Petitioner's bond was denied. *Id.* at ¶ 9. The Petitioner's appeal is currently pending before the BIA. *Id.* The Petitioner's next court hearing before the immigration court is scheduled on October 29, 2025. *Id.* at ¶ 23.

Petitioner filed his Petition on October 3, 2025. Doc. 1. He also filed a Motion for Temporary Restraining Order (TRO) and Motion for Preliminary Injunction the same day. Doc. 2. Both raise the same claims. On October 6, 2025, this Court issued an Order to Show Cause directing the Respondents to answer why the Petition should not be granted

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[1] Petitioner's immigration history, beginning on March 19, 2000, when he entered through Nogales, AZ, without being inspected by an immigration officer or at a designated Port of Entry, is outlined under Tab A attached to Petitioner's Petition. *See* Record of Deportable/Inadmissible Alien at 2.

and whether Petitioner should be granted a bond hearing. Doc. 6 at 3. Therefore, Respondents will respond to the merits of the Petition. Petition challenges his detention under 8 U.S.C. § 1225(b)(2)(A) and denial of bond under 8 C.F.R. § 1003.19. He requests a bond hearing. Respondents deny all claims made in the Petition and TRO.

II. STANDARD OF REVIEW.

Petitioner bears the burden of demonstrating that his detention is unlawful. *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411, at *4 (D. Minn. Aug. 15, 2025). In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically, here, Petitioner challenges his temporary civil immigration detention pending his removal proceedings. Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S.

524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.")

III. PETITIONER'S CLAIMS BARRED BY 8 U.S.C. § 1252(g) AND (b)(9).

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, *adjudicate cases*, or execute removal orders.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioners' claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

Section 1252(g) also bars district courts from hearing challenges to the method by

which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and bars review of "ICE's decision to take [plaintiff] into custody and to detain him during his removal proceedings"). Petitioner's claims stem from ICE's decision to commence removal proceedings and therefore detain him. His detention arises from the decision to commence proceedings against him. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings."); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

Other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

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

"a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings").

Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all

constitutional claims or questions of law."). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioners challenge the government's decision and action to detain them, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). *But see Vasquez Garcia*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *3-4. As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why Petitioners' claims are unreviewable here.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§ 1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.*

at 294–95. In this case, Petitioners do challenge the government's decision to detain them in the first place. Though Petitioners attempt to frame their challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain them in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9). Indeed, that Petitioners are challenging the basis upon which they are detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioner's claims would be more appropriately presented before the appropriate federal court of appeals because they challenge the government's decision or action to detain them, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9). In light of the above, the Court should deny the Petition and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

IV. PETITIONER IS AN ARRIVING ALIEN SUBJECT TO MANDATORY DETENTION WHICH COMPORTS WITH HIS DUE PROCESS RIGHTS.

An arriving alien is "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. *See* 8 C.F.R. § 1.2. Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution,"

immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025) ("[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings."); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

A. Petitioner Qualifies as an "Applicant for Admission."

Here, Petitioner falls within the ambit of Section 1225(b)(2)(A)'s mandatory detention as Petitioner is an "applicant for admission" to the United States, which includes undocumented aliens present in the United States. Ex. A at ¶ 5. Petitioner is an arriving alien seeking admission into the United States subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and detention throughout the remainder of those proceedings are

lawful. Noncitizens in pre-final-removal-order civil immigration detention generally fall within two categories: 8 U.S.C. § 1225, which consists of noncitizens seeking an initial entry, and 8 U.S.C. § 1226, which consists of noncitizens who entered the United States. Petitioner falls under 8 U.S.C. § 1225 because he was found to be an inadmissible arriving alien. The difference between the noncitizens in these two categories is significant for due process purposes. *See Thuraissigiam*, 591 U.S. 103, 117 106–07, 138–40 (2020); *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States").

B. *Francisco Cerritos Echevarria v. Pam Bondi* (D. Ariz.).

Respondents are aware of a prior ruling in this District rejecting these arguments, *see e.g., Francisco Cerritos Echevarria v. Pam Bondi, et al.*, 2:25-cv-03252-DWL-ESW, (D. Ariz. Oct. 3, 2025), but Respondents respectfully maintain that Petitioner has not been deprived of due process, and falls within the definition of an "arriving alien" warranting mandatory detention as the removal process unfolds. Respondents also respectfully maintain that a person is an "applicant for admission" until an immigration official has inspected that person and determined that they are admissible into the United States.

In *Echevarria*, the Court determined that the phrase "alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that an alien who is already present in the United States cannot be "seeking admission":

> The word "seeking" is the present participle of the verb "seek." It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.
>
> It is hard to see how Petitioner could be deemed to have been "seeking" admission at the time of the encounter on July 2, 2025. By that point, Petitioner had already been present in the United States for 24 years, having arrived and entered in 2001. Moreover, under Respondents' interpretation of § 1225(a)(1), Petitioner became an "applicant for admission" in 2001, upon his arrival and entry. Implicit in Respondents' position, then, is that

> Petitioner somehow existed in a perpetual state of "seeking" admission during the 24-year period between when he first became an "applicant for admission" in 2001, by virtue of his entry into the country, and when he was encountered and inspected by an immigration officer in 2025.

Echevarria, 2025 U.S. Dist. LEXIS 196174, at *16–17 (internal citations omitted).

However, this analysis fails to consider other pieces of statutory context. Respondents respectfully argue that the phrase "applicants for admission" carves out a subset of those who are "seeking admission." For example, elsewhere in section 1225, the statute says that "[a]ll aliens who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that an alien may be "seeking admission" either by being an "applicant for admission," or in some different way. As discussed earlier, the phrase "applicant for admission" unambiguously includes aliens who have already entered the United States. "In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *See Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf* v. *United States*, 510 U. S. 135, 143 (1994)). "We therefore avoid interpretations that would "attribute different meanings to the same phrase." (quoting *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* court's holding is not supported by the text of the statute, and Respondents respectfully request this Court reach a different result.

Furthermore, Respondents direct this Court's attention to a decision issued on September 30, 2025, in the United States District Court for the District of Nebraska. *See Luciano Vargas Lopez v. Trump, et al.*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). The court in *Luciano Vargas Lopez* denied a similar Petition for Writ of Habeas Corpus filed by a Petitioner, who entered the United States in 2013, and was detained under § 1225(b)(2) without bond, holding that Petitioner was properly detained under § 1225(b)(2) as an alien within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of

release on bond through § 1229a removal proceedings. *Id.* at *6-9. The court noted that illegally remaining in the country for years did not mean the Petitioner, who "wish[ed] to stay in this country," was suddenly not an "applicant for admission." *Id.* at *9. Additionally, "even if [Petitioner] might fall within the scope of § 1226(a), he "certainly" fts within the language of § 1225(b)(2) as well. *Id.*

The court also noted the "overlapping relationship between § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions but consistent with the interpretation of the two provisions under *Jennings*." *Id.* The court determined that § 1226 does not contain language limiting its application "to aliens already present in the United States." *Id.* (referring *to Jennings*, 583 U.S. at 289) (stating that United States immigration law "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).") ("As noted, § 1226 applies to aliens already present in the United States."), *with* 8 U.S.C. § 1226(a) (containing no reference to aliens "present" or "already present" in the United States); 8 U.S.C. § 1226(c) (containing no reference to "criminal aliens" "present" or "already present" in the United States). The court determined that "references to 'aliens' in § 1226 must be read to mean 'alien[s] present in the United States who ha[ve] not been admitted' within the meaning of § 1225(a)(1) and within at least the 'catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) in § 1225(b)(2)." (citing *Jennings*, 583 U.S. at 287).

The Southern District of California also issued a favorable ruling denying a request for a TRO by an alien who was similarly detained under § 1225(b)(2) despite already being in the United States. *See Jose Guadalupe Sixtos Chavez, et al. v. Noem, et al.*, --F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). The court noted, among other arguments, that "Section 1225(a)(1) expressly defines that '[a]n alien present in the United States who has not been admitted ... shall be deemed for purposes of this Act *an applicant for admission.*' *Id.* § 1225(a)(1). (emphasis added)." *Id.* at *4. The court reasoned that, "Petitioners do not contest that they are "alien[s] present in the United States who ha[ve]not

been admitted. By the plain language of § 1225(a)(1), then, Petitioners are 'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2)." *Id.* Respondents respectfully request this Court consider *Luciano Vargas Lopez v. Trump, et al.* and *Jose Guadalupe Sixtos Chavez, et al. v. Noem, et al.* persuasive for the reasons mentioned above.

C. Due Process Protections to Arriving Aliens are Limited.

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

Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to "arriving aliens" like Petitioner, is critical because, for "more than a century" now, the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. at 660 (holding that with regard to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon*, 459 U.S. at 32 ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without a bond hearing violated their Fifth Amendment Due Process rights because "an alien on

the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'").

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

More broadly, the Supreme Court has long recognized that the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the Nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952). Preserving the political branches' authority to control the border serves "the obvious

necessity that the Nation speak with one voice" on such matters. *Zadvydas v. Davis*, 533 U.S. 678, 711 (2001).

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

Here, as an arriving alien, Petitioner has no due process protections beyond those afforded by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990) (Aliens "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Landon*, 459 U.S. at 32 ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application."); *Mezei*, 345 U.S. at 212 ("[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"); *Thuraissigiam*, 591 U.S. at 131. Petitioner has and continues to receive all the protections allowed by the relevant statutes. Since Petitioner was mandatorily detained under 8 U.S.C. § 1225(b), the IJ properly found that he lacked jurisdiction to issue bond. Ex. A at ¶ 8. Because Petitioner is subject to mandatory detention without bond under the statute, and because the Supreme Court has held that such detention comports with due process for

those subject to 8 U.S.C. § 1225(b), the Court should deny the habeas petition. *Thuraissigiam*, 591 U.S. at 131.

V. PETITIONER BRINGS IMPROPER HABEAS CLAIMS.

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

Seeking judicial review under the Administrative Procedure Act (APA) is not properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th Cir. 2000) ("For purposes of immigration law, at least, "judicial review" refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement."); see also *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065).

Petitioner claims that the BIA's precedential decision in *Matter of Yajure Hurtado* does not satisfy the requirements for deference under *Loper Bright* and *Skidmore*. Doc. 1 at 15. BIA's precedential decisions "serve as precedents in all proceedings involving the

same issue or issues." 8 CFR § 1003.1(g)(1); *see also id.* § 1003.1(d)(i). These arguments exceed the purpose of habeas and are ultimately subsumed within Petitioner's § 1225(b)(2) challenge. Here, Petitioner is ultimately challenging his detention authority under § 1225(b)(2), which is appropriately challenged in a habeas petition, not through an additional attack under the APA. To the extent Petitioner is also challenging the "auto-stay" provision of 8 C.F.R. § 1003.19(i)(2), his confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention throughout the entire removal proceedings.

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

VII. CONCLUSION.

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

Respectfully submitted on October 14, 2025.

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