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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REYES CABRERA-CORTES,

Petitioner,

v.

JASON KNIGHT, et al.,

Respondents.

Case No. 2:25-cv-01976-RFB-MDC

Federal Respondents' Response to the Petition for Writ of Habeas Corpus (ECF No. 14-1, at 1–23)

The Federal Respondents hereby submit this Response to Petitioner Reyes Cabrera-Cortes' ("Petitioner" or "Cabrera-Cortes") Petition for Writ of Habeas Corpus.

I. Background

A. Statutory and Regulatory Background

1. Applicants for Admission

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

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

8 U.S.C. § 1225(a)(1).[1] Section 1225(a)(1) was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No.

[1] 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).

104-208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

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

IIRIRA added Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which illegal aliens who entered the United States without inspection gained equities and privileges in immigration proceedings unavailable to aliens who presented themselves for inspection at a port of entry). The provision "places some

physically-but not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

2. Detention under the INA

i. Detention under 8 U.S.C. § 1225

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 Hurtado*, 29 I. & N. Dec. at 220 ("[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, the 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).

ii. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides the general detention authority for aliens in removal proceedings. An alien "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the United States may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (often called a bond hearing) by an IJ at any time before a final 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.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006). The IJ should consider the following factors during a custody redetermination: (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, time since such activity, and the seriousness of the offense; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape authorities; and (9) the

alien's manner of entry to the United States. *Id.* at 40. But regardless of these factors, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

iii. Review Before the Board of Immigration Appeals

The Board of Immigration Appeals (BIA) is an appellate body within the Executive Office for Immigration Review (EOIR) "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it." 8 C.F.R. § 1003.1(d)(1). By regulation, it has authority to review IJ custody determinations. 8 C.F.R. §§ 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

B. Factual Background

Petitioner is a native and citizen of Mexico who was placed in removal proceeding through the issuance of a Notice to Appear on August 1, 2025. ECF No. 14-1, at 35. Petitioner entered the United States without admission or parole after inspection by an immigration officer. *Id.* The place and date of Petitioner's entry into the United States is unknown. *Id.*

Upon information and belief, DHS first detained Petitioner on August 1, 2025, after Petitioner's encounter with law enforcement while driving to work. ECF No. 14-1, at 4.

Petitioner requested a bond hearing, and the Immigration Judge ("IJ") granted his bond request on August 14, 2025. ECF No. 14-1, at 26. DHS then appealed the IJ's bond decision on August 21, 2025. ECF No. 14-1, at 29. Although Petitioner did not produce the requisite evidence, upon information and belief, and based on the well-known established practices in Immigration Court, prior to appealing the IJ's bond decision, DHS automatically stayed Petitioner's release on bond by virtue of filing the standard form (Form

EOIR-43) providing DHS's notice of intent to appeal the decision. Form EOIR-43, citing 8 C.F.R. § 1003.19(i)(2), states that the filing of the form "automatically stays the Immigration Judge's custody redetermination decision."

II. Standard of Review

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of his 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 proceeding.

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).

III. Argument

A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1225

Petitioner's temporary detention pursuant to the stay provision of 8 C.F.R. § 1003.19(i)(2) is reinforced by Congress's command to detain Petitioner throughout his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Moreover, this temporary detention does not violate Due Process. Because Petitioner cannot show the temporary detention violates the law, the Petition must be denied. *See* 28 U.S.C. § 2241.

The current operative mechanism of Petitioner's detention is an automatic stay of release on bond for a maximum of 90 days under 8 C.F.R. § 1003.19(i)(2), but this confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention throughout the entire removal proceedings.

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement as Petitioner is an "applicant for admission" to the United States. As described above, an "applicant for admission" is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Congress's broad language here is unequivocally intentional—an undocumented alien is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Petitioner is "deemed" an applicant for admission based on Petitioner's failure to seek lawful admission to the United States before an immigration officer, which is undisputed. *See generally* ECF Nos. 41, 41-1. And because Petitioner has not demonstrated to an examining immigration officer that Petitioner is "clearly and beyond a doubt entitled to be admitted," Petitioner's detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that Petitioner "shall be" detained.

The Supreme Court has confirmed an alien present in the country but never admitted is deemed "an applicant for admission" and that "detention must continue" "until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings*, 583 U.S. at 289 & 299. At issue in *Jennings* was the statutory interpretation. The Supreme Court reversed the Ninth Circuit Court of Appeal's imposition of a six-month detention

time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the statute and reversed on these grounds, remanding the constitutional Due Process claims for initial consideration before the lower court. *Id.* But under the words of the statute, as explained by the Supreme Court, 8 U.S.C. § 1225 includes aliens like the Petitioner who are present but have not been admitted and they shall be detained pending their removal proceedings.

Specifically, the Supreme Court declared, "an alien who 'arrives in the United States,' *or* 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Id.* at 287 (emphasis on "or" added). In doing so, the Court explained both aliens captured at the border and those illegally residing within the United States would fall under § 1225. This would include Petitioner as an alien who is present in the country without being admitted.

And now, the Board of Immigration Appeals (BIA) has confirmed the application of § 1225 in a published formal decision: "Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Hurtado*, 29 I&N Dec. at 216. Indeed, §1225 applies to aliens who are present in the country *even for years* and who have not been admitted. *See Hurtado*, 29 I&N Dec. at 226 ("the statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." (citing 8 U.S.C. §1225)).

In *Hurtado*, the BIA affirmed the decision of the immigration judge finding the Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was present in the United States for almost three years but was never admitted shall be detained under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an alien who unlawfully entered the United States in 2022 and was granted temporary protected status in 2024. *Id.* at 216-17. However, that status was revoked in 2025, and the

alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. It is clear from the decision, the alien was initially served with a Notice of Custody Determination, informing him of his detention under 8 U.S.C. § 122**6** and his ability to request bond, like the Petitioner was in this case. *Id.* at 226. However, when the alien sought a redetermination of his custody status, the immigration judge held the Court did not have jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

In affirming the decision of the immigration judge who determined he lacked jurisdiction, the BIA found § 1225 clear and unambiguous as explained above. Thus, because the alien was present in the United States (regardless of how long) and because he was never admitted, he shall be detained during his removal proceedings. *See id.* at 228. In doing so, the BIA rejected the same arguments raised by Petitioner and by other similar petitioners in this District. For example, the BIA rejected the "legal conundrum" postulated by the alien that while he may be an applicant for admission under the statute, he is somehow not actually "seeking admission." *Id.* at 221. The BIA explained that such a leap failed to make sense and violated the plain meaning of the statute. *See id.*

Next, the BIA rejected the alien's argument that the mandatory detention scheme under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act superfluous. *Id.* The BIA explained, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute 'shall be detained for [removal proceedings].'" *Id.* at 222. The BIA explained further that any redundancy between the two statutes does not give license to "rewrite or eviscerate" one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

Also, the BIA reasoned that it matters not that the alien was initially served with a warrant listing 8 U.S.C. § 122**6** and informing him of his ability to seek bond—an Immigration Court cannot bestow jurisdiction upon itself with that initial paperwork when said jurisdiction has been specifically revoked by Congress in § 1225. *See id.* at 226-27

(explaining "the mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).") The BIA further pointed out, "Our acknowledgement that aliens detained under section 236(a) may be eligible for discretionary release on bond does not mean that *all* aliens detained while in the United States with a warrant of arrest are detained under section 236(a) and entitled to a bond hearing before the Immigration Judge, regardless of whether they are applicants for admission under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)." *Id.* at 227 (quotations omitted). Thus, the BIA rejected this and every argument raised by the alien to find § 1225 applied to him despite residing in the country for years. *Id.*

The BIA mandate is clear: "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Id.* at 225. Indeed, this ruling emphasizes that § 1225 applies to aliens like the Petitioner who is also present in the United States but has not been admitted.

The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted by a three-appellate judge panel. *See id. generally.* It is binding on all immigration judges in the United States. 8 C.F.R. § 1003.1(g)(1) ("[D]ecisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States."). And because the decision was published, a majority of the entire Board must have voted to publish it, which establishes the decision "to serve as precedent[] in all proceedings involving the same issue or issues." *See* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in immigration court today. *See* also 8 C.F.R. § 1003.1(d)(1) (explaining "the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations."). And in the Board's own words, *Hurtado* is a "precedential opinion." *Id.* at 216.

As such, immigrant judges are holding § 1225 applies to aliens who are present but not admitted and therefore immigration judges have denied bond for lack of jurisdiction. But in some prior cases where an immigration judge erred in releasing a qualifying alien on bond, like Petitioner, who is subject to mandatory detention, DHS's invocation of the stay of release pending appeal in 8 C.F.R. § 1003.19(i)(2) ensured DHS's opportunity to vindicate Congress's mandatory detention scheme.

While the law is now clear in immigration court, the BIA has yet to reach DHS's appeal involving the Petitioner. But in the coming days, the Federal Respondents would expect the BIA to reach this appeal, apply the broad holding in *Hurtado*, and reverse the immigration judge's release of the Petitioner on bond. Indeed, this very decision by the immigration judge was wrongly decided and without jurisdiction and will soon be reversed.

Because Petitioner shall be detained during the removal proceedings and these proceedings are uncontrovertibly ongoing, his temporary detention is lawful. Any argument by Petitioner that his detention exceeds statutory authority is clearly invalid and should be rejected. The United States is aware of prior rulings in this District and others rejecting this argument (*see e.g.*, *Herrera-Torralba v. Knight*, 2:25-cv-01366-RFB-DJA (D. Nev. Sep 05, 2025); *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep 17, 2025)), but the United States respectfully maintains §1225 straightforwardly applies to Petitioner, especially in light of *Jennings. See Jennings*, 583 U.S. at 287 (explaining "an alien who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." § 1225(a)(1)).

1. The *Vargas Lopez v. Trump* Recent Decision Is Highly Instructive and Supports Petitioner's Detention Under 8 U.S.C. § 1225

The United States District Court for the District of Nebraska's decision denying the habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*, the petitioner, an undocumented alien who had been residing in the United States since 2013, sought immediate release from detention. *Vargas Lopez*, No. 8:25CV526, 2025 WL 2780351, at *1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez had

received a bond hearing, and the immigration judge ordered that he be released from custody under bond of $10,000. *Id.* at *3. DHS however appealed the bond determination, which automatically stayed Vargas Lopez's release on bond. *Id.* Vargas Lopez then filed a petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

First, the court denied the petition because Vargas Lopez failed to carry his burden of demonstrating by a preponderance of the evidence that his detention was unlawful. *Id.* at *6. Vargas Lopez argued that he fell under § 1226, not 1225, but his petition and filings failed to provide proof of the "warrant for Vargas Lopez's arrest" that § 1226 requires.

Second, the court concluded that Vargas Lopez was subject to detention without possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court's decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court then concluded that Vargas Lopez is an alien within the "catchall" scope of § 1225(b)(2), subject to detention without possibility of release on bond through a proceeding on removal under § 1229a. *Id.* at *9. The court found that Vargas Lopez was an "applicant for admission" because his counsel admitted that Vargas Lopez "wishe[d] to stay in this country." *Id.* That finding, according to the court, was consistent with the conclusions of the BIA in *Hurtado* and *Jennings*.

Pursuant to the language of the statute and the holding of *Jennings*, the court said that "just because Vargas Lopez illegally remained in this country *for years* does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)." *Id.* "Even if Vargas Lopez might have fallen within the scope of § 1226(a)," the court found "he also certainly fit within the language of § 1225(b)(2) as well." *Id.* "The Court thus conclude[d] that the *plain language* of § 1225(b)(2) and the "all applicants for admission" language of *Jennings* permitted the DHS to detain Vargas Lopez under § 1225(b)(2)." *Id.*

2. The *Chavez v. Noem* Recent Decision Is Also Instructive

The United States District Court for the Southern District of California's decision in *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24 2025), is also instructive. In *Chavez,* the court denied a motion for a temporary restraining order ("TRO") filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2). *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been mandatorily detained and instead they should have received bond redetermination hearings under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to "enjoin[] Respondents from continuing to detain them unless [they received] an individualized bond hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO." *Id.*

In denying the TRO, the *Chavez* court went no further than the plain language of § 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly found that because petitioners did not contest that they are "alien[s] present in the United States who ha[ve] not been admitted," then the *Chavez* petitioners are "applicants for admission" and thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2). *Id*; *see also Hurtado*, 29 I. & N. Dec. at 221–222 (finding that an alien who entered without inspection is an "applicant for admission" and his argument that he cannot be considered as "seeking admission" is unsupported by the plain language of the INA, and further stating, "[if]f he is not admitted to the United States . . . but he is not 'seeking admission' . . . then what is his legal status?").

3. The BIA's Decision in *Hurtado* Is Entitled to Significant Weight in Construing the Scope of 8 U.S.C. § 1225(b)(2)

While *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), eliminated Chevron deference, *Hurtado* nonetheless should be afforded substantial weight under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed to an agency interpretation depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.* at 140. *Hurtado* scores highly on these factors.

First, the BIA applied its specialized expertise in immigration detention law, the very

subject Congress charged it with administering. Its decision addressed the interplay between §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of experience resolving custody questions. Second, the BIA's reasoning is thorough and well supported. It carefully explained why noncitizens who entered without inspection remain "applicants for admission" under § 1225(a)(1), and why reclassifying them under § 1226(a) would create statutory issues and undermine congressional intent. Third, the BIA's interpretation is consistent with Supreme Court precedent, including *Jennings*, which recognized that detention under § 1225(b) is mandatory. Finally, adopting *Hurtado* promotes uniformity and coherence in federal immigration law by preventing detention outcomes from turning on the happenstance of when and where a noncitizen is apprehended.

4. The Legislative History Bolsters Petitioner's Detention

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d at 928; *Chavez*, 2025 WL 2730228, at *4. It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Torres*, 976 F.3d at 928 (quoting H.R. Rep. 104-469, pt. 1, at 225); *Chavez*, 2025 WL 2730228, at *4 (The addition of § 1225(a)(1) "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.' ").

As the pertinent House Judiciary Committee Report explains: "[Before the IIRIRA], aliens who [had] entered without inspection [were] deportable under section 241(a)(1)(B)."

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). But "[u]nder the new 'admission' doctrine, such aliens *will not be considered to have been admitted*, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, *based on their presence without admission*." *Id.* Thus, applicants for admission remain such unless an immigration officer determines that they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Hurtado*, 29 I. & N. Dec. at 228. Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens "shall be detained for a proceeding under section 240.' 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 288.

The Court should thus reject Petitioner's proposed statutory interpretation and request to be released because Petitioner's requests would make aliens who presented at a port of entry subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

5. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices

Any argument that prior agency practice supports applying § 1226(a) to Petitioner is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore.*, 323 U.S. at 140 (cleaned up)).

For example, here Petitioner points to 62 Fed. Reg. at 10323, where the agency provided no analysis of its reasoning. In contrast, the BIA's recent precedent decision in

Hurtado includes thorough reasoning. *Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory text and legislative history. *Id.* at 223-225. It highlighted congressional intent that aliens present without inspection be considered "seeking admission." *Id.* at 224. The BIA concluded that rewarding aliens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.* at 228.

To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright Enterprises*, 603 U.S. at 395. But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support Petitioner's position that the plain language mandates detention under § 1226(a).

B. Petitioner's Temporary Detention Does Not Offend Due Process

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. As explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *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."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *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, at 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings*, 583 U.S. at 286 ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *Id.* at 512 ("In contrast, because the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas* was "indefinite" and "potentially permanent," *id.,* at 690–691, 121 S.Ct. 2491, the

record shows that § 1226(c) detention not only has a definite termination point, but lasts, in the majority of cases, for less than the 90 days the Court considered presumptively valid in *Zadvydas*.").[2] In light of Congress's interest in dealing with illegal immigration by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the "*Mathews v. Eldridge* test" *See id. generally*.

Likewise, in the case at bar Petitioner's temporary detention pending his removal proceedings does not violate Due Process. Petitioner has been detained for a few months as his *process* unfolds. Specifically, DHS's narrow appeal on the issue of release on bond is before the BIA, and resolution one way or another is undoubtedly forthcoming. Petitioner's ample available process in his current removal proceedings demonstrate no lack of Procedural Due Process—nor any deprivation of liberty "sufficiently outrageous" required to establish a Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

The temporary, automatic and discretionary stays permits the United States an opportunity to appeal an IJ bond decision to correct any errors by the Immigration Judge while providing "an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's liberty interest. *Zavala*, 310 F. Supp. 2d at 1077; *El-Dessouki v. Cangemi*, No. CIV 063536 DSD/JSM, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006); *Altayar v. Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016 U.S. Dist. LEXIS 175819, at *10–11 (D. Ariz. Nov. 23, 2016).

As explained in *Altayar*, purpose of the automatic stay is to "avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues." Review of Custody Determinations, 71 FR 57873-01,

[2] In 2018 the Court again highlighted the significance of a "definite termination point" for detention of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

2006 WL 2811410; *Altayar*, 2016 U.S. Dist. LEXIS 175819 at *12-13. An automatic stay of up to 90 days does not violate due process because it is narrowly tailored to serve a compelling United States' interest. *Id.* In *Altayar*, the Court found there is no procedural due process violation from § 1003.19(i)(2).

In this case, Petitioner who is present in the United States without admission or parole, is an applicant for admission in INA § 240 removal proceedings and is therefore detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and the IJ does not have jurisdiction to issue a bond. Because the IJ in this case conducted a bond hearing and granted a bond *in error*, the automatic stay of 8 C.F.R. § 1003.19(i)(2) has here served the very purpose for which it was created in the first place. As history has revealed, subsequent to the IJ's decision error, the BIA issued its precedential decision in *Hurtado*, essentially superseding the IJ's erroneous decision and showing that IJ lacked jurisdiction to grant Petitioner's bond. Had the automatic stay not been in place, the error would have gone farther, and Petitioner would have been mistakenly released from DHS custody.

The United States is aware of prior rulings in this District and others rejecting these arguments, but the United States respectfully maintains Petitioner has not been deprived of Due Process in light of the aforementioned precedent.

C. Request for EAJA Fees Should be Denied

Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504, and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain fees in this case under 5 U.S.C. § 504 since that provision excludes administrative immigration proceedings. *Ardestani v. Immigration and Naturalization Service,* 502 U.S. 129 (1991). His only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that in an action brought by or against the United States, a court must award fees and expenses to a prevailing non-government party "unless the court

finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

Here, Petitioner's request is premature because he is not a prevailing party. Second, even if Petitioner were to prevail in this case, the Federal Respondents' position asserted in this Response is substantially justified because other courts have found the arguments presented herein to be persuasive and that DHS can lawfully detain, under the mandatory detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated as Perez Sales.

As described above, the United States District Court for the District of Nebraska and the United States District Court for the Southern District of California have both issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the United States who have not been admitted are "applicants for admission" and are thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other federal judges have found persuasive the positions advanced by the Federal Respondents in this case, the Federal Respondents' position is substantially justified. *See Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse its discretion, in finding that the United States' position was substantially justified for purposes of EAJA, where different judges disagreed about the proper reading of the statute and the case involved an issue of first impression).

Because the United States' position in this case is substantially justified, Petitioner's request for attorney's fees under EAJA cannot prevail.

D. Petitioners' Claims and Requests are Barred by 8 U.S.C. § 1252

Petitioners bear the burden of establishing that this Court has subject matter jurisdiction over their 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, Petitioners' 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").

Petitioners' claims stem from ICE's decision to commence removal proceedings and therefore detain them. Their detention arises from the decision to commence proceedings against them. *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.

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, Petitioners' 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).

The Court should deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

IV. Conclusion

For these reasons, Federal Respondents request that the Petition be denied.

Respectfully submitted this 31st day of October 2025.

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