UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Rodrigo Galeno Moreno,	:	**No. 3:25-cv-01988**
Petitioner,	:	
	:	
v.	:	**(Neary, J.)**
	:	
United States Department of	:	
Homeland Security,[1]	:	
Respondent.	:	**Filed Electronically**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

This is a habeas action filed on October 21, 2025, by Petitioner, RODRIGO GALENO MORENO, an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Pike County Correctional Facility in Lors Valley, Pennsylvania. Doc. 1, Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, at 1. Moreno

---

[1] Although Petitioner named several other government officials, the only proper respondent in this case is Craig Lowe, the Warden of Pike County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("In habeas challenges to present physical confinement – 'core challenges' – the default rule is that the proper respondent is the warden of the facility where the prisoner is being held."). Petitioner requests release from confinement. *See* Doc. 1, Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, at 8, ¶ 15 ("State exactly what you want the court to do: Release of Petitioner from detention.").

requests the Court issue a writ of habeas corpus requiring Respondent to release petitioner from detention. *Id.* at 8, ¶ 15.

On October 23, 2025, this Court entered an order directing Respondent to respond to the Petition on or before November 13, 2025. Doc. 2, Order to Show Cause. This Response is filed in accordance with that Order.

INTRODUCTION

Petitioner challenges the legality and constitutionality of ICE's civil detention authority. As "[a noncitizen][2] present in the United States who has not been admitted[,]" Petitioner is defined by law as an applicant for admission. 8 U.S.C. § 1225(a)(1). And, like here, where an applicant for admission "seek[s] admission [and] is not clearly and beyond a doubt entitled to be admitted" to the United States, "[she] *shall* be detained[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The Immigration and Nationality Act ("INA") clearly defines a noncitizen "present in the United States who has not been admitted" as an "applicant for admission." And because Petitioner is present in the United States, has

[2] The INA employs the term "alien," defined as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3). Herein, "noncitizen" means any person as defined in 8 U.S.C. § 1101(a)(3).

not been admitted, is seeking admission, and not clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention pursuant to § 1225(b)(2)(A). Therefore, Federal Respondent respectfully requests this Court deny the instant Petition.

The United States Court of Appeals for the Third Circuit, its sister circuits, and the courts of the Middle District of Pennsylvania have yet to address the issue raised in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025) regarding detention under 8 U.S.C. § 1225. While the Respondent acknowledges that some district courts have rejected Respondent's arguments on the issues presented below,[3] other district

---

[3] *See, e.g., Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, --- F.Supp.3d, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Hasan v. Crawford*, -- F. Supp. 3d --, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 (E.D. NY. Oct. 6, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D. N.C. Oct. 7, 2025); *Alejandro v. Olson*, No. 1:25-cv-02027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Aguilar Merino v. Ripa*, No. 25-23845, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *H.G.V.U. v. Smith, et al.*, No. 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Bethancourt Soto v. Soto*, No. 25-cv-16200, 2025 WL 2976572 (D. N.J. Oct. 22, 2025); *Astudillo v. Hyde*, No. 25-551, 2025 WL 3035083

courts have also found Respondent's arguments dispositive. *See Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). As such, Respondent requests that the Court deny and dismiss the Petition.

FACTS

A. Statutory and Regulatory Background

Before proceeding to the factual and legal premise of the instant habeas petition, it is important to explain the statutory and regulatory provisions governing civil immigration detention. Such provisions have been the subject of extensive judicial discussion. *See generally DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Important to any understanding of this statutory scheme is the concept of "admission." An "admission" (or being "admitted") is "the *lawful* entry of [a noncitizen] into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added). The INA authorizes the removal of certain noncitizens

---

(D. R.I. Oct. 30, 2025); *Martinez Lopez v. Larose*, No. 25-cv-2717, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025).

who have not been admitted to the United States through different procedures, and as the Supreme Court has unequivocally held, requires federal immigration officials to detain these noncitizens pending the conclusion of any necessary proceedings. *See* 8 U.S.C. § 1225(b).

1. Mandatory Detention – 8 U.S.C. § 1225

Any noncitizen "present in the United States who has not been admitted or who arrives in the U.S." whether or not at a port of entry is treated an "an applicant for admission." 8 U.S.C. § 1225(a)(1); *see* 8 C.F.R. § 235.1(f)(2). Applicants for admission may be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through non-expedited removal proceedings under § 1225(b)(2). 8 U.S.C. §§ 1225(b)(1) (arriving noncitizens), (b)(2) (other applicants for admission). Section 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)[.]" *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). And applicants for admission "*shall be detained* for a [removal] proceeding" if the "examining immigration officer determines that [the noncitizen] seeking admission is not clearly and

beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).[4]

Although detention pursuant to section 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue . . . until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Further, while § 1225(b)(2) does not provide for bond hearings, *see id.* at 297–303, it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security (hereinafter, the "Secretary") "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)." *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). "[P]arole of such [noncitizens] shall not be regarded as an admission of the [noncitizens]." 8 U.S.C. § 1182; *see id.* § 1101(a)(13)(B).

---

[4] This form of mandatory detention has the same effect as the mandatory civil immigration detention required for certain other classes of aliens pursuant to § 1226(c).

2. Discretionary Detention – 8 U.S.C. § 1226(a)

As the Supreme Court has explained, "[s]ection 1226 *generally* governs the process of arresting and detaining that group of [noncitizens] pending their removal." *Jennings*, 583 U.S. at 288 (emphasis added); *see* 8 U.S.C. § 1226(a); *Rodriguez*, 747 F. Supp.3d at 916. Under § 1226(a), the government may detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole. *See* 8 U.S.C. § 1226(a). By regulation, immigration officers can release a noncitizen if the noncitizen 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). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge 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). Pursuant to 8 U.S.C. § 1226(b), ICE "at any time may revoke a bond or parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain" the noncitizen. *Id.*; *see* 8 C.F.R. §§ 236.1(c)(9), (d)(1).

C. Underlying Immigration Procedural History

Moreno is a native and citizen of Mexico. Exhibit 1, Department of Homeland Security Evidence, at 2-3; Exhibit 2, Notice to Appear, at 1. Moreno entered the United States at an unknown location on an unknown date and time. Exhibit 1 at 3; Exhibit 2 at 1.

On June 26, 2025, ICE Enforcement and Removal Operations (ERO) officers encountered Moreno at Luzerne County Prison. Exhibit 1 at 3. After confirming that Moreno was a noncitizen, ICE ERO issued an immigration detainer and warrant. *Id.*

On July 9, 2025, ICE took Moreno into custody. *Id.* That same day, ICE served Moreno with a Notice to Appear. Exhibit 2 at 2. Specifically, the Notice to Appear charged Moreno as removable pursuant to Section 212(a)(6)(A)(i) of the INA, in that he was a noncitizen present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* at 1.

On July 18, 2025, DHS served Moreno with additional charges of inadmissibility/deportability. Exhibit 3, Additional Charges of Inadmissibility/Deportability, at 2. The Notice of Additional Charges

charged Moreno as removable pursuant to Section 212(a)(7)(A)(i)(I) of the INA, in that he was a noncitizen who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or valid entry document required by the Act, and a valid unexpired passport or other suitable travel document, or document of identity and nationality as required under regulations issued by the Attorney General. *Id.* at 1.

Moreno has requested several continuances of his underlying immigration proceedings. *See, e.g.*, Exhibit 4, Order dated August 28, 2025. His next immigration hearing is scheduled for December 16, 2025. *See* Executive Office for Immigration Review, Automated Case Information (available at https://acis.eoir.justice.gov/en/caseInformation) (enter Petitioner's Alien number and country-of-origin).

D. Procedural Bond History

On July 21, 2025, the Honorable Tamar Wilson, United States Immigration Judge, denied Moreno's request for bond. Exhibit 5, Order dated July 21, 2025. Judge Wilson found that Moreno could not meet his

burden of demonstrating that he was not a danger to the community.[5] *Id.* at 1. While Moreno reserved his right to appeal, *id.*, no appeal was filed.

On September 8, 2025, after Moreno requested a custody redetermination, the Honorable Leo Finston, United States Immigration Judge, denied Petitioner's request. Exhibit 6, Order dated September 8, 2025. In his decision, Judge Finston indicated the immigration court lacked jurisdiction, and he cited to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Again, while Moreno reserved his right to appeal, no appeal was filed. *See* Executive Office for Immigration Review, Automated Case Information (available at https://acis.eoir.justice.gov/en/caseInformation) (enter Petitioner's Alien number and country-of-origin).

Moreno is detained at Pike County Correctional Facility. *See* U.S. Immigration and Customs Enforcement, Online Detainee Locator System (available at https://locator.ice.gov/odls/#/search) (enter

---

[5] The July 21, 2025 bond hearing predated *Matter of Yajure Hurtado*, 29 I. & N. 216 (BIA 2025).

Petitioner's Alien number and country-of-origin) (last visited November 13, 2025, at 4:00 p.m.).

ARGUMENT

Petitioner's claim fails on the merits. At the outset, this Court does not have jurisdiction to review Petitioner's claims due to Moreno's failure to exhaust his administrative remedies and statutory construction. In the event this Court assumes jurisdiction, Petitioner's interpretation of § 1225(b) contradicts the statute's plain text, and the Court should dismiss the Petition on the merits.

I. The Court lacks jurisdiction over Petitioner's claims because Moreno has not exhausted his administrative remedies.

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Moreno has failed to exhaust his administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and

resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Here, despite reserving his right to appeal, Moreno never availed himself of the administrative remedies available to him. *See German Chajchic*, No. 1:17-cv-00457, Rep. and Recomm., 2017 WL 4401895, at *7-8 ("At the outset, the deference which [the Court] should give the Immigration Judge decisions in this field is underscored by the fact that as a prudential matter courts frequently require habeas petitioners ... to fully exhaust their administrative remedies prior to filing for habeas corpus relief."). This judicial requirement of exhaustion for habeas petitions generally serves a number of important purposes, including: "(1) allowing the appropriate agency to develop a factual record and apply its expertise facilitates judicial review; (2) permitting agencies to grant the relief requested conserves judicial resources; and (3) providing agencies the opportunity to correct their own errors fosters administrative autonomy." *Moscato v. Fed. Bureau of Prisons*, 98 F.3d 757, 761-62 (3d Cir. 1996) (explaining the rationale for exhaustion for habeas petitions in the context of prison disciplinary proceedings). "These very important purposes are frequently furthered by requiring

[noncitizens] who receive a bond hearing before the immigration judge to exhaust their administrative remedies and raise any issues with the BIA prior to seeking federal habeas corpus relief." *Chajchic*, 2017 WL 4401895, at *8. As such, this Court should dismiss Moreno's petition.

II. The Court lacks jurisdiction under 8 U.S.C. § 1252.

If the Court finds that exhaustion is not necessary, 8 U.S.C. §§ 252(e)(3), 1252(g), and 1252(b)(9) preclude review of Moreno's claims. Accordingly, this Court should deny and dismiss the Petition.

First, Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction, over Petitioner's challenge to his detention under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within

1252(e), section 1252(e)(3) applies broadly to judicial review of section 1225(b), not just determinations under section 1225(b)(1). *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), with 8 U.S.C. § 1252(e)(3)(A). *See Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' ... We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship."). Here, Moreno challenges the determination, set forth in writing by both the Department of Justice and DHS, that noncitizens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). Moreno thus seeks judicial review of a written policy or guideline implementing § 1225(b), which is covered by § 1252(e)(3)(A)(ii).

Second, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney

General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."

Section 1252(g) also bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain a noncitizen pending removal. *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020); *see also 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 also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

In *Tazu*, the United States Court of Appeals for the Third Circuit found that the decision to detain a noncitizen during removal proceedings

fell under the "execute removal orders" portion of 8 U.S.C. § 1252(g). 975 F.3d at 298-99. The Third Circuit explained as follows:

> The text of § 1252(g) resolves this claim. It strips us of jurisdiction to review the Attorney General's "decision or action ... to ... execute [a] removal order[.]" Tazu's challenge to his short re-detention for removal attacks a key part of executing his removal order. The verb "execute" means "[t]o perform or complete." And to perform or complete a removal, the Attorney General must exercise his discretionary power to detain a [noncitizen] for a few days. That detention does not fall within some other "part of the deportation process." We thus hold that a brief door-to-plane detention is integral to the act of "execut[ing] [a] removal order[ ]."
>
> The Government re-detained Tazu just three days after it got his new passport. If courts had not intervened, it would have removed him just three-and-a-half weeks after re-detaining him. Re-detaining Tazu was simply the enforcement mechanism the Attorney General picked to execute his removal. So § 1252(g) funnels review away from the District Court and this Court.

Id. (internal quotations omitted). Here, while a distinction exists between the timeline of detention, the Third Circuit's reasoning in *Tazu*, that the Attorney General's decision to detain a noncitizen for removal is the enforcement mechanism for execution of a removal order, supports the decision to detain Moreno. *See also Herrera-Correra v. United States*, No. CV 08-2941, 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."). As such, judicial review of the claim that Petitioner is entitled to bond is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.

Second, under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning noncitizens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "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] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); 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"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

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 aliens 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.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit 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, Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings against an

arriving alien 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"). As such, the Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also 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, Petitioner does challenge the government's decision to detain him in the first place.

Though Petitioner may attempt to frame this challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain him pending his removal proceedings in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention is an 'action taken . . . to remove' [a noncitizen]." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petition for lack of jurisdiction under § 1252(b)(9). Petitioner must present his claims before the appropriate federal court of appeals because they challenge the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

III. Moreno's detention is lawful.

Even if this Court finds that 8 U.S.C. §§ 1252(e)(3), 1252(g), and 1252(b)(9) do not preclude judicial review, the Court should reject Petitioner's argument that 8 U.S.C. § 1226(a) governs his detention instead of 8 U.S.C. § 1225(b)(2).

A. Pursuant to 8 U.S.C. § 1225(b)(2)(A), detention is mandatory for applicants for admission who are not clearly and beyond a doubt entitled to admission.

Before this Court can analyze the Petition's claims, it must determine what statute authorizes Petitioner's detention. As a legal matter, 8 U.S.C. § 1225(b)(2)(A) applies here, since it encompasses applicants for admission "seeking admission [and] [are] not clearly and beyond a doubt entitled to be admitted." *Id.*; *see Jennings*, 583 U.S. at 287; *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sep. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass July 28, 2025) (emphasis added); *see also Laguna Espinoza v. ICE*, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025) ("the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal of foreigners").

First, consider the plain text. Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). "Seeking admission" and "appl[ying] for admission," in this context, are

plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all noncitizens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person "seeking admission" is just another way of saying someone is applying for admission—that is, he is an "applicant for admission"—which includes both those individuals arriving in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

Second, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission who are "arriving in the United States" (or those who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Section 1225(b)(2), by contrast, applies to "other" noncitizens—"in the case of [a noncitizen] who

is an applicant for admission"—those not subject to expedited removal under (b)(1). They too must "be detained" but instead for a more typical removal "proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of "applicants for admission": (b)(1) applies to "arriving" or recently arrived noncitizens who must be detained pending expedited removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who, like Petitioner, must be "detained for a [non-expedited] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to "arriving" noncitizens would render it redundant and without any effect.

And third, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. 8

U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to noncitizens who are "applicants for admission,"—a specially defined subset of noncitizens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen]."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

A court in Massachusetts recently confirmed that a noncitizen, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). The court explained this resulted in the "continued detention" of a noncitizen during removal proceedings as commanded by statute. *Id.* And the BIA has long

recognized that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Lemus-Losa*, 25 I. & N. Dec. at 743.

B. The BIA recently adopted the government's interpretation, and the Court should consider that expert panel's conclusion.

The BIA addressed this issue in September and agreed with the government's interpretation of § 1225(b)(2). *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Though agency decisions are not binding on this Court, the reasoning is persuasive.

Petitioner points to "decades of prior practice," in which noncitizens who entered without inspection or admission received bond hearings. Doc. 1 at 21, ¶ 58. But prior administration practice does not alter this Court's obligation to "independently interpret the statute and effectuate the will of Congress" by adopting the best reading of the statutory language. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). 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.'" *Id.* at 432-33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

The agency's explanation for its prior practice is limited to one sentence: "Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." *Inspection and Expedited Removal of [Noncitizens]; Detention and Removal of [Noncitizens]; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 93131, 10312, 10323 (Mar. 6, 1997). This unexplained conclusion provides no persuasive reasoning in support of Petitioner's interpretation.

Here, "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). The Court should adopt the government's interpretation as the best reading of the statute's plain text, context, and structure.

CONCLUSION

Respondent respectfully request the Court deny the habeas petition and hold Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Respectfully submitted,

BRIAN D. MILLER
United States Attorney

s/Gerard T. Donahue
Gerard T. Donahue
Assistant United States Attorney
235 N. Washington Ave, Ste. 311
Scranton, PA 18503
Phone: (570) 348-2800
Fax: (570) 348-2830
Gerard.Donahue@usdoj.gov

Dated: November 13, 2025

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Rodrigo Galeno Moreno,	:	**No. 3:25-cv-01988**
Petitioner,	:	
	:	
v.	:	**(Neary, J.)**
	:	
United States Department of Homeland Security	:	
Respondents.	:	**Filed Electronically**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on November 13, she served a copy of the attached

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

via Electronic Filing:

Eric Rosenfeld, Esq.

/s/ Stephanie Kakareka
STEPHANIE KAKAREKA
Legal Administrative Specialist