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9 *Attorneys for the Federal Respondents*

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 Edgar Alexander Garcia Soto,

13 Petitioner,

14 v.

15 Jason KNIGHT, Field Office Director of
Enforcement and Removal Operations, Salt
16 Lake City Field Office, Immigration and
Customs Enforcement, Michael
17 BERNACKE, Acting Director of the Las
Vegas U.S. Immigration and
Customs Enforcement Field Sub-Office;
18 Kristi NOEM, Secretary, U.S. Department
of Homeland Security, Pamela BONDI,
19 U.S. Attorney General, John
MATTOS, Warden of Nevada Southern
20 Detention Center,

21 Respondents.

Case No. 2:25-cv-02138-RFB-BNW

**Federal Respondents' Response to
Order to Show Cause Regarding
Petition for Habeas Corpus**

22 Federal Respondents Jason Knight, Michael Bernacke, Kristi Noem, and Pamela
23 Bondi, through undersigned counsel, hereby submit their response to the Court's Order to
24 Show Cause on why the Court should not grant Petitioner Edgar Alexander Garcia Soto's
25 Petition for Writ of Habeas Corpus. ECF No. 5. This response is supported by the
26 following memorandum of points and authorities.

27 / / /

28 / / /

1 Respectfully submitted this 12th day of November 2025.

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3 Deputy Attorney General of the United States
4 SIGAL CHATTAH
5 First Assistant United States Attorney

6 /s/ Summer A. Johnson
7 SUMMER A. JOHNSON
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9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 In this action, Petitioner challenges a lawfully enacted statute which authorizes his
11 temporary detention under 8 U.S.C. § 1225(b)(2). Therefore, to grant his petition,
12 Petitioner asks this Court to set aside a lawfully enacted regulation and statute, finding both
13 unconstitutionally applied as alleged violations of the Due Process Clause of the United
14 States Constitution. But as discussed below, the Supreme Court has long recognized
15 Congress's broad power and immunity from judicial control to expel aliens from the
16 country and to detain them while doing so. *See e.g., Shaughnessy v. United States ex rel Mezei*,
17 345 U.S. 206, 210 (1953); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). The United States'
18 temporary detention of Petitioner in no way exceeds this broad authority and does not
19 deprive Petitioner of Due Process. *See Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention
20 during removal proceedings is a constitutionally permissible part of that process.").
21 Because Petitioner's temporary detention is lawful, the Habeas Petition fails, and the
22 United States, including all Federal Respondents in their official capacities, hereby seeks
23 dismissal of the Petition.

24 **I. BACKGROUND**

25 **A. Statutory and Regulatory Background**

26 **1. Applicants for Admission**

27 "The phrase 'applicant for admission' is a term of art denoting a particular legal
28 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

1 for the purposes of this Act an applicant for admission.

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

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

25 IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants who have not been
26 lawfully admitted, regardless of their physical presence in the country, are placed on equal
27

28 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).

1 footing in removal proceedings under the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep.
2 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced “certain aspects of the current
3 ‘entry doctrine,’” under which illegal aliens who entered the United States without
4 inspection gained equities and privileges in immigration proceedings unavailable to aliens
5 who presented themselves for inspection at a port of entry). The provision “places some
6 physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of
7 removal proceedings.” *Torres*, 976 F.3d at 928.

8 **2. Detention Under 8 U.S.C. § 1225**

9 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
10 present in the United States who [have] not been admitted” or “who arrive[] in the United
11 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
12 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583
13 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218 (BIA 2025).

14 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
15 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
16 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens
17 are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But
18 if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,”
19 immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii).
20 An alien “with a credible fear of persecution” is “detained for further consideration of the
21 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to
22 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” they
23 are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

24 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
25 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
26 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
27 removal proceeding “if the examining immigration officer determines that [the] alien
28 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §

1 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are present
2 in the United States without admission are applicants for admission as defined under section
3 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of
4 their removal proceedings.”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens
5 arriving in and seeking admission into the United States who are placed directly in full
6 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
7 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).
8 However, the Department of Homeland Security (DHS) has the sole discretionary authority
9 to temporarily release on parole “any alien applying for admission to the United States” on
10 a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §
11 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 807 (2022).

12 **3. Detention Under 8 U.S.C. § 1226(a)**

13 Section 1226 provides for arrest and detention “pending a decision on whether the
14 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
15 government may detain an alien during his removal proceedings, release him on bond, or
16 release him on conditional parole. By regulation, immigration officers can release aliens
17 upon demonstrating that the alien “would not pose a danger to property or persons” and “is
18 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request
19 a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of
20 removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

21 At a custody redetermination, the IJ may continue detention or release the alien on
22 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
23 discretion in deciding whether to release an alien on bond. *In Re Guerra*, 24 I. & N. Dec. 37,
24 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
25 consider, an alien “who presents a danger to persons or property should not be released
26 during the pendency of removal proceedings.” *Id.* at 38.

27 **4. Review Before the Board of Immigration Appeals**

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

11 **B. Factual Background**

12 Petitioner is a citizen of Mexico, who has not been admitted or paroled in the
13 United States. *See* Notice to Appear, attached as Exhibit A. In his petition, the Petitioner
14 claims that he illegally entered the United States in approximately May 2000. *See* Record of
15 Deportable/Inadmissible Alien, attached as Exhibit B, at 2. Petitioner has been in ICE
16 detention since approximately October 19, 2025. ECF No. 1, at ¶17. Petitioner was
17 encountered on October 19, 2025, after being detained by the Federal Bureau of
18 Investigations and Canyon County Sherriff’s Office during a multi-agency enforcement
19 action targeting a large illegal gambling and criminal enterprise. *See* Exhibit B, at 2.
20 Petitioner is being held as an inadmissible alien present in the United States without
21 admission or parole (8 U.S.C. § 1182(a)(6)(A)(i)) and as an immigrant present without an
22 immigrant visa (8 U.S.C. § 1182(a)(7)(A)(i)(I)). Petitioner has not requested a bond
23 redetermination hearing before an Immigration Judge. ECF No. 1 at ¶47. His master
24 calendar hearing regarding his removal and/or his request for Cancellation of Removal is
25 currently scheduled for November 25, 2025. *See* Exhibit C. Petitioner filed the instant
26 Petition for Writ of Habeas Corpus on October 30, 2025.

27 **II. STANDARD OF REVIEW**

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

6 Judicial review of immigration matters, including of detention issues, is limited.
7 *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination*
8 *Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo*
9 *v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow*
10 *Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character
11 and therefore subject only to narrow judicial review”). The Supreme Court has thus
12 “underscore[d] the limited scope of judicial inquiry into immigration legislation,” and “has
13 repeatedly emphasized that over no conceivable subject is the legislative power of Congress
14 more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal
15 quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S.
16 522, 531 (1954).

17 The plenary power of Congress and the Executive Branch over immigration
18 necessarily encompasses immigration detention, because the authority to detain is elemental
19 to the authority to deport, and because public safety is at stake. *See Shaughnessy*, 345 U.S. at
20 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
21 sovereign attribute exercised by the Government's political departments largely immune
22 from judicial control.”); *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this
23 deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)
24 (“Proceedings to exclude or expel would be vain if those accused could not be held in
25 custody pending the inquiry into their true character and while arrangements were being
26 made for their deportation.”); *Demore*, 538 U.S. at 531 (“Detention during removal
27 proceedings is a constitutionally permissible part of that process.”)

28 III. ARGUMENT

1 Petitioner’s temporary detention is reinforced by Congress’s command to detain
2 Petitioner throughout his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Moreover,
3 this temporary detention does not violate Due Process. Petitioner also has failed to exhaust
4 his administrative remedies, because he has never requested a bond hearing. Because
5 Petitioner cannot show that his temporary detention violates the law, the Petition must be
6 dismissed as a matter of law and the Order to Show Cause based thereon be discharged.

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

8 **1. Under the Plain Text of 8 U.S.C. § 1225, Petitioner Must Be Detained**
9 **Pending the Outcome of His Removal Proceedings**

10 Petitioner’s temporary detention is reinforced by Congress’s command to detain
11 Petitioner throughout his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Moreover,
12 this temporary detention does not violate Due Process. Because Petitioner cannot show the
13 temporary detention violates the law, the Petition must be denied. *See* 28 U.S.C. § 2241.

14 Petitioner’s confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which
15 requires detention throughout the entire removal proceedings. Pursuant to 8 U.S.C. §
16 1225(b)(2)(A), “in the case of an alien who is an applicant for admission, if the examining
17 immigration officer determines that an alien seeking admission is not clearly and beyond a
18 doubt entitled to be admitted, the alien shall be detained for a proceeding under section
19 1229a [removal proceedings].” 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that 8
20 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to
21 that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 (“Both § 1225(b)(1)
22 and § 1225(b)(2) authorize the detention of certain aliens.”).

23 Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)’s mandatory
24 detention requirement as Petitioner is an “applicant for admission” to the United States. As
25 described above, an “applicant for admission” is an alien present in the United States who
26 has not been admitted. 8 U.S.C. § 1225(a)(1). Congress’s broad language here is
27 unequivocally intentional — an undocumented alien is to be “deemed for purposes of this
28 chapter an applicant for admission.” *Id.* Petitioner is “deemed” an applicant for admission

1 based on Petitioner's failure to seek lawful admission to the United States before an
2 immigration officer, which is undisputed. ECF No. 1, ¶ 24. And because Petitioner has not
3 demonstrated to an examining immigration officer that Petitioner is "clearly and beyond a
4 doubt entitled to be admitted," Petitioner's detention is mandatory. 8 U.S.C. §
5 1225(b)(2)(A). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. §
6 1225(b)(2)(A), which mandates that Petitioner "shall be" detained.

7 The Supreme Court has confirmed an alien present in the country but never admitted
8 is deemed "an applicant for admission" and that "detention must continue" "until removal
9 proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings*,
10 583 U.S. at 287 & 299. At issue in *Jennings* was the statutory interpretation. The Supreme
11 Court reversed the Ninth Circuit Court of Appeal's imposition of a six-month detention
12 time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the
13 statute and reversed on these grounds, remanding the constitutional Due Process claims for
14 initial consideration before the lower court. *Id.* But under the words of the statute, as
15 explained by the Supreme Court, 8 U.S.C. § 1225 includes aliens like the Petitioner who are
16 present but have not been admitted, and they shall be detained pending their removal
17 proceedings.

18 Specifically, the Supreme Court declared, "an alien who 'arrives in the United
19 States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant
20 for admission.' § 1225(a)(1)." *Id.* at 287 (emphasis on "or" added). In doing so, the Court
21 explained both aliens captured at the border and those illegally residing within the United
22 States would fall under § 1225. This would include Petitioner as an alien who is present in
23 the country without being admitted.

24 And now, the Board of Immigration Appeals (BIA) has confirmed the application
25 of §1225 in a published formal decision: "Based on the plain language of section
26 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),
27 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are
28 present in the United States without admission." *Matter of Yajure Hurtado*, 29 I. & N. Dec. at

1 216. Indeed, §1225 applies to aliens who are present in the country *even for years* and who
2 have not been admitted. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 226 (“the statutory
3 text of the INA . . . is instead clear and explicit in requiring mandatory detention of all
4 aliens who are applicants for admission, without regard to how many years the alien has
5 been residing in the United States without lawful status.” (citing 8 U.S.C. § 1225)).

6 In *Hurtado*, the BIA affirmed the decision of the immigration judge, finding the
7 Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was
8 present in the United States for almost three years but was never admitted shall be detained
9 under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an
10 alien who unlawfully entered the United States in 2022 and was granted temporary
11 protected status in 2024. *Id.* at 216–17. However, that status was revoked in 2025, and the
12 alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. It is
13 clear from the decision that the alien was initially served with a Notice of Custody
14 Determination informing him of his detention under 8 U.S.C. § 1226 and of his ability to
15 request bond, like the Petitioner was in this case. *Id.* at 226. However, when the alien sought
16 a redetermination of his custody status, the immigration judge held the Court did not have
17 jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

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

27 Next, the BIA rejected the alien’s argument that the mandatory detention scheme
28 under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act

1 superfluous. *Id.* The BIA explained, “nothing in the statutory text of section 236(c),
2 including the text of the amendments made by the Laken Riley Act, purports to alter or
3 undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
4 requiring that aliens who fall within the definition of the statute ‘shall be detained for
5 [removal proceedings].’” *Id.* at 222. The BIA explained further that any redundancy
6 between the two statutes does not give license to “rewrite or eviscerate” one of the statutes.
7 *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

8 Also, the BIA reasoned that it matters not that the alien was initially served with a
9 warrant listing 8 U.S.C. § 1226 and informing him of his ability to seek bond — an
10 Immigration Court cannot bestow jurisdiction upon itself with that initial paperwork when
11 said jurisdiction has been specifically revoked by Congress in § 1225. *See id.* at 226-27
12 (explaining “the mere issuance of an arrest warrant does not endow an Immigration Judge
13 with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8
14 U.S.C. § 1225(b)(2)(A).”) The BIA further pointed out, “Our acknowledgement that aliens
15 detained under section 236(a) may be eligible for discretionary release on bond does not
16 mean that *all* aliens detained while in the United States with a warrant of arrest are detained
17 under section 236(a) and entitled to a bond hearing before the Immigration Judge,
18 regardless of whether they are applicants for admission under section 235(b)(2)(A) of the
19 INA, 8 U.S.C. § 1225(b)(2)(A).” *Id.* at 227 (quotations omitted). Thus, the BIA rejected this
20 and every argument raised by the alien to find § 1225 applied to him despite residing in the
21 country for years. *Id.*

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

27 The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted
28 by a three-appellate judge panel. *See id. generally.* It is binding on all immigration judges in

1 the United States. 8 C.F.R. § 1003.1(g)(1) (“[D]ecisions of the Board and decisions of the
2 Attorney General are binding on all officers and employees of DHS or immigration judges
3 in the administration of the immigration laws of the United States.”). And because the
4 decision was published, a majority of the entire Board must have voted to publish it, which
5 establishes the decision “to serve as precedent[] in all proceedings involving the same issue
6 or issues.” *See* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in immigration
7 court today. *See also* 8 C.F.R. § 1003.1(d)(1) (explaining “the Board, through precedent
8 decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and
9 the general public on the proper interpretation and administration of the Act and its
10 implementing regulations.”). And in the Board’s own words, *Hurtado* is a “precedential
11 decision.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

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

18 While the law is now clear in immigration court, the BIA has yet to reach DHS’s
19 appeal involving the Petitioner. But in the coming days, the Federal Respondents would
20 expect the BIA to reach this appeal, apply the broad holding in *Hurtado*, and reverse the
21 immigration judge’s release of the Petitioner on bond. Indeed, this very decision by the
22 immigration judge, upon which Petitioner places so much weight, was wrongly decided and
23 without jurisdiction and will soon be reversed.

24 Because Petitioner shall be detained during the removal proceedings and these
25 proceedings are incontrovertibly ongoing, his temporary detention is lawful. Any argument
26 by Petitioner that his detention exceeds statutory authority is clearly invalid and should be
27 rejected. The United States is aware of prior rulings in this District and others rejecting this
28 argument (*see e.g., Herrera-Torralba v. Knight*, 2:25-cv-01366-RFB-DJA (D. Nev. Sep 05,

1 2025); *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep 17, 2025)), but the
2 United States respectfully maintains §1225 straightforwardly applies to Petitioner, especially
3 in light of *Jennings*. See *Jennings*, 583 U.S. at 287 (explaining “an alien who “arrives in the
4 United States,” or “is present” in this country but “has not been admitted,” is treated as “an
5 applicant for admission. § 1225(a)(1).”).

6
7 **2. The Vargas Lopez v. Trump Recent Decision Is Highly Instructive and
Supports Petitioner’s Detention Under 8 U.S.C. § 1225.**

8 The United States District Court for the District of Nebraska’s decision denying the
9 habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*,
10 the petitioner, an undocumented alien who had been residing in the United States since
11 2013, sought immediate release from detention. *Vargas Lopez v. Trump*, No. 8:25CV526,
12 2025 WL 2780351, at *1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez
13 had received a bond hearing, and the immigration judge ordered that he be released from
14 custody under bond of \$10,000. *Id.* at *3. DHS however appealed the bond determination,
15 which automatically stayed Vargas Lopez’s release on bond. *Id.* Vargas Lopez then filed a
16 petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his
17 due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was
18 unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

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

23 Second, the court concluded that Vargas Lopez was subject to detention without
24 possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court’s
25 decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct
26 groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court then
27 concluded that Vargas Lopez is an alien within the “catchall” scope of § 1225(b)(2), subject
28 to detention without possibility of release on bond through a proceeding on removal under §

1 1229a. *Id.* at *9. The court found that Vargas Lopez was an “applicant for admission”
2 because his counsel admitted that Vargas Lopez “wished to stay in this country.” *Id.* That
3 finding, according to the court, was consistent with the conclusions of the BIA
4 in *Hurtado* and *Jennings*.

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

12 **3. *The Recent Chavez v. Noem Decision Is Also Instructive.***

13 The United States District Court for the Southern District of California’s decision in
14 *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24
15 2025), is also instructive. In *Chavez*, the court denied a motion for a temporary restraining
16 order (“TRO”) filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2).
17 *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been
18 mandatorily detained and instead they should have received bond redetermination hearings
19 under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to “enjoin[]
20 Respondents from continuing to detain them unless [they received] an individualized bond
21 hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO.” *Id.*

22 In denying the TRO, the *Chavez* court went no further than the plain language of §
23 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly
24 found that because petitioners did not contest that they are “alien[s] present in the United
25 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for
26 admission” and thus subject to the mandatory detention provisions of “applicants for
27 admission” under § 1225(b)(2). *Id.*; see also *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–
28 222 (finding that an alien who entered without inspection is an “applicant for admission”

1 and his argument that he cannot be considered as “seeking admission” is unsupported by
2 the plain language of the INA, and further stating, “[i]f he is not admitted to the United
3 States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

4 **4. The Legislative History Bolsters Petitioner’s Detention.**

5 When the plain text of a statute is clear, “that meaning is controlling” and courts
6 “need not examine legislative history.” *Washington State v. Chimei Innolux Corp.*, 659 F.3d
7 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
8 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726,
9 730 (9th Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants
10 who were attempting to lawfully enter the United States were in a worse position than
11 persons who had crossed the border unlawfully.” *Torres*, 976 F.3d at 928; *Chavez*, 2025 WL
12 2730228, at *4. It “intended to replace certain aspects of the [then] current ‘entry doctrine,’
13 under which illegal aliens who have entered the United States without inspection gain
14 equities and privileges in immigration proceedings that are not available to aliens who
15 present themselves for inspection at a port of entry.” *Torres*, 976 F.3d at 928 (quoting H.R.
16 Rep. 104-469, pt. 1, at 225); *Chavez*, 2025 WL 2730228, at *4 (The addition of § 1225(a)(1)
17 “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their
18 physical presence in the country, are placed on equal footing in removal proceedings under
19 the INA — in the position of an ‘applicant for admission.’ ”).

20 As the pertinent House Judiciary Committee Report explains: “[Before the IIRIRA],
21 aliens who [had] entered without inspection [were] deportable under section 241(a)(1)(B).”
22 H.R. Rep. No. 104-469, pt. 1, at 225 (1996). But “[u]nder the new ‘admission’ doctrine,
23 such aliens *will not be considered to have been admitted*, and thus, must be subject to a ground of
24 inadmissibility, rather than a ground of deportation, *based on their presence without admission.*”
25 *Id.* Thus, applicants for admission remain such unless an immigration officer determines
26 that they are “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A);
27 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 228. Failing to clearly and beyond a doubt
28

1 demonstrate that they are entitled to admission, such aliens “shall be detained for a
2 proceeding under section 240.” 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 288.

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

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

8 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is
9 unavailing because under *Loper Bright*, the plain language of the statute and not prior
10 practice controls. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225–26. In overturning
11 *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[]
12 our own mistakes” *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A.,*
13 *Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades
14 old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management
15 Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380.
16 Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The
17 weight given to agency interpretations “must always ‘depend upon their thoroughness, the
18 validity of their reasoning, the consistency with earlier and later pronouncements, and all
19 those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at
20 431–32 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

21 The BIA’s recent precedent decision in *Hurtado* includes thorough reasoning. *Matter*
22 *of Yajure Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory
23 text and legislative history. *Id.* at 223–225. It highlighted congressional intent that aliens
24 present without inspection be considered “seeking admission.” *Id.* at 223–224. The BIA
25 concluded that rewarding aliens who entered unlawfully with bond hearings while
26 subjecting those presenting themselves at the border to mandatory detention would be an
27 “incongruous result” unsupported by the plain language “or any reasonable interpretation
28 of the INA.” *Id.* at 228.

1 To be sure, “when the best reading of the statute is that it delegates discretionary
2 authority to an agency,” the Court must “independently interpret the statute and effectuate
3 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§
4 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
5 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does
6 not support Petitioner’s position that the plain language mandates detention
7 under § 1226(a).

8 **B. Petitioner’s Temporary Detention Does Not Offend Due Process**

9 As mentioned above, Congress broadly crafted “applicants for admission” to include
10 undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. §
11 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their
12 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most
13 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
14 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to
15 detain undocumented aliens during removal proceedings, as they — by definition — have
16 crossed borders and traveled in violation of United States law. As explained above, that is
17 the prerogative of the legislative branch serving the interest of the government and the
18 United States.

19 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
20 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
21 sovereign attribute exercised by the Government’s political departments largely immune
22 from judicial control.”). And with this power to remove aliens, the Supreme Court has
23 recognized the United States’ longtime Constitutional ability to detain those in removal
24 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation
25 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain
26 if those accused could not be held in custody pending the inquiry into their true character,
27 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
28 (“Detention during removal proceedings is a constitutionally permissible part of that

1 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
2 detain some classes of aliens during the course of certain immigration proceedings.
3 Detention during those proceedings gives immigration officials time to determine an alien’s
4 status without running the risk of the alien’s either absconding or engaging in criminal
5 activity before a final decision can be made.”).

6 In another immigration context (aliens already ordered removed awaiting their
7 removal), the Supreme Court has explained that detaining these aliens less than six months
8 is presumed constitutional. *See Zadvydas*, 533 U.S. at 701. But even this presumptive
9 constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive
10 in other contexts. For example, in *Demore*, the Supreme Court explained Congress was
11 justified in detaining aliens during the entire course of their removal proceedings who were
12 convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case, similar to undocumented
13 aliens like Petitioner, Congress provided for the detention of certain convicted aliens during
14 their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of
15 the “definite termination point” of the detention, which was the length of the removal
16 proceedings.² *Id.* at 512.³ In light of Congress’s interest in dealing with illegal immigration
17 by keeping specified aliens in detention pending the removal period, the Supreme Court
18 dispensed of any Due Process concerns without engaging in the “*Mathews v. Eldridge* test”
19 *See id. generally.*

20 Petitioner’s ample available process in his current removal proceedings demonstrate
21 no lack of Procedural Due Process — nor any deprivation of liberty “sufficiently
22 outrageous” required to establish a Substantive Due Process claim. *See generally Reed v.*
23 *Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir.

25 ² “In contrast, because the statutory provision at issue in this case governs detention of deportable criminal
26 aliens *pending their removal proceedings*, the detention necessarily serves the purpose of preventing the aliens
27 from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas*
28 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*.”

³ 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.

1 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the
2 decision to detain him pending removal which is a “constitutionally permissible part of that
3 process.” *See Demore*, 538 U.S. at 531.

4 Likewise, in the case at bar, Petitioner’s brief period of detention pending removal
5 proceedings does not violate the Due Process Clause. Petitioner has been detained for less
6 than a month while his immigration case progresses. Although he has not requested a bond
7 hearing, he nonetheless contends that an Immigration Judge would decline to consider such
8 a request. Should Petitioner request a bond hearing, one would be available to him. He
9 cannot, however, rely on speculation about what an Immigration Judge might decide in a
10 hypothetical proceeding. The opportunity to request a bond and to receive a bond hearing is
11 itself a component of the procedural due process afforded to noncitizens in removal
12 proceedings. Here, Petitioner’s due process claim fails because he never availed himself of
13 that process by requesting a bond hearing.

14 In addition, Petitioner, who is present in the United States without admission or
15 parole, is an applicant for admission in INA § 240 removal proceedings and is therefore
16 detained pursuant to 8 U.S.C. § 1225. The United States is aware of prior rulings in this
17 District and others rejecting these arguments, but the United States respectfully maintains
18 Petitioner has not been deprived of Due Process in light of the aforementioned precedent.

19 **C. Petitioner Has Failed to Exhaust Administrative Remedies**

20 Similarly, requiring exhaustion here would be consistent with Congressional intent
21 to have claims, such as Petitioner’s, subject to the channeling provisions of § 1252(b)(9) that
22 provide for appeal to the BIA and then, if unsuccessful, the Ninth Circuit. “Exhaustion can
23 be either statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541
24 (9th Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is
25 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
26 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential requirement, a court has
27 discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26
28