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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

YULISA ALVARADO AMBROCIO, Petitioner, v. Sergio ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office, Kristi NOEM, Secretary of the United States Department of Homeland Security, Todd M. LYONS, Acting Director of United States Immigration and Customs Enforcement, Pamela BONDI, Attorney General of the United States, acting in their official capacities, Respondents.	CASE NO. 25-cv-10215-PCP **RESPONDENTS' RETURN AND OPPOSITION TO WRIT OF HABEAS CORPUS** Honorable P. Casey Pitts United States District Judge

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I. INTRODUCTION

Petitioner, Yulisa Alvarado Ambrocio ("Petitioner"), seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of any future detention by Immigration and Customs Enforcement ("ICE") and seeking, among other remedies, an order enjoining Respondents from re-detaining her "unless her re-detention is ordered at a custody hearing before a neutral arbiter in which the Government bears the burden of proving, by clear and convincing evidence, that she is neither a flight risk nor a danger to the community." Petitioner is not in custody. Petitioner has never been in custody. Her petition must be denied for the reasons set forth below.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is an alien "applicant for admission." She last entered the United States without admission or parole near Santa Teresa, New Mexico on or around April 24, 2024. *See* Declaration of Thomas Auer ("Auer Decl.") at ¶ 5. An immigration officer issued her a Notice to Appear ("NTA") for removal proceedings based on her presence in the United States without being admitted or paroled. *See id.* at ¶ 7.

On September 24, 2025, an Immigration Judge ("IJ") granted the United States Department of Homeland Security's ("DHS") motion to dismiss. *See* Am. Pet. for Writ of Habeas Corpus ("Pet.') ¶¶ 3, 31, ECF No. 2. After the hearing, ICE agreed not to detain Petitioner. *See id.* at ¶¶ 32-34. Later, Petitioner filed an appeal of the IJ's decision granting DHS' motion to dismiss without prejudice. *See* Auer Decl. at ¶¶ 10-11, Ex. 1. That appeal is currently pending. *See id.*

On September 16, 2025, after the Court issued a preliminary injunction as to Carmen Aracely Pablo Sequen, Petitioner filed an amended pleading with two other new parties and alleging claims arising under the Administrative Procedure Act ("APA") and the United States Constitution in addition to individual habeas claims. *See* Am. Compl. and Pet. for Writ of Habeas Corpus at 40-51, ECF No. 32. [1] The same day, Petitioner filed a motion for a temporary restraining order. *See* Pls.' Mot. for TRO, ECF

[1] On November 24, 2025, the Court issued an order severing Petitioner's habeas claims from other claims that were joined in Carmen Aracely Pablo Sequen's initial habeas action. *See* Order Granting Mot. to Sever, ECF No. 137. As a consequence, there are some citations to the docket in that action.

No. 34. The Cort declined to grant Petitioner's motion for a temporary restraining order and considered her request a motion for a preliminary injunction. *See* Order Granting in Part Mot. for TRO at 1-2, ECF No. 36.

On October 15, 2025, the Court issued an order granting a preliminary injunction as to Petitioner and Petitioner, Ligia Garcia. *See* Order Granting Prelim. Inj., ECF No. 90. The Court's order states that the "government may not detain Ms. Alvarado Ambrocio, and may not re-detain Ms. Garcia, during the pendency of these proceedings without providing them with pre-detention bond hearings before a neutral immigration judge." *See id.* at 24. The Court's order further provides that the Government "may detain petitioners only if, at such a bond hearing, the government bears its burden of demonstrating by clear and convincing evidence that Ms. Alvarado Ambrocio or Ms. Garcia are a danger to the community or a flights risk and that no conditions other than detention would be sufficient to prevent such harms." *Id.*

On November 24, 2025, the Court issued an order severing Petitioner's habeas claims from the claims arising under the APA and the United States Constitution. *See* Order Granting Mot. to Sever, ECF No. 137. Based on that order, Petitioner filed the operative habeas petition. *See generally* Pet. Petitioner is not in custody, and she has not been in custody. *See* Pet. ¶¶ 31-35.

III. ARGUMENT

A. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(b)(1).

Respondents acknowledge that the Court previously analyzed some of their jurisdictional arguments in other contexts in this case including, but not limited to, 8 U.S.C. § 1252(e)(3). *See* Order Provisionally Certifying Classes and Granting Prelim. Inj. and Denying a Stay at 20-22, ECF No. 138 (analyzing 8 U.S.C. § 1252 within the context of Petitioner's motion for class certification, motion for a preliminary injunction, and motion for a stay). Respondents make some of those jurisdictional arguments again in this individual habeas return to reserve all of their rights including the right to appeal.

1. 8 U.S.C. § 1252(e)(3) Bars Review of Petitioner's Claims.

Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction, over Petitioner's challenge to any future 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, Petitioner challenges the determination, set forth in writing by both the Department of Justice and DHS, that aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). *See, e.g.*, Pet. ¶¶ 6-8. Petitioner thus seeks judicial review of a written policy or guideline implementing § 1225(b), which is covered by § 1252(e)(3)(A)(ii).

2. 8 U.S.C. § 1252(g) Bars Review of Petitioner's Claims.

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly "aris[es] from" the decision to commence removal proceedings against an alien. *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 also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 298 (3d Cir. 2020) ("The text of § 1252(g)... strips us of jurisdiction to

review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 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[.]") (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) ("The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. . . . Thus, an alien's detention throughout this process *arises from* the [Secretary]'s decision to commence proceedings[]" and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'"). As such, judicial review of the Petitioner's claims is barred by § 1252(g).

3. 8 U.S.C. § 1252(b)(9) Bars Review of Petitioner's Claims.

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 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) ("*AADC*"). 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. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("*AADC*"); *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing

Nasrallah v. Barr, 590 U.S. 573, 579–80 (2020)).

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 aliens 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) (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"); *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." 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.").

Subsections (a)(5) and (b)(9) 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 v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (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 decision and action to detain her in the future, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove her 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 and to enjoin Petitioner's future detention. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain her in the first place. *See, e.g.*, Pet. ¶¶ 39-43. Though Petitioner frames her challenge as relating to detention authority (Pet. ¶¶ 6-8), rather than a challenge to DHS's decision to detain her in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which she may be detained in the future is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). Petitioner must present her claims before the appropriate court of appeals because she challenges the Government's decision or action to detain her in the future, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

B. THE COURT SHOULD DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS AS PETITIONER IS SUBJECT TO DETENTION UNDER 8 U.S.C. § 1225.

1. Petitioner Is Subject to Mandatory Detention as an Applicant for Admission Under 8 U.S.C. § 1225(b)(2).

For the reasons set forth in Respondents' prior briefing including, but not limited to, the opposition to the motion for a temporary restraining order (ECF No. 21), the opposition to the motion for a temporary restraining order and a preliminary injunction (ECF No. 45), the supplemental brief (ECF No. 50), the motion to dismiss and motion to sever as well as the supporting reply (ECF Nos. 106, 130), the opposition to the motion for class certification (ECF No. 109), the opposition to the motion for a preliminary injunction and stay of agency action (ECF No. 111), and the opposition to the motion to stay agency action (ECF No. 113) as well as the hearings for all of these motions, Respondents contend that Petitioner is subject to mandatory detention as an "applicant for admission" under 8 U.S.C. § 1225(b)(2). Briefly, as an "applicant for admission," who is present in the United States without having been admitted, she is subject to mandatory detention and is entitled only to the process due to her under the statute.

Respondents acknowledge this Court's prior rulings rejecting their analysis to Petitioner's challenges to Respondents' policies or practices at issue in this case including those arising under 8 U.S.C. § 1225(b)(2). *See* Order Granting Prelim. Inj., ECF No. 27; Order Granting Prelim. Inj., ECF No. 90. While Respondents respectfully disagree with that analysis, in the interest of judicial economy and to conserve judicial resources, Respondents rely on all of their prior arguments explaining why Petitioner is subject to mandatory detention under 8 U.S.C. § 1225 in this opposition and return. Respondents reserve all rights, including the right to appeal, and the right to raise any prior argument they made arising under 8 U.S.C. § 1225 in any future appeal. After the Court issued its orders granting a preliminary injunction as to Carmen Aracely Pablo Sequen and Petitioner, several courts in other districts in the Ninth Circuit have denied motions for a temporary restraining order or preliminary injunctive relief for individuals, like Petitioner, who were detained under 8 U.S.C. § 1225(b)(2) following conditional parole; moreover, these courts have upheld, at least preliminarily, mandatory detention under § 1225(b)(2). *See Altamirano Ramos v. Lyons*, No. 25-cv-09785, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (acknowledging that the court had previously rejected the government's interpretation of § 1225(b)(2), but "after additional

research and analysis, the court has concluded that Petitioner is subject to mandatory detention under § 1225(b)(2)(a), and that Petitioner is not eligible for a bond hearing under 8 U.S.C. § 1226(a)"); *Sixtos Chavez v. Noem*, No. 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir. Nov. 7, 2025); *Valencia v. Chestnut*, No. 25-cv-01550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, No. 25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025). Should the Court prefer to receive a more exhaustive and fulsome analysis of any issue arising under 8 U.S.C. § 1225, Respondents will do so upon the Court's request.

2. Section 1226 Does Not Impact the Detention Authority for Applicants for Admission.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. §§ 1226, 1227(a), and 1229a, and does not impact the directive in 8 U.S.C. § 1225(b)(2)(A) that "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 proceedings under [8 U.S.C. § 1229a]," *id.* § 1225(b)(2)(A).[2] As the Supreme Court explained, 8 U.S.C. § 1226(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 289, 303; *Matter of Q. Li*, 29 I&N Dec. at 70 (BIA 2025); *see also Matter of M-S-*, 27 I&N Dec. at 516 (U.S. Atty. Gen. 2019) (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory"

[2] The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). "[I]t is a commonplace of statutory construction that the specific governs the general . . . ." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is "most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission" and in order to "eliminate the contradiction, the specific provision is construed as an exception to the general one"); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that "[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones"). Here, 8 U.S.C. § 1225(b)(2)(A) "does not negate [8 U.S.C. § 1226(a)] entirely," which still applies to admitted aliens who are deportable, "but only in its application to the situation that [8 U.S.C. § 1225(b)(2)(A)] covers." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

detention authority under 8 U.S.C. § 1225).[3]

Generally, such aliens may be released on bond or their own recognizance, also known as "conditional parole." 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to release on bond; rather, both DHS and IJs have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under 8 U.S.C. § 1226(c). *See* 8 U.S.C. § 1226(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* 8 U.S.C. § 1226(c)(2).

Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, 8 U.S.C. § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to 8 U.S.C. § 1226. 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*, 586 U.S. 392, 416-19 (2019) (recognizing that aliens who are inadmissible for engaging in terrorist activity are subject to 8 U.S.C. § 1226(c)). As the Supreme Court in *Barton* also noted, "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "Redundancy in one portion of a statute is not a license to

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[3] Importantly, a warrant of arrest is not required in all cases. *See* 8 U.S.C. § 1357(a). For example, an immigration officer has the authority "to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation" or "to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . . ." *Id.* § 1357(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests); *see Q. Li*, 29 I&N Dec. at 70 n.5. Moreover, DHS may issue a warrant of arrest within 48 hours (or an "additional reasonable period of time" given any emergency or other extraordinary circumstances), 8 C.F.R. § 287.3(d); doing so does not constitute "post-hoc issuance of a warrant," *Q. Li*, 29 I&N Dec. at 69 n.4. While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to 8 U.S.C. § 1226(a) detention authority under a plain reading of 8 U.S.C. § 1226(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

rewrite or eviscerate another portion of the statute contrary to its text . . . ." *Id.*; *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216, 222 (BIA 2025) ("Interpreting the provisions of section [1226(c)] as rendering null and void the provisions of section [1225](b)(2)(A) (or even the provisions of section... 1225(b)(1)), would be in contravention of the 'cardinal principle of statutory construction,' which is that courts are to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.'" (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)). The statutory language of 8 U.S.C. § 1226(c)—including the most recent amendment pursuant to the Laken Riley Act, *see* 8 U.S.C. § 1226(c)(1)(E), merely reflects a "congressional effort to be doubly sure" that certain aliens are detained, *Barton*, 590 U.S. at 239.

To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that "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 [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

C. PETITIONER CANNOT OBTAIN AN INJUNCTION PROHIBITNG HER TRANSFER.

In her habeas petition, Petitioner improperly seeks an order enjoining Respondents from transferring her outside of this district. *See* Pet. ¶ 11; *see also* Pet. at 11. The Court cannot provide that relief. The Attorney General has discretion to determine the appropriate place of detention. *Milan-Rodriguez v. Sessions*, No. 16-cv-01578-AWI, 2018 WL 400317, *10 (Jan. 12, 2018) (citing *Rios-Berrios v. I.N.S.*, 776 F.2d 859, 863 (9th Cir. 1985) ("We wish to make ourselves clear. We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide."). And while the Court may review whether such discretion resulted in a deprivation of rights, Petitioner has not shown how her mandatory future detention, or any transfer, would interfere with the ability to present her case or access counsel more than any other similarly situated detainee. *See Milan-*

Rodriguez, 2018 WL 400317, *10 ("There is nothing in the record to indicate that Petitioner's transfer was irregular or anything other than an ordinary incident of immigration detention."). If Petitioner is detained, Respondents have the authority under the INA to transfer her outside of the district.

D. THIS COURT SHOULD NOT REVERSE THE BURDEN OF PROOF.

Petitioner claims that at any custody hearing, Respondents should bear the burden of proving by, clear and convincing evidence, that she is a flight risk or a danger to the community. *See* Pet. at 11. At any future hearing, Petitioner should have the burden of demonstrating that they are not a flight risk or danger to the community. It would be improper to reverse the burden of proof and place it on Respondents in these circumstances. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210-12 (9th Cir. 2022). ("Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases."); *Matter of Guerra,* 24 I&N at 39.

E. THIS COURT CANNOT AFFECT THE EXECUTION OF ANY FUTURE REMOVAL ORDER.

Petitioner's habeas petition suggests that this Court can enjoin her detention indefinitely and even if she is subject to a final removal order. *See* Pet. at ¶ 11 (seeking a permanent injunction without any limitation).

Petitioner's immigration proceedings will continue even after the Court rules on her habeas petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner becomes subject to a final order of removal, her detention is mandatory under the INA. *See* 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has unambiguously upheld detention pending an alien's removal. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (an alien is not entitled to habeas relief after the expiration of the presumptively reasonable six-month period of detention under § 1231(a)(6) unless he can show the detention is "indefinite"—*i.e.*, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."). Thus, if

Petitioner becomes subject to a future final order of removal, her detention will be required by statute.

Moreover, 8 U.S.C. § 1252(g) further limits the Court's authority to stay removal even during the process of extra-statutory procedures. Congress spoke clearly that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). This jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999). Numerous courts of appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of removal—even temporarily to assert other claims to relief—are barred by Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred plaintiff's claim seeking a temporary stay of removal while he pursued a motion to reopen his immigration proceedings); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting plaintiff's argument that jurisdiction remained because petitioner was challenging DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide whether to execute a removal order includes the discretion to decide when to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

Even if the Court grants Petitioner's habeas petition, any order cannot affect the execution of any future removal order including, but not limited to, Petitioner's mandatory detention under the INA.

F. PETITIONER IS NOT ENTITLED TO FEES.

Finally, Petitioner seeks "all costs incurred in maintaining this action, including reasonable attorneys' fees under the Equal Access to Justice Act." *See* Pet. at 11. Petitioner fails to state why she would be entitled to fees or why Respondents' positions are not "substantially justified." *See generally* Pet.; *see also Meza-Vazquez v. Garland*, 993 F.3d 726, 729 (9th Cir. 2021) (explaining the test for when the Federal Government's positions are substantially justified). If the Court concludes that Petitioner is entitled to fees, Respondents request the opportunity to brief whether fees are permissible and proper under the Equal Access to Justice Act.

IV. CONCLUSION

The Court lacks jurisdiction over Petitioner's claims. Additionally, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b). Accordingly, the Court should deny Petitioner's habeas petition. At minimum, the Court cannot issue an order that affects the execution of any future final order of removal for Petitioner.

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Respectfully submitted,

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