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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

BERNARDO GUADARRAMA AYALA,

Petitioner,

v.

BRIAN HENKEY, Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement; KENNETH PORTER, Acting Director of the Boise U.S. Immigration and Customs Enforcement Field Sub-Office; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, and MIKE HOLLINSHEAD, Sheriff of Elmore County,

Respondents.

Case No. 1:25-CV-00682-AKB

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (Dkt. No. 1)

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INTRODUCTION

Petitioner Bernardo Guadarrama Ayala (Ayala or Petitioner) entered the United States unlawfully and without inspection. He has not sought asylum since his arrival and claims not to be seeking admission into the United States. Immigration and Customs Enforcement (ICE) detained Ayala pursuant to 8 U.S.C. § 1225(b)(2) and placed him in removal proceedings under 8 U.S.C. § 1229a. Ayala remains in ICE's custody. Ayala challenges his detention and seeks release through the Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order (TRO). *See* Dkt. No. 1 (Petition); Dkt. No. 2 (Motion for Temporary Restraining Order).

Through multiple provisions of 8 U.S.C. § 1252, Congress has severely limited judicial review of immigration cases and stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention during those proceedings. Because this Court lacks jurisdiction over the Petitioner's claims, the Petition should be dismissed. Even if this Court determines it does have jurisdiction, however, venue is not appropriate here because Congress determined that only the United States District Court for the District of Columbia has venue for challenges to national policy decisions like those at issue here.

Assuming the Court has jurisdiction and venue, Petitioner's claim still fails. Petitioner admits to being present unlawfully and unequivocally states he is not seeking lawful admission to the United States. Neither has he sought asylum. Thus, he may be detained and immediately removed; no writ need issue. *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), 1225(a)(4). However, even if Petitioner were seeking lawful admission to the United States as an "applicant for admission," Petitioner is still correctly subject to mandatory detention under 8 U.S.C. § 1225(b)(2). That unambiguous statute controls resolution of this case. *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). 8 U.S.C. § 1225(a)(1) provides that "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission."

8 U.S.C. § 1225(b)(2)(A) thereafter provides that "an alien who is an applicant for admission . . . shall be detained" for removal proceedings, unless an immigration officer determines that he is "clearly and beyond a doubt entitled to be admitted." Because Petitioner acknowledges being in the country unlawfully and has never been lawfully admitted, he is subject to mandatory detention under Section 1225(b)(2). The Petition for Habeas Corpus should be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Bernardo Guadarrama Ayala is a citizen of Mexico. *See* Declaration of Jared Callahan (Callahan Decl.) at ¶ 4. Petitioner acknowledges that he entered the United States unlawfully and without inspection in 2016. Dkt. No. 1 at ¶ 24 (where Petitioner admits entering without inspection), ¶ 29 (where Petitioner admits he "entered unlawfully"). Petitioner has never filed an application for asylum or other legal status. Callahan Decl. at ¶ 8,

On December 3, 2025, ICE arrested Petitioner in Caldwell, Idaho as a noncitizen present in the United States unlawfully. *See* Callahan Decl. at ¶ 10. ICE thereafter charged Petitioner under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled, and placed Petitioner in removal proceedings under 8 U.S.C. § 1229a. Callahan Decl. at ¶ 13. Petitioner is currently detained at the Elmore County Jail in Mountain Home, Idaho, pursuant to 8 U.S.C. § 1225(b)(2). Callahan Decl. at ¶¶ 3, 11-12.

On December 4, 2025, Petitioner filed the Petition for Writ of Habeas Corpus (Dkt. No. 1) and Motion for Temporary Restraining Order (Dkt. No. 2). Petitioner concedes that he is a noncitizen unlawfully present in the United States. Petitioner argues, however, that his arrest and one-day detention was unlawful because he was not provided a bond hearing or other process based on national policy changes. Petitioner states unequivocally that he is not seeking lawful admission into the United States. *See* Dkt. No. 2-1 at 7, 9 (noting Petitioner is not seeking admission to the United States).

On December 4, 2025, the same day that the Petition was filed and before Petitioner served the Government with its filings, the Court issued an Order requiring Petitioner to serve the Government and setting a briefing schedule to resolve the Petition. *See* Dkt. No. 3 at ¶¶ 1-2. The Court also effectively granted the Motion for Temporary Restraining Order, before service and without granting the Government an opportunity to be respond, by prohibiting ICE from moving Petitioner within or out of the United States, Dkt. No. 3 at ¶ 5, and prohibiting ICE from engaging in "activities or communications with the Petitioner" regarding his rights or "removal proceedings" without the presence of counsel, Dkt. No. 3 at ¶ 6. *See also* Dkt. No. 2 (where the only relief sought by Petitioner in the TRO was that immediately awarded by the Court). Specifically, The Court's injunction effectively prevents the Government from conducting regular removal proceedings or presenting Petitioner to an immigration judge until these proceedings conclude or the Court dissolves the TRO.[1]

LEGAL STANDARD

Habeas proceedings provide a forum to challenge the legality of confinement. *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *see also Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). They cannot be used to seek other relief. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 116-18 (2020). A writ of habeas corpus is appropriate only when the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Estelle v. McGuire*, 502 U.S. 62, 68 (1991).

Before considering the merits of any habeas petition, a Court must first evaluate its jurisdiction and venue. *See Williams v. Woodford*, 384 F.3d 567, 582 (9th Cir. 2004).

[1] There are no immigration judges in Idaho. Accordingly, ICE needs to relocate Petitioner to Las Vegas or another location in order to proceed with regular immigration proceedings and/or provide any bond hearings. *See* Callahan Decl. at ¶¶ 13-17.

LEGAL BACKGROUND

The detention and removal of inadmissible noncitizens in the United States is governed by a complex statutory framework created by Congress. A major objective of that framework was to "'protec[t] the Executive's discretion' from undue interference by the courts; indeed, 'that can fairly be said to be the theme'" of the statutory framework. *Thuraissigiam*, 591 U.S. at 112 (citation omitted).

A noncitizen "who arrives at a port of entry, i.e., a place where an alien may lawfully enter, must apply for admission," as must a noncitizen who arrives at any other place or enters unlawfully. *Id.* at 108 (internal quotation marks omitted). If the noncitizen does not wish to apply for admission because he is not seeking admission to the United States, he may be deported immediately. *See* 8 U.S.C. § 1225(a)(4). If the noncitizen does seek lawful admission, but is for whatever reason deemed inadmissible, he may be removed. *Id.* "The usual removal process involves an evidentiary hearing before an immigration judge," where the alien "may attempt to show that he or she should not be removed." *Thuraissigiam*, 591 U.S. at 108. Removal proceedings initiated under 8 U.S.C. § 1229a begin when the Government files a Notice to Appear with the Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 520, 2011 WL 2194682 (BIA 2011). "During the time when removal is being litigated, the alien will either be detained, at considerable expense, or allowed to reside in this country, with the attendant risk that he or she may not later be found." *Thuraissigiam*, 591 U.S. at 108.

A noncitizen may be detained under several provisions of the Immigration and Nationality Act, but Sections 1225(b)(2) and 1226(a) are relevant here. In short, Section 1225(b) applies to noncitizens present without lawful admission, while Section 1226(a) applies to aliens lawfully admitted but thereafter subject to removal, e.g., because they engaged in conduct that rendered them removable.

Under 8 U.S.C. § 1225(b)(2), a noncitizen not lawfully admitted but who is seeking admission "shall be detained for a proceeding under section 1229a," if the examining officer determines that the noncitizen is "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2). Noncitizens detained pursuant to Section 1225 are not eligible for a bond hearing in part because they have never been lawfully admitted. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *see also* 8 U.S.C. § 1225(a)(4) (noting immediate deportability of an alien unlawfully present and not seeking admission).

Under Section 1226(a), a noncitizen previously lawfully admitted but subject to removal "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). As with section 1225(b), the process under 1226(a) assumes the noncitizen wants to remain in the United States pending removal. When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. 8 C.F.R. § 236.1(c)(8). The noncitizen will thereafter be released if he "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citation omitted). "Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an [immigration judge] at any time before a removal order becomes final." *Id.* at 1197. That is to say, the noncitizen detained under 1226(a) may appeal the ICE officer's initial custody determination to an immigration judge and seek bond in that proceeding. *See* 8 C.F.R. § 236.1(d)(1).

ARGUMENT

I. This Court lacks subject matter jurisdiction and venue to hear this case.

A. This Court lacks subject matter jurisdiction because Petitioner's claims and requested relief are barred by 8 U.S.C. § 1252.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000). Because Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9), this case must be dismissed.

Courts lack jurisdiction over any claim arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders"); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(g) also bars district courts from hearing challenges to the method by which the Government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Limpin v. United States*, 828 Fed. App'x 429, 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction"); *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) (§ 1252(g) bars review of "ICE's decision to take [petitioner] into custody and to detain him during his removal proceedings").

Here, Petitioner's claims arise from his detention during removal proceedings, which stem from the Attorney General's decision to commence such proceedings. *Herrera-Correra v. United States*, No. 08-CV-2941, 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) ("[A]n

alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under 1252(g).) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang v. United States*, No. 10-CV-0389, 2010 WL 11463156, at *6 (C.D. Cal. Aug.18, 2010); 8 U.S.C. § 1252(g); *but see Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025); *Elias v. Knight*, No. 25-CV-00604-BLW, Dkt. No. 16 (D. Idaho Nov. 19, 2025). As such, § 1252(g) bars review of Petitioner's claims. *See Acxel S.Q.D.C. v. Bondi*, No. 25-CV-3348, 2025 WL 2617973, at * 2 (D. Minn. Sept. 9, 2025) (finding that § 1252(g) jurisdictionally bars review of petitioner's challenge to detention during removal proceedings).

8 U.S.C. § 1252(b)(9) also bars judicial review of "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter . . . ." 8 U.S.C. § 1252(b)(9). And even where judicial review is available, it is only upon a final order of removal and then through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings").

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity[,] can be reviewed *only* through the [petition for review] process." *See J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how*

immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original, internal citations omitted); *see also 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"). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal 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").[2]

To the extent that Petitioner seeks to challenge his detention, he should present the challenge to the appropriate federal court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9). The Court should deny the Petition and dismiss for lack of jurisdiction under 8 U.S.C. § 1252.

B. The Court lacks venue because, even assuming jurisdiction, venue for Petitioner's claims is vested exclusively in the United States District Court for the District of Columbia.

Petitioner's core challenge does not center on facts specific to Petitioner or his unlawful presence in the United States. Rather, Petitioner's challenge is to the Government's determination under 8 U.S.C. § 1225(b) that Petitioner and those similarly situated are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Specifically, Petitioner challenges the Government's "new policy" and guidance that explains why noncitizens like Petitioner are

[2] Petitioner filed his Petition within 24 hours of arrest and therein requested outright release. Accordingly, there can be no question that Petitioner challenges both the initial detention and the authority to detain without bond. Only if the initial detention was challenged, would outright release be an appropriate remedy. A writ of habeas corpus can only be used to seek release, not to control procedures or drive administrative processes. *See, e.g. Thuraissigiam*, 591 U.S. at 116-17; *see also infra* at Section I.B (explaining why venue is inappropriate for this national policy challenge, as opposed to habeas in district court).

subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See, e.g.* Dkt. No. 1 at ¶¶ 42-46. Even assuming jurisdiction, the District of Idaho is not the appropriate venue because Congress has restricted venue for challenges to "determinations under 1225(b)" to the United States District Court for the District of Columbia. *See* 8 U.S.C. § 1252(e)(3)(A). Accordingly, this case must be dismissed.

When Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), it significantly limited jurisdiction and judicial review of immigration cases. *See, e.g.*, 8 U.S.C. § 1252(g) (Exclusive Jurisdiction). However, while it precluded jurisdiction in the district courts for most cases, it specifically provided venue to the United States District Court for the District of Columbia for certain limited challenges in 8 U.S.C. § 1252(e)(3)(A):

> Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—
>
> (i) whether such section, or any regulation issued to implement such section, is constitutional; or
>
> (ii) whether such regulation, or a written policy directive, written policy guidance, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of the law.

In this case, all agree that the Government has made a "determination[] under 1225(b)" that Petitioner is subject to mandatory detention. And all agree that Petitioner is challenging that 1225(b) determination. *See, e.g.*, Dkt. No. 1 at ¶¶ 2-3, 55 (where Petitioner challenges the Government's 1225(b) determination). Petitioner also alleges that the 1225(b) determination is the result of "DHS policy issued on July 8, 2025," and a Board of Immigration Appeals (BIA) decision issued September 5, 2025." *See* Dkt. No. 1 at ¶¶ 3-5, 7-8, 42-43.

The plain language of 8 U.S.C. § 1252(e)(3) applies and restricts venue to the United States District Court for the District of Columbia. *See* 8 U.S.C. § 1252 (generally precluding jurisdiction in district courts but providing unique venue for certain challenges in the U.S. District Court for the District of Columbia). Indeed, Petitioner's case not only challenges a "determination under section 1225(b)," but challenges that determination on the grounds that a "written policy directive" or "written policy guideline" is inconsistent with law. Congress foresaw this category of challenges and specifically directed that any such challenges be brought in the United States District Court for the District of Columbia. *See* 8 U.S.C. § 1252(e)(3)(A)(ii). Because venue for this challenge is only appropriate in the United States District Court for the District of Columbia, the Court must dismiss under 8 U.S.C. § 1252(e)(3).

II. Section 1225 governs Petitioner's detention.

Petitioner's claims for alleged statutory and constitutional violations fail because he admits being in the United States unlawfully, has not sought asylum, claims not to be seeking lawful admission, and is subject to mandatory detention under 8 U.S.C. § 1225. The Court should therefore affirm the Government's determination under 1225(b).

A. Petitioner is unlawfully present in the United States and not seeking admission; accordingly, he is properly detained under Section 1225 for immediate removal.

Petitioner acknowledges that he entered the United States unlawfully and without inspection. *See, e.g.*, Dkt. No. 1 at ¶ 1 (admits entering without inspection), ¶ 29 (admits entering unlawfully). Neither did he seek asylum or other legal status. Callahan Decl. at ¶ 8. Moreover, he admits in this proceeding that he has not sought admission to the United States in the past and is not now seeking lawful admission to the United States to legalize his status. *See* Dkt. No. 2-1 at 7 (where Petitioner claims he "has not sought admission"), 9 (where Petitioner clarifies that he is not "seeking admission"). Given those concessions, Petitioner is an

unlawfully present noncitizen who is not an applicant for admission. Accordingly, he is subject to immediate removal. *See* 8 U.S.C. § 1225(a)(4) (where a noncitizen is not seeking admission as an applicant for admission, he can be "depart[ed] immediately").

Granting a writ of habeas corpus to a noncitizen who is not seeking admission so that he can be released to live unlawfully and without bother would "extend the writ of habeas corpus far beyond its scope." *Thuraissigiam*, 591 U.S. at 107 (citing *Boumediene v. Bush*, 553 U.S. 723 (2008)). Accordingly, the writ should be denied, and the Government permitted to remove Petitioner or allow him to leave voluntarily. In the alternative, the writ could be granted and Petitioner released into the custody of someone for the purpose of transportation back to Mexico. *See Thuraissigiam*, 591 U.S. at 119 (describing Justice Story's release of a similarly situated Petitioner in *Ex parte D'Olivera*, 7 F.Cas. 853, 854 (C.C.D. Mass. 1813)).

B. Assuming Petitioner remains an "applicant for admission," he is properly detained under 8 U.S.C. § 1225(b).

Based on the plain language of the statute, the Court should reject Petitioner's claim that § 1226(a) governs his detention instead of § 1225. *See* Dkt. No. 1 at ¶¶ 48-53.

Section 1225(b)(2)(A) applies to aliens, like Petitioner, who have never been lawfully admitted into the United States. Assuming the alien is seeking lawful admission, he is subject to mandatory detention unless the examining immigration officer determines that he is "clearly and beyond a doubt" entitled to be admitted. *See Chavez v. Noem*, No. 25-CV-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025); *see also Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (holding detention appropriate under § 1225(b)(2)); *but see, e.g., Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1263 (W.D. Wash. 2025); *E.C. v. Noem*, No. 25-CV-01789, 2025 WL 2916264, at *13 (D. Nev. Oct. 14, 2025). Section 1225(a)(1) "expressly defines that '[a]n alien present in the United States who has not

been admitted . . . shall be deemed for purposes of this Act *an applicant for admission*.'" *Chavez v. Noem*, 2025 WL 2730228, at *4 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Moreover, "admission" is defined as "the lawful entry of an alien into the United States after inspection and authorization." *See* 8 U.S.C. § 1101(a)(13)(A). Here, all agree that Petitioner is an "alien present in the United States who has not been admitted." Thus, as found by the court in *Chavez v. Noem,* and as mandated by the plain language of the statute, Petitioner is an "applicant for admission" and subject to the mandatory detention provisions of § 1225(b)(2).[3]

When the plain text of a statute is clear, "that meaning is controlling and [courts] need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent that legislative history is relevant here, it does not "refute[] the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc),

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[3] The statutory scheme presumes that an alien arrested and not lawfully admitted is seeking lawful admission; it therefore treats the alien as an applicant for admission. However, as noted above, in the unique case before this Court, Petitioner claims not to be seeking admission to the United States and instead seeks outright release to continue living unlawfully. This would seem to distinguish Petitioner's case from all the other recent habeas cases, and it justifies denial of the writ in this case. An unlawful alien that is not seeking lawful entry cannot be considered an applicant for admission and may be immediately removed. *See* 8 U.S.C. § 1225(a)(4).

The court in *Elias v. Knight*, No. 25-cv-00604-BLW, Dkt. No. 16 at 15, suggested a reading of the statutes where a noncitizen unlawfully present may remain an applicant for admission without actually desiring to seek lawful admission in the United States. That analysis, however, is at war with common sense and would render the immigration system a sham. The process provided by the immigration laws is designed to provide process to those that want to be here—i.e., those who are seeking admission or lawful status. There simply is no need to provide significant process for unlawful aliens who do not seek lawful admission—if they do not want to be in the country lawfully, they can, of course, be immediately removed. *See, e.g.*, 8 U.S.C. § 1225(a)(4).

declined to extend by, United States v. Gambino-Ruiz, 91 F.4th 981 (9th Cir. 2024); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216 at 223, 2025 WL 2674169 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). The IIRIRA therefore "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (citation omitted)).

Interpreting § 1225 to only apply to aliens encountered attempting to enter the United States or aliens encountered shortly after they gained entry without inspection as Petitioner suggests, *see* Dkt. No. 1 at ¶ 52, would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Torres v. Barr*, 976 F.3d at 928. Thus, it would violate the entire premise of *Torres v. Barr's* analysis on that point. *See id.* 927-28. Noncitizens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 at 225 ("The House Judiciary Committee Report makes clear that Congress intended to eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights than those who presented themselves to authorities for inspection."). This Court should follow the Ninth Circuit's analysis in *Torres v. Barr*, 976 F.3d at 927-28, and "'refuse to interpret the INA in a way that would in effect repeal that statutory fix' intended by Congress in enacting the IIRIRA." *Chavez v. Noem,* 2025 WL 2730228, at *4 (quoting *United States v. Gambino-Ruiz*, 91 F.4th at 990); *but see Elias v. Knight*, No. 25-CV-00604-BLW, Dkt.

No. 16 at 17-19 (where the court rejected *Torres v. Barr* and a statutory analysis that gave meaning to Congress' attempt to address the anomaly).[4]

The phrase "alien seeking admission" does not limit the scope of § 1225(b)(2)(A) as suggested by Petitioner. The BIA, experts in immigration law through specialized experience, 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." *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743, 2012 WL 948566 (BIA 2012). Moreover, there is "no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under . . . 8 U.S.C. § 1226(a)." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Lemus-Losa*, 25 I&N Dec. at 743 & n.6). Indeed, the United States Supreme Court squarely rejected that concept in *Thuraissigiam*, noting that an alien that had made it into the country as opposed to being stopped at the border was not entitled to more favorable treatment. 591 U.S. at 139. The Court noted that to treat people differently depending on where they were apprehended

> disregards the reason for our century-old rule regarding the due process rights of an alien seeking initial entry. That rule rests on fundamental propositions: '[T]he power to admit or exclude aliens is a sovereign prerogative,' . . . the Constitution gives the 'political department of the government' plenary authority to decide which aliens to admit, . . . and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.'

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[4] The Court in *Elias* found that the administration's new policy guidelines "upend[ed] decades of settled practice without clear congressional intent." *See Elias*, No. 25-CV-00604, Dkt. No. 16 at 17. However, the prior interpretation of the statute was not challenged or tested as compared to the position outlined now. Thus, the past practice—essentially left unchallenged—cannot be deemed "more right" simply because it existed for a long time. The plain language of the statutes should govern.

Thuraissigiam, 591 U.S. at 139. The Supreme Court said it right—the political department of the Government has plenary authority to determine how an alien is to be detained when seeking entry. Petitioner, at best, is seeking entry at this time, and thus the Court absolutely must defer to the Government's plenary authority.

The Government urges the Court to grapple with this important question: If an alien is unlawfully present and not seeking lawful admission at the time of his arrest, then why would he be entitled to any relief? Again, all of the processes which the immigration statutes provide aliens are designed to test an alien's claims of admission or their rights not to be removed. But where an alien is not seeking lawful admission or status, the processes are not necessary. The alien must simply leave or be immediately removed.

Petitioner's core legal argument is that his detention should be governed by 8 U.S.C. § 1226(a), a process he claims applies to aliens, like himself, who are not seeking lawful admission. *See* Dkt. No. 2-1 at 7, 9 (where Petitioner claims he is not seeking admission); *see also* Dkt. No. 1 at ¶ 52 (where Petitioner claims that § 1225's "entire framework is premised on inspections of people who are "seeking admission" at the border as opposed to 1226(a)). But Petitioner is wrong to assume, as he does, that 1226(a) somehow differentiates itself from 1225(b) because it governs situations where people are not seeking lawful admission. That violates an important principle: common sense. Indeed, 1226(a)'s entire framework, like 1225(b), assumes the alien at issue is seeking lawful admission to remain in the country—that is why 1226(a) outlines provisions for detention "pending a decision on whether the alien is to be removed." If an alien unlawfully present is not seeking lawful admission or status, there is no need for detention "pending a decision" on removal under 1226(a) because the alien not seeking admission must and will be immediately removed. *See, e.g.*, 8 U.S.C. § 1225(a)(4).

Petitioner cannot have it both ways—he must seek admission to be potentially entitled to discretionary release. The inquiry into whether an alien should be removed is difficult precisely because most noncitizen are seeking lawful admission and do not want to be removed. But if it is true that Petitioner does not fit that category, then there is no need for an inquiry as to whether he should be removed given that, in this case, Petitioner concedes he is unlawfully in the United States, not seeking admission, and has never sought asylum. *See* 8 U.S.C. § 1225(b)(2).

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)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under § 1225(a)(1), in part because that is the only reading that makes sense. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which requires that all aliens "who are applicants for admission or otherwise seeking admission . . . be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). Congress further determined that an alien not seeking admission needs to proceed as an applicant for admission and can be immediately removed. *See* 8 U.S.C. § 1225(a)(4).

As correctly determined by the district court in *Chavez v. Noem*, the addition of § 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific crimes. 2025 WL 2730228, at *5. And it does not render the Government's reading of 1225(b)(2) superfluous. Section 1226(c)'s mandatory detention provisions, including as amended by the Laken Riley Act, govern a significant swath of aliens who are not covered by

1225(b)(2), including, for example, admitted aliens. The mere fact that there may be overlap is not a basis for rewriting section 1225(b)(2)'s clear text. And even as to the areas of overlap, section 1226(c) does considerable independent work by prohibiting the Secretary from granting parole to those aliens that it covers.

Because Petitioner is properly detained under § 1225, his claims fail.

III. Even if Petitioner prevails on his statutory argument, outright release is not an appropriate remedy.

Petitioner asks this Court to assume jurisdiction over this immigration matter and either order Respondents to "release Petitioner immediately" or, in the alternative,

> issue an order requiring Respondents to schedule a bond hearing within 20 days, where they will bear the burden to demonstrate by clear and convincing evidence that he is a danger to the community or a flight risk, to justify his continued detention, and enjoining Respondents from seeking to stay his release from custody by operation of 8 C.F.R. § 1003.19(i).

See Dkt. No. 1 at 15, subpart (6). The Court should deny these requests because they are inequitable, inconsistent with the alleged violation (i.e., the Government's application of 1225(b)(2) instead of 1226(a)), and seek to bypass the established immigration adjudication and review process that Congress designed to handle the volume and complexity of immigration cases. *See Mirmehdi v. United States*, 689 F.3d 975, 982 (9th Cir. 2012) ("Congress has established a substantial, comprehensive, and intricate remedial scheme in the context of immigration.") (quoting *Arar v. Ashcroft*, 585 F.3d 559, 572 (2d Cir. 2009)).

Petitioner admits to being unlawfully present in the United States and claims not to be seeking admission. He nevertheless seeks his outright release as part of this habeas proceeding. Allowing him to obtain such release improperly circumvents the immigration judge and the comprehensive immigration system statutorily created to handle such cases and claims, and in any case, is not a permissible use of the writ of habeas corpus.

A. There is no justification for Petitioner's outright release.

Even assuming that Petitioner prevails, and the Court determines that Petitioner's detention should be governed by Section 1226(a) as opposed to Section 1225(b), there is no equitable reason to release Petitioner outright.

Under § 1226(a), the Government was lawfully permitted to arrest and detain Petitioner as an alien unlawfully present in the United States. Thus, Petitioner's initial arrest and detention were sound even if § 1226(a) applies. After arrest, 8 U.S.C. § 1226(a) allows the Attorney General to (1) continue to detain Petitioner or (2) release him on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1)-(2). Thus, even under § 1226(a), Petitioner is not entitled to outright release.

Assuming Section 1226(a) applies, Petitioner will have two levels of custody review. First, Petitioner will be subject to an initial custody and bond determination by an immigration officer. *See* 8 C.F.R. § 236.1(c)(8). Second, assuming Petitioner is not pleased with the outcome of that determination, Petitioner can appeal the immigration officer's determination to an immigration judge. *See* 8 C.F.R. § 236.1(d)(1). This is a fair and equitable process consistent with the law Petitioner believes should apply in this case.

Given that the Government stands ready to apply § 1226(a) to Petitioner, there is no equitable reason to order his outright release. That is particularly true here where Petitioner filed the Petition the day after his arrest and the Court immediately granted injunctive relief. At most, the Government held Petitioner without a bond hearing for one day before the Court's injunction precluded the Government from taking further action.

This Court should not follow the district court's analysis in *Elias*, No. 25-CV-00604-BLW, Dkt. No. 16 at 22-23. There the district court released a petitioner on the grounds that that "Respondents [had] utterly failed to articulate a legitimate interest in the Petitioner being

detained," and because the court believed there was "no evidence that [Petitioner was] a flight risk or poses a danger to the community." *Id*. at 22. Such analysis cannot stand, however, because (a) neither Respondents nor Petitioner are seeking a bond hearing before the federal court in this proceeding, and (b) the Government is not trying to justify discretionary detention in this proceeding or submit evidence on that point. Whether Petitioner should be discretionarily detained under 1226(a) is a question for the immigration officer and immigration judge to answer in the first instance. This Court lacks jurisdiction to conduct a bond hearing because that authority has been statutorily assigned to Respondents.

B. The Court should not enter an affirmative injunction outlining the bond hearing process to be followed; instead, the Court should allow the Government to follow the procedures outlined in § 1226(a).

If this Court concludes that Petitioner is improperly detained pursuant to § 1225, it should not dictate how ICE should proceed on remand as requested by Petitioner. *See* Dkt. No. 1 at 15, subpart (6) (where Petitioner essentially requests an affirmative injunction outlining the bond process that he prefers). Instead, the Court should allow ICE to detain Petitioner under § 1226(a) while following the procedures outlined in that statute and the corresponding regulations to determine custody and release. *See, e.g., Rodriguez v. Bostock*, 779 F. Supp. 3d at 1263 (ordering United States to provide petitioner with bond hearing under 8 U.S.C. § 1226(a) within fourteen days); *E.C. v. Noem*, 2025 WL 2916264, at *13 (ordering United States to provide Petitioner with bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days).

Letting the Government follow its statutory procedures would allow a local immigration officer to make an initial custody determination before application to an immigration judge on appeal. *See* 8 C.F.R. § 236.1. Because there are no immigration judges in Idaho, Petitioner would be transferred to allow such a hearing. *See* Callahan Decl. at ¶¶ 13-17.

Injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680 (9th Cir. 2021) (cleaned up). "Where relief can be structured on an individual basis, it must be narrowly tailored to remedy the specific harm shown[.]" *Id.* (internal citation omitted). Here, the specific harm that Petitioner alleges—that he is unlawfully barred from receiving a bond hearing—is remedied by allowing an immigration officer to consider release on bond, and then, allowing Petitioner to appeal that decision to an immigration judge if necessary.

Because a habeas petition can only be used to secure release, it cannot require specific procedures following release. *See Thuraissigiam*, 591 U.S. at 116-117. Here, the relief sought by Petitioner goes beyond release and demands a specific post-release process. Accordingly, the requested relief is inconsistent with the purpose of the writ and must be denied. *See id.* at 118.

CONCLUSION

Petitioner admits his unlawful presence in the United States and claims that he is not seeking lawful admission into the country. Nevertheless, he filed the pending writ to gain his outright release so that he can continue living in the country unlawfully. That is not a permissible use of the writ, makes no sense, and cannot be countenanced. Accordingly, and under these facts, the Court should deny the writ and dismiss the case.

Respectfully submitted this 11th day of December, 2025.

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By:

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