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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Ricardo de Jesus Cisneros,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

Michael Bernacke, in his official capacity as
ICE Field Officer Director and as warden in
current custody of Petitioner,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: 2:25-cv-01170-HCN-JCB

REPLY TO RESPONDENTS' RESPONSE
TO THE PETITIONER'S HABEAS
PETITION

IMMIGRATION HABEAS CASE

1 On January 13, 2025, Respondents responded to this Court's order to show cause, Petitioner
2 now, by and through undersigned counsel, enters this reply to the government's response.

3 **I. 8 U.S.C. § 1252(b)(9) Prevents the District Court from Hearing Challenges to**
4 **Removal, not Detention.**

5 First, Petitioner does not challenge a final removal order. His claim concerns the statutory
6 authority for his detention and its constitutionality. Courts in this Circuit and elsewhere recognize that
7 § 1252(b)(9) does not bar district court jurisdiction over habeas challenges that do not directly contest
8 removal. See *Jose J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025);
9 cf. *Mukantagara v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113, 1115–16 (10th Cir. 2023). Petitioner
10 is not challenging a removal order, issuance of a notice to appear, or commencement of proceedings;
11 § 1252(b)(9) does not apply.

12
13 Second, § 1252(b)(9) applies only to claims “arising from” removal actions. The Supreme Court
14 in *Jennings* confirmed that challenges to detention itself, independent of a removal order, fall outside
15 this bar. 583 U.S. at 294–95. As *Jennings* explains:

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18 Because the extent of the Government's detention authority is not a matter of
19 “discretionary judgment,” “action,” or “decision,” respondents' challenge to “the
20 statutory framework that permits [their] detention without bail,” *ibid.*, falls outside of
21 the scope of § 1226(e). We may therefore consider the merits of their claims.

22 *Id.* Petitioner's claim mirrors this: he challenges the government's categorical construction of
23 § 1225(b)(2) and its denial of bond hearings, an independent deprivation of liberty properly cognizable
24 in habeas.

25 Third, the historical function of habeas supports this Court's jurisdiction. Habeas exists to test
26 the lawfulness of detention regardless of ongoing removal proceedings. *Zadvydas v. Davis*, 533 U.S.
27 678, 687 (2001). Interpreting § 1252(b)(9) to bar all district court review of detention would strip
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1 habeas of its essential role, especially for interior aliens subject to mandatory or prolonged detention
2 without bond.

3 Finally, district courts consistently recognize that § 1252(b)(9) does not preclude habeas review
4 of detention for aliens not challenging a final removal order. See *Escobar Salgado v. Mattos*, 2025 WL
5 3205356, at *8–10 (D. Nev. Nov. 17, 2025); *Jose J.O.E.*, 2025 WL 2466670, at *7. The statutory
6 channeling provisions prevent piecemeal appellate review of removal orders—they do not foreclose
7 constitutional or statutory challenges to ongoing detention.
8

9 Accordingly, this Court retains jurisdiction under 28 U.S.C. § 2241 to consider Petitioner’s
10 challenge to detention under § 1225(b)(2)(A). Petitioner’s claims are properly before the Court and
11 should proceed on the merits.
12

13 **II. Respondent’s Interpretation of 8 U.S.C. § 1225(b)(2)(A) is Overbroad**

14 Respondents’ argument relies on an overbroad reading of 8 U.S.C. § 1225(b)(2)(A), which
15 courts nationwide have repeatedly rejected. They claim the “plain text” mandates mandatory detention
16 for all noncitizens who entered without inspection, regardless of length of residence, but district courts
17 have found this interpretation inconsistent with the statute, legislative history, and longstanding agency
18 practice. See *Bautista v. Santacruz*, 2025 WL 3289861, 3288403 (C.D. Cal. Nov. 20 & 25, 2025)
19 (nationwide injunction).
20

21 Although Respondents assert that the “plain text” of § 1225 compels mandatory detention of
22 all noncitizens who entered without inspection regardless of how long they have resided in the United
23 States, a large majority of district courts have concluded that this interpretation is inconsistent with the
24 statutory structure, legislative history, and decades of settled agency practice.¹
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26

27 ¹ See *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *Herrera v.*
28 *Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-
01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL
2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10,

1 Respondents' position mirrors arguments rejected in those cases: that § 1225(a)(1)'s definition
 2 of "applicant for admission" permanently strips immigration judges of bond authority, even for long-
 3 present interior noncitizens. As the District of Nevada explained, this reading "would transform § 1225
 4 from a border-inspection statute into a permanent detention regime for millions" and cannot be squared
 5 with the INA. *Escobar Salgado v. Mattos*, 2025 WL 3205356, at *10–22 (D. Nev. Nov. 17, 2025).

7 Although Respondents never cite to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025),
 8 their arguments mirror those findings. Hurtado's categorical bond prohibition for interior noncitizens
 9 represents a sharp departure from decades of § 1226(a) practice. Courts reviewing Hurtado have
 10

11 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Perez Sanchez v.*
 12 *Bernacke*, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025
 13 WL 2998098 (D. Nev. Oct. 23, 2025); *ominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094 (D.
 14 Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, 2:25-CV-01987-RFB-BNW (D. Nev. Oct. 27, 2025); *Arce-Cervera v.*
 15 *Noem*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Alvarado Gonzalez v. Mattos*, No. 2:25-
 16 CV-01599-RFB-NJK (D. Nev. Oct. 30, 2025); *Rodriguez Cabrera v. Mattos*, No. 2:25-cv-01551-RFB-EJY, 2025 WL
 17 3072687 (D. Nev. Nov. 3, 2025); *Berto Mendez v. Noem*, No. 2:25-cv-02602-RFB-MDC, 2025 WL 3124285 (D. Nev.
 18 Nov. 7, 2025); *Cornejo-Mejia v. Bernacke*, No. 2:25-cv-02139-RFB-BNW, 2025 WL 3222482 (D. Nev. Nov. 18, 2025);
 19 *Lucero Ortiz v. Bernacke*, No. 2:25-cv-01833-RFB-NJK, 2025 WL 3237291 (D. Nev. Nov. 19, 2025); *Perez Sales v.*
 20 *Mattos*, No. 2:25-cv-01819-RFB-BNW, 2025 WL 3237366 (D. Nev. Nov. 19, 2025); *Hernandez Duran v. Bernacke*, No.
 21 2:25-cv-02105-RFB-EJY, 2025 WL 3237451 (D. Nev. Nov. 19, 2025); *Cabrera-Cortes v. Knight*, No. 2:25-cv-01976-
 22 RFB-MDC, 2025 WL 3240971 (D. Nev. Nov. 20, 2025); *Jacobo Ramirez v. Noem*, No. 2:25-cv-02136-RFB-MDC, 2025
 23 WL 3270137 (D. Nev. Nov. 24, 2025); *Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, 2025 WL 3470902 (D. Nev.
 24 Dec. 3, 2025); *Silva Hernandez v. Noem*, No. 2:25-cv-02304-RFB-EJY, 2025 WL 3470903 (D. Nev. Dec. 3, 2025); *Reyes*
 25 *Cristobal v. Bernacke*, No. 2:25-cv-02231-RFB-EJY, 2025 WL 3485770 (D. Nev. Dec. 4, 2025); *Carrillo Fernandez v.*
 26 *Knight*, No. 2:25-cv-02221-RFB-BNW, 2025 WL 3485800 (D. Nev. Dec. 4, 2025); *Pilar Torres v. Bernacke*, No. 2:25-cv-
 27 02270-RFB-EJY, 2025 WL 3514615 (D. Nev. Dec. 8, 2025); *Nolasco-Gomez v. Noem*, No. 2:25-cv-02217-RFB-DJA,
 28 2025WL 3514758 (D. Nev. Dec. 8, 2025); *Ramirez-Contreras v. Noem*, No. 2:25-cv-02218-RFB-EJY, 2025 WL 3514681
 (D. Nev. Dec. 8, 2025); *Rodas v. Noem*, No. 2:25-cv-02216-RFB-BNW, 2025 WL 3514680 (D. Nev. Dec. 8, 2025);
Perdomo-Gonzalez v. Noem, No. 2:25-cv-02121-RFB-EJY, 2025 WL 3514758 (D. Nev. Dec. 8, 2025); *Hernandez Isidoro*
v. Bernacke, No. 2:25-cv-02312-RFB-NJK, 2025 WL 3524773 (D. Nev. Dec. 8, 2025); *Serrano Gonzalez v. Knight*, No.
 2:25-cv-02081-RFB-BNW, 2025 WL 3524774 (D. Nev. Dec. 9, 2025); *Morales Rondon v. Bernacke*, No. 2:25-cv-01979-
 RFB-BNW, 2025 WL 3527246 (D. Nev. Dec. 9, 2025); *Marquez v. Knight*, No. 2:25-cv-02203-RFB-NJK, 2025 WL
 3527244 (D. Nev. Dec. 9, 2025); *Flores-Garcia v. Bernacke*, No. 3:25-cv-00688-RFB-CSD, 2025 WL 3527247 (D. Nev.
 Dec. 9, 2025); *Garcia Soto v. Knight*, No. 2:25-cv-02138-RFB-BNW, 2025 WL 3537405 (D. Nev. Dec. 10, 2025);
Quinonez Orosco v. Lyons, No. 2:25-cv-02240-RFB-EJY, 2025 WL 3539275 (D. Nev. Dec. 10, 2025); *Gallegos Rangel v.*
Knight, No. 2:25-cv-02161-RFB-BNW, 2025 WL 3539303 (D. Nev. Dec. 10, 2025); *Salguero v. DHS*, No. 2:25-cv-02328-
 RFB-NJK, 2025 WL 3539276 (D. Nev. Dec. 10, 2025); *Mejia Soto v. DHS*, No. 2:25-cv-02281-RFB-EJY (D. Nev. Dec.
 11, 2025); *Perez Gonzalez v. Noem*, No. 2:25-cv-02137-RFB-DJA (D. Nev. Dec. 11, 2025); *Ramirez v. Noem*, No. 2:25-
 cv-02110-RFB-DJA (D. Nev. Dec. 12, 2025); *Reyes v. Henkey*, No. 2:25-cv-02206-RFB-NJK (D. Nev. Dec. 12, 2025);
Rodriguez Vazquez v. Bostock, No. 3:25-cv-05240 (W.D. Wash.); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK (D. Mass.);
Diaz Martinez v. Hyde, No. CV 25-11613-BEM (D. Mass.); *Sarmiento v. Perry*, No. 1:25-cv-01644 (E.D. Va.); *Salazar v.*
Dedos, No. 1:25-cv-00835-DHU-JMR (D.N.M.); *Nava Hernandez v. Baltazar*, No. 1:25-cv-03094-CNS (D. Colo.);
Ernesto Gonzalez Ramos v. Dedos, No. 1:25-cv-00975-MLG-KRS (D.N.M.); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-cv-
 01031 (D.N.M.); *Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS (D. Colo.); *Arauz v. Baltazar*, No. 1:25-cv-03260-
 CNS (D. Colo.); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo.).

1 overwhelmingly rejected this approach. See *Escobar Salgado*, 2025 WL 3205356; *Barco Mercado v.*
2 *Francis*, No. 1:25-CV-06852, at *9–10 (S.D.N.Y. Nov. 26, 2025).

3 *Jennings v. Rodriguez*, 583 U.S. 281 (2018), also does not support Respondents. *Jennings*
4 addressed statutory bond authority for applicants at the border, not interior noncitizens, and did not
5 hold that § 1225 displaces § 1226(a) or permits indefinite mandatory detention without individualized
6 review.
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8 Finally, Respondents’ “perverse incentive” argument fails. Congress already addressed
9 unlawful entry through removability and enforcement provisions; it did not authorize indefinite
10 detention solely based on entry method. Their interpretation would render § 1226(a) largely superfluous
11 and raise serious due process concerns. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

12 Respondents’ statutory argument is undermined by DHS’s own Notice to Appear, which
13 charges Petitioner under 8 U.S.C. § 1182(a) as “present in the United States without having been
14 admitted or paroled,” not as an “arriving alien” or applicant for admission. This reflects DHS’s
15 determination that Petitioner was apprehended in the interior, placing him in standard removal
16 proceedings. DHS cannot now recast him as an applicant for admission under § 1225(b)(2)(A) to avoid
17 the bond framework of § 1226(a). Courts routinely reject such post hoc recharacterizations. See
18 *Hurtado v. Garland*, ___ F. Supp. 3d ___ (C.D. Cal. 2025); *Escobar Salgado v. Mattos*, 2025 WL
19 3205356, at *10–22 (D. Nev. Nov. 17, 2025).

20 Petitioner’s detention is governed by § 1226(a), not § 1225(b). Section 1225 applies at the
21 threshold of entry, while § 1226(a) governs detention pending removal proceedings. Reading § 1225
22 to swallow § 1226 would render § 1226(a) meaningless and conflict with Congress’s narrower mandate
23 in § 1226(c). Courts have repeatedly rejected this overbroad interpretation as inconsistent with the
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1 statutory scheme and due process. *Id.*; *Bautista v. Santacruz*, 2025 WL 3289861, 3288403 (C.D. Cal.
2 Nov. 20 & 25, 2025).

3 Because DHS chose to charge Petitioner as an interior noncitizen, it cannot now invoke
4 § 1225(b)(2)(A) to deny him bond eligibility. The Court should reject Respondents' attempt to expand
5 § 1225 beyond its intended scope.
6

7 **III. Respondents Reliance on *Demore v. Kim* is in Error**

8 Respondents' contention that Petitioner lacks any constitutional right to a bond hearing is
9 contrary to Supreme Court precedent and to the near-uniform view of district courts nationwide. While
10 *Demore v. Kim*, 538 U.S. 510 (2003), upheld mandatory detention for a narrow class of criminal
11 noncitizens under § 1226(c), the Court did so only in reliance on two critical assumptions that are
12 absent here: that detention would be brief and that it would apply to individuals with serious criminal
13 convictions who had already been afforded substantial procedural protections. *Id.* at 528–30. The
14 Supreme Court has since made clear that *Demore* does not authorize prolonged civil detention without
15 individualized review, particularly where detention extends beyond the “brief” period contemplated by
16 Congress. *See Jennings v. Rodriguez*, 583 U.S. 281, 304–05 (2018) (rejecting statutory bond hearings
17 but reaffirming the availability of as-applied constitutional challenges).
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20 Unlike the petitioner in *Demore*, Petitioner is not subject to criminal mandatory detention, has
21 not been convicted of any qualifying offense, and is detained solely under a civil immigration statute.
22 The government's attempt to analogize § 1225(b)(2) detention to § 1226(c) detention ignores these
23 distinctions and improperly extends *Demore* beyond its narrow holding. Indeed, the Supreme Court
24 has repeatedly emphasized that civil detention is constitutionally permissible only when accompanied
25 by adequate procedural safeguards and when reasonably related in duration and purpose to its
26 justification. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
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1 Consistent with those principles, nearly every district court to consider the issue has concluded
2 that noncitizens detained under § 1225(b)(2)—particularly those apprehended in the interior and
3 subjected to prolonged detention—have a constitutional right to an individualized bond hearing. Courts
4 across multiple circuits have held that due process requires the government to justify continued
5 detention by clear and convincing evidence and to provide a neutral decisionmaker to assess flight risk
6 and danger. *See, e.g., Escobar Salgado v. Mattos*, 2025 WL 3205356, at *18–22 (D. Nev. Nov. 17,
7 2025); *Hurtado v. Garland*, ___ *F. Supp. 3d* ___ (C.D. Cal. 2025); *Jose J.O.E. v. Bondi*, 2025 WL
8 2466670, at *8–12 (D. Minn. Aug. 27, 2025); *Garcia Cortez v. Noem*, 2025 WL 2652880, at *9–13
9 (D. Colo. Sept. 16, 2025). This overwhelming consensus reflects the settled principle that civil
10 detention without meaningful individualized review raises serious due process concerns.
11

12 Respondents’ assertion that Petitioner’s detention has a “definite termination point” is similarly
13 unavailing. As numerous courts have recognized, removal proceedings—particularly where
14 noncitizens pursue statutorily authorized relief—often last many months or years. The mere theoretical
15 endpoint of removal does not cure the constitutional infirmity of prolonged detention without a bond
16 hearing. *See Jennings*, 583 U.S. at 315 (Breyer, J., dissenting) (noting that detention pending removal
17 “may last for years”). Due process does not permit the government to detain a civil detainee for an
18 indeterminate period based solely on speculation that proceedings will eventually conclude.
19

20 Finally, Respondents’ reliance on a single district court decision upholding § 1225 detention
21 cannot overcome the weight of authority recognizing a constitutional bond right. Particularly when
22 Petitioner has cited to dozens of cases both in this circuit and around the United States that have found
23 that Respondent’s actions in denying bond are unlawful. The Due Process Clause demands more than
24 categorical detention based on statutory labels; it requires an individualized assessment of liberty
25 interests. Where, as here, Petitioner has been subjected to prolonged civil detention without any
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1 opportunity to seek release, due process requires a bond hearing. The Constitution—not DHS’s
2 litigation position—sets that minimum floor.

3 **IV. Conclusion**

4 For the foregoing reasons, Petitioner respectfully submits that Respondents’ arguments fail as
5 a matter of law and fact. Section 1252(b)(9) does not divest this Court of jurisdiction to hear Petitioner’s
6 habeas challenge to his detention under § 1225(b)(2)(A), as he does not contest a final order of removal
7 and his claims arise independently from the statutory and constitutional legality of his ongoing
8 detention. Respondents’ statutory interpretation of § 1225(b)(2)(A) is overbroad, inconsistent with the
9 INA’s structure, and directly at odds with DHS’s own charging decision treating Petitioner as an
10 interior respondent under § 1226(a). Legislative history, statutory purpose, and controlling precedent—
11 including *Zadvydas*, *Jennings*, and consistent district-court authority—confirm that § 1226(a) governs
12 detention in these circumstances and entitles Petitioner to an individualized bond hearing.
13

14 Accordingly, Petitioner respectfully requests that this Court grant the habeas petition, recognize
15 that Respondents’ detention authority under § 1225(b)(2)(A) does not apply to him, and order that he
16 be afforded a meaningful bond hearing before an immigration judge in accordance with the Due Process
17 Clause and governing law.
18

19 Dated: December 30, 2025

20 Respectfully submitted,

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22
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