UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-00078-ECT-JFD

PEDRO XAVIER CORNEJO CHUQUI,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

**FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Pedro Xavier Cornejo Chuqui filed this petition for a writ of habeas corpus because he wants an immigration court to conduct a bond hearing in connection with his detention by the U.S. Immigration and Customs Enforcement ("ICE"). Federal Respondents[1] submit this response to the petition. The Court should deny Petitioner's request for habeas relief because his detention is mandatory under 8 U.S.C. § 1225—he is not eligible for a bond hearing.

## BACKGROUND

### I. Facts and Procedural History

The Federal Respondents draw the following background and procedural history from the petition and the Declaration of Deportation Officer William J. Robinson ("Robinson Decl.").

[1] The "Federal Respondents" are Pamela Bondi, Attorney General; Kristi Noem, Secretary, U.S. Department of Homeland Security; Department of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Immigration and Customs Enforcement; Daren K. Margolin, Director for Executive Office for Immigration Review; Executive Office for Immigration Review; and, David Easterwood, Acting Director, St. Paul Field Office, Immigration and Customs Enforcement.

Petitioner is a citizen and national of Ecuador. Pet. ¶ 13; Robinson Decl. ¶ 4. He entered the United States in January 2020 without inspection. Pet. ¶ 28; U.S. Border Patrol (USBP) encountered Petitioner on or about February 15, 2020, at or near Sasabe, Arizona. Robinson Decl. ¶ 4. USBP issued Petitioner a Notice to Appear and Order of Expedited Removal, Form I-860, and Petitioner was placed in fear proceedings. Robinson Decl. ¶ 4.

On or about May 4, 2020, U.S. Citizenship and Immigrations Services (USCIS) made a positive credible fear determination and issued Petitioner a Notice to Appear, Form I-862, charging removability under 212(a)(6)(A)(i) of the INA. Robinson Decl. ¶ 5. On or about June 9, 2020, an Immigration Judge granted Petitioner a bond of $8,000.00. Robinson Decl. ¶ 6. Petitioner posted the $8,000.00 bond on or about June 11, 2020, and Petitioner was released from ICE custody. Robinson Decl. ¶ 7.

On or about November 16, 2022, an Immigration Judge in Hartford, Connecticut, dismissed Petitioner's case. Robinson Decl. ¶ 8.

On or about January 7, 2026, ICE's Enforcement and Removal Operations (ERO) encountered Petitioner during Operation Metro Surge and arrested him. Robinson Decl. ¶ 9; Pet. ¶ 30. On or about January 7, 2026, Petitioner filed for Writ of Habeas Corpus. Robinson Decl. ¶ 10. Then, on or about January 8, 2026, without notice of the habeas petition, ICE ERO transferred Petitioner to El Paso Camp East Montana in El Paso, Texas for bed space decompression. Robinson Decl. ¶ 11.

Petitioner is currently being processed for removal under 1229a. Robinson Decl. ¶11, Ex. A.

## II. Statutory Background on Immigration Detention

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens[2] as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'" *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing denied*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for any [noncitizens] during the pendency of their deportation proceedings."). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Congress has therefore enacted a multi-layered statutory scheme for the inspection and civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in

[2] Federal law refers to people who are not citizens or nationals of the United States using the term "alien." 8 U.S.C. § 1101(a)(3). Federal Respondents will use the term "noncitizen" instead. *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It is the interplay between the first two of these statutes that is at issue here.

**A. Inspection and Detention under 8 U.S.C. § 1225**

Section 1225 governs inspection, the initial step in this process. *Id.*

The very first paragraph of the statute, paragraph (a)(1), defines its scope. 8 U.S.C. § 1225(a)(1). Entitled "[NONCITIZENS] TREATED AS APPLICANTS FOR ADMISSION," paragraph (a)(1) identifies who "shall be deemed for purposes of this chapter an applicant for admission." *Id.* A person is "deemed" an "applicant for admission" by falling into one of two categories of noncitizens: (1) those who are "present in the United States who ha[ve] not been admitted or" (2) those "who arrive[] in the United States," whether at a lawful port of entry or not. *Id.* The law then provides that "all . . . applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).

Paragraph (b) of § 1225 addresses what to do once an applicant for admission is determined to be inadmissible. Under this paragraph, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

Section 1225(b)(1) generally governs applicants for admission who are "arriving in the United States" (plus "certain other"[3] noncitizens) found inadmissible for fraud or

[3] The "certain other" noncitizens referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to extend (b)(1)'s expedited procedures to a noncitizen who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [he or she] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception

lacking documentation. 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Noncitizens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review," *id.* § 1225(b)(1)(A)(i), unless they apply for asylum and are found to have a fear of persecution, *id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If he or she does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he or she is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2), by contrast, is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Paragraph (b)(2) applies "in the case of [a noncitizen] who is an applicant for admission," and states, "if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for [noncitizens] arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release

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inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

on parole "any [noncitizen] applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

### B. Apprehension and Discretionary Detention under 8 U.S.C. § 1226(a)

Even after initial inspection, the government retains the authority to arrest and detain noncitizens here in the country pending removal proceedings. "Section 1226 generally governs the process of arresting and detaining that group of [noncitizens] pending their removal." *Jennings*, 583 U.S. at 288. It states that a noncitizen, "[o]n warrant issued by the Attorney general . . . may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a).[4] For noncitizens arrested under §1226(a), the government has broad discretionary authority to detain a noncitizen during removal proceedings. *See id.* § 1226(a)(1) (DHS "may continue to detain the arrested" noncitizen during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the" noncitizen. 8 U.S.C. § 1226(a)(1). "To secure release, the

[4] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

[noncitizen] must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). DHS may set a bond or condition a noncitizen's release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

But if DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, he may request a bond hearing before an immigration judge, within the Department of Justice's Executive Office for Immigration Review. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for his ties to the United States and the possible risks of flight or danger to the community. *See In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [noncitizen] or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of

the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

## ARGUMENT

### I. Petitioner is properly subject to mandatory detention according to the plain text, context, and structure of § 1225.

The Court is familiar with this issue by now and has already ruled on the government's arguments for holding that detention under these circumstances is appropriately characterized as mandatory detention pursuant to § 1225. *See, e.g.*, *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025). Although the Eighth Circuit is poised to weigh-in soon, *see Avila v. Bondi*, No. 25-3248 (8th Cir. docketed Nov. 10, 2025), the Federal Respondents acknowledge that this case presents similar legal and factual issues to prior habeas petitions.

Rather than belabor these proceedings further by re-arguing points that the Court has already considered and rejected, the Federal Respondents will: (1) offer additional authority that the Court may not have previously considered; and (2) summarize the fatual and legal basis for the government's interpretation in this particular case. The Federal Respondents request that the Court note the arguments made below and in *Jose J.O.E.* and hold that they are preserved for appeal.

A. Additional Authority

Courts across the country have agreed with the government's interpretation of § 1225 in factually similar cases. *See, e.g.*, *Naikpay v. Sukkar*, No. 2:25-cv-1167-KCD-DNF, 2026 WL 44820, *1 (M.D. Fla. Jan. 7, 2026); *Zakinyan v. Warden*, No. 25-CV-3717

JLS (MMP), 2026 WL 36081, *3 (S.D. Cal. Jan. 6, 2026); *Alfonso Parra v. Secretary, Department of Homeland Security*, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243, * (M.D. Fla. Jan. 5, 2026); *Calderon Lopez v. Lyons*, --- F. Supp. 3d ----, 2026 WL 44683, *1, *4-8 (N.D. Tex. 2026); *Lopez v. Ladwig*, No. 6:25-cv-01884, 2026 WL 19095, *4 (W.D. La. Jan. 2, 2026); *Zuniga v. Lyons*, --- F. Supp. 3d ----, No. 1:25-CV-221-H, 2025 WL 3755126, *1, *3-7 (N.D. Tex. 2025); *Rodriguez v. Jeffreys*, 8:25CV714, 2025 WL 3754411, *11-14 (D. Neb. Dec. 29, 2025); *Montoya v. Holt*, CIV-25-01231-JD, 2025 WL 3733302, *6-10 (W.D. Okla. Dec. 26, 2025); *Lucero v. Field Office Director of Enforcement and Removal Operations*, No. 1:25-cv-823, 2025 WL 3718730, 2025 WL 3718730, *1-6 (S.D. Ohio Dec. 23, 2025); *A.M. v. Joyce*, No. 2:25-cv-00615-LEW, 2025 WL 3706922, *1,*4-5 (D. Me. Dec. 22, 2025); *De La Torre v. Lyons*, No. 1:25-cv-01516-DJC-CSK, 2025 WL 3704448, *2 (E.D. Cal. Dec. 22, 2025); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025); *Urbina Zapata v. Chestnut*, No. 1:25-cv-01922-WBS-CKD, 2025 WL 3687643 (E.D. Cal. Dec. 19, 2025); *E.R.J.B. v. Wofford*, No. 1:25-cv-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025); *Romero Rebolledo v. Chestnut*, No. 1:25-cv-01904-WS-CKD, 2025 WL 3683122 (E.D. Cal. Dec. 18, 2025); *Liang v. Almodovar*, No. 1:25-cv-09322-MKV, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Pablo Coronado v. Secretary, DHS*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *P.B. v. Bergami*, No. 3:25-cv-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Yanyun Mo v. Chestnut*, No. 1:25-cv-01789 WBS CSK, 2025 WL 3539063 (E.D. Cal. Dec. 10, 2025); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Melgar v. Bondi, et al.*, No.

8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-CV-867 (JLS), 2025 WL 7484932, (W.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, No. 1:25-CV-01612 (SEC P), 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Hernandez Cruz v. Noem*, No. 8:2-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Suarez v. Noem*, No. 1:25-cv-202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Maceda Jimenez v. Thompson*, No. 4:25-cv-05025, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Alves De Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, 2025 LX 568700 (C.D. Cal. Nov. 12, 2025)*; Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025)*;Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025).

This Court observed that there are "reasons to question" the majority view, that the "statutory-interpretation issue is difficult and close," and that courts reaching the opposite conclusion have done so "reasonably." *Ahmed M. v. Bondi*, No. 25-cv-4711 (ECT/SGE), Doc. No. 8 at 2, 2026 WL 25627, *1 (Jan. 5, 2026); *see also Hector G. v. Lyons*, No. 25-cv-4710 (PJS/EMB), Doc. No. 9 (Dec. 30, 2025 Order) ("Respondents' argument has some force."). The Government is well aware that taking a fresh look at this statutory scheme is no small task. "The complex provisions of the INA have provoked comparisons to a morass, a Gordian knot, and King Minos's labyrinth in ancient Crete. . . . Divining its meaning is ordinarily not for the faint of heart." *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (en banc) (cleaned up).

However, given the importance of the question and recent developments in the caselaw, the United States respectfully urges this Court to revisit the majority approach and give serious consideration to the Government's view of the law as set forth in this response. *See Sandoval*, 2025 WL 3048926, at *6 (noting "many of the[] cases" taking the majority position did so "before—or soon after—the BIA issued its opinion in" *Hurtado*). And it is worth emphasizing that courts within the Eighth Circuit agree with the government's arguments. *See, e.g., Melgar v. Bondi, et al.*, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Suarez v. Noem*, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In particular, the District of Nebraska's decision in *Melgar* comprehensively and persuasively analyzes the text of § 1225 and § 1226 before concluding that a habeas petition like the one filed in this case

failed on the merits because the petitioner was properly detained under § 1225. The Federal Respondents contend that this authority justifies revisiting the Court's earlier decisions on the § 1225/1226 issue presented in this petition.

*1.* Factual Distinctions Make this Case Different from *J.O.E.*

This case has several material distinctions from the *J.O.E.* case. First, Petitioner was not in removal proceedings when recently apprehended. The record is clear that the proceedings against Petitioner had been dismissed. Robinson Decl. ¶ 8. Petitioner, however, has never been admitted, and does not dispute that fact. Pet. ¶¶ 27-29. Petitioner's recent arrest was under 1225(b)(2)(A). Robinson Decl., Ex. A. picked up under 1225 and put in new proceedings.

In *J.O.E.,* this Court pointed to a lack of record evidence that the petitioner was detained under 1225: "The problem is, Respondents point to no record evidence suggesting that Jose was arrested and detained under § 1225. Jose was arrested on a warrant pursuant to § 1226, *see* ECF No. 22-2 at 1, and detained under authority of § 1226 and its implementing regulations, *see* ECF No. 22-3." That is not the case here. *See generally* Petition.[5]

[5] Some courts reason that the box for an "alien present in the United States without being admitted or paroled" is checked on the NTA (Ex. A), while the box for "arriving aliens" is unchecked. But because Section 1225 applies *both* to noncitizens already "present in the United States" and those who arrive in the United States, the checked box is perfectly consistent with Petitioner being subject to detention under Section 1225(b)(2)(A).

2. Mandatory Detention under § 1225

The Court should uphold Petitioner's mandatory detention under § 1225(b)(2). Petitioner is a noncitizen present in the United States who entered without inspection. Thus, he is "deemed" to be an "applicant for admission" under § 1225(a)(1). Pursuant to the statute's "catchall provision"—paragraph (b)(2)—a noncitizen like Petitioner who is deemed an applicant for admission and who is not subject to paragraph (b)(1) must be detained during removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The Court should reject Petitioner's request to recast his detention as arising under § 1226, for reasons that are evident from the text, context, and structure of the statutes at issue.

*First*, Petitioner's argument is contrary to § 1225's plain text, which "deem[s]" people who are already "present in the United States" without admission to be applicants for admission. *See* 8 U.S.C. § 1225(a)(1). Although paragraph (b)(1) applies to those "arriving" in the United States and other more recent arrivals, paragraph (b)(2) is not so limited and applies instead to any "other" noncitizen "who is an applicant for admission." *Compare id.* § 1225(b)(1)(A)(i), *with id.* § 1225(b)(2)(A); *accord Jennings*, 583 U.S. at 287. The term "seeking admission" does not implicitly narrow this provision to just those applicants for admission who are "arriving" at the border. Such an interpretation would render paragraph (b)(2) essentially redundant of (b)(1). Rather, (b)(2) includes all people deemed to be applicants for admission who are not already covered by paragraph (b)(1).

*Second*, the context of § 1225's passage in a 1996 reform package shows Congress intended to place noncitizens who are present without admission on equal footing with those who are apprehended upon arrival. Before the current version of § 1225 was enacted,

under the entry doctrine, inadmissible noncitizens who successfully evaded apprehension and gained entry enjoyed greater rights than those who were found inadmissible after appearing for inspection. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (explaining history of § 1225), *declined to extend by United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). But Congress did away with the distinction by, among other changes, deeming both categories to be treated as applicants for admission in § 1225(a) and treating them similarly in § 1225(b). Interpreting § 1225(b) to turn on physical entry rather than lawful admission after inspection would reinvigorate the entry doctrine, contrary to Congress's legislative efforts.

*Third*, Petitioner's approach contradicts the structure of the statute, both within § 1225 itself and between § 1225 and § 1226. Section 1225(b) divides applicants for admission between two subparagraphs: (b)(1) for those applicants for admission who are arriving, and (b)(2) for "other" applicants for admission. Section 1225(b) treats all "applicants for admission"—whether arriving or already present—as mandatory detainees under either (b)(1) or (b)(2), unlike admitted noncitizens who are subject to discretionary detention and allowed bond under § 1226.

Based on § 1225's plain text, context, and structure, the Court should hold Petitioner is properly subject to mandatory detention under § 1225(b)(2).

B. Remedy

If the Court determines that Petitioner is detained under § 1226(a) and not under § 1225(b)(2), then the appropriate remedy is to order a custody redetermination hearing instead of immediate release. That approach would "comport[] with the general rule that

'the scope of injunctive relief is dictated by the extent of the violation established' and should be 'no more burdensome to the defendant than necessary to provide complete relief to the plaintiff.'" *Fuentes v. Olson*, 2025 WL 3524455, at *5 (D. Minn. Dec. 9, 2025) (alterations omitted) (quoting *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022)); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (staying preliminary injunctions "to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue"). The result of this rule is that "[m]ost courts confronting claims analogous to" those raised by Petitioner "order a bond hearing, not immediate release, as a remedy." *Fuentes*, 2025 WL 3524455, at *5 (collecting authority). Petitioner should not obtain a different outcome here.

Under Petitioner's theory, he is not subject to expedited removal proceedings and not subject to detention under any provision of § 1225. If he is correct, then he would have to be subject to discretionary detention under § 1226(a). But § 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. 572, 575 (original emphasis) (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Instead, the statute provides that the government "*may* release the [noncitizen] on . . . bond of *at least* $1,500" or on conditional parole. 8 U.S.C. § 1226(a)(2) (emphasis added). Under this plain text, posting bond of "at least $1,500" is a condition precedent to release. *Id.* And whether a person is entitled to release on bond in the first place depends on if he can prove he "is not a danger to the community or a flight risk." *Miranda v. Garland*, 34 F.4th 338, 347 (4th Cir. 2022). Petitioner is not entitled to an order of immediate release from this Court, unmediated by

the immigration court procedures ordinarily applicable to custody redetermination proceedings under § 1226(a).

C. Evidentiary Hearing

The Federal Respondents believe that the Court can rule on this petition without holding an evidentiary hearing. The facts are not likely to be disputed, and the only issues before the Court are ones of legal interpretation that are capable of resolution on the parties' submissions.

## CONCLUSION

For the reasons discussed above, the Federal Respondents respectfully request that the Court deny this habeas petition.

Dated: January 10, 2026

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