

1 ADAM GORDON  
 United States Attorney  
 2 JULIET M. KEENE  
 Assistant U.S. Attorney  
 3 NM Bar No. 126365  
 Office of the U.S. Attorney  
 4 880 Front Street, Room 6293  
 San Diego, CA 92101-8893  
 5 Telephone: (619) 546-6768  
 Email: Juliet.Keene@usdoj.gov  
 6 Attorneys for Respondents  
 7

8 **UNITED STATES DISTRICT COURT**  
 9 **SOUTHERN DISTRICT OF CALIFORNIA**  
 10

11 S.A.,

Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, et al.,

15 Respondents.  
 16  
 17  
 18  
 19  
 20

Case No.: 26-cv-0592

**RESPONSE TO PETITION FOR  
WRIT OF HABEAS CORPUS**

22 **I. Introduction**

23 Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is  
 24 detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.  
 25 § 1225(b)(2). Petitioner’s habeas petition seeks release. <sup>1</sup> Petitioner’s detention is  
 26 mandated by statute. The Court should deny and dismiss the petition.  
 27

28 <sup>1</sup>ICE has been informed of this Court’s Order precluding Petitioner from being moved  
 out of the Southern District of California during the pendency of this matter.

## II. Factual Background <sup>2</sup>

Petitioner is a citizen and national of Afghanistan. On February 19, 2023, Petitioner arrived at the San Ysidro Port of Entry and applied for admission to the United States. Ex. 1, NTA. He was determined to be an arriving alien applying for admission and inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. He was then placed in removal proceedings under 8 U.S.C. § 1229a and released from DHS custody on parole.

On January 26, 2026, Petitioner was apprehended by DHS at Camp Pendleton Marine Base and placed into ICE custody. ECF No. 1 at ¶ 7. Petitioner was determined to be an immigrant not in possession of a valid entry document. DHS initiated new removal proceedings under 8 U.S.C. § 1229a and issued a new Notice to Appear. Ex. 2, NTA 2026. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner's removal proceedings are ongoing and Petitioner will have the opportunity to apply for relief from removal before an IJ, including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.<sup>3</sup>

## III. Argument

### A. Petitioner is Lawfully Detained

While Petitioner was previously released from custody on parole, discretionary decisions under Section 1226 are not subject to judicial review. 8 U.S.C. § 1226(e) (“No court may set aside any action or decision by the Attorney General under this section regarding the detention or any alien or the revocation or denial of bond or parole.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”). As Petitioner challenges the decision to remand him back into custody, his claims are barred by Section 1226(e). *See Jennings*

<sup>2</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

<sup>3</sup> *See also* 8 C.F.R. § 208.2(b) (“Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a . . . Notice to Appear.”).

1 *v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously explained, § 1226(e)  
2 precludes an alien from ‘challeng[ing] a “discretionary judgment” by the Attorney  
3 General or a “decision” that the Attorney General has made regarding his detention or  
4 release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory framework that  
5 permits [the alien’s] detention without bail.’”).

6 Section 1225 applies to “applicants for admission,” such as Petitioner, who are  
7 defined as “alien[s] present in the United States who [have] not been admitted” or “who  
8 arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into  
9 one of two categories, those covered by § 1225(b)(1) and those covered by  
10 § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—  
11 the provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall  
12 provision that applies to all applicants for admission not covered by § 1225(b)(1) (with  
13 specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at  
14 297.

15 **B. This Habeas Case is Limited to Issues Concerning Detention.**

16 Habeas relief is available to challenge only the legality or duration of  
17 confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*,  
18 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v. Thraissigiam*, 591  
19 U.S. 103, 117 (2020) (The writ of habeas corpus historically “provide[s] a means of  
20 contesting the lawfulness of restraint and securing release.”). “[O]ur review of the  
21 history and purpose of habeas leads us to conclude the relevant question is whether,  
22 based on the allegations in the petition, release is *legally required* irrespective of the  
23 relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v.*  
24 *Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the  
25 petitioner’s claim would “necessarily lead to immediate or speedier release.”). To the  
26 extent that Petitioner brings claims that do not arise under § 2241 regarding his asylum  
27 application, the petition should be dismissed.

28 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, Respondents respectfully request that the Court  
3 dismiss this action.

4  
5 DATED: February 6, 2026

Respectfully submitted,

6 ADAM GORDON  
United States Attorney

7 *s/ Juliet M. Keene*  
8 JULIET M. KEENE  
Assistant United States Attorney  
9 Attorney for Respondents