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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JORGE ARMANDO CARLOS,

Petitioner-Plaintiff,

v.

KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security; PAM
BONDI, Attorney General of the United
States; TODD M. LYONS, Acting Director
of United States Immigration and Customs
Enforcement; JASON KNIGHT, Acting
Field Office Director of Salt Lake City Field
Office, U.S. Immigration and Customs
Enforcement; and JOHN MATTOS,
Warden, Nevada Southern Detention
Center; U.S. Immigration and Customs
Enforcement.

Respondents-Defendants.

Case No. 2:25-cv-01900-RFB-EJY

**Federal Respondents' Response in
Opposition to Petitioner's Petition for
Writ of Habeas Corpus and Complaint
for Declaratory and Injunctive Relief
(ECF No. 1)**

Federal Respondents hereby file their response in opposition to Petitioner Jorge Armando Carlos's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (ECF No. 1). Petitioner is an undocumented alien, who is currently detained by U.S. Immigration and Customs Enforcement ("ICE"). Petitioner seeks habeas relief from his mandatory detention while his removal proceedings play out before an immigration judge. ECF No. 1, at ¶1. But his petition and complaint fail for many reasons and should be dismissed.

The petition and complaint should be dismissed because petitioner is lawfully detained under 8 U.S.C. §1225(b)(2) because he is an applicant for admission, he poses a danger to the community as he has a domestic battery conviction on March 20, 2019, a bench warrant issued by Washoe County for \$10,000 on a second domestic battery charge on July 16, 2025, currently pending, and a speeding conviction in Oregon on September 16, 2020. In addition, he is in violation of 8 U.S.C. §1325, because he is an undocumented alien, who has never been lawfully admitted in the United States. Furthermore, the Court lacks jurisdiction to interfere in the petitioner's removal proceedings. Finally, the petition and complaint should be dismissed because petitioner has failed to exhaust administrative remedies. This response is supported by the following memorandum of points and authorities.

Respectfully submitted this 10th day of October 2025.

SIGAL CHATTAH
Acting United States Attorney

/s/ Virginia T. Tomova
VIRGINIA T. TOMOVA
Assistant United States Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

Currently in separate removal proceedings before the Executive Office of Immigration Review's Immigration Court, Petitioner Jorge Armando Carlos, an undocumented alien, challenges his temporary detention while the decision is made regarding his removal. Petitioner admits that his removal proceedings started on July 18, 2025, when Department of Homeland Security (DHS) filed a notice to appear (NTA) charging him as removable individual pursuant to INA § 212(a)(6)(A) for being present in the United States without admission or parole. ECF No. 1, p. 6. Petitioner thereby petitions this Court for a Writ of Habeas Corpus under 28 U.S.C. § 2241. ECF No. 1, ¶ 1. In doing so, Petitioner challenges a lawfully enacted regulation (8 C.F.R. § 1003.19(i)(2)) authorizing Petitioner's detention through an automatic stay, but critically, that automatic stay merely implements detention Congress authorized under 8 U.S.C. § 1225(b)(2). Therefore, to grant

the Petition, Petitioner asks this Court to set aside a lawfully enacted regulation and statute, finding both unconstitutionally applied, as alleged violations of the Due Process Clause of the United States Constitution. But as discussed below, the Supreme Court has long recognized Congress's broad power and immunity from judicial control to expel aliens from the country and to detain them while doing so. *See e.g., Shaughnessy v. United States*, 345 U.S. 206, 210 (1953); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). The United States' temporary detention of Petitioner in no way exceeds this broad authority and does not deprive Petitioner of Due Process. *See Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process"); *see also Mohammed Mostafa Altayar v. Loretta E. Lynch*, Case CV-16-02479-PHX-GMS (D. Arizona 2016). Because Petitioner's temporary detention is lawful, the Habeas Petition fails, and the United States, including all Federal Respondents in their official capacities, hereby seeks dismissal of the Petition and his Complaint.

BACKGROUND

Petitioner is a native of Mexico. ECF No. 1, ¶ 17. According to the petitioner, he entered the United States in February of 2005. *Id.* Petitioner was not admitted or paroled by an immigration officer, and he entered without an inspection. On July 16, 2025, the petitioner was arrested for domestic violence which is still pending in Washoe County, and there is a \$10,000 bench warrant for the petitioner's arrest for failure to appear before the Court on the domestic violence charge. Subsequently, on July 17, 2025, Petitioner was arrested by DHS on July 17, 2025, upon reasonable belief of Petitioner's unlawful presence in the United States. *Id.*, p. 7. The Department of Homeland Security (DHS) subsequently placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a by issuing him a Notice to Appear charging Petitioner as being inadmissible for being present in the United States without being admitted, under 8 U.S.C § 1182(a)(6)(A)(i) ("An alien present in the

1 United States without being admitted or paroled, or who arrives in the United States at any
2 time or place other than as designated by the Attorney General, is inadmissible.”). *Id.*, p. 6.

3 During removal proceedings, aliens deemed “applicants for admission” shall be
4 detained. 8 U.S.C. § 1225(b)(2)(A) provides: “Subject to subparagraphs (B) and (C), in the
5 case of an alien who is an applicant for admission, if the examining immigration officer
6 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be
7 admitted, the alien shall be detained for a proceeding under section 1229a of this title.”
8 Congress defined “applicant for admission” as the following: “An alien present in the
9 United States who has not been admitted or who arrives in the United States (whether or
10 not at a designated port of arrival and including an alien who is brought to the United States
11 after having been interdicted in international or United States waters) shall be deemed for
12 purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1); *see Jennings v.*
13 *Rodriguez*, 583 U.S. 281, 287 (2018) (explaining that every “alien who arrives in the United
14 States or is present in this country but has not been admitted is treated as an applicant for
15 admission.” (quotations and punctuation omitted)). This is regardless of how long an illegal
16 alien has been in the country. There is no case law that holds that after some time, the status
17 of an illegal alien, who entered the United States without inspection somehow miraculously
18 changes into something else other than an applicant for an admission. To date neither the
19 petitioner nor the Court have been able to articulate what is the status of an illegal alien who
20 has entered the United States without inspection other than an applicant for admission.

21 Petitioner requested and was granted a bond hearing on August 12, 2025. At the
22 hearing, DHS argued Petitioner was an applicant for admission under 8 U.S.C. § 1225(a)(1)
23 and was therefore ineligible for bond. The Immigration Judge disagreed and granted a
24 \$6,000 bond even though the Petitioner is an applicant for admission who entered the
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United States without inspection and had a conviction of domestic violence in 2019 and a second pending charge for domestic violence in 2025, which has also resulted in a \$10,000 bench warrant for the Petitioner's arrest. *See* Order of an Immigration Judge, attached as Exhibit A. It is unclear from the order, whether the Immigration Judge considered the petitioner's domestic violence criminal history as there is no reference to such history in the determination of the bond. On August 13, 2025, DHS filed a notice of intent to appeal custody redetermination which automatically stayed the Immigration Judge's custody redetermination decision pursuant to 8 C.F.R. § 1003.19 (i)(2). *See* Notice of Intent to Appeal Custody Redetermination, attached as Exhibit B. DHS filed an appeal before the Board of Immigration Appeals (BIA), on August 25, 2025. *See* Notice of Appeal, attached as Exhibit C. On September 15, 2025, the Board of Immigration Appeals issued a briefing schedule regarding a bond appeal, while the petitioner's removal proceedings were pending. *See* Notice of Briefing Schedule, attached as Exhibit D.

The limited issue on appeal regarding Petitioner's release on bond is expeditiously moving through the BIA, with the Parties' briefing deadlines already having passed. *See* Exhibit D. The automatic stay will cease upon a decision of the BIA or 90 days, whichever is shorter. *See* 8 C.F.R. § 1003.6(c)(4). Petitioner's removal proceedings continue before the Immigration Court, as Petitioner's next hearing is now scheduled for October 17, 2025. *See* Notice of In Person Hearing, attached as Exhibit E. (Notice of Hearing, Filing No. 27-5, Exhibit E).¹ Petitioner remains detained in the detention center in Pahrump, Nevada. Petitioner

¹ Subsequent to a recent Board of Immigration Appeals decision ([Matter of Yahure Hurtado](#), 29 I&N Dec. 216 (BIA 2025)), immigration judges across the country, including judges in the Southern District of California and Nebraska have accepted DHS's position concerning present aliens who have not been admitted being deemed applicants for admission pursuant to [8 U.S.C. § 1225\(a\)\(1\)](#) and denied them bond pursuant to § 1225(b)(2)(A). *See Luciano Vargas Lopez v. Donald J. Trump et al*, 8:25-cv-00526-BCB-RCC (District of Nebraska, September 30, 2025), attached as Exhibit F; *see also Jose Guadalupe Sixtos Chavez et al. v. Kristi Noem et, al.*, ---F. Supp.3d---, (S.D. Cal., Sept. 24, 2025) (preliminary injunctive relief and temporary restraining order denied), attached as Exhibit G.

1 challenges his temporary detention pursuant to the automatic stay by filing this Petition for
 2 Writ of Habeas Corpus on October 6, 2025. ECF No. 1.

3 STANDARD OF REVIEW

4 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of
 5 his detention. See 28 U.S.C. § 2241. The burden is on the petitioner to show the
 6 confinement is unlawful. See *Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically, here,
 7 Petitioner challenges his temporary civil immigration detention pending his removal
 8 proceeding. Judicial review of immigration matters, including of detention issues, is
 9 limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-*
 10 *Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434
 11 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993);
 12 *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a
 13 political character and therefore subject only to narrow judicial review”). The Supreme
 14 Court has thus “underscore[d] the limited scope of inquiry into immigration legislation,”
 15 and “has repeatedly emphasized that over no conceivable subject is the legislative power of
 16 Congress more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792
 17 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347
 18 U.S. 522, 531 (1954).

19 The plenary power of Congress and the Executive Branch over immigration
 20 necessarily encompasses immigration detention, because the authority to detain is elemental
 21 to the authority to deport, and because public safety is at stake. See *Shaughnessy v. United*
 22 *States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or
 23 exclude aliens as a fundamental sovereign attribute exercised by the Government's political
 24 departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538

(1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”)

ARGUMENT

A. This Court Lacks Jurisdiction to Intervene in Petitioner’s Removal Proceedings.

As a threshold matter, Petitioner’s argument that this court has jurisdiction to intervene and micromanage the bond hearings for his removal proceedings should fail under the multiple jurisdiction-stripping provisions within 8 U.S.C. § 1252. ECF No. 1, pp. 1-2. This is because Petitioner is attempting to use habeas to collaterally attack his ongoing removal proceedings, even though Congress has provided that “no court shall have jurisdiction, by habeas corpus . . . or by any other provision of law,” to review any questions of law or fact “arising from any action taken or proceeding brought to remove an alien from the United States” except on a petition for review of a final order of removal. 8 U.S.C. § 1252(b)(9). Moreover, “no court shall have jurisdiction to hear any cause or claim” that arises from “the decision or action” to “commence” removal proceedings or “adjudicate [those] cases.” *Id.* § 1252(g). While these jurisdictional bars may still allow foreign nationals to challenge the conditions of their confinement during those removal proceedings, the statutes do not permit the use of habeas to “challeng[e] the decision to detain them in the first place or to seek removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion). Yet that is *precisely* what Petitioner is requesting here, as adjudicating whether bond should be given to a foreign national in removal proceedings is part and parcel of “adjudicate[ing a] case” before each immigration judge. ECF No. 1, ¶1 (Petitioner is seeking review of his detention while he is in removal proceedings.)

1 First, look at § 1252(g) and the issue of whether detention to detain Petitioner is
2 incident to both commencing removal proceedings against him, as well as the
3 determinations that he should not be given a bond hearing during his removal proceedings.
4 “On a warrant issued by the Attorney General, an alien may be arrested and detained
5 pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C.
6 § 1226(a). That is the authority Federal Respondents are exercising here. They are not
7 detaining the petitioner for any reason independent of the decision to commence removal
8 proceedings against him. They are detaining Petitioner because of those removal
9 proceedings. And Petitioner has not alleged a reason for his that is not also the reason for
10 the government’s decision to commence removal proceedings against him. True,
11 Petitioner’s habeas claim does not *directly* challenge the decision to initiate removal
12 proceedings against him. Rather, Petitioner challenges the decision to detain him during
13 the pendency of those proceedings. Thus, the question of whether the court has jurisdiction
14 revolves around whether Petitioner’s detention “arises from” of a decision to “commence
15 proceedings, adjudicate cases, or execute removal proceedings.” 8 U.S.C. § 1252(g); *see also*
16 *Valencia-Mejia v. United States*, No. 08-cv-2943, 2008 WL 4286979, at *3 (C.D. Cal. Sept. 15,
17 2008). The decision of the government to commence removal proceedings against a foreign
18 national includes the detention of that foreign national pending the removal determination.
19 *See* 8 U.S.C. § 1226(a). In other words, the decision to detain is a “specification of the
20 decision to ‘commence proceedings’ which . . . § 1252(g) covers.” *Reno v. Am.-Arab Anti-*
21 *Discrimination Comm.* (“AADC”), 525 U.S. 471, 474, 485 n.9 (1999). As to this issue, *Sissoko*
22 *v. Mukasey*, 509 F.3d 947 (9th Cir. 2007) (“*Sissoko III*”) is directly on point. In that case, the
23 plaintiff had overstayed his visa and then traveled out of the United States for his father’s
24 funeral. *See Sissoko v. Mukasey*, 440 F.3d 1145, 1149 (9th Cir. 2006) (“*Sissoko II*”). Upon his
25 return to the United States after the funeral, an immigration inspection officer took him into
26 custody as an “arriving alien” without proper documentation. *Id.* The officer decided to
27 initiate expedited removal proceedings against the plaintiff but later issued a Notice to
28 Appear and placed him in regular removal proceedings. *Sissoko III*, 509 F.3d at 949. He

1 was thereafter subject to mandatory detention for nearly three months during the pendency
2 of his removal proceedings and sued for false arrest. *See Sissoko II*, 440 F.3d at 1149.
3 Plaintiff and his wife brought a false arrest claim against the arresting immigration officer,
4 alleging that the detention was in violation of the Fourth Amendment. *Id.* The court of
5 appeals held that the plaintiff's claim was barred by § 1252(g) because his detention arose
6 from the decision to commence expedited removal proceedings. *Id.*; *see also Alvarez v. ICE*,
7 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms," § 1252(g) "bars us from
8 questioning [the government's] discretionary decisions to commence removal" of a foreign
9 national, which include the "decision to take him into custody *and to detain him during his*
10 *removal proceedings.*" (emphasis added)); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067–68
11 (N.D. Ill. 2007) (claim challenging arrest and detention during removal proceedings was
12 barred under § 1252(g) because "'when removal proceedings are initiated against an
13 inadmissible alien by issuing a removal order, the alien is automatically arrested and
14 detained.' The arrest/detention arose from the decision to commence proceedings, and
15 Plaintiff's Fourth Amendment claim arose from the arrest/detention. Thus, . . . the Fourth
16 Amendment claim arose from the decision to commence proceedings.").

17 Petitioner cannot get around this problem, because an immigration judge is
18 "adjudicate[ing a] case" for the purposes of § 1252(g) when they are making bond
19 determinations—or applying the Board of Immigration Appeals ("BIA") precedent in *Matter*
20 *of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025), in which it concluded ICE could
21 treat undocumented immigrants already present in the United States as arriving aliens
22 subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

23 Second, 8 U.S.C. § 1252(b)(9) provides that "[j]udicial review of all questions of law
24 and fact, including interpretation and application of constitutional and statutory provisions,
25 arising from any action taken or proceeding brought to remove an alien from the United
26 States under this subchapter shall be available only in judicial review of a final order."
27 Congress specified that "no court shall have jurisdiction, by habeas corpus under [28 U.S.C.
28 § 2241] or any other habeas corpus provision . . . or by any other provision of law (statutory

1 or nonstatutory), to review such an order or such questions of law or fact.” *Id.*; *see also id.* §
 2 1252(a)(5) (applying the same jurisdictional bar to “judicial review of an order of removal”).
 3 While § 1252(b)(9) may not bar claims challenging the conditions or scope of detention of
 4 foreign nationals in removal proceedings, it *does* bar claims “challenging the decision to
 5 detain them in the first place.” *Jennings*, 583 U.S. at 294 (plurality opinion).² By making
 6 such a challenge, the habeas claims here require a court to answer “legal questions” that
 7 arise from “an action taken to remove an alien,” so Petitioner’s claims “fall within the scope
 8 of § 1252(b)(9).” *Jennings*, 583 U.S. at 295 n.3 (plurality opinion).

9 Third, § 1252(a)(2)(B)(ii) provides that “no court shall have jurisdiction to review . . .
 10 any other decision or action of the Attorney General or the Secretary of Homeland Security
 11 the authority for which is specified under this subchapter to be in the discretion of the
 12 Attorney General or the Secretary of Homeland Security.” 8 U.S.C. § 1252(a)(2)(B). Even
 13 if there were any remaining ambiguity as to whether a foreign national could challenge the
 14 decision to detain him during removal proceedings—on the dubious theory that the
 15 detention was somehow neither part of the decision to commence removal proceedings nor
 16 an action taken to adjudicate that case—Congress added this third jurisdictional bar to
 17 clarify that courts may not entertain a challenge to a discretionary decision under the INA.
 18 That jurisdictional bar is relevant here because the statute that Petitioner insists his
 19 detention should be analyzed under (8 U.S.C. § 1226(a)) authorizes detention pending
 20 removal proceedings and clearly confers discretion: “On a warrant issued by the Attorney
 21 General, an alien *may* be arrested and detained pending a decision on whether the alien is to
 22 be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added). Additionally,
 23 except when detention is mandatory based on the alien’s criminal history, “pending such
 24

25 ² *See also Jennings*, 583 U.S. at 317 (Thomas, J., concurring in part and concurring in the judgment) (“Section
 26 1252(b)(9) is a ‘general jurisdictional limitation’ that applies to ‘all claims arising from deportation proceedings’ and
 27 the ‘many decisions or actions that may be part of the deportation process.’ Detaining an alien falls within this
 28 definition—indeed, this Court has described detention during removal proceedings as an ‘aspect of the deportation
 process.’ . . . The phrase ‘any action taken to remove an alien from the United States’ must at least cover
 congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien’s
 removal.” (alterations and citation omitted) (quoting *AADC*, 525 U.S. at 482–83; *Demore v. Kim*, 538 U.S. 510, 523
 (2003); and 8 U.S.C. § 1252(b)(9))).

1 decision, the Attorney General . . . *may* continue to detain the arrested alien.” *Id.* (emphasis
 2 added). This discretionary language within § 1226(a) means Petitioner’s detention is
 3 specified as a discretionary decision under the INA that is insulated from judicial review.
 4 *See, e.g., Bouarfa v. Mayorkas*, 604 U.S. 6, 13–14 (2024) (“As ‘[t]his Court has repeatedly
 5 observed,’ ‘the word *may* clearly connote discretion.’” (emphasis in original) (quoting *Biden*
 6 *v. Texas*, 597 U.S. 785, 802 (2022) (cleaned up)).

7 **B. Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(2).**

8 The current operative mechanism of Petitioner’s detention is an automatic stay of
 9 release on bond for a maximum of 90 days under 8 C.F.R. § 1003.19(i)(2), but this
 10 confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention
 11 throughout the entire removal proceedings.

12 Pursuant to 8 U.S.C. § 1225(b)(2)(A), “in the case of an alien who is an applicant for
 13 admission, if the examining immigration officer determines that an alien seeking admission
 14 is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a
 15 proceeding under section 1229a [removal proceedings].” 8 U.S.C. § 1225(b)(2)(A). The
 16 Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and
 17 that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at
 18 287 (“Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.”).

19 Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)’s mandatory
 20 detention requirement as Petitioner is an “applicant for admission” to the United States. As
 21 described above, an “applicant for admission” is an alien present in the United States who
 22 has not been admitted. 8 U.S.C. § 1225(a)(1). Congress’s broad language here is
 23 unequivocally intentional—an undocumented alien is to be “deemed for purposes of this
 24 chapter an applicant for admission.” *Id.* Regardless of Petitioner’s characterization that “an
 25 applicant for admission” should only include aliens captured at the border or at a port of
 26 entry, he is “deemed” an applicant for admission based on Petitioner’s failure to seek lawful
 27 admission to the United States before an immigration officer, which is undisputed. ECF No.
 28 1. And because Petitioner has not demonstrated to an examining immigration officer that

1 Petitioner is “clearly and beyond a doubt entitled to be admitted,” Petitioner’s detention is
2 mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, the Petitioner is properly detained pursuant to
3 8 U.S.C. § 1225(b)(2)(A), which mandates that Petitioner “shall be” detained.

4 The Supreme Court has confirmed an alien present in the country but never admitted
5 is deemed “an applicant for admission” and that “detention must continue” “until removal
6 proceedings have concluded” based on the “plain meaning” of 8 U.S.C. § 1225. *Jennings v.*
7 583 U.S. at 289 & 299. At issue in *Jennings* was the statutory interpretation. The Supreme
8 Court reversed the Ninth Circuit Court of Appeal’s imposition of a six-month detention
9 time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the
10 statute and reversed on these grounds, remanding the constitutional Due Process claims for
11 initial consideration before the lower court. *Id.* But under the words of the statute, as
12 explained by the Supreme Court, 8 U.S.C. § 1225 includes aliens like the Petitioner who are
13 present but have not been admitted and they shall be detained pending their removal
14 proceedings.

15 Specifically, the Supreme Court declared, “an alien who ‘arrives in the United
16 States,’ *or* ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant
17 for admission.’” *Id.* at 287 (emphasis on “or” added). In doing so, the Court explained both
18 aliens captured at the border and those illegally residing within the United States would fall
19 under § 1225. This would include Petitioner as an alien who is present in the country
20 without being admitted.

21 And now, the Board of Immigration Appeals (BIA) has confirmed the application of
22 § 1225 in a published formal decision: “Based on the plain language of section 235(b)(2)(A)
23 of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration
24 Judges lack authority to hear bond requests or to grant bond to aliens who are present in the
25 United States without admission.” *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
26 Indeed, §1225 applies to aliens who are present in the country *even for years* and who have
27 not been admitted. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 226 (BIA 2025) (“the
28 statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention

1 of all aliens who are applicants for admission, without regard to how many years the alien
2 has been residing in the United States without lawful status.” (citing 8 U.S.C. §1225)).

3 In *Hurtado*, the BIA affirmed the decision of the immigration judge finding the
4 Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was
5 present in the United States for almost three years but was never admitted shall be detained
6 under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an
7 alien who unlawfully entered the United States in 2022 and was granted temporary
8 protected status in 2024. *Id.* at 216-17. However, that status was revoked in 2025, and the
9 alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. It is
10 clear from the decision, the alien was initially served with a Notice of Custody
11 Determination, informing him of his detention under 8 U.S.C. § 1226 and his ability to
12 request bond, like the Petitioner was in this case. *Id.* at 226. However, when the alien sought
13 a redetermination of his custody status, the immigration judge held the Court did not have
14 jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

15 In affirming the decision of the immigration judge who determined he lacked
16 jurisdiction, the BIA found § 1225 clear and unambiguous as explained above. Thus,
17 because the alien was present in the United States (regardless of how long) and because he
18 was never admitted, he shall be detained during his removal proceedings. *See id.* at 228. In
19 doing so, the BIA rejected the same arguments raised by Petitioner and by other similar
20 petitioners in this District. For example, the BIA rejected the “legal conundrum” postulated
21 by the alien that while he may be an applicant for admission under the statute, he is
22 somehow not actually “seeking admission.” *Id.* at 221. The BIA explained that such a leap
23 failed to make sense and violated the plain meaning of the statute. *See id.*

24 Next, the BIA rejected the alien’s argument that the mandatory detention scheme
25 under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act
26 superfluous. *Id.* The BIA explained, “nothing in the statutory text of section 236(c),
27 including the text of the amendments made by the Laken Riley Act, purports to alter or
28 undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),

1 requiring that aliens who fall within the definition of the statute ‘shall be detained for
2 [removal proceedings].’” *Id.* at 222. The BIA explained further that any redundancy
3 between the two statutes does not give license to “rewrite or eviscerate” one of the statutes.
4 *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

5 Also, the BIA reasoned that it matters not that the alien was initially served with a
6 warrant listing 8 U.S.C. § 1226 and informing him of his ability to seek bond—an
7 Immigration Court cannot bestow jurisdiction upon itself with that initial paperwork when
8 said jurisdiction has been specifically revoked by Congress in § 1225. *See id.* at 226-27
9 (explaining “the mere issuance of an arrest warrant does not endow an Immigration Judge
10 with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8
11 U.S.C. § 1225(b)(2)(A).”) The BIA further pointed out, “Our acknowledgement that aliens
12 detained under section 236(a) may be eligible for discretionary release on bond does not
13 mean that *all* aliens detained while in the United States with a warrant of arrest are detained
14 under section 236(a) and entitled to a bond hearing before the Immigration Judge,
15 regardless of whether they are applicants for admission under section 235(b)(2)(A) of the
16 INA, 8 U.S.C. § 1225(b)(2)(A).” *Id.* at 227 (quotations omitted). Thus, the BIA rejected this
17 and every argument raised by the alien to find § 1225 applied to him despite residing in the
18 country for years. *Id.*

19 The BIA mandate is clear: “under a plain language reading of section 235(b)(2)(A) of
20 the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests
21 or to grant bond to aliens, like the respondent, who are present in the United States without
22 admission.” *Id.* at 225. Indeed, this ruling emphasizes that § 1225 applies to aliens like the
23 Petitioner who is also present in the United States but has not been admitted.

24 The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted
25 by a three-appellate judge panel. *See id. generally.* It is binding on all immigration judges in
26 the United States. 8 C.F.R. § 1003.1(g)(1) (“[D]ecisions of the Board and decisions of the
27 Attorney General are binding on all officers and employees of DHS or immigration judges
28 in the administration of the immigration laws of the United States.”). And because the

1 decision was published, a majority of the entire Board must have voted to publish it, which
2 establishes the decision “to serve as precedent[] in all proceedings involving the same issue
3 or issues.” *See* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in
4 immigration court today. *See also* 8 C.F.R. § 1003.1(d)(1) (explaining “the Board, through
5 precedent decisions, shall provide clear and uniform guidance to DHS, the immigration
6 judges, and the general public on the proper interpretation and administration of the Act
7 and its implementing regulations.”). And in the Board’s own words, *Hurtado* is a
8 “precedential opinion.” *Id.* at 216.

9 But in some prior cases where an immigration judge erred in releasing a qualifying
10 alien on bond, like Petitioner, who is subject to mandatory detention, DHS’s invocation of
11 the stay of release pending appeal in 8 C.F.R. § 1003.19(i)(2) not only is consistent with law
12 but also ensured DHS’s opportunity to vindicate Congress’s mandatory detention scheme.

13 While the law is now clear in immigration court, the BIA has yet to reach DHS’s
14 appeal involving the Petitioner. But in the coming weeks or perhaps only days, the Federal
15 Respondents would expect the BIA to reach this appeal, and hopefully apply the holding in
16 *Hurtado*, and reverse the immigration judge’s release of the Petitioner on bond, on the basis
17 that he is an applicant for admission and subject to detention under § 1225(b)(2) and that he
18 is a danger to the community based on petitioner’s conviction of domestic violence in 2019,
19 another pending charge of domestic violence and a bench warrant of \$10,000 in Washoe
20 County associated with the second domestic violence charge in 2025.

21 Because Petitioner shall be detained during the removal proceedings and these
22 proceedings are uncontrovertibly ongoing, his temporary detention is lawful. Petitioner has
23 his final removal hearing on October 17, 2025. *See* Exhibit E. Any argument by Petitioner
24 that his detention exceeds statutory authority is clearly invalid and should be rejected. As
25 mentioned above, district courts in Southern District of California and Nebraska *post*
26 *Hurtado*, have agreed with the government’s analysis of §§ 1225 and 1226, and have
27 dismissed petitions for habeas corpus and denied injunctive relief.
28

C. Petitioner’s Temporary Detention Does Not Offend Due Process.

While Petitioner claims that the Government’s interest in detaining him is minimal, leading to his claims of Due Process violations (ECF No. 1, pp. 24-26), Congress and the Supreme Court would disagree. Plaintiff also claims that the “Government has offered no specific justification for continuing to detain” the Petitioner, even though DHS has given the clear reasons that Petitioner is subject to mandatory detention as an applicant for admission under § 1225(b)(2) and that his criminal history of domestic violence clearly shows that he is a danger to the community and subject to mandatory detention. *Id.*, p. 25.

As mentioned above, Congress broadly crafted “applicants for admission” to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And, Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. As explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”). And with this power to remove aliens, the Supreme Court has recognized the United States’ longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, 531

1 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that
2 process.”); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“Congress has authorized
3 immigration officials to detain some classes of aliens during the course of certain
4 immigration proceedings. Detention during those proceedings gives immigration officials
5 time to determine an alien's status without running the risk of the alien's either absconding
6 or engaging in criminal activity before a final decision can be made.”).

7 In another immigration context (aliens already ordered removed awaiting their
8 removal), the Supreme Court has explained that detaining these aliens less than six months
9 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
10 presumptive constitutional limit has been subsequently distinguished as perhaps
11 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
12 explained Congress was justified in detaining aliens during the entire course of their removal
13 proceedings who were convicted of certain crimes. 538 U.S. at 513. In that case, similar to
14 undocumented aliens like Petitioner, Congress provided for the detention of certain
15 convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized
16 the constitutionality of the “definite termination point” of the detention, which was the
17 length of the removal proceedings. *Id.* at 512 (“In contrast, because the statutory provision
18 at issue in this case governs detention of deportable criminal aliens *pending their removal*
19 *proceedings*, the detention necessarily serves the purpose of preventing the aliens from fleeing
20 prior to or during such proceedings. Second, while the period of detention at issue in
21 *Zadvydas* was “indefinite” and “potentially permanent,” *id.*, at 690–691, 121 S.Ct. 2491, the
22 record shows that § 1226(c) detention not only has a definite termination point, but lasts, in
23 the majority of cases, for less than the 90 days the Court considered presumptively valid in
24 *Zadvydas*.”).³ In light of Congress’s interest in dealing with illegal immigration by keeping
25
26

27 ³ In 2018 the Court again highlighted the significance of a “definite termination point” for
28 detention of certain aliens pending removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 304
(2018).

1 specified aliens in detention pending the removal period, the Supreme Court dispensed of
 2 any Due Process concerns without engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

3 Likewise, Petitioner’s temporary detention pending his removal proceedings does not
 4 violate Due Process. Specifically, his next removal hearing is coming up before the
 5 immigration judge on October 17, 2025, and his expedited narrow appeal on the issue of
 6 release on bond is before the BIA with briefing having already been submitted. Resolution
 7 one way or another is undoubtedly forthcoming. Petitioner’s ample available process in his
 8 current removal proceedings demonstrate no lack of Procedural Due Process—nor any
 9 deprivation of liberty “sufficiently outrageous” required to establish a Substantive Due
 10 Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St.*
 11 *Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May
 12 1, 2001). Congress simply made the decision to detain him pending removal which is a
 13 “constitutionally permissible part of that process.” *See Demore v. Kim*, 538 U.S. 510, 531
 14 (2003).

15 The United States is aware of prior rulings by this Court rejecting this argument in
 16 similar cases, but the United States respectfully maintains Petitioner has not been deprived
 17 of Due Process considering the Supreme Court precedent. It will be a grave mistake and a
 18 danger to the public, if this Court orders a release of the Petitioner, who not only has broken
 19 the law by entering the United States illegally without an inspection, but who also was
 20 convicted of domestic violence in 2019, and currently has a pending another domestic
 21 violence in 2025 and a \$10,000 bench warrant for his arrest regarding the second domestic
 22 violence charge.

23 **D. Petitioner Has Failed to Exhaust Administrative Remedies**

24 Similarly, requiring exhaustion here would be consistent with Congressional intent
 25 to have claims, such as Petitioner’s, subject to the channeling provisions of § 1252(b)(9) that
 26 provide for appeal to the BIA and then, if unsuccessful, the Ninth Circuit. “Exhaustion can
 27 be either statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541
 28 (9th Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is

jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential requirement, a court has discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, Petitioner is attempting to bypass the administrative scheme by not requesting a bond hearing and by not appealing (not yet rendered) bond denials to the BIA.

“District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas corpus.” *Castro–Cortez v. I.N.S.*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That section does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal quotation marks omitted).

“When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s administrative proceedings before the BIA). Moreover, a “petitioner cannot obtain review of procedural errors in the administrative process that were not raised before the agency merely by alleging that every such error violates due process.” *Vargas v. U.S. Dep’t of Immigr. & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument that was not raised below because it could have been addressed by the agency).

1 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA is
2 the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
3 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned
4 to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See*
5 *Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept.
6 15, 2017) (noting a denial of bond to an immigration detainee was “a question well suited
7 for agency expertise”); *Matter of M-S-*, 27 I. & N. Dec. 509, 515–18 (2019) (addressing
8 interplay of §§ 1225(b)(1) and 1226). *But see Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896–
9 97 (9th Cir. 2021); *Garcia*, 2025 WL 2549431, at *4-5.

10 Waiving exhaustion would also “encourage other detainees to bypass the BIA and
11 directly appeal their no-bond determinations from the IJ to federal district court.” *Aden*,
12 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek
13 relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
14 straight-to-federal-court strategy would needlessly increase the burden on district courts. *See*
15 *Bd. of Trs. of Constr. Laborers’ Pension Tr. for S. California v. M.M. Sundt Constr. Co.*, 37 F.3d
16 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion
17 requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting
18 “exhaustion promotes efficiency”). If the IJs erred as Petitioners allege or may eventually
19 allege, this Court should allow the administrative process to correct itself. *See id.*

20 Moreover, detention alone is not an irreparable injury. Discretion to waive
21 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
22 Petitioners bear the burden to show that an exception to the exhaustion requirement applies.
23 *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention after the
24 denial of a bond hearing [does not] constitute[] irreparable harm such that prudential
25 exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3
26 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL
27 3082403 (9th Cir. July 21, 2021).

1 Not only Petitioner is an illegal alien who has entered the United States without
2 inspection, but he has a conviction of domestic violence in 2019 and another pending charge
3 for domestic violence in 2025, including a \$10,000 bench warrant for his arrest stemming
4 from the second domestic violence charge. The outcome of the appeal before the BIA is very
5 important part of the administrative process in immigration cases, such as Petitioner's.
6 Although it is unknown what the BIA will decide on the current pending bond appeal,
7 individuals like the Petitioner, who are applicants for admission and who have criminal
8 record are subject to mandatory detention and pose a danger to the community. In
9 addition, if Petitioner disagrees with the BIA decision, Congress is clear that an appeal of a
10 BIA decision is before the circuit courts not district courts. Because Petitioner has not
11 exhausted his administrative remedies, this matter should be dismissed or stayed, pending
12 the outcome of the BIA appeal on the bond.

13
14 **CONCLUSION**

15 Petitioner fails to establish his temporary detention is unlawful. His Petition for Writ
16 of Habeas Corpus and his Complaint should be dismissed.

17 Respectfully submitted this 10th day of October 2025.

18
19 SIGAL CHATTAH
Acting United States Attorney

20 /s/ Virginia T. Tomova
21 VIRGINIA T. TOMOVA
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