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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 FIDEL ARIAS TORRES,

13 Petitioner,

14 v.
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16 PAM BONDI; et al.,

17 Respondents.
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Case No.: 25-cv-2457-BAS-KSC

**RESPONDENTS' RETURN TO
SECOND AMENDED HABEAS
PETITION**

I. Introduction

Petitioner has filed an amended habeas petition under 28 U.S.C. § 2241. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. As an applicant for admission, Petitioner is mandatorily detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Based on the arguments set forth below, the Court should deny any requests for relief and dismiss the petition.

II. Statutory Background

A. Individuals Seeking Admission to the United States

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest those subject to removal, and detain them 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 by panel and en banc denied*, *Banyee v. Bondi*, 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* aliens during the pendency of their deportation proceedings.”). The Supreme Court even recognized that 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)). Over the century, Congress has enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue here.

B. Detention Under 8 U.S.C. § 1225

“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). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be deemed for purposes of this chapter an applicant for admission,” defining that term to encompass *both* an alien “present in the United States who has not been admitted *or* [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added). Section 1225(b) governs the inspection procedures applicable to all applicants for admission. They “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) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the]

1 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
2 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
3 2025) (“[A]liens who are present in the United States without admission are applicants
4 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
5 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);
6 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking
7 admission into the United States who are placed directly in full removal proceedings,
8 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until
9 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,
10 DHS has the sole discretionary authority to temporarily release on parole “any alien
11 applying for admission to the United States” on a “case-by-case basis for urgent
12 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v.*
13 *Texas*, 597 U.S. 785, 806 (2022).

14 **C. Detention Under 8 U.S.C. § 1226(a)**

15 Section 1226 provides for arrest and detention “pending a decision on whether
16 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),
17 the government may detain an alien during his removal proceedings, release him on
18 bond, or release him on conditional parole. By regulation, immigration officers can
19 release an alien who demonstrates that he “would not pose a danger to property or
20 persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An
21 alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any
22 time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
23 236.1(d)(1), 1236.1(d)(1), 1003.19.

24 At a custody redetermination, the IJ may continue detention or release the alien
25 on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have
26 broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. &
27 N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless
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1 of the factors IJs consider, an alien “who presents a danger to persons or property should
2 not be released during the pendency of removal proceedings.” *Id.* at 38.

3 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23
4 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it
5 address the applicable burden of proof or particular factors that must be considered. *See*
6 *generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad
7 discretionary authority to determine, after arrest, whether to detain or release an alien
8 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees
9 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.
10 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

11 Included within the Attorney General and DHS’s discretionary authority are
12 limits on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B),
13 the IJ does not have authority to redetermine the conditions of custody imposed by DHS
14 for any arriving alien. The regulations also include a provision that allows DHS to
15 invoke an automatic stay of any decision by an IJ to release an individual on bond when
16 DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) (“The
17 decision whether or not to file [an automatic stay] is subject to the discretion of the
18 Secretary.”).

19 **D. Review Before the Board of Immigration Appeals**

20 The BIA is an appellate body within the Executive Office for Immigration
21 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
22 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
23 adjudications under the [INA] that the Attorney General may by regulation assign to
24 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
25 BIA not only resolves particular disputes before it, but is also directed to, “through
26 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
27 judges, and the general public on the proper interpretation and administration of the
28 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the

1 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
2 1003.1(d)(7).

3 If an automatic stay of a custody decision is invoked by DHS, regulations require
4 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in
5 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,
6 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.
7 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.
8 § 1003.6(c)(5).

9 If the BIA denies DHS’s custody appeal, the automatic stay remains in effect for
10 five business days. 8 C.F.R. § 1003.6(d). DHS may, during that five-day period, refer
11 the case to the Attorney General under 8 C.F.R. § 1003.1(h)(1) for consideration. *Id.*
12 Upon referral to the Attorney General, the release is stayed for 15 business days while
13 the case is considered. The Attorney General may extend the stay of release upon
14 motion by DHS. *Id.*

15 **III. Factual and Procedural Background**

16 Petitioner is a native and citizen of Mexico. At an unknown place and on an
17 unknown date, Petitioner unlawfully entered the United States without being admitted,
18 paroled, or inspected. On December 20, 2024, Petitioner filed a form I-485, Application
19 to Register Permanent Residence or Adjust Status, with the United States Customs and
20 Immigration Services (USCIS). That application was denied on June 25, 2025. On the
21 same day, Petitioner was apprehended by DHS agents. Petitioner was issued a Notice
22 to Appear, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien
23 present who has not been admitted or paroled. Petitioner is currently detained in ICE
24 custody under 8 U.S.C. § 1225(b)(2). Petitioner requested and was initially granted
25 bond by an immigration judge (IJ); DHS appealed that decision to the Board of
26 Immigration Appeals (BIA).¹ On October 14, 2025, the BIA vacated the IJ’s order and
27

28 ¹ In appealing the bond order, DHS invoked the automatic stay provision of 8 C.F.R.
§ 1003.19(i)(2).

1 confirmed that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2).² Respondent
2 Exhibit I.

3 IV. Argument

4 A. Petitioner's Claims are Moot

5 There is no “case” or “controversy” when an issue is moot. “[T]he question of
6 mootness is . . . one which a federal court must resolve before it assumes jurisdiction.”
7 *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). “A case becomes moot—and
8 therefore no longer a Case or Controversy for purposes of Article III—when the issues
9 presented are no longer live or the parties lack a legally cognizable interest in the
10 outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks
11 and citations omitted). The Supreme Court has routinely cautioned that a case becomes
12 moot “if an event occurs while a case is pending on appeal that makes it impossible for
13 the court to grant ‘any effectual relief whatever’ to a prevailing party.” *Church of*
14 *Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). Thus, even a once-justiciable
15 case becomes moot and must be dismissed “when the issues presented are no longer
16 ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v.*
17 *McCormack*, 395 U.S. 486, 496 (1969).

18 To the extent Petitioner asserts claims as to DHS’s invocation of the automatic
19 stay provision of 8 C.F.R. § 1003.19(i)(2), that provision was in place when DHS
20 appealed the IJ’s bond order. However, there is no longer a stay in place and the BIA
21 has vacated the IJ’s bond order. As such, the Court cannot “grant ‘any effectual relief
22 whatever’ to a prevailing party.” *Church of Scientology of Cal.*, 506 U.S. at 12; *see*
23 *Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th Cir. 1991) (case is moot if court lacks
24 power to grant relief can be granted).

25 Accordingly, this Court should dismiss those claims as moot.

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28 ² Counsel for both parties became aware of the issuance of this decision after the hearing
held before this Court on October 24, 2025.

B. Claims and Requested Relief Jurisdictionally Barred

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General’s discrete acts of ‘commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders’—which represent the initiation or prosecution of various stages in the deportation process.”); *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court’s jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over claims that necessarily arise “from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 1252(g).

Section 1252(g) also bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s

1 discretionary decisions to commence removal” and bars review of “ICE’s decision to
2 take [plaintiff] into custody and to detain him during his removal proceedings”).

3 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
4 commences proceedings against an alien when the alien is issued a Notice to Appear
5 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
6 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
7 may arrest the alien against whom proceedings are commenced and detain that
8 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
9 detention throughout this process arises from the Attorney General’s decision to
10 commence proceedings” and review of claims arising from such detention is barred
11 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
12 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

13 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
14 and fact . . . arising from any action taken or proceeding brought to remove an alien
15 from the United States under this subchapter shall be available only in judicial review
16 of a final order under this section.” Further, judicial review of a final order is available
17 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
18 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable
19 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up
20 to or consequent upon final orders of deportation,” including “non-final order[s],” into
21 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; see *J.E.F.M. v.*
22 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathtaking in
23 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
24 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
25 issue—whether legal or factual—arising from *any* removal-related activity can be
26 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
27 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal
28 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose

1 all judicial review of agency actions. Instead, the provisions channel judicial review
2 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
3 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
4 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

5 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
6 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
7 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
8 as precluding review of constitutional claims or questions of law raised upon a petition
9 for review filed with an appropriate court of appeals in accordance with this section.”
10 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
11 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
12 process before the court of appeals ensures that noncitizens have a proper forum for
13 claims arising from their immigration proceedings and “receive their day in court.”
14 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
15 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
16 obviate . . . Suspension Clause concerns” by permitting judicial review of
17 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
18 law.”). These provisions divest district courts of jurisdiction to review both direct and
19 indirect challenges to removal orders, including decisions to detain for purposes of
20 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
21 includes challenges to the “decision to detain [an alien] in the first place or to seek
22 removal”).

23 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
24 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
25 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
26 jurisdiction to review both direct and indirect challenges to removal orders, including
27 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.
28 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]

1 in the first place or to seek removal[.]”). Here, Petitioner challenges the government’s
2 decision and action to detain, which arises from DHS’s decision to commence removal
3 proceedings, and is thus an “action taken . . . to remove [him/her] from the United
4 States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*
5 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
6 not bar review in that case because the petitioner did not challenge “his initial
7 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
8 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
9 detention decision, which flows from the government’s decision to “commence
10 proceedings”).

11 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
12 § 1252. *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.
13 LEXIS 175957 (D. Minn. Sept. 9, 2025).

14 **C. Petitioner is Lawfully Detained**

15 Petitioner’s claims for alleged statutory and constitutional violations fail because
16 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.

17 Based on the plain language of the statute, Petitioner’s detention is governed by
18 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
19 *applicant for admission*, if the examining immigration officer determines that an alien
20 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
21 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
22 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
23 “expressly defines that ‘[a]n alien present in the United States who has not been
24 admitted . . . shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*
25 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien
26 present in the United States who has not been admitted.” Thus, as found by the district
27 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner
28 is an “applicant for admission” and subject to the mandatory detention provisions of

1 § 1225(b)(2).

2 When the plain text of a statute is clear, “that meaning is controlling” and courts
3 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
4 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
5 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
6 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and
7 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby
8 immigrants who were attempting to lawfully enter the United States were in a worse
9 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d
10 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-*
11 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-
12 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain
13 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have
14 entered the United States without inspection gain equities and privileges in immigration
15 proceedings that are not available to aliens who present themselves for inspection at a
16 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). A contrary interpretation
17 would put aliens who “crossed the border unlawfully” in a better position than those
18 “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at
19 a port of entry would be subject to mandatory detention under § 1225, but those who
20 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*
21 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear
22 that Congress intended to eliminate the prior statutory scheme that provided aliens who
23 entered the United States without inspection more procedural and substantive rights that
24 those who presented themselves to authorities for inspection.”). The court should
25 “‘refuse to interpret the INA in a way that would in effect repeal that statutory fix’
26 intended by Congress in enacting the IIRIRA.” *Chavez*, 2025 WL 2730228, at *4
27 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

28 The plain language of the § 1225(b)(2) does not contradict nor render § 1226(a)

1 superfluous. In *Chavez v. Noem*, the Court noted that § 1226(a) “‘generally governs the
2 process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible
3 at the time of entry or who have been convicted of certain criminal offenses since
4 admission.’” *Chavez*, 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288)
5 (emphasis in original). In turn, individuals who have not been charged with specific
6 crimes listed in § 1226(c) are still subject to the discretionary detention provisions of §
7 1226(a) as determined by the Attorney General. See 8 U.S.C. § 1226(a) (“On a warrant
8 issued by the Attorney General, an alien may be arrested and detained pending a
9 decision on whether the alien is to be removed from the United States.”) (emphasis
10 added). Therefore, heeding the plain language of § 1225(b)(2) has no effect on
11 § 1226(a). Similarly, the application of § 1225’s explicit definition of “applicants for
12 admission” does not render the addition of § 1226(c) by the Riley Laken Act
13 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,
14 the addition of § 1226(c) simply removed the Attorney General’s detention discretion
15 for aliens charged with specific crimes. 2025 WL 2730228, at *5.

16 One of the most basic interpretative canons instructs that a “statute should be
17 construed so that effect is given to all its provisions.” See *Corley v. United States*, 556
18 U.S. 303, 314 (2009) (cleaned up). If Congress did not want § 1225(b)(2)(A) to apply
19 to “applicants for admission,” then it would not have included the phrase “applicants
20 for admission” in the subsection. See 8 U.S.C. § 1225(b)(2)(A); see also *Corley*, 556
21 U.S. at 314.

22 Finally, the phrase “alien seeking admission” does not limit the scope of
23 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*
24 requesting permission to enter the United States in the ordinary sense are nevertheless
25 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,
26 25 I&N Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it
27 keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting
28 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking

admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further, § 1225(a)(5) provides that “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States.” The reasonable import of this particular phrasing is that one who is an applicant for admission is considered to be “seeking admission” under the statute.

Because Petitioner is properly detained under § 1225, as confirmed by the BIA in vacating the IJ’s order, Petitioner cannot show entitlement to relief.

To the extent the Court finds it has jurisdiction over this matter, Respondents acknowledge that courts in this district have recently rejected similar statutory arguments in other similar habeas matters. While Respondents maintain that Petitioner is properly subject to mandatory detention under § 1225, to the extent the Court finds this Petitioner subject to detention authority under 8 U.S.C. § 1226(a), Respondents’ position is that the proper remedy would be directing a new bond hearing under § 1226(a). This Court lacks jurisdiction in this matter to order release or the reinstatement of the IJ’s bond order that was vacated by the BIA. *See* 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.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously

1 explained, § 1226(e) precludes an alien from ‘challeng[ing] a “discretionary judgment”
2 by the Attorney General or a “decision” that the Attorney General has made regarding
3 his detention or release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory
4 framework that permits [the alien’s] detention without bail.’”); 8 U.S.C. § 1226(b)
5 (“The Attorney General at any time may revoke a bond or parole authorized under
6 subsection (a), rearrest the alien under the original warrant, and detain the alien.”).

7
8 **V. CONCLUSION**

9 For the foregoing reasons, Respondents respectfully request that the Court
10 dismiss this action.

11 DATED: November 5, 2025

Respectfully submitted,

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