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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARIO BISTRAIN VAZQUEZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center, San Diego, California; Joseph FREDEN, Field Office Director of San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; TODD M. LYONS, Acting Direction, Immigration and Customs Enforcements, U.S. Department of Homeland Security; SIRCE OWEN, Acting Director for Executive Office for Immigration Review; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAM BONDI, Attorney General of the United States,

Respondents.

Case No.: 25-CV-2715-TWR-DEB

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION

I. Introduction

Petitioner Mario Bistrain Vazquez is detained in Immigration and Customs Enforcement (ICE) custody and is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's habeas petition requests that this Court order Petitioner's immediate release. Through multiple provisions of 8 U.S.C. § 1252, Congress has unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Moreover, Petitioner's detention is mandated by statute. Even apart from these preliminary issues, Petitioner cannot show a likelihood of success on the merits because he seeks to circumvent the detention statute under which he is rightfully detained. The Court should deny Petitioner's request for relief and dismiss the petition.

II. Factual and Procedural Background[1]

Petitioner is a citizen and national of Mexico. At an unknown place on June 15, 2008, he entered the United States without being admitted, paroled, or inspected. On August 14, 2014, Petitioner was arrested by Immigration and Customs Enforcement (ICE), Enforcement Removal Operations (ERO) officers pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear (NTA). On May 22, 2015, Petitioner's removal proceedings were administratively closed by an immigration judge. On June 12, 2025, a motion to re-calendar Petitioner's immigration's case was filed by DHS.

On June 26, 2025, Homeland Security Investigations (HSI) Special Agents (SAs) took Petitioner into custody for having no lawful authorization to be present in the United States after entering without inspection. Petitioner was transferred to ICE custody, and he remains detained at the Otay Mesa Detention Facility pursuant to 8 U.S.C. § 1225(b)(2). On July 14, 2025, an IJ granted Petitioner's release on a $5,500

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

bond, and ATD (alternative to detention) at the discretion of DHS. DHS reserved its right to appeal the IJ's decision to the BIA. On July 15, 2025, DHS filed a Form EOIR-43, Notice of Intent to Appeal the Custody Redetermination, and indicated that it was invoking the automatic stay provision of 8 C.F.R. § 1003.19(i)(2). On July 25, 2025, DHS filed a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, and EOIR-43 Senior Legal Official Certification. Subsequently, DHS and Petitioner each filed their respective appeal brief before the BIA. The appeal remains pending.

III. Argument

A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his 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). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9). *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist. LEXIS 175957 (D. Minn. Sept. 9, 2025) (dismissing similar habeas petition and finding no jurisdiction pursuant to § 1252).

Courts lack jurisdiction over any claim or cause of action arising from any 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.") (emphasis added); *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."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings,

adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 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 discretionary decisions to commence removal" and bars review of "ICE's decision to take [plaintiff] into custody and to detain him during his removal proceedings").

Petitioner's detention arises from the decision to commence proceedings against him. *See, e.g.*, *Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings."); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. §§ 1252(g) and (b)(9) deprive the district court of jurisdiction to review an action to execute removal order).

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

25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025). As such, judicial review of the claim that Petitioner is entitled to bond is barred by § 1252(g). *See Acxel S.Q.D.C.*, 2025 U.S. Dist. LEXIS 175957, at *5 (noting that § 1252(g)'s exception for "pure questions of law" is "narrow" and does not apply to such claims).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." (emphasis added). Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings").

The Court should dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

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B. Petitioner is Subject to Mandatory Detention

Based on the plain language of the statue, the Court should reject Petitioner's argument that § 1226(a) instead of § 1225 governs his detention. *See* ECF No. 1 at 13-14. Section 1225(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]'" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) "expressly defines that '[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this Act *an applicant for admission*.'" *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an "alien present in the United States who has not been admitted." Thus, as found by the district court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner is an "applicant for admission" and subject to the mandatory detention provisions of § 1225(b)(2).

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration

proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court should reject Petitioner's interpretation because it would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 ("The House Judiciary Committee Report makes clear that Congress intended to eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights that those who presented themselves to authorities for inspection."). Thus, the Court should "'refuse to interpret the INA in a way that would in effect repeal that statutory fix' intended by Congress in enacting the IIRIRA." *Chavez,* 2025 WL 2730228, at *4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

Petitioner's argument that application of the plain language of the § 1225(b)(2) contradicts and renders § 1226(a) superfluous is unpersuasive. *See* ECF No. 1 at 13. This argument was recently rejected by the district court in *Chavez v. Noem*. There, the court noted that § 1226(a) "'generally governs the process of arresting and detaining' certain aliens, namely 'aliens who were inadmissible at the time of entry *or who have been convicted of certain criminal offenses since admission*.'" *Chavez,* 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288) (emphasis in original). In turn, individuals who have not been charged with specific crimes listed in § 1226(c) are still subject to the discretionary detention provisions of § 1226(a) *as determined by the Attorney General*. *See* 8 U.S.C. § 1226(a) ("*On a warrant issued by the Attorney General*, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.") (emphasis added). Therefore, heeding the plain language of § 1225(b)(2) has no effect on § 1226(a).

Similarly, the application of § 1225's explicit definition of "applicants for admission" does not render the addition of § 1226(c) by the Riley Laken Act

superfluous. Once again correctly determined by the district court in *Chavez v. Noem*, the addition of § 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific crimes. 2025 WL 2730228, at *5.

Petitioner's interpretation also reads "applicant for admission" out of § 1225(b)(2)(A). One of the most basic interpretative canons instructs that a "statute should be construed so that effect is given to all its provisions." *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Petitioner's interpretation fails that test. It renders the phrase "applicant for admission" in § 1225(b)(2)(A) "inoperative or superfluous, void or insignificant." *See id.* If Congress did not want § 1225(b)(2)(A) to apply to "applicants for admission," then it would not have included the phrase "applicants for admission" in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

Finally, Petitioner's argument that the phrase "alien seeking admission" limits the scope of § 1225(b)(2)(A) fails. *See* ECF No. 1 at 13. The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (emphasis in original). Petitioner "provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *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).

To the extent Petitioner challenges the automatic-stay provision of the regulations, the Court should reject such a challenge. The automatic stay provision is not a detention statute, but merely a means for review of an IJ's decision. Respondents' authority to detain here, which is the relevant inquiry in habeas, comes directly from 8 U.S.C. § 1225. The fact that DHS has invoked the automatic-stay provision to keep Petitioner in detention during DHS's bond appeal does not change the constitutionality of the detention. The automatic stay was invoked in support of the statutory scheme implemented by Congress under 8 U.S.C. § 1225, which requires mandatory detention.

On September 5, 2025, after the IJ granted Petitioner bond, the BIA decided *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision, which is binding on IJs, clearly directs: "Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." As noted above, Petitioner's temporary detention pursuant to the automatic stay of 8 C.F.R. § 1003.19(i)(2) is reinforced by Congress's command to detain Petitioner throughout the removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). The operative automatic stay of release pending appeal at issue in this case is a temporary measure that merely ensures that DHS has an opportunity to vindicate Congress's mandatory detention scheme. Because Petitioner

shall be detained during removal proceedings and the proceedings are uncontrovertibly ongoing, the temporary detention is lawful.

Because Petitioner is properly detained under § 1225, he cannot show entitlement to relief.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the petition.

DATED: October 20, 2025

Respectfully submitted,

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