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

11 EDVIN ORLANDO MARTINEZ LOPEZ,	Case No.: 25-cv-2717-JES-AHG
12 Petitioner,	RESPONDENTS' RETURN TO PETITIONER
13 v.	
14 KRISTI NOEM, Secretary, U.S. 15 Department of Homeland Security, et al., 16 Respondents.	

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I. Introduction

Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's habeas petition seeks release or a bond hearing. Through multiple provisions of 8 U.S.C. § 1252, Congress has stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including the consequent detention pending removal proceedings. Moreover, Petitioner's detention is mandated by statute. The Court should deny and dismiss the petition.

II. Factual Background¹

Petitioner is a citizen and national of Guatemala. Exh. No. 1. At an unknown time and on an unknown date, he entered the United States without being admitted, paroled, or inspected. *Id.* On September 8, 2025, Petitioner was apprehended by United States Border Patrol (USBP) agents and 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. Exh. No 2. He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear (NTA). *Id.* Petitioner is currently detained at the Otay Mesa Detention Facility in Otay Mesa, California, pursuant to 8 U.S.C. § 1225(b)(2). ECF No. 1 at ¶ 1. On September 29, 2025, an IJ denied Petitioner's request for bond, finding that he is subject to mandatory detention. *Id.* at ¶¶ 2-4. He has not appealed the bond denial order to the BIA.

III. Argument

A. Petitioner's Claims and Requested Relief 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

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

1 threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C.
2 § 1252(g) and 8 U.S.C. § 1252(b)(9).

3 In general, courts lack jurisdiction to review a decision to commence or
4 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
5 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
6 alien arising from the decision or action by the Attorney General to commence
7 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
8 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
9 Congress to focus special attention upon, and make special provision for, judicial
10 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
11 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
12 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
13 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
14 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
15 alien at the commencement of removal proceedings are not within any court’s
16 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
17 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
18 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
19 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action
20 by the Attorney General to commence proceedings [and] adjudicate cases,” over which
21 Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

22 Section 1252(g) also bars district courts from hearing challenges to the method
23 by which the government chooses to commence removal proceedings, including the
24 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
25 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
26 discretionary decisions to commence removal” and bars review of “ICE’s decision to
27 take [plaintiff] into custody and to detain him during his removal proceedings”).
28

1 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
2 commences proceedings against an alien when the alien is issued a Notice to Appear
3 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
4 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
5 may arrest the alien against whom proceedings are commenced and detain that
6 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
7 detention throughout this process arises from the Attorney General’s decision to
8 commence proceedings” and review of claims arising from such detention is barred
9 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
10 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No.
11 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

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

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

4 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
5 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
6 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
7 as precluding review of constitutional claims or questions of law raised upon a petition
8 for review filed with an appropriate court of appeals in accordance with this section.”
9 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
10 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
11 process before the court of appeals ensures that noncitizens have a proper forum for
12 claims arising from their immigration proceedings and “receive their day in court.”
13 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
14 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
15 obviate . . . Suspension Clause concerns” by permitting judicial review of
16 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
17 law.”). These provisions divest district courts of jurisdiction to review both direct and
18 indirect challenges to removal orders, including decisions to detain for purposes of
19 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95, 138 S.
20 Ct. 830, 841, 200 L. Ed. 2d 122 (2018) (section 1252(b)(9) includes challenges to the
21 “decision to detain [an alien] in the first place or to seek removal”).

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

1 decision and action to detain him, which arises from DHS’s decision to commence
2 removal proceedings, and is thus an “action taken . . . to remove [him] from the United
3 States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*
4 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
5 not bar review in that case because the petitioner did not challenge “his initial
6 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
7 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
8 detention decision, which flows from the government’s decision to “commence
9 proceedings”). *But see Vasquez Garcia*, No. 25-cv-02180-DMS-MMP, 2025 WL
10 2549431, at *3-4. As such, the Court lacks jurisdiction over this action. The reasoning
11 in *Jennings* outlines why Petitioner’s claims are unreviewable here.

12 While holding that it was unnecessary to comprehensively address the scope of
13 § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of
14 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at
15 293–94. The Court found that “§ 1252(b)(9) [did] not present a jurisdictional bar” in
16 situations where “respondents . . . [were] not challenging the decision to detain them in
17 the first place.” *Id.* at 294–95. In this case, Petitioner does challenge the government’s
18 decision to detain him in the first place. Though Petitioner attempts to frame his
19 challenge as one relating to detention authority, rather than a challenge to DHS’s
20 decision to detain him in the first instance, such creative framing does not evade the
21 preclusive effect of § 1252(b)(9). Indeed, that Petitioner is challenging the basis upon
22 which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action
23 taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J.,
24 concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioner’s claims would be more
25 appropriately presented before the appropriate federal court of appeals because they
26 challenge the government’s decision or action to detain him, which must be raised
27 before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

1 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
2 § 1252.²

3 **B. Petitioner is Lawfully Detained**

4 Petitioner's claims for alleged statutory and constitutional violations fail because
5 he is subject to mandatory detention under 8 U.S.C. § 1225.

6 Based on the plain language of the statute, the Court should reject Petitioner's
7 argument that § 1226(a) governs his detention instead of § 1225. *See* ECF No. 1 at ¶¶
8 23-24, 28, 41-42. Section 1225(b)(2)(A) requires mandatory detention of “an alien who
9 is *an applicant for admission*, if the examining immigration officer determines that an
10 alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]”
11 *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24,
12 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
13 “expressly defines that ‘[a]n alien present in the United States who has not been
14 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*
15 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien
16 present in the United States who ha[s] not been admitted.” Thus, as found by the district
17 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner
18 is an “applicant for admission” and subject to the mandatory detention provisions of §
19

20 ² On an alternative basis, the Court should deny the Petition for failure to exhaust
21 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust
22 available judicial and administrative remedies before seeking relief under § 2241.”
23 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does
24 not exhaust administrative remedies, a district court ordinarily should either dismiss the
25 petition without prejudice or stay the proceedings until the petitioner has exhausted
26 remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160
27 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014)
28 (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). Here, Petitioner is attempting to bypass the
administrative scheme by not appealing the underlying bond denial to the BIA. Thus,
the Court should dismiss or stay this matter to allow Petitioner an opportunity to exhaust
his administrative remedies.

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). The Court should reject
17 Petitioner’s interpretation because it would put aliens who “crossed the border
18 unlawfully” in a better position than those “who present themselves for inspection at a
19 port of entry.” *Id.* Aliens who presented at a port of entry would be subject to mandatory
20 detention under § 1225, but those who crossed illegally would be eligible for a bond
21 under § 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House
22 Judiciary Committee Report makes clear that Congress intended to eliminate the prior
23 statutory scheme that provided aliens who entered the United States without inspection
24 more procedural and substantive rights than those who presented themselves to
25 authorities for inspection.”). Thus, the court should “‘refuse to interpret the INA in a
26 way that would in effect repeal that statutory fix’ intended by Congress in enacting the
27 IIRIRA.” *Chavez*, 2025 WL 2730228, at *4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

28 Petitioner’s argument that application of the plain language of the § 1225(b)(2)

1 contradicts and renders § 1226(a) superfluous is unpersuasive. *See* ECF No. 1 at ¶ 28.
2 This exact argument was recently rejected by the district court in *Chavez v. Noem*.
3 There, the Court noted that § 1226(a) “‘generally governs the process of arresting and
4 detaining’ certain aliens, namely ‘aliens who were inadmissible at the time of entry *or*
5 *who have been convicted of certain criminal offenses since admission.*”” *Chavez*, 2025
6 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288) (emphasis in original).
7 Moreover, § 1226(a) also covers those deemed to be deportable who were admitted as
8 a nonimmigrant but failed to maintain their status or comply with the conditions of their
9 status (i.e., visa overstays). *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1227(a)(1). In
10 turn, individuals who have not been charged with specific crimes listed in § 1226(c), as
11 well as those previously admitted but deemed deportable, are still subject to the
12 discretionary detention provisions of § 1226(a) *as determined by the Attorney General*.
13 *See* 8 U.S.C. § 1226(a) (“*On a warrant issued by the Attorney General*, an alien may be
14 arrested and detained pending a decision on whether the alien is to be removed from the
15 United States.”) (emphasis added). Therefore, heeding the plain language of §
16 1225(b)(2) has no effect on § 1226(a).

17 Similarly, the application of § 1225’s explicit definition of “applicants for
18 admission” does not render the addition of § 1226(c) by the Riley Laken Act
19 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,
20 the addition of § 1226(c) simply removed the Attorney General’s detention discretion
21 for aliens charged with specific crimes. 2025 WL 2730228, at *5.

22 Petitioner’s interpretation also reads “applicant for admission” out of §
23 1225(b)(2)(A). One of the most basic interpretative canons instructs that a “statute
24 should be construed so that effect is given to all its provisions.” *See Corley v. United*
25 *States*, 556 U.S. 303, 314 (2009) (cleaned up). Petitioner’s interpretation fails that test.
26 It renders the phrase “applicant for admission” in § 1225(b)(2)(A) “inoperative or
27 superfluous, void or insignificant.” *See id.* If Congress did not want § 1225(b)(2)(A) to
28 apply to “applicants for admission,” then it would not have included the phrase

1 “applicants for admission” in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also*
2 *Corley*, 556 U.S. at 314.

3 Finally, Petitioner’s argument that the phrase “alien seeking admission” limits
4 the scope of § 1225(b)(2)(A) fails. *See* ECF No. 1 at ¶¶ 21-24. The BIA has long
5 recognized that “many people who are not *actually* requesting permission to enter the
6 United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’
7 under the immigration laws.” *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012).
8 Petitioner “provide[] no legal authority for the proposition that after some undefined
9 period of time residing in the interior of the United States without lawful status, the INA
10 provides that an applicant for admission is no longer ‘seeking admission,’ and has
11 somehow converted to a status that renders him or her eligible for a bond hearing under
12 section 236(a) of the INA.” *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing
13 *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

14 Statutory language “is known by the company it keeps.” *Marquez-Reyes v.*
15 *Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579
16 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read
17 in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants
18 for admission are both those individuals present without admission and those who arrive
19 in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking
20 admission” under § 1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221;
21 *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which
22 requires all aliens “who are applicants for admission or otherwise seeking admission”
23 to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here
24 “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it
25 (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571
26 U.S. 31, 45 (2013).

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

1 **IV. CONCLUSION**

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

4 DATED: October 21, 2025

Respectfully submitted,

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