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

10 C.L.V.,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE, et al.,

14 Respondents.

Case No.: 25-cv-02795-JO-AHG

**RESPONDENTS' RETURN AND
RESPONSE IN OPPOSITION TO
PETITIONER'S PETITION FOR
HABEAS RELIEF**

15
16 **I. Introduction**

17 Petitioner C.L.V. has filed a habeas petition pursuant to 28 U.S.C. § 2241. For
18 the reasons set forth below, the Court should deny Petitioner's requests for relief and
19 dismiss the petition.

20 **II. Factual and Procedural Background**

21 Petitioner is a citizen and national of Colombia. Exhibit 1, Record of
22 Deportable/Inadmissible Alien, Form I-213. On or about November 23, 2023, he
23 unlawfully entered the United States near San Ysidro, California without being
24 admitted, paroled, or inspected. Ex 1. DHS apprehended Petitioner near the border after
25 the unlawful entry and placed Petitioner in removal proceedings under 8 U.S.C. § 1229a
26 and issued a Notice to Appear (NTA), charging Petitioner inadmissible under 8 U.S.C.
27 § 1182(a)(6)(i), as an alien present in the United States who has not been admitted or
28

1 paroled. Ex. 2, NTA. Petitioner was released from DHS custody on an order of
2 recognizance. Ex. 1 at 3; *see also* ECF No. 1, ¶ 16.

3 At a master calendar hearing on May 22, 2025, DHS, pursuant to 8 C.F.R.
4 § 1239.2(c), made an oral motion to dismiss Petitioner’s § 1229a removal proceedings.
5 ECF No. 1 at ¶ 20. Petitioner verbally opposed the motion at the hearing, but the
6 immigration judge (IJ) granted the motion to dismiss. *Id.*; Ex. 3, Order on Motion to
7 Dismiss. After the hearing, Petitioner was arrested and detained in ICE custody pursuant
8 to the execution of a warrant. Ex. 4, Warrant for Arrest of Alien; *see also* ECF No. 1,
9 ¶ 22. He was then issued a Notice of Expedited Removal.¹ Ex. 5, Notice and Order of
10 Expedited Removal; *see also* ECF No. 1, ¶ 24. Shortly thereafter, Petitioner filed a
11 notice of appeal of the IJ’s dismissal of his 1229a removal proceedings. Ex. 6, Notice
12 of Appeal. On July 17, 2025, he filed a Motion for Custody Redetermination Hearing,
13 which the IJ denied on July 29, 2025. Ex. 7, Motion; Ex. 8, Order of IJ.

14 On August 28, 2025, Petitioner submitted a letter to the IJ requesting to be
15 allowed to voluntarily depart to Colombia, but his letter was rejected as improperly
16 filed. Ex. 9, Petitioner’s Letter; Ex. 10, Rejection Notice. On September 8, 2025,
17 Petitioner, through counsel, withdrew his appeal, stating his preference was to proceed
18 through the expedited removal process. Ex. 11, Motion to Withdraw Appeal. As a result
19 of Petitioner’s withdrawal of his appeal, the Board of Immigration Appeals (BIA)
20 returned the matter to the Immigration Court on September 23, 2025. Ex. 12, Order of
21 BIA. On September 26, 2025, DHS reinitiated § 1229a removal proceedings against
22 Petitioner by issuing and filing a new NTA, charging Petitioner as inadmissible under
23 8 U.S.C. § 1182(a)(6)(i), as an alien present in the United States who has not been
24 admitted or paroled. Ex. 13, NTA.

25 Petitioner has a master hearing scheduled for 1:00 p.m. on October 30, 2025. Ex.
26 14, Notice of In-Person Hearing. He is not currently subject to a final order of removal
27

28 _____
¹ The Order of Expedited Removal was never signed.

1 and remains detained in Otay Mesa Detention Facility pursuant to 8 U.S.C.
2 § 1225(b)(2).

3 III. Statutory Background

4 A. Individuals Seeking Admission to the United States

5 For more than a century, this country’s immigration laws have authorized
6 immigration officials to charge noncitizens as removable from the country, arrest those
7 who are subject to removal, and detain them during removal proceedings. *See Abel v.*
8 *United States*, 362 U.S. 217, 232–37 (1960). “The rule has been clear for decades:
9 ‘[d]etention during deportation proceedings [i]s ... constitutionally valid.’” *Banyee v.*
10 *Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523
11 (2003)), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025
12 WL 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952)
13 (“Detention is necessarily a part of this deportation procedure.”); *Demore*, 538 U.S. at
14 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens
15 during the pendency of their deportation proceedings.”). The Supreme Court even
16 recognized that removal proceedings ““would be [in] vain if those accused could not be
17 held in custody pending the inquiry into their true character.”” *Demore*, 538 U.S. at
18 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). Over the century,
19 Congress has enacted a multi-layered statutory scheme for the civil detention of aliens
20 pending a decision on removal, during the administrative and judicial review of removal
21 orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It
22 is the interplay between these statutes that is at issue here.

23 B. Detention Under 8 U.S.C. § 1225

24 “To implement its immigration policy, the Government must be able to decide
25 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*
26 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step
27 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by
28 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled

1 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be
2 deemed for purposes of this chapter an applicant for admission,” defining that term to
3 encompass *both* an alien “present in the United States who has not been admitted *or*
4 [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added). Section
5 1225(b) governs the inspection procedures applicable to all applicants for admission.
6 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered
7 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

8 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
9 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
10 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These
11 aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. §
12 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a
13 fear of persecution,” immigration officers will refer the alien for a credible fear
14 interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is
15 “detained for further consideration of the application for asylum.” *Id.* §
16 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a
17 fear of persecution, or is “found not to have such a fear,” they are detained until removed
18 from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

19 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
20 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
21 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
22 for a removal proceeding “if the examining immigration officer determines that [the]
23 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
24 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
25 2025) (“[A]liens who are present in the United States without admission are applicants
26 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
27 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);
28 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking

1 admission into the United States who are placed directly in full removal proceedings,
2 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until
3 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,
4 DHS has the sole discretionary authority to temporarily release on parole “any alien
5 applying for admission to the United States” on a “case-by-case basis for urgent
6 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v.*
7 *Texas*, 597 U.S. 785, 806 (2022).

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

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

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

24 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23
25 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it
26 address the applicable burden of proof or particular factors that must be considered. See
27 *generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad
28 discretionary authority to determine, after arrest, whether to detain or release an alien

1 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees
2 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.
3 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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

5 The BIA is an appellate body within the Executive Office for Immigration
6 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
7 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
8 adjudications under the [INA] that the Attorney General may by regulation assign to
9 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
10 BIA not only resolves particular disputes before it, but is also directed to, “through
11 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
12 judges, and the general public on the proper interpretation and administration of the
13 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
14 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
15 1003.1(d)(7).

16 **IV. Argument**

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

18 The Court lacks jurisdiction to hear Petitioner’s claims, which stem from DHS’s
19 decision to arrest and detain Petitioner pending removal proceedings. *See Ass’n of Am.*
20 *Med. Coll.*, 217 F.3d at 778–79; *Finley*, 490 U.S. at 547–48. Petitioner brings his habeas
21 action under 28 U.S.C. § 2241, but jurisdiction over his claims is barred under
22 8 U.S.C. § 1252(b)(9) and § 1252(g).

23 In general, courts lack jurisdiction to review a decision to commence or
24 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
25 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
26 alien arising from the decision or action by the Attorney General to commence
27 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
28 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for

1 Congress to focus special attention upon, and make special provision for, judicial
2 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
3 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
4 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
5 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under
6 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
7 alien at the commencement of removal proceedings are not within any court’s
8 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
9 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
10 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
11 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action
12 by the Attorney General to commence proceedings [and] adjudicate cases,” over which
13 Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

14 Section 1252(g) also bars district courts from hearing challenges to the *method*
15 by which the government chooses to commence removal proceedings, including the
16 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
17 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
18 discretionary decisions to commence removal” and also to review “ICE’s decision to
19 take [plaintiff] into custody to detain him during removal proceedings”).

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

1 *v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal.
2 Aug. 18, 2010); 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No. 25-cv-02180-
3 DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

4 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
5 and fact . . . arising from any action taken or proceeding brought to remove an alien
6 from the United States under this subchapter shall be available only in judicial review
7 of a final order under this section.” Further, judicial review of a final order is available
8 only through “a petition for review filed with an appropriate court of appeals.”
9 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the
10 unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and
11 actions leading up to or consequent upon final orders of deportation,” including
12 “non-final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483,
13 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9)
14 is “breathtaking in scope and vise-like in grip and therefore swallows up virtually all
15 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
16 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-
17 related activity can be reviewed *only* through the [petition for review] PFR process.”
18 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge
19 their removal proceedings, they are not jurisdiction-stripping statutes that, by their
20 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel
21 judicial review over final orders of removal to the courts of appeal.”) (emphasis in
22 original); *see id.* at 1035 (“[Sections] 1252(a)(5) and [(b)(9)] channel review of all
23 claims, including policies-and-practices challenges . . . whenever they ‘arise from’
24 removal proceedings.”).

25 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
26 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
27 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
28 as precluding review of constitutional claims or questions of law raised upon a petition

1 for review filed with an appropriate court of appeals in accordance with this section.”
2 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
3 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
4 process before the court of appeals ensures that aliens have a proper forum for claims
5 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,
6 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
7 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
8 obviate . . . Suspension Clause concerns” by permitting judicial review of
9 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
10 law”). These provisions divest district courts of jurisdiction to review both direct and
11 indirect challenges to removal orders, including decisions to detain for purposes of
12 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)
13 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
14 the first place or to seek removal”).

15 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
16 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
17 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
18 jurisdiction to review both direct and indirect challenges to removal orders, including
19 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.
20 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]
21 in the first place or to seek removal[.]”). Here, Petitioner challenges the government’s
22 decision and action to detain her, which arises from DHS’s decision to commence
23 removal proceedings, and is thus an “action taken . . . to remove [her] from the United
24 States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*
25 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
26 not bar review in that case because the petitioner did not challenge “his initial
27 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
28 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold

1 detention decision, which flows from the government’s decision to “commence
2 proceedings”). *But see Vasquez Garcia*, No. 25-cv-02180-DMS-MMP, 2025 WL
3 2549431, at *3-4. As such, the Court lacks jurisdiction over this action. The reasoning
4 in *Jennings* outlines why Petitioner’s claims are unreviewable here.

5 While holding that it was unnecessary to comprehensively address the scope of
6 § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of
7 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at
8 293–94. The Court found that “§ 1252(b)(9) [did] not present a jurisdictional bar” in
9 situations where “respondents . . . [were] not challenging the decision to detain them in
10 the first place.” *Id.* at 294–95. In this case, Petitioner does challenge the government’s
11 decision to detain him in the first place. Though Petitioner attempts to frame his
12 challenge as one relating to detention authority, rather than a challenge to DHS’s
13 decision to detain him in the first instance, such creative framing does not evade the
14 preclusive effect of § 1252(b)(9). Indeed, that Petitioner is challenging the basis upon
15 which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action
16 taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J.,
17 concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioner’s claims would be more
18 appropriately presented before the appropriate federal court of appeals because he
19 challenges the government’s decision or action to detain him, which must be raised
20 before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

21 Thus, as Petitioner’s claims arise from the decision to commence proceedings,
22 this Court lacks jurisdiction under 8 U.S.C. § 1252.

23 **D. Petitioner is Lawfully Detained**

24 Even assuming the Court has jurisdiction over her petition, Petitioner has not
25 stated a statutory violation or a Fifth Amendment due process violation. Petitioner is
26 currently subject to mandatory detention under 8 U.S.C. § 1225.

27 Based on the plain language of the statute, the Court should reject Petitioners’
28 argument that § 1226(a) governs their detention instead of § 1225. *See* ECF No. 1 at

1 _____. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
2 *applicant for admission*, if the examining immigration officer determines that an alien
3 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
4 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
5 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
6 “expressly defines that ‘[a]n alien present in the United States who has not been
7 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.’” *Id.*
8 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioners are “alien[s]
9 present in the United States who ha[ve] not been admitted.” Thus, as found by the
10 district court in *Chavez v. Noem* and as mandated by the plain language of the statute,
11 Petitioners are “applicants for admission” and subject to the mandatory detention
12 provisions of § 1225(b)(2).

13 When the plain text of a statute is clear, “that meaning is controlling” and courts
14 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
15 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
16 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
17 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and
18 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby
19 immigrants who were attempting to lawfully enter the United States were in a worse
20 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d
21 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-*
22 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-
23 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain
24 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have
25 entered the United States without inspection gain equities and privileges in immigration
26 proceedings that are not available to aliens who present themselves for inspection at a
27 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court should reject
28 Petitioner’s interpretation because it would put aliens who “crossed the border

1 unlawfully” in a better position than those “who present themselves for inspection at a
2 port of entry.” *Id.* Aliens who presented at a port of entry would be subject to mandatory
3 detention under § 1225, but those who crossed illegally would be eligible for a bond
4 under § 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House
5 Judiciary Committee Report makes clear that Congress intended to eliminate the prior
6 statutory scheme that provided aliens who entered the United States without inspection
7 more procedural and substantive rights that those who presented themselves to
8 authorities for inspection.”). Thus, the court should ““refuse to interpret the INA in a
9 way that would in effect repeal that statutory fix’ intended by Congress in enacting the
10 IIRIRA.” *Chavez*, 2025 WL 2730228, at *4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

11 Petitioner’s argument that application of the plain language of the § 1225(b)(2)
12 contradicts and renders § 1226(a) superfluous is unpersuasive. *See* ECF No. 2-1 at 17-
13 18. This exact argument was recently rejected by the district court in *Chavez v. Noem*.
14 There, the Court noted that § 1226(a) ““generally governs the process of arresting and
15 detaining’ certain aliens, namely ‘aliens who were inadmissible at the time of entry *or*
16 *who have been convicted of certain criminal offenses since admission.*”” *Chavez*, 2025
17 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288) (emphasis in original). In turn,
18 individuals who have not been charged with specific crimes listed in § 1226(c) are still
19 subject to the discretionary detention provisions of § 1226(a) *as determined by the*
20 *Attorney General*. *See* 8 U.S.C. § 1226(a) (“*On a warrant issued by the Attorney*
21 *General*, an alien may be arrested and detained pending a decision on whether the alien
22 is to be removed from the United States.”) (emphasis added). Therefore, heeding the
23 plain language of § 1225(b)(2) has no effect on § 1226(a).

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

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

10 Finally, Petitioner’s argument that the phrase “alien seeking admission” limits
11 the scope of § 1225(b)(2)(A) fails. *See* ECF No. 2-1 at 18-19. The BIA has long
12 recognized that “many people who are not *actually* requesting permission to enter the
13 United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’
14 under the immigration laws.” *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012).
15 Petitioner “provides no legal authority for the proposition that after some undefined
16 period of time residing in the interior of the United States without lawful status, the INA
17 provides that an applicant for admission is no longer ‘seeking admission,’ and has
18 somehow converted to a status that renders him or her eligible for a bond hearing under
19 section 236(a) of the INA.” *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing
20 *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

21 Statutory language “is known by the company it keeps.” *Marquez-Reyes v.*
22 *Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579
23 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read
24 in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants
25 for admission are both those individuals present without admission and those who arrive
26 in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking
27 admission” under §1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221;
28 *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which

1 requires all aliens “who are applicants for admission or otherwise seeking admission”
2 to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here
3 “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it
4 (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571
5 U.S. 31, 45 (2013).

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

8 **V. CONCLUSION**

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

11 DATED: October 24, 2025

12 Respectfully submitted,

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