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9 Attorneys for Respondents

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

13 MARICELA MARTINEZ-MARTINEZ,

14 Petitioner,

15 v.

16  
17 KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security; TODD LYONS,  
18 Acting Director, U.S. Immigration and  
Customs Enforcement; PATRICK  
19 DIVVER, Field Office Director, San Diego  
Field Office, U.S. Immigration and Customs  
20 Enforcement; CHRISTOPHER LAROSE,  
Senior Warden, Otay Mesa Detention  
21 Center; SIRCE OWEN, Acting Director of  
the Executive Office for Immigration  
22 Review (EOIR), U.S. Department of Justice;  
PAMELA BONDI, Attorney General, U.S.  
23 Department of Justice

24 Respondents.

Case No.: 25-cv-2975-GPC(VET)

**RESPONDENTS' RETURN TO  
HABEAS PETITION**

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27  
28

1 **I. Introduction and Summary of Argument**

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is  
3 currently in removal proceedings under 8 U.S.C. § 1229a and is charged with  
4 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United  
5 States who has not been admitted or paroled. *See* Exhibit 1 (Notice to Appear). As  
6 Petitioner is inadmissible and statutorily an applicant for admission, Petitioner is  
7 mandatorily detained in Immigration and Customs Enforcement (ICE) custody pursuant  
8 to 8 U.S.C. § 1225(b)(2). Based on the arguments set forth below, the Court should  
9 deny any requests for relief and dismiss the petition.

10 **II. Statutory Background**

11 **A. Individuals Seeking Admission to the United States**

12 For more than a century, this country’s immigration laws have authorized  
13 immigration officials to charge noncitizens as removable from the country, arrest those  
14 subject to removal, and detain them during removal proceedings. *See Abel v. United*  
15 *States*, 362 U.S. 217, 232–37 (1960). “The rule has been clear for decades: ‘[d]etention  
16 during deportation proceedings [i]s ... constitutionally valid.’” *Banyee v. Garland*, 115  
17 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)),  
18 *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL  
19 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952)  
20 (“Detention is necessarily a part of this deportation procedure.”); *Demore*, 538 U.S. at  
21 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens  
22 during the pendency of their deportation proceedings.”). The Supreme Court even  
23 recognized that removal proceedings ““would be [in] vain if those accused could not be  
24 held in custody pending the inquiry into their true character.”” *Demore*, 538 U.S. at  
25 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). Over the century,  
26 Congress has enacted a multi-layered statutory scheme for the civil detention of aliens  
27 pending a decision on removal, during the administrative and judicial review of removal  
28

1 orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It  
2 is the interplay between these statutes that is at issue here.

3 **B. Detention Under 8 U.S.C. § 1225**

4 “To implement its immigration policy, the Government must be able to decide  
5 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*  
6 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step  
7 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by  
8 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled  
9 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be  
10 deemed for purposes of this chapter an applicant for admission,” defining that term to  
11 encompass *both* an alien “present in the United States who has not been admitted *or*  
12 [one] who arrives in the United States . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
13 1225(b) governs the inspection procedures applicable to all applicants for admission.  
14 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
15 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

16 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially  
17 determined to be inadmissible due to fraud, misrepresentation, or lack of valid  
18 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These  
19 aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. §  
20 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a  
21 fear of persecution,” immigration officers will refer the alien for a credible fear  
22 interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is  
23 “detained for further consideration of the application for asylum.” *Id.* §  
24 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a  
25 fear of persecution, or is “found not to have such a fear,” they are detained until removed  
26 from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

27 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
28 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”

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

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

17 Section 1226 provides for arrest and detention “pending a decision on whether  
18 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),  
19 the government may detain an alien during his removal proceedings, release him on  
20 bond, or release him on conditional parole. By regulation, immigration officers can  
21 release an alien who demonstrates that he “would not pose a danger to property or  
22 persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An  
23 alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any  
24 time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§  
25 236.1(d)(1), 1236.1(d)(1), 1003.19.

26 At a custody redetermination, the IJ may continue detention or release the alien  
27 on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have  
28 broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. &

1 N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless  
2 of the factors IJs consider, an alien “who presents a danger to persons or property should  
3 not be released during the pendency of removal proceedings.” *Id.* at 38.

4 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23  
5 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it  
6 address the applicable burden of proof or particular factors that must be considered. *See*  
7 *generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad  
8 discretionary authority to determine, after arrest, whether to detain or release an alien  
9 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees  
10 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.  
11 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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

#### 20 **D. Review Before the Board of Immigration Appeals**

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

1 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the  
2 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §  
3 1003.1(d)(7).

4 If an automatic stay of a custody decision is invoked by DHS, regulations require  
5 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in  
6 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,  
7 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.  
8 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.  
9 § 1003.6(c)(5).

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

### 16 III. Argument

#### 17 A. Claims and Requested Relief Jurisdictionally Barred

18 Petitioner bears the burden of establishing that this Court has subject matter  
19 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d  
20 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

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

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

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

18 Other courts have held, “[f]or the purposes of § 1252, the Attorney General  
19 commences proceedings against an alien when the alien is issued a Notice to Appear  
20 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF  
21 (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General  
22 may arrest the alien against whom proceedings are commenced and detain that  
23 individual until the conclusion of those proceedings.” *Id.* at \*3. “Thus, an alien’s  
24 detention throughout this process arises from the Attorney General’s decision to  
25 commence proceedings” and review of claims arising from such detention is barred  
26 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,  
27 2010 WL 11463156, at \*6; 8 U.S.C. § 1252(g).

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

21 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring  
22 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)  
23 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed  
24 as precluding review of constitutional claims or questions of law raised upon a petition  
25 for review filed with an appropriate court of appeals in accordance with this section.”  
26 See also *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review  
27 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review  
28 process before the court of appeals ensures that noncitizens have a proper forum for

1 claims arising from their immigration proceedings and “receive their day in court.”  
2 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,  
3 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
4 obviate . . . Suspension Clause concerns” by permitting judicial review of  
5 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
6 law.”). These provisions divest district courts of jurisdiction to review both direct and  
7 indirect challenges to removal orders, including decisions to detain for purposes of  
8 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)  
9 includes challenges to the “decision to detain [an alien] in the first place or to seek  
10 removal”).

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

1 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
2 § 1252.<sup>1</sup> See *Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.  
3 LEXIS 175957 (D. Minn. Sept. 9, 2025).

4 **B. Petitioner is Lawfully Detained**

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

7 Based on the plain language of the statute, Petitioner’s detention is governed by  
8 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*  
9 *applicant for admission*, if the examining immigration officer determines that an alien  
10 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*  
11 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at \*4 (S.D. Cal. Sept. 24, 2025)  
12 (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 has 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 § 1225(b)(2).

20 When the plain text of a statute is clear, “that meaning is controlling” and courts  
21 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
22 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing

23 \_\_\_\_\_  
24 <sup>1</sup> On an alternative basis, the Court should ensure Petitioner properly exhausts  
25 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust  
26 available judicial and administrative remedies before seeking relief under § 2241.”  
27 *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does  
28 not exhaust administrative remedies, a district court ordinarily should either dismiss the  
petition without prejudice or stay the proceedings until the petitioner has exhausted  
remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160  
(9th Cir. 2011); see also *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014)  
(issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080  
(9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s  
administrative proceedings before the BIA).

1 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
2 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and  
3 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby  
4 immigrants who were attempting to lawfully enter the United States were in a worse  
5 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d  
6 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*  
7 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-  
8 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain  
9 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have  
10 entered the United States without inspection gain equities and privileges in immigration  
11 proceedings that are not available to aliens who present themselves for inspection at a  
12 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). A contrary interpretation  
13 would put aliens who “crossed the border unlawfully” in a better position than those  
14 “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at  
15 a port of entry would be subject to mandatory detention under § 1225, but those who  
16 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*  
17 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear  
18 that Congress intended to eliminate the prior statutory scheme that provided aliens who  
19 entered the United States without inspection more procedural and substantive rights that  
20 those who presented themselves to authorities for inspection.”). The court should  
21 “‘refuse to interpret the INA in a way that would in effect repeal that statutory fix’  
22 intended by Congress in enacting the IIRIRA.” *Chavez*, 2025 WL 2730228, at \*4  
23 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

24 The plain language of the § 1225(b)(2) does not contradict nor render § 1226(a)  
25 superfluous. In *Chavez v. Noem*, the Court noted that § 1226(a) “‘generally governs the  
26 process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible  
27 at the time of entry *or who have been convicted of certain criminal offenses since*  
28 *admission.*’” *Chavez*, 2025 WL 2730228, at \*5 (quoting *Jennings*, 583 U.S. at 288)

1 (emphasis in original). In turn, individuals who have not been charged with specific  
2 crimes listed in § 1226(c) are still subject to the discretionary detention provisions of §  
3 1226(a) *as determined by the Attorney General*. See 8 U.S.C. § 1226(a) (“*On a warrant*  
4 *issued by the Attorney General*, an alien may be arrested and detained pending a  
5 decision on whether the alien is to be removed from the United States.”) (emphasis  
6 added). Therefore, heeding the plain language of § 1225(b)(2) has no effect on  
7 § 1226(a). Similarly, the application of § 1225’s explicit definition of “applicants for  
8 admission” does not render the addition of § 1226(c) by the Riley Laken Act  
9 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,  
10 the addition of § 1226(c) simply removed the Attorney General’s detention discretion  
11 for aliens charged with specific crimes. 2025 WL 2730228, at \*5.

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

18 Finally, the phrase “alien seeking admission” does not limit the scope of  
19 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*  
20 requesting permission to enter the United States in the ordinary sense are nevertheless  
21 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,  
22 25 I&N Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it  
23 keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting  
24 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking  
25 admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant  
26 for admission” in § 1225(a)(1). Applicants for admission are both those individuals  
27 present without admission and those who arrive in the United States. See 8 U.S.C.  
28 § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). See

1 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.  
2 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants  
3 for admission or otherwise seeking admission” to be inspected by immigration officers.  
4 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase  
5 that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped  
6 Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further, § 1225(a)(5)  
7 provides that “[a]n applicant for admission may be required to state under oath any  
8 information sought by an immigration officer regarding the purposes and intentions of  
9 the applicant in seeking admission to the United States.” The reasonable import of this  
10 particular phrasing is that one who is an applicant for admission is considered to be  
11 “seeking admission” under the statute.

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

14 Even if the Court infers a constitutional right against prolonged mandatory  
15 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,  
16 courts become extremely wary of permitting continued custody absent a bond hearing.”  
17 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at \*4 (S.D. Cal. Apr.  
18 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,  
19 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at \*6 (S.D. Cal. Jan. 9, 2023) (detained  
20 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at  
21 \*5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,  
22 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at \*2 (S.D. Cal. Mar. 29, 2019) (two  
23 years). Petitioner’s detention falls significantly short of the length courts have found to  
24 raise due process concerns.

25 Respondents acknowledge that courts in this district have recently rejected  
26 similarly arguments in other similar habeas matters. While Respondents maintain that  
27 Petitioner is properly subject to mandatory detention under § 1225, to the extent the  
28 Court finds this Petitioner subject to detention authority under 8 U.S.C. § 1226(a),

1 Respondents’ position is that the proper remedy would be directing a bond hearing  
2 under § 1226(a). *See* 8 U.S.C. § 1226(e) (“No court may set aside any action or decision  
3 by the Attorney General under this section regarding the detention or any alien or the  
4 revocation or denial of bond or parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295  
5 (2018) (“As we have previously explained, § 1226(e) precludes an alien from  
6 ‘challeng[ing] a “discretionary judgment” by the Attorney General or a “decision” that  
7 the Attorney General has made regarding his detention or release.’ But § 1226(e) does  
8 not preclude ‘challenges [to] the statutory framework that permits [the alien’s] detention  
9 without bail.’”); 8 U.S.C. § 1226(b) (“The Attorney General at any time may revoke a  
10 bond or parole authorized under subsection (a), rearrest the alien under the original  
11 warrant, and detain the alien.”).

12 **IV. CONCLUSION**

13 For the foregoing reasons, Respondents respectfully request that the Court  
14 dismiss this action.

15 DATED: November 10, 2025

Respectfully submitted,

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