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

13 ANDERSON CARVALHO SANTOS,
14 Petitioner,
15
16 v.
17 GREGORY JOHN ARCHAMBEAULT,
et al.,
18 Respondents.

Case No.: 25-cv-3009 RSH DDL

**RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF
HABEAS CORPUS**

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I. Introduction

Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) as an immigrant not in possession of a valid entry document. As an applicant for admission, Petitioner is mandatorily detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Based on the arguments set forth below, the Court should deny Petitioner’s requests for relief and dismiss his habeas petition.

II. Statutory Background

A. Individuals Seeking Admission to the United States

For more than a century, the immigration laws of the United States have authorized immigration officials to charge noncitizens as removable from the country, arrest those subject to removal, and detain them during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). “The rule has been clear for decades: ‘[d]etention during deportation proceedings [i]s ... constitutionally valid.’” *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025). Over time, Congress has enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue here.

B. Detention Under 8 U.S.C. § 1225

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

1 “ALIENS TREATED AS APPLICANTS FOR ADMISSION” – dictates who shall be
2 deemed “an applicant for admission,” defining that term to encompass *both* an alien
3 “present in the United States who has not been admitted *or* [one] who arrives in the
4 United States” *Id.* § 1225(a)(1) (emphasis added). Section 1225(b) governs the
5 inspection procedures applicable to all applicants for admission. They “fall into one of
6 two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”
7 *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. These aliens are generally subject to
11 expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien
12 “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
13 officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An
14 alien “with a credible fear of persecution” is “detained for further consideration of the
15 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent
16 to apply for asylum, express a fear of persecution, or is “found not to have such a fear,”
17 they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i),
18 (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 also 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).

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

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

13 Notably, Section 1226(a) does not grant “any *right* to release on bond.” *Matter*
14 *of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)).
15 Nor does it address the applicable burden of proof or factors that must be considered.
16 *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad
17 discretionary authority to determine, after arrest, whether to detain or release an alien
18 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees
19 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.
20 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). The regulations also include a
21 provision that allows DHS to invoke an automatic stay of any decision by an IJ to
22 release an individual on bond when DHS files an appeal of the custody redetermination.
23 8 C.F.R. § 1003.19(i)(2).

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

25 The BIA is an appellate body within the Executive Office for Immigration
26 Review (EOIR) that possesses delegated authority from the Attorney General. 8 C.F.R.
27 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
28 adjudications under the [INA] that the Attorney General may by regulation assign to

1 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
2 BIA is also directed to, “through precedent decisions, [] provide clear and uniform
3 guidance to DHS, the immigration judges, and the general public on the proper
4 interpretation and administration of the [INA] and its implementing regulations.” *Id.* §
5 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the
6 Attorney General. 8 C.F.R. § 1003.1(d)(7).

7 If an automatic stay of a custody decision is invoked by DHS, regulations require
8 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in
9 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,
10 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.
11 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.
12 § 1003.6(c)(5). If the BIA denies DHS’s custody appeal, the automatic stay remains in
13 effect for five business days. 8 C.F.R. § 1003.6(d). DHS may, during that five-day
14 period, refer the case to the Attorney General under 8 C.F.R. § 1003.1(h)(1) for
15 consideration. *Id.* Upon referral to the Attorney General, the release is stayed for 15
16 business days while the case is considered. *Id.*

17 III. Argument

18 A. Petitioner’s Requests are Jurisdictionally Barred

19 Petitioner bears the burden of establishing that this Court has subject matter
20 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
21 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

22 Courts lack jurisdiction over any claim or cause of action arising from any
23 decision to commence or adjudicate removal proceedings or execute removal orders.
24 *See* 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim
25 by or on behalf of any alien arising from the decision or action by the Attorney General
26 to *commence proceedings, adjudicate cases, or execute removal orders.*”) (emphasis
27 added). In other words, § 1252(g) removes district court jurisdiction over “three discrete
28 actions that the Attorney may take: [her] ‘decision or action’ to ‘commence

1 proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-*
2 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis removed). Petitioner’s
3 claims necessarily arise “from the decision or action by the Attorney General to
4 commence proceedings [and] adjudicate cases,” over which Congress has explicitly
5 foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

6 Section 1252(g) also bars district courts from hearing challenges to the method
7 by which the government chooses to commence removal proceedings, including the
8 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
9 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
10 discretionary decisions to commence removal” and bars review of “ICE’s decision to
11 take [plaintiff] into custody and to detain him during his removal proceedings”);
12 *Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL 4286979, at *4
13 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the
14 Immigration Judge arose from this decision to commence proceedings.”); *Tazu v. Att’y*
15 *Gen. U.S.*, 975 F.3d 292, 298-99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and
16 (b)(9) deprive the district court of jurisdiction to review a removal order).

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

26 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
27 and fact . . . arising from any action taken or proceeding brought to remove an alien
28 from the United States under this subchapter shall be available only in judicial review

1 of a final order under this section.” And judicial review is available only through “a
2 petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5).
3 The Supreme Court has made it clear that § 1252(b)(9) is “the unmistakable ‘zipper’
4 clause,” channeling “judicial review of all” “decisions and actions leading up to or
5 consequent upon final orders of deportation,” including “non-final order[s],” into
6 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see also J.E.F.M. v.*
7 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathtaking in
8 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
9 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
10 issue – whether legal or factual – arising from *any* removal-related activity can be
11 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
12 1031.

13 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
14 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
15 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
16 as precluding review of constitutional claims or questions of law raised upon a petition
17 for review filed with an appropriate court of appeals in accordance with this section.”
18 The petition-for-review process before the court of appeals ensures that noncitizens
19 have a forum for claims arising from their immigration proceedings and “receive their
20 day in court.” *J.E.F.M.*, 837 F.3d at 1031-32 (internal quotations omitted). That said,
21 these provisions also divest district courts of jurisdiction to review both direct and
22 indirect challenges to removal orders, including decisions to detain for purposes of
23 removal or for proceedings. *See Jennings*, 583 U.S. at 294-95. Accordingly, this Court
24 should deny the petition for lack of jurisdiction.

25 **D. Petitioner is Lawfully Detained**

26 Petitioner’s claims for alleged statutory and constitutional violations fail because
27 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.
28

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

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

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

12 The plain language of the § 1225(b)(2) does not contradict nor render § 1226(a)
13 superfluous. In *Chavez v. Noem*, the Court noted that § 1226(a) “‘generally governs the
14 process of arresting and detaining’ certain persons, namely ‘aliens who were
15 inadmissible at the time of entry *or who have been convicted of certain criminal offenses*
16 *since admission.*’” *Chavez*, 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at
17 288) (emphasis in original). In turn, individuals who have not been charged with
18 specific crimes listed in § 1226(c) are still subject to the discretionary detention
19 provisions of § 1226(a) *as determined by the Attorney General*. *See* 8 U.S.C. § 1226(a)
20 (“*On a warrant issued by the Attorney General*, an alien may be arrested and detained
21 pending a decision on whether the alien is to be removed from the United States.”)
22 (emphasis added). Therefore, heeding the plain language of § 1225(b)(2) has no effect
23 on § 1226(a). Similarly, the application of § 1225’s explicit definition of “applicants for
24 admission” does not render the addition of § 1226(c) by the Riley Laken Act
25 superfluous. Instead, the addition of § 1226(c) simply removed the Attorney General’s
26 detention discretion for aliens charged with specific crimes. 2025 WL 2730228, at *5.

27 One of the most basic interpretative canons instructs that a “statute should be
28 construed so that effect is given to all its provisions.” *See Corley v. United States*, 556

1 U.S. 303, 314 (2009) (cleaned up). If Congress did not want § 1225(b)(2)(A) to apply
2 to “applicants for admission,” then it would not have included the phrase “applicants
3 for admission” in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556
4 U.S. at 314.

5 Finally, the phrase “alien seeking admission” does not limit the scope of
6 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*
7 requesting permission to enter the United States in the ordinary sense are nevertheless
8 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,
9 25 I&N Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it
10 keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting
11 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking
12 admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant
13 for admission” in § 1225(a)(1). Applicants for admission are both those individuals
14 present without admission and those who arrive in the United States. *See* 8 U.S.C.
15 § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See*
16 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.
17 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants
18 for admission or otherwise seeking admission” to be inspected by immigration officers.
19 8 U.S.C. § 1225(a)(3). Further, § 1225(a)(5) provides that “[a]n applicant for admission
20 may be required to state under oath any information sought by an immigration officer
21 regarding the purposes and intentions of the applicant in seeking admission to the
22 United States.” The reasonable import of this phrasing is that one who is an applicant
23 for admission is considered to be “seeking admission” under the statute.

24 Although Respondents acknowledge that other courts in this district have come
25 to different conclusions, Respondents maintain that Petitioner is properly subject to
26 mandatory detention under § 1225 and dismissal is proper. *Cf. Vargas Lopez v. Trump*,
27 No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025); *Sandoval v. Acuna*,
28 No. 6:25-CV-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025). To the extent

1 the Court finds this Petitioner subject to detention authority under 8 U.S.C. § 1226(a),
2 however, Respondents contend that the proper remedy would be to require a bond
3 hearing, not order immediate release. *See* 8 U.S.C. § 1226(e) (“No court may set aside
4 any action or decision by the Attorney General under this section regarding the
5 detention or any alien or the revocation or denial of bond or parole.”).

6 **IV. CONCLUSION**

7 The Court should deny Petitioner’s petition and dismiss this case.

8 DATED: November 20, 2025

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