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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ELEAZAR ESAU AVALOS FLORES, Petitioner, v. KRISTI NOEM, et al., Respondents.	Case No.: 25-cv-3011-BAS-BLM **RESPONDENTS' RETURN TO HABEAS PETITION AND RESPONSE IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER**

I. Introduction and Summary of Argument

Petitioner has filed a habeas petition under 28 U.S.C. § 2241 and a motion for temporary restraining order. 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 alien present in the United States who has not been admitted or paroled, 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. *See* Exhibit 1 (Notice to Appear). 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 any requests for relief and dismiss the petition.

II. Statutory Background

A. Individuals Seeking Admission to the United States

For more than a century, this country's immigration laws 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); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings."). (emphasis in original). The Supreme Court even recognized that removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). Over the century, Congress has enacted a multi-layered statutory scheme for

1 the civil detention of aliens pending a decision on removal, during the administrative
2 and judicial review of removal orders, and in preparation for removal. *See generally* 8
3 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue
4 here.

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

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

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

1 Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*,
2 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)."
3 *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained
4 for a removal proceeding "if the examining immigration officer determines that [the]
5 alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8
6 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
7 2025) ("[A]liens who are present in the United States without admission are applicants
8 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
9 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.");
10 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking
11 admission into the United States who are placed directly in full removal proceedings,
12 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until
13 removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). However,
14 DHS has the sole discretionary authority to temporarily release on parole "any alien
15 applying for admission to the United States" on a "case-by-case basis for urgent
16 humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v.*
17 *Texas*, 597 U.S. 785, 806 (2022).

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

19 Section 1226 provides for arrest and detention "pending a decision on whether
20 the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a),
21 the government may detain an alien during his removal proceedings, release him on
22 bond, or release him on conditional parole. By regulation, immigration officers can
23 release an alien who demonstrates that he "would not pose a danger to property or
24 persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An
25 alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any
26 time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
27 236.1(d)(1), 1236.1(d)(1), 1003.19.
28

1 At a custody redetermination, the IJ may continue detention or release the alien
2 on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have
3 broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. &
4 N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless
5 of the factors IJs consider, an alien "who presents a danger to persons or property should
6 not be released during the pendency of removal proceedings." *Id.* at 38.
7 Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23
8 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952) (emphasis in
9 original). Nor does it address the applicable burden of proof or particular factors that
10 must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the
11 Attorney General broad discretionary authority to determine, after arrest, whether to
12 detain or release an alien during his removal proceedings. *See id.* If, after the bond
13 hearing, either party disagrees with the decision of the IJ, that party may appeal the
14 decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).
15 Included within the Attorney General and DHS's discretionary authority are
16 limits on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B),
17 the IJ does not have authority to redetermine the conditions of custody imposed by DHS
18 for any arriving alien. The regulations also include a provision that allows DHS to
19 invoke an automatic stay of any decision by an IJ to release an individual on bond when
20 DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) ("The
21 decision whether or not to file [an automatic stay] is subject to the discretion of the
22 Secretary.").
23 **D. Review Before the Board of Immigration Appeals**
24 The BIA is an appellate body within the Executive Office for Immigration
25 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
26 §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative
27 adjudications under the [INA] that the Attorney General may by regulation assign to
28 it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The

BIA not only resolves particular disputes before it, but is also directed to, "through precedent decisions, [] provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

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

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

III. Argument

A. Claims and Requested Relief Jurisdictionally Barred

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over asserted 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).

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders."); *Reno v. Am.-Arab Anti-*

1 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for
2 Congress to focus special attention upon, and make special provision for, judicial
3 review of the Attorney General's discrete acts of "commenc[ing] proceedings,
4 adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation
5 or prosecution of various stages in the deportation process."); *Limpin v. United States*,
6 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
7 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an
8 alien at the commencement of removal proceedings are not within any court's
9 jurisdiction"). In other words, § 1252(g) removes district court jurisdiction over "three
10 discrete actions that the Attorney may take: her 'decision or action' to 'commence
11 proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482
12 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over
13 claims that necessarily arise "from the decision or action by the Attorney General to
14 commence proceedings [and] adjudicate cases," over which. 8 U.S.C. § 1252(g).

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

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

1 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
2 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).
3 Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law
4 and fact . . . *arising from any action taken or proceeding brought to remove an alien*
5 *from the United States* under this subchapter shall be available only in judicial review
6 of a final order under this section." (emphasis added). Further, judicial review of a final
7 order is available only through "a petition for review filed with an appropriate court of
8 appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9)
9 is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and
10 actions leading up to or consequent upon final orders of deportation," including "non-
11 final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485;
12 *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is
13 "breathtaking in scope and vise-like in grip and therefore swallows up virtually all
14 claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and
15 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-
16 related activity can be reviewed *only* through the [petition for review] PFR process."
17 *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge
18 their removal proceedings, they are not jurisdiction-stripping statutes that, by their
19 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel
20 judicial review over final orders of removal to the courts of appeal.") (emphasis in
21 original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims,
22 including policies-and-practices challenges . . . whenever they 'arise from' removal
23 proceedings").
24 Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring
25 one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
26 provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed
27 as precluding review of constitutional claims or questions of law raised upon a petition
28 for review filed with an appropriate court of appeals in accordance with this section."

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

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

3 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
4 § 1252.[1] *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.
5 LEXIS 175957 (D. Minn. Sept. 9, 2025).

6 **B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

7 Petitioner has not established entitlement to interim injunctive relief. Petitioner
8 has failed to show a likelihood of success on the underlying merits, a showing of
9 irreparable harm, and that the equities tip in Petitioner's favor. Thus, Petitioner's motion
10 should be denied.

11 In general, the showing required for a temporary restraining order is the same as
12 that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D.*
13 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a
14 temporary restraining order, a petitioner must "establish that he is likely to succeed on
15 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
16 relief, that the balance of equities tips in his favor, and that an injunction is in the public
17 interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*
18 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a "substantial
19 case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.
20 2011). When "a plaintiff has failed to show the likelihood of success on the merits,
21 [courts] need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*,
22 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary

23

24 [1] On an alternative basis, the Court should ensure Petitioner properly exhausts administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust
25 available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does
26 not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted
27 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)
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).

injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. "Few interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985).

1. No Likelihood of Success on the Merits

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot show a likelihood of success or serious questions going to the merits of the claim for alleged statutory and constitutional violations arising from Petitioner's mandatory detention under 8 U.S.C. § 1225.

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

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to correct "an anomaly whereby

immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). A contrary interpretation would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 ("The House Judiciary Committee Report makes clear that Congress intended to eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights that those who presented themselves to authorities for inspection."). The Court should "'refuse to interpret the INA in a way that would in effect repeal that statutory fix' intended by Congress in enacting the IIRIRA." *Chavez,* 2025 WL 2730228, at *4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

The plain language of the § 1225(b)(2) does not contradict nor render § 1226(a) superfluous. In *Chavez v. Noem*, the district court noted that § 1226(a) "'generally governs the process of arresting and detaining' certain aliens, namely 'aliens who were inadmissible at the time of entry *or who have been convicted of certain criminal offenses since admission*.'" *Chavez,* 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288) (emphasis in original). In turn, individuals who have not been charged with specific crimes listed in § 1226(c) are still subject to the discretionary detention provisions of § 1226(a) *as determined by the Attorney General*. *See* 8 U.S.C. § 1226(a)

1 ("*On a warrant issued by the Attorney General*, an alien may be arrested and detained
2 pending a decision on whether the alien is to be removed from the United States.")
3 (emphasis added). Therefore, heeding the plain language of § 1225(b)(2) has no effect
4 on § 1226(a). Similarly, the application of § 1225's explicit definition of "applicants for
5 admission" does not render the addition of § 1226(c) by the Riley Laken Act
6 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,
7 the addition of § 1226(c) simply removed the Attorney General's detention discretion
8 for aliens charged with specific crimes. 2025 WL 2730228, at *5.

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

15 Finally, the phrase "alien seeking admission" does not limit the scope of
16 § 1225(b)(2)(A). The BIA has long recognized that "many people who are not *actually*
17 requesting permission to enter the United States in the ordinary sense are nevertheless
18 deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*,
19 25 I&N Dec. 734, 743 (BIA 2012). Statutory language "is known by the company it
20 keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting
21 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking
22 admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant
23 for admission" in § 1225(a)(1). Applicants for admission are both those individuals
24 present without admission and those who arrive in the United States. *See* 8 U.S.C.
25 § 1225(a)(1). Both are understood to be "seeking admission" under § 1225(a)(1). *See*
26 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.
27 Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants
28 for admission or otherwise seeking admission" to be inspected by immigration officers.

8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). Further, § 1225(a)(5) provides that "[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States." The reasonable import of this particular phrasing is that one who is an applicant for admission is considered to be "seeking admission" under the statute.

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

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

Respondents acknowledge that courts in this district have recently rejected similarly arguments in other similar habeas matters. Respondents maintain that Petitioner is properly subject to mandatory detention under § 1225 and dismissal is proper. *Cf. Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025). To the extent the Court finds this Petitioner subject to detention authority under 8 U.S.C. § 1226(a), Respondents' position is that the proper

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

2. Irreparable Harm Has Not Been Shown

To prevail on the request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, 854 Fed.Appx. 190 (9th Cir. 2021) ("[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived."). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Here, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018).

1 **3. Balance of Equities Does Not Tip in Petitioner's Favor**

2 It is well settled that "the public interest in enforcement of the immigration laws 3 is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 4 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 ("There is always a public 5 interest in prompt execution of removal orders: The continued presence of an alien 6 lawfully deemed removable undermines the streamlined removal proceedings [the 7 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and 8 permits and prolongs a continuing violation of United States law.") (simplified). 9 Moreover, "ultimately the balance of the relative equities 'may depend to a large extent 10 upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v.* 11 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13, 12 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained 13 above, there is no likelihood of success on the merits of Petitioner's claims. The 14 balancing of equities and the public interest weigh heavily against granting Petitioner's 15 equitable relief.

16 **IV. CONCLUSION**

17 For the foregoing reasons, Respondents respectfully request that the Court 18 dismiss this action.

19 DATED: November 14, 2025

Respectfully submitted,

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