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

12 JESUS HERRERA SANCHEZ,
13
14 Petitioner,

15 v.

16 CHRISTOPHER J. LAROSE, et al.,
17
18 Respondents.

Case No.: 25-cv-3035-JO-SBC

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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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 an
6 applicant for admission, Petitioner is mandatorily detained in Immigration and Customs
7 Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Based on the arguments
8 set forth below, the Court should deny any requests for relief and dismiss the petition.

9 **II. Statutory Background**

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

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

1 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue
2 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 [Immigration and
7 Nationality Act], 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of
8 their removal proceedings.”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for
9 aliens arriving in and seeking admission into the United States who are placed directly
10 in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
11 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*,
12 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily
13 release on parole “any alien applying for admission to the United States” on a “case-by-
14 case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §
15 1182(d)(5)(A); *see Biden v. 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 immigration
24 judge (IJ) at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a);
25 8 C.F.R. §§ 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) (emphasis in
6 original). Nor does it address the applicable burden of proof or particular factors that
7 must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the
8 Attorney General broad discretionary authority to determine, after arrest, whether to
9 detain or release an alien during his removal proceedings. *See id.* If, after the bond
10 hearing, either party disagrees with the decision of the IJ, that party may appeal the
11 decision to the BIA. *See* 8 C.F.R. §§ 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 Board of Immigration Appeals (BIA) is an appellate body within the
22 Executive Office for Immigration Review (EOIR) and possesses delegated authority
23 from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is “charged with
24 the review of those administrative adjudications under the [INA] that the Attorney
25 General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R.
26 §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it,
27 but is also directed to, “through precedent decisions, [] provide clear and uniform
28 guidance to DHS, the immigration judges, and the general public on the proper

1 interpretation and administration of the [INA] and its implementing regulations.” *Id.* §
2 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the
3 Attorney General. 8 C.F.R. § 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 General may take: her ‘decision or action’ to
8 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S.
9 at 482 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction
10 over claims that necessarily arise “from the decision or action by the Attorney General
11 to commence proceedings [and] adjudicate cases...” 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).

28

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

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

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

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

28

1 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
2 § 1252.¹ See *Axcel 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 also fail
6 because 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).

16 Here, Petitioner is an “alien present in the United States who has not been
17 admitted.” Thus, as found by the district court in *Chavez v. Noem* and as mandated by
18 the plain language of the statute, Petitioner is an “applicant for admission” and subject
19 to the mandatory detention provisions of § 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 ¹ 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 in it “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671
2 F.3d 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 [of the statute] would put aliens who “crossed the border unlawfully” in a better position
14 than those “who present themselves for inspection at a port of entry.” *Id.* To wit, aliens
15 who presented themselves at a port of entry would be subject to mandatory detention
16 under § 1225, but those who crossed illegally would be eligible for a bond under §
17 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary
18 Committee Report makes clear that Congress intended to eliminate the prior statutory
19 scheme that provided aliens who entered the United States without inspection more
20 procedural and substantive rights than those who presented themselves to authorities for
21 inspection.”). The Court should “‘refuse to interpret the INA in a way that would in
22 effect repeal that statutory fix’ intended by Congress in enacting the IIRIRA.” *Chavez*,
23 2025 WL 2730228, at *4 (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) (emphasis in original). Statutory language “is known
23 by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir.
24 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase
25 “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of
26 “applicant for admission” in § 1225(a)(1). Applicants for admission are both those
27 individuals present without admission and those who arrive in the United States (at a
28 port of entry or elsewhere). See 8 U.S.C. § 1225(a)(1). Both are understood to be

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

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

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

26 Respondents acknowledge that courts in this district have recently rejected
27 similar arguments in other similar habeas matters. While Respondents maintain that
28 Petitioner is properly subject to mandatory detention under § 1225, to the extent the

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

13 **IV. CONCLUSION**

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

16 DATED: November 12, 2025

Respectfully submitted,

17 ADAM GORDON
18 United States Attorney

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21 _____
22 SHELDON A. SMITH
23 Special Assistant United States Attorney
24 Attorneys for Respondents
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Attorneys for Respondents

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

JESUS HERRERA SANCHEZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al.,

Respondents.

Case No.: 25-cv-3035-JO-SBC

TABLE OF EXHIBITS

Exhibits:

1. Notice to Appear, dated June 21, 2023

EXHIBIT 1

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [REDACTED]
Event No: [REDACTED]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FINS: [REDACTED] File No: [REDACTED]

In the Matter of:

Respondent: **JESUS HERRERA-SANCHEZ AKA: HERRERA SANCHEZ, JESUS GENARO** currently residing at:
[REDACTED] (Number, street, city, state and ZIP code) [REDACTED] (Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You entered the United States at or near LUKEVILLE, ARIZONA, on or about August 15, 2017;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

7488 CALZADA DE LA FUENTE SAN DIEGO CA 921540000. OTAY MESA DETENTION CENTER
(Complete Address of Immigration Court, including Room Number, if any)

on July 10, 2023 at 1:00 PM to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

VINCENT SAN MARTIN - SDDO
(Signature and Title of Issuing Officer)

Date: June 21, 2023

SAN DIEGO, CALIFORNIA
(City and State)

EOIR - 1 of 8

Warning: Any statement you make may be against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: [Signature] (Signature and Title of Immigration Officer) (Signature of Respondent) Date: _____

Certificate of Service

This Notice To Appear was served on the respondent by me on June 21, 2023, in the following manner and in compliance with section 239(a)(1) of the Act.

- [X] in person [] by certified mail, returned receipt # _____ requested [] by regular mail
[] Attached is a credible fear worksheet.
[X] Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

[Signature] (Signature of Respondent if Personally Served) M. D03003 VIDRIO - Deportation Officer (Signature and Title of officer)

EOIR - 2 of 8

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notice-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.