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

13 RAMIRO PEREZ-VELAZQUEZ,

14 Petitioner,

15 v.

16
17 CHRISTOPHER J. LAROSE; et al.,

18 Respondents.
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Case No.: 25-cv-03073-CAB-MMP

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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

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

10 **II. Statutory Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 III. Argument

17 A. Claims and Requested Relief Jurisdictionally Barred

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

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

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

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

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

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

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

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

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

1 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
2 § 1252.¹ 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 fail because
6 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.

7 Based on the plain language of the statute, Petitioner’s detention is governed by
8 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
9 *applicant for admission*, if the examining immigration officer determines that an alien
10 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
11 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
12 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
13 “expressly defines that ‘[a]n alien present in the United States who has not been
14 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.’” *Id.*
15 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien
16 present in the United States who has not been admitted.” Thus, as found by the district
17 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner
18 is an “applicant for admission” and subject to the mandatory detention provisions of
19 § 1225(b)(2).

20 When the plain text of a statute is clear, “that meaning is controlling” and courts

21 _____
22 ¹ On an alternative basis, the Court should ensure Petitioner properly exhausts
23 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust
24 available judicial and administrative remedies before seeking relief under § 2241.”
25 *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
27 petition without prejudice or stay the proceedings until the petitioner has exhausted
28 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 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
2 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
3 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
4 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and
5 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby
6 immigrants who were attempting to lawfully enter the United States were in a worse
7 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d
8 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*
9 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-
10 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain
11 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have
12 entered the United States without inspection gain equities and privileges in immigration
13 proceedings that are not available to aliens who present themselves for inspection at a
14 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). A contrary interpretation
15 would put aliens who “crossed the border unlawfully” in a better position than those
16 “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at
17 a port of entry would be subject to mandatory detention under § 1225, but those who
18 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*
19 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear
20 that Congress intended to eliminate the prior statutory scheme that provided aliens who
21 entered the United States without inspection more procedural and substantive rights that
22 those who presented themselves to authorities for inspection.”). The court should
23 “‘refuse to interpret the INA in a way that would in effect repeal that statutory fix’
24 intended by Congress in enacting the IIRIRA.” *Chavez*, 2025 WL 2730228, at *4
25 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

26 The plain language of the § 1225(b)(2) does not contradict nor render § 1226(a)
27 superfluous. In *Chavez v. Noem*, the Court noted that § 1226(a) “‘generally governs the
28 process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible

1 at the time of entry *or who have been convicted of certain criminal offenses since*
2 *admission.*” *Chavez*, 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288)
3 (emphasis in original). In turn, individuals who have not been charged with specific
4 crimes listed in § 1226(c) are still subject to the discretionary detention provisions of §
5 1226(a) *as determined by the Attorney General*. See 8 U.S.C. § 1226(a) (“*On a warrant*
6 *issued by the Attorney General*, an alien may be arrested and detained pending a
7 decision on whether the alien is to be removed from the United States.”) (emphasis
8 added). Therefore, heeding the plain language of § 1225(b)(2) has no effect on
9 § 1226(a). Similarly, the application of § 1225’s explicit definition of “applicants for
10 admission” does not render the addition of § 1226(c) by the Riley Laken Act
11 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,
12 the addition of § 1226(c) simply removed the Attorney General’s detention discretion
13 for aliens charged with specific crimes. 2025 WL 2730228, at *5.

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

20 Finally, the phrase “alien seeking admission” does not limit the scope of
21 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*
22 requesting permission to enter the United States in the ordinary sense are nevertheless
23 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,
24 25 I&N Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it
25 keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting
26 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking
27 admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant
28 for admission” in § 1225(a)(1). Applicants for admission are both those individuals

1 present without admission and those who arrive in the United States. *See* 8 U.S.C.
2 § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See*
3 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.
4 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants
5 for admission or otherwise seeking admission” to be inspected by immigration officers.
6 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase
7 that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped
8 Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further, § 1225(a)(5)
9 provides that “[a]n applicant for admission may be required to state under oath any
10 information sought by an immigration officer regarding the purposes and intentions of
11 the applicant in seeking admission to the United States.” The reasonable import of this
12 particular phrasing is that one who is an applicant for admission is considered to be
13 “seeking admission” under the statute.

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

16 C. Fourth Amendment Claims Fail

17 To the extent Petitioner asserts claims under the Fourth Amendment, he fails to
18 explain why release is the remedy for such alleged violations. *United States v. Crews*,
19 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment’s
20 “exclusionary principle” “delimits what proof the Government may offer against the
21 accused at trial, closing the courtroom door to evidence secured by official
22 lawlessness,” but an individual “is not himself a suppressible ‘fruit’”); *Cruz v. Barr*,
23 926 F.3d 1128, 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment
24 grounds because fruits of the regulatory violation were the only evidence of petitioner’s
25 alienage).

26 Moreover, Fourth Amendment claims related to alienage “belong in front of an
27 Immigration Judge, not a federal district court.” *See Marvan v. Slaughter*, No. CV 25-
28 49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition

1 challenging detention based on Fourth Amendment violations for lack of subject matter
2 jurisdiction). Petitioner cannot simply “bypass the immigration courts and proceed
3 directly to district court. Instead, [he] must exhaust the administrative process before
4 [he] can access the federal courts.” *Id.* at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To
5 the extent Petitioner desires to bring such claims, this district court does not have
6 jurisdiction. Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and
7 fact . . . arising from any action taken or proceeding brought to remove an alien from
8 the United States under this subchapter shall be available only in judicial review of a
9 final order under this section.” Further, judicial review of a final order is available only
10 through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
11 § 1252(a)(5).

12 IV. CONCLUSION

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

15 DATED: November 24, 2025

Respectfully submitted,

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