

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ADAM GORDON  
United States Attorney  
STEPHEN H. WONG  
California Bar No. 212485  
ERIN M. DIMBLEBY  
California Bar No. 323359  
Assistant U.S. Attorneys  
Office of the U.S. Attorney  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
Telephone: (619) 546-9464/6987  
Facsimile: (619) 546-7751  
Email: stephen.wong@usdoj.gov  
erin.dimbleby@usdoj.gov

Attorneys for Respondents

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

MANUEL RAMIREZ-RIVERA,  
  
Petitioner,  
  
v.  
  
KRISTI NOEM; et al.,  
  
Respondents.

Case No.: 25-cv-3072-RBM-DEB

**RESPONDENTS' RETURN TO  
HABEAS PETITION**

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. Factual Background<sup>1</sup>**

10 Petitioner is a citizen and national of Mexico. In 2005, he entered the United  
11 States without being admitted or paroled. On June 29, 2025, Petitioner was apprehended  
12 by agents from the Department of Homeland Security (DHS) Enforcement and  
13 Removal Operations (ERO) and charged with inadmissibility under 8 U.S.C.  
14 § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted  
15 or paroled. He was then placed in removal proceedings under 8 U.S.C. § 1229a and  
16 issued a Notice to Appear (NTA). Subsequently, Petitioner was transferred to ICE  
17 custody, and he remains detained at the Otay Mesa Detention Facility pursuant to 8  
18 U.S.C. § 1225(b)(2). On August 1, 2025, an immigration judge (IJ) granted Petitioner's  
19 release on a \$6,500 bond (with electronic monitoring at the discretion of DHS). The  
20 Department of Homeland Security (DHS) reserved its right to appeal the IJ's decision  
21 to the Board of Immigration Appeals (BIA). On August 1, 2025, DHS filed a Form  
22 EOIR-43, Notice of Intent to Appeal the Custody Redetermination, and indicated that  
23 it was invoking the automatic stay provision of 8 C.F.R. § 1003.19(i)(2). On August 14,  
24 2025, DHS filed a Form EOIR-26, Notice of Appeal from a Decision of an Immigration  
25 Judge, and EOIR-43 Senior Legal Official Certification. On September 2, 2025, DHS  
26 and Petitioner each filed their respective appeal brief before the BIA. On November 7,  
27

28 <sup>1</sup> The exhibits attached as Exhibit 2 are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 2025, the BIA issued a decision sustaining DHS’s appeal and vacating the IJ’s August  
2 1, 2025, bond order.

### 3 III. Statutory Background

#### 4 A. Individuals Seeking Admission to the United States

5 For more than a century, this country’s immigration laws have authorized  
6 immigration officials to charge noncitizens as removable from the country, arrest those  
7 subject to removal, and detain them during removal proceedings. *See Abel v. United*  
8 *States*, 362 U.S. 217, 232–37 (1960). “The rule has been clear for decades: ‘[d]etention  
9 during deportation proceedings [i]s ... constitutionally valid.’” *Banyee v. Garland*, 115  
10 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)),  
11 *rehearing by panel and en banc denied, Banyee v. Bondi*, No. 22-2252, 2025 WL  
12 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952)  
13 (“Detention is necessarily a part of this deportation procedure.”); *Demore*, 538 U.S. at  
14 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens  
15 during the pendency of their deportation proceedings.”). The Supreme Court even  
16 recognized that removal proceedings “‘would be [in] vain if those accused could not be  
17 held in custody pending the inquiry into their true character.’” *Demore*, 538 U.S. at  
18 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). Over the century,  
19 Congress has enacted a multi-layered statutory scheme for the civil detention of aliens  
20 pending a decision on removal, during the administrative and judicial review of removal  
21 orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It  
22 is the interplay between these statutes that is at issue here.

#### 23 B. Detention Under 8 U.S.C. § 1225

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

1 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be  
2 deemed for purposes of this chapter an applicant for admission,” defining that term to  
3 encompass *both* an alien “present in the United States who has not been admitted *or*  
4 [one] who arrives in the United States . . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
5 1225(b) governs the inspection procedures applicable to all applicants for admission.  
6 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
7 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

8 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially  
9 determined to be inadmissible due to fraud, misrepresentation, or lack of valid  
10 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These  
11 aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. §  
12 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a  
13 fear of persecution,” immigration officers will refer the alien for a credible fear  
14 interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is  
15 “detained for further consideration of the application for asylum.” *Id.* §  
16 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a  
17 fear of persecution, or is “found not to have such a fear,” they are detained until removed  
18 from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

19 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
20 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
21 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
22 for a removal proceeding “if the examining immigration officer determines that [the]  
23 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8  
24 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA  
25 2025) (“[A]liens who are present in the United States without admission are applicants  
26 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.  
27 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);  
28 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking

1 admission into the United States who are placed directly in full removal proceedings,  
2 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until  
3 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,  
4 DHS has the sole discretionary authority to temporarily release on parole “any alien  
5 applying for admission to the United States” on a “case-by-case basis for urgent  
6 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v.*  
7 *Texas*, 597 U.S. 785, 806 (2022).

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

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

18 At a custody redetermination, the IJ may continue detention or release the alien  
19 on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have  
20 broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. &  
21 N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless  
22 of the factors IJs consider, an alien “who presents a danger to persons or property should  
23 not be released during the pendency of removal proceedings.” *Id.* at 38.

24 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23  
25 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it  
26 address the applicable burden of proof or particular factors that must be considered. See  
27 *generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad  
28 discretionary authority to determine, after arrest, whether to detain or release an alien

1 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees  
2 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.  
3 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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

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

13 The BIA is an appellate body within the Executive Office for Immigration  
14 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.  
15 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative  
16 adjudications under the [INA] that the Attorney General may by regulation assign to  
17 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The  
18 BIA not only resolves particular disputes before it, but is also directed to, “through  
19 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration  
20 judges, and the general public on the proper interpretation and administration of the  
21 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the  
22 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §  
23 1003.1(d)(7).

24 If an automatic stay of a custody decision is invoked by DHS, regulations require  
25 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in  
26 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,  
27 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.  
28 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.

1 § 1003.6(c)(5).

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

#### 8 IV. Argument

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

10 Petitioner bears the burden of establishing that this Court has subject matter  
11 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d  
12 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

13 In general, courts lack jurisdiction to review a decision to commence or  
14 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)  
15 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any  
16 alien arising from the decision or action by the Attorney General to commence  
17 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*  
18 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for  
19 Congress to focus special attention upon, and make special provision for, judicial  
20 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,  
21 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation  
22 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,  
23 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8  
24 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an  
25 alien at the commencement of removal proceedings are not within any court’s  
26 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three  
27 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence  
28 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482

1 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over  
2 claims that necessarily arise “from the decision or action by the Attorney General to  
3 commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 1252(g).

4 Section 1252(g) also bars district courts from hearing challenges to the method  
5 by which the government chooses to commence removal proceedings, including the  
6 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203  
7 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
8 discretionary decisions to commence removal” and bars review of “ICE’s decision to  
9 take [plaintiff] into custody and to detain him during his removal proceedings”).

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

20 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law  
21 and fact . . . arising from any action taken or proceeding brought to remove an alien  
22 from the United States under this subchapter shall be available only in judicial review  
23 of a final order under this section.” Further, judicial review of a final order is available  
24 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.  
25 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable  
26 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up  
27 to or consequent upon final orders of deportation,” including “non-final order[s],” into  
28 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v.*

1 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathtaking in  
2 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to  
3 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*  
4 issue—whether legal or factual—arising from *any* removal-related activity can be  
5 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at  
6 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal  
7 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose  
8 *all* judicial review of agency actions. Instead, the provisions channel judicial review  
9 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at  
10 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-  
11 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

12 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring  
13 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)  
14 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed  
15 as precluding review of constitutional claims or questions of law raised upon a petition  
16 for review filed with an appropriate court of appeals in accordance with this section.”  
17 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review  
18 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review  
19 process before the court of appeals ensures that noncitizens have a proper forum for  
20 claims arising from their immigration proceedings and “receive their day in court.”  
21 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,  
22 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
23 obviate . . . Suspension Clause concerns” by permitting judicial review of  
24 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
25 law.”). These provisions divest district courts of jurisdiction to review both direct and  
26 indirect challenges to removal orders, including decisions to detain for purposes of  
27 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)

28

1 includes challenges to the “decision to detain [an alien] in the first place or to seek  
2 removal”).

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

19 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
20 § 1252. *See Axxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist. LEXIS  
21 175957 (D. Minn. Sept. 9, 2025).

## 22 **B. Petitioner is Lawfully Detained**

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

25 Based on the plain language of the statute, Petitioner’s detention is governed by  
26 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*  
27 *applicant for admission*, if the examining immigration officer determines that an alien  
28 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*

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

10 When the plain text of a statute is clear, “that meaning is controlling” and courts  
11 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
12 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
13 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
14 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and  
15 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby  
16 immigrants who were attempting to lawfully enter the United States were in a worse  
17 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d  
18 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*  
19 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-  
20 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain  
21 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have  
22 entered the United States without inspection gain equities and privileges in immigration  
23 proceedings that are not available to aliens who present themselves for inspection at a  
24 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). A contrary interpretation  
25 would put aliens who “crossed the border unlawfully” in a better position than those  
26 “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at  
27 a port of entry would be subject to mandatory detention under § 1225, but those who  
28 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*

1 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear  
2 that Congress intended to eliminate the prior statutory scheme that provided aliens who  
3 entered the United States without inspection more procedural and substantive rights that  
4 those who presented themselves to authorities for inspection.”). The court should  
5 “‘refuse to interpret the INA in a way that would in effect repeal that statutory fix’  
6 intended by Congress in enacting the IIRIRA.” *Chavez*, 2025 WL 2730228, at \*4  
7 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

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

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

1 U.S. at 314.

2 Finally, the phrase “alien seeking admission” does not limit the scope of  
3 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*  
4 requesting permission to enter the United States in the ordinary sense are nevertheless  
5 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,  
6 25 I&N Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it  
7 keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting  
8 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking  
9 admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant  
10 for admission” in § 1225(a)(1). Applicants for admission are both those individuals  
11 present without admission and those who arrive in the United States. *See* 8 U.S.C.  
12 § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See*  
13 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.  
14 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants  
15 for admission or otherwise seeking admission” to be inspected by immigration officers.  
16 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase  
17 that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped  
18 Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further, § 1225(a)(5)  
19 provides that “[a]n applicant for admission may be required to state under oath any  
20 information sought by an immigration officer regarding the purposes and intentions of  
21 the applicant in seeking admission to the United States.” The reasonable import of this  
22 particular phrasing is that one who is an applicant for admission is considered to be  
23 “seeking admission” under the statute.

24 Respondents acknowledge that courts in this district have recently rejected  
25 similarly arguments in other similar habeas matters. Respondents maintain that  
26 Petitioner is properly subject to mandatory detention under § 1225 and dismissal is  
27 proper. *Cf. Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at \*9 (D. Neb.  
28 Sept. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at \*5

1 (W.D. La. Oct. 31, 2025). To the extent the Court finds this Petitioner subject to  
2 detention authority under 8 U.S.C. § 1226(a), Respondents’ position is that the proper  
3 remedy would be directing a new bond hearing under § 1226(a). This Court lacks  
4 jurisdiction in this matter to order release or the reinstatement of the IJ’s bond order that  
5 was vacated by the BIA. *See* 8 U.S.C. § 1226(e) (“No court may set aside any action or  
6 decision by the Attorney General under this section regarding the detention or any alien  
7 or the revocation or denial of bond or parole.”); *Jennings v. Rodriguez*, 583 U.S. 281,  
8 295 (2018) (“As we have previously explained, § 1226(e) precludes an alien from  
9 ‘challeng[ing] a “discretionary judgment” by the Attorney General or a “decision” that  
10 the Attorney General has made regarding his detention or release.’ But § 1226(e) does  
11 not preclude ‘challenges [to] the statutory framework that permits [the alien’s] detention  
12 without bail.’”); 8 U.S.C. § 1226(b) (“The Attorney General at any time may revoke a  
13 bond or parole authorized under subsection (a), rearrest the alien under the original  
14 warrant, and detain the alien.”).

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

17 **V. CONCLUSION**

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

20 DATED: November 19, 2025

Respectfully submitted,

21 ADAM GORDON  
22 United States Attorney

23 *s/ Stephen H. Wong*  
24 STEPHEN H. WONG  
25 Assistant United States Attorney  
26 Attorneys for Respondents  
27  
28