ADAM GORDON
United States Attorney
LISA M. HEMANN, AZ Bar No. 024703
ERIN M. DIMBLEBY, CA 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) 546-6964/6987
Facsimile: (619) 546-7751
Email: Lisa.Hemann@usdoj.gov
E-mail: Erin.Dimbleby@usdoj.gov

Attorneys for Respondents

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

VINAYAK NAYYER,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al,

Respondents.

Case No.: 25-cv-3111-AGS-DDL

I. Introduction and Summary of Argument

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

II. Statutory Background

A. Individuals Seeking Admission to the United States

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest those

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

B. Detention Under 8 U.S.C. § 1225

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

They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

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

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

humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Detention Under 8 U.S.C. § 1226(a)

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

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

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

Included within the Attorney General and DHS's discretionary authority are limits on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B),

1 the IJ does not have authority to redetermine the conditions of custody imposed by DHS
2 for any arriving alien. The regulations also include a provision that allows DHS to
3 invoke an automatic stay of any decision by an IJ to release an individual on bond when
4 DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) ("The
5 decision whether or not to file [an automatic stay] is subject to the discretion of the
6 Secretary.").

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

8 The BIA is an appellate body within the Executive Office for Immigration
9 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
10 §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative
11 adjudications under the [INA] that the Attorney General may by regulation assign to
12 it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
13 BIA not only resolves particular disputes before it, but is also directed to, "through
14 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
15 judges, and the general public on the proper interpretation and administration of the
16 [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). Decisions rendered by the
17 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
18 1003.1(d)(7).

19 If an automatic stay of a custody decision is invoked by DHS, regulations require
20 the BIA to track the progress of the custody appeal "to avoid unnecessary delays in
21 completing the record for decision." 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,
22 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.
23 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.
24 § 1003.6(c)(5).

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

the case is considered. The Attorney General may extend the stay of release upon motion by DHS. *Id.*

III. Argument

A. Claims and Requested Relief Jurisdictionally Barred

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

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

Section 1252(g) also bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the

1 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
2 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's
3 discretionary decisions to commence removal" and bars review of "ICE's decision to
4 take [plaintiff] into custody and to detain him during his removal proceedings").
5 Other courts have held, "[f]or the purposes of § 1252, the Attorney General
6 commences proceedings against an alien when the alien is issued a Notice to Appear
7 before an immigration court." *Herrera-Correra v. United States*, No. 08-2941 DSF
8 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General
9 may arrest the alien against whom proceedings are commenced and detain that
10 individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's
11 detention throughout this process arises from the Attorney General's decision to
12 commence proceedings" and review of claims arising from such detention is barred
13 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
14 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).
15 Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law
16 and fact . . . *arising from any action taken or proceeding brought to remove an alien*
17 *from the United States* under this subchapter shall be available only in judicial review
18 of a final order under this section." Further, judicial review of a final order is available
19 only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C.
20 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable
21 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up
22 to or consequent upon final orders of deportation," including "non-final order[s]," into
23 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v.*
24 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in
25 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
26 removal proceedings"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
27 issue—whether legal or factual—arising from *any* removal-related activity can be
28 reviewed *only* through the [petition for review] PFR process." *J.E.F.M.*, 837 F.3d at

1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings").

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

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including

decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him/her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings").

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

B. Petitioner is Lawfully Detained

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

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

[1] On an alternative basis, the Court should ensure Petitioner properly exhausts administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does 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 *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 Because Petitioner is properly detained under § 1225, Petitioner cannot show
25 entitlement to relief.

26 Even if the Court infers a constitutional right against prolonged mandatory
27 detention, Petitioner's claim still fails. "In general, as detention continues past a year,
28 courts become extremely wary of permitting continued custody absent a bond hearing."

Sibomana v. LaRose, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two years). Petitioner's detention falls significantly short of the length courts have found to raise due process concerns.

C. Petitioner's Conditional Parole was Lawfully Revoked.

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). Under the INA, ICE may choose to release a person on parole. The decision is discretionary and is made on a case-by-case basis. An immigrant who has been detained at the border, may be paroled for humanitarian reasons or due to it providing a significant public benefit (8 U.S.C. § 1182(d)(5)(A))) or she may be conditionally released (8 U.S.C. § 1226(a)). These are distinct procedures. A person on conditional parole is usually released on their own recognizance subject to certain conditions such as reporting requirements. To be released on conditional parole, there must be a finding by ICE that the immigrant does not pose a risk of flight or danger to the community. *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1115 (9th Cir. 2007).

ICE has statutory and regulatory authority to revoke its parole decisions and initiate removal proceedings. No immigration court or hearing is required for revocation under that authority. Parole decisions may be made for broad and practical reasons related to public benefit, as well as for humanitarian reasons—i.e., while ICE's decision incorporates flight risk and danger assessment, it is not limited to those criteria. ICE's discretionary decisions concerning detention and release are, in this respect, distinct from an immigration court bond hearing.

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

Regulations for such revocation exist, but they grant broad authority to make the decision to revoke release decisions. "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'" *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original

The statute does not provide that ICE is prohibited from revoking parole once granted. And while some courts have recognized due process limitations on the authority of the government to revoke parole depending on the facts of the case, to imply into existence a broad bar on any release revocation by ICE—assigning that authority instead strictly to immigration courts—is inconsistent with the statutory scheme. Finally, countermanding ICE's discretionary parole authority by requiring mandatory immigration court proceedings would strip ICE of the ability to make such parole decisions for broader reasons. Such an implied negation of ICE's discretionary authority

1 would impair ICE's ability to grant conditional parole in the first place, which damages
2 the immigration law system.

3 **D. Release is an Improper Remedy**

4 Respondents acknowledge that courts in this district have recently rejected
5 similarly arguments in other similar habeas matters. Respondents maintain that
6 Petitioner is properly subject to mandatory detention under § 1225 and dismissal is
7 proper. *Cf. Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb.
8 Sept. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *5
9 (W.D. La. Oct. 31, 2025). To the extent the Court finds this Petitioner subject to
10 detention authority under 8 U.S.C. § 1226(a), Respondents' position is that the proper
11 remedy would be directing a bond hearing under § 1226(a). *See* 8 U.S.C. § 1226(e)
12 ("No court may set aside any action or decision by the Attorney General under this
13 section regarding the detention or any alien or the revocation or denial of bond or
14 parole."); *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) ("As we have previously
15 explained, § 1226(e) precludes an alien from 'challeng[ing] a "discretionary judgment"
16 by the Attorney General or a "decision" that the Attorney General has made regarding
17 his detention or release.' But § 1226(e) does not preclude 'challenges [to] the statutory
18 framework that permits [the alien's] detention without bail.'"); 8 U.S.C. § 1226(b)
19 ("The Attorney General at any time may revoke a bond or parole authorized under
20 subsection (a), rearrest the alien under the original warrant, and detain the alien.").

21 **IV. CONCLUSION**

22 For the foregoing reasons, Respondents respectfully request that the Court
23 dismiss this action.

24 DATED: November 20, 2025 Respectfully submitted,

25 ADAM GORDON
26 United States Attorney

27 *s/ Lisa M. Hemann*
28 LISA M. HEMANN

ERIN M. DIMBLEBY
Assistant United States Attorney
Attorney for Respondents