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

11 ANTONIO MARTINEZ OCAMPO,  
12  
13 Petitioner,  
14  
15 v.  
16 CHRISTOPHER J. LAROSE, et al,  
17 Respondents.

Case No.: 25-cv-3120-JO-VET

**RETURN TO PETITION FOR WRIT  
OF HABEAS CORPUS**

Date: November 21, 2025  
Time: 9:00 a.m.  
Judge: Hon. Jinsook Ohta  
Courtroom: 4C

**NO ORAL ARGUMENT  
REOUESTED**

18  
19 **I. Introduction and Summary of Argument**

20 Petitioner, who is a citizen of Mexico, has filed a habeas petition under 28 U.S.C.  
21 § 2241. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is  
22 charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in  
23 the United States who has not been admitted or paroled and 8 U.S.C. § 1182(a)(7)(i)(I),  
24 as an immigrant not in possession of a valid entry document. *See* Exhibit 1 (Notice to  
25 Appear and I-261). As an applicant for admission, Petitioner is mandatorily detained in  
26 Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.  
27 § 1225(b)(2). Based on the arguments set forth below, the Court should dismiss the  
28 petition.

## II. Factual Background

Petitioner entered the United States on an unknown date. On December 3, 1998, Petitioner was issued a Final Order of Removal. *See* Ex. 2, I-213. On January 4, 1999, an immigration judge granted Petitioner Voluntary Departure, and on September 7, 1999, Petitioner voluntarily departed. *Id.* Petitioner later unlawfully re-entered the United States without being admitted, inspected, or paroled. On October 16, 2015, Petitioner was arrested by Oceanside Police in violation of VC-23153(A)/23152(b) (driving under the influence of alcohol) and on December 1, 2015, Petitioner was convicted in the Superior Court of California, County of San Diego. *Id.*

On August 7, 2025, Petitioner was apprehended pursuant to a Warrant. *See* Ex. 1; Ex. 3 (Warrant). At that time, he was found to be inadmissible 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. He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear. His removal proceedings remain ongoing. On August 29, 2025, an immigration judge conducted a custody redetermination hearing and found that he posed a flight risk, but granted his release with a \$6,500 bond. *See* Ex. 4, Order of Immigration Judge. On September 12, 2025, the Department filed form EOIR-43, indicating its intent to appeal. *See* Ex. 5, Form EOIR-26 (Notice of Appeal) and Form EOIR-43 (Notice of ICE Intent to Appeal Custody Redetermination and Senior Legal Official Certification). In appealing the bond order, DHS invoked the automatic stay provision of 8 C.F.R. § 1003.19(i)(2). Petitioner has not been placed in expedited removal proceedings. On September 17, 2025, the IJ issued a Bond Memorandum to assist in the appeal review process, concluding that the Court lacks jurisdiction to redetermine Respondent's custody following *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that the plain language of INA 235(b)(2)(A) divests jurisdiction from Immigration Judges to hear bond requests or to grant bond to aliens who are present in the United States without admission. *See* Ex. 6. The appeal remains pending.

### III. 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

1 encompass *both* an alien “present in the United States who has not been admitted *or*  
2 [one] who arrives in the United States . . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
3 1225(b) governs the inspection procedures applicable to all applicants for admission.  
4 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
5 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

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

17 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
18 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
19 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
20 for a removal proceeding “if the examining immigration officer determines that [the]  
21 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8  
22 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA  
23 2025) (“[A]liens who are present in the United States without admission are applicants  
24 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.  
25 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);  
26 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking  
27 admission into the United States who are placed directly in full removal proceedings,  
28 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until

1 removal proceedings have concluded.”) (citing *Jennings*, 583 U.S. at 299). However,  
2 DHS has the sole discretionary authority to temporarily release on parole “any alien  
3 applying for admission to the United States” on a “case-by-case basis for urgent  
4 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v.*  
5 *Texas*, 597 U.S. 785, 806 (2022).

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

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

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

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

1 decision to the Border of Immigration Appeals (BIA). *See* 8 C.F.R. §§ 236.1(d)(3),  
2 1003.19(f), 1003.38, 1236.1(d)(3).

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

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

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

22 If an automatic stay of a custody decision is invoked by DHS, regulations require  
23 the BIA to track the progress of the custody appeal "to avoid unnecessary delays in  
24 completing the record for decision." 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,  
25 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.  
26 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.  
27 § 1003.6(c)(5).

28

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

#### 7 IV. Argument

##### 8 A. Petitioner Brings Improper Habeas Claims

9 To the extent Petitioner bases claims on applications for relief from removal and  
10 removal proceedings, such claims are an improper basis for habeas review. An  
11 individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody” under  
12 federal authority “in violation of the Constitution or laws or treaties of the United  
13 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality  
14 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);  
15 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*  
16 *Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically  
17 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). To  
18 determine if a claim sounds in habeas jurisdiction, the court considers “whether, based  
19 on the allegations in the petition, release is *legally required* irrespective of the relief  
20 requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*,  
21 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the  
22 petitioner’s claim would “necessarily lead to immediate or speedier release.”). Any  
23 alleged denial of the right to apply for asylum does automatically entitle Petitioner to  
24 release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL  
25 2300783, at \*1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under  
26 § 2241 because they were not arguing they were unlawfully in custody and receiving  
27 the requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No.  
28 25cv1912-LL-AHG, 2025 WL 2300781, at \*3 (S.D. Cal. Aug. 1, 2025) (“Like in

1 *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it  
2 cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting  
3 *Pinson*, 69 F.4th at 1065).

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

1 *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such  
2 claims is vested exclusively in the courts of appeals[.]”). The petition-for-review  
3 process before the court of appeals ensures that noncitizens have a proper forum for  
4 claims arising from their immigration proceedings and “receive their day in court.”  
5 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,  
6 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
7 obviate . . . Suspension Clause concerns” by permitting judicial review of  
8 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
9 law.”).

10 Thus, Petitioner’s claims unrelated to the lawfulness of detention do not arise  
11 under § 2241 and should be dismissed.

## 12 **B. Claims and Requested Relief Jurisdictionally Barred**

13 Petitioner bears the burden of establishing that this Court has subject matter  
14 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d  
15 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

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

1 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three  
2 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence  
3 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482  
4 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over  
5 claims that necessarily arise “from the decision or action by the Attorney General to  
6 commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 1252(g).

7 Section 1252(g) also bars district courts from hearing challenges to the method  
8 by which the government chooses to commence removal proceedings, including the  
9 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203  
10 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
11 discretionary decisions to commence removal” and bars review of “ICE’s decision to  
12 take [plaintiff] into custody and to detain him during his removal proceedings”).

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

23 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
24 § 1252. *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.  
25 LEXIS 175957 (D. Minn. Sept. 9, 2025).

### 26 **C. Petitioner’s Unfounded Claims Should be Dismissed**

27 The Constitution limits federal judicial power to designated “cases” and  
28 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*

1 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present  
2 a “case” or “controversy” within the meaning of Article III). “Absent a real and  
3 immediate threat of future injury there can be no case or controversy, and thus no Article  
4 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-  
5 BAS-MDD, 2015 WL 8515412, at \*3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*  
6 *Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a  
7 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by  
8 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful  
9 behavior will likely occur or continue, and that the threatened injury is certainly  
10 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing  
11 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is  
12 traceable to the challenged action of the United States and (3) likely to be redressed by  
13 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

14 Here, Petitioner’s habeas petition asserts allegations concerning expedited  
15 removal proceedings.<sup>1</sup> However, Petitioner is in removal proceedings under 8 U.S.C.  
16 § 1229a, not expedited removal proceedings. Moreover, Petitioner asserts claims and  
17 allegations concerning termination of removal proceedings, re-detention without notice,  
18 and an arrest made in violation of the Fourth Amendment. However, Petitioner  
19 unlawfully entered the United States without inspection and then was detained pursuant  
20 to 8 U.S.C. § 1225(b)(2), as alien present in the United States without being admitted  
21 or paroled. Moreover, Petitioner’s proceedings have not been terminated, and he was  
22 not previously released from custody. As such, there is no controversy concerning any  
23 such claims for this Court to resolve. Federal courts do not have jurisdiction “to give  
24 opinions upon moot questions or abstract propositions, or to declare principles or rules  
25 of law which cannot affect the matter in issue in the case before it.” *Church of*  
26 *Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations and  
27 citations omitted). “A claim is moot if it has lost its character as a present, live

28 \_\_\_\_\_  
<sup>1</sup> Expedited removal proceedings are conducted pursuant to 8 U.S.C. § 1225(b)(1).

1 controversy.” *Am. Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir.  
2 1997) (citation omitted).

3 **D. Petitioner is Lawfully Detained**

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

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

19 When the plain text of a statute is clear, “that meaning is controlling” and courts  
20 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
21 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
22 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
23 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and  
24 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby  
25 immigrants who were attempting to lawfully enter the United States were in a worse  
26 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d  
27 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*  
28 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-

1 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain  
2 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have  
3 entered the United States without inspection gain equities and privileges in immigration  
4 proceedings that are not available to aliens who present themselves for inspection at a  
5 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). A contrary interpretation  
6 would put aliens who “crossed the border unlawfully” in a better position than those  
7 “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at  
8 a port of entry would be subject to mandatory detention under § 1225, but those who  
9 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*  
10 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear  
11 that Congress intended to eliminate the prior statutory scheme that provided aliens who  
12 entered the United States without inspection more procedural and substantive rights than  
13 those who presented themselves to authorities for inspection.”). The court should  
14 “‘refuse to interpret the INA in a way that would in effect repeal that statutory fix’  
15 intended by Congress in enacting the IIRIRA.” *Chavez*, 2025 WL 2730228, at \*4  
16 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

17 The plain language of the § 1225(b)(2) does not contradict nor render § 1226(a)  
18 superfluous. In *Chavez v. Noem*, the Court noted that § 1226(a) “‘generally governs the  
19 process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible  
20 at the time of entry *or who have been convicted of certain criminal offenses since*  
21 *admission.*’” *Chavez*, 2025 WL 2730228, at \*5 (quoting *Jennings*, 583 U.S. at 288)  
22 (emphasis in original). In turn, individuals who have not been charged with specific  
23 crimes listed in § 1226(c) are still subject to the discretionary detention provisions of §  
24 1226(a) *as determined by the Attorney General*. *See* 8 U.S.C. § 1226(a) (“*On a warrant*  
25 *issued by the Attorney General*, an alien may be arrested and detained pending a  
26 decision on whether the alien is to be removed from the United States.”) (emphasis  
27 added). Therefore, heeding the plain language of § 1225(b)(2) has no effect on  
28 § 1226(a). Similarly, the application of § 1225’s explicit definition of “applicants for

1 admission” does not render the addition of § 1226(c) by the Riley Laken Act  
2 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,  
3 the addition of § 1226(c) simply removed the Attorney General’s detention discretion  
4 for aliens charged with specific crimes. 2025 WL 2730228, at \*5.

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

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

1 information sought by an immigration officer regarding the purposes and intentions of  
2 the applicant in seeking admission to the United States.” The reasonable import of this  
3 particular phrasing is that one who is an applicant for admission is considered to be  
4 “seeking admission” under the statute.

5 To the extent Petitioner challenges the automatic-stay provision of the  
6 regulations, the Court should reject such a challenge. The automatic stay provision is  
7 not a detention statute, it is merely a means for review of an IJ’s decision. Respondents’  
8 authority to detain here, which is the relevant inquiry in habeas, comes directly from  
9 U.S.C. § 1225. The fact that DHS has invoked the automatic-stay provision to keep  
10 Petitioner in detention during DHS’s bond appeal does not change the constitutionality  
11 of the detention. The automatic stay was invoked in support of the statutory scheme  
12 implemented by Congress under 8 U.S.C. § 1225, which requires mandatory detention.

13 On September 5, 2025, after the IJ granted Petitioner bond, the BIA decided  
14 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision, which is  
15 binding on IJs, clearly directs: “Based on the plain language of section 235(b)(2)(A) of  
16 the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration  
17 Judges lack authority to hear bond requests or to grant bond to aliens who are present  
18 in the United States without admission.” As noted above, Petitioner’s temporary  
19 detention pursuant to the automatic stay of 8 C.F.R. § 1003.19(i)(2) is reinforced by  
20 Congress’s command to detain Petitioner throughout the removal proceedings pursuant  
21 to 8 U.S.C. § 1225(b)(2). The operative automatic stay of release pending appeal at  
22 issue in this case is a temporary measure that merely ensures that DHS has an  
23 opportunity to vindicate Congress’s mandatory detention scheme. Because Petitioner  
24 shall be detained during removal proceedings and the proceedings are uncontrovertibly  
25 ongoing, the temporary detention is lawful.

26 Respondents acknowledge that some courts in this district have recently rejected  
27 similar arguments in other analogous habeas matters and determined that noncitizen  
28 petitioners were eligible for custody redetermination under 8 U.S.C. § 1226(a).

1 However, Respondents maintain that Petitioner is properly subject to mandatory  
2 detention under 8 U.S.C. § 1225 and dismissal is proper. *See Arias Torres v. Bondi*, No.  
3 25cv2457-BAS-MSB, ECF No. 11 (S.D. Cal. Oct. 24, 2025).

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

6 **V. CONCLUSION**

7 For the foregoing reasons, Respondents respectfully request that the Court  
8 dismiss this action.

9  
10  
11 DATED: November 19, 2025

Respectfully submitted,

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