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

10 JONATAN REYES-MEDINA,  
11 Petitioner,  
12 v.  
13 CHRISTOPHER J. LAROSE, et al,  
14 Respondents.

Case No.: 25-cv-3129-BJC-DDL

**RETURN IN OPPOSITION TO  
PETITION FOR HABEAS  
CORPUS AND RESPONSE IN  
OPPOSITION TO MOTION  
FOR TEMPORARY  
RESTRAINING ORDER**

16 **I. Introduction and Summary of Argument**

17 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is  
18 currently in removal proceedings under 8 U.S.C. § 1229a and is charged with  
19 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United  
20 States who has not been admitted or paroled. *See* Exhibit 1 (Notice to Appear); ECF  
21 No. 1, ¶ 39. As an applicant for admission, Petitioner is mandatorily detained in  
22 Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.  
23 § 1225(b)(2). Based on the arguments set forth below, the Court should deny any  
24 requests for relief and dismiss the petition.

25 **II. Statutory Background**

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

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

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

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

18 “To implement its immigration policy, the Government must be able to decide  
19 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*  
20 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step  
21 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by  
22 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled  
23 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be  
24 deemed for purposes of this chapter an applicant for admission,” defining that term to  
25 encompass *both* an alien “present in the United States who has not been admitted *or*  
26 [one] who arrives in the United States . . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
27 1225(b) governs the inspection procedures applicable to all applicants for admission.  
28

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

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

14 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
15 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
16 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
17 for a removal proceeding “if the examining immigration officer determines that [the]  
18 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8  
19 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA  
20 2025) (“[A]liens who are present in the United States without admission are applicants  
21 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.  
22 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);  
23 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking  
24 admission into the United States who are placed directly in full removal proceedings,  
25 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until  
26 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,  
27 DHS has the sole discretionary authority to temporarily release on parole “any alien  
28 applying for admission to the United States” on a “case-by-case basis for urgent

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

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

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

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

19 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23  
20 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it  
21 address the applicable burden of proof or particular factors that must be considered. *See*  
22 *generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad  
23 discretionary authority to determine, after arrest, whether to detain or release an alien  
24 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees  
25 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.  
26 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

27 Included within the Attorney General and DHS’s discretionary authority are  
28 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

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

### 3 III. Argument

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

5 Petitioner bears the burden of establishing that this Court has subject matter  
6 jurisdiction over asserted claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d  
7 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). In  
8 general, courts lack jurisdiction to review a decision to commence or adjudicate removal  
9 proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall have  
10 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the  
11 decision or action by the Attorney General to commence proceedings, adjudicate cases,  
12 or execute removal orders.”); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S.  
13 471, 483 (1999) (“There was good reason for Congress to focus special attention upon,  
14 and make special provision for, judicial review of the Attorney General’s discrete acts  
15 of “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal  
16 orders”—which represent the initiation or prosecution of various stages in the  
17 deportation process.”); *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020)  
18 (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because claims  
19 stemming from the decision to arrest and detain an alien at the commencement of  
20 removal proceedings are not within any court’s jurisdiction”). In other words, § 1252(g)  
21 removes district court jurisdiction over “three discrete actions that the Attorney may  
22 take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute  
23 removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Congress has explicitly  
24 foreclosed district court jurisdiction over claims that necessarily arise “from the  
25 decision or action by the Attorney General to commence proceedings [and] adjudicate  
26 cases,” over which. 8 U.S.C. § 1252(g).

27 Section 1252(g) also bars district courts from hearing challenges to the method  
28 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 “breathhtaking 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

1 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal  
2 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose  
3 *all* judicial review of agency actions. Instead, the provisions channel judicial review  
4 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at  
5 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-  
6 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

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

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

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

13 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
14 § 1252. *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.  
15 LEXIS 175957 (D. Minn. Sept. 9, 2025).

16 **B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

17 Petitioner has not established entitlement to interim injunctive relief. Petitioner  
18 has failed to show a likelihood of success on the underlying merits, a showing of  
19 irreparable harm, and that the equities tip in Petitioner’s favor. Thus, Petitioner’s motion  
20 should be denied.

21 In general, the showing required for a temporary restraining order is the same as  
22 that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D.*  
23 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a  
24 temporary restraining order, a petitioner must “establish that he is likely to succeed on  
25 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
26 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
27 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*  
28 *Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a “substantial

1 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.  
2 2011). When “a plaintiff has failed to show the likelihood of success on the merits,  
3 [courts] need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*,  
4 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary  
5 injunctive relief—balancing of the harm to the opposing party and the public interest—  
6 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few  
7 interests can be more compelling than a nation’s need to ensure its own security.” *Wayte*  
8 *v. United States*, 470 U.S. 598, 611 (1985).

9 **1. No Likelihood of Success on the Merits**

10 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at  
11 740. Petitioner cannot show a likelihood of success or serious questions going to the  
12 merits of the claim for alleged statutory and constitutional violations arising from  
13 Petitioner’s mandatory detention under 8 U.S.C. § 1225.

14 Based on the plain language of the statute, Petitioner’s detention is governed by  
15 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*  
16 *applicant for admission*, if the examining immigration officer determines that an alien  
17 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*  
18 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at \*4 (S.D. Cal. Sept. 24, 2025)  
19 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)  
20 “expressly defines that ‘[a]n alien present in the United States who has not been  
21 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*  
22 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien  
23 present in the United States who has not been admitted.” Thus, as found by the district  
24 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner  
25 is an “applicant for admission” and subject to the mandatory detention provisions of  
26 § 1225(b)(2).

27 When the plain text of a statute is clear, “that meaning is controlling” and courts  
28 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d

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

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

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

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

19 Finally, the phrase “alien seeking admission” does not limit the scope of  
20 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*  
21 requesting permission to enter the United States in the ordinary sense are nevertheless  
22 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,  
23 25 I&N Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it  
24 keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting  
25 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking  
26 admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant  
27 for admission” in § 1225(a)(1). Applicants for admission are both those individuals  
28 present without admission and those who arrive in the United States. See 8 U.S.C.

1 § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See*  
2 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.  
3 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants  
4 for admission or otherwise seeking admission” to be inspected by immigration officers.  
5 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase  
6 that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped  
7 Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further, § 1225(a)(5)  
8 provides that “[a]n applicant for admission may be required to state under oath any  
9 information sought by an immigration officer regarding the purposes and intentions of  
10 the applicant in seeking admission to the United States.” The reasonable import of this  
11 particular phrasing is that one who is an applicant for admission is considered to be  
12 “seeking admission” under the statute. Because Petitioner is properly detained under  
13 § 1225, Petitioner cannot show entitlement to relief.

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

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

1 Sept. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at \*5  
2 (W.D. La. Oct. 31, 2025). To the extent the Court finds this Petitioner subject to  
3 detention authority under 8 U.S.C. § 1226(a), Respondents’ position is that the proper  
4 remedy would be directing a new bond hearing under § 1226(a). This Court lacks  
5 jurisdiction in this matter to order release or the reinstatement of the IJ’s bond order that  
6 was vacated by the BIA. *See* 8 U.S.C. § 1226(e) (“No court may set aside any action or  
7 decision by the Attorney General under this section regarding the detention or any alien  
8 or the revocation or denial of bond or parole.”); *Jennings v. Rodriguez*, 583 U.S. 281,  
9 295 (2018) (“As we have previously explained, § 1226(e) precludes an alien from  
10 ‘challeng[ing] a “discretionary judgment” by the Attorney General or a “decision” that  
11 the Attorney General has made regarding his detention or release.’ But § 1226(e) does  
12 not preclude ‘challenges [to] the statutory framework that permits [the alien’s] detention  
13 without bail.’”); 8 U.S.C. § 1226(b) (“The Attorney General at any time may revoke a  
14 bond or parole authorized under subsection (a), rearrest the alien under the original  
15 warrant, and detain the alien.”).

## 16 2. Irreparable Harm Has Not Been Shown

17 To prevail on the request for interim injunctive relief, Petitioner must  
18 demonstrate “immediate threatened injury.” *Caribbean Marine Services Co., Inc. v.*  
19 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum*  
20 *Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely  
21 showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22.  
22 Detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021  
23 WL 662659, at \*3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*,  
24 854 Fed.Appx. 190 (9th Cir. 2021) (“[C]ivil detention after the denial of a bond hearing  
25 [does not] constitute[] irreparable harm such that prudential exhaustion should be  
26 waived.”). Further, “[i]ssuing a preliminary injunction based only on a possibility of  
27 irreparable harm is inconsistent with [the Supreme Court’s] characterization of  
28 injunctive relief as an extraordinary remedy that may only be awarded upon a clear

1 showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. Here,  
2 because Petitioner’s alleged harm “is essentially inherent in detention, the Court cannot  
3 weigh this strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-  
4 SK, 2018 WL 747861 at \*10 (N.D. Cal. Dec. 24, 2018).

5 **3. Balance of Equities Does Not Tip in Petitioner’s Favor**

6 It is well settled that “the public interest in enforcement of the immigration laws is  
7 significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.  
8 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public  
9 interest in prompt execution of removal orders: The continued presence of an alien  
10 lawfully deemed removable undermines the streamlined removal proceedings [the  
11 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and  
12 permits and prolongs a continuing violation of United States law.”) (simplified).  
13 Moreover, “ultimately the balance of the relative equities ‘may depend to a large extent  
14 upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*  
15 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at \*4 (D. Ariz. Dec. 13,  
16 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained  
17 above, there is no likelihood of success on the merits of Petitioner’s claims. The  
18 balancing of equities and the public interest weigh heavily against granting Petitioner’s  
19 equitable relief.

20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court should deny Petitioner’s motion and dismiss  
22 the Petition.

23 DATED: November 24, 2025

Respectfully submitted,  
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24  
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