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

12 ANSELMO ROMERO SANCHEZ,
13
14 Petitioner,

15 v.

16 CHRISTOPHER J. LaROSE, Senior
Warden Otay Mesa Detention Center;
17 PAMELA BONDI, United States Attorney
General; KRISTI NOEM, Secretary of the
18 Department of Homeland Security;
19 PATRICK DIVVER, ICE San Diego Field
Office Director, in their official capacities,

20 Respondents.
21

Case No.: 25-cv-3136-JLS(JLB)

**RESPONDENTS' RETURN TO
HABEAS PETITION**

22
23 **I. Introduction and Summary of Argument**

24 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is
25 currently in removal proceedings under 8 U.S.C. § 1229a and is charged with
26 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United
27 States who has not been admitted or paroled. *See* Exhibit 1 (Notice to Appear). As
28

1 Petitioner is inadmissible and statutorily an applicant for admission, Petitioner is
2 mandatorily detained in Immigration and Customs Enforcement (ICE) custody pursuant
3 to 8 U.S.C. § 1225(b)(2). Based on the arguments set forth below, the Court should
4 deny any requests for relief and dismiss the petition.

5 II. Statutory Background

6 A. Individuals Seeking Admission to the United States

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

25 B. Detention Under 8 U.S.C. § 1225

26 “To implement its immigration policy, the Government must be able to decide
27 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*
28 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step

1 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by
2 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled
3 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be
4 deemed for purposes of this chapter an applicant for admission,” defining that term to
5 encompass *both* an alien “present in the United States who has not been admitted *or*
6 [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added). Section
7 1225(b) governs the inspection procedures applicable to all applicants for admission.
8 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered
9 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

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

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

1 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);
2 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking
3 admission into the United States who are placed directly in full removal proceedings,
4 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until
5 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,
6 DHS has the sole discretionary authority to temporarily release on parole “any alien
7 applying for admission to the United States” on a “case-by-case basis for urgent
8 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v.*
9 *Texas*, 597 U.S. 785, 806 (2022).

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

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

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

26 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23
27 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it
28 address the applicable burden of proof or particular factors that must be considered. See

1 generally 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad
2 discretionary authority to determine, after arrest, whether to detain or release an alien
3 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees
4 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.
5 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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

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

15 The BIA is an appellate body within the Executive Office for Immigration
16 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
17 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
18 adjudications under the [INA] that the Attorney General may by regulation assign to
19 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
20 BIA not only resolves particular disputes before it, but is also directed to, “through
21 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
22 judges, and the general public on the proper interpretation and administration of the
23 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
24 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
25 1003.1(d)(7).

26 If an automatic stay of a custody decision is invoked by DHS, regulations require
27 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in
28 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,

1 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.
2 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.
3 § 1003.6(c)(5).

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

10 III. Argument

11 A. Claims and Requested Relief Jurisdictionally Barred

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

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

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

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

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

22 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
23 and fact . . . arising from any action taken or proceeding brought to remove an alien
24 from the United States under this subchapter shall be available only in judicial review
25 of a final order under this section.” Further, judicial review of a final order is available
26 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
27 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable
28 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up

1 to or consequent upon final orders of deportation,” including “non-final order[s],” into
2 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v.*
3 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathtaking in
4 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
5 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
6 issue—whether legal or factual—arising from *any* removal-related activity can be
7 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
8 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal
9 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose
10 *all* judicial review of agency actions. Instead, the provisions channel judicial review
11 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
12 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
13 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

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

1 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
2 includes challenges to the “decision to detain [an alien] in the first place or to seek
3 removal”).

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

20 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
21 § 1252.¹ *See Axcel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.
22 LEXIS 175957 (D. Minn. Sept. 9, 2025).

23 _____
24 ¹ On an alternative basis, the Court should ensure Petitioner properly exhausts
25 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust
26 available judicial and administrative remedies before seeking relief under § 2241.”
27 *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does
28 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 **B. Petitioner is Lawfully Detained**

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

4 Based on the plain language of the statute, Petitioner’s detention is governed by
5 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
6 *applicant for admission*, if the examining immigration officer determines that an alien
7 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
8 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
9 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
10 “expressly defines that ‘[a]n alien present in the United States who has not been
11 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*
12 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien
13 present in the United States who has not been admitted.” Thus, as found by the district
14 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner
15 is an “applicant for admission” and subject to the mandatory detention provisions of
16 § 1225(b)(2).

17 When the plain text of a statute is clear, “that meaning is controlling” and courts
18 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
19 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
20 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
21 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and
22 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby
23 immigrants who were attempting to lawfully enter the United States were in a worse
24 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d
25 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*
26 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-
27 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain
28 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have

1 entered the United States without inspection gain equities and privileges in immigration
2 proceedings that are not available to aliens who present themselves for inspection at a
3 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). A contrary interpretation
4 would put aliens who “crossed the border unlawfully” in a better position than those
5 “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at
6 a port of entry would be subject to mandatory detention under § 1225, but those who
7 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*
8 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear
9 that Congress intended to eliminate the prior statutory scheme that provided aliens who
10 entered the United States without inspection more procedural and substantive rights than
11 those who presented themselves to authorities for inspection.”). The court should
12 “refuse to interpret the INA in a way that would in effect repeal that statutory fix’
13 intended by Congress in enacting the IIRIRA.” *Chavez*, 2025 WL 2730228, at *4
14 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

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

1 the addition of § 1226(c) simply removed the Attorney General’s detention discretion
2 for aliens charged with specific crimes. 2025 WL 2730228, at *5.

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

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

1 particular phrasing is that one who is an applicant for admission is considered to be
2 “seeking admission” under the statute.

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

5 Even if the Court infers a constitutional right against prolonged mandatory
6 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
7 courts become extremely wary of permitting continued custody absent a bond hearing.”
8 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr.
9 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,
10 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained
11 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at
12 *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,
13 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two
14 years). Petitioner’s detention falls significantly short of the length courts have found to
15 raise due process concerns.

16 Respondents acknowledge that courts in this district have recently rejected
17 similarly arguments in other similar habeas matters. While Respondents maintain that
18 Petitioner is properly subject to mandatory detention under § 1225, to the extent the
19 Court finds this Petitioner subject to detention authority under 8 U.S.C. § 1226(a),
20 Respondents’ position is that the proper remedy would be directing a bond hearing
21 under § 1226(a). *See* 8 U.S.C. § 1226(e) (“No court may set aside any action or decision
22 by the Attorney General under this section regarding the detention or any alien or the
23 revocation or denial of bond or parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295
24 (2018) (“As we have previously explained, § 1226(e) precludes an alien from
25 ‘challeng[ing] a “discretionary judgment” by the Attorney General or a “decision” that
26 the Attorney General has made regarding his detention or release.’ But § 1226(e) does
27 not preclude ‘challenges [to] the statutory framework that permits [the alien’s] detention
28 without bail.’”); 8 U.S.C. § 1226(b) (“The Attorney General at any time may revoke a

1 bond or parole authorized under subsection (a), rearrest the alien under the original
2 warrant, and detain the alien.”).

3 **IV. CONCLUSION**

4 For the foregoing reasons, Respondents respectfully request that the Court
5 dismiss this action.

6 DATED: November 18, 2025

Respectfully submitted,

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