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

12 GONZALO QUIAHUA-SALAS,

13 Petitioner,

14 v.

15 KRISTI NOEM; et al.,

16 Respondents.
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Case No.: 25-CV3165-BJC-KSC

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is
3 currently in removal proceedings under 8 U.S.C. § 1229a and is charged with
4 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United
5 States who has not been admitted or paroled, and 8 U.S.C. § 1182(a)(7)(i)(I), as an
6 immigrant not in possession of a valid entry document. *See* Exhibit 1 (Notice to
7 Appear). As an applicant for admission, Petitioner is mandatorily detained in
8 Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.
9 § 1225(b)(2). Based on the arguments set forth below, the Court should deny any
10 requests for relief and dismiss the petition.

11 **II. Factual Background¹**

12 Petitioner is a citizen and national of Mexico. On an unknown date and at an
13 unknown time, he entered the United States without being admitted or paroled. On
14 August 4, 2025, Petitioner was apprehended by Border Patrol and charged with
15 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United
16 States who has not been admitted or paroled, and as an immigrant not in possession of
17 a valid entry document under 8 U.S.C. § 1182(a)(7)(i)(I). He was then placed in removal
18 proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear (NTA).
19 Subsequently, Petitioner was transferred to ICE custody, and he remains detained at the
20 Otay Mesa Detention Facility pursuant to 8 U.S.C. § 1225(b)(2). On August 28, 2025,
21 an immigration judge (IJ) granted Petitioner’s release on a \$2,000 bond with electronic
22 monitoring. The Department of Homeland Security (DHS) reserved its right to appeal
23 the IJ’s decision to the Board of Immigration Appeals (BIA). On August 28, 2025, DHS
24 filed a Form EOIR-43, Notice of Intent to Appeal the Custody Redetermination, and
25 indicated that it was invoking the automatic stay provision of 8 C.F.R. § 1003.19(i)(2).

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¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 On September 10, 2025, DHS filed a Form EOIR-26, Notice of Appeal from a Decision
2 of an Immigration Judge, and EOIR-43 Senior Legal Official Certification.

3 **III. Statutory Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 § 1003.6(c)(5).

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

8 IV. Argument

9 A. Claims and Requested Relief Jurisdictionally Barred

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

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

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

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

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

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

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

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

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

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

19 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
20 § 1252.² *See Axcel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.
21 LEXIS 175957 (D. Minn. Sept. 9, 2025).

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23 _____
24 ² 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 To the extent Petitioner challenges the automatic-stay provision of the
4 regulations, the Court should reject such a challenge. The automatic stay provision is
5 not a detention statute, it is merely a means for review of an IJ’s decision. Respondents’
6 authority to detain here, which is the relevant inquiry in habeas, comes directly from 8
7 U.S.C. § 1225. The fact that DHS has invoked the automatic-stay provision to keep
8 Petitioner in detention during DHS’s bond appeal does not change the constitutionality
9 of the detention. The automatic stay was invoked in support of the statutory scheme
10 implemented by Congress under 8 U.S.C. § 1225, which requires mandatory detention.

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

24 Because Petitioner is properly detained under § 1225, Petitioner cannot show
25 entitlement to relief.

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27 //

28 //

V. CONCLUSION

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

DATED: November 25, 2025

Respectfully submitted,

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s/ Laura C. Sambataro

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