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

12 JORGE OSORIO-MARTINEZ,

13 Petitioner,

14 v.

15 KRISTI NOEM, et al.,

16 Respondents.  
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Case No.: 25-cv-3232-BAS-JLB

**RESPONDENTS' RETURN TO  
HABEAS PETITION**



1 Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ----, 2025 WL 2730228 (S.D. Cal.  
2 Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. July  
3 28, 2025).

4 Based on the arguments below, the Court should deny any requests for relief and  
5 dismiss the petition.

## 6 II. Statutory Background

### 7 A. Individuals Seeking Admission to the United States

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

### 26 B. Detention Under 8 U.S.C. § 1225

27 “To implement its immigration policy, the Government must be able to decide  
28 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*

1 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step  
2 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by  
3 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled  
4 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be  
5 deemed for purposes of this chapter an applicant for admission,” defining that term to  
6 encompass *both* an alien “present in the United States who has not been admitted *or*  
7 [one] who arrives in the United States . . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
8 1225(b) governs the inspection procedures applicable to all applicants for admission.  
9 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
10 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

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

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

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

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

12 Section 1226 provides for arrest and detention “pending a decision on whether  
13 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),  
14 the government may detain an alien during his removal proceedings, release him on  
15 bond, or release him on conditional parole. By regulation, immigration officers can  
16 release an alien who demonstrates that he “would not pose a danger to property or  
17 persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An  
18 alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any  
19 time before a final order of removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R. §§  
20 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

27 Section 1226(a) does not grant “any right to release on bond.” *Matter of D-J-*, 23  
28 I&N Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952) (emphasis in

1 original). Nor does it address the applicable burden of proof or particular factors that  
2 must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the  
3 Attorney General broad discretionary authority to determine, after arrest, whether to  
4 detain or release an alien during his or her removal proceedings. *See id.* If, after the bond  
5 hearing, either party disagrees with the decision of the IJ, that party may appeal the  
6 decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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

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

16 The BIA is an appellate body within the Executive Office for Immigration  
17 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.  
18 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative  
19 adjudications under the [INA] that the Attorney General may by regulation assign to  
20 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The  
21 BIA not only resolves particular disputes before it, but is also directed to, “through  
22 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration  
23 judges, and the general public on the proper interpretation and administration of the  
24 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the  
25 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §  
26 1003.1(d)(7).

27 If an automatic stay of a custody decision is invoked by DHS, regulations require  
28 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in

1 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,  
2 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.  
3 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.  
4 § 1003.6(c)(5).

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

### 11 III. Argument

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

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

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

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

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

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

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

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

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

1 law.”). These provisions divest district courts of jurisdiction to review both direct and  
2 indirect challenges to removal orders, including decisions to detain for purposes of  
3 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)  
4 includes challenges to the “decision to detain [an alien] in the first place or to seek  
5 removal”).

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

22 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
23 § 1252.<sup>2</sup> *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.  
24 LEXIS 175957 (D. Minn. Sept. 9, 2025).

25 \_\_\_\_\_  
26 <sup>2</sup> On an alternative basis, the Court should ensure Petitioner properly exhausts  
27 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust  
28 available judicial and administrative remedies before seeking relief under § 2241.”  
*Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does  
not exhaust administrative remedies, a district court ordinarily should either dismiss the  
petition without prejudice or stay the proceedings until the petitioner has exhausted

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 \_\_\_\_\_  
26 remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160  
27 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014)  
28 (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).

1 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*  
2 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-  
3 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain  
4 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have  
5 entered the United States without inspection gain equities and privileges in immigration  
6 proceedings that are not available to aliens who present themselves for inspection at a  
7 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

8 “The entry fiction doctrine flows from the principle that the ‘power to admit or  
9 exclude aliens is a sovereign prerogative,’ and ‘the Constitution gives the political  
10 department of the government plenary authority to decide which aliens to admit.’”  
11 *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872, at \*7 (C.D. Cal.  
12 Nov. 12, 2025) (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139  
13 (2020) (quotations omitted)). Such plenary power includes the “power to set procedures  
14 to be followed in determining whether an alien should be admitted.” *Thuraissigiam*, 591  
15 U.S. at 139. “The entry fiction doctrine protects that sovereign prerogative, which  
16 ‘would be meaningless if it became inoperative as soon as an arriving alien set foot on  
17 U.S. soil.’” *Altamirano Ramos*, 2025 WL 3199872, at \*7 (quoting *Thuraissigiam*, 591  
18 U.S. at 139). Within this context, the Supreme Court has explained, “[w]hen an alien  
19 arrives at a port of entry—for example, an international airport—the alien is on U.S. soil,  
20 but the alien is not considered to have entered the country.” *Thuraissigiam*, 591 U.S. at  
21 139. Such is true even in situations where an alien is “paroled elsewhere in the country  
22 *for years* pending removal.” *Id.* (emphasis added). The Supreme Court has recognized  
23 that those individuals are treated “as if stopped at the border.” *Id.* “The same must be  
24 true” of an “applicant for admission” who enters into the United States unlawfully. *Id.*  
25 at 140.

26 A contrary interpretation would put aliens who “crossed the border unlawfully”  
27 in a better position than those “who present themselves for inspection at a port of entry.”  
28 *Id.* Aliens who presented at a port of entry would be subject to mandatory detention

1 under § 1225, but those who crossed illegally would be eligible for a bond under §  
2 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary  
3 Committee Report makes clear that Congress intended to eliminate the prior statutory  
4 scheme that provided aliens who entered the United States without inspection more  
5 procedural and substantive rights than those who presented themselves to authorities  
6 for inspection.”). The Court should “‘refuse to interpret the INA in a way that would in  
7 effect repeal that statutory fix’ intended by Congress in enacting the IIRIRA.” *Chavez*,  
8 2025 WL 2730228, at \*4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

9 The plain language of § 1225(b)(2) does not contradict nor render § 1226(a)  
10 superfluous. Section 1226(a) provides the detention authority for the significant group  
11 of aliens who are *not* “applicants for admission” subject to § 1225(b)(2)(A)—  
12 specifically, aliens who have been admitted to the United States but are now removable.  
13 *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the  
14 specific governs the general”). For example, the detention of any of the millions of  
15 aliens who have overstayed their visas are governed by § 1226(a), because those aliens  
16 (unlike Petitioner) *were* lawfully admitted to the United States.

17 Moreover, in *Chavez v. Noem*, the district court noted that § 1226(a) “‘generally  
18 governs the process of arresting and detaining’ certain aliens, namely ‘aliens who were  
19 inadmissible at the time of entry *or who have been convicted of certain criminal offenses*  
20 *since admission.*’” *Chavez*, 2025 WL 2730228, at \*5 (quoting *Jennings*, 583 U.S. at  
21 288) (emphasis in original). In turn, individuals who have not been charged with  
22 specific crimes listed in § 1226(c) are still subject to the discretionary detention  
23 provisions of § 1226(a) *as determined by the Attorney General*. *See* 8 U.S.C. § 1226(a)  
24 (“*On a warrant issued by the Attorney General, an alien may be arrested and detained*  
25 *pending a decision on whether the alien is to be removed from the United States.*”)  
26 (emphasis added). Therefore, heeding the plain language of § 1225(b)(2) has no effect  
27 on § 1226(a). Similarly, the application of § 1225’s explicit definition of “applicants for  
28 admission” does not render the addition of § 1226(c) by the Riley Laken Act

1 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,  
2 the addition of § 1226(c) simply removed the Attorney General’s detention discretion  
3 for aliens charged with specific crimes. 2025 WL 2730228, at \*5.

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

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

1 intentions of the applicant in seeking admission to the United States.” The reasonable  
2 import of this particular phrasing is that one who is an applicant for admission is  
3 considered to be “seeking admission” under the statute.

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

6 Respondents acknowledge that courts in this district have recently rejected  
7 similar arguments in other similar habeas matters. Respondents maintain that Petitioner  
8 is properly subject to mandatory detention under § 1225 and dismissal is proper. To the  
9 extent the Court finds this Petitioner subject to detention authority under 8 U.S.C.  
10 § 1226(a), Respondents’ position is that the proper remedy would be directing a bond  
11 hearing under § 1226(a), to be held within fourteen (14) days. *See* 8 U.S.C. § 1226(e)  
12 (“No court may set aside any action or decision by the Attorney General under this  
13 section regarding the detention of any alien or the revocation or denial of bond or  
14 parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously  
15 explained, § 1226(e) precludes an alien from ‘challeng[ing] a “discretionary judgment”  
16 by the Attorney General or a “decision” that the Attorney General has made regarding  
17 his detention or release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory  
18 framework that permits [the alien’s] detention without bail.”); 8 U.S.C. § 1226(b)  
19 (“The Attorney General at any time may revoke a bond or parole authorized under  
20 subsection (a), rearrest the alien under the original warrant, and detain the alien.”).

21 **IV. CONCLUSION**

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

24 DATED: December 1, 2025

Respectfully submitted,

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