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

11  
12 MIGUEL ANGEL GARCIA-MORALES,

13 Petitioner,

14 v.

15 KRISTI NOEM, et al.,

16 Respondents.  
17

Case No.: 25-cv-3254 CAB BLM

**RESPONDENTS' RETURN TO  
HABEAS PETITION**

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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. Accordingly, Petitioner is mandatorily  
6 detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.  
7 § 1225(b)(2)(A).

8 On September 5, 2025, the Board of Immigration Appeals (BIA) ruled on this  
9 issue in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed  
10 analysis, the BIA determined that based on the plain language of section 235(b)(2)(A)  
11 of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges  
12 lack authority to hear bond requests or to grant bond to noncitizens who are present in  
13 the United States without admission. Other district courts have followed the BIA’s  
14 approach. *See, e.g., Valencia v. Chesnut*, --- F. Supp. 3d ---, 2025 WL 3205133 (E.D.  
15 Cal. Nov. 17, 2025); *Alonzo v. Noem*, --- F. Supp. 3d ----, 2025 WL 3208284 (E.D. Cal.  
16 Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830 (S.D. Tex. Nov. 13, 2025);  
17 *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872 (C.D. Cal. Nov. 12,  
18 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD (E.D. Mo. Nov. 10, 2025); *Silva*  
19 *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025);  
20 *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31,  
21 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct.  
22 30, 2025); *Vargas Lopez v. Trump*, --- F. Supp. 3d ----, 2025 WL 2780351 (D. Neb.  
23 Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ----, 2025 WL 2730228 (S.D. Cal.  
24 Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. July  
25 28, 2025).

26 Based on the arguments below, the Court should deny Petitioner’s requests for  
27 relief and dismiss the petition.

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## II. Statutory Background

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

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

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

“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute – in a provision entitled “ALIENS TREATED AS APPLICANTS FOR ADMISSION” – dictates who “shall be deemed for purposes of this chapter an applicant for admission,” defining that term to

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

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

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

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

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

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

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

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

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

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

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

23 If an automatic stay of a custody decision is invoked by DHS, regulations require  
24 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in  
25 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,  
26 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.  
27 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.  
28 § 1003.6(c)(5).

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

### 7 III. Argument

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

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

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

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

7 “For the purposes of § 1252, the Attorney General commences proceedings  
8 against an alien when the alien is issued a Notice to Appear before an immigration  
9 court.” *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833,  
10 at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against  
11 whom proceedings are commenced and detain that individual until the conclusion of  
12 those proceedings.” *Id.* at \*3. “Thus, an alien’s detention throughout this process arises  
13 from the Attorney General’s decision to commence proceedings” and review of claims  
14 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509  
15 F.3d 947, 949 (9th Cir. 2007)); *Wang v. United States*, No. CV-10-0389 SVW (RCx),  
16 2010 WL 11463156, at \*6 (C.D. Cal. Aug. 8, 2018); 8 U.S.C. § 1252(g).

17 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law  
18 and fact . . . arising from any action taken or proceeding brought to remove an alien  
19 from the United States under this subchapter shall be available only in judicial review  
20 of a final order under this section.” (emphasis added). Further, judicial review of a final  
21 order is available only through “a petition for review filed with an appropriate court of  
22 appeals.” 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9)  
23 is “the unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and  
24 actions leading up to or consequent upon final orders of deportation,” including “non-  
25 final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485;  
26 *see also J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is  
27 “breathhtaking in scope and vise-like in grip and therefore swallows up virtually all  
28 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and

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

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

27 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has  
28 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*

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

15 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
16 § 1252.<sup>1</sup> *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.  
17 LEXIS 175957 (D. Minn. Sept. 9, 2025).

18 **B. Petitioner is Lawfully Detained**

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

21 Based on the plain language of the statute, Petitioner’s detention is governed by

22  
23 <sup>1</sup> On an alternative basis, the Court should ensure Petitioner properly exhausts  
24 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust  
25 available judicial and administrative remedies before seeking relief under § 2241.”  
26 *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does  
27 not exhaust administrative remedies, a district court ordinarily should either dismiss  
28 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 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*  
2 *applicant for admission*, if the examining immigration officer determines that an alien  
3 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*  
4 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at \*4 (S.D. Cal. Sept. 24, 2025)  
5 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)  
6 “expressly defines that ‘[a]n alien present in the United States who has not been  
7 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.’” *Id.*  
8 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien  
9 present in the United States who has not been admitted.” Thus, as in *Chavez v. Noem*  
10 and as mandated by the plain language of the statute, Petitioner is an “applicant for  
11 admission” and subject to the mandatory detention provisions of § 1225(b)(2).

12 When the plain text of a statute is clear, “that meaning is controlling” and courts  
13 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
14 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
15 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
16 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and  
17 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby  
18 immigrants who were attempting to lawfully enter the United States were in a worse  
19 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d  
20 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*  
21 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see also Matter of Yajure Hurtado*, 29 I&N Dec. at  
22 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace  
23 certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who  
24 have entered the United States without inspection gain equities and privileges in  
25 immigration proceedings that are not available to aliens who present themselves for  
26 inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

27 “The entry fiction doctrine flows from the principle that the ‘power to admit or  
28 exclude aliens is a sovereign prerogative,’ and ‘the Constitution gives the political

1 department of the government plenary authority to decide which aliens to admit.”  
2 *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872, at \*7 (C.D. Cal.  
3 Nov. 12, 2025) (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139  
4 (2020) (quotations omitted)). Such plenary power includes the “power to set procedures  
5 to be followed in determining whether an alien should be admitted.” *Thuraissigiam*, 591  
6 U.S. at 139. “The entry fiction doctrine protects that sovereign prerogative, which  
7 ‘would be meaningless if it became inoperative as soon as an arriving alien set foot on  
8 U.S. soil.” *Altamirano Ramos*, 2025 WL 3199872, at \*7 (quoting *Thuraissigiam*, 591  
9 U.S. at 139). Within this context, the Supreme Court has explained that “[w]hen an alien  
10 arrives at a port of entry – for example, an international airport – the alien is on U.S. soil,  
11 but the alien is not considered to have entered the country.” *Thuraissigiam*, 591 U.S. at  
12 139. Such is true even in situations where an alien is “paroled elsewhere in the country  
13 for years pending removal.” *Id.* (emphasis added). The Supreme Court has recognized  
14 that those individuals are treated “as if stopped at the border.” *Id.* “The same must be  
15 true” of an “applicant for admission” who enters into the United States unlawfully. *Id.*  
16 at 140.

17 A contrary interpretation would put aliens who “crossed the border unlawfully”  
18 in a better position than those “who present themselves for inspection at a port of entry.”  
19 *Id.* Aliens who presented at a port of entry would be subject to mandatory detention  
20 under § 1225, but those who crossed illegally would be eligible for a bond under §  
21 1226(a). See *Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary  
22 Committee Report makes clear that Congress intended to eliminate the prior statutory  
23 scheme that provided aliens who entered the United States without inspection more  
24 procedural and substantive rights than those who presented themselves to authorities  
25 for inspection.”). The Court should “‘refuse to interpret the INA in a way that would in  
26 effect repeal that statutory fix’ intended by Congress in enacting the IIRIRA.” *Chavez*,  
27 2025 WL 2730228, at \*4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

28 The plain language of § 1225(b)(2) does not contradict or render § 1226(a)

1 superfluous. Section 1226(a) provides the detention authority for the significant group  
2 of aliens who are *not* “applicants for admission” subject to § 1225(b)(2)(A) –  
3 specifically, aliens who have been admitted to the United States but are now removable.  
4 *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the  
5 specific governs the general”). For example, the detention of any of the millions of  
6 aliens who have overstayed their visas are governed by § 1226(a), because those aliens  
7 (unlike Petitioner) *were* lawfully admitted to the United States.

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

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

1 Finally, the phrase “alien seeking admission” does not limit the scope of  
2 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*  
3 requesting permission to enter the United States in the ordinary sense are nevertheless  
4 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,  
5 25 I&N Dec. 734, 743 (BIA 2012) (emphasis in original). Statutory language “is known  
6 by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir.  
7 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase  
8 “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of  
9 “applicant for admission” in § 1225(a)(1). Applicants for admission are both those  
10 individuals present without admission and those who arrive in the United States. *See*  
11 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1).  
12 *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.  
13 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants  
14 for admission or otherwise seeking admission” to be inspected by immigration officers.  
15 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive – a word or  
16 phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the  
17 Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further,  
18 § 1225(a)(5) provides that “[a]n applicant for admission may be required to state under  
19 oath any information sought by an immigration officer regarding the purposes and  
20 intentions of the applicant in seeking admission to the United States.” The reasonable  
21 import of this particular phrasing is that one who is an applicant for admission is  
22 considered to be “seeking admission” under the statute.

23 Although Respondents acknowledge that some courts in this district have  
24 rejected similar arguments in other habeas matters. Respondents maintain that  
25 Petitioner is properly subject to mandatory detention under § 1225 and dismissal is  
26 proper. To the extent the Court finds this Petitioner subject to detention authority under  
27 8 U.S.C. § 1226(a), Respondents’ position is that the proper remedy would be directing  
28 a bond hearing under § 1226(a) within fourteen (14) days, not immediate release. *See* 8

1 U.S.C. § 1226(e) (“No court may set aside any action or decision by the Attorney  
2 General under this section regarding the detention or release of any alien or the grant,  
3 revocation, or denial of bond or parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295  
4 (2018) (“As we have previously explained, § 1226(e) precludes an alien from  
5 ‘challeng[ing] a “discretionary judgment” by the Attorney General or a “decision” that  
6 the Attorney General has made regarding his detention or release.’ But § 1226(e) does  
7 not preclude ‘challenges [to] the statutory framework that permits [the alien’s] detention  
8 without bail.’”); 8 U.S.C. § 1226(b) (“The Attorney General at any time may revoke a  
9 bond or parole authorized under subsection (a), rearrest the alien under the original  
10 warrant, and detain the alien.”).

11 **IV. CONCLUSION**

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

14 DATED: December 2, 2025

Respectfully submitted,

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