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8 Attorneys for Respondents

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

11 RZGAR QADER KHORSHEED
12 KHORSHEED,
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Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center,
San Diego, California, *et al.*,

Respondents.

Case No.: 25-cv-03346-BTM-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)(A)(i)(I), as an
6 immigrant not in possession of a valid entry document. Accordingly, Petitioner is
7 mandatorily detained in Immigration and Customs Enforcement (ICE) custody pursuant
8 to 8 U.S.C. § 1225(b)(2)(A).

9 On September 5, 2025, the Board of Immigration Appeals (BIA) ruled on this
10 issue in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed
11 analysis, the BIA determined that based on the plain language of section 235(b)(2)(A)
12 of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges
13 lack authority to hear bond requests or to grant bond to noncitizens who are present in
14 the United States without admission. Other district courts have followed the BIA’s
15 approach. *See, e.g., Valencia v. Chesnut*, --- F. Supp. 3d ---, 2025 WL 3205133 (E.D.
16 Cal. Nov. 17, 2025); *Alonzo v. Noem*, --- F. Supp. 3d ----, 2025 WL 3208284 (E.D. Cal.
17 Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830 (S.D. Tex. Nov. 13, 2025);
18 *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872 (C.D. Cal. Nov. 12,
19 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD (E.D. Mo. Nov. 10, 2025); *Silva*
20 *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025);
21 *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31,
22 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct.
23 30, 2025); *Vargas Lopez v. Trump*, --- F. Supp. 3d ----, 2025 WL 2780351 (D. Neb.
24 Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ----, 2025 WL 2730228 (S.D. Cal.
25 Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. July
26 28, 2025).

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

1 **II. Statutory Background**

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

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

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

22 “To implement its immigration policy, the Government must be able to decide
23 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*
24 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step
25 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by
26 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled
27 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be
28 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 Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
23 2025) (“[A]liens who are present in the United States without admission are applicants
24 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 asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
11 770, 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). Congress has explicitly foreclosed district court jurisdiction

1 over claims that necessarily arise “from the decision or action by the Attorney General
2 to commence proceedings [and] adjudicate cases” 8 U.S.C. § 1252(g).

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

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

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

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

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 § 1252.¹ *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.
21 LEXIS 175957 (D. Minn. Sept. 9, 2025).

22
23 ¹ 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 the
28 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).

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

22 A contrary interpretation would put aliens who “crossed the border unlawfully”
23 in a better position than those “who present themselves for inspection at a port of entry.”
24 *Id.* Aliens who presented at a port of entry would be subject to mandatory detention
25 under § 1225, but those who crossed illegally would be eligible for a bond under §
26 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary
27 Committee Report makes clear that Congress intended to eliminate the prior statutory
28 scheme that provided aliens who entered the United States without inspection more

1 procedural and substantive rights than those who presented themselves to authorities
2 for inspection.”). The Court should ““refuse to interpret the INA in a way that would in
3 effect repeal that statutory fix’ intended by Congress in enacting the IIRIRA.” *Chavez*,
4 2025 WL 2730228, at *4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

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

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

28 One of the most basic interpretative canons instructs that a “statute should be

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

6 Finally, the phrase “alien seeking admission” does not limit the scope of
7 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*
8 requesting permission to enter the United States in the ordinary sense are nevertheless
9 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,
10 25 I&N Dec. 734, 743 (BIA 2012) (emphasis in original). Statutory language “is known
11 by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir.
12 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase
13 “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of
14 “applicant for admission” in § 1225(a)(1). Applicants for admission are both those
15 individuals present without admission and those who arrive in the United States. *See* 8
16 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1).
17 *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.
18 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants
19 for admission or otherwise seeking admission” to be inspected by immigration officers.
20 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or
21 phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the
22 Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further,
23 § 1225(a)(5) provides that “[a]n applicant for admission may be required to state under
24 oath any information sought by an immigration officer regarding the purposes and
25 intentions of the applicant in seeking admission to the United States.” The reasonable
26 import of this particular phrasing is that one who is an applicant for admission is
27 considered to be “seeking admission” under the statute.

28 Because Petitioner is properly detained under § 1225, Petitioner cannot show

1 entitlement to relief.

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

17 **C. Petitioner’s Conditional Parole was Lawfully Revoked.**

18 The INA governs the detention and release of noncitizens during and following
19 their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021).
20 Under the INA, ICE may choose to release a person on parole. The decision is
21 discretionary and is made on a case-by-case basis. An immigrant who has been detained
22 at the border, may be paroled for humanitarian reasons or due to it providing a
23 significant public benefit (8 U.S.C. § 1182(d)(5)(A))) or she may be conditionally
24 released (8 U.S.C. § 1226(a)). These are distinct procedures. A person on conditional
25 parole is usually released on their own recognizance subject to certain conditions such
26 as reporting requirements. To be released on conditional parole, there must be a finding
27 by ICE that the immigrant does not pose a risk of flight or danger to the community.
28 *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1115 (9th Cir. 2007).

1 ICE has statutory and regulatory authority to revoke its parole decisions and
2 initiate removal proceedings. No immigration court or hearing is required for revocation
3 under that authority. Parole decisions may be made for broad and practical reasons
4 related to public benefit, as well as for humanitarian reasons—i.e., while ICE’s decision
5 incorporates flight risk and danger assessment, it is not limited to those criteria. ICE’s
6 discretionary decisions concerning detention and release are, in this respect, distinct
7 from an immigration court bond hearing.

8 By statute, the authority to grant and revoke this parole is vested in the Secretary
9 of Homeland Security, who may delegate it. *See* 8 U.S.C. § 1226(e) (“No court may set
10 aside any action or decision by the Attorney General under this section regarding the
11 detention or any alien or the revocation or denial of bond or parole.”); *Jennings v.*
12 *Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously explained, § 1226(e)
13 precludes an alien from ‘challeng[ing] a “discretionary judgment” by the Attorney
14 General or a “decision” that the Attorney General has made regarding his detention or
15 release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory framework that
16 permits [the alien’s] detention without bail.”); 8 U.S.C. § 1226(b) (“The Attorney
17 General at any time may revoke a bond or parole authorized under subsection (a),
18 rearrest the alien under the original warrant, and detain the alien.”).

19 Regulations for such revocation exist, but they grant broad authority to make the
20 decision to revoke release decisions. “While the regulation provides the detainee some
21 opportunity to respond to the reasons for revocation, it provides no other procedural and
22 no meaningful substantive limit on this exercise of discretion as it allows revocation
23 ‘when, in the opinion of the revoking official ... [t]he purposes of release have been
24 served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release
25 would no longer be appropriate.” *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.
26 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§
27 241.4(l)(2)(i), (iv) (emphasis in original).

28 The statute does not provide that ICE is prohibited from revoking parole once

1 granted. And while some courts have recognized due process limitations on the
2 authority of the government to revoke parole depending on the facts of the case, to imply
3 into existence a broad bar on any release revocation by ICE—assigning that authority
4 instead strictly to immigration courts—is inconsistent with the statutory scheme.
5 Finally, countermanding ICE’s discretionary parole authority by requiring mandatory
6 immigration court proceedings would strip ICE of the ability to make such parole
7 decisions for broader reasons. Such an implied negation of ICE’s discretionary authority
8 would impair ICE’s ability to grant conditional parole in the first place, which damages
9 the immigration law system.

10 **IV. CONCLUSION**

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

13 DATED: December 10, 2025

Respectfully submitted,

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