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

12 JESUS DE HARO-FELIX,  
13  
14                                   Petitioner,  
15  
16                                   v.  
17 KRISTI NOEM, et al.,  
  Respondents.

Case No. 3:25-cv-03385-JO-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).<sup>1</sup> Within his § 1229a proceedings, Petitioner is due to appear before an  
8 Immigration Judge for a merits hearing on April 17, 2026.<sup>2</sup>

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., Chen v. Almodovar*, 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y.  
16 Dec. 4, 2025); *Valencia v. Chestnut*, --- F. Supp. 3d ----, 2025 WL 3205133 (E.D. Cal.  
17 Nov. 17, 2025); *Alonzo v. Noem*, --- F. Supp. 3d ----, 2025 WL 3208284 (E.D. Cal. Nov.  
18 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov.  
19 13, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ----, 2025 WL 3199872 (C.D.  
20 Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 313942  
21 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL  
22 3095972 (W.D. La. Nov. 4, 2025); *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467,

23  
24 <sup>1</sup> Petitioner's apprehension by the Department of Homeland Security (DHS) in June  
25 2025, which initiated his current immigration detention, is his first time in DHS custody.  
26 Petitioner was not previously released from DHS custody.

27 <sup>2</sup> Pursuant to this Court's Order requiring Respondents to attach DHS documents and  
28 records from the underlying immigration proceedings, Respondents hereby submit  
redacted excerpts of Petitioner's record of proceedings and A-file. However,  
Petitioner's habeas petition presents limited facts to support his petition and is instead  
presenting a pure legal question. As a result, records from the underlying removal  
proceedings are of limited relevance in determining whether detention is lawful under  
8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226(a).

1 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-  
2 bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F. Supp.  
3 3d ----, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d -  
4 ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG,  
5 2025 WL 2108913 (D. Mass. July 28, 2025).

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

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## 9 II. Statutory Background

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

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

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

2 “To implement its immigration policy, the Government must be able to decide  
3 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*  
4 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step  
5 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by  
6 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled  
7 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be  
8 deemed for purposes of this chapter an applicant for admission,” defining that term to  
9 encompass *both* an alien “present in the United States who has not been admitted *or*  
10 [one] who arrives in the United States . . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
11 1225(b) governs the inspection procedures applicable to all applicants for admission.  
12 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
13 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

14 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially  
15 determined to be inadmissible due to fraud, misrepresentation, or lack of valid  
16 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These  
17 aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. §  
18 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a  
19 fear of persecution,” immigration officers will refer the alien for a credible fear  
20 interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is  
21 “detained for further consideration of the application for asylum.” *Id.*  
22 § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express  
23 a fear of persecution, or is “found not to have such a fear,” they are detained until  
24 removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

25 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
26 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
27 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
28 for a removal proceeding “if the examining immigration officer determines that [the]

1 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.”  
2 8 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA  
3 2025) (“[A]liens who are present in the United States without admission are applicants  
4 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.  
5 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);  
6 *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking  
7 admission into the United States who are placed directly in full removal proceedings,  
8 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until  
9 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,  
10 DHS has the sole discretionary authority to temporarily release on parole “any alien  
11 applying for admission to the United States” on a “case-by-case basis for urgent  
12 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v.*  
13 *Texas*, 597 U.S. 785, 806 (2022).

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

15 Section 1226 provides for arrest and detention “pending a decision on whether  
16 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),  
17 the government may detain an alien during his removal proceedings, release him on  
18 bond, or release him on conditional parole. By regulation, immigration officers can  
19 release an alien who demonstrates that he “would not pose a danger to property or  
20 persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An  
21 alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any  
22 time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§  
23 236.1(d)(1), 1236.1(d)(1), 1003.19.

24 At a custody redetermination, the IJ may continue detention or release the alien  
25 on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have  
26 broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I&N  
27 Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of  
28

1 the factors IJs consider, an alien “who presents a danger to persons or property should  
2 not be released during the pendency of removal proceedings.” *Id.* at 38.

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

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

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

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

1 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §  
2 1003.1(d)(7).

3 If an automatic stay of a custody decision is invoked by DHS, regulations require  
4 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in  
5 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,  
6 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.  
7 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.  
8 § 1003.6(c)(5).

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

### 15 III. Argument

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

17 Petitioner bears the burden of establishing that this Court has subject matter  
18 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d  
19 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

20 In general, courts lack jurisdiction to review a decision to commence or  
21 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)  
22 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any  
23 alien arising from the decision or action by the Attorney General to commence  
24 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*  
25 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for  
26 Congress to focus special attention upon, and make special provision for, judicial  
27 review of the Attorney General’s discrete acts of ‘commenc[ing] proceedings,  
28 adjudicat[ing] cases, [and] execut[ing] removal orders’—which represent the initiation

1 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,  
2 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8  
3 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an  
4 alien at the commencement of removal proceedings are not within any court’s  
5 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three  
6 discrete actions that the Attorney General may take: her ‘decision or action’ to  
7 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S.  
8 at 482 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction  
9 over claims that necessarily arise “from the decision or action by the Attorney General  
10 to commence proceedings [and] adjudicate cases . . . .” 8 U.S.C. § 1252(g).

11 Section 1252(g) also bars district courts from hearing challenges to the method  
12 by which the government chooses to commence removal proceedings, including the  
13 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203  
14 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
15 discretionary decisions to commence removal” and bars review of “ICE’s decision to  
16 take [plaintiff] into custody and to detain him during his removal proceedings”).

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

28

1           Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law  
2 and fact . . . arising from any action taken or proceeding brought to remove an alien  
3 from the United States under this subchapter shall be available only in judicial review  
4 of a final order under this section.” (emphasis added). Further, judicial review of a final  
5 order is available only through “a petition for review filed with an appropriate court of  
6 appeals.” 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9)  
7 is “the unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and  
8 actions leading up to or consequent upon final orders of deportation,” including “non-  
9 final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485;  
10 see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is  
11 “breathhtaking in scope and vise-like in grip and therefore swallows up virtually all  
12 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and  
13 § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-  
14 related activity can be reviewed *only* through the [petition for review] PFR process.”  
15 *J.E.F.M.*, 837 F.3d at 1031 (emphasis in original) (“[W]hile these sections limit *how*  
16 immigrants can challenge their removal proceedings, they are not jurisdiction-stripping  
17 statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the  
18 provisions channel judicial review over final orders of removal to the courts of appeal.”)  
19 (emphasis in original); see *id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of  
20 all claims, including policies-and-practices challenges . . . whenever they ‘arise from’  
21 removal proceedings”).

22           Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring  
23 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)  
24 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed  
25 as precluding review of constitutional claims or questions of law raised upon a petition  
26 for review filed with an appropriate court of appeals in accordance with this section.”  
27 See also *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review  
28 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review

1 process before the court of appeals ensures that noncitizens have a proper forum for  
2 claims arising from their immigration proceedings and “receive their day in court.”  
3 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,  
4 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
5 obviate . . . Suspension Clause concerns” by permitting judicial review of  
6 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
7 law.”). These provisions divest district courts of jurisdiction to review both direct and  
8 indirect challenges to removal orders, including decisions to detain for purposes of  
9 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)  
10 includes challenges to the “decision to detain [an alien] in the first place or to seek  
11 removal”).

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

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1 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
2 § 1252.<sup>3</sup> *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 WL 2617973  
3 (D. Minn. Sept. 9, 2025).

4 **B. Petitioner is Lawfully Detained**

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

7 Based on the plain language of the statute, Petitioner’s detention is governed by  
8 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “‘an alien who is *an*  
9 *applicant for admission*, if the examining immigration officer determines that an alien  
10 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*  
11 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at \*4 (S.D. Cal. Sept. 24, 2025)  
12 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original).

13 Section 1225(a)(1) “expressly defines that ‘[a]n alien present in the United States  
14 who has not been admitted ... shall be deemed for purposes of this Act *an applicant for*  
15 *admission.*” *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). In fact, as  
16 recognized by another district court in this Circuit, “the [Supreme] Court’s introductory  
17 language is quite clear: “[A]n alien who ‘arrives in the United States,’ or ‘is present’ in  
18 this country but ‘has not been admitted,’ is treated as ‘an applicant for admission.”  
19 *Alonzo v. Noem*, 2025 WL 3208284, at \*4 (quoting *Jennings*, 583 U.S. at 287).

20 Here, Petitioner is an “alien present in the United States who has not been  
21 admitted.” Thus, as found by the district courts in *Chavez v. Noem*, *Altamirano Ramos*

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22  
23 <sup>3</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 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 *v. Lyons*, and *Valencia v. Chestnut*, and as mandated by the plain language of the statute,  
2 Petitioner is an “applicant for admission” and subject to the mandatory detention  
3 provisions of § 1225(b)(2).

4 When the plain text of a statute is clear, “that meaning is controlling” and courts  
5 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
6 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
7 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
8 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and  
9 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby  
10 immigrants who were attempting to lawfully enter the United States were in a worse  
11 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d  
12 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*  
13 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-  
14 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain  
15 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have  
16 entered the United States without inspection gain equities and privileges in immigration  
17 proceedings that are not available to aliens who present themselves for inspection at a  
18 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

19 “The entry fiction doctrine flows from the principle that the ‘power to admit or  
20 exclude aliens is a sovereign prerogative,’ and ‘the Constitution gives the political  
21 department of the government plenary authority to decide which aliens to admit.’”  
22 *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ----, 2025 WL 3199872, at \*7 (C.D. Cal.  
23 Nov. 12, 2025) (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139  
24 (2020) (quotations omitted)). Such plenary power includes the “power to set procedures  
25 to be followed in determining whether an alien should be admitted.” *Thuraissigiam*, 591  
26 U.S. at 139. “The entry fiction doctrine protects that sovereign prerogative, which  
27 ‘would be meaningless if it became inoperative as soon as an arriving alien set foot on  
28 U.S. soil.’” *Altamirano Ramos*, 2025 WL 3199872, at \*7 (quoting *Thuraissigiam*, 591

1 U.S. at 139). Within this context, the Supreme Court has explained, “[w]hen an alien  
2 arrives at a port of entry—for example, an international airport—the alien is on U.S. soil,  
3 but the alien is not considered to have entered the country.” *Thuraissigiam*, 591 U.S. at  
4 139. Such is true even in situations where an alien is “paroled elsewhere in the country  
5 for years pending removal.” *Id.* (emphasis added). The Supreme Court has recognized  
6 that those individuals are treated “as if stopped at the border.” *Id.* “The same must be  
7 true” of an “applicant for admission” who enters into the United States unlawfully. *Id.*  
8 at 140.

9 A contrary interpretation would put aliens who “crossed the border unlawfully”  
10 in a better position than those “who present themselves for inspection at a port of entry.”  
11 *Id.* Aliens who presented at a port of entry would be subject to mandatory detention  
12 under § 1225, but those who crossed illegally would be eligible for a bond under §  
13 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary  
14 Committee Report makes clear that Congress intended to eliminate the prior statutory  
15 scheme that provided aliens who entered the United States without inspection more  
16 procedural and substantive rights than those who presented themselves to authorities  
17 for inspection.”). The Court should “refuse to interpret the INA in a way that would in  
18 effect repeal that statutory fix’ intended by Congress in enacting the IIRIRA.” *Chavez*,  
19 2025 WL 2730228, at \*4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

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

28 Moreover, in *Chavez v. Noem*, the district court noted that § 1226(a) “generally

1 governs the process of arresting and detaining’ certain aliens, namely ‘aliens who were  
2 inadmissible at the time of entry *or who have been convicted of certain criminal offenses*  
3 *since admission.*” *Chavez*, 2025 WL 2730228, at \*5 (quoting *Jennings*, 583 U.S. at  
4 288) (emphasis in original). In turn, individuals who have not been charged with  
5 specific crimes listed in § 1226(c) are still subject to the discretionary detention  
6 provisions of § 1226(a) *as determined by the Attorney General*. See 8 U.S.C. § 1226(a)  
7 (“*On a warrant issued by the Attorney General*, an alien may be arrested and detained  
8 pending a decision on whether the alien is to be removed from the United States.”)  
9 (emphasis added). Therefore, heeding the plain language of § 1225(b)(2) has no effect  
10 on § 1226(a).

11 Similarly, the application of § 1225’s explicit definition of “applicants for  
12 admission” does not render the addition of § 1226(c) by the Riley Laken Act  
13 superfluous. See *Chen v. Almodovar*, 2025 WL 3484855, at \* 7. Once again correctly  
14 determined by the district court in *Chavez v. Noem*, the addition of § 1226(c) simply  
15 removed the Attorney General’s detention discretion for aliens charged with specific  
16 crimes. 2025 WL 2730228, at \*5; *see also Valencia v. Chestnut*, 2025 WL 3205133, at  
17 \*4 (concluding the same).

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

24 Finally, the phrase “alien seeking admission” does not limit the scope of  
25 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*  
26 requesting permission to enter the United States in the ordinary sense are nevertheless  
27 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,  
28 25 I&N Dec. 734, 743 (BIA 2012) (emphasis in original). Statutory language “is known

1 by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir.  
2 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase  
3 “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of  
4 “applicant for admission” in § 1225(a)(1). Applicants for admission are both those  
5 individuals present without admission and those who arrive in the United States. *See* 8  
6 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1).  
7 *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.  
8 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants  
9 for admission or otherwise seeking admission” to be inspected by immigration officers.  
10 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or  
11 phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the  
12 Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further,  
13 § 1225(a)(5) provides that “[a]n applicant for admission may be required to state under  
14 oath any information sought by an immigration officer regarding the purposes and  
15 intentions of the applicant in seeking admission to the United States.” The reasonable  
16 import of this particular phrasing is that one who is an applicant for admission is  
17 considered to be “seeking admission” under the statute.

18 Because Petitioner is properly detained under § 1225, Petitioner cannot show  
19 entitlement to relief. Respondents acknowledge that courts in this district have recently  
20 rejected similar arguments in other similar habeas matters. “But ‘[w]hat governs the  
21 case is the text of the statute, not what other district courts have concluded.” *Valencia*,  
22 2025 WL 3205133 at \*6 (quoting *Mejia Olalde*, 2025 WL 3131942, at \*2). Indeed,  
23 “[u]nder the plain terms of Section 1225(a)(1), [petitioner] is ‘deemed’ an applicant for  
24 admission[,]” and “[o]f all the statutory terms at issue, this is perhaps the most  
25 straightforward.” *Rojas v. Olson*, 2025 WL 3033967 at \*8.

26 Respondents therefore maintain that Petitioner is properly subject to mandatory  
27 detention under § 1225 and dismissal is proper. To the extent the Court finds this  
28 Petitioner subject to detention authority under 8 U.S.C. § 1226(a), Respondents’

1 position is that the proper remedy would be directing a bond hearing under § 1226(a),  
2 to be held within fourteen (14) days. *See* 8 U.S.C. § 1226(e) (“No court may set aside  
3 any action or decision by the Attorney General under this section regarding the  
4 detention or release of any alien or the grant, revocation, or denial of bond or parole.”);  
5 *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously explained,  
6 § 1226(e) precludes an alien from ‘challeng[ing] a “discretionary judgment” by the  
7 Attorney General or a “decision” that the Attorney General has made regarding his  
8 detention or release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory  
9 framework that permits [the alien’s] detention without bail.’”); 8 U.S.C. § 1226(b)  
10 (“The Attorney General at any time may revoke a bond or parole authorized under  
11 subsection (a), rearrest the alien under the original warrant, and detain the alien.”).

#### 12 13 IV. CONCLUSION

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

16 DATED: December 8, 2025

Respectfully submitted,

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