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

11 JUAN TERCERO GONZALEZ,
 12
 13 Petitioner,

14 v.

14 KRISTI NOEM, *et al*,
 15
 16 Respondents.

Case No.: 25-cv-3417-JO-DEB

**RESPONDENTS' RETURN TO
 HABEAS PETITION**

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

22 Petitioner¹ has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is
 23 currently in removal proceedings under 8 U.S.C. § 1229a and is charged with

24
 25 ¹ Petitioner appears to be a class member of *Maldonado Bautista v. Santacruz*, No. 5:25-
 26 cv-01873-SSS-BFM (C.D. Cal.). The court in *Bautista* granted class certification and
 27 partial summary judgment for the plaintiffs in that case, but did not issue a class-wide
 28 declaratory judgment. The court also did not issue a class-wide injunction, which would
 not be permitted by law. Rather, the court set a January 9, 2026 joint status report
 deadline and January 16, 2026 status conference. Until and unless the *Bautista* court
 issues a class-wide declaratory judgment or injunction, the *Bautista* court's opinion and
 partial grant of summary judgment does not constitute a judgment. See, e.g., Fed. R.
 Civ. P. 54(b).

1 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United
2 States who has not been admitted or paroled. Accordingly, Petitioner is mandatorily
3 detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.
4 § 1225(b)(2)(A).

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

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

25 II. Statutory Background

26 A. Individuals Seeking Admission to the United States

27 For over a century, this country's immigration laws have authorized immigration
28 officials to charge noncitizens as removable from the country, arrest those subject to

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

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

18 “To implement its immigration policy, the Government must be able to decide
19 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*
20 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step
21 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by
22 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled
23 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be
24 deemed for purposes of this chapter an applicant for admission,” defining that term to
25 encompass *both* an alien “present in the United States who has not been admitted *or*
26 [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added). Section
27 1225(b) governs the inspection procedures applicable to all applicants for admission.

28

1 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered
2 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

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

14 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
15 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
16 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
17 for a removal proceeding “if the examining immigration officer determines that [the]
18 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.”
19 8 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
20 2025) (“[A]liens who are present in the United States without admission are applicants
21 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
22 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);
23 *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking
24 admission into the United States who are placed directly in full removal proceedings,
25 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until
26 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,
27 DHS has the sole discretionary authority to temporarily release on parole “any alien
28 applying for admission to the United States” on a “case-by-case basis for urgent

1 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v.*
2 *Texas*, 597 U.S. 785, 806 (2022).

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

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

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

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

27 Included within the Attorney General and DHS’s discretionary authority are
28 limits on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B),

1 the IJ does not have authority to redetermine the conditions of custody imposed by DHS
2 for any arriving alien. The regulations also include a provision that allows DHS to
3 invoke an automatic stay of any decision by an IJ to release an individual on bond when
4 DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) (“The
5 decision whether or not to file [an automatic stay] is subject to the discretion of the
6 Secretary.”).

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

8 The BIA is an appellate body within the Executive Office for Immigration
9 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
10 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
11 adjudications under the [INA] that the Attorney General may by regulation assign to
12 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
13 BIA not only resolves particular disputes before it, but is also directed to, “through
14 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
15 judges, and the general public on the proper interpretation and administration of the
16 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
17 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
18 1003.1(d)(7).

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

25 If the BIA denies DHS’s custody appeal, the automatic stay remains in effect for
26 five business days. 8 C.F.R. § 1003.6(d). DHS may, during that five-day period, refer
27 the case to the Attorney General under 8 C.F.R. § 1003.1(h)(1) for consideration. *Id.*
28 Upon referral to the Attorney General, the release is stayed for 15 business days while

1 the case is considered. The Attorney General may extend the stay of release upon
2 motion by DHS. *Id.*

3 III. Argument

4 A. Claims and Requested Relief Jurisdictionally Barred

5 Petitioner bears the burden of establishing that this Court has subject matter
6 jurisdiction over asserted claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d
7 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

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

27 Section 1252(g) also bars district courts from hearing challenges to the method
28 by which the government chooses to commence removal proceedings, including the

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

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

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

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

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

26 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
27 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
28 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of

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

14 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
15 § 1252.² *See Axcel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.
16 LEXIS 175957 (D. Minn. Sept. 9, 2025).

17 **B. Petitioner is Lawfully Detained**

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

20 Based on the plain language of the statute, Petitioner’s detention is governed by
21 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*

22 _____
23 ² 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 *applicant for admission*, if the examining immigration officer determines that an alien
2 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
3 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
4 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
5 “expressly defines that ‘[a]n alien present in the United States who has not been
6 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.”” *Id.*
7 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien
8 present in the United States who has not been admitted.” Thus, as found by the district
9 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner
10 is an “applicant for admission” and subject to the mandatory detention provisions of
11 § 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 Matter of Yajure Hurtado*, 29 I&N Dec. at 223-
22 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain
23 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have
24 entered the United States without inspection gain equities and privileges in immigration
25 proceedings that are not available to aliens who present themselves for inspection at a
26 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, “[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 nor 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. Once again correctly determined by the district court in *Chavez v. Noem*,
21 the addition of § 1226(c) simply removed the Attorney General’s detention discretion
22 for aliens charged with specific 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* 8
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 Because Petitioner is properly detained under § 1225, Petitioner cannot show
24 entitlement to relief.

25 Respondents acknowledge that courts in this district have recently rejected
26 similar arguments in other similar habeas matters. Respondents maintain that Petitioner
27 is properly subject to mandatory detention under § 1225 and dismissal is proper. To the
28 extent the Court finds this Petitioner subject to detention authority under 8 U.S.C.

1 § 1226(a), Respondents’ position is that the proper remedy would be directing a bond
2 hearing under § 1226(a), to be held within fourteen (14) days. *See* 8 U.S.C. § 1226(e)
3 (“No court may set aside any action or decision by the Attorney General under this
4 section regarding the detention of any alien or the revocation or denial of bond or
5 parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously
6 explained, § 1226(e) precludes an alien from ‘challeng[ing] a “discretionary judgment”
7 by the Attorney General or a “decision” that the Attorney General has made regarding
8 his 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 **IV. CONCLUSION**

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

15 DATED: December 8, 2025

Respectfully submitted,

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