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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 DANILO GUERRA PUPO,  
12 Petitioner,  
13 v.  
14 CHRISTOPHER LAROSE, *et al.*,  
15 Respondents.

Case No.: 25-cv-3448-JO-VET

**RESPONDENTS' RETURN TO  
PETITIONER'S HABEAS  
PETITION**

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1 I. INTRODUCTION

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)(7)(A)(i)(I), as an alien not in possession of a  
5 valid entry document. Accordingly, Petitioner is mandatorily detained in Immigration  
6 and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2)(A). He asks  
7 the Court to order his immediate release on parole or, alternatively, a bond hearing  
8 before an immigration judge.

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. FACTUAL BACKGROUND<sup>1</sup>**

2 Petitioner is a citizen and national of Cuba. ECF No. 1. On or about July 21,  
3 2024, Petitioner entered the United States at the Eagle Pass Port of Entry in Texas and  
4 was encountered by U.S. Customs and Border Protection. *Id.* at 5. On the same day, he  
5 was charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien not  
6 in possession of a valid entry document. Ex. 1. He was placed in removal proceedings  
7 under 8 U.S.C. § 1229a and issued a Notice to Appear. *Id.* Petitioner was then released  
8 from custody on humanitarian parole. ECF No. 1 at 5; *see* 8 U.S.C. § 1182(d)(5)(A). In  
9 his removal proceedings, Petitioner filed an I-589 Application for Asylum and  
10 Withholding of Removal and for Relief Under the Convention Against Torture. ECF  
11 No. 1 at 5–6.

12 On July 15, 2025, Petitioner appeared before an immigration judge, and the  
13 Department of Homeland Security (DHS) moved to dismiss Petitioner’s removal  
14 proceedings in order to place him in expedited removal proceedings under 8 U.S.C.  
15 § 1225(b)(1). ECF No. 1 at 5. The IJ denied DHS’s motion. *Id.* On the same day, ICE  
16 Enforcement and Removal Operations (ERO) detained Petitioner and placed him in  
17 custody pursuant to 8 U.S.C. § 1225(b)(2). ECF No. 1 at 5. Petitioner continues to be  
18 detained at the Otay Mesa Detention Center while his removal proceedings are ongoing.  
19 Meanwhile, Petitioner has applied for permanent residence under the Cuban  
20 Adjustment Act with United States Citizenship and Immigration Services. ECF No. 1  
21 at 6.

22 **III. STATUTORY BACKGROUND**

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

24 For over a century, this country’s immigration laws have authorized immigration  
25 officials to charge noncitizens as removable from the country, arrest those subject to  
26 removal, and detain them during removal proceedings. *See Abel v. United States*, 362  
27

28 <sup>1</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

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

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

17 “To implement its immigration policy, the Government must be able to decide  
18 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*  
19 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step  
20 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by  
21 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled  
22 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be  
23 deemed for purposes of this chapter an applicant for admission,” defining that term to  
24 encompass *both* an alien “present in the United States who has not been admitted *or*  
25 [one] who arrives in the United States . . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
26 1225(b) governs the inspection procedures applicable to all applicants for admission.  
27 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
28 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

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

12 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
13 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
14 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
15 for a removal proceeding “if the examining immigration officer determines that [the]  
16 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.”  
17 8 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA  
18 2025) (“[A]liens who are present in the United States without admission are applicants  
19 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.  
20 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);  
21 *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking  
22 admission into the United States who are placed directly in full removal proceedings,  
23 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until  
24 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,  
25 DHS has the sole discretionary authority to temporarily release on parole “any alien  
26 applying for admission to the United States” on a “case-by-case basis for urgent  
27 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v.*  
28 *Texas*, 597 U.S. 785, 806 (2022).

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

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

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

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

25 Included within the Attorney General and DHS’s discretionary authority are  
26 limits on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B),  
27 the IJ does not have authority to redetermine the conditions of custody imposed by DHS  
28 for any arriving alien. The regulations also include a provision that allows DHS to

1 invoke an automatic stay of any decision by an IJ to release an individual on bond when  
2 DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) (“The  
3 decision whether or not to file [an automatic stay] is subject to the discretion of the  
4 Secretary.”).

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

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

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

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

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2 **IV. ARGUMENT**

3 **A. Petitioner’s Claims are Barred by 8 U.S.C. § 1252.**

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

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

26 Section 1252(g) also bars district courts from hearing challenges to the method  
27 by which the government chooses to commence removal proceedings, including the  
28 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203

1 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
2 discretionary decisions to commence removal” and bars review of “ICE’s decision to  
3 take [plaintiff] into custody and to detain him during his removal proceedings”).

4 Other courts have held, “[f]or the purposes of § 1252, the Attorney General  
5 commences proceedings against an alien when the alien is issued a Notice to Appear  
6 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF  
7 (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General  
8 may arrest the alien against whom proceedings are commenced and detain that  
9 individual until the conclusion of those proceedings.” *Id.* at \*3. “Thus, an alien’s  
10 detention throughout this process arises from the Attorney General’s decision to  
11 commence proceedings” and review of claims arising from such detention is barred  
12 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *ang*  
13 *v. United States*, No. CV-10-0389 SVW (RCx), 2010 WL 11463156, at \*6 (C.D. Cal.  
14 Aug. 8, 2018); 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 “breathhtaking 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.<sup>2</sup> *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. Even if Petitioner’s Claims Are Not Barred, Petitioner’s Detention is Lawful**  
18 **and Mandatory**

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

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

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22  
23 <sup>2</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 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*  
2 *applicant for admission*, if the examining immigration officer determines that an alien  
3 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*  
4 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at \*4 (S.D. Cal. Sept. 24, 2025)  
5 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)  
6 “expressly defines that ‘[a]n alien present in the United States who has not been  
7 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*  
8 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an “alien  
9 present in the United States who has not been admitted.” Thus, as found by the district  
10 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner  
11 is an “applicant for admission” and subject to the mandatory detention provisions of  
12 § 1225(b)(2).

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

28 “The entry fiction doctrine flows from the principle that the ‘power to admit or

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

18 A contrary interpretation would put aliens who “crossed the border unlawfully”  
19 in a better position than those “who present themselves for inspection at a port of entry.”  
20 *Id.* Aliens who presented at a port of entry would be subject to mandatory detention  
21 under § 1225, but those who crossed illegally would be eligible for a bond under §  
22 1226(a). See *Matter of Yajure Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary  
23 Committee Report makes clear that Congress intended to eliminate the prior statutory  
24 scheme that provided aliens who entered the United States without inspection more  
25 procedural and substantive rights than those who presented themselves to authorities  
26 for inspection.”). The Court should “‘refuse to interpret the INA in a way that would in  
27 effect repeal that statutory fix’ intended by Congress in enacting the IIRIRA.” *Chavez*,  
28 2025 WL 2730228, at \*4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

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

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

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

1 U.S. at 314.

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

24 Because Petitioner is properly detained under § 1225, Petitioner cannot show  
25 entitlement to relief.

26 Respondents acknowledge that courts in this district have recently rejected  
27 similar arguments in other similar habeas matters. Respondents maintain that Petitioner  
28 is properly subject to mandatory detention under § 1225 and dismissal is proper. To the

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

13 **V. CONCLUSION**

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

16 DATED: December 9, 2025

17 Respectfully submitted,

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