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

13 ANTONIO CHAVEZ VALDOVINOS,

14
15 Petitioner,

16 v.

17 CHRISTOPHER J. LAROSE, et al.,

18
19 Respondents.

Case No.: 25-cv-03460-RSH-DDL

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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

21
22 Petitioner 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 two
24 counts of inadmissibility: (1) under 8 U.S.C. § 1182(a)(6)(A)(i) (an alien present in the
25 United States who has not been admitted or paroled; and (2) under 8 U.S.C. § 1182
26 (a)(7)(A)(i)(I) (an immigrant who, at the time of his application for admission, was not
27 in possession of any valid entry document). *See* Exhibit 1 (Notice to Appear).

28

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

3 On September 5, 2025, the Board of Immigration Appeals (BIA) ruled on this
4 issue in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed
5 analysis, the BIA determined that based on the plain language of section 235(b)(2)(A)
6 of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges
7 lack authority to hear bond requests or to grant bond to noncitizens who are present in
8 the United States without admission. Other district courts have followed the BIA’s
9 approach. *See, e.g., Valencia v. Chestnut*, --- F. Supp. 3d ---, 2025 WL 3205133 (E.D.
10 Cal. Nov. 17, 2025); *Alonzo v. Noem*, --- F. Supp. 3d ----, 2025 WL 3208284 (E.D. Cal.
11 Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex.
12 Nov. 13, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872
13 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL
14 313942 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025
15 WL 3095972 (W.D. La. Nov. 4, 2025); *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467,
16 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-
17 bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F. Supp.
18 3d ----, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d -
19 ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG,
20 2025 WL 2108913 (D. Mass. July 28, 2025).

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

23 II. Statutory Background

24 A. Individuals Seeking Admission to the United States

25 For over a century, this country’s immigration laws have authorized immigration
26 officials to charge noncitizens as removable from the country, arrest those subject to
27 removal, and detain them during removal proceedings. *See Abel v. United States*, 362
28 U.S. 217, 232–37 (1960). “The rule has been clear for decades: ‘[d]etention during

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

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

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

1 **III. Argument**

2 **A. Claims and Requested Relief Jurisdictionally Barred**

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

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

25 Section 1252(g) also bars district courts from hearing challenges to the method
26 by which the government chooses to commence removal proceedings, including the
27 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
28 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s

1 discretionary decisions to commence removal” and bars review of “ICE’s decision to
2 take [plaintiff] into custody and to detain him during his removal proceedings”).

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

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

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

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

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

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

13 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
14 § 1252. *See Acel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 WL 2617973
15 (D. Minn. Sept. 9, 2025).

16 **B. Petitioner is Lawfully Detained**

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

19 Based on the plain language of the statute, Petitioner’s detention is governed by
20 § 1225. Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
21 *applicant for admission*, if the examining immigration officer determines that an alien
22 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
23 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
24 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
25 “expressly defines that “[a]n alien present in the United States who has not been
26 admitted . . . shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*
27 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). As recognized by another
28 district court in this Circuit, “the [Supreme] Court’s introductory language is quite clear:

1 “[A]n alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has
2 not been admitted,’ is treated as ‘an applicant for admission.’” *Alonzo v. Noem*, 2025
3 WL 3208284, at *4 (quoting *Jennings*, 583 U.S. at 287). Here, Petitioner is an “alien
4 present in the United States who has not been admitted.” Thus, as found by the district
5 courts in *Chavez v. Noem*, *Altamirano Ramos v. Lyons*, and *Valencia v. Chestnut*, and
6 as mandated by the plain language of the statute, Petitioner is an “applicant for
7 admission” and subject to the mandatory detention provisions of § 1225(b)(2).

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

23 “The entry fiction doctrine flows from the principle that the ‘power to admit or
24 exclude aliens is a sovereign prerogative,’ and ‘the Constitution gives the political
25 department of the government plenary authority to decide which aliens to admit.’”
26 *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872, at *7 (C.D. Cal.
27 Nov. 12, 2025) (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139
28 (2020) (quotations omitted)). Such plenary power includes the “power to set procedures

1 to be followed in determining whether an alien should be admitted.” *Thuraissigiam*, 591
2 U.S. at 139. “The entry fiction doctrine protects that sovereign prerogative, which
3 ‘would be meaningless if it became inoperative as soon as an arriving alien set foot on
4 U.S. soil.’” *Altamirano Ramos*, 2025 WL 3199872, at *7 (quoting *Thuraissigiam*, 591
5 U.S. at 139). Within this context, the Supreme Court has explained, “[w]hen an alien
6 arrives at a port of entry—for example, an international airport—the alien is on U.S. soil,
7 but the alien is not considered to have entered the country.” *Thuraissigiam*, 591 U.S. at
8 139. Such is true even in situations where an alien is “paroled elsewhere in the country
9 for years pending removal.” *Id.* (emphasis added). The Supreme Court has recognized
10 that those individuals are treated “as if stopped at the border.” *Id.* “The same must be
11 true” of an “applicant for admission” who enters into the United States unlawfully. *Id.*
12 at 140.

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

24 The plain language of § 1225(b)(2) does not contradict nor render § 1226(a)
25 superfluous. Section 1226(a) provides the detention authority for the significant group
26 of aliens who are *not* “applicants for admission” subject to § 1225(b)(2)(A)—
27 specifically, aliens who have been admitted to the United States but are now removable.
28 *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the

1 specific governs the general”). For example, the detention of any of the millions of
2 aliens who have overstayed their visas are governed by § 1226(a), because those aliens
3 (unlike Petitioner) *were* lawfully admitted to the United States.

4 Moreover, in *Chavez v. Noem*, the district court noted that § 1226(a) “‘generally
5 governs the process of arresting and detaining’ certain aliens, namely ‘aliens who were
6 inadmissible at the time of entry *or who have been convicted of certain criminal offenses*
7 *since admission.*” *Chavez*, 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at
8 288) (emphasis in original). In turn, individuals who have not been charged with
9 specific crimes listed in § 1226(c) are still subject to the discretionary detention
10 provisions of § 1226(a) *as determined by the Attorney General*. See 8 U.S.C. § 1226(a)
11 (“*On a warrant issued by the Attorney General, an alien may be arrested and detained*
12 *pending a decision on whether the alien is to be removed from the United States.*”) (emphasis added). Therefore, heeding the plain language of § 1225(b)(2) has no effect
13 on § 1226(a). Similarly, the application of § 1225’s explicit definition of “applicants for
14 admission” does not render the addition of § 1226(c) by the Riley Laken Act
15 superfluous. Once again correctly determined by the district court in *Chavez v. Noem*,
16 the addition of § 1226(c) simply removed the Attorney General’s detention discretion
17 for aliens charged with specific crimes. 2025 WL 2730228, at *5; *see also Valencia v.*
18 *Chestnut*, 2025 WL 3205133, at *4 (concluding the same).

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

26 Finally, the phrase “alien seeking admission” does not limit the scope of
27 § 1225(b)(2)(A). The BIA has long recognized that “many people who are not *actually*
28 requesting permission to enter the United States in the ordinary sense are nevertheless

1 deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*,
2 25 I&N Dec. 734, 743 (BIA 2012) (emphasis in original). Statutory language “is known
3 by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir.
4 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase
5 “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of
6 “applicant for admission” in § 1225(a)(1). Applicants for admission are both those
7 individuals present without admission and those who arrive in the United States. *See*
8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1).
9 *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.
10 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants
11 for admission or otherwise seeking admission” to be inspected by immigration officers.
12 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or
13 phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the
14 Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). Further,
15 § 1225(a)(5) provides that “[a]n applicant for admission may be required to state under
16 oath any information sought by an immigration officer regarding the purposes and
17 intentions of the applicant in seeking admission to the United States.” The reasonable
18 import of this particular phrasing is that one who is an applicant for admission is
19 considered to be “seeking admission” under the statute.

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

28 Respondents maintain that Petitioner is properly subject to mandatory detention

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

14 **C. *Bautista* Affords No Relief the Petitioner**

15 Petitioner mentions *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal.) in
16 his Petition, but *Bautista* affords him no relief. *See* ECF No. 1 at 7-8. In *Bautista*, the
17 court granted class certification and partial summary judgment for the plaintiffs in that
18 case, but the court's orders did not enter any declaratory judgment as to the nationwide
19 class. *See* Partial MSJ Ruling at 17 (granting motion for partial summary judgment but
20 not ordering any relief); *see also* Class Cert. Ruling at 15 (granting motion for class
21 certification but ordering only that class be certified, Petitioners be appointed class
22 representatives, Petitioners' counsel be appointed class counsel, ordering a joint status
23 report and setting status conference); Proposed Order (proposing specific declaratory
24 relief that the Court did not enter). The *Bautista* court also expressly declined to enter
25 final judgment as to the claims at issue in the motion for partial summary judgment
26 under Federal Rule of Civil Procedure 54(b). *See* Partial MSJ Ruling at 17. Rather, the
27 Court set a January 9, 2026, joint status report deadline and January 16, 2026, status
28 conference indicating that the Court intends to address the question of final relief at a

1 later date. Class Cert. Ruling at 15.

2 Absent an entry of final judgment on the entire case, or a certification of partial
3 final judgment under Rule 54(b), there is no declaratory judgment. The partial summary
4 judgment ruling does not operate as a “judgment” because it is not an appealable order
5 and “does not end the action as to any of the claims or parties and may be revised at any
6 time before the entry of a judgment adjudicating all the claims and all the parties’ rights
7 and liabilities.” Fed. R. Civ. P. 54(a), (b). Thus, there is no class-wide judgment, let
8 alone any final judgment that could have preclusive effect as to class members.

9 To be proper, a declaratory judgment must have preclusive effect: “Without
10 preclusive effect, a declaratory judgment is little more than an advisory opinion.”
11 *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023); *see also Wells v. Johnson*, 150 F.4th
12 289, 301 (4th Cir. 2025) (stating that the only reason a proper declaratory judgment
13 does not violate Article III’s requirements is because it has preclusive effect between
14 the parties); *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 (9th Cir. 2005).
15 And preclusive effect cannot be obtained without sufficient finality. *B & B Hardware,*
16 *Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015) (citing Restatement (Second) of
17 Judgments § 27, p. 250 (1980), for the general rule that an issue must be determined by
18 a “valid and final judgment” for preclusion to apply); *Luben Indus., Inc. v. United*
19 *States*, 707 F.2d 1037, 1040 (9th Cir. 1983) (affirming district court decision not to
20 apply preclusive effect to an interlocutory decision that “could not have been the subject
21 of an appeal at the time”); Restatement (Second) of Judgments § 28, p. 273 (1980)
22 Restatement (Second) of Judgments § 27, p. 250 (1980) (issue preclusion does not apply
23 when the “party against whom preclusion is sought could not, as a matter of law, have
24 obtained review of the judgment in the initial action”; *id.* at cmt. a (“[T]he availability
25 of review for the correction of errors has become critical to the application of preclusion
26 doctrine.”)).

27 Accordingly, as the *Bautista* court has declined to enter a class-wide judgment,
28 there is currently no declaratory relief, let alone relief with preclusive effect on

1 *Maldonado Bautista* class members' claims concerning the proper interpretation of 8
2 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Respondents respectfully request that the Court
5 dismiss this action.

6
7 DATED: December 17, 2025

Respectfully submitted,

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11 Assistant U.S. Attorney
12 Attorney for Respondents
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