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

12 EDGAR MAYORAL GARCIA,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al.,

16 Respondents.
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Case No.: 25-cv-3466-JES-MMP

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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

2 ~~Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is~~
3 ~~currently in removal proceedings under 8 U.S.C. § 1229a and is charged with~~
4 ~~inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United~~
5 ~~States who has not been admitted or paroled. Accordingly, Petitioner is mandatorily~~
6 ~~detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.~~
7 ~~§ 1225(b)(2)(A).~~

8 On September 5, 2025, the Board of Immigration Appeals (BIA) ruled on this
9 issue in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed
10 analysis, the BIA determined that based on the plain language of section 235(b)(2)(A)
11 of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges
12 lack authority to hear bond requests or to grant bond to noncitizens who are present in
13 the United States without admission. Other district courts have followed the BIA's
14 approach. *See, e.g., Valencia v. Chestnut*, --- F. Supp. 3d ---, 2025 WL 3205133 (E.D.
15 Cal. Nov. 17, 2025); *Alonzo v. Noem*, --- F. Supp. 3d ----, 2025 WL 3208284 (E.D. Cal.
16 Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex.
17 Nov. 13, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872
18 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL
19 313942 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025
20 WL 3095972 (W.D. La. Nov. 4, 2025); *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467,
21 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-
22 bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F. Supp.
23 3d ----, 2025 WL 2780351 (D. Neb. Sept. 30, 3025); *Chavez v. Noem*, --- F. Supp. 3d -
24 ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG,
25 2025 WL 2108913 (D. Mass. July 28, 2025).

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

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1 **II. Statutory Background**

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

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

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

22 “To implement its immigration policy, the Government must be able to decide
23 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*
24 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step
25 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by
26 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled
27 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be
28 deemed for purposes of this chapter an applicant for admission,” defining that term to

1 encompass *both* an alien “present in the United States who has not been admitted or
2 [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added). Section
3 1225(b) governs the inspection procedures applicable to all applicants for admission.
4 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered
5 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

6 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
7 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
8 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These
9 aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. §
10 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a
11 fear of persecution,” immigration officers will refer the alien for a credible fear
12 interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is
13 “detained for further consideration of the application for asylum.” *Id.*
14 § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express
15 a fear of persecution, or is “found not to have such a fear,” they are detained until
16 removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

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

1 removal proceedings have concluded.’’) (citing *Jennings*, 583 U.S. at 299). However,
2 DHS has the sole discretionary authority to temporarily release on parole “any alien
3 applying for admission to the United States” on a “case-by-case basis for urgent
4 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v.*
5 *Texas*, 597 U.S. 785, 806 (2022).

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

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

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

22 Section 1226(a) does not grant “any right to release on bond.” *Matter of D-J-*, 23
23 I&N Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952) (emphasis in
24 original). Nor does it address the applicable burden of proof or particular factors that
25 must be considered. See generally 8 U.S.C. § 1226(a). Rather, it grants DHS and the
26 Attorney General broad discretionary authority to determine, after arrest, whether to
27 detain or release an alien during his or her removal proceedings. See *id.* If, after the bond
28

1 hearing, either party disagrees with the decision of the IJ, that party may appeal the
2 decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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

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

12 The BIA is an appellate body within the Executive Office for Immigration
13 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
14 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
15 adjudications under the [INA] that the Attorney General may by regulation assign to
16 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
17 BIA not only resolves particular disputes before it, but is also directed to, “through
18 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
19 judges, and the general public on the proper interpretation and administration of the
20 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
21 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
22 1003.1(d)(7).

23 If an automatic stay of a custody decision is invoked by DHS, regulations require
24 the BIA to track the progress of the custody appeal “to avoid unnecessary delays in
25 completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days,
26 unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R.
27 § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R.
28 § 1003.6(c)(5).

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

7 III. Argument

8 A. Petitioner Fails to Plead Sufficient Information

9 The Constitution limits federal judicial power to designated “cases” and
10 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*
11 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present
12 a “case” or “controversy” within the meaning of Article III). “Absent a real and
13 immediate threat of future injury there can be no case or controversy, and thus no Article
14 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
15 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
16 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a
17 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by
18 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
19 behavior will likely occur or continue, and that the threatened injury is certainly
20 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing
21 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
22 traceable to the challenged action of the United States and (3) likely to be redressed by
23 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

24 Moreover, an individual may seek habeas relief under 28 U.S.C. § 2241 if he is
25 “in custody” under federal authority “in violation of the Constitution or laws or treaties
26 of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge
27 only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067
28 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland*

1 *Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus
2 historically “provide[s] a means of contesting the lawfulness of restraint and securing
3 release.”). The Ninth Circuit squarely explained how to decide whether a claim sounds
4 in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to
5 conclude the relevant question is whether, based on the allegations in the petition,
6 release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072
7 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)
8 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead
9 to immediate or speedier release.”); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC,
10 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not
11 arise under § 2241 because they were not arguing they were unlawfully in custody and
12 receiving the requested relief would not entitle them to release); *Giron Rodas v. Lyons*,
13 No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in
14 *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it
15 cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting
16 *Pinson*, 69 F.4th at 1065).

17 Moreover, the Supreme Court has held that “[h]abeas Corpus Rule 2(c) is more
18 demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition
19 must ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts
20 supporting each ground.’” *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules
21 Governing Section 2254 Cases in the United States District Court (“Federal Habeas
22 Rules”)); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations
23 which are not supported by a statement of specific facts do not warrant habeas relief.”).
24 As stated by the Advisory Committee’s Note on Habeas Corpus Rule 4, 28 U.S.C., p.
25 471, “notice pleading is not sufficient, for the petition is expected to state facts that point
26 to a real possibility of constitutional error.”) (internal quotation marks omitted).

27 Here, Petitioner’s habeas petition fails to supply sufficient information for the
28 Court to adjudicate his claims. As such, the Court should deny the petition. *See Alonso*

1 *Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3,
2 2025) ~~(dismissing without prejudice habeas petition that failed to allege sufficient~~
3 ~~factual information).~~

4 **B. 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 *v. United States*, No. CV-10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal.
15 Aug. 8, 2018); 8 U.S.C. § 1252(g).

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

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

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

27 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
28 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*

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

15 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
16 § 1252.¹ *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 WL 2617973
17 (D. Minn. Sept. 9, 2025).

18 **C. Petitioner is Lawfully Detained**

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

22 _____
23 ¹ On an alternative basis, the Court should ensure Petitioner properly exhausts
24 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust
25 available judicial and administrative remedies before seeking relief under § 2241.”
26 *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does
27 not exhaust administrative remedies, a district court ordinarily should either dismiss the
28 petition without prejudice or stay the proceedings until the petitioner has exhausted
remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160
(9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014)
(issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080
(9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s
administrative proceedings before the BIA).

1 § 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). As recognized by another
9 district court in this Circuit, “the [Supreme] Court’s introductory language is quite clear:
10 “[A]n alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has
11 not been admitted,’ is treated as ‘an applicant for admission.’” *Alonzo v. Noem*, 2025
12 WL 3208284, at *4 (quoting *Jennings*, 583 U.S. at 287). Here, Petitioner is an “alien
13 present in the United States who has not been admitted.” Thus, as found by the district
14 courts in *Chavez v. Noem*, *Altamirano Ramos v. Lyons*, and *Valencia v. Chestnut*, and
15 as mandated by the plain language of the statute, Petitioner is an “applicant for
16 admission” and subject to the mandatory detention provisions of § 1225(b)(2).

17 When the plain text of a statute is clear, “that meaning is controlling” and courts
18 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
19 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
20 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
21 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and
22 Immigrant Responsibility Act of 1996 (IIRIRA) to correct “an anomaly whereby
23 immigrants who were attempting to lawfully enter the United States were in a worse
24 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d
25 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-*
26 *Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-
27 34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain
28 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have

1 entered the United States without inspection gain equities and privileges in immigration
2 proceedings that are not available to aliens who present themselves for inspection at a
3 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

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

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

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

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

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

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

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

1 Because Petitioner is properly detained under § 1225, Petitioner cannot show
2 entitlement to relief. Respondents acknowledge that courts in this district have recently
3 rejected similar arguments in other similar habeas matters. “But “[w]hat governs the
4 case is the text of the statute, not what other district courts have concluded.” *Valencia*,
5 2025 WL 3205133 at *6 (quoting *Mejia Olalde*, 2025 WL 3131942, at *2). Indeed,
6 “[u]nder the plain terms of Section 1225(a)(1), [petitioner] is ‘deemed’ an applicant for
7 admission[,]” and “[o]f all the statutory terms at issue, this is perhaps the most
8 straightforward.” *Rojas v. Olson*, 2025 WL 3033967 at *8.

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

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1 IV. CONCLUSION

2 For the foregoing reasons, Respondents respectfully request that the Court
3 dismiss this action.

4 DATED: December 11, 2025

Respectfully submitted,

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