ADAM GORDON
United States Attorney
JULIET M. KEENE
Assistant United States Attorney
NM SBN 126365
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-6768
Email: Juliet.Keene@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AIGUL KAZYBAYEVA
Petitioner,

v.

WARDEN OF OTAY MESA DETENTION CENTER,
Respondents.

Case No.: 26-CV-421-GPC

RETURN TO PETITION

Judge: Gonzalo P. Curiel
Date: February 6, 2026
Time: 1:30 p.m.
Courtroom: 12A

I. Factual Background

This pro se Petitioner has filed a habeas petition seeking a bond hearing or release from detention under the Due Process Clause of the Fifth Amendment, based on the alleged revocation of her parole without notice. ECF No. 1 at 6. Petitioner is a native and citizen of Kazakhstan and was apprehended upon entry in Arizona, but released on parole. *See* Ex. 1, I-213. On September 7, 2022, the Department of Homeland Security revoked her parole, but then exercised its discretion to dismiss removal proceedings. *Id.* Petitioner was recently detained while attempting to enter Camp Pendleton and DHS issued a new Notice to Appear (NTA) and removal proceedings are pending. *See* Ex. 2, NTA. An immigration judge denied Petitioner bond based on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). *See* Petition at Ex. A, IJ Bond Order.

II. Argument

Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and has been ordered inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i), as an alien present in the United States who is not in possession of a valid entry document. Service of a Notice to Appear constitutes written notice of termination of parole. *See* 8 CFR § 212.5(e)(2)(i). Petitioner's parole was formally revoked in 2022 although removal proceedings were dismissed. At the time she was detained, she did not have any parole status. Petitioner's claims for alleged statutory and constitutional violations fail because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.

Based on the plain language of the statue, Petitioner's detention is governed by § 1225. Section 1225(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]'" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) "expressly defines that '[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this Act *an applicant for admission*.'" *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an "alien present in the United States who has not been admitted." Thus, as found by the district court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner is an "applicant for admission" and subject to the mandatory detention provisions of § 1225(b)(2).

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to correct "an anomaly whereby

immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

"The entry fiction doctrine flows from the principle that the 'power to admit or exclude aliens is a sovereign prerogative,' and 'the Constitution gives the political department of the government plenary authority to decide which aliens to admit.'" *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872, at *7 (C.D. Cal. Nov. 12, 2025) (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quotations omitted)). Such plenary power includes the "power to set procedures to be followed in determining whether an alien should be admitted." *Thuraissigiam*, 591 U.S. at 139. "The entry fiction doctrine protects that sovereign prerogative, which 'would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil.'" *Altamirano Ramos*, 2025 WL 3199872, at *7 (quoting *Thuraissigiam*, 591 U.S. at 139). Within this context, the Supreme Court has explained, "[w]hen an alien arrives at a port of entry—for example, an internation airport—the alien is on U.S. soil, but the alien is not considered to have entered the country." *Thuraissigiam*, 591 U.S. at 139. Such is true even in situations where an alien is "paroled elsewhere in the country *for years* pending removal." *Id.* (emphasis added). The Supreme Court has recognized that those individuals are treated "as if stopped at the border." *Id.* "The same must be true" of an "applicant for admission" who enters into the United States unlawfully. *Id.* at 140. If Congress did not want § 1225(b)(2)(A) to apply to "applicants for admission," then it would not have included the phrase "applicants for admission" in the subsection.

See 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

Finally, the phrase "alien seeking admission" does not limit the scope of § 1225(b)(2)(A). The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (emphasis in original). Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those 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). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). Further, § 1225(a)(5) provides that "[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States." The reasonable import of this particular phrasing is that one who is an applicant for admission is considered to be "seeking admission" under the statute. Because Petitioner is properly detained under § 1225, Petitioner cannot show entitlement to relief.

To the extent the Court finds this Petitioner subject to detention authority under 8 U.S.C. § 1226(a), Respondents' position is that the proper remedy would be directing a bond hearing under § 1226(a), to be held within fourteen (14) business days. *See* 8 U.S.C. § 1226(e) ("No court may set aside any action or decision by the Attorney

General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.").

III. CONCLUSION

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

DATED: January 28, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/Juliet M. Keene
JULIET M. KEENE
Assistant United States Attorney
Attorneys for Respondents