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

12 MELANY NAVARRO SANCHEZ,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE; et al.,

16 Respondents.  
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Case No.: 25-cv-2396-JES-MMP

**RESPONDENTS' RETURN TO  
HABEAS PETITION**

## I. Introduction

Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's habeas petition seeks<sup>1</sup> release or a bond hearing. Through multiple provisions of 8 U.S.C. § 1252, Congress has stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including the consequent detention pending removal proceedings. Moreover, Petitioner's detention is mandated by statute. The Court should deny and dismiss the petition.

## II. Factual Background<sup>2</sup>

Petitioner is a citizen and national of Nicaragua. On December 12, 2024, she arrived at the San Ysidro Port of Entry as a CBP-One appointment and applied for admission to the United States. At the time of her arrival, she was not in possession of a valid entry document. She was determined to be an arriving alien applying for admission and inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. She was then placed in removal proceedings under 8 U.S.C. § 1229a (240 proceedings) and issued a Notice to Appear (NTA).

Following her initial encounter, Petitioner was released from DHS custody on parole. On July 31, 2025, a Form I-200, Warrant for Arrest, was issued for Petitioner's arrest. On July 31, 2025, she was apprehended by San Diego ICE/ERO. Petitioner is currently detained at the Otay Mesa Detention Center and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

## IV. Argument

### A. Petitioner's Claims and Requested Relief are Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over her claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770,

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<sup>1</sup> To the extent Petitioner also seeks an order enjoining her relocation, ICE has agreed that Petitioner will not be moved out of the Southern District of California during the pendency of this matter.

<sup>2</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a  
2 threshold matter, Petitioner’s claims are jurisdictionally barred under 8 U.S.C.  
3 § 1252(g) and 8 U.S.C. § 1252(b)(9).

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

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

1 Other courts have held, “[f]or the purposes of § 1252, the Attorney General  
2 commences proceedings against an alien when the alien is issued a Notice to Appear  
3 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF  
4 (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General  
5 may arrest the alien against whom proceedings are commenced and detain that  
6 individual until the conclusion of those proceedings.” *Id.* at \*3. “Thus, an alien’s  
7 detention throughout this process arises from the Attorney General’s decision to  
8 commence proceedings” and review of claims arising from such detention is barred  
9 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,  
10 2010 WL 11463156, at \*6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No.  
11 25-cv-02180-DMS-MMP, 2025 WL 2549431, at \*4 (S.D. Cal. Sept. 3, 2025).

12 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law  
13 and fact . . . arising from any action taken or proceeding brought to remove an alien  
14 from the United States under this subchapter shall be available only in judicial review  
15 of a final order under this section.” Further, judicial review of a final order is available  
16 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.  
17 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable  
18 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up  
19 to or consequent upon final orders of deportation,” including “non-final order[s],” into  
20 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v.*  
21 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathhtaking in  
22 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to  
23 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*  
24 issue—whether legal or factual—arising from *any* removal-related activity can be  
25 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at  
26 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal  
27 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose  
28 *all* judicial review of agency actions. Instead, the provisions channel judicial review

1 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at  
2 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-  
3 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

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

22 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has  
23 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*  
24 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of  
25 jurisdiction to review both direct and indirect challenges to removal orders, including  
26 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.  
27 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]  
28 in the first place or to seek removal[.]”). Here, Petitioner challenges the government’s

1 decision and action to detain her, which arises from DHS’s decision to commence  
2 removal proceedings, and is thus an “action taken . . . to remove [her] from the United  
3 States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*  
4 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did  
5 not bar review in that case because the petitioner did not challenge “his initial  
6 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at \*3  
7 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold  
8 detention decision, which flows from the government’s decision to “commence  
9 proceedings”). *But see Vasquez Garcia*, No. 25-cv-02180-DMS-MMP, 2025 WL  
10 2549431, at \*3-4. As such, the Court lacks jurisdiction over this action. The reasoning  
11 in *Jennings* outlines why Petitioners’ claims are unreviewable here.

12 While holding that it was unnecessary to comprehensively address the scope of  
13 § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of  
14 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at  
15 293–94. The Court found that “§ 1252(b)(9) [did] not present a jurisdictional bar” in  
16 situations where “respondents . . . [were] not challenging the decision to detain them in  
17 the first place.” *Id.* at 294–95. In this case, Petitioners do challenge the government’s  
18 decision to detain them in the first place. Though Petitioners attempt to frame their  
19 challenge as one relating to detention authority, rather than a challenge to DHS’s  
20 decision to detain them in the first instance, such creative framing does not evade the  
21 preclusive effect of § 1252(b)(9). Indeed, that Petitioners are challenging the basis upon  
22 which they are detained is enough to trigger § 1252(b)(9) because “detention *is* an  
23 ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J.,  
24 concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioners’ claims would be more  
25 appropriately presented before the appropriate federal court of appeals because they  
26 challenge the government’s decision or action to detain them, which must be raised  
27 before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

1 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
2 § 1252.

3 **B. Petitioner is Lawfully Detained**

4 While Petitioner was previously released from custody on parole, discretionary  
5 decisions under Section 1226 are not subject to judicial review. 8 U.S.C. § 1226(e) (“No  
6 court may set aside any action or decision by the Attorney General under this section  
7 regarding the detention or any alien or the revocation or denial of bond or parole.”);  
8 *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a  
9 constitutionally permissible part of that process.”). As Petitioner challenges the decision  
10 to remand her back into custody, her claims are barred by Section 1226(e). *See Jennings*  
11 *v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously explained, § 1226(e)  
12 precludes an alien from ‘challeng[ing] a “discretionary judgment” by the Attorney  
13 General or a “decision” that the Attorney General has made regarding his detention or  
14 release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory framework that  
15 permits [the alien’s] detention without bail.’”).

16 Section 1225 applies to “applicants for admission,” such as Petitioner, who are  
17 defined as “alien[s] present in the United States who [have] not been admitted” or “who  
18 arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into  
19 one of two categories, those covered by § 1225(b)(1) and those covered by  
20 § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—  
21 the provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall  
22 provision that applies to all applicants for admission not covered by § 1225(b)(1) (with  
23 specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at  
24 297; *see also Matter of Yajure Hurtado*, 29 I&N Dec. at 218-19 (for “those aliens who  
25 are seeking admission and who an immigration officer has determined are ‘not clearly  
26 and beyond a doubt entitled to be admitted’ . . . the INA explicitly requires that this  
27 third ‘catchall’ category of applicants for admission be mandatorily detained for the  
28 duration of their immigration proceedings”); *Matter of Q. Li*, 29 I&N Dec. at 69 (“[A]n

1 applicant for admission who is arrested and detained without a warrant while arriving  
2 in the United States, whether or not at a port of entry, and subsequently placed in  
3 removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b),  
4 and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8  
5 U.S.C. § 1226(a).”). Section 1225(b) therefore applies because Petitioner is present in  
6 the United States without being admitted. *See Matter of Lemus-Losa*, 25 I&N Dec. 734,  
7 743 (BIA 2012) (“many people who are not *actually* requesting permission to enter the  
8 United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’  
9 under the immigration laws”); *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (noting  
10 “no legal authority for the proposition that after some undefined period of time residing  
11 in the interior of the United States without lawful status, the INA provides that an  
12 applicant for admission is no longer ‘seeking admission,’ and has somehow converted  
13 to a status that renders him or her eligible for a bond hearing under section 236(a) of  
14 the INA”).

15 Statutory language “is known by the company it keeps.” *Marquez-Reyes v.*  
16 *Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579  
17 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read  
18 in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants  
19 for admission are both those individuals present without admission and those who arrive  
20 in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking  
21 admission” under § 1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221;  
22 *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which  
23 requires all aliens “who are applicants for admission or otherwise seeking admission”  
24 to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here  
25 “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it  
26 (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571  
27 U.S. 31, 45 (2013). If Congress did not want § 1225(b)(2)(A) to apply to “applicants  
28

1 for admission,” then it would not have included the phrase “applicants for admission”  
2 in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

3 The district court’s decision in *Florida v. United States* is instructive here. There,  
4 the court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission  
5 throughout removal proceedings, rejecting the assertion that DHS has discretion to  
6 choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660  
7 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory  
8 detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to  
9 include illegal border crossers would make little sense if DHS retained discretion to  
10 apply § 1226(a) and release illegal border crossers whenever the agency saw fit.” *Id.*  
11 The court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme  
12 Court explained that “wholesale failure” by the federal government motivated the 1996  
13 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on,  
14 *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General  
15 explained “section [1225] (under which detention is mandatory) and section [1226(a)]  
16 (under which detention is permissive) can be reconciled only if they apply to different  
17 classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

18 When the plain text of a statute is clear, “that meaning is controlling” and courts  
19 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
20 842, 848 (9th Cir. 2011). Indeed, “in interpreting a statute a court should always turn  
21 first to one, cardinal canon before all others.” *Conn. Nat’l Bank v. Germain*, 503 U.S.  
22 249, 253-54 (1992). The Supreme Court has “stated time and again that courts must  
23 presume that a legislature says in a statute what it means and means in a statute what it  
24 says there.” *Id.* (citations omitted). Thus, “[w]hen the words of a statute are  
25 unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.*  
26 (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

27 But to the extent legislative history is relevant here, nothing “refutes the plain  
28 language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th

1 Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who  
2 were attempting to lawfully enter the United States were in a worse position than  
3 persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th  
4 Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th  
5 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R.  
6 Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain aspects of the  
7 [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United  
8 States without inspection gain equities and privileges in immigration proceedings that  
9 are not available to aliens who present themselves for inspection at a port of entry.”  
10 *Matter of Yajure Hurtado*, 29 I&N Dec. at 234 (quoting H.R. Rep. 104-469, pt. 1, at  
11 225). Petitioner’s position requires an interpretation that would put aliens who “crossed  
12 the border unlawfully” in a better position than those “who present themselves for  
13 inspection at a port of entry.” *Id.* Such interpretation would allow aliens who presented  
14 at a port of entry to be subject to mandatory detention under § 1225, but those who  
15 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*  
16 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear  
17 that Congress intended to eliminate the prior statutory scheme that provided aliens who  
18 entered the United States without inspection more procedural and substantive rights that  
19 those who presented themselves to authorities for inspection.”).

20 As Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), her claims fail.

## 21 V. CONCLUSION

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

24 DATED: September 19, 2025

Respectfully submitted,

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