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8
 9 **UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

10 Jefferson Dominguez-Lara, et al.,

11 Petitioners,

12 v.

13 Kristi Noem, et al.,

14 Federal Respondents.

Case No. 2:25-cv-01553-JAD-BNW

**Federal Respondents' Opposition to
 Petitioners' Amended Motion for
 Preliminary Injunction**

15
 16 The Federal Respondents hereby submit this Opposition to Petitioners' Amended
 17 Motion for Preliminary Injunction (ECF No. 23).

18 **I. Introduction**

19 Petitioners ask this Court to override Congress's detention scheme and short-circuit
 20 ongoing appeals before the Board of Immigration Appeals (BIA). They are not entitled to
 21 that extraordinary relief. As "applicants for admission" who were never admitted,
 22 Petitioners are lawfully detained under 8 U.S.C. § 1225(b)(2), which mandates custody
 23 through the conclusion of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281,
 24 297–99 (2018). Because § 1225 controls, Petitioners are not eligible for bond and any
 25 interim release lies, if at all, in DHS's case-by-case parole, 8 U.S.C. § 1182(d)(5)(A).

26 Notably, although Petitioners allege that they are subject to detention under § 1226,
 27 they have failed to provide proof of the warrant for their arrest that § 1226 requires. *See*
 28 *Vargas Lopez*, No. 8:25CV526, 2025 WL 2780351, at *6 (D. Neb. Sept. 30, 2025) (finding

1 that the petitioner had failed to show he was subject to detention under § 1226 because he
2 had failed to provide proof of the warrant for his arrest). The burden of proof in a habeas
3 corpus case falls on Petitioners to show that they are entitled to the relief requested. *Id.*
4 Here, Petitioners have simply failed to meet their burden of showing that they are subject to
5 detention under § 1226.

6 Further, although this Court has recently grappled with the United States' reliance
7 on § 1225 such as in *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
8 2676082 (D. Nev. Sept. 17, 2025). This Court's prior decisions, however, did not have the
9 benefit of recent and subsequent authorities to aid the Court in its statutory analysis of §
10 1225(b)(2). For example, on September 30, 2025, the District of Nebraska published a
11 memorandum and order in *Vargas Lopez v. Trump*, No. 8:25-cv-00526-BCB-RCC, denying a
12 habeas petition that challenged the petitioner's continued immigration detention and
13 upholding the United States' authority to detain the petitioner under 8 U.S.C. § 1225(b)(2).
14 There, the court concluded that aliens who entered without inspection are "applicants for
15 admission" subject to mandatory detention throughout removal proceedings, with no
16 entitlement to bond or conditional release. Relying on *Jennings v. Rodriguez* and the BIA's
17 precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the court
18 found that § 1225(b)(2) governs over § 1226(a) when both could apply.

19 Similarly, just one week after this Court's order in *Maldonado*, the Southern District
20 of California, in *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025), inherently
21 adopted the reasoning set forth in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA
22 2025), and held that aliens who entered without inspection fall within § 1225(b)(2), leaving
23 immigration judges without jurisdiction to conduct bond hearings.

24 Because other courts have addressed the question differently, the statutory
25 interpretation issue remains live and in need of clarification. Although the BIA's
26 precedential decision in *Hurtado* is not binding on this Court, the decision is entitled to
27 consideration under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). *Hurtado* presents the most
28 thorough and reasoned analysis we have, and it captures the *specialized expertise* of the

1 agency that Congress charged with administering the INA. Under *Skidmore*, *Hurtado* should
 2 be accorded significant weight in construing the scope of § 1225(b)(2).

3 II. Background

4 A. Statutory and Regulatory Background

5 Congress has created a multi-layered statutory scheme for the civil detention of
 6 aliens pending removal proceedings and removal. *See, e.g.*, 8 U.S.C. §§ 1225, 1226, 1231.
 7 Whether an alien falls within this statutory scheme is determined by the time and
 8 circumstances of entry, as well as the stage of the removal process.

9 1. Detention under 8 U.S.C. § 1225

10 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
 11 present in the United States who [have] not been admitted” or “who arrive[] in the United
 12 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
 13 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287;
 14 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 218.

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

25 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
 26 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
 27 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
 28 removal proceeding “if the examining immigration officer determines that [the] alien

1 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
 2 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are
 3 present in the United States without admission are applicants for admission as defined
 4 under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for
 5 the duration of their removal proceedings.”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA
 6 2025) (“for aliens arriving in and seeking admission into the United States who are placed
 7 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
 8 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
 9 *Jennings*, 583 U.S. at 299). However, the Department of Homeland Security (DHS) has the
 10 sole discretionary authority to temporarily release on parole “any alien applying for
 11 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons
 12 or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806
 13 (2022).

14 **2. Detention under 8 U.S.C. § 1226(a)**

15 Section 1226 provides the general detention authority for aliens in removal
 16 proceedings. An alien “may be arrested and detained pending a decision on whether the
 17 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
 18 United States may detain an alien during his removal proceedings, release him on bond, or
 19 release him on conditional parole. By regulation, immigration officers can release aliens if
 20 the alien demonstrates that he “would not pose a danger to property or persons” and “is
 21 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
 22 request a custody redetermination (often called a bond hearing) by an IJ at any time before
 23 a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1),
 24 1236.1(d)(1), 1003.19.

25 At a custody redetermination, the IJ may continue detention or release the alien on
 26 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration
 27 judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*,
 28 24 I. & N. Dec. 37, 39–40 (BIA 2006). The IJ should consider the following factors during

1 a custody redetermination: (1) whether the alien has a fixed address in the United States;
 2 (2) the alien's length of residence in the United States; (3) the alien's family ties in the
 3 United States; (4) the alien's employment history; (5) the alien's record of appearance in
 4 court; (6) the alien's criminal record, including the extensiveness of criminal activity, time
 5 since such activity, and the seriousness of the offense; (7) the alien's history of immigration
 6 violations; (8) any attempts by the alien to flee prosecution or otherwise escape authorities;
 7 and (9) the alien's manner of entry to the United States. *Id.* at 40. But regardless of these
 8 factors, an alien "who presents a danger to persons or property should not be released
 9 during the pendency of removal proceedings." *Id.* at 38.

10 **3. Review at the Board of Immigration Appeals**

11 The BIA is an appellate body within the Executive Office for Immigration Review
 12 (EOIR) "charged with the review of those administrative adjudications under the [INA]
 13 that the Attorney General may by regulation assign to it." 8 C.F.R. § 1003.1(d)(1). By
 14 regulation, it has authority to review IJ custody determinations. 8 C.F.R. §§ 236.1; 1236.1.
 15 The BIA not only resolves particular disputes before it, but also "through precedent
 16 decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and
 17 the general public on the proper interpretation and administration of the [INA] and its
 18 implementing regulations." *Id.* § 1003.1(d)(1).

19 **B. Factual Background**

20 Petitioner Jefferson Dominguez-Lara is currently detained at the Nevada Southern
 21 Detention Center (NSDC). ECF No. 21, ¶ 19. On July 21, 2025, an immigration judge
 22 granted him a \$3,000 bond on July 21, 2025, which the Department of Homeland Security
 23 stayed when it filed a Notice of Intent to Appeal. *Id.*

24 Petitioner Jose Ramirez is also currently detained at the Nevada Southern
 25 Detention Center (NSDC). *Id.* ¶ 20. On July 16, 2025, an immigration judge granted him a
 26 \$3,000 bond, which the Department of Homeland Security immediately stayed when it
 27 filed a Notice of Intent to Appeal. *Id.*

28 **III. Standard of Review**

1 A preliminary injunction is “an extraordinary remedy that may only be awarded
 2 upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat’l Res. Def.*
 3 *Council, Inc.*, 555 U.S. 7, 22 (2008). It is “never awarded as of right.” *Id.* at 24. The moving
 4 party must establish: (1) a likelihood of success on the merits, (2) irreparable harm, (3) that
 5 the balance of equities tips in their favor, and (4) that an injunction serves the public
 6 interest. *Id.* at 20. When the nonmovant is the United States, the last two factors “merge.”
 7 *Baird v. Bonta*, 81 F. 4th 1036, 1040 (9th Cir. 2023).

8 The Ninth Circuit employs a “sliding scale” approach to the four factors. *All. for*
 9 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v.*
 10 *McNair*, 537 F.3d 981, 987 (9th Cir. 2008). If the moving party raises “serious questions”
 11 going to the merits, the balance of hardships must “tip sharply” in his favor to secure a
 12 preliminary injunction. *Id.* Even under the sliding scale approach, the moving party must
 13 still show a likelihood of irreparable harm and that the injunction is in the public interest.
 14 *Id.* at 1125.

15 IV. Argument

16 The current operative mechanism of Petitioners’ detention is an automatic stay of
 17 release on bond for a maximum of 90 days under 8 C.F.R. § 1003.19(i)(2), but this
 18 confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention
 19 throughout their entire removal proceedings. Petitioners fall within the ambit of Section
 20 1225(b)(2)(A)’s mandatory detention requirement. Petitioners are “applicant[s] for
 21 admission” to the United States. An “applicant for admission” is an alien present in the
 22 United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Congress’s broad language
 23 here is unequivocally intentional—an undocumented alien is to be “deemed for purposes of
 24 this chapter an applicant for admission.” *Id.* Regardless of Petitioners’ characterization that
 25 “an applicant for admission” should only include “recent arrivals” to the country, they are
 26 “deemed” applicants for admission based on their undocumented status, which has not been
 27 disputed. *See* ECF No. 21, ¶¶ 19-20, 30. And because Petitioners have not demonstrated to
 28 an examining immigration officer that they are “clearly and beyond a doubt entitled to be

admitted,” their detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, Petitioners are properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

A. Petitioners have failed to demonstrate that they are entitled to a preliminary injunction.

Petitioners’ motion should be denied because they have not established that they are entitled to a preliminary injunction relief. To prevail on a motion for a preliminary injunction, a plaintiff or petitioner must “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs or petitioners must demonstrate a “substantial case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When “a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief — balancing of the harm to the opposing party and the public interest — merge when the United States is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. Of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief “must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party’s favor.”) (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

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1 **1. Petitioners Are Not Likely to Succeed on the Merits.**

2 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740.
 3 Petitioners cannot establish that they are likely to succeed on the underlying merits because
 4 they are lawfully subject to mandatory detention under 8 U.S.C. § 1225 and Petitioners’
 5 temporary detention does not violate due process.

6 **i. Section 1225 governs Petitioners’ detention**

7 Petitioners’ temporary detention pursuant to the automatic stay of 8 C.F.R. §
 8 1003.19(i)(2) is reinforced by Congress’s command to detain Petitioners throughout their
 9 removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Moreover, this temporary detention
 10 does not violate Due Process.

11 The current operative mechanism of Petitioners’ detention is an automatic stay of
 12 release on bond for a maximum of 90 days under 8 C.F.R. § 1003.19(i)(2), but this
 13 confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention
 14 throughout the entire removal proceedings.

15 Pursuant to 8 U.S.C. § 1225(b)(2)(A), “in the case of an alien who is an applicant for
 16 admission, if the examining immigration officer determines that an alien seeking admission
 17 is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a
 18 proceeding under section 1229a [removal proceedings].” 8 U.S.C. § 1225(b)(2)(A). The
 19 Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and
 20 that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at
 21 287 (“Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.”).

22 Petitioners fall squarely within the ambit of Section 1225(b)(2)(A)’s mandatory
 23 detention requirement as Petitioners are “applicant[s] for admission” to the United States.
 24 An “applicant for admission” is an alien present in the United States who has not been
 25 admitted. 8 U.S.C. § 1225(a)(1). Congress’s broad language here is unequivocally
 26 intentional—an undocumented alien is to be “deemed for purposes of this chapter an
 27 applicant for admission.” *Id.* Petitioners are “deemed” applicants for admission based on
 28 their failure to seek lawful admission to the United States before an immigration officer,

1 which is undisputed. *See generally* ECF Nos. 21, 23. And because Petitioners have not
2 demonstrated to an examining immigration officer that they are “clearly and beyond a
3 doubt entitled to be admitted,” Petitioners’ detention is mandatory. 8 U.S.C. §
4 1225(b)(2)(A). Thus, the Petitioners are properly detained pursuant to 8 U.S.C. §
5 1225(b)(2)(A), which mandates that they “shall be” detained.

6 The Supreme Court has confirmed an alien present in the country but never admitted
7 is deemed “an applicant for admission” and that “detention must continue” “until removal
8 proceedings have concluded” based on the “plain meaning” of 8 U.S.C. § 1225. *Jennings*,
9 583 U.S. at 289 & 299. At issue in *Jennings* was the statutory interpretation. The Supreme
10 Court reversed the Ninth Circuit Court of Appeal’s imposition of a six-month detention
11 time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the
12 statute and reversed on these grounds, remanding the constitutional Due Process claims for
13 initial consideration before the lower court. *Id.* But under the words of the statute, as
14 explained by the Supreme Court, 8 U.S.C. § 1225 includes aliens like the Petitioners who
15 are present but have not been admitted and they shall be detained pending their removal
16 proceedings.

17 Specifically, the Supreme Court declared, “an alien who ‘arrives in the United
18 States,’ or ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant
19 for admission.’” *Id.* at 287 (emphasis on “or” added). In doing so, the Court explained both
20 aliens captured at the border and those illegally residing within the United States would fall
21 under § 1225. This would include Petitioners as aliens who are present in the country
22 without being admitted.

23 And now, the Board of Immigration Appeals (BIA) has confirmed the application of
24 § 1225 in a published formal decision: “Based on the plain language of section 235(b)(2)(A)
25 of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration
26 Judges lack authority to hear bond requests or to grant bond to aliens who are present in the
27 United States without admission.” *Hurtado*, 29 I&N Dec. at 216. Indeed, §1225 applies to
28 aliens who are present in the country *even for years* and who have not been admitted. *See*

1 *Hurtado*, 29 I&N Dec. at 226 (“the statutory text of the INA . . . is instead clear and explicit
2 in requiring mandatory detention of all aliens who are applicants for admission, without
3 regard to how many years the alien has been residing in the United States without lawful
4 status.” (citing 8 U.S.C. §1225)).

5 In *Hurtado*, the BIA affirmed the decision of the immigration judge finding the
6 Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was
7 present in the United States for almost three years but was never admitted shall be detained
8 under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an
9 alien who unlawfully entered the United States in 2022 and was granted temporary
10 protected status in 2024. *Id.* at 216-17. However, that status was revoked in 2025, and the
11 alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. It is
12 clear from the decision, the alien was initially served with a Notice of Custody
13 Determination, informing him of his detention under 8 U.S.C. § 1226 and his ability to
14 request bond, like the Petitioners were in this case. *Id.* at 226. However, when the alien
15 sought a redetermination of his custody status, the immigration judge held the Court did not
16 have jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

17 In affirming the decision of the immigration judge who determined he lacked
18 jurisdiction, the BIA found § 1225 clear and unambiguous as explained above. Thus,
19 because the alien was present in the United States (regardless of how long) and because he
20 was never admitted, he shall be detained during his removal proceedings. *See id.* at 228. In
21 doing so, the BIA rejected the same arguments raised by Petitioners and by other similar
22 petitioners in this District. For example, the BIA rejected the “legal conundrum” postulated
23 by the alien that while he may be an applicant for admission under the statute, he is
24 somehow not actually “seeking admission.” *Id.* at 221. The BIA explained that such a leap
25 failed to make sense and violated the plain meaning of the statute. *See id.*

26 Next, the BIA rejected the alien’s argument that the mandatory detention scheme
27 under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act
28 superfluous. *Id.* The BIA explained, “nothing in the statutory text of section 236(c),

1 including the text of the amendments made by the Laken Riley Act, purports to alter or
 2 undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
 3 requiring that aliens who fall within the definition of the statute ‘shall be detained for
 4 [removal proceedings].’” *Id.* at 222. The BIA explained further that any redundancy
 5 between the two statutes does not give license to “rewrite or eviscerate” one of the statutes.
 6 *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

7 Also, the BIA reasoned that it matters not that the alien was initially served with a
 8 warrant listing 8 U.S.C. § 1226 and informing him of his ability to seek bond—an
 9 Immigration Court cannot bestow jurisdiction upon itself with that initial paperwork when
 10 said jurisdiction has been specifically revoked by Congress in § 1225. *See id.* at 226-27
 11 (explaining “the mere issuance of an arrest warrant does not endow an Immigration Judge
 12 with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8
 13 U.S.C. § 1225(b)(2)(A).”) The BIA further pointed out, “Our acknowledgement that aliens
 14 detained under section 236(a) may be eligible for discretionary release on bond does not
 15 mean that *all* aliens detained while in the United States with a warrant of arrest are detained
 16 under section 236(a) and entitled to a bond hearing before the Immigration Judge,
 17 regardless of whether they are applicants for admission under section 235(b)(2)(A) of the
 18 INA, 8 U.S.C. § 1225(b)(2)(A).” *Id.* at 227 (quotations omitted). Thus, the BIA rejected this
 19 and every argument raised by the alien to find § 1225 applied to him despite residing in the
 20 country for years. *Id.*

21 The BIA mandate is clear: “under a plain language reading of section 235(b)(2)(A) of
 22 the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests
 23 or to grant bond to aliens, like the respondent, who are present in the United States without
 24 admission.” *Id.* at 225. Indeed, this ruling emphasizes that § 1225 applies to aliens like the
 25 Petitioners who are also present in the United States but has not been admitted.

26 The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted
 27 by a three-appellate judge panel. *See id. generally.* It is binding on all immigration judges in
 28 the United States. 8 C.F.R. § 1003.1(g)(1) (“[D]ecisions of the Board and decisions of the

1 Attorney General are binding on all officers and employees of DHS or immigration judges
2 in the administration of the immigration laws of the United States.”). And because the
3 decision was published, a majority of the entire Board must have voted to publish it, which
4 establishes the decision “to serve as precedent[] in all proceedings involving the same issue
5 or issues.” *See* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in immigration
6 court today. *See* also 8 C.F.R. § 1003.1(d)(1) (explaining “the Board, through precedent
7 decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and
8 the general public on the proper interpretation and administration of the Act and its
9 implementing regulations.”). And in the Board’s own words, *Hurtado* is a “precedential
10 opinion.” *Id.* at 216.

11 As such, immigrant judges are holding § 1225 applies to aliens who are present but
12 not admitted and therefore immigration judges have denied bond for lack of jurisdiction.
13 But in some prior cases where an immigration judge erred in releasing a qualifying alien on
14 bond, like Petitioners, who are subject to mandatory detention, DHS’s invocation of the
15 stay of release pending appeal in 8 C.F.R. § 1003.19(i)(2) ensured DHS’s opportunity to
16 vindicate Congress’s mandatory detention scheme.

17 The law is now clear in immigration court, and although Petitioners have failed to
18 produce any evidence regarding the status of their BIA appeals, the Federal Respondents
19 reasonably anticipate the BIA, upon reaching their appeal, that it will apply the broad
20 holding in *Hurtado*, and reverse the immigration judges’ release of the Petitioners on bond.

21 Because Petitioners shall be detained during the removal proceedings and these
22 proceedings are uncontrovertibly ongoing, their temporary detention is lawful. The United
23 States is aware of prior rulings in this District and others rejecting this argument (*see e.g.*,
24 *Herrera-Torralba v. Knight*, 2:25-cv-01366-RFB-DJA (D. Nev. Sep 05, 2025); *Maldonado-*
25 *Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep 17, 2025)), but the United States
26 respectfully maintains §1225 straightforwardly applies to Petitioners, especially in light of
27 *Jennings*. *See Jennings*, 583 U.S. at 287 (explaining “an alien who “arrives in the United
28

1 States,” or “is present” in this country but “has not been admitted,” is treated as “an
2 applicant for admission.” § 1225(a)(1)).

3 For the foregoing reasons, and because Petitioners are properly detained under §
4 1225, they cannot show entitlement to relief and likelihood to succeed on the merits.

5 **a. The *Vargas Lopez v. Trump* Recent Decision Is Highly**
6 **Instructive and Supports Petitioners’ Detention Under 8**
7 **U.S.C. § 1225**

8 The United States District Court for the District of Nebraska’s decision denying the
9 habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*,
10 the petitioner, an undocumented alien who had been residing in the United States since
11 2013, sought immediate release from detention. *Vargas Lopez*, No. 8:25CV526, 2025 WL
12 2780351, at *1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez had
13 received a bond hearing, and the immigration judge ordered that he be released from
14 custody under bond of \$10,000. *Id.* at *3. DHS however appealed the bond determination,
15 which automatically stayed Vargas Lopez’s release on bond. *Id.* Vargas Lopez then filed a
16 petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his
17 due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was
18 unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

19 First, the court denied the petition because Vargas Lopez failed to carry his burden of
20 demonstrating by a preponderance of the evidence that his detention was unlawful. *Id.* at *6.
21 Vargas Lopez argued that he fell under § 1226, not 1225, but his petition and filings failed to
22 provide proof of the “warrant for Vargas Lopez’s arrest” that § 1226 requires. Here,
23 Petitioners have likewise failed to meet this basic requirement to show that they are subject
24 to detention under § 1226; the instant record is completely devoid of evidence regarding a
25 warrant for their arrest, and thus Petitioners’ cannot prevail on their preliminary injunction.

26 Second, the *Vargas Lopez* court concluded that the petitioner was subject to detention
27 without possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme
28 Court’s decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two
distinct groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court

1 then concluded that Vargas Lopez is an alien within the “catchall” scope of §
 2 1225(b)(2), subject to detention without possibility of release on bond through a proceeding
 3 on removal under § 1229a. *Id.* at *9. The court found that Vargas Lopez was an “applicant
 4 for admission” because his counsel admitted that Vargas Lopez “wishe[d] to stay in this
 5 country.” *Id.* That finding, according to the court, was consistent with the conclusions of
 6 the BIA in *Hurtado* and *Jennings*.

7 Pursuant to the language of the statute and the holding of *Jennings*, the court said that
 8 “just because Vargas Lopez illegally remained in this country *for years* does not mean that he
 9 is suddenly not an ‘applicant for admission’ under § 1225(b)(2).” *Id.* “Even if Vargas Lopez
 10 might have fallen within the scope of § 1226(a),” the court found “he also certainly fit
 11 within the language of § 1225(b)(2) as well.” *Id.* “The Court thus conclude[d] that the *plain*
 12 *language* of § 1225(b)(2) and the “all applicants for admission” language
 13 of *Jennings* permitted the DHS to detain Vargas Lopez under § 1225(b)(2).” *Id.*

14 **b. The *Chavez v. Noem* Recent Decision Is Also Instructive**

15 The United States District Court for the Southern District of California’s decision in
 16 *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24,
 17 2025), is also instructive. In *Chavez*, the court denied a motion for a temporary restraining
 18 order (“TRO”) filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2).
 19 *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been
 20 mandatorily detained and instead they should have received bond redetermination hearings
 21 under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to “enjoin[]
 22 Respondents from continuing to detain them unless [they received] an individualized bond
 23 hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO.” *Id.*

24 In denying the TRO, the *Chavez* court went no further than the plain language of §
 25 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly
 26 found that because petitioners did not contest that they are “alien[s] present in the United
 27 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for
 28 admission” and thus subject to the mandatory detention provisions of “applicants for

admission” under § 1225(b)(2). *Id.*; see also *Hurtado*, 29 I. & N. Dec. at 221–222 (finding that an alien who entered without inspection is an “applicant for admission” and his argument that he cannot be considered as “seeking admission” is unsupported by the plain language of the INA, and further stating, “[i]f he is not admitted to the United States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

c. The BIA’s Decision in *Hurtado* Is Entitled to Significant Weight in Construing the Scope of 8 U.S.C. § 1225(b)(2)

While *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), eliminated Chevron deference, *Hurtado* nonetheless should be afforded substantial weight under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed to an agency interpretation depends on “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Id.* at 140. *Hurtado* scores highly on these factors.

First, the BIA applied its specialized expertise in immigration detention law, the very subject Congress charged it with administering. Its decision addressed the interplay between §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of experience resolving custody questions. Second, the BIA’s reasoning is thorough and well supported. It carefully explained why noncitizens who entered without inspection remain “applicants for admission” under § 1225(a)(1), and why reclassifying them under § 1226(a) would create statutory issues and undermine congressional intent. Third, the BIA’s interpretation is consistent with Supreme Court precedent, including *Jennings*, which recognized that detention under § 1225(b) is mandatory. Finally, adopting *Hurtado* promotes uniformity and coherence in federal immigration law by preventing detention outcomes from turning on the happenstance of when and where a noncitizen is apprehended.

d. The Legislative History Bolsters Petitioners’ Detention

Petitioners’ reliance on the Laken Riley Act and the legislative history is misplaced. 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 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 at 928; *Chavez*, 2025 WL 2730228, at *4. 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.” *Torres*, 976 F.3d at 928 (quoting H.R. Rep. 104-469, pt. 1, at 225); *Chavez*, 2025 WL 2730228, at *4 (The addition of § 1225(a)(1) “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an ‘applicant for admission.’ ”).

As the pertinent House Judiciary Committee Report explains: “[Before the IIRIRA], aliens who [had] entered without inspection [were] deportable under section 241(a)(1)(B).” H.R. Rep. No. 104-469, pt. 1, at 225 (1996). But “[u]nder the new ‘admission’ doctrine, such aliens *will not be considered to have been admitted*, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, *based on their presence without admission*.” *Id.* Thus, applicants for admission remain such unless an immigration officer determines that they are “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *Hurtado*, 29 I. & N. Dec. at 228. Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens “shall be detained for a proceeding under section 240.” 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 288.

The Court should thus reject Petitioners’ proposed statutory interpretation and request to be released because Petitioners’ requests would make aliens who presented at a port of entry subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

e. **Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices**

Any argument that prior or longstanding agency practice supports applying § 1226(a) to Petitioners is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[] our own mistakes” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

For example, here Petitioners point to 62 Fed. Reg. at 10323, where the agency provided no analysis of its reasoning. In contrast, the BIA’s recent precedent decision in *Hurtado* includes thorough reasoning. *Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory text and legislative history. *Id.* at 223–225. It highlighted congressional intent that aliens present without inspection be considered “seeking admission.” *Id.* at 224. The BIA concluded that rewarding aliens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an “incongruous result” unsupported by the plain language “or any reasonable interpretation of the INA.” *Id.* at 228.

To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§

1 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
 2 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does
 3 not support Petitioners’ position that the plain language mandates detention under
 4 § 1226(a).

5 **ii. Petitioners’ Temporary Detention Does Not Offend Due Process**

6 As mentioned above, Congress broadly crafted “applicants for admission” to include
 7 undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. §
 8 1225(a)(1). And Congress directed aliens like the Petitioners to be detained during their
 9 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most
 10 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
 11 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to
 12 detain undocumented aliens during removal proceedings, as they—by definition—have
 13 crossed borders and traveled in violation of United States law. As explained above, that is
 14 the prerogative of the legislative branch serving the interest of the government and the
 15 United States.

16 The Supreme Court has recognized this profound interest. *See Shaughnessy v. United*
 17 *States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or
 18 exclude aliens as a fundamental sovereign attribute exercised by the Government’s political
 19 departments largely immune from judicial control.”). And with this power to remove aliens,
 20 the Supreme Court has recognized the United States’ longtime Constitutional ability to
 21 detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952)
 22 (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*,
 23 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused
 24 could not be held in custody pending the inquiry into their true character, and while
 25 arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, at 531
 26 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that
 27 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
 28 detain some classes of aliens during the course of certain immigration proceedings.

1 Detention during those proceedings gives immigration officials time to determine an alien's
2 status without running the risk of the alien's either absconding or engaging in criminal
3 activity before a final decision can be made.”).

4 In another immigration context (aliens already ordered removed awaiting their
5 removal), the Supreme Court has explained that detaining these aliens less than six months
6 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
7 presumptive constitutional limit has been subsequently distinguished as perhaps
8 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
9 explained Congress was justified in detaining aliens during the entire course of their removal
10 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
11 similar to undocumented aliens like Petitioners, Congress provided for the detention of
12 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
13 emphasized the constitutionality of the “definite termination point” of the detention, which
14 was the length of the removal proceedings. *Id.* at 512 (“In contrast, because the statutory
15 provision at issue in this case governs detention of deportable criminal aliens *pending their*
16 *removal proceedings*, the detention necessarily serves the purpose of preventing the aliens from
17 fleeing prior to or during such proceedings. Second, while the period of detention at issue in
18 *Zadvydas* was “indefinite” and “potentially permanent,” *id.*, at 690–691, 121 S.Ct. 2491, the
19 record shows that § 1226(c) detention not only has a definite termination point, but lasts, in
20 the majority of cases, for less than the 90 days the Court considered presumptively valid in
21 *Zadvydas*.”).¹ In light of Congress’s interest in dealing with illegal immigration by keeping
22 specified aliens in detention pending the removal period, the Supreme Court dispensed of
23 any Due Process concerns without engaging in the “*Mathews v. Eldridge* test” *See id. generally*.

24 Likewise, in the case at bar Petitioners’ temporary detention pending their removal
25 proceedings does not violate Due Process. Petitioners’ removal proceedings are on-going
26 and will soon reach a resolution. Further, DHS’s narrow appeal on the issue of release on
27

28 ¹ In 2018 the Court again highlighted the significance of a “definite termination point” for
detention of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 bond is before the BIA, and resolution one way or another is undoubtedly forthcoming.
2 Petitioners' ample available process in his current removal proceedings demonstrate no lack
3 of Procedural Due Process—nor any deprivation of liberty “sufficiently outrageous”
4 required to establish a Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S.
5 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as*
6 *corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to
7 detain him pending removal which is a “constitutionally permissible part of that process.”
8 *See Demore*, 538 U.S. at 531.

9 The temporary, automatic stay permits the United States an opportunity to appeal an
10 IJ bond decision to correct any errors by the Immigration Judge. *El-Dessouki v. Cangemi*, No.
11 CIV 063536 DSD/JSM, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006); *Altayar v.*
12 *Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016 U.S. Dist. LEXIS 175819, at *10–11 (D.
13 Ariz. Nov. 23, 2016). As explained in *Altayar*, purpose of the automatic stay is to “avoid the
14 necessity of having to decide whether to order a stay on extremely short notice with only the
15 most summary presentation of the issues.” Review of Custody Determinations, 71 FR
16 57873-01, 2006 WL 2811410; *Altayar*, 2016 U.S. Dist. LEXIS 175819 at *12-13. An
17 automatic stay of up to 90 days does not violate due process because it is narrowly tailored
18 to serve a compelling United States' interest. *Id.* In *Altayar*, the Court found there is no
19 procedural due process violation from § 1003.19(i)(2).

20 In this case, Petitioners who are present in the United States without admission or
21 parole, are an applicant for admission in INA § 240 removal proceedings and are therefore
22 detained pursuant to 8 U.S.C. § 1225. As discussed above, their detention is mandatory and
23 the IJ does not have jurisdiction to issue a bond. Because the IJ in this case conducted a
24 bond hearing and granted a bond *in error*, the automatic stay of 8 C.F.R. § 1003.19(i)(2) has
25 here served the very purpose for which it was created in the first place. As history has
26 revealed, subsequent to the immigration judges' decisions in error, the BIA issued its
27 precedential decision in *Hurtado*, essentially superseding the erroneous decisions and
28 showing that immigration judges lacked jurisdiction to grant Petitioners' bond. Had the

1 automatic stay not been in place, the error would have gone farther, and Petitioners would
2 have been mistakenly released from DHS custody.

3 The United States is aware of prior rulings in this District and others rejecting these
4 arguments, but the United States respectfully maintains Petitioners have not been deprived
5 of Due Process in light of the aforementioned precedent.

6 **2. Petitioners Have Failed to Show an Irreparable Harm.**

7 To prevail on their request for injunctive relief, Petitioners must demonstrate
8 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674
9 (9th Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d
10 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is
11 insufficient. *See Winter*, 555 U.S. at 22. “Issuing a preliminary injunction based only on a
12 possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization
13 of injunctive relief as an extraordinary remedy that may only be awarded upon a clear
14 showing that the plaintiff is entitled to such relief.” *Id.* Here, because Petitioners’ alleged
15 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor of”
16 Petitioners and his proposed class. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL
17 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

18 **3. Balance of Equities Does Not Tip in Petitioners’ Favor.**

19 It is well settled that the public interest in enforcement of the United States’
20 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-
21 58 (1976); *Blackie’s House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has
22 recognized that the public interest in enforcement of the immigration laws is significant.”)
23 (citing cases); *see also Nken*, 556 U.S. at 435 (“There is always a public interest in prompt
24 execution of removal orders: The continued presence of an alien lawfully deemed
25 removable undermines the streamlined removal proceedings IIRIRA established and
26 permits and prolongs a continuing violation of United States law.”) (internal quotation
27 omitted). The BIA also has an “institutional interest” to protect its “administrative agency
28 authority.” *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992), superseded by statute

as recognized in *Porter v. Nussle*, 534 U.S. 516 (2002). Indeed, “agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145.

Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above, Petitioners cannot succeed on the merits of his claims as his detention is lawful and the balancing of equities and the public interest weigh heavily against granting Petitioners equitable relief.

B. The Federal Respondents Reserve All Rights With Regards To Petitioners’ Request for Class-wide Relief.

The Federal Respondents reserve all rights to present any arguments related to the class-wide relief requested in Petitioners’ Amended Motion for Preliminary Injunction (ECF No. 23). As reflected in the Court’s Minute Order dated October 20, 2025 (ECF No. 27), the Court directed the Federal Respondents to respond, by the date of this filing, to Petitioners’ Amended Motion for Preliminary Injunction as it relates only to individual relief.

V. Conclusion

For the foregoing reasons, the Court should deny Petitioners’ Amended Motion for a Preliminary Injunction.

Respectfully submitted this 20th day of October 2025.

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