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9
10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 Ruben BENITEZ, et al.,

13 Petitioners,

14 v.

15 Kristi NOEM, Secretary, Department of
16 Homeland Security, et al.,

17 Respondents.

No. 5:25-cv-02190 RGK-AS

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONERS' *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Honorable R. Gary Klausner
United States District Judge

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**OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

Respondents hereby oppose Petitioners' *ex parte* application for temporary restraining order and order to show cause re: preliminary injunction ("Application") [Dkt. 5]. The government reiterates here the legal position it has taken in its opposition to the *ex parte* TRO application filed in the *Bautista* case, 5:25-cv-01873-SSS-BFM, which the government filed on July 24, 2025 as Docket no. 8.¹ The same legal issue at issue in *Bautista* has also been raised in the pending cases of *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS and *Jorge Arrazola-Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-01789-ODW-DFM.

I. INTRODUCTION

Petitioners, detainees in immigration custody, filed a petition for writ of habeas corpus ("Petition") asking the Court to release them, or provide them a bond hearing within 14 days. *See* Dkt. 1. Petitioners then filed their *ex parte* Application seeking essentially the same relief in the form of a Temporary Restraining Order requiring a bond hearing within 7 days. The Application and the Petition should be denied for two reasons.

First, numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to review the Petitioners' claims and preclude this Court from granting the relief that they seek. Congress has unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Congress further directed that any challenges arising from any removal-related activity—including detention pending removal proceedings—must be brought before the appropriate federal court of appeals, not a district court.

Second, assuming jurisdiction, Petitioners nonetheless fail to demonstrate they are entitled to injunctive relief. Petitioners cannot show a likelihood of success on the merits

¹ The District Court granted the *ex parte* TRO application in *Bautista* via order issued on July 28, 2025 [Dkt. 14]. Shortly thereafter, an amended complaint asserting putative class claims for similarly situated petitioners was filed in *Bautista* [Dkt. 15].

1 because they seek to circumvent the detention statute under which they are rightfully
2 detained to secure bond hearings that they are not entitled to. Petitioners fall precisely
3 within the statutory definition of aliens subject to mandatory detention without bond found
4 in § 1225(b)(2). Additionally, Petitioners are required to exhaust their administrative
5 remedies before petitioning this Court for the impermissible relief they seek here.
6 Petitioner has failed to do so, and their attempts to avail themselves of the exceptions to
7 the exhaustion requirement are unpersuasive.

8 For these reasons, and those set forth below, the Court should deny Petitioners'
9 request for relief and dismiss this action in its entirety.

10 **II. STATUTORY BACKGROUND**

11 **A. Detention under 8 U.S.C. § 1225**

12 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
13 present in the United States who [have] not been admitted” or “who arrive[] in the United
14 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
15 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
16 583 U.S. 281, 287 (2018).

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

27 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
28 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*

1 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
2 removal proceeding “if the examining immigration officer determines that [the] alien
3 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
4 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
5 in and seeking admission into the United States who are placed directly in full removal
6 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
7 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at
8 299). Still, the Department of Homeland Security (“DHS”) has the sole discretionary
9 authority to temporarily release on parole “any alien applying for admission to the United
10 States” on a “case-by-case basis for urgent humanitarian reasons or significant public
11 benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

12 **B. Detention under 8 U.S.C. § 1226(a)**

13 Section 1226 provides for arrest and detention “pending a decision on whether the
14 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
15 government may detain an alien during his removal proceedings, release him on bond, or
16 release him on conditional parole.² By regulation, immigration officers can release aliens
17 if the alien demonstrates that he “would not pose a danger to property or persons” and “is
18 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
19 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
20 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R.
21 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

22 At a custody redetermination, the IJ may continue detention or release the alien on
23 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
24 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
25

26 ² Being “conditionally paroled under the authority of § 1226(a)” is distinct from
27 being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-*
28 *Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because
release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible
for adjustment of status under § 1255(a)).

37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien “who presents a danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38.

C. Review at the Board of Immigration Appeals (“BIA”)

The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

III. ARGUMENT

A. The Court Lacks Jurisdiction to Entertain Petitioners’ Action under 8 U.S.C. § 1252.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioners’ claims. Accordingly, Petitioners are unable to show a likelihood of success on the merits.

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under this chapter.”³

³ Much of the Attorney General’s authority has been transferred to the Secretary of Homeland Security and many references to the Attorney General are understood to refer to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

1 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as
2 provided in this section and notwithstanding any other provision of law (statutory or
3 nonstatutory), including section 2241 of title 28, United States Code, or any other habeas
4 corpus provision, and sections 1361 and 1651 of such title.”⁴ Except as provided in § 1252,
5 courts “cannot entertain challenges to the enumerated executive branch decisions or
6 actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

7 Section 1252(g) also bars district courts from hearing challenges to the *method* by
8 which the Secretary of Homeland Security chooses to commence removal proceedings,
9 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d
10 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning
11 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision
12 to take [plaintiff] into custody and to detain him during removal proceedings”).

13 Petitioners’ claims stem from their detention during removal proceedings. That
14 detention arises from the decision to commence such proceedings against them. *See, e.g.,*
15 *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4
16 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the
17 Immigration Judge arose from this decision to commence proceedings[.]”); *Wang v.*
18 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
19 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8
20 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to
21 execute removal order).

22 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
23 commences proceedings against an alien when the alien is issued a Notice to Appear
24 before an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF
25

26 ⁴ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.
27 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),
28 including section 2241 of title 28, United States Code, or any other habeas corpus
provision, and sections 1361 and 1651 of such title” after “notwithstanding any other
provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

(JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from the Attorney General’s decision to commence proceedings” and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial review of the Bond Denial Claims is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.

Second, under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d

1 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
2 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
3 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269,
4 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
5 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
6 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
7 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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

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

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

10 While holding that it was unnecessary to comprehensively address the scope of
11 § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of
12 challenges that may fall within the scope of § 1252(b)(9). See *Jennings*, 583 U.S. at 293–
13 94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations
14 where “respondents . . . [were] not challenging the decision to detain them in the first
15 place.” *Id.* at 294–95. In this case, Petitioners *do* challenge the government’s decision to
16 detain them in the first place. Though Petitioners may attempt to frame their challenge as
17 one relating to detention authority, rather than a challenge to DHS’s decision to detain
18 them in the first instance, such creative framing does not evade the preclusive effect of §
19 1252(b)(9).

20 Indeed, the fact that Petitioners are challenging the basis upon which they are
21 detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to
22 remove’ an alien.” See *Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C.
23 § 1252(b)(9). The Court should dismiss the Bond Denial Claims for lack of jurisdiction
24 under § 1252(b)(9). If anything, Petitioners must present their claims before the
25 appropriate federal court of appeals because these claims challenge the government’s
26 decision or action to detain them, which must be raised before a court of appeals, not this
27 Court. See 8 U.S.C. § 1252(b)(9).

B. Even Assuming Jurisdiction, Petitioners Fail to Meet the High Bar for Injunctive Relief.

1. Petitioners are unable to show a likelihood of success on the merits.

a. Under the Plain Text of § 1225, Petitioners Must Be Detained Pending the Outcome of Their Removal Proceedings.

The Court should reject Petitioners' argument that § 1226(a) governs their detention instead of § 1225. When there is "an irreconcilable conflict in two legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). § 1226(a) "applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See 8 U.S.C. § 1225*. It applies only to "applicants for admission"; that is, as relevant here, aliens present in the United States who have not been admitted. *See id.*; *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioners fall within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

Under 8 U.S.C. § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the provision relevant here—is the "broader" of the two. *Id.* It "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also 8 U.S.C. § 1225(b)(2)*; *Matter of Q. Li*, 29 I & N. Dec. at 69 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). Section 1225(b) therefore applies because Petitioner is present in the United

1 States without being admitted.

2 The BIA has long recognized that “many people who are not *actually* requesting
3 permission to enter the United States in the ordinary sense are nevertheless deemed to be
4 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.
5 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*
6 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United*
7 *States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A)
8 must be read in the context of the definition of “applicant for admission” in § 1225(a)(1).
9 Applicants for admission are both those individuals present without admission and those
10 who arrive in the United States. See 8 U.S.C. § 1225(a)(1). Both are understood to be
11 “seeking admission” under § 1225(a)(1). See *Lemus-Losa*, 25 I. & N. Dec. at 743. Congress
12 made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission
13 or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. §
14 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is
15 synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).”
16 *United States v. Woods*, 571 U.S. 31, 45 (2013).

17 The court’s decision in *Florida v. United States* is instructive here. The district court
18 held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout
19 removal proceedings, rejecting the assertion that DHS has discretion to choose to detain
20 an applicant for admission under either section 1225(b) or 1226(a). *Florida v. United*
21 *States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, No. 23-11528,
22 2023 WL 5212561 (11th Cir. July 11, 2023). Such discretion “would render mandatory
23 detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to
24 include illegal border crossers would make little sense if DHS retained discretion to apply
25 § 1226(a) and release illegal border crossers whenever the agency saw fit.” *Id.* The court
26 pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court
27 explained that “wholesale failure” by the federal government motivated the 1996
28 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on, *Matter*

1 of *M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General explained
2 “section [1225] (under which detention is mandatory) and section [1226(a)] (under which
3 detention is permissive) can be reconciled only if they apply to different classes of aliens.”
4 *Florida*, 660 F. Supp. 3d at 1275.

5 b. *Congress did not intend to treat individuals who unlawfully*
6 *enter the country better than those who appear at a port of entry.*

7 When the plain text of a statute is clear, “that meaning is controlling” and courts
8 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
9 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
10 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
11 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby
12 immigrants who were attempting to lawfully enter the United States were in a worse
13 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d
14 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*,
15 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain aspects of the [then] current
16 ‘entry doctrine,’ under which illegal aliens who have entered the United States without
17 inspection gain equities and privileges in immigration proceedings that are not available
18 to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep.
19 104-469, pt. 1, at 225). The Court should reject Petitioners’ interpretation because it would
20 put aliens who “crossed the border unlawfully” in a better position than those “who present
21 themselves for inspection at a port of entry.” *Id.* Aliens who presented at port of entry
22 would be subject to mandatory detention under § 1225, but those who crossed illegally
23 would be eligible for a bond under § 1226(a).

24 Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in
25 statutory drafting are “common . . . sometimes in a congressional effort to be doubly sure.”
26 *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien “was
27 paroled into this country through a shocking abuse of that power.” 171 Cong. Rec. H278
28 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it out of concern

1 that the executive branch “ignore[d] its fundamental duty under the Constitution to defend
2 its citizens.” *Id.* at H269 (statement of Rep. Roy). One member even expressed frustration
3 that “every illegal alien is currently required to be detained by current law throughout the
4 pendency of their asylum claims.” *Id.* at H278 (statement of Rep. McClintock). The LRA
5 reflects a “congressional effort to be doubly sure” that such unlawful aliens are detained.
6 *Barton*, 590 U.S. at 239.

7 *c. Prior agency practices are not entitled to deference under Loper*
8 *Bright*.

9 The asserted longstanding agency practice carries little, if any, weight under *Loper*
10 *Bright*. See App. at 2. The weight given to agency interpretations “must always ‘depend
11 upon their thoroughness, the validity of their reasoning, the consistency with earlier and
12 later pronouncements, and all those factors which give them power to persuade.’” *Loper*
13 *Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift &*
14 *Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis
15 to support its reasoning. See 62 Fed. Reg. at 10323.

16 To be sure, “when the best reading of a statute is that it delegates discretionary
17 authority to an agency,” the Court must “independently interpret the statute and effectuate
18 the will of Congress.” *Loper Bright*, 603 U.S. at 395 (cleaned up). But read most naturally,
19 §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
20 proceedings have concluded. *Jennings*, 583 U.S. at 297. Petitioners thus cannot show a
21 likelihood of success on the merits.

22 2. Petitioners Failed to Exhaust Their Administrative Remedies before
23 the BIA.

24 Petitioners have not even appealed their underlying bond denial to the BIA. To
25 excuse this, they argue that such appeal to the BIA would be “futile.” But when an alien
26 fails to exhaust appellate review at the BIA, courts should “ordinarily” dismiss the habeas
27 petition without prejudice or stay proceedings until he exhausts his appeals. *Leonardo v.*
28 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Bypassing review at the BIA is

1 “improper.” *Id.* The Ninth Circuit identifies three reasons to require exhaustion before
2 entertaining a habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).
3 First, the agency’s “expertise” makes its “consideration necessary to generate a proper
4 record and reach a proper decision.” *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d
5 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages “the deliberate bypass
6 of the administrative scheme.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third,
7 “administrative review is likely to allow the agency to correct its own mistakes and to
8 preclude the need for judicial review.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each
9 reason applies here. *See Puga*, 488 F.3d at 815.

10 a. *Exhaustion is warranted because agency expertise is needed,*
11 *excusal will only encourage other detainees to bypass*
12 *administrative remedies, and appellate review at the BIA may*
13 *preclude the need for judicial intervention.*

14 Petitioners rely on an administrative agency’s “decades-old practice” to support a
15 claim that detention under § 1226(a) applies. Yet at the same time, they seek to bypass
16 administrative review. *See id.* Before addressing how an agency’s “longstanding practice”
17 affects the statutory analysis, the Court would likely benefit from the BIA’s expertise. *See*
18 *Puga*, 488 F.3d at 815. After all, “the BIA is the subject-matter expert in immigration bond
19 decisions.” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash.
20 Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the
21 interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-
22 RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond
23 to an immigration detainee was “a question well suited for agency expertise”); *Matter of*
24 *M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

25 Waiving exhaustion would also “encourage other detainees to bypass the BIA and
26 directly appeal their no-bond determinations from the IJ to federal district court.” *Aden*,
27 2019 WL 5802013, at *2. Individuals, like Petitioners, would have little incentive to seek
28

1 relief before the BIA if this Court permits review here. And green-lighting Petitioners’
2 skip-the-BIA-and-go-straight-to-federal-court strategy needlessly increases the burden on
3 district courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
4 *Constr. Co.*, [37 F.3d 1419, 1420](#) (9th Cir. 1994) (“Judicial economy is an important
5 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, [598 U.S. 411,](#)
6 [418](#) (2023) (noting “exhaustion promotes efficiency”). If the IJs erred as alleged, this
7 Court should allow the administrative process to correct itself. *See id.*

8 *b. Petitioners’ reasons to waive exhaustion would swallow the*
9 *rule.*

10 *First*, detention alone is not an irreparable injury. Discretion to waive exhaustion
11 “is not unfettered.” *Laing v. Ashcroft*, [370 F.3d 994, 998](#) (9th Cir. 2004). Petitioners bear
12 the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, [646](#)
13 [F.3d at 1161](#); *Aden*, [2019 WL 5802013](#), at *3. And detention alone is insufficient to excuse
14 exhaustion. *See, e.g., Delgado*, [2017 WL 4776340](#), at *2. Adopting such a rationale
15 “would essentially mandate the release of all detainees while their appeals were pending,
16 and thereby stand the exhaustion requirement on its head.” *Meneses v. Jennings*, No. 21-
17 CV-07193-JD, [2021 WL 4804293](#), at *5 (N.D. Cal. Oct. 14, 2021), *abrogated on other*
18 *grounds by Doe v. Garland*, [109 F.4th 1188](#) (9th Cir. 2024); *see also Bogle v. DuBois*, [236](#)
19 [F. Supp. 3d 820, 823](#) n. 6 (S.D.N.Y. 2017) (noting that “continued detention . . . is
20 insufficient to qualify as irreparable injury justifying non-exhaustion”) (quotation marks
21 omitted). “[C]ivil detention after the denial of a bond hearing [does not] constitute[]
22 irreparable harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No.
23 CV 20-0377JLR, [2021 WL 662659](#), at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom.*
24 *Diaz Reyes v. Mayorkas*, No. 21-35142, [2021 WL 3082403](#) (9th Cir. July 21, 2021); *see*
25 *also Aden*, [2019 WL 5802013](#), at *3 (Plaintiff “cites no authority for the position that
26 detention following a bond hearing constitutes irreparable harm sufficient to waive the
27 exhaustion requirement.”).

28 Further, Petitioners have not carried their burden to show “that prudential

1 exhaustion should be waived.” *Aden*, [2019 WL 5802013](#), at *3. They allege their detention
2 alone constitutes irreparable harm. But if Petitioners’ proffered standard for irreparable
3 harm is correct, then every single individual who alleges unlawful detention would
4 similarly meet the irreparable-harm-standard. *See, e.g., Delgado*, [2017 WL 4776340](#), at
5 *2. The exception would swallow the rule. *See id.* (“[b]ecause all immigration habeas
6 petitions could raise the same argument [that detention is irreparable injury], if it were
7 decisive, the prudential exhaustion requirement would always be waived—but it is not.”).

8 Petitioners’ argument also “begs the question of whether [they have] suffered a
9 constitutional deprivation.” *Meneses*, [2021 WL 4804293](#), at *5. They “simply assume[] a
10 deprivation to assert the resulting harm. That will not do.” *Id.* at *5. Federal courts are
11 “not free to address the underlying merits without first determining the exhaustion
12 requirement has been satisfied or properly waived.” *Laing*, [370 F.3d at 998](#).

13 *Second*, Petitioners have not established that appellate review at the BIA would be
14 inadequate or futile. Aside from irreparable harm, exhaustion can be excused only on a
15 showing that review at the BIA is “inadequate or not efficacious” or “would be a futile
16 gesture.” *Laing*, [370 F.3d at 1000](#).

17 Critically, there has not, and could not, be a delay in Petitioners’ case at the BIA,
18 because they have not filed any appeals to the BIA.

19 3. Petitioners have not established irreparable harm because they have an
20 adequate remedy in appealing to the BIA.

21 Because Petitioners’ alleged harm is essentially inherent in detention, the Court
22 cannot weigh this strongly in favor of Petitioners.

23 4. The Government has a compelling interest in allowing the BIA to
24 speak on the issue.

25 Where, as here, the moving party only raises “serious questions going to the merits,”
26 the balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*,
27 [632 F.3d 1127, 1134–35](#) (9th Cir. 2011) (quoting *The Lands Council v. McNair*, [537 F.3d](#)
28 [981, 987](#) (9th Cir. 2008)). Petitioner fails to do so here. *See id.* The government has a

1 compelling interest in the steady enforcement of its immigration laws. *See Miranda v.*
2 *Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a
3 “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-
4 cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public
5 interest in the United States’ enforcement of its immigration laws is high”); *United States*
6 *v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the
7 Government’s interest in enforcing immigration laws is enormous.”). Judicial intervention
8 would only disrupt the status quo. The Court should avoid a path that “inject[s] a degree
9 of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714
10 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See 8 C.F.R. § 1003.1(d)(1)*.
11 By regulation it must “provide clear and uniform guidance” “through precedent decisions”
12 to “DHS [and] immigration judges.” *Id.* Defendants ask that the Court allow the
13 established process to continue without disruption.

14 The BIA also has an “institutional interest” to protect its “administrative agency
15 authority.” *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by*
16 *statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). “Exhaustion is generally
17 required as a matter of preventing premature interference with agency processes, so that
18 the agency may function efficiently and so that it may have an opportunity to correct its
19 own errors, to afford the parties and the courts the benefit of its experience and expertise,
20 and to compile a record which is adequate for judicial review.” *Global Rescue Jets, LLC*
21 *v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting
22 *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not the courts, ought
23 to have primary responsibility for the programs that Congress has charged them to
24 administer.” *McCarthy*, 503 U.S. at 145. The Court should allow the BIA the opportunity
25 to weigh in on the issues raised in this action. *See id.*

1 **IV. CONCLUSION**

2 Petitioners' request for relief via the Application and the Petition should be denied.

3
4 Respectfully submitted,

5 Dated: August 22, 2025

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14 **LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE**

15 The undersigned, counsel of record for the Federal Respondents certifies that this
16 brief contains 5,515 words, which complies with the word limit of L.R. 11-6.1.
17

18 Dated: August 25, 2025

19 /s/ Daniel A. Beck
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