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

12 MATEO JUAN ANDRES  
13 SALVADOR,

14 Petitioner,

15 v.

16 Kristi NOEM, et al.,

17 Respondents.  
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No. 2:25-cv-07946-MRA-MAA

**FEDERAL RESPONDENTS'  
OPPOSITION TO PETITIONERS' *EX*  
*PARTE* APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE RE:  
PRELIMINARY INJUNCTION [DKT.  
8]**

Honorable Mónica Ramírez Almadani

United States District Judge

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

Respondents hereby oppose the Petitioner’s *ex parte* application for temporary restraining order and order to show case re: preliminary injunction (“Application”) [Dkt. 5]. The government reiterates here the legal position it has taken on related issues 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.<sup>1</sup>

**I. INTRODUCTION**

Petitioner, an adult detainee in immigration custody, has filed a petition for writ of habeas corpus (“Petition”) [Dkt. 1] asking the Court to release him, or provide him a bond hearing within 14 days. Petitioner then filed an *ex parte* Application [Dkt. 8] seeking essentially the same relief in the form of a Temporary Restraining Order requiring a bond hearing within 7 days.

The Application should be denied for three reasons.

First, Petitioner’s *ex parte* Application did not comply with Central District of California Local Rule 7-19, which governs the form and procedure required for filing *ex parte* applications. Nor did Petitioner submit a proposed order, although the Application’s text incorrectly alludes to such an order having been submitted.

Second, numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to review the Petitioner’s claims and preclude this Court from granting the relief that he seeks. 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.

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<sup>1</sup> 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 Third, assuming jurisdiction, Petitioner nonetheless fail to demonstrate that he is  
2 entitled to the injunctive relief sought. Per his Petition, the Petitioner is now an adult who  
3 was initially apprehended by immigration authorities as a seventeen-year old shortly after  
4 entering the United States. Specifically, he entered the United State at or near San Luis,  
5 Arizona on or about October 27, 2021. [Dkt. 8-1. at p. 16]. He has resided in the United  
6 States for four years. He was then very recently arrested on June 26, 2025, per his Petition.  
7 As for Petitioner's claim that he entered the United States as a seventeen-year old minor,  
8 that may be true, but he was not detained and kept in federal custody pursuant to that initial  
9 entry. Rather he was released to a relative, per his Petition, evidently without an order of  
10 supervision. His initial removal proceedings were cancelled alongside his pursuit of  
11 certain types of relief relating to minors. The fact that he was arrested several years later,  
12 at approximately 21 years of age, and that new removal proceedings were initiated against  
13 him, does not render him an eternal minor who has been rendered permanently exempt  
14 from immigration detention. Insofar as Petitioner cites to various laws and settlements  
15 relating to the detention of minors, those are not intended to apply to adults who were not  
16 in continuing custody, but were rather arrested and detained much later when they had  
17 already been adults for years, like Petitioner here.

18 Furthermore, Petitioner also cannot show a likelihood of success on the merits  
19 because he seeks to circumvent the detention statute under which he is rightfully detained  
20 in order to secure a bond hearing that he is not entitled to. Petitioner falls precisely within  
21 the statutory definition of aliens subject to mandatory detention without bond found in §  
22 1225(b)(2). Additionally, Petitioner is required to exhaust his administrative remedies  
23 before petitioning this Court for the relief he seeks here. Petitioner has failed to do so.

24 Accordingly, the Court should deny Petitioner's *ex parte* TRO application.  
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## II. STATUTORY BACKGROUND

### A. Detention under 8 U.S.C. § 1225

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

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

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United

1 States” on a “case-by-case basis for urgent humanitarian reasons or significant public  
2 benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

4 Section 1226 provides for arrest and detention “pending a decision on whether the  
5 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the  
6 government may detain an alien during his removal proceedings, release him on bond, or  
7 release him on conditional parole.<sup>2</sup> By regulation, immigration officers can release aliens  
8 if the alien demonstrates that he “would not pose a danger to property or persons” and “is  
9 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also  
10 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at  
11 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R.  
12 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

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

20 The BIA is an appellate body within the Executive Office for Immigration Review  
21 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority  
22 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review  
23 of those administrative adjudications under the [INA] that the Attorney General may by  
24 regulation assign to it,” including IJ custody determinations. 8 C.F.R.

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26 <sup>2</sup> 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)).

§§ 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 Petitioner’s Action under 8 U.S.C. § 1252.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner’s claims. Accordingly, Petitioner is 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.”<sup>3</sup> 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title.”<sup>4</sup> Except as provided in § 1252, courts “cannot entertain challenges to the enumerated executive branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by

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<sup>3</sup> 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)

<sup>4</sup> Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), 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.

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

6 Petitioner’s claims stem from his detention during removal proceedings. That  
7 detention arises from the decision to commence such proceedings against them. *See, e.g.,*  
8 *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at \*4  
9 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the  
10 Immigration Judge arose from this decision to commence proceedings[.]”); *Wang v.*  
11 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at \*6 (C.D. Cal. Aug.  
12 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8  
13 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to  
14 execute removal order).

15 As other courts have held, “[f]or the purposes of § 1252, the Attorney General  
16 commences proceedings against an alien when the alien is issued a Notice to Appear  
17 before an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF  
18 (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may  
19 arrest the alien against whom proceedings are commenced and detain that individual until  
20 the conclusion of those proceedings.” *Id.* at \*3. “Thus, an alien’s detention throughout this  
21 process arises from the Attorney General’s decision to commence proceedings” and  
22 review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko*  
23 *v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at \*6; 8 U.S.C.  
24 § 1252(g)..

25 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including  
26 interpretation and application of statutory provisions . . . arising from any action  
27 taken . . . to remove an alien from the United States” is only proper before the appropriate  
28 federal court of appeals in the form of a petition for review of a final removal order. *See* 8

1 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471,  
2 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels  
3 judicial review of all [claims arising from deportation proceedings]” to a court of appeals  
4 in the first instance. *Id.*; see *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523,  
5 at \*2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

14 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*  
15 issue—whether legal or factual—arising from *any* removal-related activity can be  
16 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d  
17 1026, 1031 (9th Cir. 2016) (emphasis in original); see *id.* at 1035 (“§§ 1252(a)(5) and  
18 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .  
19 whenever they ‘arise from’ removal proceedings”); accord *Ruiz v. Mukasey*, 552 F.3d 269,  
20 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or  
21 proceeding” is it within the district court’s jurisdiction); cf. *Xiao Ji Chen v. U.S. Dep’t of*  
22 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is  
23 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

24 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring  
25 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)  
26 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed  
27 as precluding review of constitutional claims or questions of law raised upon a petition for  
28 review filed with an appropriate court of appeals in accordance with this section.” See also

1 *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims  
2 is vested exclusively in the courts of appeals[.]”). The petition-for-review process before  
3 the court of appeals ensures that aliens have a proper forum for claims arising from their  
4 immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32  
5 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010)  
6 (“The REAL ID Act of 2005 amended the [IIRIRA] to obviate . . . Suspension Clause  
7 concerns” by permitting judicial review of “nondiscretionary” BIA determinations and  
8 “all constitutional claims or questions of law.”).

9 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit  
10 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*  
11 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of  
12 jurisdiction to review both direct and indirect challenges to removal orders, including  
13 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at  
14 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the  
15 first place or to seek removal[.]”). Here, Petitioner challenges the government’s decision  
16 and action to detain him, which arises from DHS’s decision to commence removal  
17 proceedings, and is thus an “action taken . . . to remove [them] from the United States.”  
18 *See 8 U.S.C. § 1252(b)(9)*; *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v.*  
19 *Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar  
20 review in that case because the petitioner did not challenge “his initial detention”);  
21 *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12,  
22 2024) (recognizing that there is no judicial review of the threshold detention decision,  
23 which flows from the government’s decision to “commence proceedings”). As such, the  
24 Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why  
25 Petitioner’s claims are unreviewable here.

26 While holding that it was unnecessary to comprehensively address the scope of  
27 § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of  
28 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–

94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, Petitioner *does* challenge the government’s decision to detain them in the first place. Though Petitioner may attempt to frame his challenge as one relating to detention authority, rather than a challenge to DHS’s decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Bond Denial Claims for lack of jurisdiction under § 1252(b)(9).

**B. Even Assuming Jurisdiction, Petitioner Fails to Meet the High Bar for Injunctive Relief.**

1. Petitioner is unable to show a likelihood of success on the merits.

*a. Under the Plain Text of § 1225, Petitioner Must Be Detained Pending the Outcome of His Removal Proceedings.*

The Court should reject Petitioner’s argument that § 1226(a) governs his 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 Petitioner fall within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

Petitioner argues that because he was initially arrested as a seventeen-year old

1 shortly after he entered the United States in Arizona back in 2021, he therefore is subject  
2 to special custody limitations that prevent his arrest and detention under the immigration  
3 laws. *See* TRO Application, pp. 13-14. But he was released after his initial arrest. He was  
4 then arrested and detained in June of 2025, when he had been an adult for years. He does  
5 not identify a basis for finding that he has been continuously in federal custody since then  
6 as a minor and so subject to a special minor custody regime in perpetuity. He cites to  
7 *Flores v. Sessions*, 862 F.3d 863, 866 (9<sup>th</sup> Cir. 2017) as holding that minors are not released  
8 on their own recognizance by ORR. But that does not hold that minors are perpetually  
9 held in federal custody as minors. To the contrary, the Petition alleges that after his initial  
10 apprehension by United States Customs and Border Patrol, he was almost immediately  
11 “released to his sponsor, Juan Andres Salvador, his brother. Ex. B.” Petition, p. 7 [Dkt. 1].  
12 See also Dkt. 8-1, p. 6 (ORR notification of release of unaccompanied alien child to  
13 sponsor, dated December 16, 2021). He was not a “minor” in June of 2025 who was in  
14 permanent, continuous ORR custody and so barred from being arrested and subject to  
15 detention under any other legal authority. He cannot avoid the reach of 8 U.S.C. § 1225(a).

16 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien  
17 present in the United States who has not been admitted or who arrives in the United  
18 States.” Applicants for admission “fall into one of two categories, those covered by  
19 § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section  
20 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It “serves as a  
21 catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)  
22 (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.*  
23 at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n  
24 applicant for admission who is arrested and detained without a warrant while arriving in  
25 the United States, whether or not at a port of entry, and subsequently placed in removal  
26 proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is  
27 ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. §  
28 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 Petitioner’s 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           2.     Petitioner Failed to Exhaust His Administrative Remedies before the  
25                   BIA.

26           Petitioner has not appealed his underlying bond denial to the BIA. To excuse this,  
27 he argues that such appeal to the BIA would be “futile.” But when an alien fails to exhaust  
28 appellate review at the BIA, courts should “ordinarily” dismiss the habeas petition without

1 prejudice or stay proceedings until he exhausts his appeals. *Leonardo v. Crawford*, 646  
2 F.3d 1157, 1160 (9th Cir. 2011). Bypassing review at the BIA is “improper.” *Id.* The Ninth  
3 Circuit identifies three reasons to require exhaustion before entertaining a habeas petition.  
4 *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency’s “expertise”  
5 makes its “consideration necessary to generate a proper record and reach a proper  
6 decision.” *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)).  
7 Second, excusing exhaustion encourages “the deliberate bypass of the administrative  
8 scheme.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third, “administrative review  
9 is likely to allow the agency to correct its own mistakes and to preclude the need for  
10 judicial review.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here.  
11 *See Puga*, 488 F.3d at 815.

12           3.     Petitioner has not established irreparable harm because he has an  
13                     adequate remedy in appealing to the BIA.

14           Because Petitioner’s alleged harm is essentially inherent in detention, the Court  
15 cannot weigh this strongly in favor of Petitioner.

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

18           Where, as here, the moving party only raises “serious questions going to the merits,”  
19 the balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*,  
20 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d  
21 981, 987 (9th Cir. 2008)). Petitioner fails to do so here. *See id.* The government has a  
22 compelling interest in the steady enforcement of its immigration laws. *See Miranda v.*  
23 *Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a  
24 “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-  
25 cv-01809-JLS-DFM, 2020 WL 8172983, at \*4 (C.D. Cal. Dec. 20, 2020) (“the public  
26 interest in the United States’ enforcement of its immigration laws is high”); *United States*  
27 *v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the  
28

1 Government’s interest in enforcing immigration laws is enormous.”). Judicial intervention  
2 would only disrupt the status quo. The Court should avoid a path that “inject[s] a degree  
3 of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714  
4 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See* 8 C.F.R. § 1003.1(d)(1).  
5 By regulation it must “provide clear and uniform guidance” “through precedent decisions”  
6 to “DHS [and] immigration judges.” *Id.* Defendants ask that the Court allow the  
7 established process to continue without disruption.

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

20 **C. Petitioner’s Request that a TRO be Issued Barring Respondents from**  
21 **Transferring Him to Other Districts Should Also Be Denied.**

22 Finally, Petitioner’s *ex parte* TRO Application also requests, in passing, that the  
23 Court issue a TRO barring the Respondents from transferring him to other districts.<sup>5</sup>  
24 Petitioner does not provide authority establishing that it proper to issue such an order as  
25 a TRO, and it is not. Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in  
26 deciding where to detain aliens. The INA precludes review of “any . . . decision or action  
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28 <sup>5</sup> Since Petitioner did not submit a proposed order with his filing, it is not  
entirely clear what he is actually asking for.

1 of the Attorney General . . . the authority for which is specified under this subchapter to  
2 be in the discretion of the Attorney General . . . .” 8 U.S.C. § 1252(a)(2)(B)(ii).

3 Therefore, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain  
4 Petitioners. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (citing *Rios-*  
5 *Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial review of  
6 decision to transfer a detainee is inappropriate due to lack of jurisdiction).

7 Furthermore, § 1252(g) also bars enjoining transfers under Title 8. It prohibits  
8 district courts from hearing challenges to decisions and actions about whether, when, and  
9 where to commence removal proceedings. Reading the discretionary language in §§  
10 1231(g)(1) and 1252(g) together confirms that Congress foreclosed piecemeal litigation  
11 over where a detainee may be placed into removal proceedings. *See Liu v. INS*, 293 F.3d  
12 36, 41 (2d Cir. 2002) (habeas petition “must not be construed to be ‘seeking review of  
13 any discretionary decision’” (quoting *Chmakov v. Blackman*, 266 F.3d 210, 215 (3d Cir.  
14 2001))), superseded by statute on other grounds as recognized by *Ruiz-Martinez v.*  
15 *Mukasey*, 516 F.3d 102, 113 (2d Cir. 2008); *see also Jimenez-Angeles v. Ashcroft*, 291  
16 F.3d 594, 599 (9th Cir. 2002); *Tercero v. Holder*, 510 F. App’x 761, 766 (10th Cir.  
17 2013) (Attorney General’s discretionary decision to detain aliens is not reviewable by  
18 way of habeas.).

19 Petitioner also cannot demonstrate that he will suffer irreparable injury if he is  
20 transferred to another district while detained. To show irreparable harm, he must  
21 demonstrate “immediate threatened injury.” *Caribbean Marine Servs. Co., Inc. v.*  
22 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem’l Coliseum Comm’n v.*  
23 *Nat’l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a  
24 “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. “Issuing a  
25 preliminary injunction based only on a possibility of irreparable harm is inconsistent  
26 with [the Supreme Court’s] characterization of injunctive relief as an extraordinary  
27 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to  
28 such relief.” *Winter*, 555 U.S. at 22.

1 Furthermore, Petitioner cannot demonstrate irreparable harm since this Court  
2 continues to have jurisdiction to adjudicate this habeas petition unless the Petitioner was  
3 already transferred *prior* to the filing of petition. A writ of habeas corpus operates not  
4 upon the prisoner, but upon the prisoner's custodian. *See Braden v. 30th Jud. Circuit Ct.*  
5 *of Kentucky*, 410 U.S. 484, 494–495 (1973). Jurisdiction over a § 2241 petition attaches  
6 when a petitioner files a petition in his district of confinement and names his custodian.  
7 *See Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir. 2005) (“jurisdiction attaches on the  
8 initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner  
9 and the accompanying custodial change.”). *See, e.g., Acosta v. Doerer*, No. 5:24-cv-  
10 01630-SPG-SSC, 2024 WL 4800878, at \*4 (C.D. Cal. Oct. 24, 2024) (holding that the  
11 district court maintained jurisdiction even after immigration detainee petitioner was  
12 transferred from one federal facility to another); *Rincon-Corrales v. Noem*, No. 2:25-cv-  
13 00801-APG-DJA, 2025 WL 1342851, at \*2 (D. Nev. May 8, 2025) (“[O]nce a petitioner  
14 has properly filed a habeas petition in the district of confinement, any subsequent  
15 transfer does not strip the filing district of habeas jurisdiction.”).

16 Accordingly, there is no basis for a TRO barring transfer to other districts.

#### 17 **IV. CONCLUSION**

18 The Petitioner's *ex parte* TRO Application should be denied.  
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Respectfully submitted,

Dated: August 26, 2025

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

The undersigned, counsel of record for the Federal Respondents certifies that this brief contains 5,457 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 26, 2025

/s/ Daniel A. Beck

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