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

12 ALMA LUCERO SANDOVAL
13 HERNANDEZ, et al.,

14 Petitioners,

15 v.

16 KRISTI NOEM, Secretary, Department
of Homeland Security, et al.,

17 Respondents.
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No. 5:25-cv-02563-FMO-SK

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

Honorable Fernando M. Olguin
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 (the "Application") [Dkt. 4]. 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 this District in other cases including *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS, *Jorge Arrazola-Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-01789-ODW-DFM, and *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS.

The Board of Immigration Appeals (BIA) has recently ruled on this issue in its order issued on September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. A copy of the BIA's decision in *Matter of Yajure* is attached hereto as Exhibit A. The Hon. Cathy Ann Bencivengo in the Southern District of California recently issued a decision affirming that the reasoning of *Matter of Yajure* is correct and denying a TRO accordingly in *Chavez v. Noem*, Case no. 3:25-cv-02325-CAB-SBC, Dkt. no. 8 (September 24, 2025). A copy of that *Chavez* decision is attached as Exhibit B hereto.

I. INTRODUCTION

Petitioners, detainees in immigration custody, filed a petition for writ of habeas corpus (the "Petition") asking the Court to release them, or provide them a bond hearing

¹ The District Court granted the *ex parte* TRO application in *Bautista* via its 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 within 7 days. *See* Dkt. 1. Petitioners then filed their *ex parte* Application seeking
2 essentially the same relief in the form of a Temporary Restraining Order requiring a bond
3 hearing within 7 days. The Application and the Petition should be denied for two reasons.

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

11 Second, assuming jurisdiction, Petitioners nonetheless fail to demonstrate they are
12 entitled to injunctive relief. Petitioners cannot show a likelihood of success on the merits
13 because they seek to circumvent the detention statute under which they are rightfully
14 detained to secure bond hearings that they are not entitled to. Petitioners fall precisely
15 within the statutory definition of aliens subject to mandatory detention without bond found
16 in § 1225(b)(2). As the BIA determined in *Matter of Yajure*, Immigration Judges lack
17 authority to hear bond requests or to grant bond to aliens who are present in the United
18 States without admission. *See* Exhs. A-B hereto.

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

21 **II. STATUTORY BACKGROUND**

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

23 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
24 present in the United States who [have] not been admitted” or “who arrive[] in the United
25 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
26 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
27 583 U.S. 281, 287 (2018).

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

11 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
12 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
13 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
14 removal proceeding “if the examining immigration officer determines that [the] alien
15 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
16 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
17 in and seeking admission into the United States who are placed directly in full removal
18 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
19 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at
20 299). Still, the Department of Homeland Security (“DHS”) has the sole discretionary
21 authority to temporarily release on parole “any alien applying for admission to the United
22 States” on a “case-by-case basis for urgent humanitarian reasons or significant public
23 benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

25 Section 1226 provides for arrest and detention “pending a decision on whether the
26 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
27 government may detain an alien during his removal proceedings, release him on bond, or
28

1 release him on conditional parole.² By regulation, immigration officers can release aliens
2 if the alien demonstrates that he “would not pose a danger to property or persons” and “is
3 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
4 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
5 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R.
6 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

7 At a custody redetermination, the IJ may continue detention or release the alien on
8 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
9 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
10 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors
11 IJs consider, an alien “who presents a danger to persons or property should not be released
12 during the pendency of removal proceedings.” *Id.* at 38.

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

14 The BIA is an appellate body within the Executive Office for Immigration Review
15 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
16 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review
17 of those administrative adjudications under the [INA] that the Attorney General may by
18 regulation assign to it,” including IJ custody determinations. 8 C.F.R.
19 §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it,
20 but also “through precedent decisions, [it] shall provide clear and uniform guidance to
21 DHS, the immigration judges, and the general public on the proper interpretation and
22 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The
23 decision of the [BIA] shall be final except in those cases reviewed by the Attorney
24 General.” 8 C.F.R. § 1003.1(d)(7).

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)).

1 **III. ARGUMENT**

2 **A. The Court Lacks Jurisdiction to Entertain Petitioners' Action under 8**
3 **U.S.C. § 1252.**

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

7 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including habeas
8 corpus jurisdiction, to review “any cause or claim by or on behalf of any alien arising from
9 the decision or action by the Attorney General to [1] *commence proceedings*,
10 [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under this chapter.”³
11 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as
12 provided in this section and notwithstanding any other provision of law (statutory or
13 nonstatutory), including section 2241 of title 28, United States Code, or any other habeas
14 corpus provision, and sections 1361 and 1651 of such title.”⁴ Except as provided in § 1252,
15 courts “cannot entertain challenges to the enumerated executive branch decisions or
16 actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

17 Section 1252(g) also bars district courts from hearing challenges to the *method* by
18 which the Secretary of Homeland Security chooses to commence removal proceedings,
19 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d
20 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning
21 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision
22 to take [plaintiff] into custody and to detain him during removal proceedings”).

23 Petitioners’ claims stem from their detention during removal proceedings. That

24
25 ³ Much of the Attorney General’s authority has been transferred to the Secretary of
26 Homeland Security and many references to the Attorney General are understood to refer
27 to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

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

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

20 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including
21 interpretation and application of statutory provisions . . . arising from any action
22 taken . . . to remove an alien from the United States” is only proper before the appropriate
23 federal court of appeals in the form of a petition for review of a final removal order. *See* 8
24 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
25 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels
26 judicial review of all [claims arising from deportation proceedings]” to a court of appeals
27 in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523,
28 at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

9 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
10 issue—whether legal or factual—arising from *any* removal-related activity can be
11 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d
12 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
13 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
14 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269,
15 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
16 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
17 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
18 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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

1 (“The REAL ID Act of 2005 amended the [IIRIRA] to obviate . . . Suspension Clause
2 concerns” by permitting judicial review of “nondiscretionary” BIA determinations and
3 “all constitutional claims or questions of law.”).

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

21 While holding that it was unnecessary to comprehensively address the scope of
22 § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of
23 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–
24 94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations
25 where “respondents . . . [were] not challenging the decision to detain them in the first
26 place.” *Id.* at 294–95. In this case, Petitioners *do* challenge the government’s decision to
27 detain them in the first place. Though Petitioners may attempt to frame their challenge as
28 one relating to detention authority, rather than a challenge to DHS’s decision to detain

1 them in the first instance, such creative framing does not evade the preclusive effect of §
2 1252(b)(9).

3 Indeed, the fact that Petitioners are challenging the basis upon which they are
4 detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to
5 remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C.
6 § 1252(b)(9). The Court should dismiss the Bond Denial Claims for lack of jurisdiction
7 under § 1252(b)(9). If anything, Petitioners must present their claims before the
8 appropriate federal court of appeals because these claims challenge the government’s
9 decision or action to detain them, which must be raised before a court of appeals, not this
10 Court. *See* 8 U.S.C. § 1252(b)(9).

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

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

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

16 The Court should reject Petitioners’ argument that § 1226(a) governs their detention
17 instead of § 1225. When there is “an irreconcilable conflict in two legal provisions,” then
18 “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d
19 1006, 1015 (9th Cir. 2017). § 1226(a) “applies to aliens “arrested and detained pending a
20 decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C. §
21 1225. It applies only to “applicants for admission”; that is, as relevant here, aliens present
22 in the United States who have not be admitted. *See id.*; *see also Florida v. United States*,
23 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioners fall within that category,
24 the specific detention authority under § 1225 governs over the general authority found at
25 § 1226(a).

26 The BIA recently analyzed and decided this legal issue in its order issued on
27 September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA
28 2025) (attached as Exhibit A hereto). After detailed analysis, the BIA determined that

1 based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality
2 Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond
3 requests or to grant bond to aliens who are present in the United States without admission.

4 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*
5 *Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The
6 BIA is well-positioned to assess how agency practice affects the interplay between 8
7 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL
8 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration
9 detainee was “a question well suited for agency expertise”); *Matter of M-S-*, 27 I&N Dec.
10 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

11 The BIA’s decision in *Matter of Yajure* is based upon and consistent with the
12 governing statutory language. Under 8 U.S.C. § 1225(a), an “applicant for admission” is
13 defined as an “alien present in the United States who has not been admitted or who arrives
14 in the United States.” Applicants for admission “fall into one of two categories, those
15 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.
16 Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It
17 “serves as a catchall provision that applies to all applicants for admission not covered by
18 § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates
19 detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69
20 (“[A]n applicant for admission who is arrested and detained without a warrant while
21 arriving in the United States, whether or not at a port of entry, and subsequently placed in
22 removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and
23 is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C.
24 § 1226(a).”). Section 1225(b) therefore applies because Petitioner is present in the United
25 States without being admitted.

26 The BIA has long recognized that “many people who are not *actually* requesting
27 permission to enter the United States in the ordinary sense are nevertheless deemed to be
28 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.

1 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*
2 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United*
3 *States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A)
4 must be read in the context of the definition of “applicant for admission” in § 1225(a)(1).
5 Applicants for admission are both those individuals present without admission and those
6 who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be
7 “seeking admission” under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress
8 made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission
9 or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. §
10 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is
11 synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).”
12 *United States v. Woods*, 571 U.S. 31, 45 (2013).

13 The court’s decision in *Florida v. United States* is instructive here. The district court
14 held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout
15 removal proceedings, rejecting the assertion that DHS has discretion to choose to detain
16 an applicant for admission under either section 1225(b) or 1226(a). *Florida v. United*
17 *States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, No. 23-11528,
18 2023 WL 5212561 (11th Cir. July 11, 2023). Such discretion “would render mandatory
19 detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to
20 include illegal border crossers would make little sense if DHS retained discretion to apply
21 § 1226(a) and release illegal border crossers whenever the agency saw fit.” *Id.* The court
22 pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court
23 explained that “wholesale failure” by the federal government motivated the 1996
24 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on, *Matter*
25 *of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General explained
26 “section [1225] (under which detention is mandatory) and section [1226(a)] (under which
27 detention is permissive) can be reconciled only if they apply to different classes of aliens.”
28 *Florida*, 660 F. Supp. 3d at 1275.

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

3 When the plain text of a statute is clear, “that meaning is controlling” and courts
4 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
5 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
6 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
7 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby
8 immigrants who were attempting to lawfully enter the United States were in a worse
9 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d
10 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*,
11 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain aspects of the [then] current
12 ‘entry doctrine,’ under which illegal aliens who have entered the United States without
13 inspection gain equities and privileges in immigration proceedings that are not available
14 to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep.
15 104-469, pt. 1, at 225). The Court should reject Petitioners’ interpretation because it would
16 put aliens who “crossed the border unlawfully” in a better position than those “who present
17 themselves for inspection at a port of entry.” *Id.* Aliens who presented at port of entry
18 would be subject to mandatory detention under § 1225, but those who crossed illegally
19 would be eligible for a bond under § 1226(a).

20 Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in
21 statutory drafting are “common . . . sometimes in a congressional effort to be doubly sure.”
22 *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien “was
23 paroled into this country through a shocking abuse of that power.” 171 Cong. Rec. H278
24 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it out of concern
25 that the executive branch “ignore[d] its fundamental duty under the Constitution to defend
26 its citizens.” *Id.* at H269 (statement of Rep. Roy). One member even expressed frustration
27 that “every illegal alien is currently required to be detained by current law throughout the
28 pendency of their asylum claims.” *Id.* at H278 (statement of Rep. McClintock). The LRA

1 reflects a “congressional effort to be doubly sure” that such unlawful aliens are detained.
2 *Barton*, 590 U.S. at 239.

3 c. *Prior agency practices are not entitled to deference under Loper*
4 *Bright*.

5 The asserted longstanding agency practice carries little, if any, weight under *Loper*
6 *Bright*. The weight given to agency interpretations “must always ‘depend upon their
7 thoroughness, the validity of their reasoning, the consistency with earlier and later
8 pronouncements, and all those factors which give them power to persuade.’” *Loper Bright*
9 *Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift & Co.*, 323
10 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis to support
11 its reasoning. *See* 62 Fed. Reg. at 10323. To be sure, “when the best reading of a statute is
12 that it delegates discretionary authority to an agency,” the Court must “independently
13 interpret the statute and effectuate the will of Congress.” *Loper Bright*, 603 U.S. at 395
14 (cleaned up). But read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for
15 applicants for admission until certain proceedings have concluded. *Jennings*, 583 U.S. at
16 297. Petitioners thus cannot show a likelihood of success on the merits.

17 2. The Balance of Hardships Favors Respondents

18 Where the moving party only raises “serious questions going to the merits,” the
19 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632
20 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981,
21 987 (9th Cir. 2008)). Petitioners fail 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 Government’s interest in enforcing immigration laws is enormous.”). Judicial intervention

1 would only disrupt the status quo. The Court should avoid a path that “inject[s] a degree
2 of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714
3 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See* 8 C.F.R. § 1003.1(d)(1).
4 By regulation it must “provide clear and uniform guidance” “through precedent decisions”
5 to “DHS [and] immigration judges.” *Id.* Here, the BIA has provided that clear guidance
6 by its decision in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

7 **IV. CONCLUSION**

8 Petitioners’ request for relief via the Application and the Petition should be denied.
9

10 Respectfully submitted,

11 Dated: October 1, 2025

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

21 The undersigned, counsel of record for the Federal Respondents certifies that this
22 brief contains 4,648 words, which complies with the word limit of L.R. 11-6.1.
23

24 Dated: October 1, 2025

25 /s/ Daniel A. Beck
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