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

13 Bayron Rovidio Marin,

14 Petitioner,

15 v.

16 Kristi Noem, *et al.*,

17 Respondents.  
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No. 2:25-cv-09343-CV-SSC

**FEDERAL RESPONDENTS'  
OPPOSITION TO PETITIONER'S EX  
PARTE APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER**

Honorable Cynthia Valenzuela  
United States District Judge

**I. INTRODUCTION**

On or about August 27, 2025, Petitioner Bayron Rovidio Marin (“Petitioner”) was arrested pursuant to 8 U.S.C. § 1357, which authorizes immigration officers to “arrest an alien in the United States if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.” During this arrest, Petitioner was injured and transferred to Harbor-UCLA Medical Center, where he has been undergoing medical treatment. While at Harbor-UCLA Medical Center, he remains in in U.S. Immigration and Customs Enforcement (“ICE”) custody.

By his Habeas Petition and Motion for Temporary Restraining Order, Petitioner asks this Court to order Respondents to release him from custody and remove all restraints on his liberty—including removing the guards or other security personnel in or near Petitioner’s hospital room. As set forth below, ICE intends to take further action consistent with the laws prescribed under the Immigration and Nationality Act (“INA”) once Petitioner is released from medical care and it can conduct the examination as proscribed in 8 C.F.R. § 287.3.

Petitioner further argues that detainees like himself are entitled to a prompt initial bond hearing under 8 U.S.C. § 1226(a). The Respondents’ position, however, is that the BIA’s September 5, 2025 order in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) correctly found that detainees like Petitioner were not entitled to such bond hearings because they are detained under 8 U.S.C. § 1225(b)(2). And the remedy for a claim of being subject to § 1226(a) would not be immediate release, but rather ordering a bond hearing. *See e.g. Henberto Arreola Armenta, et al. v. Kristi Noem, et al.*, 5:25-cv-02416-JFW-SP, Dkt. no. 7 (Sept. 16, 2025); *Moises Salomon Zaragoza Mosqueda et al. v. Kristi Noem et al.*, 5:25-cv-02304-CAS-BFM (Sept. 8, 2025).

Accordingly, the TRO Application should be denied.

1 **II. STATUTORY BACKGROUND**

2 **A. 8 U.S.C. § 1357 and corresponding regulations**

3 Section 1357 allows for warrantless arrests of “any alien in the United States, if he  
4 has reason to believe that the alien so arrested is in the United States in violation of any  
5 such law or regulation and is likely to escape before a warrant can be obtained for his  
6 arrest, but the alien arrested shall be taken without unnecessary delay for an  
7 examination” before an immigration officer (examining officer). The corresponding  
8 regulations require a determination of whether the alien will be continued in custody or  
9 released on bond within 48 hours, and whether a notice to appear and warrant of arrest  
10 will be issued, *absent an emergency or other extraordinary circumstances*. See 8  
11 C.F.R. § 287.3(c). Additionally, if the examining immigration officer is satisfied there is  
12 prima facie evidence that the arrested alien is here in the United States unlawfully, the  
13 examining officer will refer the alien to an immigration judge for removal proceedings,  
14 order the alien removed via the expedited removal process, or take other appropriate  
15 action. See *id.* at § 287.3(b).

16 **B. Detention under 8 U.S.C. § 1225**

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

22 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially  
23 determined to be inadmissible due to fraud, misrepresentation, or lack of valid  
24 documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject  
25 to expedited removal proceedings. See 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien  
26 “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration  
27 officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien  
28 with “a credible fear of persecution” is “detained for further consideration of the

1 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to  
2 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he  
3 is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

4 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
5 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
6 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
7 for a removal proceeding “if the examining immigration officer determines that [the]  
8 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” §  
9 U.S.C. § 1225(b)(2)(A); see *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)  
10 (“Immigration Judge’s lack authority to hear bond requests or to grant bond to aliens  
11 who are presented in the United States without admission”); *Matter of Q. Li*, 29 I. & N.  
12 Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United  
13 States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the  
14 INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have  
15 concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland  
16 Security (“DHS”) has the sole discretionary authority to temporarily release on parole  
17 “any alien applying for admission to the United States” on a “case-by-case basis for  
18 urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see  
19 *Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

21 Section 1226 provides for arrest and detention “pending a decision on whether the  
22 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the  
23 government may detain an alien during his removal proceedings, release him on bond, or  
24 release him on conditional parole.<sup>1</sup> By regulation, immigration officers can release aliens  
25 if the alien demonstrates that he “would not pose a danger to property or persons” and

26  
27 <sup>1</sup> Being “conditionally paroled under the authority of § 1226(a)” is distinct from  
28 being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-  
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 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also  
2 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at  
3 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R.  
4 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

### 11 **III. ARGUMENT**

#### 12 **A. Petitioner does not show a likelihood of success on the merits**

##### 13 1. Respondents Have Not Unnecessary Delayed Examination and the 14 Issuance of an NTA Given the Extraordinary Circumstances

15 Respondents lawfully arrested Petitioner pursuant to its warrantless arrest  
16 authority proscribed under 8 U.S.C. § 1357. However, given the unusual and unfortunate  
17 circumstances of Petitioner’s injury during the arrest and its subsequent medical  
18 treatment while he is hospitalized, Respondents have been unable to examine Petitioner  
19 in accordance with 8 C.F.R. § 287.3(c) to determine whether they intend to refer him to  
20 an Immigration Judge for removal proceedings, order him removed pursuant to the  
21 expedited removal process, or take other appropriate action. Petitioner reads this  
22 regulation as strictly requiring, within 48 hours, immediate service of a Notice to Appear  
23 and arrest warrant. The regulation does not require this strict timeline when an  
24 emergency or extraordinary circumstances are involved, however, and the Petitioner’s  
25 state of prolonged hospitalization and surgeries appear to be just such extraordinary  
26 circumstances. Accordingly, Petitioner’s release from ICE custody is not warranted.

2. To the Extent Petitioner Entered Without Inspection He Must Be Detained Pending the Outcome of Removal Proceedings.

Petitioner argues that he is entitled to an immediate bond hearing under 8 U.S.C. § 1226(a). Respondents acknowledge that a number of courts in this District have found that similarly situated immigrant detainees are being held under 8 U.S.C. § 1226(a), and are therefore entitled to a prompt initial bond hearing, ordering that as the appropriate remedy. *See e.g. Henberto Arreola Armenta, et al. v. Kristi Noem, et al.*, 5:25-cv-02416-JFW-SP, Dkt. no. 7 (September 16, 2025 decision by Hon. Judge Walter granting TRO and ordering §1226(a) bond hearing); *Moises Salomon Zaragoza Mosqueda et al. v. Kristi Noem et al.*, 5:25-cv-02304-CAS-BFM (September 8, 2025 decision by Hon. Judge Snyder granting TRO and ordering § 1226(a) bond hearing).

Respondents, however, contend that the BIA ruled correctly in its September 5, 2025 order in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) finding that detainees like Petitioner here were not entitled to such bond hearings because they are detained under 8 U.S.C. § 1225(b)(2). To the extent Petitioner concedes that he entered the United States without inspection, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). 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 be admitted. *See id.*; *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioner falls 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 States without being admitted.

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

The court’s decision in *Florida v. United States* is instructive here. The district

1 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission  
2 throughout removal proceedings, rejecting the assertion that DHS has discretion to  
3 choose to detain an applicant for admission under either section 1225(b) or 1226(a).  
4 *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*,  
5 No. 23-11528, 2023 WL 5212561 (11th Cir. July 11, 2023). Such discretion “would  
6 render mandatory detention under § 1225(b) meaningless. Indeed, the 1996 expansion of  
7 § 1225(b) to include illegal border crossers would make little sense if DHS retained  
8 discretion to apply § 1226(a) and release illegal border crossers whenever the agency  
9 saw fit.” *Id.* The court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the  
10 Supreme Court explained that “wholesale failure” by the federal government motivated  
11 the 1996 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied  
12 on, *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General  
13 explained “section [1225] (under which detention is mandatory) and section [1226(a)]  
14 (under which detention is permissive) can be reconciled only if they apply to different  
15 classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

16 3. Congress did not intend to treat individuals who unlawfully enter the  
17 country better than those who appear at a port of entry.

18 When the plain text of a statute is clear, “that meaning is controlling” and courts  
19 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
20 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
21 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
22 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby  
23 immigrants who were attempting to lawfully enter the United States were in a worse  
24 position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d  
25 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-*  
26 *Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain aspects of the [then]  
27 current ‘entry doctrine,’ under which illegal aliens who have entered the United States  
28 without inspection gain equities and privileges in immigration proceedings that are not

1 available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting  
2 H.R. Rep. 104-469, pt. 1, at 225). The Court should reject Petitioner’s interpretation  
3 because it would put aliens who “crossed the border unlawfully” in a better position than  
4 those “who present themselves for inspection at a port of entry.” *Id.* Aliens who  
5 presented at port of entry would be subject to mandatory detention under § 1225, but  
6 those who crossed illegally would be eligible for a bond under § 1226(a).

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

18 **B. Petitioner Has Not Show He Will Suffer Irreparable Harm Absent A**  
19 **Mandatory Preliminary Injunction**

20 Petitioner has not demonstrated that he will suffer irreparable injury absent his  
21 release. Notably, “loss of liberty” is “common to all [noncitizens] seeking review of their  
22 custody or bond determinations.” *See Resendiz v. Holder*, 2012 WL 5451162, at \*5  
23 (N.D. Cal. Nov. 7, 2012). Once Petitioner is released from the hospital, Petitioner will be  
24 subject to an immigration enforcement action and will be in the same situation he is in  
25 currently. The fact Petitioner is currently in the hospital does not prevent future  
26 immigration enforcement action. Furthermore, Petitioner is already confined at the  
27 hospital by the nature of his injury, which is an extraordinary circumstance that has  
28 delayed the issuance of an NTA to him.

**C. The Balance of Interests Favors the Government**

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of removal orders[.]”).

The public interest in enforcing the United States' immigration laws outweighs Petitioner's private interest here.

**IV. CONCLUSION**

For the above reasons, Respondents respectfully request that Petitioner's Motion for a TRO be denied.

Dated: October 2, 2025

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