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

12 GERMAN ESPINOZA MAXIMO,

13 Petitioner,

14 v.

15 FERETI SEMAIA, Warden of the Geo
16 Group Adelanto ICE Processing Center,
et al.,

17 Respondents.
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No. 2:25-cv-10299-WLH-SK

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

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

Respondents hereby oppose Petitioner's *ex parte* application for a temporary restraining order mainly enjoining Respondents from continuing to detain Petitioner or alternatively requiring them to provide him an individualized bond hearing under 8 U.S.C. § 1226(a) within seven days (the "Application"). See Dkt. No. 5.¹ 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. 8.² The same legal issue at issue in *Bautista* has subsequently been raised and resolved in this District in a series of other cases including *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS, *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS, and *Miguel Portillo, et al. v. Kristi Noem, et al.*, 5:25-cv-02892-JFW-PVC. Respondents are not aware that this Court has issued any order addressing or resolving this issue and Petitioner does not argue so.

The Board of Immigration Appeals (BIA) has ruled on this issue by order dated September 5, 2025 in *Matter of 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. See generally *id.* at 229 ("The Immigration

¹ Petitioner also requests the Court to enjoin Respondents from transferring Petitioner out of this District, see Dkt. No. 5 at 2, 21, but fails to provide sufficient legal basis for that request. As such, the Court need not reach that issue. *United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir. 2010) ("Arguments made in passing and not supported by citations to the record or to case authority are generally deemed waived."); *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for [a litigant], and a bare assertion does not preserve a claim, particularly when, as here, a host of other issues are presented for review."); *Townsend v. Monster Beverage Corp.*, 303 F. Supp. 3d 1010, 1036 (C.D. Cal. 2018) ("The Court's role is not to make or develop arguments on behalf of the parties.").

² The District Court granted the *ex parte* TRO application in *Bautista* via order issued on July 28, 2025, requiring a Section 1226(a) bond hearing to be provided to the petitioners within seven days [Dkt. 14].

Judge properly held that he lacked authority to hear the respondent's request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii)."). Other District Courts have also followed BIA's approach. *See Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

I. INTRODUCTION

Petitioner, a detainee in immigration custody who was present in the United States without ever having been inspected and admitted, filed a petition for writ of habeas corpus ("Petition") asking the Court to release him or provide him a bond hearing. *See Dkt. No. 1*. Petitioner then filed his *Ex Parte* Application seeking essentially the same relief. *See Dkt. No. 5*. 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 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. Petitioner's removal proceedings have commenced, and he is being detained pending removal.

Second, assuming jurisdiction, Petitioner nonetheless fails to demonstrate he is entitled to injunctive relief. Petitioner cannot show a likelihood of success on the merits because he seeks to circumvent the detention statute under which he is rightfully detained to secure bond hearings that he is not entitled to. Petitioner falls precisely within the statutory definition of aliens subject to mandatory detention without bond found in §

1 1225(b)(2), i.e., an alien present in the United States that has not been admitted.³ As the
2 BIA determined in *Matter of Yajure*, 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 For these reasons, and those set forth below, the Court should deny Petitioner's
5 request for relief and dismiss this action in its entirety.

6 **II. STATUTORY BACKGROUND**

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

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

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

23
24 ³ As the Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281, 287
25 (2018), “Under . . . 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is
26 present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant for
27 admission.’ § 1225(a)(1). Applicants for admission must ‘be inspected by immigration
28 officers’ to ensure that they may be admitted into the country consistent with U.S.
immigration law. § 1225(a)(3).” Moreover, as the BIA held in *Matter of Yajure*, “aliens
who are present in the United States without admission are applicants for admission as
defined under . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their
removal proceedings.” 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300).

1 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
2 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
3 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
4 removal proceeding “if the examining immigration officer determines that [the] alien
5 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
6 1225(b)(2)(A); see *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
7 in and seeking admission into the United States who are placed directly in full removal
8 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
9 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at
10 299). Still, the Department of Homeland Security (“DHS”) has the sole discretionary
11 authority to temporarily release on parole “any alien applying for admission to the United
12 States” on a “case-by-case basis for urgent humanitarian reasons or significant public
13 benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

15 Section 1226 provides for arrest and detention “pending a decision on whether the
16 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
17 government may detain an alien during his removal proceedings, release him on bond, or
18 release him on conditional parole.⁴ By regulation, immigration officers can release aliens
19 if the alien demonstrates that he “would not pose a danger to property or persons” and “is
20 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
21 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
22 any time before a final order of removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R.
23 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

24 At a custody redetermination, the IJ may continue detention or release the alien on
25

26 ⁴ 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 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
2 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
3 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors
4 IJs consider, an alien “who presents a danger to persons or property should not be released
5 during the pendency of removal proceedings.” *Id.* at 38.

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

7 The BIA is an appellate body within the Executive Office for Immigration Review
8 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
9 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review
10 of those administrative adjudications under the [INA] that the Attorney General may by
11 regulation assign to it,” including IJ custody determinations. 8 C.F.R.
12 §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it,
13 but also “through precedent decisions, [it] shall provide clear and uniform guidance to
14 DHS, the immigration judges, and the general public on the proper interpretation and
15 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The
16 decision of the [BIA] shall be final except in those cases reviewed by the Attorney
17 General.” 8 C.F.R. § 1003.1(d)(7).

18 III. LEGAL STANDARD

19 “The opportunities for legitimate *ex parte* applications are extremely limited.” *Lum*
20 *v. Mercedes-Benz USA, LLC*, 2012 WL 13012454, at *1 (C.D. Cal. Jan. 5, 2012). To
21 justify *ex parte* relief, the moving party must make two showings: (1) “the evidence must
22 show that the moving party’s cause will be irreparably prejudiced if the underlying motion
23 is heard according to regular noticed motion procedures”; and (2) “it must be established
24 that the moving party is without fault in creating the crisis that requires *ex parte* relief, or
25 that the crisis occurred as a result of excusable neglect.” *Mission Power Engineering Co.*
26 *v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

1 **IV. ARGUMENT**

2 **A. The Court Lacks Jurisdiction to Entertain Petitioner’s 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 Petitioner’s claims. Accordingly, Petitioner is 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.”⁵
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.”⁶ 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 Petitioner’s claims stem from his detention during removal proceedings. That

24 _____
25 ⁵ 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).

26 ⁶ 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),
including section 2241 of title 28, United States Code, or any other habeas corpus
28 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 him. *See, e.g.,*
2 *Valencia-Mejia v. United States*, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The
3 decision to detain plaintiff until his hearing before the Immigration Judge arose from this
4 decision to commence proceedings[.]”); *Wang v. United States*, 2010 WL 11463156, at *6
5 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020)
6 (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review
7 action to execute removal order).

8 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
9 commences proceedings against an alien when the alien is issued a Notice to Appear
10 before an immigration court.” *Herrera-Correra v. United States*, 2008 WL 11336833, at
11 *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom
12 proceedings are commenced and detain that individual until the conclusion of those
13 proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from the
14 Attorney General’s decision to commence proceedings” and review of claims arising from
15 such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949
16 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial
17 review of the Application and Petition is barred by § 1252(g). The Court should dismiss
18 for lack of jurisdiction.

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

28 Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means

1 for judicial review of immigration proceedings:

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

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

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

1 concerns” by permitting judicial review of “nondiscretionary” BIA determinations and
2 “all constitutional claims or questions of law.”).

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

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

1 1252(b)(9).

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

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

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

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

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

25 The BIA recently analyzed and decided this legal issue in its order issued on
26 September 5, 2025 in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After
27 detailed analysis, the BIA determined that based on the plain language of section
28 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),

1 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are
2 present in the United States without admission. Other District Courts have followed the
3 BIA's approach. *See, e.g., Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL
4 3048926 (W.D. La. Oct. 31, 2025) (“[T]he *Jennings* Court did not restrict the application
5 of § 1225(b) only to aliens who are seeking entry into the United States or aliens who are
6 near the border. . . . And while, of course, the BIA's precedential decisions are not binding
7 upon this Court, the BIA is a court that possesses subject matter expertise on immigration
8 matters. Thus, when considering the BIA's thorough analysis of the plain statutory text
9 and legislative history of the INA, this Court finds *Hurtado* persuasive.”); *Cirrus Rojas v.*
10 *Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez*
11 *v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*,
12 --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). Even more critically,
13 “the BIA is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*,
14 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). As such, it is well-positioned to
15 assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See*
16 *Delgado v. Sessions*, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a
17 denial of bond to an immigration detainee was “a question well suited for agency
18 expertise”); *Matter of M-S-*, 27 I. & N. Dec. 509, 515-18 (2019) (addressing interplay of
19 §§ 1225(b)(1) and 1226).

20 The BIA's decision in *Matter of Yajure* is based upon and consistent with the
21 governing statutory language. Under 8 U.S.C. § 1225(a), an “applicant for admission” is
22 defined as an “alien present in the United States who has not been admitted or who arrives
23 in the United States.” Applicants for admission “fall into one of two categories, those
24 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.
25 Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It
26 “serves as a catchall provision that applies to all applicants for admission not covered by
27 § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates
28 detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I. & N. Dec. at 69

1 (“[A]n applicant for admission who is arrested and detained without a warrant while
2 arriving in the United States, whether or not at a port of entry, and subsequently placed in
3 removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and
4 is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C.
5 § 1226(a).”). Section 1225(b) therefore applies because Petitioner is present in the United
6 States without being admitted.

7 The BIA has long recognized that “many people who are not *actually* requesting
8 permission to enter the United States in the ordinary sense are nevertheless deemed to be
9 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.
10 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*
11 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United*
12 *States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A)
13 must be read in the context of the definition of “applicant for admission” in § 1225(a)(1).
14 Applicants for admission are both those individuals present without admission and those
15 who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be
16 “seeking admission” under §1225(a)(1). *See* *Lemus-Losa*, 25 I. & N. Dec. at 743. Congress
17 made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission
18 or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. §
19 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is
20 synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).”
21 *United States v. Woods*, 571 U.S. 31, 45 (2013).

22 The court’s decision in *Florida v. United States* is instructive here. The district court
23 held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout
24 removal proceedings, rejecting the assertion that DHS has discretion to choose to detain
25 an applicant for admission under either section 1225(b) or 1226(a). *Florida v. United*
26 *States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, 2023 WL 5212561
27 (11th Cir. July 11, 2023). Such discretion “would render mandatory detention under §
28 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border

1 crossers would make little sense if DHS retained discretion to apply § 1226(a) and release
2 illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore v.*
3 *Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale
4 failure” by the federal government motivated the 1996 amendments to the INA. *Florida*,
5 660 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509,
6 516 (A.G. 2019), in which the Attorney General explained “section [1225] (under which
7 detention is mandatory) and section [1226(a)] (under which detention is permissive) can
8 be reconciled only if they apply to different classes of aliens.” *Florida*, 660 F. Supp. 3d at
9 1275.

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

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

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

12 *c. Prior agency practices are not entitled to deference under Loper*
13 *Bright*.

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

26 2. The Balance of Hardships Favors Respondents

27 Where the moving party only raises “serious questions going to the merits,” the
28 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632

1 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981,
2 987 (9th Cir. 2008)). Petitioner fails to do so here. *See id.* The government has a
3 compelling interest in the steady enforcement of its immigration laws. *See Miranda v.*
4 *Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a
5 “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-
6 cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public
7 interest in the United States’ enforcement of its immigration laws is high”); *United States*
8 *v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the
9 Government’s interest in enforcing immigration laws is enormous.”). Judicial intervention
10 would only disrupt the status quo. The Court should avoid a path that “inject[s] a degree
11 of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714
12 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See 8 C.F.R. § 1003.1(d)(1).*
13 By regulation it must “provide clear and uniform guidance” “through precedent decisions”
14 to “DHS [and] immigration judges.” *Id.* Here, the BIA has provided that clear guidance in
15 its decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

16 **V. CONCLUSION**

17 Petitioner’s request for relief by the Application and Petition should be denied.
18 Should the Court nonetheless grant the Application, Respondents respectfully request that
19 it limit the relief to what other courts in this District have generally issued in similar cases:
20 Requiring release unless a Section 1226(a) bond hearing is provided within seven (7) days.
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Respectfully submitted,

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