

1 BILAL A. ESSAYLI
Acting United States Attorney
2 DAVID M. HARRIS
Assistant United States Attorney
3 Chief, Civil Division
DANIEL A. BECK (Cal. Bar No. 204496)
4 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
5 Federal Building, Suite 7516
300 North Los Angeles Street
6 Los Angeles, California 90012
Telephone: (213) 894-8974
7 E-mail: Daniel.Beck@usdoj.gov

8 Attorneys for Federal Respondents

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

12 JONATHAN ALEJANDRO NORORIS
13 ESCOBAR,

14 Petitioner,

15 v.

16 TODD LYONS, Acting Director
Immigration Customs and Enforcement,
17 et al.,

18 Respondents.

No. 2:25-cv-10216

**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 compelling an immigration judge to provide an individualized bond hearing to Petitioner under 8 U.S.C. § 1226(a) within seven days (the "Application") [Dkt. 2]. 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 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, *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 also 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.

¹ 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].

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”) [[Dkt. 1](#)] asking the Court to release them or provide them a bond hearing. Petitioner then filed their *ex parte* Application seeking essentially the same relief. 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 they seek. Congress has unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Congress further directed that any challenges arising from any removal-related activity—including detention pending removal proceedings—must be brought before the appropriate federal court of appeals, not a district court. Petitioner’s removal proceedings have commenced and they are being detained pending removal.

Second, assuming jurisdiction, Petitioner nonetheless fails to demonstrate they are entitled to injunctive relief. Petitioner cannot show a likelihood of success on the merits because they seek to circumvent the detention statute under which they are rightfully detained to secure bond hearings that they are not entitled to. Petitioner falls precisely within the statutory definition of aliens subject to mandatory detention without bond found in § 1225(b)(2), i.e., an alien present in the United States that has not been admitted.² As the BIA determined in *Matter of Yajure*, Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United

² As the Supreme Court explained in *Jennings v. Rodriguez*, [583 U.S. 281, 287](#) (2018), “Under ... [8 U.S.C. § 1225](#), an alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant for admission.’ § 1225(a)(1). Applicants for admission must ‘be inspected by immigration 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 States without admission.

2 For these reasons, and those set forth below, the Court should deny Petitioner's
3 request for relief and dismiss this action in its entirety.

4 **II. STATUTORY BACKGROUND**

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

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

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

21 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
22 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
23 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
24 for a removal proceeding “if the examining immigration officer determines that [the]
25 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
26 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for
27 aliens arriving in and seeking admission into the United States who are placed directly in
28 full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),

1 mandates detention “until removal proceedings have concluded.”) (citing *Jennings*, 583
2 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole
3 discretionary authority to temporarily release on parole “any alien applying for
4 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons
5 or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806
6 (2022).

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

8 Section 1226 provides for arrest and detention “pending a decision on whether the
9 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
10 government may detain an alien during his removal proceedings, release him on bond, or
11 release him on conditional parole.³ By regulation, immigration officers can release aliens
12 if the alien demonstrates that he “would not pose a danger to property or persons” and
13 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
14 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
15 any time before a final order of removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R.
16 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

17 At a custody redetermination, the IJ may continue detention or release the alien on
18 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
19 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
20 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the
21 factors IJs consider, an alien “who presents a danger to persons or property should not be
22 released during the pendency of removal proceedings.” *Id.* at 38.

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

24 The BIA is an appellate body within the Executive Office for Immigration Review
25

26 ³ 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 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
2 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the
3 review of those administrative adjudications under the [INA] that the Attorney General
4 may by regulation assign to it,” including IJ custody determinations. 8 C.F.R.
5 §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it,
6 but also “through precedent decisions, [it] shall provide clear and uniform guidance to
7 DHS, the immigration judges, and the general public on the proper interpretation and
8 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The
9 decision of the [BIA] shall be final except in those cases reviewed by the Attorney
10 General.” 8 C.F.R. § 1003.1(d)(7).

11 **III. ARGUMENT**

12 **A. The Court Lacks Jurisdiction to Entertain Petitioner’s Action under 8** 13 **U.S.C. § 1252.**

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

17 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including
18 habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien
19 arising from the decision or action by the Attorney General to [1] *commence*
20 *proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under
21 this chapter.”⁴ 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates
22 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision
23 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,
24 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”⁵ Except

25
26 ⁴ 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)

27 ⁵ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.
28 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),
(footnote cont’d on next page)

1 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive
2 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

3 Section 1252(g) also bars district courts from hearing challenges to the *method* by
4 which the Secretary of Homeland Security chooses to commence removal proceedings,
5 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d
6 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning
7 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision
8 to take [plaintiff] into custody and to detain him during removal proceedings”).

9 Petitioner’s claims stem from their detention during removal proceedings. That
10 detention arises from the decision to commence such proceedings against them. *See, e.g.,*
11 *Valencia-Mejia v. United States*, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008)
12 (“The decision to detain plaintiff until his hearing before the Immigration Judge arose
13 from this decision to commence proceedings[.]”); *Wang v. United States*, 2010 WL
14 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–
15 99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of
16 jurisdiction to review action to execute removal order).

17 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
18 commences proceedings against an alien when the alien is issued a Notice to Appear
19 before an immigration court.” *Herrera-Correra v. United States*, 2008 WL 11336833, at
20 *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom
21 proceedings are commenced and detain that individual until the conclusion of those
22 proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from
23 the Attorney General’s decision to commence proceedings” and review of claims arising
24 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
25 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As
26

27 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 such, judicial review of the Application and Petition is barred by § 1252(g). The Court
2 should dismiss for lack of jurisdiction.

3 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including
4 interpretation and application of statutory provisions . . . arising from any action
5 taken . . . to remove an alien from the United States” is only proper before the
6 appropriate federal court of appeals in the form of a petition for review of a final
7 removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination*
8 *Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’
9 clause” that “channels judicial review of all [claims arising from deportation
10 proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV
11 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah*
12 *v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

21 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
22 issue—whether legal or factual—arising from *any* removal-related activity can be
23 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d
24 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
25 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
26 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d
27 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
28 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*

1 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
2 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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

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

(W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why Petitioner’s claims are unreviewable here.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of 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 their challenge as one relating to detention authority, rather than a challenge to DHS’s decision to detain them 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 they are 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 Application and Petition for lack of jurisdiction under § 1252(b)(9). If anything, Petitioner must present their claims before the appropriate federal court of appeals because these claims challenge the government’s decision or action to detain them, which must be raised before a court of appeals, not this Court. *See 8 U.S.C. § 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 Their Removal Proceedings.

The Court should reject Petitioner’s argument that § 1226(a) governs their

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

10 The BIA recently analyzed and decided this legal issue in its order issued on
11 September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA
12 2025). After detailed analysis, the BIA determined that based on the plain language of
13 section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A)
14 (2018), Immigration Judges lack authority to hear bond requests or to grant bond to
15 aliens who are present in the United States without admission.

16 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*
17 *Nielsen*, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-
18 positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225
19 and 1226. *See Delgado v. Sessions*, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15,
20 2017) (noting a denial of bond to an immigration detainee was “a question well suited
21 for agency expertise”); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing
22 interplay of §§ 1225(b)(1) and 1226).

23 The BIA’s decision in *Matter of Yajure* is based upon and consistent with the
24 governing statutory language. Under 8 U.S.C. § 1225(a), an “applicant for admission” is
25 defined as an “alien present in the United States who has not been admitted or who
26 arrives in the United States.” Applicants for admission “fall into one of two categories,
27 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at
28 287. Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It

1 “serves as a catchall provision that applies to all applicants for admission not covered by
2 § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2)
3 mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N
4 Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant
5 while arriving in the United States, whether or not at a port of entry, and subsequently
6 placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C.
7 § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of
8 the INA, 8 U.S.C. § 1226(a).”). Section 1225(b) therefore applies because Petitioner is
9 present in the United States without being admitted.

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

26 The court’s decision in *Florida v. United States* is instructive here. The district
27 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission
28 throughout removal proceedings, rejecting the assertion that DHS has discretion to

1 choose to detain an applicant for admission under either section 1225(b) or 1226(a).
2 *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*,
3 2023 WL 5212561 (11th Cir. July 11, 2023). Such discretion “would render mandatory
4 detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to
5 include illegal border crossers would make little sense if DHS retained discretion to
6 apply § 1226(a) and release illegal border crossers whenever the agency saw fit.” *Id.* The
7 court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court
8 explained that “wholesale failure” by the federal government motivated the 1996
9 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on,
10 *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General
11 explained “section [1225] (under which detention is mandatory) and section [1226(a)]
12 (under which detention is permissive) can be reconciled only if they apply to different
13 classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

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

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

1 inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court
2 should reject Petitioner’s interpretation because it would put aliens who “crossed the
3 border unlawfully” in a better position than those “who present themselves for inspection
4 at a port of entry.” *Id.* Aliens who presented at port of entry would be subject to
5 mandatory detention under § 1225, but those who crossed illegally would be eligible for
6 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 *c. Prior agency practices are not entitled to deference under*
19 *Loper Bright.*

20 The asserted longstanding agency practice carries little, if any, weight under *Loper*
21 *Bright*. The weight given to agency interpretations “must always ‘depend upon their
22 thoroughness, the validity of their reasoning, the consistency with earlier and later
23 pronouncements, and all those factors which give them power to persuade.’” *Loper*
24 *Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift &*
25 *Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis
26 to support its reasoning. See 62 Fed. Reg. at 10323. To be sure, “when the best reading
27 of a statute is that it delegates discretionary authority to an agency,” the Court must
28 “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*,

1 603 U.S. at 395 (cleaned up). But read most naturally, §§ 1225(b)(1) and (b)(2) mandate
2 detention for applicants for admission until certain proceedings have concluded.
3 *Jennings*, 583 U.S. at 297. Petitioner thus cannot show a likelihood of success on the
4 merits.

5 2. The Balance of Hardships Favors Respondents

6 Where the moving party only raises “serious questions going to the merits,” the
7 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632
8 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d
9 981, 987 (9th Cir. 2008)). Petitioner fails to do so here. *See id.* The government has a
10 compelling interest in the steady enforcement of its immigration laws. *See Miranda v.*
11 *Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a
12 “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-
13 cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public
14 interest in the United States’ enforcement of its immigration laws is high”); *United*
15 *States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7,
16 2015) (“the Government’s interest in enforcing immigration laws is enormous.”).
17 Judicial intervention would only disrupt the status quo. The Court should avoid a path
18 that “inject[s] a degree of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694
19 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See*
20 8 C.F.R. § 1003.1(d)(1). By regulation it must “provide clear and uniform guidance”
21 “through precedent decisions” to “DHS [and] immigration judges.” *Id.* Here, the BIA has
22 provided that clear guidance by its decision in *Matter of Jonathan Javier Yajure*
23 *Hurtado*, 29 I&N Dec. 216 (BIA 2025).

1 **IV. CONCLUSION**

2 Petitioner's request for relief by the Application and Petition should be denied.
3 Should the Court nonetheless grant the Application, however, the relief should be limited
4 to what other Judges in this District have generally issued in similar cases: Requiring
5 release unless a Section 1226(a) bond hearing is provided within seven (7) days.
6

7 Respectfully submitted,

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BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

12 /s/ Daniel A. Beck*

13 DANIEL A. BECK
14 Assistant United States Attorney

15 Attorneys for Federal Respondents

16 * The undersigned, counsel of record for the Federal Respondents certifies that this brief
17 contains 4,702 words, which complies with the word limit of L.R. 11-6.1.
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