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

12 MANUEL SOTO MUNOZ,
13 Petitioner,
14 v.
15 FERETI SEMAIA, et al.,
16 Respondents.
17

No. 5:25-cv-2898-MRA-BFM

**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. 3]. 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, and *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS. This Court has ruled on the same legal issue in *Mateo Juan Andres Salvador v. Pamela Jo Bondi et al.*, 2:25-cv-07946-MRA-MAA (September 2, 2025 order granting in part application for temporary restraining order) [Dkt. no. 12].

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].

1 **I. INTRODUCTION**

2 Petitioner, a detainee in immigration custody who was present in the United States
3 without ever having been inspected and admitted, filed a petition for writ of habeas
4 corpus (“Petition”) [Dkt. 1] asking the Court to release them or provide them a bond
5 hearing. Petitioner then filed their *ex parte* Application seeking essentially the same
6 relief. The Application and the Petition should be denied for two reasons.

7 First, numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to
8 review the Petitioner’s claims and preclude this Court from granting the relief that they
9 seek. Congress has unambiguously stripped federal courts of jurisdiction over challenges
10 to the commencement of removal proceedings, including detention pending removal
11 proceedings. Congress further directed that any challenges arising from any removal-
12 related activity—including detention pending removal proceedings—must be brought
13 before the appropriate federal court of appeals, not a district court. Petitioner’s removal
14 proceedings have commenced and they are being detained pending removal.

15 Second, assuming jurisdiction, Petitioner nonetheless fails to demonstrate they are
16 entitled to injunctive relief. Petitioner cannot show a likelihood of success on the merits
17 because they seek to circumvent the detention statute under which they are rightfully
18 detained to secure bond hearings that they are not entitled to. Petitioner falls precisely
19 within the statutory definition of aliens subject to mandatory detention without bond
20 found in § 1225(b)(2), i.e., an alien present in the United States that has not been
21 admitted.² As the BIA determined in *Matter of Yajure*, Immigration Judges lack
22 authority to hear bond requests or to grant bond to aliens who are present in the United
23

24 ² As the Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018),
25 “Under ... 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is present’ in
26 this country but ‘has not been admitted,’ is treated as ‘an applicant for admission.’ §
27 1225(a)(1). Applicants for admission must ‘be inspected by immigration officers’ to
28 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
24
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 **C. Review at the Board of Immigration Appeals (“BIA”)**

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

13 **III. ARGUMENT**

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

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

19 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including
20 habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien
21 arising from the decision or action by the Attorney General to [1] *commence*
22 *proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under
23 this chapter.”⁴ 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates
24 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision
25 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,
26

27 ⁴ Much of the Attorney General’s authority has been transferred to the Secretary of
28 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)

1 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”⁵ Except
2 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive
3 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

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

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

18 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
19 commences proceedings against an alien when the alien is issued a Notice to Appear
20 before an immigration court.” *Herrera-Correra v. United States*, 2008 WL 11336833, at
21 *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom
22 proceedings are commenced and detain that individual until the conclusion of those
23 proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from
24 the Attorney General’s decision to commence proceedings” and review of claims arising
25

26 ⁵ 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),
28 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 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
2 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As
3 such, judicial review of the Application and Petition is barred by § 1252(g). The Court
4 should dismiss for lack of jurisdiction.

5 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including
6 interpretation and application of statutory provisions . . . arising from any action
7 taken . . . to remove an alien from the United States” is only proper before the
8 appropriate federal court of appeals in the form of a petition for review of a final
9 removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination*
10 *Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’
11 clause” that “channels judicial review of all [claims arising from deportation
12 proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV
13 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah*
14 *v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

23 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
24 issue—whether legal or factual—arising from *any* removal-related activity can be
25 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d
26 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
27 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
28 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d

1 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
2 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
3 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
4 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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

18 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit
19 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
20 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
21 jurisdiction to review both direct and indirect challenges to removal orders, including
22 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at
23 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
24 the first place or to seek removal[.]”). Here, Petitioner challenges the government’s
25 decision and action to detain them, which arises from DHS’s decision to commence
26 removal proceedings, and is thus an “action taken . . . to remove [them] from the United
27 States.” *See 8 U.S.C. § 1252(b)(9)*; *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*
28 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did

1 not bar review in that case because the petitioner did not challenge “his initial
2 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
4 detention decision, which flows from the government’s decision to “commence
5 proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in
6 *Jennings* outlines why Petitioner’s claims are unreviewable here.

7 While holding that it was unnecessary to comprehensively address the scope of
8 § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of
9 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–
10 94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations
11 where “respondents . . . [were] not challenging the decision to detain them in the first
12 place.” *Id.* at 294–95. In this case, Petitioner *does* challenge the government’s decision to
13 detain them in the first place. Though Petitioner may attempt to frame their challenge as
14 one relating to detention authority, rather than a challenge to DHS’s decision to detain
15 them in the first instance, such creative framing does not evade the preclusive effect of §
16 1252(b)(9).

17 Indeed, the fact that Petitioner is challenging the basis upon which they are
18 detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to
19 remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C.
20 § 1252(b)(9). The Court should dismiss the Application and Petition for lack of
21 jurisdiction under § 1252(b)(9). If anything, Petitioner must present their claims before
22 the appropriate federal court of appeals because these claims challenge the government’s
23 decision or action to detain them, which must be raised before a court of appeals, not this
24 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 detention instead of § 1225. When there is “an irreconcilable conflict in two legal provisions,” then “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). § 1226(a) “applies to aliens “arrested and detained pending a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See 8 U.S.C. § 1225*. It applies only to “applicants for admission”; that is, as relevant here, aliens present in the United States who have not 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).

The BIA recently analyzed and decided this legal 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.

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

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

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

1 appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or
2 Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45
3 (2013).

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

20 b. Congress did not intend to treat individuals who unlawfully
21 enter the country better than those who appear at a port of
22 entry.

23 When the plain text of a statute is clear, “that meaning is controlling” and courts
24 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
25 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
26 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d
27 726, 730 (9th Cir. 2011). Section 1225 was added by Congress under the IIRIRA to
28 correct “an anomaly whereby immigrants who were attempting to lawfully enter the

1 United States were in a worse position than persons who had crossed the border
2 unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to*
3 *extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to
4 replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens
5 who have entered the United States without inspection gain equities and privileges in
6 immigration proceedings that are not available to aliens who present themselves for
7 inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court
8 should reject Petitioner’s interpretation because it would put aliens who “crossed the
9 border unlawfully” in a better position than those “who present themselves for inspection
10 at a port of entry.” *Id.* Aliens who presented at port of entry would be subject to
11 mandatory detention under § 1225, but those who crossed illegally would be eligible for
12 a bond under § 1226(a).

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

24 *c. Prior agency practices are not entitled to deference under*
25 *Loper Bright.*

26 The asserted longstanding agency practice carries little, if any, weight under *Loper*
27 *Bright*. The weight given to agency interpretations “must always ‘depend upon their
28 thoroughness, the validity of their reasoning, the consistency with earlier and later

1 pronouncements, and all those factors which give them power to persuade.” *Loper*
2 *Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift &*
3 *Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis
4 to support its reasoning. See 62 Fed. Reg. at 10323. To be sure, “when the best reading
5 of a statute is that it delegates discretionary authority to an agency,” the Court must
6 “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*,
7 603 U.S. at 395 (cleaned up). But read most naturally, §§ 1225(b)(1) and (b)(2) mandate
8 detention for applicants for admission until certain proceedings have concluded.
9 *Jennings*, 583 U.S. at 297. Petitioner thus cannot show a likelihood of success on the
10 merits.

11 2. The Balance of Hardships Favors Respondents

12 Where the moving party only raises “serious questions going to the merits,” the
13 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632
14 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d
15 981, 987 (9th Cir. 2008)). Petitioner fails to do so here. See *id.* The government has a
16 compelling interest in the steady enforcement of its immigration laws. See *Miranda v.*
17 *Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a
18 “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-
19 cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public
20 interest in the United States’ enforcement of its immigration laws is high”); *United*
21 *States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7,
22 2015) (“the Government’s interest in enforcing immigration laws is enormous.”).
23 Judicial intervention would only disrupt the status quo. The Court should avoid a path
24 that “inject[s] a degree of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694
25 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. See
26 8 C.F.R. § 1003.1(d)(1). By regulation it must “provide clear and uniform guidance”
27 “through precedent decisions” to “DHS [and] immigration judges.” *Id.* Here, the BIA has
28 provided that clear guidance by its decision in *Matter of Jonathan Javier Yajure*

1 *Hurtado*, 29 I&N Dec. 216 (BIA 2025).

2 **IV. CONCLUSION**

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

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8 Respectfully submitted,

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18 contains 4.692 words, which complies with the word limit of L.R. 11-6.1.