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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 LUCIO GUTIERREZ GARCIA,

15 Petitioner,

16 v.

17 Warden of ADELANTO DETENTION
FACILITY; Ernesto Santacruz Jr in his
18 official Capacity as Field Office
Director of the Immigration and
19 Customs Enforcement, Enforcement
and Removal Operations ADELANTO
20 DETENTION FACILITY; KRISTI
NOEM, in her official capacity as
21 Secretary of the U.S. Department of
Homeland Security; and PAM BONDI,
22 in her official capacity as Attorney
General of the United States,

23 Respondents.
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No. 5:25-cv-02911-AB-AJR

**FEDERAL RESPONDENTS' ANSWER
TO PETITIONER'S PETITION FOR
WRIT OF HABEAS CORPUS**

Honorable Judge A. Joel Richlin
United States Magistrate Judge

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RESPONDENTS' ANSWER TO PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Respondents hereby oppose Petitioner's Writ of Habeas Corpus [[Dkt. 1](#)]. Petitioner seeks federal habeas relief compelling the Executive Office for Immigration Review ("EOIR") to conduct bond hearings under [8 U.S.C. § 1226\(a\)](#) or for the United States ("U.S.") Department of Homeland Security ("DHS") to release him.

First, the Court lacks jurisdiction over the Petition pursuant to [8 U.S.C. §§ 1252\(g\)](#) and [\(b\)\(9\)](#) because Petitioner's claims arise out of his detention during removal proceedings.

Second, the government reiterates here the legal position it has taken in the *Bautista* case presided over by the Honorable Judge Sykes, No. 5:25-cv-01873-SSS-BFM. Judge Sykes 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](#)]. More recently in *Bautista*, Judge Sykes granted summary judgment on November 20, 2025 [[Dkt. 81](#), --- F. Supp. 3d. ---, [2025 WL 3289861](#) (C.D. Cal. Nov. 20, 2025)], and subsequently granted class certification, [[Dkt. 82](#), --- F.R.D. ---, [2025 WL 3288403](#) (C.D. Cal. Nov. 25, 2025)].

In any event, the same legal issue at issue in *Bautista* has subsequently been raised and resolved in this District in a series of other cases, including: *Jose Ramon Zaragoza v. Kristi Noem, et al.*, 5:25-cv-02925-HDV-PVC, [Dkt. 8](#) (November 11, 2025 order granting TRO for bond hearings); *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, [2025 WL 2633187](#) (Aug. 13, 2025 order), *Ruben Benitez et al. v. Kristi Noem, et al.*, [2025 U.S. Dist. LEXIS 171945](#) (Aug. 26, 2025 order), and *Miguel Portillo, et al. v. Kristi Noem, et al.*, 5:25-cv-02892-JFW-PVC (October 31, 2025 order granting temporary restraining order) [[Dkt. 7](#)]. Judge Wilson issued an order finding that such detentions are governed by § 1225(b)(2). *See Altamirano Ramos v. Lyons et al.*, [2025 WL 3199872](#) (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO).

1 Likewise, in an even more recent decision, Judge Blumenfeld, Jr., denied a TRO finding
2 detentions are governed by § 1225(b)(2), and not § 1226(a). *See Hernandez Cruz v.*
3 *Noem et al.*, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (denying application for bond
4 hearing by TRO).

5 The Board of Immigration Appeals (“BIA”) has ruled on this issue by order dated
6 September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After
7 detailed analysis, the BIA determined that based on the plain language of section
8 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),
9 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who
10 are present in the United States without admission. Like the *Altamiranos*, *Ramos*, and
11 *Hernandez Cruz* decisions, other District Courts have followed the BIA’s approach. *See*
12 *Barrios Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas*
13 *v. Olson*, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, ---
14 F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, ---
15 F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

16 Thus, Petitioner is properly detained pursuant to § 1225 and his claims based on
17 his inaccurate assertion that he should be detained under § 1226 instead must be
18 dismissed. To the extent Petitioner would be entitled to any remedy, at most it would be
19 ordering a bond hearing before an Immigration Judge (“IJ”) under Section 1226(a),
20 consistent with what Judge Sykes ordered in the *Bautista* case, 5:25-cv-01873-SSS-
21 BFM, and not immediate release free of any restrictions.

22 **Third**, the Petition fails to allege facts sufficient to state a Fourth Amendment
23 claim. While he alleges that the arresting ICE agents did not “articulate[]” the basis for
24 their reasonable suspicion or probable cause, he fails to plead any facts showing that the
25 arresting agents did not *have* the requisite reasonable suspicion or probable cause.
26 Moreover, he does not dispute the fact that he entered the U.S. unlawfully and is present
27 without having been admitted.

28 **Fourth**, to the extent Petitioner is bringing any claims based on the allegedly

1 inadequate medical care he received in detention, such claims do not relate to the fact of
2 his confinement nor would require his release, if successful. Thus, such claims are not
3 properly raised in the Petition.

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, DHS has the sole discretionary authority to temporarily release on
3 parole “any alien applying for admission to the United States” on a “case-by-case basis
4 for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see
5 *Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

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

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

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

23 The BIA is an appellate body within the Executive Office for Immigration Review
24 (“EOIR”). See 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
25

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

10 **III. ARGUMENT**

11 **A. The Petition Must Be Denied and Dismissed Because 8 U.S.C. § 1252** 12 **Deprives the Court of Jurisdiction.**

13 As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of
14 Petitioner’s claims.

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

24 ² Much of the Attorney General’s authority has been transferred to the Secretary of
25 Homeland Security and many references to the Attorney General are understood to refer
26 to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

27 ³ 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),
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 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 claim stems from his 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 such, judicial review of the Application and Petition is barred by § 1252(g). The Court
27 should dismiss for lack of jurisdiction.

28 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including

1 interpretation and application of statutory provisions ... arising from any action
2 taken ... to remove an alien from the United States” is only proper before the appropriate
3 federal court of appeals in the form of a petition for review of a final removal order. *See*
4 8 U.S.C. § 1252(b)(9); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483
5 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial
6 review of all [claims arising from deportation proceedings]” to a court of appeals in the
7 first instance. *Id.*; *see Lopez v. Barr*, 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021)
8 (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

11 Notwithstanding any other provision of law (statutory or nonstatutory), . . .

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

17 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
18 issue—whether legal or factual—arising from *any* removal-related activity can be
19 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d
20 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
21 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
22 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d
23 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
24 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
25 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
26 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

27 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring
28 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)

1 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
2 as precluding review of constitutional claims or questions of law raised upon a petition
3 for review filed with an appropriate court of appeals in accordance with this section.”
4 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
5 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
6 process before the court of appeals ensures that aliens have a proper forum for claims
7 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,
8 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d
9 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [IIRIRA] to obviate . . .
10 Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA
11 determinations and “all constitutional claims or questions of law.”).

12 As such, the Court lacks jurisdiction over the Petition and it must be dismissed.

13 **B. Petitioner’s First and Third Claims Also Must Be Dismissed Because**
14 **He Is Properly Detained Pursuant to 8 U.S.C. § 1225.**

15 Petitioner asserts that § 1226(a), not § 1225, governs his detention such that he has
16 improperly been denied a bond hearing in violation of § 1226(a) and his due process
17 rights. As explained herein, Petitioner is properly detained under § 1225 and, as such, is
18 not entitled to a bond hearing.

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

21 Petitioner is an “applicant for admission,” subject to mandatory detention under
22 the plain text of § 1225. *See 8 U.S.C. § 1225(a)–(b)*. “Section 1225 governs the
23 inspection, detention, and removal of aliens seeking admission into the United States.”
24 *Sandoval v. Acuna*, 2025 WL 3048926, at *3 (W.D. La. Oct. 31, 2025). The statute
25 defines “an applicant for admission” broadly:

26 An alien present in the United States who has not been admitted or who
27 arrives in the United States (whether or not at a designated port of
28 arrival ...) shall be deemed for purposes of this chapter an applicant for

admission.

See 8 U.S.C. § 1225(a)(1). Section 1225 requires mandatory detention of an applicant for admission if “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” *Id.* § 1225(b)(2)(A).

Section 1225’s definition of “an applicant for admission” is controlling. *See Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) (“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning.”). As relevant here, an alien is “deemed” to be “an applicant for admission” if he is present in the United States without having been admitted. This unambiguously broad statute does not distinguish among unadmitted individuals who are present in the U.S. for one hour, one day, one year, or one decade. *See* 8 U.S.C. § 1225(a)(1). Nor does it distinguish between those who arrive in the U.S. for inspection and those who cross the border without inspection. In this case, Petitioner does not dispute the fact that he entered the U.S. unlawfully and is present without having been admitted. Consequently, he is an “applicant[] for admission” under § 1225(a), subject to mandatory detention under § 1225(b). *See Sandoval*, 2025 WL 3048926, at *3 (inadmissible aliens under § 1182(a)(6)(A)(i) are “applicants for admission”).

The Court should reject Petitioner’s argument that § 1226(a) governs his 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 been 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).

1 Section 1226(a) applies more generally than § 1225 because it consists of those
2 “who enter lawfully but later become inadmissible.” *Sandoval*, 2025 WL 3048926, at *4.
3 Section 1225(a) differs because it applies specifically to individuals like Petitioner who
4 is deemed an applicant for admission. In these situations, the specific provision controls
5 over the more general one. *See id.*; *see also Altamirano Ramos*, 2025 WL 3199872, at *6
6 (C.D. Cal. Nov. 12, 2025) (applying this canon of statutory interpretation to §§ 1225 and
7 1226); *Hernandez Cruz v. Noem et al.*, 2:25-cv- 8:25-cv-02566-SB-MAA (C.D. Cal.
8 Dec. 2, 2025) (denying application for bond hearing by TRO) [Dkt. 11]; *United States v.*
9 *Brumbaugh*, 139 F.4th 1077, 1085 (9th Cir. 2025) (noting that the “well established
10 canon of statutory interpretation ... ‘that the specific governs the general,’ ... applies
11 especially where, as here, ‘Congress has enacted a comprehensive scheme and has
12 deliberately targeted specific problems with specific solutions’”) (quoting *RadLAX*
13 *Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012)).

14 Section 1225(b)(2)(A) clearly applies to Petitioner because the definition of an
15 “applicant for admission,” expressly includes those present in the U.S. without
16 inspection. *See* 8 U.S.C. § 1225(a)(1); *see Jennings*, 583 U.S. at 287 (2018) (noting that
17 § 1225(b)(2) is “a catchall provision that applies to all applicants for admission not
18 covered by § 1225(b)(1) [*i.e.*, those who arrive for inspection]”); *see also Torres v. Barr*,
19 976 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) (noting that Congress eliminated the
21 distinction between those entering the United States with or without inspection).

22 The BIA recently analyzed and decided this legal issue in its order issued on
23 September 5, 2025, in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216
24 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language
25 of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. §
26 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to
27 grant bond to aliens who are present in the United States without admission. Other
28 District Courts have followed the BIA’s approach. *See Altamirano Ramos v. Lyons et al.*,

1 2:25-cv-09785-SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond
2 hearing by TRO) [Dkt. 8]; *Barrios Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La.
3 Oct. 31, 2025); *Cirrus Rojas v. Olson*, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025);
4 *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept. 30, 2025);
5 *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

6 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*
7 *Nielsen*, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-
8 positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225
9 and 1226. *See Delgado v. Sessions*, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15,
10 2017) (noting a denial of bond to an immigration detainee was “a question well suited
11 for agency expertise”); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing
12 interplay of §§ 1225(b)(1) and 1226).

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

28 The BIA has long recognized that “many people who are not *actually* requesting

1 permission to enter the United States in the ordinary sense are nevertheless deemed to be
2 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N.
3 Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.”
4 *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v.*
5 *United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in
6 § 1225(b)(2)(A) must be read in the context of the definition of “applicant for
7 admission” in § 1225(a)(1). Applicants for admission are both those individuals present
8 without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1).
9 Both are understood to be “seeking admission” under § 1225(a)(1). *See* *Lemus-Losa*, 25 I.
10 & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens
11 “who are applicants for admission or otherwise seeking admission” to be inspected by
12 immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an
13 appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or
14 Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45
15 (2013).

16 The court’s decision in *Florida v. United States* is instructive here. The district
17 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission
18 throughout removal proceedings, rejecting the assertion that DHS has discretion to
19 choose to detain an applicant for admission under either section 1225(b) or 1226(a).
20 *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*,
21 2023 WL 5212561 (11th Cir. July 11, 2023). Such discretion “would render mandatory
22 detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to
23 include illegal border crossers would make little sense if DHS retained discretion to
24 apply § 1226(a) and release illegal border crossers whenever the agency saw fit.” *Id.* The
25 court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court
26 explained that “wholesale failure” by the federal government motivated the 1996
27 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on,
28 *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General

1 explained “section [1225] (under which detention is mandatory) and section [1226(a)]
2 (under which detention is permissive) can be reconciled only if they apply to different
3 classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

4 b. *Congress Did Not Intend to Treat Individuals Who Unlawfully*
5 *Enter the Country Better Than Those Who Appear at a Port of*
6 *Entry.*

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

23 Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in
24 statutory drafting are “common . . . sometimes in a congressional effort to be doubly
25 sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible
26 alien “was paroled into this country through a shocking abuse of that power.” 171 Cong.
27 Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it
28 out of concern that the executive branch “ignore[d] its fundamental duty under the

1 Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). One member
2 even expressed frustration that “every illegal alien is currently required to be detained by
3 current law throughout the pendency of their asylum claims.” *Id.* at H278 (statement of
4 Rep. McClintock). The LRA reflects a “congressional effort to be doubly sure” that such
5 unlawful aliens are detained. *Barton*, 590 U.S. at 239.

6 *c. Prior Agency Practices Are Not Entitled to Deference Under*
7 *Loper Bright*.

8 The asserted longstanding agency practice carries little, if any, weight under *Loper*
9 *Bright*. The weight given to agency interpretations “must always ‘depend upon their
10 thoroughness, the validity of their reasoning, the consistency with earlier and later
11 pronouncements, and all those factors which give them power to persuade.’” *Loper*
12 *Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift &*
13 *Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis
14 to support its reasoning. *See* 62 Fed. Reg. at 10323. To be sure, “when the best reading
15 of a statute is that it delegates discretionary authority to an agency,” the Court must
16 “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*,
17 603 U.S. at 395 (cleaned up). But read most naturally, §§ 1225(b)(1) and (b)(2) mandate
18 detention for applicants for admission until certain proceedings have concluded.
19 *Jennings*, 583 U.S. at 297.

20 Petitioner thus is properly detained under 8 U.S.C. § 1225. Accordingly, because
21 Petitioner’s first and third cause of action are premised on the incorrect assertion that his
22 detention is governed by § 1226(a), both claims fail and must be dismissed for this
23 additional reason.

24 **C. Petitioner’s Second Claim Also Must Be Dismissed Because the**
25 **Petition’s Fourth Amendment Allegations Are Insufficient.**

26 Although the Fourth Amendment prohibits “unreasonable searches and seizures”
27 by the Government, ICE is permitted to make warrantless stops for immigration
28 enforcement if it has reasonable suspicion of a violation. *See* 8 U.S.C. § 1357(a)(2) (any

1 authorized employee of the Service shall have the power without warrant to “arrest any
2 alien in the United States, if he has reason to believe that the alien so arrested is in the
3 United States in violation of any law or regulation made in pursuance of law regulating
4 the admission, exclusion, or expulsion of aliens, or to arrest any alien in the United
5 States, if he has reason to believe the alien so arrested is in the United States in violation
6 of any such law or regulation and is likely to escape before a warrant can be obtained for
7 his arrest” An arrest, even if conducted without a warrant, does not automatically
8 equate to a violation of Fourth Amendment rights.

9 Here, Petitioner alleges that he was arrested without a warrant and that the ICE
10 agents did not “*articulate*[] any reasonable suspicion or probable cause that Petitioner
11 had committed an immigration or criminal offense.” Dkt. 1 at ¶ 60. However, the
12 Petition fails to plead any facts showing that ICE did not *have* such reasonable suspicion
13 in making an arrest of or detaining Petitioner. Indeed, the Petitioner does not plead any
14 facts showing that he is not properly subject to immigration detention independent of the
15 circumstances of any arrest. Thus, his second cause of action based on alleged violation
16 of his Fourth Amendment rights must be dismissed.

17 **D. To the Extent the Petition Asserts Claims Based on Allegedly**
18 **Inadequate Medical Care, Such Claims Do Not Sound in Habeas.**

19 The Petition makes claims regarding allegedly inadequate medical care while he
20 has been in detention. See Dkt. 1 ¶¶ 34-36. However, such claims do not sound in
21 habeas. See *Pinson v. Carvajal*, 69 F.4th 1059, 1069, 1073 (9th Cir. 2023) (claim “based
22 on the deliberate failure to deliver adequate medical care neither goes to the fact of
23 [Petitioner’s] confinement nor would require immediate release if successful [and] is
24 outside the core of habeas.”). Thus, to the extent Petitioner’s claims are based on his
25 receipt of allegedly inadequate medical care, those claims are not properly raised in the
26 Petition and must be dismissed.

27 **IV. CONCLUSION**

28 The Federal Respondents respectfully request that the Court deny the habeas

1 petition and dismiss the action. Should the Court nonetheless grant the Petition,
2 however, the relief should be limited to what other Judges in this District have generally
3 issued in similar cases, consistent with this Court's ruling in *Bautista*: Requiring release
4 unless a Section 1226(a) bond hearing is provided within seven (7) days.

5 Dated: December 15, 2025

Respectfully submitted,

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15 **L.R. 11-6.1 Certification**
16

17 Undersigned counsel of record certifies that this brief contains 5,433 words, which
18 complies with the word limit of L.R. 11-6.1.

19 Dated: December 15, 2025

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