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

12 MAURICIO ALEJANDRO OVALLE  
13 LOMBANA,

14 Petitioner,

15 v.

16 MARK BOWEN, Acting Warden,  
Adelanto ICE Processing Center, et al.,

17 Respondents.  
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No. 2:25-cv-10871-HDV-JC

**FEDERAL RESPONDENTS'  
OPPOSITION TO PETITIONER'S *EX*  
*PARTE* APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW  
CAUSE RE: PRELIMINARY  
INJUNCTION**

**[Filed Concurrently with the Declaration  
of Fernando Negrete]**

Honorable Hernan D. Vera  
United States District Judge

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

**I. INTRODUCTION**

Respondents hereby oppose Petitioner's *ex parte* application [Dkt. 7] for a temporary restraining order compelling his immediate release from immigration detention – without bond, without conditions, with a permanent prohibition on the United States Department of Homeland Security (“DHS”) ever re-detaining him without a heightened evidentiary hearing, and enjoining DHS from transferring or removing him. Petitioner was apprehended after an illegal entry, served with a Notice to Appear (“NTA”), repeatedly arrested for crimes while on release (including his arrest for spousal battery in January of 2025), and was ultimately re-detained on September 30, 2025. *See* Fernando Negrete Decl., ¶¶ 5-10. Petitioner's repeated post-release criminal activity is certainly sufficient ‘changed circumstances’ to warrant his redetention.

To the extent Petitioner now seeks release from detention during his removal proceedings, his remedy, if any, would be to seek release on bond pursuant to a hearing held before an Immigration Judge, where he might prove that he is not in fact a criminal danger or flight risk. In that regard, his next Immigration Court hearing is scheduled for December 9, 2025. As to his entitlement to seek release on bond, 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.<sup>1</sup> The same legal issue at issue in *Bautista* has subsequently been raised and resolved in this District in a series of other cases including

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<sup>1</sup> 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]. 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]. More recently in *Bautista*, Judge Sykes granted summary judgment on November 20, 2025 [Dkt. 81] and granted class certification on November 25, 2025 [Dkt. 82].

1 this Court’s ruling in *Jose Ramon Zaragoza v. Kristi Noem, et al.*, 5:25-cv-02925-HDV-  
2 PVC, Dkt. no. 8 (November 11, 2025 order granting TRO for bond hearings); *Javier*  
3 *Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS, *Ruben Benitez et*  
4 *al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS, and *Miguel Portillo, et al. v. Kristi*  
5 *Noem, et al.*, 5:25-cv-02892-JFW-PVC (October 31, 2025 order granting temporary  
6 restraining order) [Dkt. no. 7]. Judge Wilson recently issued an order finding that such  
7 detentions are governed by § 1225(b)(2). *See Altamirano Ramos v. Lyons et al.*, 2:25-cv-  
8 09785-SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by  
9 TRO) [Dkt. no. 8].

10 The Board of Immigration Appeals (BIA) has ruled on this issue by order dated  
11 September 5, 2025 in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After  
12 detailed analysis, the BIA determined that based on the plain language of section  
13 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),  
14 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who  
15 are present in the United States without admission. Like the *Altamiranos Ramos*  
16 decision, other District Courts have followed the BIA’s approach. *See Barrios Sandoval*  
17 *v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas*  
18 *v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas*  
19 *Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez*  
20 *v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

21 In sum, to the extent Petitioner would be entitled to any remedy via his TRO  
22 Application, at most it would be ordering a bond hearing before an Immigration Judge  
23 under Section 1226(a), consistent with what this Court ordered in *Zaragoza, supra*, and  
24 not immediate release free of any restrictions.

## 25 **I. STATUTORY BACKGROUND**

### 26 **A. Detention under 8 U.S.C. § 1225**

27 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]  
28 present in the United States who [have] not been admitted” or “who arrive[] in the

1 United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two  
2 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*  
3 *v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

14 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
15 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
16 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
17 for a removal proceeding “if the examining immigration officer determines that [the]  
18 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8  
19 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for  
20 aliens arriving in and seeking admission into the United States who are placed directly in  
21 full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),  
22 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583  
23 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole  
24 discretionary authority to temporarily release on parole “any alien applying for  
25 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons  
26 or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806  
27 (2022).

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

Section 1226 provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.<sup>2</sup> By regulation, immigration officers can release aliens if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

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

The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to

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<sup>2</sup> Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

1 DHS, the immigration judges, and the general public on the proper interpretation and  
2 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The  
3 decision of the [BIA] shall be final except in those cases reviewed by the Attorney  
4 General.” 8 C.F.R. § 1003.1(d)(7).

## 5 **II. ARGUMENT**

6 As noted above, Petitioner was properly taken back into detention because he was  
7 repeatedly arrested for serious criminal conduct, including a spouse battery arrest on  
8 January 6, 2025. See Negrete Decl. ¶¶ 7 & 8. These arrests occurred after Petitioner was  
9 initially released on his own recognizance in 2022. This record reflects significant  
10 changed circumstances and demonstrates ongoing danger to the community, further  
11 supporting DHS’s discretionary decision to re-detain him.

12 Apart from the Petitioner’s criminal record, this Court has already considered and  
13 addressed the essential arguments made below in the case of *Jose Ramon Zaragoza v.*  
14 *Kristi Noem, et al.*, 5:25-cv-02925-HDV-PVC, Dkt. no. 8 (November 11, 2025 order  
15 granting TRO for bond hearings). The Respondents reiterate the government’s position,  
16 however, regarding the statutory authority for detaining individuals like the Petitioner.

### 17 **A. The Court Lacks Jurisdiction to Entertain Petitioner’s Action under 8** 18 **U.S.C. § 1252.**

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

22 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including  
23 habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien  
24 arising from the decision or action by the Attorney General to [1] *commence*  
25 *proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under

1 this chapter.”<sup>3</sup> 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates  
2 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision  
3 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,  
4 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”<sup>4</sup> Except  
5 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive  
6 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

7 Section 1252(g) also bars district courts from hearing challenges to the *method* by  
8 which the Secretary of Homeland Security chooses to commence removal proceedings,  
9 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d  
10 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning  
11 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision  
12 to take [plaintiff] into custody and to detain him during removal proceedings”).

13 Petitioner’s claims stem from his detention during removal proceedings. That  
14 detention arises from the decision to commence such proceedings against them. *See, e.g.,*  
15 *Valencia-Mejia v. United States*, 2008 WL 4286979, at \*4 (C.D. Cal. Sept. 15, 2008)  
16 (“The decision to detain plaintiff until his hearing before the Immigration Judge arose  
17 from this decision to commence proceedings[.]”); *Wang v. United States*, 2010 WL  
18 11463156, at \*6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–  
19 99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of  
20 jurisdiction to review action to execute removal order).

21 As other courts have held, “[f]or the purposes of § 1252, the Attorney General  
22 commences proceedings against an alien when the alien is issued a Notice to Appear  
23 before an immigration court.” *Herrera-Correra v. United States*, 2008 WL 11336833, at

24 \_\_\_\_\_  
25 <sup>3</sup> Much of the Attorney General’s authority has been transferred to the Secretary of  
26 Homeland Security and many references to the Attorney General are understood to refer  
27 to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

28 <sup>4</sup> Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.  
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 \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom  
2 proceedings are commenced and detain that individual until the conclusion of those  
3 proceedings.” *Id.* at \*3. “Thus, an alien’s detention throughout this process arises from  
4 the Attorney General’s decision to commence proceedings” and review of claims arising  
5 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d  
6 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at \*6; 8 U.S.C. § 1252(g). As  
7 such, judicial review of the Application and Petition is barred by § 1252(g). The Court  
8 should dismiss for lack of jurisdiction.

9 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including  
10 interpretation and application of statutory provisions . . . arising from any action  
11 taken . . . to remove an alien from the United States” is only proper before the  
12 appropriate federal court of appeals in the form of a petition for review of a final  
13 removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination*  
14 *Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’  
15 clause” that “channels judicial review of all [claims arising from deportation  
16 proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV  
17 20-1330 (JRT/BRT), 2021 WL 195523, at \*2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah*  
18 *v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

27 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*  
28 issue—whether legal or factual—arising from *any* removal-related activity can be

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

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

22 As such, the Court lacks jurisdiction over this action.

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

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

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

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

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

10  
11 The BIA recently analyzed and decided this legal issue in its order issued on  
12 September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA  
13 2025). After detailed analysis, the BIA determined that based on the plain language of  
14 section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A)  
15 (2018), Immigration Judges lack authority to hear bond requests or to grant bond to  
16 aliens who are present in the United States without admission. Other District Courts have  
17 followed the BIA’s approach. *See Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-  
18 SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO)  
19 [Dkt. no. 8]; *See Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926  
20 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL  
21 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL  
22 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL  
23 2730228 (S.D. Cal. Sept. 24, 2025).

24 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*  
25 *Nielsen*, 2019 WL 5802013, at \*2 (W.D. Wash. Nov. 7, 2019). The BIA is well-  
26 positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225  
27 and 1226. *See Delgado v. Sessions*, 2017 WL 4776340, at \*2 (W.D. Wash. Sept. 15,  
28 2017) (noting a denial of bond to an immigration detainee was “a question well suited

1 for agency expertise”); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing  
2 interplay of §§ 1225(b)(1) and 1226).

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

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

1 “who are applicants for admission or otherwise seeking admission” to be inspected by  
2 immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an  
3 appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or  
4 Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45  
5 (2013).

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

22 Finally, to the extent Petitioner suggests that § 1226(a) should apply because he is  
23 married to U.S. citizen, Petitioner was recently arrested for spousal battery on January 6,  
24 2025. *See* Negrete Decl. ¶ 8. Any future marriage-based relief would require a good-faith  
25 marital relationship; an arrest for domestic violence against the U.S. citizen spouse  
26 strongly undermines the bona fides necessary to pursue such relief. *Id.*

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

4           When the plain text of a statute is clear, “that meaning is controlling” and courts  
5   “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
6   842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
7   “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
8   726, 730 (9th Cir. 2011). Section 1225 was added by Congress under the IIRIRA to  
9   correct “an anomaly whereby immigrants who were attempting to lawfully enter the  
10   United States were in a worse position than persons who had crossed the border  
11   unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to*  
12   *extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to  
13   replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens  
14   who have entered the United States without inspection gain equities and privileges in  
15   immigration proceedings that are not available to aliens who present themselves for  
16   inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court  
17   should reject Petitioner’s interpretation because it would put aliens who “crossed the  
18   border unlawfully” in a better position than those “who present themselves for inspection  
19   at a port of entry.” *Id.* Aliens who presented at port of entry would be subject to  
20   mandatory detention under § 1225, but those who crossed illegally would be eligible for  
21   a bond under § 1226(a).

22           Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in  
23   statutory drafting are “common . . . sometimes in a congressional effort to be doubly  
24   sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible  
25   alien “was paroled into this country through a shocking abuse of that power.” 171 Cong.  
26   Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it  
27   out of concern that the executive branch “ignore[d] its fundamental duty under the  
28   Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). One member

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

5 *c. Prior agency practices are not entitled to deference under*  
6 *Loper Bright.*

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

20 2. The Balance of Hardships Favors Respondents

21 Where the moving party only raises “serious questions going to the merits,” the  
22 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632  
23 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d  
24 981, 987 (9th Cir. 2008)). Petitioner fails to do so here. See *id.*

25 Petitioner has a documented criminal history that includes a battery arrest on  
26 March 28, 2023, and a spouse battery arrest on January 6, 2025. See Negrete Decl. ¶¶ 7  
27 & 8. These arrests occurred after Petitioner was initially released on his own  
28 recognizance in 2022. This record reflects significant changed circumstances and

1 demonstrates ongoing danger to the community, further supporting DHS's discretionary  
2 decision to re-detain him.

3       Additionally, DHS's Enforcement Integrated Database Alien Removal Module  
4 (EARM), a DHS system for tracking immigration removal records, notes that  
5 Petitioner's Order of Supervision was deactivated on August 27, 2025, for failure to  
6 report. Although the I-213 does not reference this notation, and Respondents  
7 acknowledge this is administrative database information, the failure to report designation  
8 is consistent with the decision to re-detain Petitioner at his next scheduled check-in on  
9 September 30, 2025. *See* Negrete Decl. ¶ 9. This further contradicts Petitioner's assertion  
10 that he was detained for no reason.

11       The government has a compelling interest in the steady enforcement of its  
12 immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022)  
13 (vacating an injunction that required a "broad change" in immigration bond procedure);  
14 *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at \*4  
15 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its  
16 immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL  
17 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing  
18 immigration laws is enormous."). Accordingly, Petitioner's request for broad injunctive  
19 relief that essentially immunizes him broadly from immigration laws is inappropriate,  
20 and it certainly is not narrowly tailored to the harm asserted: That he is being held in  
21 immigration detention despite allegedly not posing a criminal danger or flight risk. As  
22 noted above, at most it would support a request for a prompt bond hearing before an  
23 Immigration Judge.

### 24 **III. CONCLUSION**

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

Respectfully submitted,

Dated: November 28, 2025

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