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10
11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 DANNA LUCIANO, *et al.*,
15 Petitioners,
16 v.
17 KRISTI NOEM, *et al.*,
18 Respondents.
19

No. 5:25-cv-03156-RGK-MAA

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

[No hearing date set]

Honorable R. Gary Klausner
United States District Judge

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

Respondents hereby oppose Petitioners' *ex parte* application for a temporary restraining order compelling an immigration judge to provide an individualized bond hearing to Petitioners under 8 U.S.C. § 1226(a) within seven days (the "Application") [Dkt. 4]. 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, *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS, and *Miguel Portillo, et al. v. Kristi Noem, et al.*, 5:25-cv-02892-JFW-PVC (October 31, 2025 order granting temporary restraining order) [Dkt. no. 7]. Judge Wilson recently issued an order finding that such detentions are governed by § 1225(b)(2). *See Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO) [Dkt. no. 8].

The Board of Immigration Appeals (BIA) has ruled on this issue by order dated September 5, 2025 in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. Like the *Altamiranos Ramos* decision, other District Courts have followed the BIA's approach. *See Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas*

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]. 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 *v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas*
2 *Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez*
3 *v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

4 **I. INTRODUCTION**

5 Petitioner², detainees in immigration custody who were present in the United
6 States without ever having been inspected and admitted, filed a petition for writ of
7 habeas corpus (“Petition”) [Dkt. 1] asking the Court to release them or provide them a
8 bond hearing. Petitioner then filed their *ex parte* Application seeking essentially the
9 same relief. The Application and the Petition should be denied for two reasons.

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

18 Second, assuming jurisdiction, Petitioner nonetheless fails to demonstrate they are
19 entitled to injunctive relief. Petitioner cannot show a likelihood of success on the merits
20 because they seek to circumvent the detention statute under which they are rightfully
21 detained to secure bond hearings that they are not entitled to. Petitioner falls precisely
22 within the statutory definition of aliens subject to mandatory detention without bond
23 found in § 1225(b)(2), i.e., an alien present in the United States that has not been
24
25
26

27 ² Petitioners are Danna Luciano; Manuel Duran Armenta; Gustavo Guzman
28 Gonzalez; Oscar Danilo Cortezmencos; Edwin Solaresargueta; Eleutereo Anibal Santos
Vasquez; Lucio Gutierrez Garcia; and Pablo Tampa Mendoza. This memorandum will
refer to them collectively as “Petitioner.”

1 admitted.³ As the BIA determined in *Matter of Yajure*, Immigration Judges lack
2 authority to hear bond requests or to grant bond to aliens who are present in the United
3 States without admission.

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

6 **II. STATUTORY BACKGROUND**

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

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

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

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

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

⁴ 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)).

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

III. ARGUMENT

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

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

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

1 this chapter.”⁵ 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.”⁶ 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 their 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 ⁵ Much of the Attorney General’s authority has been transferred to the Secretary of
Homeland Security and many references to the Attorney General are understood to refer
to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

26 ⁶ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.
27 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),
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.

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

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

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

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

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* 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 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit
23 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
24 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
25 jurisdiction to review both direct and indirect challenges to removal orders, including
26 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at
27 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
28 the first place or to seek removal[.]”). Here, Petitioner challenges the government’s

1 decision and action to detain them, which arises from DHS’s decision to commence
2 removal proceedings, and is thus an “action taken . . . to remove [them] from the United
3 States.” See 8 U.S.C. § 1252(b)(9); see also, e.g., *Jennings*, 583 U.S. at 294–95; *Velasco*
4 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
5 not bar review in that case because the petitioner did not challenge “his initial
6 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
7 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
8 detention decision, which flows from the government’s decision to “commence
9 proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in
10 *Jennings* outlines why Petitioner’s claims are unreviewable here.

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

13 1. Petitioner Is Unable to Show a Likelihood of Success on the Merits.

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

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

26 The BIA recently analyzed and decided this legal issue in its order issued on
27 September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA
28 2025). After detailed analysis, the BIA determined that based on the plain language of

1 section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A)
2 (2018), Immigration Judges lack authority to hear bond requests or to grant bond to
3 aliens who are present in the United States without admission. Other District Courts have
4 followed the BIA's approach. *See Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-
5 SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO)
6 [Dkt. no. 8]; *See Barriös Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926
7 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL
8 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL
9 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL
10 2730228 (S.D. Cal. Sept. 24, 2025).

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

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

1 placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C.
2 § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of
3 the INA, 8 U.S.C. § 1226(a).”). Section 1225(b) therefore applies because Petitioner is
4 present in the United States without being admitted.

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

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

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

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

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

1 a bond under § 1226(a).

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

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

15 The asserted longstanding agency practice carries little, if any, weight under *Loper*
16 *Bright*. The weight given to agency interpretations “must always ‘depend upon their
17 thoroughness, the validity of their reasoning, the consistency with earlier and later
18 pronouncements, and all those factors which give them power to persuade.’” *Loper*
19 *Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift &*
20 *Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis
21 to support its reasoning. *See* 62 Fed. Reg. at 10323. To be sure, “when the best reading
22 of a statute is that it delegates discretionary authority to an agency,” the Court must
23 “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*,
24 603 U.S. at 395 (cleaned up). But read most naturally, §§ 1225(b)(1) and (b)(2) mandate
25 detention for applicants for admission until certain proceedings have concluded.
26 *Jennings*, 583 U.S. at 297. Petitioner thus cannot show a likelihood of success on the
27 merits.
28

2. The Balance of Hardships Favors Respondents

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

IV. CONCLUSION

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

Respectfully submitted,

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