

1 TODD BLANCHE
Deputy Attorney General
2 BILAL A. ESSAYLI
First Assistant United States Attorney
3 DAVID M. HARRIS
Assistant United States Attorney
4 Chief, Civil Division
DANIEL A. BECK
5 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
6 WHITNEY C. WAKEFIELD (WA Bar No. 61571)
Special Assistant United States Attorney
7 Federal Building, Suite 7516
300 North Los Angeles Street
8 Los Angeles, California 90012
9 Telephone: (213) 894-2574
E-mail: Whitney.Wakefield@usdoj.gov

10 Attorneys for Federal Respondents

11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 DANNA LUCIANO, *et al.*,

16 Petitioners,

17 v.

18 KRISTI NOEM, *et al.*,

19 Respondents.
20
21
22
23
24
25
26
27
28

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

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONERS'
APPLICATION FOR PRELIMINARY
INJUNCTION**

Honorable R. Gary Klausner
United States District Judge

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	3
II. STATUTORY BACKGROUND	4
A. Detention under <u>8 U.S.C. § 1225</u>	4
B. Detention under <u>8 U.S.C. § 1226(a)</u>	5
C. Review at the Board of Immigration Appeals (“BIA”)	6
III. ARGUMENT	6
A. The Court Lacks Jurisdiction to Entertain Petitioner’s Action under <u>8 U.S.C. § 1252</u>	6
B. Even Assuming Jurisdiction, Petitioner Fails to Meet the High Bar for Injunctive Relief.	10
1. Petitioner Is Unable to Show a Likelihood of Success on the Merits.	10
2. The Balance of Hardships Favors Respondents	14
IV. CONCLUSION	15

TABLE OF AUTHORITIES

<u>DESCRIPTION</u>	<u>PAGE</u>
Federal Cases	
<i>Aden v. Nielsen</i> , <u>2019 WL 5802013</u> (W.D. Wash. Nov. 7, 2019)	10
<i>Aguilar v. ICE</i> , <u>510 F.3d 1</u> (1st Cir. 2007)	7
<i>Ajlani v. Chertoff</i> , <u>545 F.3d 229</u> (2d Cir. 2008)	7
<i>All. for Wild Rockies v. Cottrell</i> , <u>632 F.3d 1127</u> (9th Cir. 2011)	13
<i>Alvarez v. ICE</i> , <u>818 F.3d 1194</u> (11th Cir. 2016)	5
<i>Barton v. Barr</i> , <u>590 U.S. 222</u> (2020)	12, 13
<i>Biden v. Texas</i> , <u>597 U.S. 785</u> (2022)	3
<i>Clark v. Martinez</i> , <u>543 U.S. 371</u> (2005)	5
<i>Delgado v. Quarantillo</i> , <u>643 F.3d 52</u> (2d Cir. 2011)	8
<i>Delgado v. Sessions</i> , <u>2017 WL 4776340</u> (W.D. Wash. Sept. 15, 2017)	10
<i>Demore v. Kim</i> , <u>538 U.S. 510</u> (2003)	11
<i>E.F.L. v. Prim</i> , <u>986 F.3d 959</u> (7th Cir. 2021)	5
<i>Florida v. United States</i> , <u>660 F. Supp. 3d 1239</u> (N.D. Fla. 2023)	9, 11
<i>Herrera-Correra v. United States</i> , <u>2008 WL 11336833</u> (C.D. Cal. Sept. 11, 2008)	6

1	<i>J.E.F.M. v. Lynch,</i>	
2	<u>837 F.3d 1026</u> (9th Cir. 2016)	7
3	<i>Jennings v. Rodriguez,</i>	
4	<u>583 U.S. 281</u> (2018)	passim
5	<i>Karczewski v. DCH Mission Valley LLC,</i>	
6	<u>862 F.3d 1006</u> (9th Cir. 2017)	9
7	<i>Lands Council v. McNair,</i>	
8	<u>537 F.3d 981</u> (9th Cir. 2008)	13
9	<i>Loper Bright Enters. v. Raimondo,</i>	
10	<u>603 U.S. 369</u> (2024)	13
11	<i>Lopez v. Barr,</i>	
12	<u>2021 WL 195523</u> (D. Minn. Jan. 20, 2021)	6
13	<i>Marquez-Reyes v. Garland,</i>	
14	<u>36 F.4th 1195</u> (9th Cir. 2022)	11
15	<i>McDonnell v. United States,</i>	
16	<u>579 U.S. 550</u> (2016)	11
17	<i>Miranda v. Garland,</i>	
18	<u>34 F.4th 338</u> (4th Cir. 2022)	13
19	<i>Nasrallah v. Barr,</i>	
20	<u>590 U.S. 573</u> (2020)	6
21	<i>Ortega-Cervantes v. Gonzales,</i>	
22	<u>501 F.3d 1111</u> (9th Cir. 2007).....	4
23	<i>Reno v. American-Arab Anti-Discrimination Comm.,</i>	
24	<u>525 U.S. 471</u> (1999)	6
25	<i>Rosario v. Holder,</i>	
26	<u>627 F.3d 58</u> (2d Cir. 2010)	7-8
27	<i>Ruiz v. Mukasey,</i>	
28	<u>552 F.3d 269</u> (2d Cir. 2009)	7
	<i>Saadulloev v. Garland,</i>	
	<u>2024 WL 1076106</u> (W.D. Pa. Mar. 12, 2024)	8
	<i>Sissoko v. Rocha,</i>	
	<u>509 F.3d 947</u> (9th Cir. 2007)	6

1	<i>Skidmore v. Swift & Co.</i> ,	
2	<u>323 U.S. 134</u> (1944)	13
3	<i>Suzlon Energy Ltd. v. Microsoft Corp.</i> ,	
4	<u>671 F.3d 726</u>	12
5	<i>Tazu v. Att’y Gen. U.S.</i> ,	
6	<u>975 F.3d 292</u> (3d Cir. 2020)	6
7	<i>Torres v. Barr</i> ,	
8	<u>976 F.3d 918</u> (9th Cir. 2020)	12
9	<i>Ubiquity Press Inc. v. Baran</i> ,	
10	<u>2020 WL 8172983</u> (C.D. Cal. Dec. 20, 2020)	13
11	<i>United States v. Arango</i> ,	
12	<u>2015 WL 11120855</u> (D. Ariz. Jan. 7, 2015)	13
13	<i>United States v. Gambino-Ruiz</i> ,	
14	<u>91 F.4th 981</u> (9th Cir. 2024)	12
15	<i>United States v. Woods</i> ,	
16	<u>571 U.S. 31</u> (2013)	11
17	<i>USA Farm Labor, Inc. v. Su</i> ,	
18	<u>694 F. Supp. 3d 693</u> (W.D.N.C. 2023)	14
19	<i>Valencia-Mejia v. United States</i> ,	
20	<u>2008 WL 4286979</u> (C.D. Cal. Sept. 15, 2008)	6
21	<i>Velasco Lopez v. Decker</i> ,	
22	<u>978 F.3d 842</u> (2d Cir. 2020)	8
23	<i>Wang v. United States</i> ,	
24	<u>2010 WL 11463156</u> (C.D. Cal. Aug. 18, 2010)	6
25	<i>Washington v. Chimei Innolux Corp.</i> ,	
26	<u>659 F.3d 842</u> (9th Cir. 2011)	12
27	<i>Xiao Ji Chen v. U.S. Dep’t of Justice</i> ,	
28	<u>434 F.3d 144</u> (2d Cir. 2006)	7

Federal Statutes

<u>8 U.S.C. § 1225(a)(3)</u>	11
<u>8 U.S.C. § 1225(b)(1)(A)(i), (iii)</u>	3
<u>8 U.S.C. § 1225(b)(1)(A)(ii)</u>	3
<u>8 U.S.C. § 1225(b)(1)(B)(ii)</u>	3
<u>8 U.S.C. § 1225(b)(2)</u>	10
<u>8 U.S.C. § 1225(b)(2)(A)</u> (2018)	1, 3, 10
<u>8 U.S.C. § 1226(a)</u>	3, 4, 9, 10
<u>8 U.S.C. § 1226(e)</u>	8
<u>8 U.S.C. § 1231(g)(1)</u>	14, 15
<u>8 U.S.C. § 1252(a)(2)(B)(ii)</u>	14
<u>8 U.S.C. § 1252(a)(2)(D)</u>	7
<u>8 U.S.C. § 1252(a)(5)</u>	7
<u>8 U.S.C. § 1252(b)(9)</u>	6, 8, 9
<u>8 U.S.C. § 1225(b)(1)(A)(i)</u>	3

OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION

Respondents hereby oppose Petitioners' application for a preliminary injunction 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]. However, the government reiterates here the legal position it has taken in the *Bautista* case presided over by the Honorable Judge Sykes, Case 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], and subsequently granted class certification on November 25, 2025 [Dkt. 82]. See 2025 WL 3289861 (MSJ decision); 2025 WL 3288403 (class cert decision).

In the Application, the instant Petitioners argue that the class certification order in *Bautista* compels a custody redetermination (bond) hearing in their case. While the issue is not yet resolved, it appears that (a) other habeas actions should now be stayed or dismissed pending resolution of *Bautista*; since the certification of a Rule 23(b)(2) class precludes individual suits (like this) for the same injunctive or declaratory relief; and (b) the class certification order is not a "declaratory judgment" because a court cannot grant declaratory relief prior to the entry of a final judgment, *i.e.*, a declaratory judgment. See *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) ("prior to final judgment there is no established declaratory remedy comparable to a preliminary injunction"). Notably, Petitioners' counsel is also plaintiffs' counsel in the *Bautista* case.

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. Noem*, 5:25-cv-02925-HDV-PVC, Dkt. no. 8 (Nov. 11, 2025 order granting TRO for bond hearings); *Javier Ceja Gonzalez v. Noem*, 5:25-cv-02054-ODW-ADS, 2025 WL 2633187 (Aug. 13, 2025 order); *Ruben Benitez v. Noem*, 5:25-cv-02190-RGK-AS, 2025 U.S. Dist. LEXIS 171945 (Aug. 26, 2025 order); and *Miguel Portillo v. Noem, et al.*,

1 5:25-cv-02892-JFW-PVC (Oct. 31, 2025 order granting temporary restraining order)
2 [Dkt. no. 7]. Judge Wilson issued an order finding that such detentions are governed by §
3 1225(b)(2). *See Altamirano Ramos v. Lyons*, 2:25-cv-09785-SVW-AJR, 2025 WL
4 3199872 (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO).
5 Likewise, in an even more recent decision, Judge Blumenfeld, Jr., denied a TRO finding
6 detentions are governed by § 1225(b)(2), and not § 1226(a). *See Hernandez Cruz v.*
7 *Noem*, 8:25-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (denying
8 application for bond hearing by TRO).

9 The Board of Immigration Appeals (BIA) has ruled on this issue by order dated
10 September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After
11 detailed analysis, the BIA determined that based on the plain language of section
12 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),
13 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who
14 are present in the United States without admission. Like the *Altamiranos Ramos* and
15 *Hernandez Cruz* decisions, other District Courts have followed the BIA's approach. *See*
16 *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31,
17 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30,
18 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept. 30,
19 3025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

20 In sum, to the extent Petitioners would be entitled to any remedy via the
21 Application, at most it would be ordering a bond hearing before an Immigration Judge
22 under Section 1226(a), consistent with what Judge Sykes ordered in the *Bautista* case,
23 5:25-cv-01873-SSS-BFM, and not immediate release free of any restrictions.
24 Respondents will reiterate their arguments on the legal claims below, having noted the
25 various prior rulings on these legal issues set forth above.
26
27
28

1 **I. INTRODUCTION**

2 Petitioner¹, detainees in immigration custody who were present in the United
3 States without ever having been inspected and admitted, filed a petition for writ of
4 habeas corpus (“Petition”) [Dkt. 1] asking the Court to release them or provide them a
5 bond hearing. Petitioner then filed their *ex parte* Application seeking essentially the
6 same relief. The Application and the Petition should be denied for two reasons.

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

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

22
23 ¹ Petitioners are Danna Luciano; Manuel Duran Armenta; Gustavo Guzman
24 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.”

25 ² As the Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281, 287
26 (2018), “Under ... 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is
27 present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant for
28 admission.’ § 1225(a)(1). Applicants for admission must ‘be inspected by immigration
officers’ to ensure that they may be admitted into the country consistent with U.S.
immigration law. § 1225(a)(3).” Moreover, as the BIA held in *Matter of Yajure*, “aliens
who are present in the United States without admission are applicants for admission as
(footnote cont’d on next page)

1 authority to hear bond requests or to grant bond to aliens who are present in the United
2 States without admission.

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

5 **II. STATUTORY BACKGROUND**

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

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

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

22 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
23 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
24 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
25 for a removal proceeding “if the examining immigration officer determines that [the]
26 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8

27
28 defined under . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their
removal proceedings. 29 I&N Dec. at 220 (citing *Jennings*, 583 U.S. at 300).

1 U.S.C. § 1225(b)(2)(A); see *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for
2 aliens arriving in and seeking admission into the United States who are placed directly in
3 full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
4 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583
5 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole
6 discretionary authority to temporarily release on parole “any alien applying for
7 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons
8 or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806
9 (2022).

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

11 Section 1226 provides for arrest and detention “pending a decision on whether the
12 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
13 government may detain an alien during his removal proceedings, release him on bond, or
14 release him on conditional parole.³ By regulation, immigration officers can release aliens
15 if the alien demonstrates that he “would not pose a danger to property or persons” and
16 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
17 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
18 any time before a final order of removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R.
19 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

20 At a custody redetermination, the IJ may continue detention or release the alien on
21 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
22 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
23 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the
24 factors IJs consider, an alien “who presents a danger to persons or property should not be
25

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

1 released during the pendency of removal proceedings.” *Id.* at 38.

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

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

14 **III. ARGUMENT**

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

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

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

27 ⁴ Much of the Attorney General’s authority has been transferred to the Secretary of
28 Homeland Security and many references to the Attorney General are understood to refer
to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

1 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,
2 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”⁵ Except
3 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive
4 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

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

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

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

26 ⁵ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.
27 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),
28 including section 2241 of title 28, United States Code, or any other habeas corpus
provision, and sections 1361 and 1651 of such title” after “notwithstanding any other
provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

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

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

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

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

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

1 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d
2 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
3 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
4 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
5 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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

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

1 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
2 not bar review in that case because the petitioner did not challenge “his initial
3 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
4 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
5 detention decision, which flows from the government’s decision to “commence
6 proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in
7 *Jennings* outlines why Petitioner’s claims are unreviewable here.

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

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

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

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

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

1 followed the BIA's approach. *See Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-
2 SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO)
3 [Dkt. no. 8]; *See Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926
4 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL
5 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL
6 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL
7 2730228 (S.D. Cal. Sept. 24, 2025).

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

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

1 present in the United States without being admitted.

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

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

1 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on,
2 *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General
3 explained “section [1225] (under which detention is mandatory) and section [1226(a)]
4 (under which detention is permissive) can be reconciled only if they apply to different
5 classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

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

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

27 Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in
28 statutory drafting are “common . . . sometimes in a congressional effort to be doubly

sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien “was paroled into this country through a shocking abuse of that power.” 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it out of concern that the executive branch “ignore[d] its fundamental duty under the Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). One member even expressed frustration that “every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims.” *Id.* at H278 (statement of Rep. McClintock). The LRA reflects a “congressional effort to be doubly sure” that such unlawful aliens are detained. *Barton*, 590 U.S. at 239.

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

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

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

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

16 **IV. CONCLUSION**

17 Petitioner’s request for relief by the Application and Petition should be denied.
18 Should the Court nonetheless grant the Application, however, the relief should be limited
19 to what other Judges in this District have generally issued in similar cases: Requiring
20 release unless a Section 1226(a) bond hearing is provided within seven (7) days.
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: December 15, 2025

TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Whitney Wakefield*
WHITNEY WAKEFIELD
Special Assistant United States Attorney

Attorneys for Federal Respondents

* The undersigned, counsel of record for the Federal Respondents certifies that this brief contains 5,272 words, which complies with the word limit of L.R. 11-6.1.