

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
8 300 North Los Angeles Street
Los Angeles, California 90012
9 Telephone: (213) 894-2574
E-mail: Whitney.Wakefield@usdoj.gov

10 Attorneys for Respondents

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

15 SUKHWINDER SINGH,
16 Petitioners,
17 v.
18 MARK BOWEN, *et al.*,
19 Respondents.
20

No. 5:25-cv-03381-MRA-E

**RESPONDENTS' OPPOSITION TO
PETITIONERS' MOTION FOR
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER**

Honorable Monica Ramirez Almadani
United States District Judge

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**OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER**

Respondents hereby oppose Petitioners' motion for a temporary restraining order compelling Petitioner's immediate release, or an individualized bond hearing to Petitioner under 8 U.S.C. § 1226(a) (the "Motion") [Dkt. 2]. 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).

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").

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 this Court's ruling in *Jonathan Alejandro Nororis Escobar v. Todd Lyons et al.*, 5:25-cv-02885-MRA-JC, Dkt. no. 10 (November 4, 2025 order granting TRO for bond hearings); *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*,

1 *et al.*, 5:25-cv-02892-JFW-PVC (Oct. 31, 2025 order granting temporary restraining
2 order) [Dkt. no. 7]. Judge Wilson issued an order finding that such detentions are
3 governed by § 1225(b)(2). *See Altamirano Ramos v. Lyons*, 2:25-cv-09785-SVW-AJR,
4 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by
5 TRO). Likewise, in an even more recent decision, Judge Blumenfeld, Jr., denied a TRO
6 finding detentions are governed by § 1225(b)(2), and not § 1226(a). *See Hernandez Cruz*
7 *v. Noem*, 8:25-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025)
8 (denying 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 2025); *Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

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

26 I. INTRODUCTION

27 Petitioner, a detainee in immigration custody who was present in the United States
28 without ever having been inspected and admitted, filed a petition for writ of habeas

1 corpus (“Petition”) [Dkt. 1] asking the Court to release him or provide a bond hearing.
2 Petitioner then filed his Motion seeking essentially the same relief. The Motion and the
3 Petition should be denied for two reasons.

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

12 Second, assuming jurisdiction, Petitioner nonetheless fails to demonstrate he is
13 entitled to injunctive relief. Petitioner cannot show a likelihood of success on the merits
14 because he seeks to circumvent the detention statute under which he is rightfully
15 detained to secure bond hearings that he is not entitled to. Petitioner falls precisely
16 within the statutory definition of aliens subject to mandatory detention without bond
17 found in § 1225(b)(2), i.e., an alien present in the United States that has not been
18 admitted.¹ As the BIA determined in *Matter of Yajure*, Immigration Judges lack
19 authority to hear bond requests or to grant bond to aliens who are present in the United
20 States without admission.

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

23
24
25 ¹ 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
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).
3

II. STATUTORY BACKGROUND

A. Detention under 8 U.S.C. § 1225

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

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

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

1 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons
2 or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806
3 (2022).

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

5 Section 1226 provides for arrest and detention “pending a decision on whether the
6 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
7 government may detain an alien during his removal proceedings, release him on bond, or
8 release him on conditional parole.² By regulation, immigration officers can release aliens
9 if the alien demonstrates that he “would not pose a danger to property or persons” and
10 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
11 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
12 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R.
13 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

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

21 The BIA is an appellate body within the Executive Office for Immigration Review
22 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
23 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the
24 review of those administrative adjudications under the [INA] that the Attorney General
25

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

8 **III. ARGUMENT**

9 **A. The Court Lacks Jurisdiction to Entertain Petitioner’s Action under 8** 10 **U.S.C. § 1252.**

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

14 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including
15 habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien
16 arising from the decision or action by the Attorney General to [1] *commence*
17 *proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under
18 this chapter.”³ 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates
19 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision
20 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,
21 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”⁴ Except
22 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive
23 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

24
25 ³ 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 ⁴ 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 Section 1252(g) also bars district courts from hearing challenges to the *method* by
2 which the Secretary of Homeland Security chooses to commence removal proceedings,
3 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d
4 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning
5 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision
6 to take [plaintiff] into custody and to detain him during removal proceedings”).

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

15 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
16 commences proceedings against an alien when the alien is issued a Notice to Appear
17 before an immigration court.” *Herrera-Correra v. United States*, 2008 WL 11336833, at
18 *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom
19 proceedings are commenced and detain that individual until the conclusion of those
20 proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from
21 the Attorney General’s decision to commence proceedings” and review of claims arising
22 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
23 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As
24 such, judicial review of the Motion and Petition is barred by § 1252(g). The Court
25 should dismiss for lack of jurisdiction.

26 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including
27 interpretation and application of statutory provisions . . . arising from any action
28 taken . . . to remove an alien from the United States” is only proper before the

1 appropriate federal court of appeals in the form of a petition for review of a final
2 removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination*
3 *Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’
4 clause” that “channels judicial review of all [claims arising from deportation
5 proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV
6 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah*
7 *v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

16 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
17 issue—whether legal or factual—arising from *any* removal-related activity can be
18 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d
19 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
20 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
21 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d
22 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
23 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
24 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
25 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

26 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring
27 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
28 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed

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

11 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit
12 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
13 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
14 jurisdiction to review both direct and indirect challenges to removal orders, including
15 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at
16 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
17 the first place or to seek removal[.]”). Here, Petitioner challenges the government’s
18 decision and action to detain him, which arises from DHS’s decision to commence
19 removal proceedings, and is thus an “action taken . . . to remove [them] from the United
20 States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*
21 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
22 not bar review in that case because the petitioner did not challenge “his initial
23 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
24 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
25 detention decision, which flows from the government’s decision to “commence
26 proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in
27 *Jennings* outlines why Petitioner’s claims are unreviewable here.

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

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

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

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

The BIA recently analyzed and decided this legal issue in its order issued on September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. Other District Courts have followed the BIA's approach. *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]; *See Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

1 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*
2 *Nielsen*, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-
3 positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225
4 and 1226. *See Delgado v. Sessions*, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15,
5 2017) (noting a denial of bond to an immigration detainee was “a question well suited
6 for agency expertise”); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing
7 interplay of §§ 1225(b)(1) and 1226).

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

23 The BIA has long recognized that “many people who are not *actually* requesting
24 permission to enter the United States in the ordinary sense are nevertheless deemed to be
25 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N.
26 Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.”
27 *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v.*
28 *United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in

1 § 1225(b)(2)(A) must be read in the context of the definition of “applicant for
2 admission” in § 1225(a)(1). Applicants for admission are both those individuals present
3 without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1).
4 Both are understood to be “seeking admission” under §1225(a)(1). *See Lemus-Losa*, 25 I.
5 & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens
6 “who are applicants for admission or otherwise seeking admission” to be inspected by
7 immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an
8 appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or
9 Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45
10 (2013).

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

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.* The government has a
25 compelling interest in the steady enforcement of its immigration laws. *See Miranda v.*
26 *Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a
27 “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-
28 cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public

1 interest in the United States' enforcement of its immigration laws is high"); *United*
2 *States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7,
3 2015) ("the Government's interest in enforcing immigration laws is enormous.").
4 Judicial intervention would only disrupt the status quo. The Court should avoid a path
5 that "inject[s] a degree of uncertainty" in the process. *USA Farm Labor, Inc. v. Su*, 694
6 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See*
7 8 C.F.R. § 1003.1(d)(1). By regulation it must "provide clear and uniform guidance"
8 "through precedent decisions" to "DHS [and] immigration judges." *Id.* Here, the BIA has
9 provided that clear guidance by its decision in *Matter of Jonathan Javier Yajure*
10 *Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11 **IV. CONCLUSION**

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

17 Respectfully submitted,

18 Dated: December 17, 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

23 /s/ Whitney Wakefield*

24 WHITNEY WAKEFIELD
25 Special Assistant United States Attorney

26 Attorneys for Federal Respondents
27
28

1 * The undersigned, counsel of record for the Federal Respondents certifies that this brief
2 contains 5,228 words, which complies with the word limit of L.R. 11-6.1.
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