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

15 JOSE GONZALEZ GIRON et al.,

16 Petitioners,

17 v.

18 KRISTI NOEM, *et al.*,

19 Respondents.
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No. 5:25-cv-03395-KK-ADS

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

Hon. Kenly Kiya Kato
United States District Judge

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RESPONDENTS' OPPOSITION TO PETITIONERS'
REQUEST FOR § 1226(a) BOND HEARINGS

I. INTRODUCTION

Respondents hereby oppose Petitioners' Writ of Habeas Corpus for Declaratory and Injunctive Relief [Dkt. 1] and *ex parte* application for Temporary Restraining Order ("TRO") [Dkt. 6]. Petitioners' seek federal habeas relief compelling the Executive Office for Immigration Review ("EOIR") to conduct bond hearings under 8 U.S.C. § 1226(a) or for the United States ("U.S.") Department of Homeland Security ("DHS") to release them. 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.¹ 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 their TRO Application, the instant Petitioners argue that the class certification order in *Bautista* compels a custody redetermination (bond) hearing in their cases. 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").

1 In any event, the same legal issue at issue in *Bautista* has subsequently been raised
2 and resolved in this District in a series of other cases including: *Jose Ramon Zaragoza v.*
3 *Kristi Noem, et al.*, 5:25-cv-02925-HDV-PVC, Dkt. no. 8 (November 11, 2025 order
4 granting TRO for bond hearings); *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*,
5 5:25-cv-02054-ODW-ADS, 2025 WL 2633187 (Aug. 13, 2025 order); *Ruben Benitez et*
6 *al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS 2025 U.S. Dist. LEXIS 171945 (Aug.
7 26, 2025 order); and *Miguel Portillo, et al. v. Kristi Noem, et al.*, 5:25-cv-02892-JFW-
8 PVC (October 31, 2025 order granting temporary restraining order) [Dkt. no. 7]. Judge
9 Wilson issued an order finding that such detentions are governed by § 1225(b)(2). *See*
10 *Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-SVW-AJR, 2025 WL 3199872 (C.D.
11 Cal. Nov. 12, 2025) (denying application for bond hearing by TRO) [Dkt. no. 8].
12 Likewise, in an even more recent decision, Judge Blumenfeld, Jr., denied a TRO finding
13 detentions are governed by § 1225(b)(2), and not § 1226(a). *See Hernandez Cruz v.*
14 *Noem et al.*, 2:25-cv- 8:25-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2,
15 2025) (denying application for bond hearing by TRO) [Dkt. no. 11].

16 The Board of Immigration Appeals (BIA) has ruled on this issue by order dated
17 September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After
18 detailed analysis, the BIA determined that based on the plain language of section
19 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),
20 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who
21 are present in the United States without admission. Like the *Altamiranos Ramos* and
22 *Hernandez Cruz* decisions, other District Courts have followed the BIA's approach. *See*
23 *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31,
24 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct.
25 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept.
26 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24,
27 2025).

28 In sum, to the extent Petitioners would be entitled to any remedy via the TRO

1 Application, at most it would be ordering a bond hearing before an Immigration Judge
2 under Section 1226(a), consistent with what Judge Sykes ordered in the *Bautista* case,
3 5:25-cv-01873-SSS-BFM, and not immediate release free of any restrictions.

4 Respondents will reiterate their arguments on the legal claims below, having noted the
5 various prior rulings on these legal issues set forth above.

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 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
24 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
25 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
26 for a removal proceeding “if the examining immigration officer determines that [the]
27 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
28 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for

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

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

10 Section 1226 provides for arrest and detention “pending a decision on whether the
11 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
12 government may detain an alien during his removal proceedings, release him on bond, or
13 release him on conditional parole.² By regulation, immigration officers can release aliens
14 if the alien demonstrates that he “would not pose a danger to property or persons” and
15 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
16 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
17 any time before a final order of removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R.
18 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

19 At a custody redetermination, the IJ may continue detention or release the alien on
20 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
21 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
22 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the
23 factors IJs consider, an alien “who presents a danger to persons or property should not be
24 released during the pendency of removal proceedings.” *Id.* at 38.

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

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

13 **III. ARGUMENT**

14 **A. The Court Lacks Jurisdiction to Entertain Petitioners’ Actions under 8**
15 **U.S.C. § 1252.**

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

19 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including
20 habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien
21 arising from the decision or action by the Attorney General to [1] *commence*
22 *proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under
23 this chapter.”³ 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates
24 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision
25 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,
26

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

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

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

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

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

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

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

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

23 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
24 issue—whether legal or factual—arising from *any* removal-related activity can be
25 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d
26 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
27 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
28 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d

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

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

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

19 **B. Even Assuming Jurisdiction, Petitioners Fail to Meet the High Bar for**
20 **Injunctive Relief.**

21 1. Petitioners are unable to show a likelihood of success on the merits.

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

24 Petitioners are “applicants for admission,” subject to mandatory detention under
25 the plain text of § 1225. *See* 8 U.S.C. § 1225(a)–(b). “Section 1225 governs the
26 inspection, detention, and removal of aliens seeking admission into the United States.”
27 *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *3 (W.D. La. Oct. 31,
28 2025). The statute defines “an applicant for admission” broadly:

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

4 *See* 8 U.S.C. § 1225(a)(1). Section 1225 requires mandatory detention of an applicant for
5 admission if “the examining immigration officer determines that an alien seeking
6 admission is not clearly and beyond a doubt entitled to be admitted.” *Id.* §
7 1225(b)(2)(A).

8 Section 1225’s definition of “an applicant for admission” is controlling. *See*
9 *Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) (“When a statute includes an explicit
10 definition, we must follow that definition, even if it varies from that term’s ordinary
11 meaning.”). As relevant here, an alien is “deemed” to be “an applicant for admission” if
12 he is present in the United States without having been admitted. This unambiguously
13 broad statute does not distinguish among unadmitted individuals who are present in the
14 U.S. for one hour, one day, one year, or one decade. *See* 8 U.S.C. § 1225(a)(1). Nor does
15 it distinguish between those who arrive in the U.S. for inspection and those who cross
16 the border without inspection. In this case, Petitioners do not dispute the fact that they
17 entered the U.S. unlawfully and are present without having been admitted. Consequently,
18 they are “applicants for admission” under § 1225(a), subject to mandatory detention
19 under § 1225(b). *See Sandoval*, 2025 WL 3048926, at *3 (inadmissible aliens under §
20 1182(a)(6)(A)(i) are “applicants for admission”).

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

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

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

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

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

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

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

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

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

26 Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in
27 statutory drafting are “common . . . sometimes in a congressional effort to be doubly
28 sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible

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

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

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

24 2. The Balance of Hardships Favors Respondents

25 Where the moving party only raises “serious questions going to the merits,” the
26 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632
27 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d
28 981, 987 (9th Cir. 2008)). Petitioners fail to do so here. *See id.*

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

14 **IV. CONCLUSION**

15 Petitioners’ request for relief by the TRO Application should be denied. Should
16 the Court nonetheless grant the Application, however, the relief should be limited to
17 what other Judges in this District have generally issued in similar cases, consistent with
18 this Court’s ruling in *Bautista*: Requiring release unless a Section 1226(a) bond hearing
19 is provided within seven (7) days.
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Respectfully submitted,

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