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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

LAZARO MALDONADO BAUTISTA; *et al.*,

Petitioners,

v.

ERNESTO SANTA CRUZ JR; *et al.*,

Respondents.

No. 5:25-cv-01873-SSS-BFM

RESPONSE TO ORDER TO SHOW CAUSE ON ISSUANCE OF PRELIMINARY INJUNCTION

Hearing Date: August 22, 2025
Hearing Time: 1p.m.
Location: Ctrm. 2, Riverside

Honorable Sunshine S. Svkes

TABLE OF CONTENTS

TABLE OF AUTHORITIES

DESCRIPTION PAGE

Cases

Federal Statutes

Other

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A preliminary injunction should not be issued because no live controversy remains following Petitioners' bond hearings, and even assuming jurisdiction, Petitioners fail to meet the high bar for a preliminary injunction.

First, the four Petitioners have all received the relief sought because they received bond hearings on August 1 and August 4. Accordingly, Petitioners' claims are moot and should be dismissed for lack of subject matter jurisdiction.

Second, assuming jurisdiction, Petitioners nonetheless fail to demonstrate they are entitled to temporary injunctive relief. Petitioners cannot show a likelihood of success on the merits because they seek to circumvent the detention statute under which they are rightfully detained to secure bond hearings that they are not entitled to. Petitioners fall precisely within the statutory definition of aliens subject to mandatory detention without bond found in 8 U.S.C. § 1225(b)(2). Additionally, Petitioners fail to establish that they likely face irreparable injury now that they have had bond hearings, and public interest factors weigh in favor of Respondents.

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

II. STATUTORY BACKGROUND

A. Mandatory 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," they are detained until removed from the United States. *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 admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release aliens

[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because

(footnote cont'd on next page)

upon demonstrating that the alien "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

C. Review at the Board of Immigration Appeals ("BIA")

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

III. FACTUAL AND PROCEDURAL BACKGROUND

On July 23, 2025, the USC Gould School of Law Immigration Clinic filed a habeas petition on behalf of four petitioners seeking bond hearings. Dkt. 1. Petitioners are foreign

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release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

nationals who were held at the Adelanto Detention Center in Adelanto, California. *Id.* On July 23, 2025, Petitioners filed an Application for a Temporary Restraining Order ("TRO"), specifically requesting that the Court enjoin Respondents from detaining Petitioners unless they are provided bond hearings. Dkt. 5 at 3. On July 28, this Court granted Petitioners' *Ex Parte* TRO Application and ordered Respondents to provide individualized bond hearings before an immigration judge within seven days of the order. Dkt. 14. On the evening of July 28, hours after the TRO was entered, a team of lawyers from the ACLU and the Northwest Immigrant Rights Project appeared in this case and filed a "Class Action Complaint." Dkt. 15. On July 29, 2025, Respondents filed a Notice of Lack of Jurisdiction over the class action complaint and amended habeas petition for want of jurisdiction. Dkt. 24. On August 1 and August 4, all four Petitioners who filed the habeas petition received bond hearings in accordance with the court's TRO. *See* Exhibits 1-4.

IV. ARGUMENT

A. Standard for Injunctive Relief

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear slowing that the Petitioner is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). For a preliminary injunction to issue, the moving party must demonstrate (1) that they are likely to succeed on the merits, (2) that they are likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in their favor, and (4) that an injunction is in the public interest. *See id.* at 20. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id.* at 24 (citation and internal quotation marks omitted).

Petitioners must meet an even higher standard in this case because they seek a mandatory injunction that would alter the status quo and impose affirmative requirements on law enforcement officers as they carry out their duties. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (mandatory injunctions are "particularly disfavored" and the

"district court should deny such relief unless the facts and law clearly favor the moving party.") (internal quotations omitted). As explained below, Petitioners cannot meet this demanding standard.

B. No Live Controversy Remains Following Petitioners' Bond Hearings

Under well-established case law, when Petitioners obtain the relief sought—in this case, bond hearings—the Court is devoid of subject matter jurisdiction. *See NASD Disp. Resol., Inc. v. Jud. Council of State of Cal.*, 488 F.3d 1065, 1068 (9th Cir. 2007) (remanding with instructions to dismiss the case where "[w]e cannot give the appellants any further relief because [intervening decisions] have already provided the relief sought by them in this case."); *Rudolph v. Cal. Two Bunch Return, LLC*, No. CV-16-00886, 2017 WL 7101147, at *2 (C.D. Cal. May 19, 2017) (dismissing for lack of subject matter jurisdiction where a "Plaintiff has already received all of the relief he seeks from the Court . . . his claim is moot and m[u]st be dismissed."); *Midcoast Fisherman's Ass'n v. Blank*, 948 F. Supp. 2d 4, 8 (D.D.C. 2013) (dismissing case where "the agency's subsequent actions have given plaintiffs the most they would be entitled to if they won this case").

Here, the Court granted Petitioners' TRO, and Petitioners have obtained the relief they sought—bond hearings. Dkt. 5; *see also* Exhibits 1-4. Specifically, the bond hearings for Petitioners were held on Friday, August 1 and on Monday, August 4. *See* Exhibits 1-4. In light of the Court's TRO granting the Petitioners the relief they sought, no live controversy remains.

C. Even Assuming Jurisdiction, Petitioners Fail to Meet the High Bar for a Preliminary Injunction

1. Petitioners Are Unable to Show a Likelihood of Success on the Merits

The Court should reject Petitioners' argument that § 1226(a) governs their detention instead of § 1225. *See* Mot. at 12. 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). As Petitioners point out, 8 U.S.C. §

1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a); *see* TRO Mot. at 5. 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 been admitted. *See id.; see also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioners fall within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

Under 8 U.S.C. § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the provision relevant here—is the "broader" of the two. *Id.* It "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li,* 29 I & N. Dec. at 69 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). On the face of the statute, Petitioners satisfy the definition of an "applicant for admission" because they are "alien[s] present in the United States who ha[ve] not been admitted." 8 U.S.C. § 1225(a)(1). Section 1225(b) therefore applies because Petitioners are all present in the United States without being admitted.

Petitioners' argument that the phrase "alien seeking admission" limits the scope of § 1225(b)(2)(A) is unpersuasive. *See* TRO Mot. at 9. The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language

"is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

Petitioners' interpretation also reads "applicant for admission" out of § 1225(b)(2)(A). One of the most basic interpretative canons instructs that a "statute should be construed so that effect is given to all its provisions." *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Petitioners' interpretation fails that test. It renders the phase "applicant for admission" in § 1225(b)(2)(A) "inoperative or superfluous, void or insignificant." *See id.* If Congress did not want § 1225(b)(2)(A) to apply to "applicants for admission," then it would not have included that phrase in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

The decision in *Florida v. United States* is instructive here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either section 1225(b) or 1226(a). *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla.). The court held that such discretion "would render mandatory detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1225(a) and release illegal border crossers whenever the agency saw

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

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

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). This court, as a result, should reject the Petitioners' interpretation because it would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Under Petitioner's interpretation, aliens who presented at port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

Moreover, nothing in the Laken Riley Act ("LRA") changes the analysis.

Redundancies in 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.

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

Petitioners rely on an administrative agency's "record and longstanding practice" to support a claim that detention under § 1226(a) applies. Mot. TRO. At 12–14. The asserted longstanding agency practice carries little, if any, weight under *Loper Bright*. *Id.* 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; *see also Maldonado v. Bostock*, No. 2:23-cv-00760-LK-BAT, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency provided "no authority" to support its reading of the statute).

To be sure, "when the best reading of the 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 (cleaned up). Petitioners

thus cannot show a likelihood of success on the merits.

2. Petitioners Fail to Establish that They Likely Face Irreparable Injury Having Now Received Bond Hearings

Since Petitioners have now received bond hearings, they cannot now establish that they likely face irreparable harm. *See* Exhibits 1-4. This Court previously found "that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury." Dkt. 14. Each petitioner has had a bond hearing, so there is no longer a potential for continued detention without an initial bond hearing, and therefore, no irreparable injury.

3. Public Interest Factors Weigh in Favor of the Government

At the preliminary injunction phase, the public interest factor does not weigh in Petitioners' favor. Even where the government is the opposing party, courts "cannot simply assume that ordinarily, the balance of hardships will weigh heavily in the applicant's favor." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (citation and internal quotation marks omitted). The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a "broad change" in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing immigration laws is enormous."). Judicial intervention would only disrupt the status quo. *See, e.g.*, *Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D. Wash. Nov. 2, 2017) ("[T]he purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits."). The Court should avoid a path that "inject[s] a degree of uncertainty" in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714 (W.D.N.C. 2023).

What's more, the BIA exists to resolve disputes precisely like the one here. *See* 8

C.F.R. § 1003.1(d)(1). By regulation it must "provide clear and uniform guidance" on the proper implementation of the INA "through precedent decisions" to "DHS [and] immigration judges." *Id.* Respondents ask that the Court allow the established process to continue without disruption. The BIA also has an "institutional interest" to protect its "administrative agency authority." *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Global Rescue Jets, LLC v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U.S. at 145.

V. CONCLUSION

Accordingly, Petitioners' request for a preliminary injunction should be denied and the Order for Show Cause should be discharged.

* * *

The undersigned counsel of record certifies that this memorandum contains 3737 words, which complies with the word limit set by L.R. 11-6.

Dated: August 8, 2025

Respectfully submitted,

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