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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE GUADALUPE SIXTOS CHAVEZ, JUAN MANUEL HERNANDEZ DIAZ, and JESUS HERRERA TORRES,

Petitioners,

v.

KRISTI NOEM, et al.,

Respondents.

Case No.: 3:25-cv-02325-CAB-SBC

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres (collectively, "Petitioners")[1] move for a preliminary injunction based on the same reasons set forth, and rejected by this Court, in their Ex Parte Application for Temporary Restraining Order ("TRO"). ECF Nos. 2, 8. Petitioners advance the same arguments, despite no change in the law or facts of this case, to receive an appealable order from the Court. *See* ECF No. 9 at 8. For the same reasons this Court denied Petitioners' application for TRO, it should deny their present motion for preliminary injunction.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Jose Guadalupe Sixtos Chavez is a citizen and national of Mexico. ECF No. 9-1 at 6. At an unknown time and on an unknown date, he entered the United States without being admitted, paroled, or inspected. *Id.* On August 22, 2025, Petitioner Sixtos Chavez was apprehended by Department of Homeland Security ("DHS") agents and charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. ECF No. 9-1 at 8-9. He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear ("NTA"). ECF No. 9-1 at 2, 9. Petitioner Sixtos Chavez is currently detained at the Otay Mesa Detention Facility pursuant to 8 U.S.C. § 1225(b)(2). On September 5, 2025, an immigration judge ("IJ") denied Petitioner Sixtos Chavez's request for bond, finding that he is subject to mandatory detention under 8 U.S.C. § 1225(b). ECF No. 9-1 at 11; *see* ECF No. 9-1 at 13 (IJ initially granting bond). He has not appealed the bond denial order to the BIA.

Petitioner Jesus Herrera Torres is a citizen and national of Mexico. ECF No. 9-1 at 40. At an unknown time and on an unknown date, he entered the United States without being admitted, paroled, or inspected. *Id.* On August 22, 2025, Petitioner Herrera Torres was apprehended by DHS agents and charged with inadmissibility under 8 U.S.C.

[1] Petitioner Juan Manuel Hernandez Diaz is no longer seeking habeas relief.

§ 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. *Id.* at 41-43. He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued an NTA. ECF No. 9-1 at 37, 43. Petitioner Herrera Torres is currently detained at the Otay Mesa Detention Facility pursuant to 8 U.S.C. § 1225(b)(2). On September 17, 2025, an IJ denied Petitioner Herrera Torres' request for bond, finding that he is subject to mandatory detention under 8 U.S.C. § 1225(b). ECF No. 9-1 at 45. He has not appealed the bond denial order to the BIA.

On September 6, 2025, Petitioners filed their Petition for Writ of Habeas Corpus. ECF No. 1. Subsequently, on September 8, 2025, Petitioners filed their application for TRO, requesting that this Court order bond hearings before an immigration judge. ECF No. 2. This Court, on September 24, 2025, issued an Order denying Petitioners' application. ECF No. 8.

III. LEGAL STANDARD[2]

A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Generally, a plaintiff seeking a preliminary injunction must show: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in favor of the plaintiff; and (4) an injunction is in the public interest. *Id.* at 20. The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the government is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

The Ninth Circuit also has a "serious questions" test which dictates that "serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test

[2] A thorough background of the relevant statutes and applicable law was provided in Respondents' Response in Opposition to Petitioners' Habeas Petition and Application for Temporary Restraining Order, ECF No. 5, and is herein incorporated by reference.

are also met." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Thus, under the serious questions test, a preliminary injunction can be granted if there is a likelihood of irreparable injury to the plaintiff, serious questions going to the merits, the balance of hardships tips in favor of the plaintiff, and the injunction is in the public interest. *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).

IV. ARGUMENT

A. No Likelihood of Success on the Merits

Petitioners fail to, or even attempt to, explain why the Court should deviate from its prior Order denying Petitioners' motion for TRO.[3] The circumstances here have not changed. Petitioners cannot show a likelihood of success or serious questions going to the merits. Thus, the Court should once again deny Petitioners' request for injunctive relief.

Based on the plain language of the statute, Petitioners are subject to mandatory detention under 8 U.S.C. § 1225; not, as they argue, 8 U.S.C. § 1226(a). ECF No. 9 at 10. Section 1225(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]'" ECF No. 8 at 8 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) "expressly defines that '[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this Act *an applicant for admission*.'" *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioners are "alien[s] present in the United States who ha[ve] not been admitted." Thus, as found by this Court and as mandated by the plain language of the statute, Petitioners are "applicants for admission" and subject to the mandatory detention provisions of § 1225(b)(2).

When the plain text of a statute is clear, "that meaning is controlling" and courts

[3] Petitioners instead argue that this Court should reach a different conclusion because other district courts have reached a different conclusion. However, non-binding district court decisions that have reached a different conclusion have no bearing on this Court's correct interpretation of the plain language of the statute which provides that Petitioners are subject to mandatory detention under 8 U.S.C. § 1225.

"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 the 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); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 223-34 (BIA 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). 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). The Court should reject 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.* Aliens who presented at a 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). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 ("The House Judiciary Committee Report makes clear that Congress intended to eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights that those who presented themselves to authorities for inspection."). Thus, the court should "'refuse to interpret the INA in a way that would in effect repeal that statutory fix' intended by Congress in enacting the IIRIRA." ECF No. 8 at 9 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

Petitioners' argument that application of the plain language of the § 1225(b)(2) contradicts and renders § 1226(a) superfluous is unpersuasive. *See* ECF No. 9 at 12-13. As rejected and found by this Court, § 1226(a) "'generally governs the process of arresting

and detaining' certain aliens, namely 'aliens who were inadmissible at the time of entry *or who have been convicted of certain criminal offenses since admission.*'" ECF No. 8 at 9 (quoting *Jenning v. Rodriguez*, 583 U.S. 281, 288 (2018)) (emphasis in original). Moreover, § 1226(a) also covers those deemed to be deportable who were admitted as a nonimmigrant but failed to maintain their status or comply with the conditions of their status (i.e., visa overstays). *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1227(a)(1). In turn, individuals who have not been charged with specific crimes listed in § 1226(c), and those previously admitted but deemed deportable, are still subject to the discretionary detention provisions of § 1226(a) as determined by the Attorney General. *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."). Therefore, heeding the plain language of § 1225(b)(2) has no effect on § 1226(a).

Similarly, the application of § 1225's explicit definition of "applicants for admission" does not render the addition of § 1226(c) by the Riley Laken Act superfluous. Once again correctly determined this Court, the addition of § 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific crimes. ECF No. 8 at 9.

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 phrase "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 the phrase "applicants for admission" in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

Finally, Petitioners' argument that the phrase "alien seeking admission" limits the scope of § 1225(b)(2)(A) fails. *See generally* ECF No. 9 at 13-16. 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). Petitioners "provide[] no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

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 Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *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).

Because Petitioners are properly detained under § 1225, they cannot show entitlement to relief.

B. Irreparable Harm Has Not Been Shown

To prevail on their request for interim injunctive relief, Petitioners must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Detention alone is not an

irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, 854 Fed.Appx. 190 (9th Cir. 2021) ("[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived."). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Here, because Petitioners' alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioners. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018).

C. Balance of Equities Does Not Tip in Petitioners' Favor

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted). 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.

Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above, Petitioners cannot succeed on the merits of their claims. The balancing of equities and the public interest weigh heavily against granting Petitioners equitable relief.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the motion for preliminary injunction and dismiss this action for lack of a basis for the habeas claims.

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Respectfully submitted,

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