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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ISMAEL SANCHEZ ROMAN,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security; U.S. DEPARTMENT
OF HOMELAND SECURITY; PAMELA
J. BONDI, U.S. Attorney General; U.S.
DEPARTMENT OF JUSTICE; TODD
LYONS, Director of U.S. Immigration and
Customs Enforcement; JASON KNIGHT,
Salt Lake City Field Office Director, U.S.
Immigration and Customs Enforcement; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; JOHN MATTOS,
Warden, Nevada Southern Detention Center,

Respondents.

Case No. 2:25-cv-01684-GMN-EJY

**RESPONDENTS' OPPOSITION TO
PETITIONERS' MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

I. Introduction

Petitioner Ismael Sanchez Roman's ("Petitioner" or "Sanchez") Motion for a Temporary Restraining Order (ECF No. 5) ("Petitioner's Motion") cannot prevail. First, numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to review Petitioner's claims and preclude this Court from granting the relief they seek. Congress has unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Congress further directed that *any* challenges arising from *any* removal-related activity—including detention pending removal proceedings—must be brought before the appropriate court of appeals, not

1 a district court. And the Court cannot provide any relief that would restrain the operation of
2 §§ 1225(b)(2) or 1226(a). But that is exactly what Petitioner requests. The Court should thus
3 deny Petitioner's Motion on jurisdictional grounds.

4 Second, assuming jurisdiction, Petitioners nonetheless fail to demonstrate they are
5 entitled to temporary injunctive relief. Petitioners cannot show a likelihood of success on the
6 merits because they seek to circumvent the detention statute under which they are rightfully
7 detained to secure bond hearings that they are not entitled to. Petitioners fall precisely
8 within the statutory definition of aliens subject to mandatory detention without bond found
9 in § 1225(b)(2). Under Section 1225, Petitioner is not entitled to a bond hearing. *See Jennings*
10 *v. Rodriguez*, 583 U.S. 281, 297 (2018).

11 Third, to the extent the Court determines § 1226(a) governs, Petitioner may
12 challenge his detention via a bond hearing, if he requests one. If § 1226(a) governs,
13 Petitioner must exhaust this administrative remedy available to him before challenging his
14 detention through a habeas petition, as a bond hearing is a constitutionally adequate process
15 through which to challenge his detention under § 1226(a). Ordering Petitioner's release here
16 would be premature as no determination regarding whether releasing Petitioner on bond
17 would constitute an undue danger to the community or flight risk.

18 II. Statement of Facts and Procedural History

19 Petitioner filed a Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241
20 (ECF No. 1) ("Petition"), and on September 8 he filed a Motion for Temporary
21 Restraining Order (ECF No 3). In its Order Denying Application for Temporary
22 Restraining Order and Serving Petition (ECF No. 4), Court denied the motion for a
23 temporary restraining order, ordered the Clerk of Court to serve copies of the Petition and
24 ECF No. 4 upon the United States Attorney for the District of Nevada and the Federal
25 Defendants, and ordered the Federal Respondents to appear in the action by September 12,
26 2025 and serve a response to the Petition by September 29, 2025. ECF No. 4.

27 On September 12, 2025, undersigned counsel submitted a timely Notice of
28 Appearance on behalf of the Federal Respondents. ECF No. 6. On the same day, Petitioner

1 filed a second Motion for a Temporary Restraining Order, and the Court set a due date of
 2 September 26, 2025, for the Federal Respondents' response. ECF No. 5. On September 18,
 3 2025, the Court issued a minute order, ECF No. 9, shortening the time for the Federal
 4 Respondents' response to Petitioner's Motion, ordering the Federal Respondents to submit
 5 a response by Sunday, September 21, 2025, at 5:00 p.m., and setting a motion hearing for
 6 Monday, September 22, 2025, at 12:00 p.m. ECF No. 9.

7 Given the expedited nature of the briefing schedule, undersigned counsel was not
 8 afforded sufficient time to collect evidence to corroborate the facts alleged in Petitioner's
 9 Motion. The Federal Respondents' arguments thus respectfully submit this opposition to
 10 Petitioner's Motion based on the papers and pleadings on file. However, the Federal
 11 Respondents reserve the right to submit different arguments in their response to the Petition
 12 as additional facts, which may negate facts alleged in the Petition and Petitioner's Motion,
 13 become available to undersigned counsel.

14 **III. Statutory Background**

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

16 In exercising its plenary power over immigration, Congress delegated to the
 17 Secretary of Homeland Security the responsibility for "[s]ecuring the borders," enforcing
 18 the immigration laws, and "control[ing] and guard[ing] the boundaries and borders of the
 19 United States against the illegal entry of aliens." 6 U.S.C. §§ 202(2) & (3); 8 U.S.C. §
 20 1103(a)(5).

21 Section 1225 applies to "applicants for admission," who are defined as "alien[s]
 22 present in the United States who [have] not been admitted" or "who arrive[] in the United
 23 States." 8 U.S.C. § 1225(a)(1). Per Section 1225(a)(3), all applicants for admission are
 24 subject to inspection by immigration officers to determine if they are admissible to the
 25 United States. The term "admission" is defined by the Immigration and Nationality Act
 26 ("INA") to mean "the lawful entry of the alien into the United States after inspection and
 27 authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. §
 28 1235.1 (setting forth inspection procedures). In contrast, "inadmissibility" is a "status" that

1 can arise long after being admitted by an immigration officer.¹ *See, e.g., Barton v. Barr*, 590
 2 U.S. 222, 236 (2020). “Lawful status and admission . . . are distinct concepts in
 3 immigration law: Establishing one does not necessarily establish the other.” *Sanchez v.*
 4 *Mayorkas*, 593 U.S. 409, 415 (2021). The “grounds for inadmissibility are assessed not only
 5 when a person is physically entering the country but at multiple points in the immigration
 6 process.” *New York v. DHS*, 969 F.3d 42, 51 (2d Cir. 2020).

7 Under Section 1225, applicants for admission “fall into one of two categories, those
 8 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S.
 9 281, 287 (2018). Section 1225(b)(1) applies to arriving aliens and “certain other” aliens
 10 “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid
 11 documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to
 12 expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates
 13 an intention to apply for asylum . . . or a fear of persecution,” immigration officers will
 14 refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible
 15 fear of persecution” is “detained for further consideration of the application for asylum.”
 16 *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a
 17 fear of persecution, or is “found not to have such a fear,” he is detained until removed. *Id.*
 18 §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

19 And, relevant here, Section § 1225(b)(2)(A) provides for the inspection of all “other”
 20 applicants for admission. Section 1225(b)(2) is “broader” and “serves as a catchall
 21 provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered
 22 by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” **shall**
 23 **be detained** for a removal proceeding “if the examining immigration officer determines that
 24 [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
 25 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens
 26 arriving in and seeking admission into the United States who are placed directly in full
 27

28 ¹ There are many grounds of inadmissibility under the INA. *See* 8 U.S.C. § 1182(a)(1)–(10). Only one of those is specifically limited to aliens “present without being admitted or paroled.” 8 U.S.C. § 1182(a)(6)(A).

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

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

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

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

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

24 The BIA is an appellate body within the Executive Office for Immigration Review
 25 (“EOIR”). See 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
 26

27 ² Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United
 28 States under the authority of § 1182(d)(5)(A).” *Ortega-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)).

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. Argument

A. The Court Lacks Jurisdiction to Entertain Petitioners’ Action under 8 U.S.C. § 1252

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

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

³ Much of the Attorney General’s authority has been transferred to the Secretary of 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).

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 1194,
4 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
5 discretionary decisions to commence removal” and also to review “ICE’s decision to take
6 [plaintiff] into custody and to detain him during removal proceedings”).

7 Petitioners’ claims stem from their detention during removal proceedings. *See, e.g.*,
8 Mot. TRO at 7. That detention arises from the decision to commence such proceedings
9 against them. *See, e.g., Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008
10 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his
11 hearing before the Immigration Judge arose from this decision to commence
12 proceedings[.]”); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156,
13 at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020)
14 (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review
15 action to execute removal order).

16 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
17 commences proceedings against an alien when the alien is issued a Notice to Appear before
18 an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008
19 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien
20 against whom proceedings are commenced and detain that individual until the conclusion
21 of those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises
22 from the Attorney General’s decision to commence proceedings” and review of claims
23 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
24 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such,
25 judicial review of the Bond Denial Claims is barred by § 1252(g). The Court should dismiss
26 for lack of jurisdiction.

27 Second, under § 1252(b)(9), “judicial review of all questions of law . . . including
28 interpretation and application of statutory provisions . . . arising from any action

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

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

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

15 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—
 16 whether legal or factual—arising from *any* removal-related activity can be reviewed *only*
 17 through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir.
 18 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all
 19 claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal
 20 proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the
 21 action is “unrelated to any removal action or proceeding” is it within the district court’s
 22 jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a
 23 “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal
 24 quotation marks omitted)).

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

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

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

27 While holding that it was unnecessary to comprehensively address the scope of
28 § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of

1 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94.
 2 The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where
 3 “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at
 4 294–95. In this case, however, Petitioners *do* challenge the government’s decision to detain
 5 them in the first place. *See, e.g.*, Mot. TRO at 2, 19. Petitioner’s ultimately challenges DHS’s
 6 decision to detain them in the first instance under Section 1225, and thus cannot not evade
 7 the preclusive effect of § 1252(b)(9).

8 Indeed, the fact that Petitioners are challenging the basis upon which they are
 9 detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to
 10 remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C.
 11 § 1252(b)(9). The Court should dismiss Petitioner’s Motion for lack of jurisdiction under §
 12 1252(b)(9). If anything, Petitioners must present their claims before the appropriate federal
 13 court of appeals because they challenge the government’s decision or action to detain them,
 14 which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

15 **B. Even Assuming Jurisdiction, Petitioners’ Fail to meet the High Bar for**
 16 **Temporary Injunctive Relief**

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

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

20 The Court should reject Petitioners’ argument that § 1226(a) governs their detention
 21 instead of § 1225. *See* Mot. at 9–18. When there is “an irreconcilable conflict in two legal
 22 provisions,” then “the specific governs over the general.” *Karczewski v. DCH Mission Valley*
 23 *LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). Section 1226(a) “applies to aliens “arrested and
 24 detained pending a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is
 25 narrower. *See* 8 U.S.C. § 1225. It applies only to “applicants for admission”; that is, as
 26 relevant here, aliens present in the United States who have not be admitted. *See id.*; *see also*
 27 *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioners
 28

1 fall within that category, the specific detention authority under § 1225 governs over the
2 general authority found at § 1226(a).

3 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien
4 present in the United States who has not been admitted or who arrives in the United
5 States.” Applicants for admission “fall into one of two categories, those covered by §
6 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section
7 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It “serves as a
8 catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)
9 (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.*
10 at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant
11 for admission who is arrested and detained without a warrant while arriving in the United
12 States, whether or not at a port of entry, and subsequently placed in removal proceedings is
13 detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any
14 subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section
15 1225(b) therefore applies because Petitioners are all present in the United States without
16 being admitted.

17 The BIA has long recognized that “many people who are not *actually* requesting
18 permission to enter the United States in the ordinary sense are nevertheless deemed to be
19 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.
20 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*
21 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*,
22 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read
23 in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for
24 admission are both those individuals present without admission and those who arrive in the
25 United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission”
26 under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in §
27 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise
28 seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The

1 word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with
2 what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v.*
3 *Woods*, 571 U.S. 31, 45 (2013).

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

18 In the present case, Petitioner falls squarely within the ambit of Section
19 1225(b)(2)(A)’s mandatory detention requirement. To start, and as Petitioner concedes,
20 Petitioner entered the United States without inspection. Mot TRO at 6. Petitioner thus is
21 an “applicant for admission” to the United States. *See Matter of Yajure Hurtado*, 29 I. &N.
22 Dec. 216, (BIA 2025) (finding that an alien conceded he was an “applicant for admission”
23 by virtue of his “entry without inspection”). As described above, an “applicant for
24 admission” is an alien present in the United States who has not been admitted. 8 U.S.C. §
25 1225(a)(1). Next, because Petitioner has not demonstrated to an examining immigration
26 officer that he is “clearly and beyond a doubt entitled to be admitted,” his detention is
27 mandatory. 8 U.S.C. § 1225(b)(2)(A). Indeed, Petitioner *cannot* demonstrate that he is
28 “clearly and beyond a doubt entitled to be admitted” because, as he is present in the United

1 States without being admitted or paroled, he is inadmissible per 8 U.S.C. § 1182(a)(6).
2 Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which
3 mandates that he “shall be” detained.

4 This reasoning is supported by the Supreme Court. As explained in *Jennings v.*
5 *Rodriguez*, 583 U.S. 281 (2018), applicants for admission fall into one of two categories:
6 those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at
7 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially
8 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
9 documentation. Section 1225(b)(1)(A)(i). Section 1225(b)(2), on the other hand, is
10 “broader” and “serves as a catchall provision that applies to *all* applicants for admission
11 not covered by 1225(b)(1) (with specific exceptions not relevant here).” *Jennings*, 583 U.S.
12 at 837 (emphasis added). Put another way, while Section 1225(b)(1) applies to aliens
13 “arriving” in the United States, Section 1225(b)(2) applies to all “other” aliens who are
14 applicants for admission—like Petitioner. Simply put, an alien does not lose his “applicant
15 for admission” status simply because he was inspected at a time other than his immediate
16 arrival in the United States. Moreover, the Supreme Court has confirmed that this
17 statutory mandate for detention extends for the entirety of removal proceedings. *See*
18 *Jennings*, 583 U.S. at 302 (“[Section] 1225(b)(2) ... mandates[s] detention of aliens
19 *throughout the completion of applicable proceedings* and not just until the moment those
20 proceedings begin.” (emphasis added)).⁵

21
22 ⁵ The only means to obtain release for an applicant for admission is through parole. CBP
23 and ICE have discretion to parole applicants for admission into the United States. *See* 8 U.S.C.
24 § 1182(d)(5). For those detained under § 1225(b), regulations provide that ICE or CBP may grant
25 parole if the alien is “neither a security risk nor a risk of absconding,” and (1) has a serious
26 medical condition; (2) is pregnant; (3) falls within certain categories of juveniles; (4) will be a
27 witness; or (5) if continued detention is otherwise “not in the public interest.” 8 C.F.R. § 212.5(b);
28 *see also* 8 C.F.R. § 235.3(c).

Accordingly, because all “other” applicants for admission—like Petitioner—who do not fall under Section 1225(b)(1) and have not demonstrated “clearly and beyond a doubt” that they are entitled to be admitted to United States under Section 1225(b)(2) “shall” be detained, Petitioner’s detention is lawful, mandatory, and he is not entitled to a bond hearing.

b. 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 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).

The Court should reject the Petitioners’ Motion 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 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).

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

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

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

12 The asserted longstanding agency practice carries little, if any, weight under *Loper*
 13 *Bright*. See Mot. TRO at 7. The weight given to agency interpretations “must always
 14 ‘depend upon their thoroughness, the validity of their reasoning, the consistency with
 15 earlier and later pronouncements, and all those factors which give them power to
 16 persuade.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore*
 17 *v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no
 18 analysis to support its reasoning. See 62 Fed. Reg. at 10323; see also *Maldonado v. Bostock*,
 19 No. 2:23-cv-00760-LK-BAT, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023)
 20 (noting the agency provided “no authority” to support its reading of the statute).

21 To be sure, “when the best reading of the statute is that it delegates discretionary authority
 22 to an agency,” the Court must “independently interpret the statute and effectuate the will
 23 of Congress.” *Loper Bright*, 603 U.S. at 395 (cleaned up). But “read most naturally, §§
 24 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
 25 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up).

26 Here the statutory text of the INA is not “doubtful and ambiguous” but is instead
 27 clear and explicit in requiring mandatory detention of all aliens who are applicants for
 28 admission, without regard to how many years the alien has been residing in the United

1 States without lawful status. *See* 8 U.S.C. § 1225(b)(1), (2). The Supreme Court in *Loper*
 2 *Bright* did not hold that the long-standing practice of the government can somehow change,
 3 or even eviscerate, explicit statutory text that is contrary to practice. *See* 603 U.S. at 385–86,
 4 *See also Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021 (stating that “no amount of policy-
 5 talk can overcome a plain statutory command.”)).

6
 7 **2. Petitioners have not established irreparable harm because they have an**
 8 **adequate remedy in requesting review from the appeals court**

9 Because Petitioners’ alleged harm “is essentially inherent in detention, the Court
 10 cannot weigh this strongly in favor of” Petitioners. *Lopez Reyes v. Bonnar*, No 18-cv-07429-
 11 SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018); *see infra* § II. A. ii. The Court
 12 should deny the motion for a preliminary injunction.

13 **3. The Government has a compelling interest**

14 Where, as here, the moving party only raises “serious questions going to the
 15 merits,” the balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v.*
 16 *Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537
 17 F.3d 981, 987 (9th Cir. 2008)). The government has a compelling interest in the steady
 18 enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir.
 19 2022) (vacating an injunction that required a “broad change” in immigration bond
 20 procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at
 21 *4 (C.D. Cal. Dec. 20, 2020) (“the public interest in the United States’ enforcement of its
 22 immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL
 23 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s interest in enforcing
 24 immigration laws is enormous.”). Judicial intervention would only disrupt the status quo.
 25 *See, e.g., Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D.
 26 Wash. Nov. 2, 2017) (“[T]he purpose of a preliminary injunction is to preserve the status
 27 quo pending a determination on the merits.”). The Court should avoid a path that “inject[s]
 28 a degree of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693,

714 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See* 8 C.F.R. § 1003.1(d)(1). By regulation it must “provide clear and uniform guidance” “through precedent decisions” to “DHS [and] immigration judges.” *Id.* Defendants 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). And the BIA has weighed on this issue. In *Hurtado*, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicant for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025).

C. To the extent the Court determines Section 1226(a) governs, Petitioner may challenge his detention via a bond hearing

Section 1226 “generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal.” *Jennings*, 583 U.S. at 288. Section 1226(a) provides that “an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that “subsection (a) creates authority for *anyone’s* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”). When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If

1 DHS decides to release the alien, it may set a bond or place other conditions on release. *See*
2 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). Even after DHS decides to release an alien, it
3 may “at any time revoke such release, “rearrest the alien under the original warrant, and
4 detain the alien.” 8 U.S.C. § 1226(b).

5 If DHS determines that an alien should remain detained during the pendency of his
6 removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a
7 “bond hearing”) before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19,
8 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to
9 release the alien, based on a variety of factors that account for the alien’s ties to the United
10 States and evaluate whether the alien poses a flight risk or danger to the community. *See*
11 *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) (“The
12 determination of the Immigration Judge as to custody status or bond may be based upon
13 any information that is available to the Immigration Judge or that is presented to him or
14 her by the alien or [DHS].”).

15 Section 1226(a) does not provide an alien with an absolute right to release on bond.
16 *See Matter of D-J*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534
17 (1952)). Nor does the Constitution. *Velasco Lopez*, 978 F.3d at 848. Furthermore, § 1226(a)
18 grants DHS and the Attorney General broad discretionary authority to determine whether
19 to detain or release an alien during his removal proceedings. *See id.* In the exercise of this
20 broad discretion, and consistent with DHS regulations, the BIA—whose decisions are
21 binding on immigration judges—has placed the burden of proof on the alien, who “must
22 establish to the satisfaction of the Immigration Judge . . . that he or she does not present a
23 danger to persons or property, is not a threat to the national security, and does not pose a
24 risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. at 38. The BIA’s “to the satisfaction”
25 standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros*,
26 10 I. & N. Dec. 536, 537 (BIA 1964). If, after the bond hearing, the immigration judge
27 concludes that the alien should not be released, or the immigration judge has set a bond
28

1 amount that the alien believes is too high, the alien may appeal that decision to the BIA.
2 *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

3 **IV. Conclusion**

4 Respectfully submitted this 21st day of September 2025.

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