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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

JESUS NUNEZ ZAMUDIO, Petitioner, v. KRISTI NOEM, Secretary, Department of Homeland Security, et al., Respondents.	No. 5:25-cv-02710-SVW-MAR **FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE** Hon, Stephen V. Wilson United States District Judge

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OPPOSITION TO *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER

Respondents hereby oppose Petitioner's *ex parte* application for temporary restraining order and order to show cause re: preliminary injunction (the "Application") [Dkt. 2], which seeks a bond hearing pursuant to 8 U.S.C. 1226(a). The government reiterates here the legal position it has taken in its opposition to the *ex parte* TRO application filed in the *Bautista* case, 5:25-cv-01873-SSS-BFM, which the government filed on July 24, 2025 as Docket no. 8.[1] The same legal issue at issue in *Bautista* has subsequently been raised and resolved in this District in a series of other cases including *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS, *Jorge Arrazola-Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-01789-ODW-DFM, and *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS. This Honorable Court also very recently ruled on the issue in *Emma Marcela Crespin De Paz v. Kristi Noem, et al.*, 2:25-cv-06649-SVW-JPR, Dkt. no. 16 (October 10, 2025 Order Granting Petition), finding that the petitioner was entitled to a Section 1226(a) bond hearing.

The Board of Immigration Appeals (BIA) has also recently ruled on this issue in its order issued on September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. A copy of the BIA's decision in *Matter of Yajure* is attached hereto as Exhibit A. The Hon. Cathy Ann Bencivengo in the Southern District of California recently issued a decision affirming that the reasoning of *Matter of Yajure* is correct and denying a TRO accordingly in *Chavez v. Noem*, Case no. 3:25-cv-02325-CAB-SBC, Dkt. no. 8 (September 24, 2025). A copy of that *Chavez* decision is attached as Exhibit B hereto.

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[1] The District Court granted the TRO application in *Bautista*, requiring a Section 1226(a) bond hearing to be provided to the petitioners within seven days [Dkt. 14].

I. INTRODUCTION

Petitioner, a detainee in immigration custody, filed a petition for writ of habeas corpus ("Petition") [Dkt. 1] asking the Court to release them or provide them a bond hearing. Petitioner then filed their *ex parte* Application seeking essentially the same relief. The Application and the Petition should be denied for two reasons.

First, numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to review the Petitioner's claims and preclude this Court from granting the relief that 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 federal court of appeals, not a district court.

Second, assuming jurisdiction, Petitioner nonetheless fails to demonstrate they are entitled to injunctive relief. Petitioner 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. Petitioner falls precisely within the statutory definition of aliens subject to mandatory detention without bond found in § 1225(b)(2). As the BIA determined in *Matter of Yajure*, Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

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

II. STATUTORY BACKGROUND

A. Detention under 8 U.S.C. § 1225

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

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

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security ("DHS") has the sole discretionary authority to temporarily release on parole "any alien applying for 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.[2] By regulation, immigration officers can release aliens if the alien demonstrates that he "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).

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

III. ARGUMENT

A. The Court Lacks Jurisdiction to Entertain Petitioner's Action under 8 U.S.C. § 1252.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. Accordingly, Petitioner is 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 any 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).

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

Petitioner's claims stem from their detention during removal proceedings. That

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[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.

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

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

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

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

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

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

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

("The REAL ID Act of 2005 amended the [IIRIRA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

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

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge the government's decision to detain them in the first place. Though Petitioner may attempt to frame their challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain them in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

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

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

1. Petitioner is unable to show a likelihood of success on the merits.

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

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

The BIA recently analyzed and decided this legal issue in its order issued on September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

"[T]he BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

The BIA's decision in *Matter of Yajure* is based upon and consistent with the governing statutory language. 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)."). Section 1225(b) therefore applies because Petitioner is present in the United States without being admitted.

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).

The court's 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. 2023), *appeal dismissed*, No. 23-11528, 2023 WL 5212561 (11th Cir. July 11, 2023). 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 § 1226(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.

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 Petitioner's 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 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 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.

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

The asserted longstanding agency practice carries little, if any, weight under *Loper Bright*. 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. To be sure, "when the best reading of a 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. Petitioner thus cannot show a likelihood of success on the merits.

2. The Balance of Hardships Favors Respondents

Where the moving party only raises "serious questions going to the merits," the balance of hardships must "tip sharply" in his favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)). Petitioner fails to do so here. *See id.* 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. 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). 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.* Here, the BIA has provided that clear guidance by its decision in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

IV. CONCLUSION

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

Respectfully submitted,

Dated: October 16, 2025

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Federal Respondents certifies that this brief contains 5,664 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 16, 2025

/s/ Daniel A. Beck
DANIEL A. BECK

EXHIBIT A

Matter of Jonathan Javier YAJURE HURTADO, Respondent

Decided September 5, 2025

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

FOR THE RESPONDENT: Gabriel Harrison, Esquire, Bellingham, Washington

FOR THE DEPARTMENT OF HOMELAND SECURITY: Cassidy A. Cloninger, Associate Legal Advisor

BEFORE: Board Panel: HUNSUCKER and MONTANTE, Appellate Immigration Judges; MCCLOSKEY, Temporary Appellate Immigration Judge.

HUNSUCKER, Appellate Immigration Judge:

The respondent, a native and citizen of Venezuela, appeals from the Immigration Judge's April 18, 2025, order denying his request for a redetermination of his custody status.[1] The Immigration Judge determined that he lacked jurisdiction to hear the respondent's bond request because the respondent was subject to mandatory detention under section 235(b)(2) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2) (2018) and, in the alternative, that the respondent is a flight risk.[2] This case presents an issue that the Board has not previously addressed in a precedential decision—the Immigration Judge's authority to hold a bond hearing for an alien present in the United States who has not been admitted after inspection.

I. FACTUAL AND PROCEDURAL BACKGROUND

The respondent crossed the border into the United States without inspection in November 2022 near El Paso, Texas. United States Citizenship and Immigration Services granted him temporary protected status in 2024,

[1] Throughout the remainder of this decision, we will use the term "bond hearing" to reference any hearing in which the Immigration Judge considers any aspect of an alien's detention or conditions of release.

[2] On April 30, 2025, the Immigration Judge issued a written memorandum in support of the bond order.

but that status expired on April 2, 2025. The respondent was apprehended by immigration officials, and on April 8, 2025, the Department of Homeland Security ("DHS") issued a notice to appear charging the respondent as inadmissible under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i) (2018), for being "[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General."

The respondent requested a bond hearing before the Immigration Judge. At the hearing, the Immigration Judge determined he had no jurisdiction to set bond under the facts of the respondent's case. Alternatively, the Immigration Judge stated he would have denied bond because the respondent is a flight risk. The respondent timely appealed to the Board.

On July 18, 2025, the Board issued a request for supplemental briefing, asking the parties to specifically address whether the Immigration Judge has the authority to conduct a bond hearing for an alien who is present in the United States without admission. Both parties filed supplemental briefs.

II. STATUTORY AND REGULATORY BACKGROUND

We review de novo whether an Immigration Judge has the authority to consider the bond request of an alien who entered the United States without admission and who has been present in the United States for at least 2 years. *See* 8 C.F.R. § 1003.1(d)(3)(i) (2025). The authority of an Immigration Judge to adjudicate any matter, including a request for a bond, is limited to the authority that is delegated to the Immigration Judge by the INA and the Attorney General through regulation.[3] *See* 8 C.F.R. § 1003.10(b) (2025); *see also Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572, 575 (A.G. 2003).

[3] The authority of an Immigration Judge to consider a bond request is impacted by legal authorities which generally define that authority in the negative. For example, the Immigration Judge is without authority to conduct a custody redetermination hearing for aliens in exclusion proceedings. *See* 8 C.F.R. § 1003.19(h)(2)(i)(A) (2025). An Immigration Judge is also without authority to conduct a custody redetermination hearing for an arriving alien, including an alien paroled after arrival pursuant to section 212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5). *See* 8 C.F.R. § 1003.19(h)(2)(i)(B); *see also Matter of Oseiwusu*, 22 I&N Dec. 19, 20 (BIA 1998). Various other sections of the INA and the regulations further prohibit the Immigration Judge from considering custody redetermination under certain circumstances. *See* INA § 235(b)(1)(B)(iii)(IV), (b)(2)(A), 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), (b)(2)(A); INA § 236(c), 8 U.S.C.A. § 1226(c) (West 2025); 8 C.F.R. §§ 235.3(b)(1), 1003.19(h)(1)(i)(A)–(E) (2025).

A. Detention Under Section 235

The inspection, detention, and removal of aliens who have not been admitted is governed by section 235 of the INA, 8 U.S.C. § 1225. There, Congress defined an applicant for admission as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." INA § 235(a)(1), 8 U.S.C. § 1225(a)(1).

Under section 235, Congress created three different categories of applicants for admission. The first two categories are covered by section 235(b)(1)(A) of the INA, 8 U.S.C. § 1225(b)(1)(A). They include: (1) arriving aliens inadmissible under section 212(a)(6)(C) or 212(a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7), and (2) aliens not admitted or paroled into the United States who are inadmissible under section 212(a)(6)(C) or 212(a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7), and "who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility." INA § 235(b)(1)(A)(i), (iii)(II), 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II); *see also* 8 C.F.R. § 235.3(b)(1) (2025). The INA explicitly requires that aliens who fall into either of these two categories are subject to mandatory detention for the duration of their immigration proceedings. *See* INA § 235(b)(1)(B)(ii), (iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); *see also* 8 C.F.R. § 235.3(b)(2)(iii). Thus, an Immigration Judge lacks authority to hear a bond request filed by an applicant for admission in either of these two categories. *See Matter of M-S-*, 27 I&N Dec. 509, 515–19 (A.G. 2019).

The third category of applicants for admission subject to the inspection, detention, and removal procedures set forth in section 235 of the INA, 8 U.S.C. § 1225, are those aliens who are seeking admission and who an immigration officer has determined are "not clearly and beyond a doubt entitled to be admitted." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). This category is a "catchall provision that applies to all applicants for admission not covered by [section 235(b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Like with the first two categories of applicants for admission, the INA explicitly requires that this third "catchall" category of applicants for admission be mandatorily detained for the duration of their immigration proceedings.[4] *See* INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 235(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings); 8 C.F.R. § 235.3(b)(1)(ii).

B. Detention Under Section 236

Section 236 of the INA, 8 U.S.C.A. § 1226 (West 2025), provides additional direction for the apprehension and detention of aliens "pending a decision on whether the alien is to be removed from the United States." INA § 236(a), 8 U.S.C.A. § 1226(a). Section 236 "generally governs the process of arresting and detaining" aliens who are deportable under section 237(a), 8 U.S.C. § 1227(a) (2018), including "aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission." *Jennings*, 583 U.S. at 288 (citing INA § 237(a)(1), (2), 8 U.S.C. § 1227(a)(1), (2)).

The detention provisions of section 236, distinguish between two groups of aliens. The first group consists of aliens arrested on a warrant issued by DHS, who, subject to certain restrictions, may be detained or released on bond or conditional parole. INA § 236(a), 8 U.S.C.A. § 1226(a). The regulatory provision at 8 C.F.R. § 1236.1(d) (2025) authorizes Immigration Judges to "exercise the authority in section 236 of the [INA] . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released, as provided in § 1003.19 of this chapter." The second group of aliens identified in section 236 are certain defined categories of "criminal aliens" subject to mandatory detention under section 236(c) of the INA, 8 U.S.C.A. § 1226(c). An Immigration Judge is without authority to consider a bond request filed by an alien falling into this category.

Section 236 does not purport to overrule the mandatory detention requirements for arriving aliens and applicants for admission explicitly set forth in section 235(b)(1) and (2) of the INA, 8 U.S.C. § 1225(b)(1), (2). Thus, while an inadmissible alien who establishes that he or she has been

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[4] While these aliens might be subject to parole by the Attorney General or DHS, that is not an issue that the Immigration Judge has authority to consider. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. 212.5(a) (2025) (designating who may exercise authority to grant parole); *see also Jennings*, 583 U.S. at 300 (noting that the Attorney General may grant aliens detained under sections 235(b)(1) and (b)(2) temporary parole into the United States "for urgent humanitarian reasons or significant public benefit" (quoting INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)).

present in the United States for over 2 years is not subject to the expedited removal process, the alien nevertheless "shall be detained for a proceeding under section 240." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A).

III. APPLICATION OF THE RESPONDENT

The issue presented on appeal is one of statutory construction: Does the INA require that all applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category? In addressing this issue, the Board must begin with the "plain language" of the INA. *See Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) ("As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.").

"The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Beecham v. United States*, 511 U.S. 368, 372 (1994) ("The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences."). The Board does not "view the language of statutory provisions in isolation but instead . . . read[s] the words 'in their context and with a view to their place in the overall statutory scheme.'" *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)); *see also Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.").

Under the plain reading of the INA, we affirm the Immigration Judge's determination that he did not have authority over the bond request because aliens who are present in the United States without admission are applicants 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. *See Jennings*, 583 U.S. at 300 (holding that the INA "unequivocally mandates that aliens falling within the scope [of section 235(b)(1) and (2)] 'shall' be detained," and that "[u]nlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

The respondent concedes that he is an "applicant for admission" under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection. The respondent also contends, however, that because he has been residing in the interior of the United States for almost 3 years (since his November 2022 entry without inspection), he cannot be considered as "seeking admission" as the phrase is used in section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).

The respondent's argument is not supported by the plain language of the INA, and actually creates a legal conundrum. If he is not admitted to the United States (as he admits) but he is not "seeking admission" (as he contends), then what is his legal status? The respondent provides 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, 8 U.S.C.A. § 1226(a). *See Matter of Lemus*, 25 I&N Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"). The respondent's argument also leaves unanswered which applicants for admission would be covered by section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), if, as he argues, applicants for admission who have been living for years in the United States without admission and without lawful status are somehow exempt from section 235(b)(2)(A) and instead fall under section 236.

The respondent also contends that the Immigration Judge's interpretation of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), as applying to aliens who are present in the United States without inspection renders superfluous sections 236(c)(1)(A), (D), and (E), 8 U.S.C.A. § 1226(c)(1)(A), (D), (E), which bar certain categories of inadmissible aliens from requesting bond under section 236(a) of the INA, 8 U.S.C.A. § 1226(a). According to the respondent, Congress would not have enacted the provisions of sections 236(c) and also amended the provision as it did with the recent passage of the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025), if those aliens were already subject to mandatory custody under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).[5] The respondent's argument is

[5] The Laken Riley Act amended section 236(c) of the INA, 8 U.S.C.A. § 1226(c), to require that the Attorney General take into custody certain criminal aliens who are deemed inadmissible, including for being "present in the United States without being admitted or

unavailing, however, because nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute "shall be detained for a proceeding under section 240."

The respondent's interpretation would, in fact, render section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), superfluous. Interpreting the provisions of section 236(c) as rendering null and void the provisions of section 235(b)(2)(A) (or even the provisions of section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1)), would be in contravention of the "cardinal principle of statutory construction," which is that courts are to '"give effect, if possible, to every clause and word of a statute,' rather than to emasculate an entire section." *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) (citations omitted).

Further, the fact that section 236(c) of the INA, 8 U.S.C.A. § 1226(c), mandates detention of a subset of the category of aliens that are also subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), is not a basis on which to determine that section 235(b)(2)(A) is null and void. *See Barton v. Barr*, 590 U.S. 222, 239 (2020) (holding that because "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication,"—"[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text").

The respondent also argues that the relevant legislative history of the INA supports an interpretation of the INA that authorizes bond and bond hearings under section 236(a) for aliens present in the United States without admission. On the contrary, the legislative history supports the interpretation the Board is taking here. The statutory definition of an "applicant for admission" at section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), was added to the INA in 1996, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579. Before the passage of IIRIRA, the INA provided for inspection of aliens only when they were arriving at a port of entry. *See* former INA § 235(a), 8 U.S.C. § 1225(a) (1994) (discussing "aliens arriving at ports of the United States"); *see also*

paroled," under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), and who have been arrested, charged with, or convicted of certain crimes, including theft.

former INA § 235(b), 8 U.S.C. § 1225(b) (discussing the detention of aliens by "the examining immigration officer at the port of arrival"). Aliens who were "seeking admission" at a port of entry under former section 235 of the INA, 8 U.S.C. § 1225, or who had been paroled into the United States and were determined to be excludable were placed in exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole under section § 212(d)(5), 8 U.S.C. § 1182(d)(5) (1994). *See also* former INA §§ 212(a), 235(a)–(b), 236, 8 U.S.C. §§ 1182(a), 1225(a)–(b), 1226 (1994); *see also* 8 C.F.R. § 235.3(a)–(c) (1995).

At the same time, aliens who were "in the United States" and within certain classes of deportable aliens, including those "who entered the United States without inspection or at any time or place other than as designated by the Attorney General" were deemed deportable under former section 241(a) of the INA, 8 U.S.C. § 1251(a) (1994), and placed in deportation proceedings. Those aliens were entitled to request release on bond. *See* former INA § 242(a)(1), 8 U.S.C. § 1252(a)(1) (1994); *see also* 8 C.F.R. § 242.2(c)(1) (1995). Thus, the placement of an alien in exclusion or deportation proceedings before the 1996 passage of IIRIRA depended on whether the alien had made an "entry" within the meaning of the INA. *See* former INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1994) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession").

In 1996, Congress enacted IIRIRA, which, among other things, substituted the term "admission" for "entry," and replaced deportation and exclusion proceedings with removal proceedings. *See Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) ("Prior to the 1996 amendment, the INA assessed status on the basis of 'entry' as opposed to 'admission.'"). Congress acted, in part, to remedy the "unintended and undesirable consequence" of having created a statutory scheme where aliens who entered without inspection "could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," including the right to request release on bond, while aliens who had "actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings,'" and were subject to mandatory custody. *Id.* (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

The legislative history of IIRIRA explains that in replacing the definition of "entry" with a definition for "admission" and "admitted," Congress:

> intended to replace certain aspects of the 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. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). The House Judiciary Committee Report for what would become IIRIRA further explains:

> Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B). Under the new "admission" doctrine, such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission. (Deportation grounds will be reserved for aliens who have been admitted to the United States.).

Id. at 226.

Thus, after the 1996 enactment of IIRIRA, aliens who enter the United States without inspection or admission are "applicants for admission" under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), and subject to the inspection, detention, and removal procedures of section 235(b) of the INA, 8 U.S.C. § 1225(b). The legislative history confirms that, under a plain language reading of section 235(b)(1) and (2) of the INA, 8 U.S.C. § 1225(b)(1), (2), Immigration Judges do not have authority to hold a bond hearing for arriving aliens and applicants for admission. *See Chapman v. Hous. Welfare Rts. Org.*, 441 U.S. 600, 608 (1979) (noting that the Supreme Court's "task is to interpret the words of these statutes in light of the purposes Congress sought to serve."); *see also Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990) ("The starting point for interpretation of a statute 'is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.'" (quoting *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980))).

The respondent contends that the statement in the House Judiciary Committee Report that "[s]ection 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States" demonstrates that Congress intended to retain the same discretionary detention scheme for aliens unlawfully in the United States that was in place prior to the 1996 enactment of IIRIRA. H.R. Rep. No. 104-469, pt. 1, at 229. The respondent's argument is unavailing, however, because nothing in the portion of the report cited by the respondent suggests that it was intended to undermine or alter the earlier statements, in the same report, that aliens present in the United States without inspection will be considered "seeking admission." *See id.* 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 than those who presented themselves to authorities for inspection. *See id.*; *see also Martinez*, 693 F.3d at 413 n.5. Interpreting the provisions of the INA in the manner the respondent argues would essentially repeal the statutory fix that Congress made with the 1996 passage of IIRIRA.

As the legislative history reflects, the Immigration Judge's interpretation of the respondent as an applicant for admission under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and therefore subject to mandatory detention and ineligible for a bond hearing is supported by the plain language of the INA. *See Jennings*, 583 U.S. at 297 ("Read most naturally, [sections 235(b)(1)] and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. Section [235(b)(1)] aliens are detained for 'further consideration of the application for asylum,' and [section 235(b)(2)] aliens are in turn detained for '[removal] proceeding[s].'" (last two alterations in original)). Thus, we affirm the Immigration Judge's interpretation, and hold, under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.

Citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the respondent also contends in his supplemental brief that DHS' "longstanding practice" of treating aliens who are present in the United States without inspection as detained under section 236(a) of the INA, 8 U.S.C.A. § 1226(a), and therefore eligible for a bond, supports his argument that he is likewise detained under section 236(a). *See Loper Bright*, 603 U.S. at 386 ("'[T]he longstanding "practice of the government"'—like any other interpretive aid—'can inform [a court's] determination of "what the law is."'" (citation omitted)).[6] Somewhat similarly, the respondent contends that Congress did

[6] We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled "Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures," 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."

not intend the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), to apply to aliens who are arrested after having lived in the United States for more than 2 years, as reflected in DHS' practice of treating those aliens as detained under section 236 of the INA, 8 U.S.C. § 1226.

The respondent's argument is unavailing, however, because the Supreme Court in *Loper Bright* made that statement specifically with respect to judicial interpretation of a "doubtful and ambiguous law." *Id.* at 385–86. As explained above, the statutory text of the INA is not "doubtful and ambiguous" but is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status. *See* INA § 235(b)(1), (2), 8 U.S.C. § 1225(b)(1), (2). The Supreme Court in *Loper Bright* did not hold that the long-standing practice of the government can somehow change, or even eviscerate, explicit statutory text that is contrary to that practice. *See* 603 U.S. at 385–86; *see also Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that "no amount of policy-talk can overcome a plain statutory command").

Likewise, the respondent's citation to *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025), does not support his arguments. The Board's statement in that decision that the respondent's custody determination was governed by section 236(a) of the INA, 8 U.S.C.A. § 1226(a), even though the respondent was present in the United States without inspection, *Matter of Akhmedov*, 29 I&N Dec. at 166, does not somehow eviscerate or nullify section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), or vest the Immigration Judge with authority over the respondent's bond request. Whether the respondent was subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and whether the Immigration Judge had authority to hear the bond request, were not issues presented to the Board in that case.

The respondent also argues that because DHS issued an arrest warrant in conjunction with the Notice to Appear and a Notice of Custody Determination, DHS has detained the respondent pursuant to section 236(a) of the INA, 8 U.S.C.A. § 1226(a), and the Immigration Judge therefore has statutory and regulatory authority to consider his request for a bond. The respondent cites *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), in support of his argument. *Matter of Q. Li*, 29 I&N Dec. at 69, held:

> [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).

Matter of Q. Li, 29 I&N Dec. at 69, further stated that "[s]ubject to certain exceptions contained in section 236(c) of the INA, 8 U.S.C. § 1226(c), aliens detained under section 236(a) may be eligible for discretionary release on bond pursuant to section 236(a)(2) of the INA, 8 U.S.C. § 1226(a)(2)."

Our conclusion in *Matter of Q. Li* that aliens detained without a warrant while arriving in the United States are mandatorily detained under section 235(b) of the INA, 8 U.S.C. § 1225, is consistent with our holding in the present case. While the respondent reads *Matter of Q. Li* as suggesting that aliens present in the United States who are detained with a warrant of arrest are detained under section 236(a), that issue was beyond the scope of our decision in that case. Our acknowledgement that "aliens detained under section 236(a) may be eligible for discretionary release on bond" does not mean that *all* aliens detained while in the United States with a warrant of arrest are detained under section 236(a) and entitled to a bond hearing before the Immigration Judge, regardless of whether they are applicants for admission under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).

In short, the mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A). *See Matter of A-W-*, 25 I&N Dec. at 46 (discussing the limits on Immigration Judge authority); *Matter of D-J-*, 23 I&N Dec. at 575 (same); 8 C.F.R. § 1003.10(b); *see also* 8 C.F.R. § 235.3(b)(1)(ii). If it did, it would render meaningless the many prohibitions cited above on the authority of an Immigration Judge to set bond.

Ultimately, this issue of statutory interpretation is complicated by a patchwork of statutes implemented at different times and intended to address different issues. The INA is a complex set of legal provisions created at different times and modified over a series of years. Where these provisions impact one another, they cannot be read in a vacuum. *See Matter of C-T-L-*, 25 I&N Dec. at 345 (BIA 2010) (explaining that the Board does not "view the language of statutory provisions in isolation but instead [is] charged with reading the words 'in their context and with a view to their place in the overall statutory scheme'" (citation omitted)). Additionally, the fact that a statute specifically prohibits an Immigration Judge from doing a particular act cannot be read as authorizing the Immigration Judge to perform acts that are not otherwise specifically prohibited.

"'[A]n alien present in the United States who has not been admitted . . .' is deemed 'an applicant for admission.'" *DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (quoting INA § 235(a)(1), 8 U.S.C. § 1225(a)(1)); *see also Matter of Lemus*, 25 I&N Dec. at 743 ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."). Applicants for admission remains such unless an immigration officer determines that they are "clearly and beyond a doubt entitled to be admitted." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens "shall be detained for a proceeding under section 240." *Id.*; *see also Jennings*, 583 U.S. at 288.

Aliens, like the respondent, who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission." *See* INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A) (2018) (defining "admission"). Likewise, being arrested pursuant to a warrant and placed into removal proceedings does not constitute an admission. Therefore, just as Immigration Judges have no authority to redetermine the custody of arriving aliens who present themselves at a port of entry, they likewise have no authority to redetermine the custody conditions of an alien who crossed the border unlawfully without inspection, even if that alien has avoided apprehension for more than 2 years.

Holding otherwise would require reading the INA to conclude that Congress intended that aliens unlawfully entering the United States without inspection, particularly those who successfully evaded apprehension for more than 2 years, be rewarded with the opportunity for a bond hearing before an Immigration Judge, whereas aliens who present themselves to officers at a port of entry are ineligible for a bond hearing. This is an incongruous result which is not supported by the plain language or any reasonable interpretation of the INA.[7]

[7] Violations of the INA and the regulations often have consequences for aliens seeking relief and protection from removal. *See, e.g.*, Circumvention of Lawful Pathways, 88 Fed. Reg. 31314, 31314 (May 16, 2023) (codified at 8 C.F.R. pts. 1003 and 1208) (establishing a "rebuttable presumption of asylum ineligibility" for certain aliens who did not "avail themselves of a lawful, safe, and orderly pathway to the United States" or "seek asylum or other protection in a country through which they travel[ed]"). For example, aliens who have not been "inspected and admitted or paroled into the United States" are ineligible for

IV. CONCLUSION

The Immigration Judge properly held that he lacked authority to hear the respondent's request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii).[8] Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

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adjustment of status under section 245(a) of the INA, 8 U.S.C. § 1255(a) (2018). *See also Sanchez v. Mayorkas*, 593 U.S. 409, 414 (2021). Likewise, an applicant for asylum will, absent extraordinary or changed circumstances, be ineligible for relief if he or she did not file the application within 1 year of his or her last arrival in the United States. *See* INA § 208(a)(2)(B), (D), 8 U.S.C. § 1158(a)(2)(B), (D).

[8] As we are dismissing the respondent's appeal on the grounds that the Immigration Judge lacked jurisdiction to hear the respondent's motion for a bond, we need not address the Immigration Judge's alternative holding denying bond because the respondent did not meet his burden of proving that he is not a flight risk, or the respondent's appellate arguments contesting that alternative holding. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 5:25-cv-02486-JLS-AJR Date: September 23, 2025
Title: Omar Sanchez Ruiz v. Warden et al

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Kelly Davis	N/A
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiffs:	Attorneys Present for Defendant:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING IN PART APPLICATION FOR TEMPORARY RESTRAINING ORDER (Doc. 3)

Before the Court is an *Ex Parte* Application for Temporary Restraining Order filed by Petitioner Gloria Sanchez. (App., Doc. 3; Mem., Doc. 3-1.) Respondents Thomas P. Giles, Todd Lyons, Kristi Noem, Pamela Bondi, and Warden of Desert View Facility, Adelanto, CA, opposed. (Opp., Doc. 7.) Having reviewed the papers, the Court GRANTS IN PART Petitioner's Application and ORDERS Respondents to show cause why a preliminary injunction should not issue.

I. BACKGROUND

Petitioner is a citizen of Mexico who is currently detained by Immigration and Customs Enforcement ("ICE") in Adelanto, California. (Petition at 2, Doc. 1; *see also* Ex. B to Petition, Doc. 1 at 19.) She is a transgender Mexican activist who was ordered deported and granted withholding of removal on October 28, 2008. (Mem. at 2; *see also* Ex. C to Mem., Doc. 3-1 at 24.) Petitioner was then placed under an Order of Supervision dated December 22, 2008, as her removal to Mexico or a safe third country could not be effectuated. (*See* Petition at 3; *see also* Mem. at 8; Ex. C to Mem.) The

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Order of Supervision requires Petitioner to comply with various conditions, including reporting to ICE on an annual basis. (Petition at 2, 8; *see also* Ex. C to Mem.)

On September 19, 2025, ICE re-detained Petitioner in Santa Ana, California. (Petition at 2.) The Petition alleges that Petitioner was not provided notice of ICE's intent to re-detain her or any information as to why her Order of Supervision was presumably revoked. (*See* Mem. at 9, 11.) Petitioner submits along with her Petition and Application a Department of Homeland Security ("DHS") memorandum dated March 30, 2025, which provides that DHS has a policy of removing noncitizens to third countries "without the need for further procedures" when the United States has received diplomatic assurances that the noncitizen will not be persecuted or tortured. (Ex. E to Mem., March 2025 Noem Memo, Doc. 3-1 at 37.) In the absence of such assurances, ICE "will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country." (*Id.* at 37–38)

On September 21, 2025, Petitioner filed a petition for writ of habeas corpus and the instant *Ex Parte* Application. (Petition; App.; Mem.) Petitioner's Application requests (1) an order enjoining Respondents from transferring her out of this judicial district during the pendency of her petition or an order requiring her return if she has already been transferred; (2) an order enjoining Respondents from removing Petitioner to a third country without notice and an opportunity to be heard on any fear of persecution or torture she has in that third country; and (3) an order requiring Petitioner's immediate release from ICE detention on an Order of Supervision until such time that her removal is reasonably foreseeable. (App. at 2.)

II. LEGAL STANDARD

"The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction." *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). Like a preliminary injunction, a

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temporary restraining order is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "The underlying purpose of a TRO is to preserve the status quo and prevent irreparable harm before a preliminary injunction hearing may be held." *Jones v. H.S.B.C. (USA)*, 844 F. Supp. 2d 1099, 1100 (S.D. Cal. 2012) (citing *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974)).

To obtain a temporary restraining order ("TRO"), a plaintiff "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that [a TRO] is in the public interest." *Winter*, 555 U.S. at 22. This "requires the plaintiff to make a showing on all four prongs." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Alternatively, under the Ninth Circuit's sliding scale test, a plaintiff may obtain a TRO by showing "that there are 'serious questions going to the merits'" and that "the 'balance of hardships tips sharply in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1135) (emphasis omitted). The final two *Winter* factors "merge" when a TRO is sought against the government. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

III. ANALYSIS

As noted above, Petitioner seeks a TRO barring Respondents from (1) transferring her out of this judicial district; (2) removing her to a third country without notice and an opportunity to be heard on any fear of persecution or torture she has in that third country; and (3) requiring her immediate release from ICE detention on an Order of Supervision until such time that her removal is reasonably foreseeable. (App. at 2.)

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First, the Court determines that Petitioner has failed to show that she will suffer irreparable harm if she is transferred outside of this judicial district as this Court's jurisdiction "attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change." *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990); *see also Vaskanyan v. Janecka*, 2025 WL 2014208, at *8 (C.D. Cal. June 25, 2025). This conclusion accords with those of other courts that have retained jurisdiction over a habeas petition after a detainee's transfer out of the district. *See, e.g.*, *Ovsepian v. Bondi*, Case No. 5:25-cv-01937-MEMF-DFM, Doc. 20 at *14–15 (C.D. Cal. Aug. 8, 2025) (finding that habeas petitioner detained by ICE had "not shown that he [was] likely to suffer irreparable harm from his transfer to Louisiana"). Moreover, though Petitioner argues that her transfer outside this judicial district will interfere with her access to counsel, she proffers only the fact that her counsel is based in Irvine, California to support this contention. (*See* Mem. at 10.) Such conclusory assertions do not suffice. Absent more, Petitioner fails to show that her transfer out of district is likely to cause her irreparable harm. Without a showing of irreparable harm, the Court need not further examine the other *Winter* factors as to this claim.

Similarly, the Court concludes that Petitioner has failed to establish a likelihood of success on the merits as to her claim that her detention violates substantive due process requirements. (*See* Petition at 9.) The Application argues that her "continued detention, both constructive and physical, beyond the presumptively reasonable six-month period, and particularly beyond the 90-day removal period authorized by 8 U.S.C. § 1231(a), violates the Due Process Clause[.]" (*Id.*) Pursuant to 8 U.S.C §1231(a)(6), the Attorney General may either release or continue to detain a noncitizen beyond the 90-day removal period. However, a noncitizen may not be detained beyond a six-month "presumptively reasonable period of detention." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). "After this 6–month period, once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

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Invoking *Zadvydas*, Petitioner argues that she is likely to succeed on the merits of her claim because her removal is not reasonably foreseeable and she has "been detained beyond the 180-day post-removal period, going back to October 2008[.]" (Mem. at 8.) However, Petitioner presents no evidence that she has been detained beyond six months, and instead argues that her release on an Order of Supervision in October 2008 constitutes a detention within the terms of Section 1231. (Mem. at 3, 6–8.) But in *Zadvydas,* the Supreme Court made a clear distinction between "detention" and "release under supervision." 533 U.S. at 683–85. The relevant detention period in *Zadvydas* pertained specifically to the noncitizen's continued confinement. *Id.* Accordingly, Petitioner here cannot point to her release on an Order of Supervision as evidence that she has been detained beyond the "presumptively reasonable period of detention." *Id.* at 701. Absent any evidence of actual detention beyond the six-month period, Petitioner's claim is premature.

By contrast, Petitioner can point to a likelihood of success on the merits and irreparable harm regarding her challenge to third country removal without notice and an opportunity to be heard as to any fear of persecution or torture. Liberally construed, that claim contends that DHS has violated its obligations under 8 U.S.C. § 1231 because it "is unlikely, and entirely unforeseeable, that Respondents would be able to secure a safe third country for Petitioner to be removed to[.]"[1] (Petition at 10.) Petitioner's

[1] Though Petitioner's claim is labeled as a violation of "8 U.S.C. Section 1231(a) and Implementing Regulations," the claim itself implicates 8 U.S.C. Section 1231(b), which prohibits removal to a third country "if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). (*See also* Petition at 10.) Petitioner also frames her claim as one for failure to comply with the Due Process Clause. (*Id.* at 11.) Removals of noncitizens may violate procedural due process "if an immigrant was not provided an opportunity to address his fear of persecution in that country." *Najjar v. Lynch*, 630 F. App'x 724 (9th Cir. 2016). DHS's current policies allow removal "without the need for further procedures" when the United States has received "diplomatic assurances that [noncitizens] removed from the United States will not be persecuted or tortured."

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Application further argues that "DHS is barred from deporting a non-citizen to a country where the non-citizen's life or freedom would be threatened because of five protected grounds" or where the non-citizen "face[s] a threat of torture." (Mem. at 8 (citing 8 U.S.C. § 1231(b)(3)(A) and 8 C.F.R. §§ 208.16–208.18).)

As stated above, Respondents do not oppose Petitioner's request for third country removal notice procedures. Rather Respondents "would greatly prefer" that "a basic notice period (e.g. 10 days) [prior to any removal to a third country]" "not be required by a TRO, and that notice rather be given normally by the government under its normal procedures." (Opp. at 2.) However, Respondents provide no indication that "normal procedures" are anything other than the operative ICE policy described in the March 2025 Noem Memorandum. Pursuant to that policy, a noncitizen may be removed from the United States absent further procedure so long as "the country of removal … has provided diplomatic assurances that [noncitizens] removed from the United States will not be persecuted or tortured." (March 2025 Noem Memo.) ICE "will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country." (*Id.*) Accordingly, the Court concludes that Petitioner has established a likelihood of success on the merits, or at least the presence of "serious questions going to the merits" as to this claim. *Alliance for the Wild Rockies*, 632 F.3d at 1135.

Petitioner has also established a likelihood of irreparable harm. Indeed, the harm of being removed to a country where one may be tortured is patently obvious. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 391 (D. Mass. 2025)

(March 2025 Noem Memo.) But even in the presence of diplomatic assurances, such a removal may still result in an "erroneous deprivation," especially because threats of harm or persecution to a noncitizen in a third country may be outside that country's government's control. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Removal without notice and an opportunity to be heard therefore raises serious due process issues. *See Ortega v. Kaiser*, 2025 WL 2243616, at *5 (N.D. Cal. Aug. 6, 2025); *see also Nguyen v. Scott*, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21, 2025).

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("Here, the threatened harm is clear and simple: persecution, torture, and death. It is hard to imagine harm more irreparable."), *stayed pending appeal*, 145 S. Ct. 2153 (2025).

So the Court turns to the final two *Winter* factors, which merge when the opposing party is the government. *See Nken*, 556 U.S. at 435. "A plaintiff's likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors decisively in his favor." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023). This is because "it is always in the public interest to prevent the violation of a party's constitutional rights" and "[t]he government [] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Id.* (quotation and citations omitted).

Here, Petitioner has satisfied the first *Winter* factor, likelihood of success, and thus the balance of equities and public interest tip "decisively" in her favor. *See Baird*, 81 F.4th at 1042. Comparatively, any potential harm to Respondents is minimal; indeed, they identify no potential harm in their opposition to Petitioner's Application. While the public has an interest in the efficient execution of this country's immigration laws, it also has a "an interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken*, 556 U.S. at 436; *see also Ovsepian*, Case No. 5:25-cv-01937-MEMF-DFM, at *14–15 ("Although there is a countervailing 'public interest in prompt execution of removal orders,' it is well-established that 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends[.]'") (quoting *Nken*, 556 U.S. at 436, and *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021) (cleaned up, further citation omitted)). Considering these interests, the Court determines that the balance of hardships tip sharply in favor of granting a TRO. *See Ovespian*, No. 5:25-cv-01937-MEMF-DFM, at *15 (similar); *Vaskanyan*, 2025 WL 2014208, at *7 (C.D. Cal. June 25, 2025) (similar).

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In sum, Petitioner has sufficiently shown that there are serious questions going to the merits of her claim, that the balance of hardships tip "sharply" in her favor, and that the other two *Winter* factors are satisfied. *Alliance for the Wild Rockies*, 632 F.3d at 1135.

Pursuant to Rule 65, a court "may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). A district court has "discretion as to the amount of security required, *if any*." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (quoting *Barahona–Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)) (emphasis in original, further citation omitted). A court "may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Id.* Respondents make no argument that a security should be required or that they are likely to suffer harm if their conduct is enjoined. In any case, there is minimal-to-no risk of harm to the government when it is enjoined from constitutional violations. *See Baird*, 81 F.4th at 1042. For these reasons, the Court concludes that no security is required.

IV. CONCLUSION

For the above reasons, the Court GRANTS IN PART Petitioner's Application for Temporary Restraining Order and ORDERS as follows:

1. Respndents, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with Respondents are ENJOINED AND RESTRAINED from removing Petitioner to a third country, i.e., a country other than the country designated as the country of removal in Petitioner's final order of removal (Mexico), without written notice of the third country to which Petitioner may be removed provided to Petitioner and her

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counsel in a language the Petitioner can understand. Following notice, Petitioner must be given a meaningful opportunity to raise a fear-based claim for withholding of removal or protection under the Convention Against Torture prior to removal.

2. This temporary restraining order shall take effect immediately and shall remain in effect through **October 7, 2025**, unless the Court extends this period, before that date, and for good cause. Fed. R. Civ. P. 65(b)(2).

3. Respondents are further ORDERED TO SHOW CAUSE in-person on **October 6, 2025 at 2:00 p.m.** as to why a preliminary injunction should not issue.[2]

4. The Application is DENIED in all other respects.

Initials of Deputy Clerk: kd

[2] The parties may seek to extend this deadline by stipulation.