

1 TODD BLANCHE  
Deputy Attorney General  
2 BILAL A. ESSAYLI  
First Assistant United States Attorney  
3 DAVID M. HARRIS  
Assistant United States Attorney  
4 Chief, Civil Division  
DANIEL A. BECK (Cal. Bar. 204496)  
5 Assistant United States Attorney  
Chief, Complex and Defensive Litigation Section  
6 Federal Building, Suite 7516  
300 North Los Angeles Street  
7 Los Angeles, California 90012  
Telephone: (213) 894-2574  
8 E-mail: daniel.beck@usdoj.gov

9 Attorneys for Federal Respondents

10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 EASTERN DIVISION  
13

14 Jaime BARCENAS DOMINGUEZ, et  
15 al.,

16 Petitioners,

17 v.

18 Kristi NOEM, Secretary, Department of  
19 Homeland Security, et al.,

20 Respondents.

No. 5:25-cv-03276-PA-DTB

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

Honorable Percy Anderson  
United States District Judge

21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
I. INTRODUCTION .....	1
II. STATUTORY BACKGROUND .....	3
A. Detention under <u>8 U.S.C. § 1225</u> .....	3
B. Detention under <u>8 U.S.C. § 1226(a)</u> .....	4
C. Review at the Board of Immigration Appeals (“BIA”) .....	4
III. ARGUMENT .....	5
A. The Court Lacks Jurisdiction to Entertain Petitioners’ Actions under <u>8 U.S.C. § 1252</u> .....	5
B. Even Assuming Jurisdiction, Petitioners Fail to Meet the High Bar for Injunctive Relief .....	8
1. Petitioners are unable to show a likelihood of success on the merits .....	8
2. The Balance of Hardships Favors Respondents .....	14
IV. CONCLUSION .....	15

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

<u>DESCRIPTION</u>	<u>PAGE</u>
<b>Federal Cases</b>	
<i>Acosta v. Doerer</i> , <u>2024 WL 4800878</u> (C.D. Cal. Oct. 24, 2024) .....	17
<i>Aden v. Nielsen</i> , <u>2019 WL 5802013</u> (W.D. Wash. Nov. 7, 2019) .....	10
<i>Aguilar v. ICE</i> , <u>510 F.3d 1</u> (1st Cir. 2007) .....	7
<i>Ajlani v. Chertoff</i> , <u>545 F.3d 229</u> (2d Cir. 2008) .....	7
<i>All. for Wild Rockies v. Cottrell</i> , <u>632 F.3d 1127–35</u> (9th Cir. 2011) .....	13
<i>Alvarez v. ICE</i> , <u>818 F.3d 1194</u> (11th Cir. 2016) .....	5
<i>Barton v. Barr</i> , <u>590 U.S. 222</u> (2020) .....	12, 13
<i>Biden v. Texas</i> , <u>597 U.S. 785</u> (2022) .....	3
<i>Clark v. Martinez</i> , <u>543 U.S. 371</u> (2005) .....	5
<i>Delgado v. Quarantillo</i> , <u>643 F.3d 52</u> (2d Cir. 2011) .....	8
<i>Delgado v. Sessions</i> , <u>2017 WL 4776340</u> (W.D. Wash. Sept. 15, 2017) .....	10
<i>Demore v. Kim</i> , <u>538 U.S. 510</u> (2003) .....	11
<i>E.F.L. v. Prim</i> , <u>986 F.3d 959</u> (7th Cir. 2021) .....	5
<i>Florida v. United States</i> , <u>660 F. Supp. 3d 1239</u> (N.D. Fla. 2023) .....	9, 11

1	<i>Herrera-Correra v. United States</i> ,	
2	<u>2008 WL 11336833</u> (C.D. Cal. Sept. 11, 2008) .....	6
3	<i>J.E.F.M. v. Lynch</i> ,	
4	<u>837 F.3d 1026</u> (9th Cir. 2016) .....	7
5	<i>Jennings v. Rodriguez</i> ,	
6	<u>583 U.S. 281</u> (2018) .....	passim
7	<i>Karczewski v. DCH Mission Valley LLC</i> ,	
8	<u>862 F.3d 1006</u> (9th Cir. 2017) .....	9
9	<i>Lands Council v. McNair</i> ,	
10	<u>537 F.3d 981</u> (9th Cir. 2008) .....	13
11	<i>Loper Bright Enters. v. Raimondo</i> ,	
12	<u>603 U.S. 369</u> (2024) .....	13
13	<i>Lopez v. Barr</i> ,	
14	<u>2021 WL 195523</u> (D. Minn. Jan. 20, 2021) .....	6
15	<i>Marquez-Reyes v. Garland</i> ,	
16	<u>36 F.4th 1195</u> (9th Cir. 2022) .....	11
17	<i>McDonnell v. United States</i> ,	
18	<u>579 U.S. 550</u> (2016) .....	11
19	<i>Miranda v. Garland</i> ,	
20	<u>34 F.4th 338</u> (4th Cir. 2022) .....	13
21	<i>Nasrallah v. Barr</i> ,	
22	<u>590 U.S. 573</u> (2020) .....	6
23	<i>Ortega-Cervantes v. Gonzales</i> ,	
24	<u>501 F.3d 1111</u> (9th Cir. 2007).....	4
25	<i>Reno v. American-Arab Anti-Discrimination Comm.</i> ,	
26	<u>525 U.S. 471</u> (1999) .....	6
27	<i>Rosario v. Holder</i> ,	
28	<u>627 F.3d 58</u> (2d Cir. 2010) .....	7-8
	<i>Ruiz v. Mukasey</i> ,	
	<u>552 F.3d 269</u> (2d Cir. 2009) .....	7
	<i>Saadulloev v. Garland</i> ,	
	<u>2024 WL 1076106</u> (W.D. Pa. Mar. 12, 2024) .....	8

1	<i>Sissoko v. Rocha</i> ,	
2	<u>509 F.3d 947</u> (9th Cir. 2007) .....	6
3	<i>Skidmore v. Swift &amp; Co.</i> ,	
4	<u>323 U.S. 134</u> (1944) .....	13
5	<i>Suzlon Energy Ltd. v. Microsoft Corp.</i> ,	
6	<u>671 F.3d 726</u> .....	12
7	<i>Tazu v. Att’y Gen. U.S.</i> ,	
8	<u>975 F.3d 292–99</u> (3d Cir. 2020) .....	6
9	<i>Torres v. Barr</i> ,	
10	<u>976 F.3d 918</u> (9th Cir. 2020) (en banc) .....	12
11	<i>Ubiquity Press Inc. v. Baran</i> ,	
12	<u>2020 WL 8172983</u> (C.D. Cal. Dec. 20, 2020) .....	13
13	<i>United States v. Arango</i> ,	
14	<u>2015 WL 11120855</u> (D. Ariz. Jan. 7, 2015) .....	13
15	<i>United States v. Gambino-Ruiz</i> ,	
16	<u>91 F.4th 981</u> (9th Cir. 2024) .....	12
17	<i>United States v. Woods</i> ,	
18	<u>571 U.S. 31</u> (2013) .....	11
19	<i>USA Farm Labor, Inc. v. Su</i> ,	
20	<u>694 F. Supp. 3d 693</u> (W.D.N.C. 2023) .....	14
21	<i>Valencia-Mejia v. United States</i> ,	
22	<u>(2008 WL 4286979)</u> (C.D. Cal. Sept. 15, 2008) .....	6
23	<i>Velasco Lopez v. Decker</i> ,	
24	<u>978 F.3d 842</u> (2d Cir. 2020) .....	8
25	<i>Wang v. United States</i> ,	
26	<u>2010 WL 11463156</u> (C.D. Cal. Aug. 18, 2010) .....	6
27	<i>Washington v. Chimei Innolux Corp.</i> ,	
28	<u>659 F.3d 842</u> (9th Cir. 2011) .....	12
	<i>Xiao Ji Chen v. U.S. Dep’t of Justice</i> ,	
	<u>434 F.3d 144</u> (2d Cir. 2006) .....	7

1 **Federal Statutes**

2 8 U.S.C. § 1225(a)(3) ..... 11

3 8 U.S.C. § 1225(b)(1)(A)(i), (iii) ..... 3

4 8 U.S.C. § 1225(b)(1)(A)(ii) ..... 3

5 8 U.S.C. § 1225(b)(1)(B)(ii) ..... 3

6 8 U.S.C. § 1225(b)(2) ..... 10

7 8 U.S.C. § 1225(b)(2)(A) (2018) ..... 1, 3, 10

8 8 U.S.C. § 1226(a) ..... 3, 4, 9, 10

9 8 U.S.C. § 1226(e) ..... 8

10 8 U.S.C. § 1231(g)(1) ..... 14, 15

11 8 U.S.C. § 1252(a)(2)(B)(ii) ..... 14

12 8 U.S.C. § 1252(a)(2)(D) ..... 7

13 8 U.S.C. § 1252(a)(5) ..... 7

14 8 U.S.C. § 1252(b)(9) ..... 6, 8, 9

15 8 U.S.C. §§ 1225(b)(1)(A)(i) ..... 3

16 8 U.S.C. §§ 1252(g) and (b) (9) ..... 5, 10

17

18

19

20

21

22

23

24

25

26

27

28

1 **RESPONDENTS’ OPPOSITION TO PETITIONERS’**

2 **REQUEST FOR § 1226(a) BOND HEARINGS**

3 **I. INTRODUCTION**

4 Respondents hereby oppose Petitioners’ Writs of Habeas Corpus for Declaratory  
5 and Injunctive Relief [Dkt. 1] and *ex parte* applications for Temporary Restraining Order  
6 (“TRO”) [Dkt. 5]. Petitioners seek federal habeas relief compelling the Executive Office  
7 for Immigration Review (“EOIR”) to conduct bond hearings under 8 U.S.C. § 1226(a) or  
8 for the United States (“U.S.”) Department of Homeland Security (“DHS”) to release  
9 them. However, the government reiterates here the legal position it has taken in the  
10 *Bautista* case presided over by the Hon. Sunshine S. Sykes, Case no. 5:25-cv-01873-  
11 SSS-BFM. The *Bautista* Court granted the *ex parte* TRO application before it via order  
12 issued on July 28, 2025, requiring a Section 1226(a) bond hearing to be provided to the  
13 petitioners within seven days [Dkt. 14]. More recently in *Bautista*, the Court granted  
14 summary judgment on November 20, 2025 [Dkt. 81], and subsequently granted class  
15 certification on November 25, 2025 [Dkt. 82].

16 In their TRO Application, the instant Petitioners argue that the summary judgment  
17 order in *Bautista* applied to the certified class. While the issue is not yet resolved, it  
18 appears that (a) other habeas actions should now be stayed or dismissed pending  
19 resolution of *Bautista*; since the certification of a Rule 23(b)(2) class precludes  
20 individual suits (like this) for the same injunctive or declaratory relief; and (b) the class  
21 certification order is not a “declaratory judgment” because a court cannot grant  
22 declaratory relief prior to the entry of a final judgment, *i.e.*, a declaratory judgment. *See*  
23 *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)(“prior to final judgment there is no  
24 established declaratory remedy comparable to a preliminary injunction”).

25 In any event, the same legal issue at issue in *Bautista* has subsequently been raised  
26 and resolved in this District in a series of other cases including: *Jose Ramon Zaragoza v.*  
27 *Kristi Noem, et al.*, 5:25-cv-02925-HDV-PVC, Dkt. no. 8 (November 11, 2025 order  
28 granting TRO for bond hearings); *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*,

1 5:25-cv-02054-ODW-ADS, *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-  
2 RGK-AS, and *Miguel Portillo, et al. v. Kristi Noem, et al.*, 5:25-cv-02892-JFW-PVC  
3 (October 31, 2025 order granting temporary restraining order) [Dkt. no. 7]. Judge Wilson  
4 issued an order finding that such detentions are governed by § 1225(b)(2). *See*  
5 *Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-SVW-AJR (C.D. Cal. Nov. 12, 2025)  
6 (denying application for bond hearing by TRO) [Dkt. no. 8]. Likewise, in an even more  
7 recent decision, Judge Blumenfeld, Jr., denied a TRO finding detentions are governed by  
8 § 1225(b)(2), and not § 1226(a). *See Hernandez Cruz v. Noem et al.*, 2:25-cv- 8:25-cv-  
9 02566-SB-MAA (C.D. Cal. Dec. 2, 2025) (denying application for bond hearing by  
10 TRO) [Dkt. no. 11].

11 The Board of Immigration Appeals (BIA) has ruled on this issue by order dated  
12 September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After  
13 detailed analysis, the BIA determined that based on the plain language of section  
14 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),  
15 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who  
16 are present in the United States without admission. Like the *Altamiranos Ramos* and  
17 *Hernandez Cruz* decisions, other District Courts have followed the BIA's approach. *See*  
18 *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31,  
19 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct.  
20 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept.  
21 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24,  
22 2025).

23 In sum, to the extent Petitioners would be entitled to any remedy via their TRO  
24 Application, at most it would be ordering a bond hearing before an Immigration Judge  
25 under Section 1226(a), and not immediate release free of any restrictions. Respondents  
26 will reiterate their arguments on the legal claims below, having noted the various prior  
27 rulings on these legal issues set forth above.

1 **II. STATUTORY BACKGROUND**

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

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

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

18 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
19 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
20 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
21 for a removal proceeding “if the examining immigration officer determines that [the]  
22 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8  
23 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for  
24 aliens arriving in and seeking admission into the United States who are placed directly in  
25 full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),  
26 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583  
27 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole  
28 discretionary authority to temporarily release on parole “any alien applying for

1 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons  
2 or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806  
3 (2022).

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

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

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

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

21 The BIA is an appellate body within the Executive Office for Immigration Review  
22 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority  
23 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the  
24 review of those administrative adjudications under the [INA] that the Attorney General  
25

---

26 <sup>1</sup> Being “conditionally paroled under the authority of § 1226(a)” is distinct from  
27 being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-*  
28 *Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because  
release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible  
for adjustment of status under § 1255(a)).

1 may by regulation assign to it,” including IJ custody determinations. 8 C.F.R.  
2 §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it,  
3 but also “through precedent decisions, [it] shall provide clear and uniform guidance to  
4 DHS, the immigration judges, and the general public on the proper interpretation and  
5 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The  
6 decision of the [BIA] shall be final except in those cases reviewed by the Attorney  
7 General.” 8 C.F.R. § 1003.1(d)(7).

### 8 **III. ARGUMENT**

#### 9 **A. The Court Lacks Jurisdiction to Entertain Petitioners’ Actions under 8** 10 **U.S.C. § 1252.**

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

14 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including  
15 habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien  
16 arising from the decision or action by the Attorney General to [1] *commence*  
17 *proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under  
18 this chapter.”<sup>2</sup> 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates  
19 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision  
20 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,  
21 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”<sup>3</sup> Except  
22 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive  
23 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

24 \_\_\_\_\_  
25 <sup>2</sup> Much of the Attorney General’s authority has been transferred to the Secretary of  
26 Homeland Security and many references to the Attorney General are understood to refer  
27 to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

28 <sup>3</sup> 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  
4 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning  
5 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision  
6 to take [plaintiff] into custody and to detain him during removal proceedings”).

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

15 As other courts have held, “[f]or the purposes of § 1252, the Attorney General  
16 commences proceedings against an alien when the alien is issued a Notice to Appear  
17 before an immigration court.” *Herrera-Correra v. United States*, 2008 WL 11336833, at  
18 \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom  
19 proceedings are commenced and detain that individual until the conclusion of those  
20 proceedings.” *Id.* at \*3. “Thus, an alien’s detention throughout this process arises from  
21 the Attorney General’s decision to commence proceedings” and review of claims arising  
22 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d  
23 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at \*6; 8 U.S.C. § 1252(g). As  
24 such, judicial review of the Application and Petition is barred by § 1252(g). The Court  
25 should dismiss for lack of jurisdiction.

26 *Second*, under § 1252(b)(9), “judicial review of all questions of law . . . including  
27 interpretation and application of statutory provisions . . . arising from any action  
28 taken . . . to remove an alien from the United States” is only proper before the

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

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

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

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

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

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

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

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

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

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

17 Petitioners are all “applicants for admission,” subject to mandatory detention  
18 under the plain text of § 1225. *See* 8 U.S.C. § 1225(a)–(b). “Section 1225 governs the  
19 inspection, detention, and removal of aliens seeking admission into the United States.”  
20 *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at \*3 (W.D. La. Oct. 31,  
21 2025). The statute defines “an applicant for admission” broadly:

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

25 *See* 8 U.S.C. § 1225(a)(1). Section 1225 requires mandatory detention of an applicant for  
26 admission if “the examining immigration officer determines that an alien seeking  
27 admission is not clearly and beyond a doubt entitled to be admitted.” *Id.* §  
28 1225(b)(2)(A).

1 Section 1225’s definition of “an applicant for admission” is controlling. *See*  
2 *Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) (“When a statute includes an explicit  
3 definition, we must follow that definition, even if it varies from that term’s ordinary  
4 meaning.”). As relevant here, an alien is “deemed” to be “an applicant for admission” if  
5 he is present in the United States without having been admitted. This unambiguously  
6 broad statute does not distinguish among unadmitted individuals who are present in the  
7 U.S. for one hour, one day, one year, or one decade. *See* 8 U.S.C. § 1225(a)(1). Nor does  
8 it distinguish between those who arrive in the U.S. for inspection and those who cross  
9 the border without inspection. In this case, Petitioners do not dispute the fact that they  
10 entered the U.S. unlawfully and are present without having been admitted. *See* Dkt. No.  
11 1 at 3 (stating Petitioners are inadmissible under 8 U.S.C. § 1182(a)). Consequently, they  
12 are “applicants for admission” under § 1225(a), subject to mandatory detention under §  
13 1225(b). *See* *Sandoval*, 2025 WL 3048926, at \*3 (inadmissible aliens under §  
14 1182(a)(6)(A)(i) are “applicants for admission”).

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

25 Section 1226(a) applies more generally than § 1225 because it consists of those  
26 “who enter lawfully but later become inadmissible.” *Sandoval*, 2025 WL 3048926, at \*4.  
27 Section 1225(a) differs because it applies specifically to individuals like Petitioners who  
28 are deemed applicants for admission. In these situations, the specific provision controls

1 over the more general one. *See id.*; *see also Altamirano Ramos*, 2025 WL 3199872, at \*6  
2 (applying this canon of statutory interpretation to §§ 1225 and 1226); *Hernandez Cruz v.*  
3 *Noem et al.*, 2:25-cv- 8:25-cv-02566-SB-MAA (C.D. Cal. Dec. 2, 2025) (denying  
4 application for bond hearing by TRO) [Dkt. no. 11]; *United States v. Brumbaugh*, 139  
5 F.4th 1077, 1085 (9th Cir. 2025) (noting that the “well established canon of statutory  
6 interpretation . . . that the specific governs the general . . . applies especially where, as  
7 here, Congress has enacted a comprehensive scheme and has deliberately targeted  
8 specific problems with specific solutions”) (cleaned up).

9 Section 1225(b)(2)(A) clearly applies to Petitioners because the definition of an  
10 “applicant for admission,” expressly includes those present in the U.S. without  
11 inspection. *See* 8 U.S.C. § 1225(a)(1); *see Jennings*, 583 U.S. at 287 (2018) (noting that  
12 § 1225(b)(2) is “a catchall provision that applies to all applicants for admission not  
13 covered by § 1225(b)(1) [i.e., those who arrive for inspection]”); *see also Torres*, 976  
14 F.3d at 928 (noting that Congress eliminated the distinction between those entering the  
15 United States with or without inspection).

16 The BIA recently analyzed and decided this legal issue in its order issued on  
17 September 5, 2025, in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216  
18 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language  
19 of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. §  
20 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to  
21 grant bond to aliens who are present in the United States without admission. Other  
22 District Courts have followed the BIA’s approach. *See Altamirano Ramos v. Lyons et al.*,  
23 2:25-cv-09785-SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond  
24 hearing by TRO) [Dkt. no. 8]; *See Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025  
25 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl,  
26 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----,  
27 2025 WL 2780351 (D. Neb. Sept. 30, 3025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025  
28 WL 2730228 (S.D. Cal. Sept. 24, 2025).

1 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*  
2 *Nielsen*, 2019 WL 5802013, at \*2 (W.D. Wash. Nov. 7, 2019). The BIA is well-  
3 positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225  
4 and 1226. See *Delgado v. Sessions*, 2017 WL 4776340, at \*2 (W.D. Wash. Sept. 15,  
5 2017) (noting a denial of bond to an immigration detainee was “a question well suited  
6 for agency expertise”); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing  
7 interplay of §§ 1225(b)(1) and 1226).

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

23 The BIA has long recognized that “many people who are not *actually* requesting  
24 permission to enter the United States in the ordinary sense are nevertheless deemed to be  
25 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N.  
26 Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.”  
27 *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v.*  
28 *United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in

1 § 1225(b)(2)(A) must be read in the context of the definition of “applicant for  
2 admission” in § 1225(a)(1). Applicants for admission are both those individuals present  
3 without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1).  
4 Both are understood to be “seeking admission” under §1225(a)(1). *See Lemus-Losa, 25 I.*  
5 *& N. Dec. at 743*. Congress made that clear in § 1225(a)(3), which requires all aliens  
6 “who are applicants for admission or otherwise seeking admission” to be inspected by  
7 immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an  
8 appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or  
9 Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods, 571 U.S. 31, 45*  
10 (2013).

11 The court’s decision in *Florida v. United States* is instructive here. The district  
12 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission  
13 throughout removal proceedings, rejecting the assertion that DHS has discretion to  
14 choose to detain an applicant for admission under either section 1225(b) or 1226(a).  
15 *Florida v. United States, 660 F. Supp. 3d 1239, 1275* (N.D. Fla. 2023), *appeal dismissed,*  
16 2023 WL 5212561 (11th Cir. July 11, 2023). Such discretion “would render mandatory  
17 detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to  
18 include illegal border crossers would make little sense if DHS retained discretion to  
19 apply § 1226(a) and release illegal border crossers whenever the agency saw fit.” *Id.* The  
20 court pointed to *Demore v. Kim, 538 U.S. 510, 518* (2003), in which the Supreme Court  
21 explained that “wholesale failure” by the federal government motivated the 1996  
22 amendments to the INA. *Florida, 660 F. Supp. 3d at 1275*. The court also relied on,  
23 *Matter of M-S-, 27 I&N Dec. 509, 516* (A.G. 2019), in which the Attorney General  
24 explained “section [1225] (under which detention is mandatory) and section [1226(a)]  
25 (under which detention is permissive) can be reconciled only if they apply to different  
26 classes of aliens.” *Florida, 660 F. Supp. 3d at 1275*.

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

4             When the plain text of a statute is clear, “that meaning is controlling” and courts  
5     “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
6     842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
7     “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
8     726, 730 (9th Cir. 2011). Section 1225 was added by Congress under the IIRIRA to  
9     correct “an anomaly whereby immigrants who were attempting to lawfully enter the  
10    United States were in a worse position than persons who had crossed the border  
11    unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to*  
12    *extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to  
13    replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens  
14    who have entered the United States without inspection gain equities and privileges in  
15    immigration proceedings that are not available to aliens who present themselves for  
16    inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court  
17    should reject Petitioners’ interpretation because it would put aliens who “crossed the  
18    border unlawfully” in a better position than those “who present themselves for inspection  
19    at a port of entry.” *Id.* Aliens who presented at port of entry would be subject to  
20    mandatory detention under § 1225, but those who crossed illegally would be eligible for  
21    a bond under § 1226(a).

22             Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in  
23    statutory drafting are “common . . . sometimes in a congressional effort to be doubly  
24    sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible  
25    alien “was paroled into this country through a shocking abuse of that power.” 171 Cong.  
26    Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it  
27    out of concern that the executive branch “ignore[d] its fundamental duty under the  
28    Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). One member

1 even expressed frustration that “every illegal alien is currently required to be detained by  
2 current law throughout the pendency of their asylum claims.” *Id.* at H278 (statement of  
3 Rep. McClintock). The LRA reflects a “congressional effort to be doubly sure” that such  
4 unlawful aliens are detained. *Barton*, 590 U.S. at 239.

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

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

20 2. The Balance of Hardships Favors Respondents

21 Where the moving party only raises “serious questions going to the merits,” the  
22 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632  
23 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d  
24 981, 987 (9th Cir. 2008)). Petitioner fails to do so here. See *id.*

25 Here, the government has a compelling interest in the steady enforcement of its  
26 immigration laws. See *Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022)  
27 (vacating an injunction that required a “broad change” in immigration bond procedure);  
28 *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at \*4

1 (C.D. Cal. Dec. 20, 2020) (“the public interest in the United States’ enforcement of its  
2 immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL  
3 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s interest in enforcing  
4 immigration laws is enormous.”). Accordingly, Petitioners’ requests for broad injunctive  
5 relief that essentially immunizes them broadly from immigration laws is inappropriate,  
6 and it certainly is not narrowly tailored to the harm asserted: That they are being held in  
7 immigration detention despite allegedly not posing a criminal danger or flight risk. As  
8 noted above, at most it would support a request for a prompt bond hearing before an  
9 Immigration Judge.

10 **IV. CONCLUSION**

11 Petitioners’ request for relief by the TRO Application should be denied. Should  
12 the Court nonetheless grant the Application, however, the relief should be limited to  
13 what other Judges in this District have generally issued in similar cases: Requiring  
14 release unless a Section 1226(a) bond hearing is provided within seven (7) days.

15 Respectfully submitted,

16 Dated: December 7, 2025

TODD BLANCHE  
Deputy Attorney General  
BILAL A. ESSAYLI  
First Assistant United States Attorney  
DAVID M. HARRIS  
Assistant United States Attorney  
Chief, Civil Division  
DANIEL A. BECK  
Assistant United States Attorney  
Chief, Complex and Defensive Litigation Section

21 /s/ Daniel A. Beck\*

22 DANIEL A. BECK  
23 Assistant United States Attorney

24 Attorneys for Federal Respondents

25 \* The undersigned, counsel of record for the Federal Respondents certifies that this brief  
26 contains 4,978 words, which complies with the word limit of L.R. 11-6.1.