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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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14

15 OSCAR EDUARDO OSORIO
VALDEZ,

16 Petitioner,

17 v.
18

19 WARDEN ADELANTO DETENTION
FACILITY, *et al.*,

20 Respondents.
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No. 5:25-cv-03204-RGK-DTB

**RESPONDENTS' ANSWER TO
PETITION FOR WRIT OF
HABEAS CORPUS**

Honorable David T. Bristow
United States Magistrate Judge

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RESPONDENTS' ANSWER TO PETITION

I. INTRODUCTION

Respondents hereby oppose Petitioner's Writ of Habeas Corpus [Dkt. 1]. Petitioner seeks federal habeas relief compelling the Executive Office for Immigration Review ("EOIR") to conduct a bond hearing under 8 U.S.C. § 1226(a) or for the United States Department of Homeland Security ("DHS") to release him. However, Respondents reiterate here the legal position they have taken in the *Bautista* case presided over by the Honorable Judge Sykes, Case no. 5:25-cv-01873-SSS-BFM.¹ Judge Sykes granted the *ex parte* TRO application in *Bautista* via order issued on July 28, 2025, requiring a Section 1226(a) bond hearing to be provided to the petitioners within seven days [Dkt. 14]. More recently in *Bautista*, Judge Sykes granted summary judgment on November 20, 2025 [Dkt. 81], and subsequently granted class certification on November 25, 2025 [Dkt. 82], *appeal docketed sub nom. Bautista v. Dep't of Homeland Sec.*, No. 25-7958 (9th Cir. Dec. 19, 2025).

In his Petition, the instant Petitioner argues that the class certification order in *Bautista* compels a custody redetermination (bond) hearing in his case. While the issue is not yet resolved and is on appeal, it appears that (a) other habeas actions should now be stayed or dismissed pending resolution of *Bautista*; since the certification of a Rule 23(b)(2) class precludes individual suits (like this) for the same injunctive or declaratory relief; and (b) the class certification order is not a "declaratory judgment" because a court cannot grant declaratory relief prior to the entry of a final judgment, *i.e.*, a declaratory judgment. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) ("prior to final judgment there is no established declaratory remedy comparable to a preliminary injunction").

In any event, the same legal issue at issue in *Bautista* has subsequently been raised and resolved in this District in a series of other cases including: *Jose Ramon Zaragoza v.*

1 *Kristi Noem, et al.*, 5:25-cv-02925-HDV-PVC, Dkt. no. 8 (November 11, 2025 order
2 granting TRO for bond hearings); *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*,
3 5:25-cv-02054-ODW-ADS, *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-
4 RGK-AS, 2025 U.S. Dist. LEXIS 171945 (Aug. 26, 2025 order); and *Miguel Portillo, et*
5 *al. v. Kristi Noem, et al.*, 5:25-cv-02892-JFW-PVC (October 31, 2025 order granting
6 temporary restraining order) [Dkt. no. 7]. Judge Wilson issued an order finding that such
7 detentions are governed by § 1225(b)(2). *See Altamirano Ramos v. Lyons et al.*, 2:25-cv-
8 09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (denying application
9 for bond hearing by TRO) [Dkt. no. 8]. Likewise, Judge Blumenfeld, Jr., denied a TRO
10 finding detentions are governed by § 1225(b)(2), and not § 1226(a). *See Hernandez Cruz*
11 *v. Noem et al.*, 2:25-cv- 8:25-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2,
12 2025) (denying application for bond hearing by TRO) [Dkt. no. 11].

13 The Board of Immigration Appeals (BIA) has ruled on this issue by order dated
14 September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). After
15 detailed analysis, the BIA determined that based on the plain language of section
16 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),
17 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who
18 are present in the United States without admission. Like the *Altamiranos Ramos* and
19 *Hernandez Cruz* decisions, other District Courts have followed the BIA's approach. *See*
20 *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31,
21 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct.
22 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025 WL 2780351 (D. Neb. Sept.
23 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24,
24 2025).

25 In sum, to the extent Petitioner would be entitled to any remedy via the TRO
26 Application, at most it would be ordering a bond hearing before an Immigration Judge
27 under Section 1226(a), consistent with what Judge Sykes ordered in the *Bautista* case,
28 5:25-cv-01873-SSS-BFM, and not immediate release free of any restrictions.

1 Respondents will reiterate their arguments on the legal claims below, having noted the
2 various prior rulings on these legal issues set forth above.

3 **II. STATUTORY BACKGROUND**

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

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

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

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

1 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on
2 parole “any alien applying for admission to the United States” on a “case-by-case basis
3 for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see*
4 *Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

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

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

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

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

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

9 **III. ARGUMENT**

10 **A. The Court Lacks Jurisdiction to Entertain Petitioner’s Actions under 8** 11 **U.S.C. § 1252.**

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

15 *First*, Section 1252(g) specifically deprives courts of jurisdiction, including
16 habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien
17 arising from the decision or action by the Attorney General to [1] *commence*
18 *proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under
19 this chapter.”³ 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates
20 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision
21 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,
22 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”⁴ Except
23 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive
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25 ³ 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 ⁴ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.
3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),
including section 2241 of title 28, United States Code, or any other habeas corpus
provision, and sections 1361 and 1651 of such title” after “notwithstanding any other
provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

2 Section 1252(g) also bars district courts from hearing challenges to the *method* by
3 which the Secretary of Homeland Security chooses to commence removal proceedings,
4 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d
5 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning
6 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision
7 to take [plaintiff] into custody and to detain him during removal proceedings”).

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

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

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

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

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

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

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

27 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring
28 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)

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

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

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

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

16 a. *Under the Plain Text of § 1225, Petitioner Must Be Detained*
17 *Pending the Outcome of His Removal Proceedings.*

18 Petitioner is an “applicant for admission,” subject to mandatory detention under
19 the plain text of § 1225. *See* 8 U.S.C. § 1225(a)–(b). “Section 1225 governs the
20 inspection, detention, and removal of aliens seeking admission into the United States.”
21 *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *3 (W.D. La. Oct. 31,
22 2025). The statute defines “an applicant for admission” broadly: “An alien present in the
23 United States who has not been admitted or who arrives in the United States (whether or
24 not at a designated port of arrival . . .) shall be deemed for purposes of this chapter an
25 applicant for admission.” *See* 8 U.S.C. § 1225(a)(1). Section 1225 requires mandatory
26 detention of an applicant for admission if “the examining immigration officer determines
27 that an alien seeking admission is not clearly and beyond a doubt entitled to be
28 admitted.” *Id.* § 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, Petitioner does not dispute the fact that he
10 entered the U.S. unlawfully and is present without having been admitted. Consequently,
11 he is an "applicant[] for admission" under § 1225(a), subject to mandatory detention
12 under § 1225(b). *See Sandoval*, 2025 WL 3048926, at *3 (inadmissible aliens under §
13 1182(a)(6)(A)(i) are "applicants for admission").

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

24 Section 1226(a) applies more generally than § 1225 because it consists of those
25 "who enter lawfully but later become inadmissible." *Sandoval*, 2025 WL 3048926, at *4.
26 Section 1225(a) differs because it applies specifically to individuals like Petitioner who
27 is deemed an applicant for admission. In these situations, the specific provision controls
28 over the more general one. *See id.*; *see also Altamirano Ramos*, 2025 WL 3199872, at *6

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

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

15 The BIA analyzed and decided this legal issue in its order issued on September 5,
16 2025, in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After
17 detailed analysis, the BIA determined that based on the plain language of section
18 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018),
19 Immigration Judges lack authority to hear bond requests or to grant bond to aliens who
20 are present in the United States without admission. Other District Courts have followed
21 the BIA’s approach. *See Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-SVW-AJR,
22 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by
23 TRO) [Dkt. no. 8]; *See Barrios Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL
24 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025
25 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ----, 2025
26 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL
27 2730228 (S.D. Cal. Sept. 24, 2025).

28 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*

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

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

22 The BIA has long recognized that “many people who are not *actually* requesting
23 permission to enter the United States in the ordinary sense are nevertheless deemed to be
24 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N.
25 Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.”
26 *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v.*
27 *United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in
28 § 1225(b)(2)(A) must be read in the context of the definition of “applicant for

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

10 The court’s decision in *Florida v. United States* is instructive here. The district
11 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission
12 throughout removal proceedings, rejecting the assertion that DHS has discretion to
13 choose to detain an applicant for admission under either section 1225(b) or 1226(a).
14 *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*,
15 2023 WL 5212561 (11th Cir. July 11, 2023). Such discretion “would render mandatory
16 detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to
17 include illegal border crossers would make little sense if DHS retained discretion to
18 apply § 1226(a) and release illegal border crossers whenever the agency saw fit.” *Id.* The
19 court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court
20 explained that “wholesale failure” by the federal government motivated the 1996
21 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on,
22 *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General
23 explained “section [1225] (under which detention is mandatory) and section [1226(a)]
24 (under which detention is permissive) can be reconciled only if they apply to different
25 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 Petitioner’s 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, Respondents have a compelling interest in the steady enforcement of
26 immigration law. *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, Petitioner’s 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 he is 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 Petitioner’s request for relief by the Petition should be denied. Should the Court
12 nonetheless grant the Petition, however, at most it should be limited to requiring a
13 § 1226(a) bond hearing to be provided within 10 days.⁵ Respondents do not believe that
14 an evidentiary hearing is required.

15 Respectfully submitted,

16 Dated: January 16, 2026

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⁵ Respondents acknowledge that it is typical to order such bond hearings within a 7-day window, but given the backlog of cases at the EOIR, Respondents respectfully request the Court to provide a few extra days to provide such hearings.

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Respondents, certifies that the memorandum of points and authorities contains 5,183 words, which complies with the word limit of Local Rule 11-6.1.

Dated: January 16, 2026

/s/ Erika S. Rojas
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