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11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 Joaquin BELTRAN ORDUNO; Jose
Luis CASILLAS VAZQUEZ; Julian
14 DE LOS SANTOS SERRANO;
Gustavo MOLINA JACINTO; Adan de
15 los Santos SANDOVAL LEMUS;
Gustavo Alonso SIFUENTES
16 MORALES,

17 Petitioners,

18 v.

19 Kristi NOEM, Secretary, U.S. Dept. of
Homeland Security; Pamela BONDI,
20 U.S. Attorney General; Todd LYONS,
ICE Acting Director; Ernesto
21 SANTACRUZ JR., Acting Director,
Los Angeles Field Office, Immigration
22 and Customs Enforcement,
Enforcement and Removal Operations;
23 Fereti SEMAIA, Warden, Adelanto ICE
Processing Center; EXECUTIVE
24 OFFICE FOR IMMIGRATION
REVIEW; IMMIGRATION AND
25 CUSTOMS ENFORCEMENT; and
DEPARTMENT OF HOMELAND
26 SECURITY,

27 Respondents.
28

No. 5:25-cv-03332-SSS-BFM

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

Honorable Suzanne S. Sykes
United States District Judge

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1 cv-02925-HDV-PVC, ECF 8 (Nov. 11, 2025 order granting TRO for bond hearings);
2 *Ceja Gonzalez v. Noem*, 5:25-cv-02054-ODW-ADS, *Benitez v. Noem*, 5:25-cv-02190-
3 RGK-AS, and *Portillo v. Noem*, 5:25-cv-02892-JFW-PVC, ECF 7 (Oct. 31, 2025 order
4 granting TRO). Judge Wilson issued an order finding that such detentions are governed
5 by § 1225(b)(2). See *Altamirano Ramos v. Lyons*, 2:25-cv-09785-SVW-AJR, ECF 8
6 (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO). Likewise, in
7 an even more recent decision, Judge Blumenfeld, Jr., denied a TRO finding detentions
8 are governed by § 1225(b)(2), and not § 1226(a). See *Hernandez Cruz v. Noem*, 2:25-cv-
9 8:25-cv-02566-SB-MAA, ECF 11 (C.D. Cal. Dec. 2, 2025) (denying application for
10 bond hearing by TRO).

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.
21 Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ----, 2025 WL 2730228 (S.D. Cal. Sept.
22 24, 2025).

23 In sum, to the extent Petitioners would be entitled to any remedy via the TRO
24 Application, at most any such remedy would be ordering a bond hearing before an
25 Immigration Judge under Section 1226(a), consistent with what this Court ordered in the
26 *Bautista* case, 5:25-cv-01873-SSS-BFM, and not immediate release free of any
27 restrictions. Respondents will reiterate their arguments on the legal claims below, having
28 noted the various prior 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.¹ 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 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. *Id.* § 1003.1(a)(1). The BIA is “charged with the review of
24 those administrative adjudications under the [INA] that the Attorney General may by
25

26 ¹ 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 regulation assign to it,” including IJ custody determinations. *Id.* §§ 1003.1(d)(1), 236.1;
2 1236.1. The BIA not only resolves particular disputes before it, but also “through
3 precedent decisions, [it] shall provide clear and uniform guidance to DHS, the
4 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.” *Id.* § 1003.1(d)(7).

8 **III. ARGUMENT**

9 **A. The Court Lacks Jurisdiction to Entertain Petitioners’ Action 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.”² 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.”³ 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 ² 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 ³ 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’ claim stems 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 TRO Application and Petition is barred by § 1252(g). The
25 Court 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 taken . .
28 . to remove an alien from the United States” is only proper before the appropriate federal

1 court of appeals in the form of a petition for review of a final removal order. *See* 8
2 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
3 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels
4 judicial review of all [claims arising from deportation proceedings]” to a court of appeals
5 in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL
6 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80
7 (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), . . . a
11 petition for review filed with an appropriate court of appeals in accordance
12 with this section shall be the sole and exclusive means for judicial review of
13 an order of removal entered or issued under any provision of this chapter,
14 except as provided in subsection (e) [concerning aliens not admitted to the
15 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
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.”

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

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

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

12 1. Petitioners Are Unable to Show a Likelihood of Success on the
13 Merits.

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

16 Each Petitioner is an “applicant for admission,” subject to mandatory detention
17 under the plain text of § 1225. *See* 8 U.S.C. § 1225(a)–(b). “Section 1225 governs the
18 inspection, detention, and removal of aliens seeking admission into the United States.”
19 *Sandoval v. Acuna*, 2025 WL 3048926, at *3. The statute defines “an applicant for
20 admission” broadly:

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

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

28 Section 1225’s definition of “an applicant for admission” is controlling. *See*
Stenberg v. Carhart, 530 U.S. 914, 942 (2000) (“When a statute includes an explicit

1 definition, we must follow that definition, even if it varies from that term’s ordinary
2 meaning.”). As relevant here, an alien is “deemed” to be “an applicant for admission” if
3 he is present in the United States without having been admitted. This unambiguously
4 broad statute does not distinguish among unadmitted individuals who are present in the
5 U.S. for one hour, one day, one year, or one decade. *See* 8 U.S.C. § 1225(a)(1). Nor does
6 it distinguish between those who arrive in the U.S. for inspection and those who cross
7 the border without inspection. In this case, Petitioners do not dispute the fact that they
8 each entered the U.S. unlawfully and is present without having been admitted.
9 Consequently, each Petitioner is an “applicant[] for admission” under § 1225(a), subject
10 to mandatory detention under § 1225(b). *See Sandoval*, 2025 WL 3048926, at *3
11 (inadmissible aliens under § 1182(a)(6)(A)(i) are “applicants for admission”).

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

22 Section 1226(a) applies more generally than § 1225 because it consists of those
23 “who enter lawfully but later become inadmissible.” *Sandoval*, 2025 WL 3048926, at *4.
24 Section 1225(a) differs because it applies specifically to individuals like Petitioners who
25 each is deemed an applicant for admission. In these situations, the specific provision
26 controls over the more general one. *See id.*; *see also Altamirano Ramos*, 2025 WL
27 3199872, at *6 (applying this canon of statutory interpretation to §§ 1225 and 1226);
28 *Hernandez Cruz*, 2:25-cv- 8:25-cv-02566-SB-MAA, ECF 11 (C.D. Cal. Dec. 2, 2025)

1 (denying application for bond hearing by TRO); *United States v. Brumbaugh*, 139 F.4th
2 1077, 1085 (9th Cir. 2025) (noting that the “well established canon of statutory
3 interpretation . . . that the specific governs the general . . . applies especially where, as
4 here, Congress has enacted a comprehensive scheme and has deliberately targeted
5 specific problems with specific solutions”) (cleaned up).

6 Section 1225(b)(2)(A) clearly applies to Petitioners because the definition of an
7 “applicant for admission,” expressly includes those present in the United States without
8 inspection. *See* 8 U.S.C. § 1225(a)(1); *see Jennings*, 583 U.S. at 287 (2018) (noting that
9 § 1225(b)(2) is “a catchall provision that applies to all applicants for admission not
10 covered by § 1225(b)(1) [i.e., those who arrive for inspection]”); *see also Torres v. Barr*,
11 976 F.3d 918, 928 (9th Cir. 2020) (noting that Congress eliminated the distinction
12 between those entering the United States with or without inspection).

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

25 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*
26 *Nielsen*, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-
27 positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225
28 and 1226. *See Delgado v. Sessions*, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15,

1 2017) (noting a denial of bond to an immigration detainee was “a question well suited
2 for agency expertise”); *Matter of M-S-*, 27 I. & N. Dec. 509, 515-18 (BIA 2019)
3 (addressing interplay of §§ 1225(b)(1) and 1226).

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

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

1 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens
2 “who are applicants for admission or otherwise seeking admission” to be inspected by
3 immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an
4 appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or
5 Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45
6 (2013).

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

22 *b. Congress Did Not Intend to Treat Individuals Who Unlawfully*
23 *Enter the Country Better Than Those Who Appear At a Port of*
24 *Entry.*

25 When the plain text of a statute is clear, “that meaning is controlling” and courts
26 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
27 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing
28 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d

1 726, 730 (9th Cir. 2011). Section 1225 was added by Congress under the IIRIRA to
2 correct “an anomaly whereby immigrants who were attempting to lawfully enter the
3 United States were in a worse position than persons who had crossed the border
4 unlawfully.” *Torres*, 976 F.3d at 928 (9th Cir. 2020), *declined to extend by, United*
5 *States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain
6 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have
7 entered the United States without inspection gain equities and privileges in immigration
8 proceedings that are not available to aliens who present themselves for inspection at a
9 port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court should reject
10 Petitioners’ interpretation because it would put aliens who “crossed the border
11 unlawfully” in a better position than those “who present themselves for inspection at a
12 port of entry.” *Id.* Aliens who presented at port of entry would be subject to mandatory
13 detention under § 1225, but those who crossed illegally would be eligible for a bond
14 under § 1226(a).

15 Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in
16 statutory drafting are “common . . . sometimes in a congressional effort to be doubly
17 sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible
18 alien “was paroled into this country through a shocking abuse of that power.” 171 Cong.
19 Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it
20 out of concern that the executive branch “ignore[d] its fundamental duty under the
21 Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). One member
22 even expressed frustration that “every illegal alien is currently required to be detained by
23 current law throughout the pendency of their asylum claims.” *Id.* at H278 (statement of
24 Rep. McClintock). The LRA reflects a “congressional effort to be doubly sure” that such
25 unlawful aliens are detained. *Barton*, 590 U.S. at 239.

26 *c. Prior Agency Practices Are Not Entitled to Deference Under*
27 *Loper Bright.*

28 The asserted longstanding agency practice carries little, if any, weight under *Loper*

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

13 2. The Balance of Hardships Favors Respondents.

14 Where the moving party only raises “serious questions going to the merits,” the
15 balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632
16 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d
17 981, 987 (9th Cir. 2008)). Petitioners fail to do so here. *See id.*

18 Here, the government has a compelling interest in the steady enforcement of its
19 immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022)
20 (vacating an injunction that required a “broad change” in immigration bond procedure);
21 *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4
22 (C.D. Cal. Dec. 20, 2020) (“the public interest in the United States’ enforcement of its
23 immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL
24 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s interest in enforcing
25 immigration laws is enormous.”). Accordingly, Petitioners’ requests for broad injunctive
26 relief that essentially immunizes them broadly from immigration laws is inappropriate,
27 and it certainly is not narrowly tailored to the harm asserted: that they are being held in
28 immigration detention despite allegedly not posing a criminal danger or flight risk. As

1 noted above, at most it would support a request for a prompt bond hearing before an
2 Immigration Judge.

3 **IV. CONCLUSION**

4 Petitioners' request for relief by the TRO Application should be denied. Should
5 the Court nonetheless grant the Application, however, the relief should be limited to
6 what other Judges in this District have generally issued in similar cases, consistent with
7 this Court's ruling in *Bautista*: Requiring release unless a Section 1226(a) bond hearing
8 is provided within seven (7) days.

9
10 Dated: December 11, 2025

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25 **LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE**

26 The undersigned, counsel of record for Federal Respondents certifies that this
27 brief contains 5,119 words, which complies with the word limit of L.R. 11-6.1.

28 Dated: December 11, 2025

/s/ Margaret M. Chen
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