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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Miguel Angel Maldonado Vazquez,

Plaintiff,

v.

Thomas Feeley, acting Field Office Director
of the Salt Lake City Field Office of U.S.
Immigration & Customs Enforcement's
Enforcement and Removal Operations
division; John Mattos, Warden, Nevada
Southern Detention Center; Kristi Noem,
Secretary, United States Department of
Homeland Security; Pamela Bondi, Attorney
General of the United States; Sirce Owen,
Director of Executive Office for Immigration
Review, et al.

Defendants.

Case No. 2:25-cv-01542-RFB-EJY

**Federal Defendants' Response to
Plaintiff's Motion for Preliminary
Injunction (ECF No. 5)**

Federal Defendants hereby file their response to Plaintiff Miguel Angel Maldonado Vazquez's motion for preliminary injunction (ECF No. 5) ("motion"). Plaintiff's motion should be denied because he has failed to demonstrate that he is entitled to a preliminary injunction, and his temporary detention pursuant to 8 U.S.C. § 1225(B)(2) is lawful and does not offend due process. In addition, the Court does not have subject matter jurisdiction over Plaintiff's claims regarding his removal proceedings because Plaintiff has failed to exhaust administrative remedies, which is a requirement under Ninth Circuit case law and his temporary detention alone is insufficient to excuse exhaustion. Finally,

1 Plaintiff's argument that he is a part of a class action falls flat, as this action is not certified
2 as a class action pursuant to Federal Rule of Civil Procedure 23. This response is supported
3 by the following memorandum of points and authorities.

4 Respectfully submitted this 3rd day of September 2025.

5
6 SIGAL CHATTAH
Acting United States Attorney

7 /s/ Virginia T. Tomova
8 VIRGINIA T. TOMOVA
Assistant United States Attorney

9 **I. INTRODUCTION**

10 Currently in separate removal proceedings before the Executive Office of
11 Immigration Review's Immigration Court, Plaintiff Miguel Vazquez, an undocumented
12 alien from Guatemala, challenges his temporary detention while the decision is made
13 regarding his removal. He thereby files the instant motion for preliminary injunction asking
14 to be released from detention, while the appeal on his bond redetermination is pending
15 before the Board of Immigration Appeals (BIA). In doing so, he cites a lawfully enacted
16 regulation 8 C.F.R. § 1003.19(i)(2) for authorizing his detention, challenges the distinction
17 between 8 U.S.C. § 1226(a) and § 1225(b) detention, but more importantly, disputes that
18 automatic stay is authorized by 8 U.S.C. § 1225(b)(2). Therefore, to grant his motion,
19 Plaintiff asks this Court to set aside a lawfully enacted regulation and statute, finding both
20 unconstitutionally applied as alleged violations of the Due Process Clause of the United
21 States Constitution. But as discussed below, the Supreme Court has long recognized
22 Congress's broad power and immunity from judicial control to expel aliens from the
23 country and to detain them while doing so. *See e.g., Shaughnessy v. United States*, 345 U.S.
24 206, 210 (1953); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). The United States' temporary
25 detention of Plaintiff in no way exceeds this broad authority and does not deprive Plaintiff
26 of Due Process. *See Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal
27 proceedings is a constitutionally permissible part of that process."). Because Plaintiff's
28 temporary detention is lawful, his motion for preliminary injunction should be denied, and

1 the United States, including all Federal Defendants in their official capacities, hereby seeks
2 dismissal of the petition. In addition, Plaintiff's motion should be denied because he has
3 failed to exhaust his administrative remedies before the BIA and his temporary detention
4 alone is insufficient to excuse exhaustion. Finally, Plaintiff has failed to meet the class
5 certification requirements under Federal Rule of Civil Procedure 23, and therefore his self-
6 proclaimed class certification fails as a matter of law. For these reasons, Plaintiff's motion
7 for preliminary injunction should be denied as a matter of law.

8 **II. BACKGROUND**

9 Plaintiff Miguel Angel Maldonado Vazquez, an undocumented alien in the United
10 States, is a citizen and a national of Guatemala. At an unknown time and on an unknown
11 date, Plaintiff, an applicant for admission in INA § 240 removal proceedings, entered the
12 United States without being admitted, paroled, or inspected under § 212 (a)(6)(A)(i) and is
13 therefore detained pursuant to INA § 235(b)(2)(A). *See* Notice to Appear, attached as
14 Exhibit A. On July 7, 2025, Plaintiff was taken into custody by the Department of
15 Homeland Security (DHS) under INA § 236, upon reasonable belief of his unlawful
16 presence in the United States. *See* Notice of Custody Determination, attached as Exhibit B.
17 DHS subsequently placed him in removal proceedings pursuant to 8 U.S.C. § 1229(a) by
18 issuing him a Notice to Appear charging him as being inadmissible for being present in the
19 United States without being admitted, under 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien present
20 in the United States without being admitted or paroled, or who arrives in the United States
21 at any time or place other than as designated by the Attorney General, is inadmissible.")

22 During removal proceedings, aliens deemed "applicants for admission" shall be
23 detained during removal proceedings. 8 U.S.C. § 1225(b)(2)(A) provides: "Subject to
24 subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the
25 examining immigration officer determines that an alien seeking admission is not clearly
26 and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding
27 under section 1229a of this title." Congress defined "applicant for admission" as the
28 following: "An alien present in the United States who has not been admitted or who arrives

1 in the United States (whether or not at a designated port of arrival and including an alien
 2 who is brought to the United States after having been interdicted in international or United
 3 States waters) shall be deemed for purposes of this chapter an applicant for admission.” 8
 4 U.S.C. § 1225(a)(1).

5 On July 23, 2025, Plaintiff requested a bond redetermination hearing, which
 6 occurred on July 24, 2025. *See* Motion for Bond Reconsideration, attached as Exhibit C; *see*
 7 *also* Bond Memorandum of the Immigration Judge, attached as Exhibit D. At the hearing,
 8 DHS argued Plaintiff was an applicant for admission under 8 U.S.C. § 1225(a)(1) and was
 9 therefore ineligible for bond. On July 31, 2025, the immigration judge issued his order
 10 disagreeing with DHS and ordered Plaintiff to be released on bond in the amount of
 11 \$1,500.00. *See* Order of the Immigration Judge, attached as Exhibit E. In that order, the IJ
 12 indicated that alternatives to detention were at DHS discretion. *Id.* At the hearing, ICE
 13 reserved its right to appeal the IJ’s order. *Id.* On August 1, 2025, ICE filed a Notice of
 14 Intent to Appeal the custody determination, triggering the automatic stay of Plaintiff’s
 15 release on bond pursuant to 8 C.F.R. § 1003.19(i)(2). (*Id.*). On August 12, 2025, DHS filed
 16 timely its Notice of Appeal with the BIA and perfected its appeal. *See* Notice of Appeal
 17 from a Decision of an Immigration Judge, attached as Exhibit F.

18 The limited issue on appeal regarding Plaintiff’s release on bond is expeditiously
 19 moving through the BIA, and cases such as Plaintiff’s are usually heard within 90 days
 20 from the date of detention. The automatic stay will cease upon a decision of the BIA or 90
 21 days, whichever is shorter. *See* 8 C.F.R. § 1003.6(c)(4). Plaintiff’s removal proceedings are
 22 going forward, and the next hearing date is September 11, 2025. Plaintiff is currently
 23 detained at Nevada Southern Detention Center in Pahrump, Nevada.

24 **III. STATUTORY BACKGROUND**

25 **a. Detention under 8 U.S.C. § 1225**

26 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
 27 present in the United States who [have] not been admitted” or “who arrive[] in the United
 28 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,

1 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583
2 U.S. 281, 287 (2018).

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

13 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
14 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
15 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
16 removal proceeding “if the examining immigration officer determines that [the] alien
17 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
18 1225(b)(2)(A); *see Matter of Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in
19 and seeking admission into the United States who are placed directly in full removal
20 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
21 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).
22 However, DHS has the sole discretionary authority to temporarily release on parole “any
23 alien applying for admission to the United States” on a “case-by-case basis for urgent
24 humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v.*
25 *Texas*, 597 U.S. 785, 806 (2022).

26 **b. Detention Under 8 U.S.C. § 1226(a)**

27 Section 1226 provides for arrest and detention “pending a decision on whether the
28 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the

1 government may detain an alien during his removal proceedings, release him on bond, or
2 release him on conditional parole. By regulation, immigration officers can release aliens
3 upon demonstrating that the alien “would not pose a danger to property or persons” and
4 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
5 request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final
6 order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1),
7 1003.19.

8 At a custody redetermination, the IJ may continue detention or release the alien on
9 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
10 discretion in deciding whether to release an alien on bond. *In Re Guerra*, 24 I. & N. Dec.
11 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors
12 IJs consider, an alien “who presents a danger to persons or property should not be released
13 during the pendency of removal proceedings.” *Id.* at 38.

14 **c. Review Before the Board of Immigration Appeals**

15 The Board of Immigration Appeals (BIA) is an appellate body within the Executive
16 Office for Immigration Review (EOIR) and possesses delegated authority from the
17 Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of
18 those administrative adjudications under the [INA] that the Attorney General may by
19 regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1),
20 236.1, 1236.1. The BIA not only resolves particular disputes before it, but is also directed
21 to, “through precedent decisions, [] provide clear and uniform guidance to DHS, the
22 immigration judges, and the general public on the proper interpretation and administration
23 of the [INA] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1). Decisions
24 rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R.
25 § 1003.1(d)(7).

26 **IV. STANDARD OF REVIEW**

27 Plaintiff challenges his temporary civil immigration detention pending his removal
28 proceeding. Judicial review of immigration matters, including of detention issues, is

1 limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-*
 2 *Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434
 3 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993);
 4 *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a
 5 political character and therefore subject only to narrow judicial review”). The Supreme
 6 Court has thus “underscore[d] the limited scope of inquiry into immigration legislation,”
 7 and “has repeatedly emphasized that over no conceivable subject is the legislative power of
 8 Congress more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792
 9 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*,
 10 347 U.S. 522, 531 (1954).

11 The plenary power of Congress and the Executive Branch over immigration
 12 necessarily encompasses immigration detention, because the authority to detain is
 13 elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy*,
 14 345 U.S. at 210 (“Courts have long recognized the power to expel or exclude aliens as a
 15 fundamental sovereign attribute exercised by the Government's political departments
 16 largely immune from judicial control.”); *Carlson*, 342 U.S. at 538 (“Detention is necessarily
 17 a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)
 18 (“Proceedings to exclude or expel would be vain if those accused could not be held in
 19 custody pending the inquiry into their true character, and while arrangements were being
 20 made for their deportation.”); *Demore*, 538 U.S. at 531 (“Detention during removal
 21 proceedings is a constitutionally permissible part of that process.”)

22 **V. ARGUMENT**

23 **a. Plaintiff Is Temporarily Detained Pursuant To 8 U.S.C. § 1225(B)(2).**

24 The current operative mechanism of Plaintiff's detention is an automatic stay of
 25 release on bond for a maximum of 90 days under 8 C.F.R. § 1003.19(i)(2), but this
 26 confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention
 27 throughout his entire removal proceedings. Pursuant to 8 U.S.C. § 1225(b)(2)(A), “in the
 28 case of an alien who is an applicant for admission, if the examining immigration officer

1 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be
2 admitted, the alien shall be detained for a proceeding under section 1229a.” 8 U.S.C. §
3 1225(b)(2)(A). Plaintiff falls squarely within the ambit of Section 1225(b)(2)(A)’s mandatory
4 detention requirement. Plaintiff is an “applicant for admission” to the United States. As
5 described above, an “applicant for admission” is an alien present in the United States who
6 has not been admitted. 8 U.S.C. § 1225(a)(1). Congress’s broad language here is
7 unequivocally intentional — an undocumented alien is to be “deemed for purposes of this
8 chapter an applicant for admission.” *Id.* Regardless of Plaintiff’s characterization that “an
9 applicant for admission” should only include “recent arrivals” to the country, he is
10 “deemed” an applicant for admission based on his undocumented status, which has not
11 been disputed. ECF No. 5, p. 2:9-15. And because Plaintiff has not demonstrated to an
12 examining immigration officer that he is “clearly and beyond a doubt entitled to be
13 admitted,” his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, the Plaintiff is
14 properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he “shall be”
15 detained.

16 The Supreme Court has confirmed an alien present in the country but never admitted
17 is deemed “an applicant for admission” and that “detention must continue” “until removal
18 proceedings have concluded” based on the “plain meaning” of 8 U.S.C. § 1225. *Jennings v.*
19 *Rodriguez*, 583 U.S. 281, 289 & 299 (2018). At issue in *Jennings* was the statutory
20 interpretation. The Supreme Court reversed the Ninth Circuit Court of Appeal’s imposition
21 of a six-month detention time limit into the statute. *Id.* at 297. The Court clarified there is no
22 such limitation in the statute and reversed on these grounds, remanding the constitutional
23 due process claims for initial consideration before the lower court. *Id.*

24 Applying this reasoning, the United States District Court for the District of
25 Massachusetts recently confirmed in a habeas action that an unlawfully present alien, who
26 had been unlawfully present in the country for approximately 20 years, was nonetheless an
27 “applicant for admission” upon the straightforward application of the statute. *See Pena v.*
28 *Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025). The

1 Court explained this resulted in the “continued detention” of an alien during removal
2 proceedings as commanded by statute. *Id.* Because Plaintiff shall be detained during his
3 removal proceedings and his proceedings are uncontrovertibly ongoing, his temporary
4 detention is lawful. Any argument by Plaintiff that his temporary detention exceeds
5 statutory authority is clearly invalid and should be rejected. *See* ECF No. 5, pp. 2-5, 9-19.

6 **b. Plaintiff’s Temporary Detention Does Not Offend Due Process.**

7 Plaintiff claims that his current temporary detention pending removal is without
8 sufficient purpose and the government’s interest carries little weight, leading to their claims
9 of procedural due process and substantive due process violations. *See* ECF No. 5, pp. 10-18.
10 Congress and the Supreme Court disagree. Plaintiff’s due process regarding his opportunity
11 to challenge the automatic stay is rooted into the appeal process before the BIA, the
12 authority in immigration matters. If Plaintiff is dissatisfied with the BIA decision, then he
13 will have an opportunity to appeal the BIA decision before the Ninth Circuit Court of
14 Appeals, not this Court which has no jurisdiction over Plaintiff’s immigration case.

15 As mentioned above, Congress broadly crafted “applicants for admission” to include
16 undocumented aliens present within the United States, like Plaintiff. *See* 8 U.S.C. §
17 1225(a)(1). And Congress directed aliens like Plaintiff to be detained during their removal
18 proceedings. 8 U.S.C. § 1225(b)(2)(A). In so doing, Congress made a legislative judgment to
19 detain undocumented aliens during removal proceedings, as they — by definition — have
20 crossed borders and traveled in violation of United States law. And as explained above, that
21 is the prerogative of the legislative branch serving the interest of the government and the
22 United States.

23 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
24 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
25 sovereign attribute exercised by the Government’s political departments largely immune
26 from judicial control.”). And with this power to remove aliens, the Supreme Court has
27 recognized the United States’ longtime Constitutional ability to detain those in removal
28 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation

1 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain
2 if those accused could not be held in custody pending the inquiry into their true character,
3 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
4 (“Detention during removal proceedings is a constitutionally permissible part of that
5 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
6 detain some classes of aliens during the course of certain immigration proceedings.
7 Detention during those proceedings gives immigration officials time to determine an alien's
8 status without running the risk of the alien's either absconding or engaging in criminal
9 activity before a final decision can be made.”).

10 In another immigration context (aliens already ordered removed awaiting their
11 removal), the Supreme Court has explained that detaining these aliens less than six months
12 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Following this
13 precedent, the United States District Court for the District of Massachusetts (case
14 mentioned above) dismissed a habeas action, finding that it was not a violation of due
15 process to detain an undocumented alien during his removal proceedings. *See Pena*, 2025
16 WL 2108913, at *1 (highlighting the petitioner had been detained for 17 days leading up to
17 the court's decision, far less than other detention times found constitutional in other cases).

18 Likewise, Plaintiff's temporary detention pending his removal proceedings does not
19 violate Due Process. He has been detained for roughly eight weeks as his *process* unfolds.
20 Specifically, his next removal hearing is coming up before the immigration judge on
21 September 11, 2025, and his expedited narrow appeal on the issue of release on bond is
22 before the BIA with initial briefing to be filed September 18, 2025. Resolution one way or
23 another is undoubtedly forthcoming. Plaintiff's ample available process in his current
24 removal proceedings demonstrate no lack of procedural due process—nor any deprivation
25 of liberty “sufficiently outrageous” required to establish a substantive due process claim. *See*
26 *generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d
27 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress
28

1 simply made the decision to detain her pending removal, which is a “constitutionally
2 permissible part of that process.” *See Demore*, 538 U.S. at 531.

3 **c. Plaintiff has failed to demonstrate that he is entitled to a preliminary**
4 **injunction.**

5 Plaintiff’s motion should be denied because he has not established that he is entitled
6 to a preliminary injunction relief. Plaintiff cannot establish that he is likely to succeed on
7 the underlying merits, there is no showing of irreparable harm, and the equities do not
8 weigh in his favor. In general, the showing required for a temporary restraining order is the
9 same as that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co. v. John D.*
10 *Brush & Co.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a preliminary
11 injunction, a plaintiff must “establish that he is likely to succeed on the merits, that he is
12 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
13 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res.*
14 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009).
15 Plaintiffs must demonstrate a “substantial case for relief on the merits.” *Leiva-Perez v.*
16 *Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When “a plaintiff has failed to show the
17 likelihood of success on the merits, we need not consider the remaining three [*Winter*
18 *factors*].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

19 The final two factors required for preliminary injunctive relief — balancing of the
20 harm to the opposing party and the public interest — merge when the Government is the
21 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
22 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
23 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*
24 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. Of California v. Orrin W.*
25 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211,
26 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant
27 seeking injunctive relief “must show either (1) a probability of success on the merits and the
28 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance

1 of hardships tips sharply in the moving party's favor.") (quoting *Andreiu v. Ashcroft*, 253
 2 F.3d 477, 483 (9th Cir. 2001)).

3 1. *Plaintiff Is Not Likely to Succeed on The Merits.*

4 Likelihood of success on the merits is a threshold issue. See *Garcia*, 786 F.3d at 740.
 5 Petitioners cannot establish that they are likely to succeed on the underlying merits of their
 6 claims for alleged statutory and constitutional violations because they are subject to
 7 mandatory detention under 8 U.S.C. § 1225.

8 The Court should reject Plaintiff's argument that § 1226(a) governs his detention
 9 instead of § 1225. See ECF No. 5, pp. 9-10. When there is "an irreconcilable conflict in two
 10 legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission*
 11 *Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). As Plaintiff points out, § 1226(a) applies
 12 to those "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a); see
 13 ECF No. 5, p. 10:1-3. In contrast, § 1225 is narrower. See 8 U.S.C. § 1225. It applies only to
 14 "applicants for admission"; that is, as relevant here, aliens present in the United States who
 15 have not be admitted. See *id.*; see also *Fla. v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D.
 16 Fla. 2023). Because Plaintiff falls within that category, the specific detention authority
 17 under § 1225 governs over the general authority found at § 1226(a).

18 Under 8 U.S.C. § 1225(a), an "applicant for admission" is defined as an "alien
 19 present in the United States who has not been admitted or who arrives in the United
 20 States." Applicants for admission "fall into one of two categories, those covered by
 21 §1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section
 22 1225(b)(2) — the provision relevant here — is the "broader" of the two. *Id.* It "serves as a
 23 catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)
 24 (with specific exceptions not relevant here)." *Id.* And § 1225(b)(2) mandates detention. *Id.*
 25 at 297; see also *Matter of Li*, 29 I. & N. Dec. at 69 ("[A]n applicant for admission who is
 26 arrested and detained without a warrant while arriving in the United States, whether or not
 27 at a port of entry, and subsequently placed in removal proceedings is detained under
 28 section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release

1 on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section 1225(b) therefore
2 applies because Plaintiff and his proposed class are all present in the United States without
3 being admitted. Plaintiff’s argument that the phrase “alien seeking admission” limits the
4 scope of § 1225(b)(2)(A) is unpersuasive. *See* ECF No. 5, pp. 9-12. The BIA has long
5 recognized that “many people who are not actually requesting permission to enter the
6 United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’
7 under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).
8 Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th
9 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)).
10 The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of the
11 definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are both
12 those individuals present without admission and those who arrive in the United States. *See*
13 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1).
14 *See Matter of Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3),
15 which requires all aliens “who are applicants for admission or otherwise seeking
16 admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or”
17 here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes
18 it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S.
19 31, 45 (2013). Plaintiff’s interpretation also reads “applicant for admission” out of §
20 1225(b)(2)(A). One of the most basic interpretative canons instructs that a “statute should
21 be construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S.
22 303, 314 (2009) (cleaned up). Plaintiff’s interpretation fails that test. It renders the phrase
23 “applicant for admission” in § 1225(b)(2)(A) “inoperative or superfluous, void or
24 insignificant.” *See id.* If Congress did not want § 1225(b)(2)(A) to apply to “applicants for
25 admission,” then it would not have included the phrase “applicants for admission” in the
26 subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

27 The district court’s decision in *Florida v. United States* is instructive here. There, the
28 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission

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

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

1 detention under § 1225, but those who crossed illegally would be eligible for a bond under §
 2 1226(a). Because Plaintiff was properly detained under § 1225, he cannot show entitlement
 3 to relief and likelihood to succeed on the merits.

4 **2. *Plaintiff Has Failed to Show an Irreparable Harm.***

5 To prevail on their request for injunctive relief, Plaintiff must demonstrate
 6 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674
 7 (9th Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d
 8 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is
 9 insufficient. *See Winter*, 555 U.S. at 22. “Issuing a preliminary injunction based only on a
 10 possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization
 11 of injunctive relief as an extraordinary remedy that may only be awarded upon a clear
 12 showing that the plaintiff is entitled to such relief.” *Id.* Here, as explained above, because
 13 Plaintiff’s alleged harm “is essentially inherent in detention, the Court cannot weigh this
 14 strongly in favor of” Plaintiff and his proposed class. *Lopez Reyes v. Bonnar*, No. 18-CV-
 15 07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

16 **3. *Balance of Equities Does Not Tip in Plaintiff’s Favor***

17 It is well settled that the public interest in enforcement of the United States’
 18 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-
 19 58 (1976); *Blackie’s House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has
 20 recognized that the public interest in enforcement of the immigration laws is significant.”)
 21 (citing cases); *see also Nken*, 556 U.S. at 435 (“There is always a public interest in prompt
 22 execution of removal orders: The continued presence of an alien lawfully deemed
 23 removable undermines the streamlined removal proceedings IIRIRA established and
 24 permits and prolongs a continuing violation of United States law.”) (internal quotation
 25 omitted). The BIA also has an “institutional interest” to protect its “administrative agency
 26 authority.” *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992), superseded by statute
 27 as recognized in *Porter v. Nussle*, 534 U.S. 516 (2002). “Exhaustion is generally required as a
 28 matter of preventing premature interference with agency processes, so that the agency may

1 function efficiently and so that it may have an opportunity to correct its own errors, to
 2 afford the parties and the courts the benefit of its experience and expertise, and to compile a
 3 record which is adequate for judicial review.” *Glob. Rescue Jets, LLC v. Kaiser Found. Health*
 4 *Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765
 5 (1975)). Indeed, “agencies, not the courts, ought to have primary responsibility for the
 6 programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145.

7 Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large
 8 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
 9 *Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec.
 10 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above,
 11 Plaintiff cannot succeed on the merits of his claims as his detention is lawful and the
 12 balancing of equities and the public interest weigh heavily against granting Plaintiff
 13 equitable relief.

14 4. *The Government Has a Compelling Interest in Allowing the BIA to Speak on the*
 15 *Issues of Bond Procedure, Automatic Stays and Removal Proceedings*

16 Where, as here, the moving party only raises “serious questions going to the merits,”
 17 the balance of hardships must “tip sharply” in his favor. *All. for the Wild Rockies v. Cottrell*,
 18 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981,
 19 987 (9th Cir. 2008)). Plaintiff fails to do so here. *See id.* The government has a compelling
 20 interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th
 21 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a “broad change” in
 22 immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM,
 23 2020 WL 8172983, at *4 (C.D. Cal. Dec. 10, 2020) (“the public interest in the United States
 24 enforcement of its immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB,
 25 2015 WL 11120855, at 2 (D. Ariz. Jan. 9, 2015) (“the Government’s interest in enforcing
 26 immigration laws is enormous.”). Judicial intervention would only disrupt the status quo.
 27 *See, e.g., Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D.
 28 Wash. Nov. 2, 2017) (“[T]he purpose of a preliminary injunction is to preserve the status

quo pending a determination on the merits.”). The Court should avoid a path that “inject[s] a degree of uncertainty” in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See* 8 C.F.R. § 1003.1(d)(1). By regulation it must “provide clear and uniform guidance” “through precedent decisions” to “DHS [and] immigration judges.” *Id.* Federal Defendants ask that the Court allow the established process to continue without disruption.

The BIA also has an “institutional interest” to protect its “administrative agency authority.” *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). “Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” *Global Rescue Jets, LLC*, 30 F.4th at 913 (quoting *Weinberger*, 422 U.S. at 765). Indeed, “agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145. The Court should allow the BIA the opportunity to weigh in on these issues he raises on appeal — which are the same issues raised in this action. *See id.*

d. The Court should deny the Motion for Preliminary Injunction because Plaintiff has failed to exhaust his administrative remedies before the BIA and Plaintiff’s detention alone is insufficient to excuse exhaustion.

DHS is appealing the IJ’s custody redetermination decision regarding this Plaintiff before the BIA. Plaintiff’s due process regarding the bond which appeal triggered the automatic stay is his response to the appeal, which is due on September 18, 2025. Instead of allowing the administrative process to be completed, Plaintiff complains that the appeal process takes an “average of 204 days” and that he should be released from detention in the meantime. ECF No. 5, p. 17. Bypassing review at the BIA is “improper.” *Id.* The Ninth Circuit identifies three reasons to require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency’s “expertise” makes its “consideration necessary to generate a proper record and reach a proper decision.” *Id.*

(quoting *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages “the deliberate bypass of the administrative scheme.” *Id.* (quoting *Noriega-Lopez*, 335 F.3d at 881). And third, “administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.” *Id.* (quoting *Noriega-Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*, 488 F.3d at 815.

1. *Exhaustion is warranted because agency’s expertise is needed, excusal will only encourage other detainees to bypass administrative remedies, and appellate review at the BIA may preclude the need for judicial intervention.*

Plaintiff relies on an administrative agency’s “record and longstanding practice” to support a claim that detention under § 1226(a) applies. ECF No. 5, pp. 9-12. Yet at the same time, he seeks to bypass administrative review. *See id.* Before addressing how an agency’s “longstanding practice” affects the statutory analysis, the Court would surely benefit from the BIA’s expertise. *See Puga*, 488 F.3d at 815. After all, “the BIA is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-1441-RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was “a question well suited for agency expertise”); *Matter of M-S-*, 27 I. & N. Dec. at 515–18 (addressing interplay of §§ 1225(b)(1) and 1226).

Green-lighting Plaintiff’s skip-the-BIA-and-go-straight-to-federal-court strategy also needlessly increases the burden on district courts. *See Bd. of Trs. of Const. Laborers’ Pension Tr. for S. Calif. v. M.M. Sundt Const. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting “exhaustion promotes efficiency”). This Court should allow the administrative process to correct itself. *See id.*

2. *Plaintiff’s reasons to waive exhaustion would swallow the rule.*

First, detention alone is not an irreparable injury. Discretion to waive exhaustion “is

1 not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Plaintiff bears the
2 burden to show that an exception to the exhaustion requirement applies. *Leonardo v.*
3 *Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011); *Aden*, 2019 WL 5802013, at *3. And
4 detention alone is insufficient to excuse exhaustion. *See, e.g., Delgado*, 2017 WL 4776340, at
5 *2. Adopting such a rationale “would essentially mandate the release of all detainees while
6 their appeals were pending and thereby stand the exhaustion requirement on its head.”
7 *Meneses v. Jennings*, No. 21-CV-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14,
8 2021), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024); *see also*
9 *Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 n. 6 (S.D.N.Y. 2017) (noting that “continued
10 detention . . . is insufficient to qualify as irreparable injury justifying non-exhaustion”)
11 (quotation marks omitted). “[C]ivil detention after the denial of a bond hearing [does not]
12 constitute[] irreparable harm such that prudential exhaustion should be waived.” *Reyes v.*
13 *Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom.*
14 *Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021); *see also*
15 *Aden*, 2019 WL 5802013, at *3 (Plaintiff “cites no authority for the position that detention
16 following a bond hearing constitutes irreparable harm sufficient to waive the exhaustion
17 requirement.”).

18 Further, Plaintiff and his proposed class “ha[ve] not carried [their] burden” in
19 showing “that prudential exhaustion should be waived.” *Aden*, 2019 WL 5802013, at *3.
20 They simply allege that their detention alone constitutes irreparable harm. *See* ECF No. 17,
21 ¶¶ 81-82. But if Plaintiff’s proffered standard for irreparable harm is correct, then every
22 single individual who alleges unlawful detention would similarly meet the irreparable-harm-
23 standard. *See, e.g., Delgado*, 2017 WL 4776340, at *2. The exception would swallow the rule.
24 *See id.* (“[b]ecause all immigration habeas petitions could raise the same argument [that
25 detention is irreparable injury], if it were decisive, the prudential exhaustion requirement
26 would always be waived—but it is not.”).

27 Plaintiff’s argument also “begs the question of whether they have suffered a
28 constitutional deprivation.” *Meneses*, 2021 WL 4804293, at *5. He “simply assumes a

1 deprivation to assert the resulting harm. That will not do.” *Id.* at *5. Federal courts are “not
2 free to address the underlying merits without first determining the exhaustion requirement
3 has been satisfied or properly waived.” *Laing*, 370 F.3d at 998.

4 *Second*, Plaintiff has not established that appellate review at the BIA would be
5 inadequate or futile. Aside from irreparable harm, exhaustion can be excused only on a
6 showing that review at the BIA is “inadequate or not efficacious” or “would be a futile
7 gesture.” *Laing*, 370 F.3d at 1000. Critically, there has not been a delay in Plaintiff’s case at
8 the BIA, because DHS’s appeal was just submitted, and Plaintiff’s response is due on
9 September 18, 2025. Even accepting Plaintiff’s argument that the “BIA’s chronic delays in
10 adjudicating bond appeals warrant excusing any exhaustion requirement” (ECF No. 5, p.
11 16:20-21), in *Reyes*, the court rejected the claim that “the indefinite timeframe of the BIA’s
12 review” constituted irreparable harm. *Reyes*, 2021 WL 662659, at *3. Although the
13 petitioner’s BIA appeal in *Reyes* had been pending for around 45 days, she had been
14 detained for over two years. *Id.* at *1. Similarly, in *Chavez*, the petitioner had been detained
15 for a year when the court dismissed for failing to exhaust his claim. *Chavez v. Immigr. &*
16 *Customs Enft Field Off. Dir.*, 2024 WL 1661159, at *1, *3 (W.D. Wash. Jan. 25, 2024), *report*
17 *and recommendation adopted*, 2024 WL 1658973 (W.D. Wash. Apr. 17, 2024). And in
18 *Delgado*, the petitioner had been detained for around four months and appealed the IJ’s to
19 the BIA. *Delgado*, 2017 WL 4776340, at *1. The court believed the situation called “for
20 agency expertise” and was “not persuaded” by “petitioner’s claim of irreparable injury due
21 to continued detention.” *Id.* at *2. The Court should take a similar approach here.

22 **e. There is No Class Certification.**

23 Plaintiff also seeks to enjoin “Defendants from continuing to apply 8 U.S.C. §
24 1225(b)(2) to him or to similarly situated class members apprehended in the interior” and
25 “prohibit the use of EOIR-43 to prolong detention for months in the absence of a timely
26 BIA decision.” ECF No. 5 at 19. Although Plaintiff has styled this case as a putative class
27 action, “there is no class of plaintiffs before the Court at this time towards whom relief
28 could be directed.” *Russell v. Barry*, Civil Action No. 87-2072, 1987 WL 15697, at *2

1 (D.D.C. Jul. 30, 1987). To the extent Plaintiff seeks relief for others, this Court should not
2 grant relief to parties not before it. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“A
3 federal court may issue an injunction if it has personal jurisdiction over the parties and
4 subject matter jurisdiction over the claim; it may not attempt to determine the rights of
5 persons not before the court.”); *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 205 n.4 (D.D.C.
6 2018) (“[I]t is not clear that the Court can or should issue class-wide injunctive relief
7 without a certified class.”); *Dorfmann v. Boozer*, 414 F.2d 1168, 1171 n.8 (D.C. Cir. 1969)
8 (preliminary injunction “should not have been issued before the action was certified as a
9 class action” where injunction “worked a transfer of money belonging to persons who were
10 not within the jurisdiction of the court”).

11 **V. CONCLUSION**

12 For these reasons, Plaintiff’s Motion for Preliminary Injunction should be denied.

13 Respectfully submitted this 3rd day of September 2025.

14
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16 /s/ Virginia T. Tomova
17 VIRGINIA T. TOMOVA
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