

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-03946 (NEB/DLM)

Jose Andres Encalada Robles,

Petitioner,

v.

Pam Bondi, Kristi Noem, Todd Lyons, Department
of Homeland Security, Immigration and Customs
Enforcement, Samuel Olson, and Ryan Shea,

Respondents.

**COMBINED BRIEF IN
OPPOSITION TO MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
IN RESPONSE TO PETITION
FOR WRIT OF HABEAS
CORPUS**

The Respondents Pamela Bondi, Attorney General, Kristi Noem, Secretary of the U.S. Department of Homeland Security, Todd Lyons, Department of Homeland Security, Immigrations (“ICE”), and Samuel Olson, Director of the St. Paul Field Office of ICE (hereinafter, “Federal Respondents”) hereby submit this Memorandum in Opposition to Petitioner’s Motion for a Temporary Restraining Order (ECF No. 3). Respondents respectfully request that this Court deny Petitioner Jose Andres Encalada Robles’s (“Robles”) motion and dismiss the petition.

First, numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to review the Petitioner’s claims and preclude this Court from granting the relief he seeks. Congress has unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Congress further directed that any challenges arising from any removal-related activity—including detention pending removal proceedings—must be brought

before the appropriate federal court of appeals, not a district court.

Second, Petitioner's motion should be denied because he is not likely to succeed on the merits of his Petition. Robles's detention is lawful under 8 U.S.C. § 1225(b)(2) because he is an applicant for admission who is not "clearly and beyond a doubt entitled to be admitted" to the United States. Petitioner himself does not claim that he has lawful status to remain in the United States. (*See generally* ECF No. 1.) Under these circumstances, Petitioner "shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Additionally, subject to conditions, Respondents have agreed not to move Petitioner outside the District of Minnesota in the short term. Because Petitioner's detention is fully supported by statute, regulation, and the Constitution, the request for a temporary restraining order should be denied and the petition should be dismissed.

BACKGROUND

I. Relevant Facts

Petitioner Robles is a citizen and national of Ecuador. (Declaration of Deportation Officer Angela Minner ("Minner Decl.") ¶ 4, Ex. A.) Robles entered the United States on an unknown date at an unknown place. (*Id.*) Robles claimed to have entered the United States around September 2019, near Eagle Pass, Texas, without inspection. (*Id.*)

On January 16, 2024, Robles filed an I-918 Application for Advance Permission to Enter as a Non-Immigrant, otherwise known as a "U Visa" application, with U.S. Citizenship & Immigration Services (USCIS). (Minner Decl. ¶ 5.) Four months later, on May 15, 2024, USCIS issued a "bona fide" determination notice on Robles' pending I-918 Non-Immigrant Visa application, which means the I-918 application is considered

complete and properly filed, and which allowed him to apply for employment authorization. (*Id.* ¶ 6.) A “bona fide” finding puts the U-visa application on a waiting list and does not mean the U-visa will be eventually approved after final adjudication. (*Id.*) U-visa application adjudication can take six to eight years due to a high volume of applications. (*Id.*) A USCIS deferred action grant does not prohibit ICE from taking enforcement action. (*Id.*) Even if a U-visa petitioner is removed from the United States, they may await the adjudication of their application outside the United States and re-enter if USCIS grants the U visa and any applicable waivers. (*Id.*)

On September 30, 2025, ICE officers conducting field operations encountered Robles in Minneapolis, Minnesota, pursuant to a traffic stop. (Minner Decl. ¶ 7, Ex. B.) ICE officers identified Robles as a citizen of Ecuador without authorization to remain in the United States, arrested Robles and issued him a Notice to Appear (“NTA”) in Removal Proceedings, Form I-862. (*Id.*) On the same date, September 30, 2025, ICE issued a Warrant for Arrest of Alien for Robles, which is referred to as a Form I-200. (Minner Decl. ¶ 8, Ex. C.)

On October 15, 2025, Robles first appeared before an immigration judge at Fort Snelling, Minnesota. (Minner Decl. ¶ 9.) Robles’ next scheduled hearing in immigration court is October 29, 2025. (*Id.*)

ICE has agreed not to move Petitioner out of the District of Minnesota until after November 7, 2025, or the resolution of the pending habeas matter, whichever comes earlier, with one caveat: in the event of unforeseen circumstance or contingency consistent with Petitioner’s original request, ICE reserves the option, with 72 hours’ notice, to apply

to the Court for permission to withdraw from this commitment. (Minner Decl. ¶ 10.)

The Court ordered Respondents to file their response to the TRO motion and petition by October 22, 2025. (ECF No. 11.) As such, the Federal Respondents are combining the two ordered briefs and do not oppose the Court doing likewise and consolidating its analysis of the requested interim relief with the ultimate merits of the petition. *See* Fed. R. Civ. P. 65(a)(2).

II. Legal Background for Individuals Seeking Admission to the United States

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “The rule has been clear for decades: “[d]etention during deportation proceedings [i]s ... constitutionally valid.” *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)); *see Demore*, 538 U.S. at 523 n.7 (“[P]rior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”). Indeed, removal proceedings ““would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.””

Demore, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

a. Detention under 8 U.S.C. § 1225

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

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

Section 1225(b)(2), under which Robles is detained, is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an individual “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration

officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); see *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 224-26 (BIA 2025); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

b. Detention under 8 U.S.C. § 1226(a)

Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Section 1226(a) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The Attorney General and the Department of Homeland Security (“DHS”) have broad discretionary authority to detain a noncitizen during removal proceedings.¹ See 8 U.S.C. § 1226(a)(1)

¹ Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, see 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is “one of the authorities he retains

(DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that “subsection (a) creates authority for *anyone*’s arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”).

When a noncitizen is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen’s ties to the United States and evaluate whether the noncitizen poses a flight

... although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

risk or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);² *see also* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Included within the Attorney General and DHS’s discretionary authority are limitations on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), the immigration judge does not have authority to redetermine the conditions of custody imposed by DHS for any arriving alien.

² The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien’s history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

c. Review of custody determinations at the Board of Immigration Appeals (“BIA”)

The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

ARGUMENT

I. Standard of Review

The purpose of a preliminary injunction or a temporary restraining order ““is merely to preserve the relative positions of the parties”” until the case can be resolved. *Univ. of Tex. v. Komenich*, 451 U.S. 390, 395 (1981).³ The burden on the party moving for the temporary restraining order is great because injunctive relief is “an extraordinary remedy never awarded as a right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008).

³ The same legal standard applies to both a request for a temporary restraining order or a preliminary injunction. *Izabella HMC-MF, LLC v. Radisson Hotels Int'l, Inc.*, 378 F. Supp. 3d 775, 778 n.2 (D. Minn. 2019).

A court may grant a preliminary injunction only upon a proper showing of (1) the probability of success on the merits, (2) that the movant will suffer irreparable harm absent the injunction, (3) the balance between this harm and the harm an injunction would cause other parties, and (4) where the public interest lies. *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 113-14 (8th Cir. 1981) (en banc). The movant bears the burden of proof for each factor. *Gelco v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987). The party seeking such relief bears “a heavy burden” and a “difficult task.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). This already stringent burden is even higher on a party such as Plaintiff that seeks a mandatory preliminary injunction—one which “alters the status quo by commanding some positive act, as opposed to a prohibitory injunction seeking only to maintain the status quo.” *TruStone Fin. Fed. Credit Union v. Fiserv, Inc.*, No. 14-CV-424 (SRN/SER), 2014 WL 12603061, at *1 (D. Minn. Feb. 24, 2014). “Mandatory preliminary injunctions are to be cautiously viewed and sparingly used.” *Id.*

II. Petitioner is not entitled to injunctive relief because he is not likely to succeed on the merits of his claim.

In analyzing a motion for injunctive relief, the likelihood of success on the merits is “[t]he most important of the Dataphase factors.” *Shrink Mo. Gov’t PAC v. Adams*, 151F.3d 763, 764 (8th Cir. 1998). Petitioner does not have a likelihood of success on his claims, and his motion should be denied.

a. This Court does not have jurisdiction over Petitioner's claims.

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

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under this chapter.” 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title.”⁴ Except as provided in § 1252, courts “cannot entertain challenges to the enumerated executive branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

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

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.

ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

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

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

et al., No. 25-cv-3348 (PAM/DLM), ECF No. 17 at 5-6 (D. Minn. Sept. 9, 2025) (denying preliminary injunction and petition for lack of jurisdiction); *but see Jose J.O.E. v. Bondi et al.*, No. 25-cv-3051 (ECT/DJF), ECF No. 24 at 16-18 (D. Minn. Aug. 27, 2025) (finding jurisdiction to grant preliminary injunction).

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

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

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

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d

1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643

F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Petitioner challenges the government’s decision and action to detain him, which arises from DHS’s decision to commence removal proceedings against him as an arriving alien and is thus an “action taken . . . to remove [them] from the United States.” 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner’s claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, Petitioner *does* challenge the government’s decision to detain him in the first place. (ECF No. 5 at 25; ECF No. 1 ¶¶ 58, 64.) Though Petitioner

may attempt to frame his challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain him pending his removal proceedings in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9). *See Acxel S.Q.D.C.*, No. 25-cv-3348 (PAM/DLM), ECF No. 17 at 5-6; *but see Jose J.O.E.*, No. 25-cv-3051 (ECT/DJF) (D. Minn. Aug. 27, 2025), ECF No. 24 at 16-18.

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

b. Under the plain text of § 1225, Robles must be detained pending the outcome of his removal proceedings.

The Court should reject Petitioner's argument that § 1226(a) governs his detention instead of § 1225. (*See* ECF No. 5 at 25-29.) When there is “an irreconcilable conflict in two legal provisions,” then “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017); *Hickman v. Cliff Peck Chevrolet, Inc.*, 566 F.2d 44, 48 (8th Cir. 1977); *In re Bender*, 338 B.R. 62, 69 (Bankr. W.D. Mo. 2006). Section 1226(a) “applies to aliens “arrested and detained pending a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. It applies only to “applicants for admission”; that is, as relevant here, aliens present in the United States who have not

be admitted. *See id.*; *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioner falls within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a). *See Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351, at *8 (D. Neb. Sept. 30, 2025).

Applying this reasoning, the United States District Court for the District of Massachusetts recently confirmed in a habeas action that an unlawfully present alien, who had been unlawfully present in the country for approximately 20 years, was nonetheless an “applicant for admission” upon the straightforward application of the statute. *See Weibert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al., Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025). The court explained this resulted in the “continued detention” of an alien during removal proceedings as commanded by statute. *Id.*

Petitioner’s argument that 1226(a) applies rests on a factual error. Petitioner states in his motion that ICE must put him in proceedings under 8 U.S.C. § 1229a, and he argues that his detention is unlawful because 8 U.S.C. § 1226 governs. (*See* ECF No. 5 at 25-29.) That is incorrect.

Robles is in 1229a proceedings. (*See* Minner Decl. ¶ 7, Ex. B.) DHS charged him initially as removable under 212(a)(6)(A)(i) of the INA, as someone who is present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General. (Minner Decl. ¶ 8, Ex. C.) The NTA clearly states at the top that he is in removal proceedings “under Section 240 of the Immigration and Nationality Act.” (Minner Decl. ¶ 7, Ex. A.) Petitioner is not in

proceedings under 1225. He is, however, detained during his 1229a removal proceedings under section 1225(b)(2), which is mandatory.

Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien present in the United States who has not been admitted or who arrives in the United States.” Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 227 (explaining “aliens detained without a warrant while arriving in the United States are mandatorily detained under section 235(b) of the INA, 8 U.S.C. § 1225. . . .”); *Matter of Q. Li*, 29 I & N Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section 1225(b) applies because Petitioner is present in the United States without being admitted. Indeed Robles does not dispute that he was not admitted or inspected. (*See* ECF No. 1 ¶¶ 47-48, 52, 63, 85).

Petitioner’s argument that he should be treated differently because he has been in the interior of the United States is unpersuasive. (*See* ECF No. 5 at 15, 20-25.) The BIA has long recognized that “many people who are not *actually* requesting permission to enter

the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013).

Petitioner’s interpretation also reads “applicant for admission” out of § 1225(b)(2)(A). One of the most basic interpretative canons instructs that a “statute should be construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Petitioner’s interpretation fails that test. It renders the phrase “applicant for admission” in § 1225(b)(2)(A) “inoperative or superfluous, void or insignificant.” *See id.* If Congress did not want § 1225(b)(2)(A) to apply to “applicants for admission,” then it would not have included that phrase in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

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

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

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were

attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court should reject the Petitioner’s interpretation because it would put aliens who “crossed the border unlawfully” in a better position than those “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

Nothing in the Laken Riley Act (“LRA”) changes the analysis.⁵ (*Cf.* ECF No. 1 ¶ 21.) Redundancies in statutory drafting are “common . . . sometimes in a congressional effort to be doubly sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien “was paroled into this country through a shocking abuse of that power.” 171 Cong. Rec. H278 (daily ed. Jan. 22, 2025) (statement of Rep. McClintock). Congress passed it out of concern that the executive branch “ignore[d] its fundamental duty under the Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). One

⁵ Several of the cases Petitioner cites (ECF No. 5 at 7) make this argument. *See, e.g., Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *13–14 (W.D. Wash. Apr. 24, 2025).

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

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

Prior agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis to support its reasoning. *See* 62 Fed. Reg. at 10323; *see also* *Maldonado v. Bostock*, No. 2:23-cv-00760-LK-BAT, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency provided “no authority” to support its reading of the statute).

To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*, 603 U.S. at 395 (cleaned up). But “read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Petitioner cannot show a likelihood of success on the merits.

e. Petitioner's detention is for the purpose of conducting his removal proceedings.

Petitioner claims that his current temporary detention pending removal is unlawful and violates prior precedent. (ECF No. 5 at 9-25.) Congress, the Eighth Circuit, and the Supreme Court disagree.

As mentioned above, Congress broadly crafted “applicants for admission” to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And, Congress directed aliens like the Petitioner to be detained during removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. As explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.”). With this power to remove aliens, the Supreme Court has recognized the United States’ longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United*

States, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.”).

In light of Congress’s interest in dealing with illegal immigration by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed with any Due Process concerns without engaging in the *Mathews v. Eldridge* test. See generally *Zadvydas*, 533 U.S. at 690-91.

f. Petitioner’s claims related to his arrest are subject to dismissal.

Petitioner’s arguments regarding the alleged illegality of his arrest are not cognizable in habeas. “The ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest . . . occurred.” *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). One court recently addressing this in a similar context explained, “Thus, even if Petitioner's initial arrest was unlawful, her detention pending removal may stand.” *Rodrigues De Oliveira v. Joyce*, No. 2:25-CV-00291-LEW, 2025 WL 1826118, at *5 (D.

Me. July 2, 2025). This claim is not likely to succeed on the merits and as a result Robles's request for a temporary restraining order should be denied.

III. The remaining *Dataphase* factors do not support a temporary restraining order.

This Court should deny Petitioner's motion because he has not established sufficient irreparable harm, and the public interest and balance of the equities favor the United States' position. As a threshold matter, the Court need not even reach these factors, given Petitioner's failure to show a likelihood of success on the merits of his claim. *See Devisme v. City of Duluth*, No. 21-CV-1195 (WMW/LIB), 2022 WL 507391, at *4 (D. Minn. Feb. 18, 2022) ("Because Devisme has not demonstrated a likelihood of success on the merits, the Court need not address the remaining *Dataphase* factors."). But even if the Court were to consider the other factors, Petitioner's claim fails.

a. Irreparable Harm

Regardless of the merits his or her claims, a plaintiff must show "that irreparable injury is likely in the absence of an injunction." *Singh v. Carter*, 185 F. Supp. 3d 11, 20 (D.D.C. 2016). To be considered "irreparable," a plaintiff must show that absent granting the preliminary relief, the injury will be "'both certain and great,' 'actual and not theoretical,' 'beyond remediation,' and 'of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.'" *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). The significance of the alleged harm is also relevant to a court's determination of whether to grant injunctive relief. *Weinberger v.*

Romero-Barcelo, 456 U.S. 305, 313 (1982) (“[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law.”); *E.B. v. Dep’t of State*, 422 F. Supp. 3d 81, 88 (D.D.C. 2019) (“While ‘there is some appeal to the proposition that any damage, however slight, which cannot be made whole at a later time, should justify injunctive relief,’ the Court cannot ignore that ‘some concept of magnitude of injury is implicit in the [preliminary injunction] standards.’”) (quoting *Gulf Oil Corp. v. Dep’t of Energy*, 514 F. Supp. 1019, 1026 (D.D.C. 1981)).

Petitioner cites the potential negative consequences of being further from his family and the possibility of not being able to communicate with counsel as a basis for irreparable harm. (ECF No. 5 at 10; ECF No. 1 ¶ 25.) Because ICE has, subject to a 72-hour reservation of rights, agreed not to move Petitioner out of the District of Minnesota until after September 19, 2025, or the resolution of the pending habeas matter (Minner Decl. ¶ 10), these claims for emergency relief are moot. (See ECF No. 1 at 24, ¶¶ 2-3.) As such, he cannot meet his burden to establish irreparable harm. See *Axel S.Q.D.C.*, No. 25-cv-3348 (PAM/DLM), ECF No. 17 at 5-6 (denying preliminary injunction and petition for lack of jurisdiction); see also *Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351, at *8-10 (D. Neb. Sept. 30, 2025) (finding Petitioner fell within “catchall” scope of Section 1225(b)(2) and denying habeas relief); but see *Jose J.O.E.*, No. 25-cv-3051 (ECT/DJF), ECF No. 24 at 16-18 (D. Minn. Aug. 27, 2025) (granting preliminary injunction); *Francisco T. v. Bondi et al.*, No. 25-cv-3219 (JMB/DTS), ECF No. 17, at 9-11 (D. Minn. Aug. 29, 2025) (same); *Aguilar Vazquez v. Bondi et al.*, No. 25-cv-3162 (KMM/ECW), ECF No. 17 (D. Minn. Aug. 19, 2025) (enjoining Respondents from denying bond to

Petitioner under 8 U.S.C. § 1225(b)(2)); *Ferrera Bejarano v. Bondi et al.*, No. 25-cv-3236 (NEB/JFD), ECF Nos. 17, 18 (D. Minn. Aug 18, 2025) (same); *Aguilar-Maldonado v. Olsen et al.*, 25-cv-3142 (SRN/SGE), ECF No. 17, 2025 WL 2374411 (D. Minn. Aug. 12, 2025) (granting preliminary injunction).

b. Public Interest, Balance of the Equities

The two remaining *Dataphase* factors—the public interest and the balance of harms—also weigh against injunctive relief. “For practical purposes, these factors ‘merge’ when a plaintiff seeks injunctive relief against the government.” *Let Them Play MN v. Walz*, 517 F. Supp. 3d 870, 888 (D. Minn. 2021).

Under the balance of harms factor, “[t]he goal is to assess the harm the movant would suffer absent an injunction, as well as the harm other interested parties and the public would experience if the injunction issued.” *Katch, LLC v. Sweetser*, 143 F. Supp. 3d 854, 875 (D. Minn. 2015) (citing *Pottgen v. Missouri State High Sch. Activities Ass’n*, 40 F.3d 926, 928 (8th Cir. 1994)). When balancing the harms, courts will also consider whether a proposed injunction would alter the status quo, finding that such proposals weigh against injunctive relief. *See, e.g., Katch, LLC*, 143 F. Supp. 3d at 875; *Amigo Gift Ass’n v. Exec. Props., Ltd.*, 588 F. Supp. 654, 660 (W.D. Mo. 1984) (“[B]ecause Amigo is not seeking the mere preservation of the status quo but rather is asking the Court to drastically alter the status quo pending a resolution of the merits, the Court finds that the balance of the equities tips decidedly in favor of Executive Properties.”).

Importantly, the Court must take into consideration the public consequences of injunctive relief against the government. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008)

(cautioning that the Court “should pay particular regard for the public consequences” of injunctive relief). The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public interest in the United States’ enforcement of its immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s interest in enforcing immigration laws is enormous.”).

Judicial intervention would only disrupt the status quo. *See, e.g., Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D. 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 the one regarding Petitioner’s detention. *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.* Respondents respectfully 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 v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). 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 raised in DHS’s appeal—which are the same issues raised in this action. *See id.* The Court should deny the motion and the petition.

CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court deny Petitioner’s motion for temporary restraining order, deny his habeas petition, and dismiss the case.

Dated: October 22, 2025

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