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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

REYNA CRUZ VEGA,

Petitioner,

v.

CHRISTOPHER LAROSE, et al.,

Respondents.

Case No.: 3:25-cv-02725-CAB-MSB

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner Reyna Cruz Vega is detained in Immigration and Customs Enforcement ("ICE") custody and is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's habeas petition and application for interim relief requests that this Court order a bond hearing before an immigration judge ("IJ"). While Petitioner's claims are structured around allegations of unlawful detention authority, her claims attack the decision rendered by an IJ during an immigration bond hearing. Petitioner asks this Court to review an IJ decision, which is explicitly barred by statute. Through multiple provisions of 8 U.S.C. § 1252, Congress has unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Even apart from this preliminary issue, Petitioner cannot show a likelihood of success on the merits because she seeks to circumvent the detention statute under which she is rightfully detained to secure a bond hearing to which she is not entitled. The Court should deny Petitioner's request for interim relief and dismiss the petition.

II. STATUTORY BACKGROUND

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). *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "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 alien "with a credible fear of persecution" is "detained for further

consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) 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 alien "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, 220 (BIA 2025) ("[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the [Immigration and Nationality Act ("INA")], 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings."); *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). However, 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." *Id.* § 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 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens upon demonstrating that the alien "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also

request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

C. Review Before the Board of Immigration Appeals

The Board of Immigration Appeals ("BIA") is an appellate body within the Executive Office for Immigration Review ("EOIR") and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(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 is also directed to, "through precedent decisions, [] 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). Decisions rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

III. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Mexico. ECF No. 1-2 at 1. On April 19, 2009, she unlawfully entered the United States without being admitted, paroled, or inspected. *Id.* On August 12, 2025, Petitioner was apprehended by United States Border Patrol ("USBP) agents and charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. *Id.* at 3. She was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear

("NTA"). *Id.* at 4. Petitioner is currently detained at the Otay Mesa Detention Facility pursuant to 8 U.S.C. § 1225(b)(2). ECF No. 1 at 3, ¶ 9. On September 22, 2025, an IJ denied Petitioner's request for bond, finding that she is subject to mandatory detention under 8 U.S.C. § 1225(b). ECF No. 1-5; *see* ECF No. 1-3 at 1(IJ initially granting bond). She has not appealed the bond denial order to the BIA.

IV. ARGUMENT

A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over her claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).

Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, *adjudicate cases*, or execute removal orders.") (emphasis added). Section 1252(g) also bars district courts from hearing challenges to the method by which the government 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 ICE's discretionary decisions to commence removal" and bars review of "ICE's decision to take [plaintiff] into custody and to detain him during his removal proceedings").

Removal proceedings commence by the filing of a NTA in immigration court. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 600 (9th Cir. 2002). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "[A]n alien's detention

throughout this process arises from the Attorney General's decision to commence proceedings." *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); 8 U.S.C. § 1252(g); *but see Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

Here, Petitioner's claims arise from her detention during removal proceedings, which stem from the Attorney General's decision to commence such proceedings. As such, § 1252(g) bars this Court's review over Petitioner's claims. *See S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 WL 2617973, at * 2 (D. Minn. Sept. 9, 2025) (finding that § 1252(g) jurisdictionally bars review of a petitioner's challenge to ongoing detention during removal proceedings).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "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] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (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"). These 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").

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* 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 her in the first place. Though Petitioner attempts to frame her challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain her in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9). Indeed, that Petitioner is challenging the basis upon which she is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319; 8 U.S.C. § 1252(b)(9). As such, Petitioner's claims should be presented before the appropriate federal court of appeals because she challenges the government's decision or action to detain her, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

The Court should deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.[1]

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[1] On an alternative basis, the Court should deny the Petition for failure to exhaust administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner's administrative proceedings before the BIA). Here, Petitioner is attempting to bypass the administrative

B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief

Petitioner has not established entitlement to interim injunctive relief. Petitioner has failed to show a likelihood of success on the underlying merits, a showing of irreparable harm, and that the equities tip in her favor. Thus, Petitioner's motion should be denied.

In general, the showing required for a temporary restraining order ("TRO") is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a TRO, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiff must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. Few interests, however, "can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977).

The Ninth Circuit also has a "serious questions" test which dictates that "serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011).

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scheme by not appealing her underlying bond denials to the BIA. Thus, the Court should dismiss or stay this matter to allow Petitioner an opportunity to exhaust her administrative remedies.

Thus, under the serious questions test, a TRO can be granted if there is a likelihood of irreparable injury to the plaintiff, serious questions going to the merits, the balance of hardships tips in favor of the plaintiff, and the injunction is in the public interest. *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).

1. No Likelihood of Success on the Merits

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot show a likelihood of success or serious questions going to the merits of her claim for alleged statutory and constitutional violations arising from her mandatory detention under 8 U.S.C. § 1225.

Based on the plain language of the statue, the Court should reject Petitioner's argument that § 1226(a) governs her detention instead of § 1225. *See* ECF No. 2 ¶¶ 15-18. As found by this Court in a different case with similar facts, §1225(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]'" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) "expressly defines that '[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this Act *an applicant for admission*.'" *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an "alien present in the United States who has not been admitted." Thus, as found by this Court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner is an "applicant[ ] for admission" and subject to the mandatory detention provisions of § 1225(b)(2).

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). 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 the Illegal Immigration Reform and Immigrant

Responsibility Act of 1996 ("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); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). 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). Interpreting § 1225 to only apply to aliens encountered attempting to enter the United States or aliens encountered shortly after they gained entry without inspection 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 a 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). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 ("The House Judiciary Committee Report makes clear that Congress intended to eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights than those who presented themselves to authorities for inspection."). Thus, the Court should "'refuse to interpret the INA in a way that would in effect repeal that statutory fix' intended by Congress in enacting the IIRIRA." *Chavez,* 2025 WL 2730228, at *4 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

Such an 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). 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 the

phrase "applicants for admission" in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

Additionally, the phrase "alien seeking admission" does not limit the scope of § 1225(b)(2)(A). 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). There is "no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

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 Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *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).

In anticipation of the possible arguments in Petitioner's traverse, the application of the plain language of the § 1225(b)(2) does not contradict or render § 1226(a) superfluous. As found by this Court in *Chavez v. Noem*, § 1226(a) "'generally governs the process of arresting and detaining' certain aliens, namely 'aliens who were inadmissible at the time

of entry *or who have been convicted of certain criminal offenses since admission.*'" 2025 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288) (emphasis in original). Moreover, § 1226(a) also covers those deemed to be deportable who were admitted as a nonimmigrant but failed to maintain their status or comply with the conditions of their status (i.e., visa overstays). *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1227(a)(1). In turn, individuals who have not been charged with specific crimes listed in § 1226(c) are still subject to the discretionary detention provisions of § 1226(a) as determined by the Attorney General. *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."). Therefore, heeding the plain language of § 1225(b)(2) has no effect on § 1226(a).

Finally, and also in anticipation in Petitioner's possible arguments, the application of § 1225's explicit definition of "applicants for admission" does not render the addition of § 1226(c) by the Riley Laken Act superfluous. Once again correctly determined by this Court in *Chavez v. Noem*, the addition of § 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific crimes. 2025 WL 2730228, at *5.

Because Petitioner is properly detained under § 1225, she cannot show entitlement to relief.[2]

2. Irreparable Harm Has Not Been Shown

To prevail on her request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of

[2] Petitioner's due process claim also fails. While some courts have found that due process requires a hearing before an IJ prior to re-detention, *see Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases), Petitioner has not been "re-detained." Petitioner was never in DHS custody prior to her August 12, 2025 apprehension and the commencement of her removal proceedings. Moreover, although Petitioner was initially granted bond by an IJ, she was not released from custody pending appeal of that bond order, and ultimately, the bond order was revoked. In turn, Petitioner has been subject to continuing detention and therefore cannot establish a due process claim based on re-detention.

irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, 854 Fed.Appx. 190 (9th Cir. 2021) ("[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived."). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Here, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018).

3. Balance of Equities Does Not Tip in Petitioner's Favor

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted). 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.

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

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's application for a temporary restraining order and dismiss this action for lack of a basis for the habeas claims.

DATED: October 22, 2025

Respectfully submitted,

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