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ADAM GORDON
United States Attorney
ALYSSA SANDERSON
Assistant U.S. Attorney
California Bar No.: 353398
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101
Tel: (619) 546-7634
Fax: (619) 546-7751
Email: Alyssa.sanderson@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WILGEN JOSE CUADRA ROMERO,

Petitioner,

v.

PAMELA BONDI, et al.,

Respondents.

Case No.: 3:25-cv-02783-BJC-VET

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

I. INTRODUCTION

Petitioner Wilgen Jose Cuadra Romero 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, his 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. Moreover, before an IJ has an opportunity to review Petitioner's Fourth Amendment claim, he asks this Court to render a decision on it. 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 he seeks to circumvent the detention statute under which he is rightfully detained to secure a bond hearing to which he is not entitled and cannot establish a constitutional violation under the Fourth Amendment. The Court should deny Petitioner's request for interim relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Nicaragua. ECF No. 1-2 at 34. At an unknown time and on an unknown date, he entered the United States without being admitted, paroled, or inspected. *Id.* On July 06, 2025, Petitioner was apprehended by ICE 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 35. He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear ("NTA"). ECF No. 1-2 ¶ 22. Petitioner is currently detained at the Imperial Regional Detention Facility pursuant to 8 U.S.C. § 1225(b)(2). ECF No. 1-2 ¶ 2.

On August 1, 2025, an IJ denied Petitioner's request for bond, finding that he is subject to mandatory detention under 8 U.S.C. § 1225(b). *Id.* ¶ 22. That same day,

Petitioner filed motions to suppress and terminate in immigration court, each related to holding DHS to its burden within § 1229a proceedings to establish alienage and removability. *Id.* ¶ 23. On August 20, 2025, the IJ denied his motion to suppress but terminated removal proceedings without prejudice, upon finding DHS failed to prove alienage. *Id.* DHS filed a new NTA on August 26, 2025, and Petitioner renewed his motions to suppress and terminate. *Id.* On September 8, 2025, the IJ denied Petitioner's motions as premature and set the following briefing schedule: DHS to submit alienage evidence by September 22, 2025, Petitioner to file motions in response by October 6, 2025, and DHS to file a reply by October 14, 2025. *Id.* A hearing on these motions was scheduled for October 27, 2025. *Id.* ¶ 24.

DHS, however, filed the authenticated alienage evidence on October 3, 2025. *Id.* ¶ 25. As a result, on October 24, 2025, the IJ terminated removal proceedings without prejudice, citing DHS's failure to timely file evidence of removability. DHS has filed a new NTA against Petitioner. *See* Ex. 1. His next hearing is set for November 10, 2025.

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 his 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 his 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, as to Petitioner's Fourth Amendment claim, allegations of racial profiling and constitutional violations in removal cases "belong in front of an Immigration Judge, not a federal district court." *See Marvan v. Slaughter*, No. CV 25-49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition challenging detention based on Fourth Amendment violations for lack of subject matter jurisdiction). Petitioner will likely renew his motions to suppress and terminate his removal proceedings based on Fourth and Fifth Amendment violations. Those issues, however, have not yet been confronted by an IJ. Petitioner cannot simply "'bypass the immigration courts and proceed directly to district court. Instead, [he] must exhaust the administrative process before [he]

can access the federal courts.'" *Id.* at *4 (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1029 (9th Cir. 2016)).

To the extent Petitioner desires to bring such claims, explicitly related to establishing alienage and removability, to a federal court, this district court does not have jurisdiction. 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 v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, 485 (1999); *see J.E.F.M.*, 837 F.3d at 1031 (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").

1 While holding that it was unnecessary to comprehensively address the scope of §
2 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges
3 that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court
4 found that "§ 1252(b)(9) [did] not present a jurisdictional bar" in situations where
5 "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.*
6 at 294–95. In this case, Petitioner does challenge the government's decision to detain him
7 in the first place. Though Petitioner attempts to frame his challenge as one relating to
8 detention authority, rather than a challenge to DHS's decision to detain him in the first
9 instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).
10 Indeed, that Petitioner is challenging the basis upon which he is detained is enough to
11 trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See*
12 *Jennings*, 583 U.S. at 319; 8 U.S.C. § 1252(b)(9).
13 As such, Petitioner's claims should be presented before the appropriate federal court
14 of appeals because he challenges the government's decision or action to detain him, which
15 must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).
16 The Court should deny the pending motion and dismiss this matter for lack of
17 jurisdiction under 8 U.S.C. § 1252.
18 **B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**
19 Petitioner has not established entitlement to interim injunctive relief. Petitioner has
20 failed to show a likelihood of success on the underlying merits, a showing of irreparable
21 harm, and that the equities tip in his favor. Thus, Petitioner's motion should be denied.
22 In general, the showing required for a temporary restraining order ("TRO") is the
23 same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v.*
24 *John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for
25 a TRO, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely
26 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
27 tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def.*
28 *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). 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 his claim for alleged statutory and constitutional violations arising from his mandatory detention under 8 U.S.C. § 1225. Moreover, Petitioner cannot show a likelihood of success or serious questions going to the merits for his Fourth Amendment claim.

a. Petitioner is Subject to 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 his detention instead of § 1225. *See* ECF No. 2-1 at 19-20. Section 1225(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant*

1 *for admission*, if the examining immigration officer determines that an alien seeking
2 admission is not clearly and beyond a doubt entitled to be admitted[.]'" *Chavez v. Noem*,
3 No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C.
4 § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) "expressly defines that '[a]n
5 alien present in the United States who has not been admitted ... shall be deemed for
6 purposes of this Act *an applicant for admission*.'" *Id.* (quoting 8 U.S.C. § 1225(a)(1))
7 (emphasis in original). Here, Petitioner is an "alien present in the United States who has
8 not been admitted." Thus, as found by the district court in *Chavez v. Noem* and as mandated
9 by the plain language of the statute, Petitioner is an "applicant for admission" and subject
10 to the mandatory detention provisions of § 1225(b)(2).

11 When the plain text of a statute is clear, "that meaning is controlling" and courts
12 "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842,
13 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes
14 the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730
15 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and Immigrant
16 Responsibility Act of 1996 ("IIRIRA") to correct "an anomaly whereby immigrants who
17 were attempting to lawfully enter the United States were in a worse position than persons
18 who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)
19 (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir.
20 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R. Rep. No. 104-
21 469, pt. 1, at 225 (1996)). It "intended to replace certain aspects of the [then] current 'entry
22 doctrine,' under which illegal aliens who have entered the United States without inspection
23 gain equities and privileges in immigration proceedings that are not available to aliens who
24 present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1,
25 at 225). Interpreting § 1225 to only apply to aliens encountered attempting to enter the
26 United States or aliens encountered shortly after they gained entry without inspection
27 would put aliens who "crossed the border unlawfully" in a better position than those "who
28 present themselves for inspection at a port of entry." *Id.* Aliens who presented at a port of

1 entry would be subject to mandatory detention under § 1225, but those who crossed
2 illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure Hurtado*, 29
3 I&N Dec. at 225 ("The House Judiciary Committee Report makes clear that Congress
4 intended to eliminate the prior statutory scheme that provided aliens who entered the
5 United States without inspection more procedural and substantive rights than those who
6 presented themselves to authorities for inspection."). Thus, the Court should "'refuse to
7 interpret the INA in a way that would in effect repeal that statutory fix' intended by
8 Congress in enacting the IIRIRA." *Chavez,* 2025 WL 2730228, at *4 (quoting *Gambino-*
9 *Ruiz*, 91 F.4th at 990).

10 Such an interpretation also reads "applicants for admission" out of § 1225(b)(2)(A).
11 One of the most basic interpretative canons instructs that a "statute should be construed so
12 that effect is given to all its provisions." *See Corley v. United States*, 556 U.S. 303, 314
13 (2009) (cleaned up). It renders the phrase "applicants for admission" in § 1225(b)(2)(A)
14 "inoperative or superfluous, void or insignificant." *See id.* If Congress did not want §
15 1225(b)(2)(A) to apply to "applicants for admission," then it would not have included the
16 phrase "applicants for admission" in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also*
17 *Corley*, 556 U.S. at 314.

18 Additionally, the phrase "alien seeking admission" does not limit the scope of §
19 1225(b)(2)(A). The BIA has long recognized that "many people who are not *actually*
20 requesting permission to enter the United States in the ordinary sense are nevertheless
21 deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25
22 I&N Dec. 734, 743 (BIA 2012). There is "no legal authority for the proposition that after
23 some undefined period of time residing in the interior of the United States without lawful
24 status, the INA provides that an applicant for admission is no longer 'seeking admission,'
25 and has somehow converted to a status that renders him or her eligible for a bond hearing
26 under section 236(a) of the INA." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing
27 *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

28 Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*,

1 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550,
2 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the
3 context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for
4 admission are both those individuals present without admission and those who arrive in the
5 United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission"
6 under §1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25
7 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who
8 are applicants for admission or otherwise seeking admission" to be inspected by
9 immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an
10 appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,'
11 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).
12 In anticipation of the possible arguments in Petitioner's traverse, the application of
13 the plain language of the § 1225(b)(2) does not contradict or render § 1226(a) superfluous.
14 As found by the district court in *Chavez v. Noem*, § 1226(a) "'generally governs the process
15 of arresting and detaining' certain aliens, namely 'aliens who were inadmissible at the time
16 of entry *or who have been convicted of certain criminal offenses since admission*.'" 2025
17 WL 2730228, at *5 (quoting *Jennings*, 583 U.S. at 288) (emphasis in original). Moreover,
18 § 1226(a) also covers those deemed to be deportable who were admitted as a nonimmigrant
19 but failed to maintain their status or comply with the conditions of their status (i.e., visa
20 overstays). *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1227(a)(1). In turn, individuals who
21 have not been charged with specific crimes listed in § 1226(c) are still subject to the
22 discretionary detention provisions of § 1226(a) as determined by the Attorney General. *See*
23 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested
24 and detained pending a decision on whether the alien is to be removed from the United
25 States."). Therefore, heeding the plain language of § 1225(b)(2) has no effect on § 1226(a).
26 Finally, and also in anticipation in Petitioner's possible arguments, the application
27 of § 1225's explicit definition of "applicants for admission" does not render the addition
28 of § 1226(c) by the Riley Laken Act superfluous. Once again correctly determined by the

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, he cannot show entitlement to relief.[1]

b. Petitioner Cannot Establish a Fourth Amendment Violation

Even if the Court had jurisdiction over Petitioner's Fourth Amendment claim, he is unable to show a violation of the Fourth Amendment. The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons ... against unreasonable searches and seizures [] shall not be violated." U.S. Const. amend. IV. As the Supreme Court has long held, officers may not "stop and briefly detain a person for investigative purposes" under the Fourth Amendment unless they have "reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" *United States v. Sokolow*, 490 U.S. 1, 7, (1989) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Section 287.8(b)(2) all but parrots this standard: it provides that immigration officers may not briefly detain a person for questioning unless the officer has a "reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States."

Here, according to the narrative in the form I-213, Petitioner was encountered by ICE agents investigating a suspect who they believed lived at Petitioner's address. ECF No. 1-2 at 35. The ICE agents and Petitioner engaged in a consensual conversation in which the agents questioned Petitioner about the suspect they were investigating. *See* ECF No. 2-1 ¶¶ 4-5. The ICE agents then asked Petitioner questions about himself. *Id.* Petitioner *voluntarily* provided his full name, date of birth, country of birth, and admitted to entering the United States without authorization. ECF No. 1-2 at 35. He also confirmed he lived in the house that the agents believed a suspect of an ongoing ICE investigation lived at. ECF

[1] As Petitioner is properly detained under § 1225, his procedural and substantive due process claims for prolonged detention without a meaningful bond process fail. As explained, Petitioner is not entitled to a bond process. Thus, Petitioner's Fifth Amendment due process claims fail and should be dismissed.

No. 2-1 ¶ 5. On these facts, Petitioner was not detained solely on the basis of his race. Instead, ICE agents, through their investigation of another and voluntary statements made by Petitioner, discovered he was unlawfully in the country. Thus, because Petitioner cannot establish a Fourth Amendment violation, he cannot show entitlement to relief.

2. Irreparable Harm Has Not Been Shown

To prevail on his 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 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 his 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 27, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Alyssa Sanderson
ALYSSA SANDERSON
Assistant United States Attorney
Attorneys for the United States

Exhibit 1

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [redacted]
Event No: [redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

In the Matter of:

Respondent: JOSE WILGEN CUADRA ROMERO currently residing at:

1572 Gateway Rd Calexico, CALIFORNIA 92231 (760) 618-7200
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native and citizen of Nicaragua.
3. You entered the United States at an unknown place, date, and time.
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

2409 LA BRUCHERIE ROAD, IMPERIAL, CALIFORNIA 92251. IMPERIAL DETAINED
(Complete Address of Immigration Court, including Room Number, if any)

on November 10, 2025 *(Date)* at 8:30 am *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

CONCEPCION ARREDONDO - SDDO
(Signature and Title of Issuing Officer)

Date: October 27, 2025

Calexico, CA
(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: ______________________________
(Signature of Respondent)

Date: ______________

____
(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on October 27, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # ___________ requested ☐ by regular mail
☐ Attached is a credible fear worksheet.
☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Refuse to Sign
(Signature of Respondent if Personally Served)

SALVADOR PEREZ JR. - Deportation Officer
(Signature and Title of officer)

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

U.S. Department of Homeland Security

Continuation Page for Form I-862

Alien's Name	File Number	Date
CUADRA ROMERO, JOSE WILGEN	[redacted] Event No: [redacted]	10/27/2025

ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien 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.

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Signature	Title
CONCEPCION ARREDONDO	SDDO