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9 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

10
 11 Kevin Ariel SALGUERO Y SALGUERO,
 and Juan Manuel GARCIA-HERNANDEZ

12 Petitioners,
 13 v.

14 Kristi NOEM, Secretary, U.S. Department of
 Homeland Security, in her official capacity;
 15 U.S. DEPARTMENT OF HOMELAND
 SECURITY; Pamela J. BONDI, U.S.
 16 Attorney General, in her official capacity;
 Todd LYONS, Acting Director for U.S.
 17 Immigration and Customs Enforcement, in
 18 his official capacity; U.S. IMMIGRATION
 AND CUSTOMS ENFORCEMENT; Jason
 19 KNIGHT, Acting Field Office Director, Salt
 Lake City Field Office; EXECUTIVE
 20 OFFICE FOR IMMIGRATION REVIEW;
 Sirce OWEN,
 21 Acting Director for Executive Office of
 Immigration Review, in her official capacity;
 22 LAS VEGAS IMMIGRATION COURT;
 John MATTOS, Warden of Nevada Southern
 23 Detention Center, in his official capacity;
 Reggie RADER, Police Chief, Henderson
 24 Detention Center, in his official capacity,
 25

26 Respondents.

Case No. 2:25-cv-02328-RFB-NJK

**Federal Respondents' Response to
 Petitioners' Motion for Temporary
 Restraining Order and Preliminary
 Injunction (ECF No. 6)**

27 Federal Respondents hereby file their response to Petitioners Kevin Ariel Salguero
 28 Y Salguero and Juan Manuel Garcia-Hernandez' Motion for Temporary Restraining Order

1 and Preliminary Injunction (ECF No. 6) (“motion”). Petitioners’ motion should be denied
2 because they have failed to demonstrate that they are entitled to a preliminary injunction.
3 In addition, Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).
4 This response is supported by the following memorandum of points and authorities.

5 **I. Introduction**

6 Petitioner, Mr. Salguero is detained at the Henderson Detention Center. ECF No. 6,
7 Page 4, line 5. On or about September 28, 2025, Mr. Salguero was arrested in Las Vegas for the
8 offense of possession of a controlled substance, which is a Felony. See the I-213 for Mr.
9 Salguero attached hereto as Exhibit A. On or about October 16, 2025, Mr. Salguero was
10 arrested for the offense of driving under the influence. See Exhibit A. Petitioner, Mr. Garcia-
11 Hernandez is detained at the Nevada Southern Detention Center. ECF No. 6, Page 4, line 15.
12 On October 18, 2025, Mr. Salguero was issued a Notice to Appear. See Mr. Salguero Notice to
13 Appear attached as Exhibit B. On October 10, 2025, Mr. Garcia-Hernandez was arrested for the
14 offense of driving under the influence. See the I-213 for Mr. Garcia-Hernandez attached hereto
15 as Exhibit C. On October 14, 2025, Mr. Garcia-Hernandez was issued a Notice to Appear. See
16 Mr. Garcia-Hernandez Notice to Appear attached as Exhibit D. Petitioners were placed into
17 1229a removal proceedings for entering the United States without inspection. ECF No. 6,
18 Page 3, lines 3, 5. Petitioners sought bond and were denied by the Immigration Judges due
19 to the decision in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). ECF No. 6,
20 Page 4, lines 20-21. Petitioners are seeking to challenge the policy adopted by the Board of
21 Immigration Appeals (“BIA”) in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).
22 ECF No. 6, Page 4, lines 20-22. Petitioners are claiming that they are unlawfully detained
23 by DHS because the mandatory detention § 1225(b)(2)(A) does not apply to them since they
24 previously entered and are now residing in the United States and such individuals are
25 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
26
27
28

1 ECF No. 6, Page 2, lines 16-20. Petitioners' motion for injunctive relief requests that this
2 Court order that Petitioners be either released or provided an individualized custody
3 redetermination hearing under § 1226(a) before an Immigration Judge. ECF No. 6, Page 9,
4 lines 14-18. Even apart from these preliminary issues, Petitioners cannot show a likelihood of
5 success on the merits because they seek to circumvent the detention statute under which they
6 are rightfully detained to secure bond hearings to which they are not entitled. The Court
7 should deny Petitioners' motion for temporary restraining order.
8

9 **II. Statutory Background**

10 **A. Detention Under 8 U.S.C. § 1225**

11 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
12 present in the United States who [have] not been admitted” or “who arrive[] in the United
13 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
14 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583
15 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218 (BIA 2025).

16 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
17 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
18 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens
19 are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But
20 if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,”
21 immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii).
22 An alien “with a credible fear of persecution” is “detained for further consideration of the
23 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to
24 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” they
25 are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

26 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
27 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
28

1 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
2 removal proceeding “if the examining immigration officer determines that [the] alien
3 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
4 1225(b)(2)(A); see *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are present
5 in the United States without admission are applicants for admission as defined under section
6 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of
7 their removal proceedings.”); *Matter of Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens
8 arriving in and seeking admission into the United States who are placed directly in full
9 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
10 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).
11 However, the Department of Homeland Security (DHS) has the sole discretionary authority
12 to temporarily release on parole “any alien applying for admission to the United States” on
13 a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §
14 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

15 **B. Detention Under 8 U.S.C. § 1226(a)**

16 Section 1226 provides for arrest and detention “pending a decision on whether the
17 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
18 government may detain an alien during his removal proceedings, release him on bond, or
19 release him on conditional parole. By regulation, immigration officers can release aliens
20 upon demonstrating that the alien “would not pose a danger to property or persons” and “is
21 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request
22 a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of
23 removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

24 At a custody redetermination, the IJ may continue detention or release the alien on
25 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
26 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,
27 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
28

1 consider, an alien “who presents a danger to persons or property should not be released
2 during the pendency of removal proceedings.” *Id.* at 38.

3 **C. Review Before the Board of Immigration Appeals**

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

14 **III. Argument**

15 **A. Petitioners’ Claims and Requests are Barred by 8 U.S.C. § 1252**

16 Petitioners bear the burden of establishing that this Court has subject matter
17 jurisdiction over their claims. *See Ass’n of Am. Med. Colleges v. United States*, 217 F.3d 770,
18 778–79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). As a threshold
19 matter, Petitioners’ claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C.
20 § 1252(b)(9).

21 Courts lack jurisdiction over any claim or cause of action arising from any decision
22 to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. §
23 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of
24 any alien arising from the decision or action by the Attorney General to *commence*
25 *proceedings, adjudicate cases, or execute removal orders.*”) (emphasis added); *Reno v. Am.-Arab*
26 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress
27 to focus special attention upon, and make special provision for, judicial review of the
28 Attorney General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]

1 execut[ing] removal orders” — which represent the initiation or prosecution of various
2 stages in the deportation process.”). In other words, § 1252(g) removes district court
3 jurisdiction over “three discrete actions that the Attorney may take: [his] ‘decision or action’
4 to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at
5 482 (emphasis removed). Petitioners’ claims necessarily arise “from the decision or action
6 by the Attorney General to commence proceedings [and] adjudicate cases,” over which
7 Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

8 Section 1252(g) also bars district courts from hearing challenges to the method by
9 which the government chooses to commence removal proceedings, including the decision to
10 detain an alien pending removal. *See Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194,
11 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
12 discretionary decisions to commence removal” and bars review of “ICE’s decision to take
13 [plaintiff] into custody and to detain him during his removal proceedings”).

14 Petitioners’ claims stem from ICE’s decision to commence removal proceedings and
15 therefore detain them. Their detention arises from the decision to commence proceedings
16 against them. *See, e.g., Valencia-Mejia v. United States*, No. CV 08-2943 CAS PJWX, 2008
17 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his
18 hearing before the Immigration Judge arose from this decision to commence proceedings.”);
19 *Wang v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal.
20 Aug. 18, 2010); *Tazu v. Att’y Gen. United States*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding
21 that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to
22 execute removal order).

23 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
24 commences proceedings against an alien when the alien is issued a Notice to Appear before
25 an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008
26 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien
27 against whom proceedings are commenced and detain that individual until the conclusion
28 of those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises

1 from the Attorney General’s decision to commence proceedings” and review of claims
2 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
3 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see*
4 *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3,
5 2025).

6 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and
7 fact . . . arising from any action taken or proceeding brought to remove an alien from the United States
8 under this subchapter shall be available only in judicial review of a final order under this
9 section.” Further, judicial review of a final order is available only through “a petition for
10 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). The Supreme
11 Court has made clear that § 1252(b)(9) is “the unmistakable ‘zipper’ clause,” channeling
12 “judicial review of all” “decisions and actions leading up to or consequent upon final orders
13 of deportation,” including “non-final order[s],” into proceedings before a court of appeals.
14 *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting
15 § 1252(b)(9) is “breathtaking in scope and vise-like in grip and therefore swallows up
16 virtually all claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
17 § 1252(b)(9) mean that *any* issue — whether legal or factual — arising from *any* removal-
18 related activity can be reviewed *only* through the [petition for review] PFR process.”
19 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge their
20 removal proceedings, they are not jurisdiction-stripping statutes that, by their terms,
21 foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial
22 review over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
23 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
24 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

25 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring one.”
26 *Aguilar v. U.S. Immigr. & Customs Enft Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir.
27 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision
28 of this chapter . . . shall be construed as precluding review of constitutional claims or

1 questions of law raised upon a petition for review filed with an appropriate court of appeals
2 in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008)
3 (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The
4 petition-for-review process before the court of appeals ensures that noncitizens have a
5 proper forum for claims arising from their immigration proceedings and “receive their day
6 in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v.*
7 *Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
8 obviate . . . Suspension Clause concerns” by permitting judicial review of
9 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
10 law.”). These provisions divest district courts of jurisdiction to review both direct and
11 indirect challenges to removal orders, including decisions to detain for purposes of removal
12 or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges
13 to the “decision to detain [an alien] in the first place or to seek removal”).

14 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
15 explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*,
16 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to
17 review both direct and indirect challenges to removal orders, including decisions to detain
18 for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section
19 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to
20 seek removal[.]”). Here, Petitioners challenge the government’s decision and action to
21 detain them, which arises from DHS’s decision to commence removal proceedings, and is
22 thus an “action taken . . . to remove [them] from the United States.” *See* 8 U.S.C. §
23 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842,
24 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because
25 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-
26 00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no
27 judicial review of the threshold detention decision, which flows from the government’s
28 decision to “commence proceedings”). *But see Garcia*, 2025 WL 2549431, at *3-4. As such,

1 the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why
2 Petitioners' claims are unreviewable here.

3 While holding that it was unnecessary to comprehensively address the scope of §
4 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that
5 may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found
6 that “§ 1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . .
7 [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this
8 case, Petitioners do challenge the government’s decision to detain them in the first place and
9 argue that such detention is a violation of their rights. ECF No. 1, ¶ 78. Though Petitioners
10 attempt to frame their challenge as one relating to detention authority, rather than a
11 challenge to DHS’s decision to detain them in the first instance, such creative framing does
12 not evade the preclusive effect of § 1252(b)(9). Indeed, that Petitioners are challenging the
13 basis upon which they are detained is enough to trigger § 1252(b)(9) because “detention is an
14 ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J.,
15 concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioners’ claims would be more
16 appropriately presented before the appropriate federal court of appeals because they
17 challenge the government’s decision or action to detain them, which must be raised before a
18 court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

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

21 C. Petitioners Have Failed to Exhaust Administrative Remedies

22 Similarly, requiring exhaustion here would be consistent with Congressional intent
23 to have claims, such as Petitioners’, subject to the channeling provisions of § 1252(b)(9) that
24 provide for appeal to the BIA and then, if unsuccessful, the Ninth Circuit. “Exhaustion can
25 be either statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541
26 (9th Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is
27 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
28 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential requirement, a court has

1 discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26
2 (9th Cir. 1981)). Here, Petitioners are attempting to bypass the administrative scheme by not
3 appealing bond denials to the BIA.

4 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
5 corpus.” *Castro–Cortez v. I.N.S.*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That section does not
6 specifically require petitioners to exhaust direct appeals before filing petitions for habeas
7 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas
8 petitioners exhaust available judicial and administrative remedies before seeking relief under
9 § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency expertise
10 makes agency consideration necessary to generate a proper record and reach a proper
11 decision; (2) relaxation of the requirement would encourage the deliberate bypass of the
12 administrative scheme; and (3) administrative review is likely to allow the agency to correct
13 its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d
14 812, 815 (9th Cir. 2007) (internal quotation marks omitted).

15 “When a petitioner does not exhaust administrative remedies, a district court
16 ordinarily should either dismiss the petition without prejudice or stay the proceedings until
17 the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v. Crawford*,
18 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th
19 Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071,
20 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s
21 administrative proceedings before the BIA). Moreover, a “petitioner cannot obtain review of
22 procedural errors in the administrative process that were not raised before the agency merely
23 by alleging that every such error violates due process.” *Vargas v. U.S. Dep’t of Immigr. &*
24 *Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*, 720 F.3d 1134, 1135–
25 36 (9th Cir. 2013) (declining to address a due process argument that was not raised below
26 because it could have been addressed by the agency).

27 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA is
28 the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-

1 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned
2 to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See*
3 *Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept.
4 15, 2017) (noting a denial of bond to an immigration detainee was “a question well suited
5 for agency expertise”); *Matter of M-S-*, 27 I. & N. Dec. 509, 515–18 (2019) (addressing
6 interplay of §§ 1225(b)(1) and 1226). *But see Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896–
7 97 (9th Cir. 2021); *Garcia*, 2025 WL 2549431, at *4-5.

8 Waiving exhaustion would also “encourage other detainees to bypass the BIA and
9 directly appeal their no-bond determinations from the IJ to federal district court.” *Aden*,
10 2019 WL 5802013, at *2. Individuals, like the Petitioners, would have little incentive to seek
11 relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
12 straight-to-federal-court strategy would needlessly increase the burden on district courts. *See*
13 *Bd. of Trs. of Constr. Laborers’ Pension Tr. for S. California v. M.M. Sundt Constr. Co.*, 37 F.3d
14 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion
15 requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting
16 “exhaustion promotes efficiency”). If the IJs erred as Petitioners allege or may eventually
17 allege, this Court should allow the administrative process to correct itself. *See id.*

18 Moreover, detention alone is not an irreparable injury. Discretion to waive
19 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
20 Petitioners bear the burden to show that an exception to the exhaustion requirement applies.
21 *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention after the
22 denial of a bond hearing [does not] constitute[] irreparable harm such that prudential
23 exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3
24 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL
25 3082403 (9th Cir. July 21, 2021). Petitioners cannot claim that they are exempt from
26 exhausting administrative remedies, when they have refused to participate in the
27 administrative process. Petitioners do not know what the BIA will decide if Petitioners
28 decide to appeal an Immigration Judge’s decision, which has not even occurred. In

1 addition, if Petitioners disagree with the BIA decision, Congress is clear that an appeal of a
2 BIA decision is before the circuit courts not district courts. Because Petitioners have not
3 exhausted their administrative remedies, this matter should be dismissed.

4 **D. Petitioners Fail to Establish Entitlement to Interim Injunctive Relief**

5 Alternatively, Petitioners' motion should be denied because they have not
6 established that they are entitled to interim injunctive relief. The legal standard for issuing a
7 TRO is essentially identical to the standard for issuing a preliminary injunction. *See*
8 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *see also*
9 *Zamfir v. Casperlabs, LLC*, 528 F. Supp. 3d 1136, 1142 (S.D. Cal. 2021). "A party seeking a
10 preliminary injunction must meet one of two variants of the same standard." *All. for the Wild*
11 *Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017). Under the *Winter* standard, a party is
12 entitled to a preliminary injunction if he demonstrates (1) that he is likely to succeed on the
13 merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3)
14 that the balance of equities tips in his favor, and (4) that an injunction is in the public
15 interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556
16 U.S. 418, 426 (2009). A party must make a showing on all four prongs. *A Woman's Friend*
17 *Pregnancy Res. Clinic v. Becerra*, 901 F.3d 1166, 1167 (9th Cir. 2018) (cleaned up). Plaintiffs
18 must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d
19 962, 967–68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success
20 on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google,*
21 *Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

22 The final two factors required for preliminary injunctive relief — balancing of the
23 harm to the opposing party and the public interest — merge when the Government is the
24 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
25 acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure
26 its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*
27 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. of California v. Orrin W.*
28 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211,

1 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant
2 seeking injunctive relief “must show either (1) a probability of success on the merits and the
3 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance
4 of hardships tips sharply in the moving party’s favor.”) (quoting *Andreiu v. Ashcroft*, 253 F.3d
5 477, 483 (9th Cir. 2001)).

6 In this case, Petitioners cannot establish that they are likely to succeed on the
7 underlying merits, there is no showing of irreparable harm, and the equities do not weigh in
8 their favor.

9 ***a. Petitioners are not likely to succeed on the underlying merits.***

10 A preliminary injunction is an “extraordinary remedy never awarded as of right.”
11 *Winter*, 555 U.S. at 7, 24. The first *Winter* factor — likely success on the merits — is “the
12 most important” and is a threshold inquiry. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.
13 2015). Petitioners carry the burden of demonstrating a likelihood of success (or alternatively,
14 showing “serious questions going to the merits”). See *A Woman's Friend Pregnancy Resource*
15 *Clinic*, 901 F.3d at 1167; *Alliance for the Wild Rockies*, 865 F.3d at 1217.

16 In this case, Petitioners cannot establish that they are likely to succeed on the
17 underlying merits of their claims for alleged statutory and constitutional violations because
18 they are subject to mandatory detention under 8 U.S.C. § 1225. Petitioners contend that
19 because they are noncitizens residing in the United States who originally entered the United
20 States without inspection or parole, and have not affirmatively sought admission, §
21 1225(b)(2)'s mandatory detention provision does not apply to them. ECF No. 6, Page 2.
22 Lines 16-20. Instead, they claim that they are likely to succeed on the merits based on the
23 text of § 1225(b)(2) and its interplay with § 1226(a), the legislative history of the Illegal
24 Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), and the BIA’s
25 previous longstanding agency practice of granting bond redetermination for noncitizens
26 present in the U.S. under § 1226(a). *Id.*

27 Petitioners’ interpretation is inconsistent with the text of § 1225(b). The Court should
28 reject Petitioners’ argument that § 1226(a) governs their detention instead of § 1225. See

1 ECF No. 4, pp. 10-22. When there is “an irreconcilable conflict in two legal provisions,”
2 then “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d
3 1006, 1015 (9th Cir. 2017). 8 U.S.C. § 1225 applies only to “applicants for admission”; that
4 is, as relevant here, aliens present in the United States who have not been admitted. *See id.*;
5 *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because
6 Petitioners fall within that category, the specific detention authority under § 1225 governs
7 over the general authority found at § 1226(a).

8 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien
9 present in the United States who has not been admitted or who arrives in the United
10 States.” Applicants for admission “fall into one of two categories, those covered by
11 §1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(2)
12 — the provision relevant here — is the “broader” of the two. *Id.* It “serves as a catchall
13 provision that applies to all applicants for admission not covered by § 1225(b)(1) (with
14 specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297;
15 *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. at 218-19 (for “those aliens who are seeking
16 admission and who an immigration officer has determined are ‘not clearly and beyond a
17 doubt entitled to be admitted’ . . . the INA explicitly requires that this third ‘catchall’
18 category of applicants for admission be mandatorily detained for the duration of their
19 immigration proceedings”); *Matter of Li*, 29 I. & N. Dec. at 69 (“[A]n applicant for
20 admission who is arrested and detained without a warrant while arriving in the United
21 States, whether or not at a port of entry, and subsequently placed in removal proceedings is
22 detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any
23 subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section
24 1225(b) therefore applies because Petitioner is present in the United States without being
25 admitted.

26 Petitioners’ argument that § 1225(b)(2)(A) is limited in scope to detention incident to
27 border inspection and does not apply to long-time residents arrested years after entry is
28 unpersuasive. *See* ECF No. 6, Page 6, lines 3-4. The BIA has long recognized that “many

1 people who are not *actually* requesting permission to enter the United States in the ordinary
2 sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.”
3 *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Petitioner “provide[] no legal
4 authority for the proposition that after some undefined period of time residing in the interior
5 of the United States without lawful status, the INA provides that an applicant for admission
6 is no longer ‘seeking admission,’ and has somehow converted to a status that renders him or
7 her eligible for a bond hearing under section 236(a) of the INA.” *Matter of Yajure Hurtado*, 29
8 I. & N. Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I. & N. Dec. at 743).

9 Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36
10 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569
11 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of
12 the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are
13 both those individuals present without admission and those who arrive in the United States.
14 See 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under §1225(a)(1).
15 See *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221; *Matter of Lemus-Losa*, 25 I. & N. Dec. at
16 743. Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants
17 for admission or otherwise seeking admission” to be inspected by immigration officers. 8
18 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive – a word or phrase that
19 is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).”
20 *United States v. Woods*, 571 U.S. 31, 45 (2013).

21 Petitioners’ interpretation also reads “applicant for admission” out of §
22 1225(b)(2)(A). One of the most basic interpretative canons instructs that a “statute should be
23 construed so that effect is given to all its provisions.” See *Corley v. United States*, 556 U.S. 303,
24 314 (2009) (cleaned up). Petitioner’s interpretation fails that test. It renders the phrase
25 “applicant for admission” in § 1225(b)(2)(A) “inoperative or superfluous, void or
26 insignificant.” See *id.* If Congress did not want § 1225(b)(2)(A) to apply to “applicants for
27 admission,” then it would not have included the phrase “applicants for admission” in the
28 subsection. See 8 U.S.C. § 1225(b)(2)(A); see also *Corley*, 556 U.S. at 314.

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

15 Congress passed IIRIRA to correct "an anomaly whereby immigrants who were
16 attempting to lawfully enter the United States were in a worse position than persons who
17 had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en
18 banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see*
19 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at
20 225 (1996)). It "intended to replace certain aspects of the [then] current 'entry doctrine,'
21 under which illegal aliens who have entered the United States without inspection gain
22 equities and privileges in immigration proceedings that are not available to aliens who
23 present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1,
24 at 225). The Court should reject Petitioners' interpretation because it would put aliens who
25 "crossed the border unlawfully" in a better position than those "who present themselves for
26 inspection at a port of entry." *Id.* Aliens who presented at a port of entry would be subject to
27 mandatory detention under § 1225, but those who crossed illegally would be eligible for a
28 bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225 ("The House

1 Judiciary Committee Report makes clear that Congress intended to eliminate the prior
2 statutory scheme that provided aliens who entered the United States without inspection
3 more procedural and substantive rights that those who presented themselves to authorities
4 for inspection.”).

5 In addition, on September 24, 2025, the Court in *Chavez v. Noem*, denied a TRO after
6 finding that Petitioners who do not contest that they are aliens present in the United States
7 who have not been admitted.” *Chavez*, 2025 WL 2730228. “By the plain language of §
8 1225(a)(1), then Petitioners are applicants for admission and thus subject to the mandatory
9 detention provision of applicants for admission under § 1225(b)(2)” *Id.* Such a reading of the
10 statute comports with Congress’ addition of §1225(a)(1) by IIRIRA in 1996. Prior to
11 IIRIRA, an “anomaly” existed “whereby immigrants who were attempting to lawfully enter
12 the United States were in a worse position than persons who had crossed the border
13 unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). The addition of § 1225(a)(1)
14 “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their
15 physical presence in the country, are placed on equal footing in removal proceedings under
16 the INA — in the position of an ‘applicant for admission.’” *Id.* As the Ninth Circuit did
17 recently in *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024), we thus also
18 “refuse to interpret the INA in a way that would in effect repeal that statutory fix” intended
19 by Congress in enacting IIRIRA. *Chavez*, at 4. Because Petitioners are properly detained
20 under § 1225, they cannot show entitlement to relief.

21 ***b. Petitioners cannot show irreparable harm.***

22 To prevail on their request for interim injunctive relief, Petitioners must demonstrate
23 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th
24 Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197,
25 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See*
26 *Winter*, 555 U.S. at 22. And as discussed above, detention alone is not an irreparable injury.
27 *See Reyes*, 2021 WL 662659, at *3 (“[C]ivil detention after the denial of a bond hearing [does
28 not] constitute[] irreparable harm such that prudential exhaustion should be waived.”).

1 Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm
2 is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an
3 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
4 entitled to such relief.” *Winter*, 555 U.S. at 22. Here, as explained above, because
5 Petitioners’ alleged harm “is essentially inherent in detention, the Court cannot weigh this
6 strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL
7 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

8 ***c. Balance of Equities do not tip in Petitioners’ favor***

9 It is well settled that the public interest in enforcement of the United States’
10 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58
11 (1976); *Blackie’s House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has recognized
12 that the public interest in enforcement of the immigration laws is significant.”) (citing cases);
13 *see also Nken*, 556 U.S. at 435 (“There is always a public interest in prompt execution of
14 removal orders: The continued presence of an alien lawfully deemed removable undermines
15 the streamlined removal proceedings IIRIRA established and permits and prolongs a
16 continuing violation of United States law.”) (internal quotation omitted). The BIA also has
17 an “institutional interest” to protect its “administrative agency authority.” *See McCarthy v.*
18 *Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*,
19 534 U.S. 516 (2002). “Exhaustion is generally required as a matter of preventing premature
20 interference with agency processes, so that the agency may function efficiently and so that it
21 may have an opportunity to correct its own errors, to afford the parties and the courts the
22 benefit of its experience and expertise, and to compile a record which is adequate for
23 judicial review.” *Glob. Rescue Jets, LLC v. Kaiser Found. Health Plan, Inc.*, 30 F.4th 905, 913
24 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not
25 the courts, ought to have primary responsibility for the programs that Congress has charged
26 them to administer.” *McCarthy*, 503 U.S. at 145.

27 Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large
28 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*

1 *Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13,
2 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

3 In this case, as explained above, Petitioners cannot succeed on the merits of their
4 claims because their detention is under §1225(b)(2)(A). The balancing of equities and the
5 public interest weigh heavily against granting Petitioners equitable relief.

6 **IV. Conclusion**

7 For the foregoing reasons, Federal Respondents respectfully request that the Court
8 deny Petitioners' motion for temporary restraining order.

9 Respectfully submitted this 4th day of December 2025.

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