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

11 HUMBERTO PEREZ,
 12
 Petitioner,
 13
 v.

Case No. 2:25-cv-02390-CDS-BNW
**Federal Respondents' Response to
 Emergency Motion for Temporary
 Restraining Order**

14 PAMELA BONDI, Attorney General of the
 United States; KRISTI NOEM, Secretary,
 United States Department of Homeland
 15 Security; MICHAEL BERNACKE, Field
 Director, Salt Lake City Office; TODD
 16 LYONS, Acting Director; JOHN MATTOS,
 Nevada Southern Detention Center,
 17
 Respondents.
 18

19 Federal Respondents Pamela Bondi, Kristi Noem, Michael Bernacke, and Todd
 20 Lyons, hereby respond to Petitioner Humberto Perez' Emergency Motion for Temporary
 21 Restraining Order. ECF No. 8. The motion for TRO should be denied for the reasons
 22 stated below. This response is supported by the accompanying memorandum of points and
 23 authorities.

24 Respectfully submitted this 7th day of January 2026.

25 TODD BLANCHE
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 26 SIGAL CHATTAH
 First Assistant United States Attorney
 27 /s/ Virginia T. Tomova
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 28 Assistant United States Attorney

Memorandum of Points and Authorities

I. Introduction

Petitioner erroneously argues that his detention is under 8 U.S.C. § 1231. Petitioner is detained under 8 U.S.C. § 1225, because he is appealing an Immigration Judge's order to the Board of Immigration Appeals (BIA), and he does not have a final order of removal. Thus, § 1231 does not apply. Petitioner has an order of removal to Cuba, but such removal was withheld by the IJ, who also denied Petitioner's application for asylum, a waiver under INA § 212(h) and an adjustment of status. *See* IJ Order, attached as Exhibit A. The IJ also withheld his decision on the Petitioner's application for protection under the Convention Against Torture (CAT). Exhibit A. That means that the IJ has not yet decided on the Petitioner's CAT application. This decision is typically made after the case has been reviewed by an IJ and the BIA. The withholding of the decision indicates that the IJ is still evaluating the case and has not yet rendered a final decision. The Petitioner has the right to appeal this decision which the Petitioner has done in this case on November 6, 2025. His appeal is still pending before the BIA. When there is no final order of removal, Petitioner's detention is lawful under § 1225(b). If the Court finds that this Petitioner is detained under § 1226 (a) instead, then the Court can order that he has a bond hearing, although it is highly questionable if this Petitioner would even be eligible for a bond hearing considering his extensive criminal conviction history for larceny and burglary from 2009 to 2025. Petitioner has not requested a bond hearing since he has been in detention, because he does not want an IJ to investigate his extensive criminal conviction history of larceny and burglary from 2009 to 2025. *See* I-213, attached as Exhibit B. Petitioner is currently detained under § 1225 (b), pending the outcome of his appeal to the BIA.

Petitioner is an alien who entered the United States without admission and has remained unlawfully in the United States. *See* NTA, attached as Exhibit C. He was subsequently apprehended by federal immigration authorities and detained pending his removal proceedings. An alien who arrives in the United States and cannot demonstrate his admissibility generally is either promptly removed or detained pending removal

1 proceedings. See 8 U.S.C. §§ 1225(b)(1)(A), (B), and (2)(A). Here, petitioner, an illegal
2 alien, is a citizen of Cuba, who has a long-standing history of violating the laws of the
3 United States, including four (5) convictions for larceny and one conviction for burglary.
4 Exhibit B. Petitioner falls within the definition of an applicant for admission subject to
5 mandatory detention under 8 U.S.C. 1225(b)(2). He is challenging temporary detention
6 while the decision is made regarding his appeal of the IJ's order. In his motion, Petitioner
7 requests that this Court releases him from detention while the appeal regarding his removal
8 proceedings are pending before the BIA without requiring him to exhaust his administrative
9 remedies. Plaintiff's propositions are against Supreme Court precedent.

10 Petitioner cannot show a likelihood of success on the merits, because to grant the
11 motion, Petitioner asks this Court to set aside a lawfully enacted regulation and statute,
12 finding both unconstitutionally applied, as alleged violations of the Due Process Clause of
13 the United States Constitution. But as discussed below, the Supreme Court has long
14 recognized Congress's broad power and immunity from judicial control to expel aliens from
15 the country and to detain them while doing so. *See e.g., Shaughnessy v. United States*, 345 U.S.
16 206, 210 (1953); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). The United States' temporary
17 detention of Petitioner in no way exceeds this broad authority and does not deprive
18 Petitioner of Due Process. *See Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during
19 removal proceedings is a constitutionally permissible part of that process.") Petitioner falls
20 precisely within the statutory definition of aliens subject to mandatory detention without
21 bond found in § 1225(b)(2).

22 Through multiple provisions of 8 U.S.C. § 1252, Congress has unambiguously
23 stripped federal courts of jurisdiction over challenges to the commencement of removal
24 proceedings, including detention pending removal proceedings. Petitioner cannot show a
25 likelihood of success on the merits because he seeks to circumvent the detention statute
26 under which he is rightfully detained. Petitioner cannot establish a likelihood of success on
27 the merits and his motion should be denied.

28 II. Statutory Framework

1 Before 1996, the federal immigration laws required the detention of aliens who
2 presented at a port of entry but allowed aliens who were already unlawfully present in the
3 United States to obtain release pending removal proceedings. Congress passed the Illegal
4 Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop
5 conferring greater privileges and benefits on aliens who enter the United States unlawfully
6 as compared to those who present themselves for inspection at a port of entry. As relevant
7 here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any
8 alien “who is an applicant for admission” and defines that term to encompass any “alien
9 present in the United States who has not been admitted” following inspection by
10 immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no exception for
11 how far into the country the alien traveled or how long the alien managed to evade
12 detection. Unless the Secretary exercises the narrow and discretionary parole authority,
13 detention is the rule for aliens who have never been lawfully admitted.

14 There is no dispute that Petitioner is an “applicant for admission” under Section
15 1225(a), who entered the United States without inspection, in violation of 8 U.S.C. § 1325.
16 Although, this Court continues to hold that illegals such as Petitioner, are not applicants for
17 admission under § 1225, but rather should be treated under § 1226(a), and given bond
18 hearings, because the Government has previously operated under a different understanding
19 of the law, this Court must still apply the language of Section 1225(b)(2)(A) as written.
20 Numerous jurisdictions have ruled that 8 U.S.C. § 1225(b) is the correct statute.¹

21
22 ¹ *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228, *4-5 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, --- F.
23 Supp. 3d ---, 2025 WL 2780351, *2, *6-10 (D. Neb. Sept. 30, 2025); *Garibay-Robledo v. Noem*, No. 25-CV-177, Dkt.
24 No. 9, at 1, 4-9 (N.D. Tex. Oct. 24, 2025); *Cirrus Rojas v. Olson*, 2025 WL 3033967, *5, *8-9 (E.D. Wis. Oct. 30, 2025);
25 *Barrios Sandoval v. Acuna*, 2025 WL 3048926, *4-7 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, 2025 WL
26 3095972, *4-7 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942, *1-5 (E.D. Mo. Nov. 10, 2025);
27 *Rodriguez v. Noem*, --- F. Supp. 3d ---, 2025 WL 3639440, *1-2 (E.D. Tex. Dec. 10, 2025); *Altamirano Ramos v. Lyons*,
28 -- F. Supp. 3d ---, 2025 WL 3199872, *4-9 (C.D. Cal. Nov. 12, 2025); *Cabanas v. Bondi*, 2025 WL 3171331, *1, *3-6
(S.D. Tex. Nov. 13, 2025); *Alonzo v. Noem*, --- F. Supp. 3d ---, 2025 WL 3208284, *3-5 (E.D. Cal. Nov. 17, 2025);
Valencia v. Chestnut, --- F. Supp. 3d ---, 2025 WL 3205133, *2-4 (E.D. Cal. Nov. 17, 2025); *Tenemasa-Lema v. Hyde*, ---
F. Supp. 3d ---, 2025 WL 3280555, *1-4 (D. Mass. 2025); *Suarez v. Noem*, 2025 WL 3312168, *1-2 (E.D. Mo. Nov.
28, 2025); *Hernandez Cruz v. Noem*, 2025 WL 3482630, *1-5 (C.D. Cal. Dec. 2, 2025); *Topal v. Bondi*, 2025 WL
3486894, *2 (W.D. Lou. Dec. 3, 2025); *Chen v. Almodovar*, 2025 WL 3484855, *1, *4-8 (S.D.N.Y. Dec. 4, 2025);
Candido v. Bondi, 2025 WL 3484932, *1-3 (W.D.N.Y. Dec. 4, 2025); *Coronado v. Secretary, Department of Homeland
Security*, 2025 WL 3628229, *1, 7-12 (S.D. Ohio Dec. 15, 2025); *Marco Paredes Padilla v. Galovich, et al.*, Case No. 25-

1 Ultimately, based on the prior rulings from this court, the district court's
2 interpretation is not only contrary to text, but it would reimpose the same perverse regime
3 that IIRIRA was meant to eliminate—requiring the detention of aliens who present at a port
4 of entry as the law requires, but authorizing the release of those aliens who enter the United
5 States in violation of law. The Court should not endorse such a backwards outcome—
6 particularly one that is so plainly subversive of congressional intent. For these same reasons,
7 Petitioner's due process claims also fail because such is entirely derivative of the Petitioner's
8 mistaken interpretation of §1225. Petitioner cannot show a likelihood of success on the
9 merits and his motion should be denied.

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
27

cv-865 (W.D. Wis. Dec. 16, 2025); *Rodriguez v. Olson*, --- F. Supp. 3d ---, 2025 WL 3672856, *4-6 (N. Ill. 2025); A.M.
28 v. Joyce, 2025 WL 3706922, *4 (D. Me. Dec. 22, 2025).

1 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
2 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
3 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
4 removal proceeding “if the examining immigration officer determines that [the] alien
5 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
6 1225(b)(2)(A); see *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025) (“[A]liens who
7 are present in the United States without admission are applicants for admission as defined
8 under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for
9 the duration of their removal proceedings.”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA
10 2025) (“for aliens arriving in and seeking admission into the United States who are placed
11 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
12 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
13 *Jennings*, 583 U.S. at 299). However, the Department of Homeland Security (DHS) has the
14 sole discretionary authority to temporarily release on parole “any alien applying for
15 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or
16 significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

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

26 At a custody redetermination, the IJ may continue detention or release the alien on
27 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
28 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,

1 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
2 consider, an alien “who presents a danger to persons or property should not be released
3 during the pendency of removal proceedings.” *Id.* at 38.

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

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

15 Federal regulations provide that both the noncitizen and the government have a right
16 to appeal an IJ's decision regarding a custody status or bond redetermination to the BIA. 8
17 C.F.R. §§ 1003.19(f), 1003.38. Petitioner filed an appeal before the BIA regarding the IJ's
18 denial of his application for asylum, a waiver under INA § 212(h) and an adjustment of
19 status.

20 **III. Factual Background**

21 Petitioner Humberto Perez is an illegal alien in the United States, a native and
22 citizen of Cuba who came into DHS custody on July 2, 2025. He entered without an
23 inspection the United States. *See* NTA, attached as Exhibit C. Petitioner has multiple
24 convictions for larceny starting in 2009 through 2023. *See* I-213, attached as Exhibit B. On
25 March 10, 2009, he was arrested for larceny which resulted in a conviction on March 25,
26 2009. *Id.* On March 17, 2011, he was arrested again for larceny which resulted in another
27 conviction on March 22, 2011. On January 30, 2014, he was arrested, charged, convicted
28 and sentenced to 364 days for larceny. *Id.* On April 25, 2019, he was arrested, charged,

1 convicted and sentenced to 60 months for burglary. *Id.* On December 22, 2023, he was
2 arrested, charged, convicted of larceny. *Id.* On October 24, 2025, Petitioner had his final
3 hearing before the Immigration Court on his asylum and withholding of removal
4 applications. The Immigration Judge denied Petitioner an asylum but withheld his removal
5 to Cuba. *See* Order of an Immigration Judge, attached as Exhibit A. On November 6, 2025,
6 petitioner filed an appeal of the IJ's order which is currently pending before the Board of
7 Immigration Appeals (BIA). *See* Filing Receipt for Appeal, attached as Exhibit D. Because
8 Petitioner filed an appeal before the BIA, he does not have a final removal order and
9 therefore Petitioner is lawfully detained under 8 U.S.C. § 1225. Prior to filing an appeal,
10 Petitioner has not requested a bond hearing before the Immigration Court, because
11 Petitioner does not want an IJ to investigate his extensive criminal conviction history of
12 larceny and burglary, which most likely will make him ineligible for a bond.

13 Petitioner is an applicant for admission, and is in removal proceedings pursuant to 8
14 U.S.C. § 1229a. Petitioner is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen
15 who entered the United States without being admitted or paroled, and under 8 U.S.C. §
16 1182(a)(7)(A)(i)(I) as an immigrant not in possession of a valid unexpired immigrant visa
17 or other valid entry document at the time of application for admission.

18 **IV. Standard of Review**

19 Judicial review of immigration matters, including of detention issues, is limited.
20 *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination*
21 *Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo*
22 *v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow*
23 *Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character
24 and therefore subject only to narrow judicial review”). The Supreme Court has thus
25 “underscore[d] the limited scope of inquiry into immigration legislation,” and “has
26 repeatedly emphasized that over no conceivable subject is the legislative power of Congress
27 more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal
28

1 quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S.
2 522, 531 (1954).

3 The plenary power of Congress and the Executive Branch over immigration
4 necessarily encompasses immigration detention, because the authority to detain is elemental
5 to the authority to deport, and because public safety is at stake. See *Shaughnessy v. United*
6 *States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or
7 exclude aliens as a fundamental sovereign attribute exercised by the Government’s political
8 departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538
9 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v.*
10 *United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if
11 those accused could not be held in custody pending the inquiry into their true character, and
12 while arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510,
13 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of
14 that process.”)

15 V. Argument

16 a. *Petitioner Fails to Establish Entitlement to Interim Injunctive Relief*

17 Petitioner’s motion should be denied because he has not established that he is
18 entitled to an interim injunctive relief. Petitioner cannot establish that he is likely to
19 succeed on the underlying merits, there is no showing of irreparable harm, and the equities
20 do not weigh in his favor. In general, the showing required for a temporary restraining
21 order is the same as that required for a preliminary injunction. See *Stuhlberg Int’l Sales Co.,*
22 *Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion
23 for a temporary restraining order, a plaintiff must “establish that he is likely to succeed on
24 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
25 that the balance of equities tips in his favor, and that an injunction is in the public interest.”
26 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see *Nken v. Holder*, 556 U.S. 418,
27 426 (2009). Plaintiff must demonstrate a “substantial case for relief on the merits.” *Leiva-*
28 *Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When “a plaintiff has failed to show

1 the likelihood of success on the merits, we need not consider the remaining three [*Winter*
2 factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

3 The final two factors required for preliminary injunctive relief—balancing of the
4 harm to the opposing party and the public interest—merge when the Government is the
5 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
6 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
7 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*
8 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434
9 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C.
10 Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking
11 injunctive relief “must show either (1) a probability of success on the merits and the
12 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance
13 of hardships tips sharply in the moving party’s favor.”) (quoting *Andreiu v. Ashcroft*, 253
14 F.3d 477, 483 (9th Cir. 2001

15 ***1. No Likelihood of Success on the Merits.***

16 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740.
17 Petitioner cannot establish that he is likely to succeed on the underlying merits of his claims
18 for alleged statutory and constitutional violations because he is subject to mandatory
19 detention under 8 U.S.C. § 1225. Petitioner does not have a final removal order, because he
20 is appealing the IJ’s order denying his application for asylum, a waiver under INA § 212(h)
21 and an adjustment of status. *See IJ Order*, attached as Exhibit A. Petitioner also cannot
22 claim that his application under CAT was granted because, the IJ also withheld his decision
23 on such application. Exhibit A. In addition, Petitioner is making unsubstantiated statements
24 in his motion regarding “threatening Petitioner with deportation,” and “forcibly removing
25 Petitioner from his cell between midnight and 6 a.m.” ECF No. 8, p. 15. There is no
26 evidence that such events have occurred. To the extent that Petitioner’s counsel wants to get
27 involved in the current pending appeal before the BIA and the Immigration Court,
28 Petitioner’s counsel has not provided a completed, signed and filed Form G-28.

1 As described above, Petitioner does not have a final removal order because he is
2 appealing an IJ's order before the BIA. Thus, the Court should reject Petitioner's arguments
3 that he is detained under § 1231. Petitioner is lawfully detained under § 1225(b)(2). It is
4 telling, why Petitioner does not want the Court to order a bond hearing but demands instead
5 an immediate release. Petitioner knows that his criminal conviction history will be
6 examined thoroughly by an IJ, who most likely will find him ineligible for a bond.
7 Petitioner is subject to mandatory detention, and the Court should not allow for this
8 Petitioner to be released while his appeal is pending before the BIA.

9 When there is "an irreconcilable conflict in two legal provisions," then "the specific
10 governs over the general." *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th
11 Cir. 2017). In contrast, § 1225 is narrower. *See* 8 U.S.C. § 1225. It applies only to
12 "applicants for admission"; that is, as relevant here, aliens present in the United States who
13 have not be admitted. *See id.*; *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275
14 (N.D. Fla. 2023). Because Petitioner falls within that category, the specific detention
15 authority under § 1225 governs over the general authority found at § 1226(a).

16 *a. Petitioner is Lawfully Detained Pursuant to 8 U.S.C. § 1225(b)(2).*

17 Petitioner's detention is lawful and statutorily authorized pursuant to 8 U.S.C. §
18 1225(b)(2), which requires mandatory detention throughout the entire removal proceedings.
19 Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for
20 admission, if the examining immigration officer determines that an alien seeking admission
21 is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a
22 proceeding under section 1229a [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The
23 Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and
24 that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at
25 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

26 Contrary to Petitioner's arguments that he is detained under § 1231, he falls squarely
27 within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement as Petitioner
28 is an "applicant for admission" to the United States, without a final removal order. If

1 Petitioner does not think that he is an applicant for admission, then what is his status in the
2 United States. As described above, an “applicant for admission” is an alien present in the
3 United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Petitioner’s alien record
4 clearly shows that he has not been admitted to the United States. Exhibit C. Congress’s
5 broad language here is unequivocally intentional—an undocumented alien is to be “deemed
6 for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1). Regardless
7 of Petitioner’s characterization that “an applicant for admission” should only include aliens
8 captured at the border or at a port of entry, he is “deemed” an applicant for admission based
9 on Petitioner’s failure to seek lawful admission to the United States before an immigration
10 officer, which is undisputed. And because Petitioner has not demonstrated to an examining
11 immigration officer that Petitioner is “clearly and beyond a doubt entitled to be admitted,”
12 Petitioner’s detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, the Petitioner is
13 properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that Petitioner
14 “shall be” detained.

15 The Supreme Court has confirmed an alien present in the country but never admitted
16 is deemed “an applicant for admission” and that “detention must continue” “until removal
17 proceedings have concluded” based on the “plain meaning” of 8 U.S.C. § 1225. *Jennings v.*
18 *583 U.S. at 289 & 299.* At issue in *Jennings* was the statutory interpretation. The Supreme
19 Court reversed the Ninth Circuit Court of Appeal’s imposition of a six-month detention
20 time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the
21 statute and reversed on these grounds, remanding the constitutional Due Process claims for
22 initial consideration before the lower court. *Id.* But under the words of the statute, as
23 explained by the Supreme Court, 8 U.S.C. § 1225 includes aliens like the Petitioner who are
24 present but have not been admitted and they shall be detained pending their removal
25 proceedings. Specifically, the Supreme Court declared, “an alien who ‘arrives in the United
26 States,’ or ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant
27 for admission.’” *Id.* at 287 (emphasis on “or” added). In doing so, the Court explained both
28 aliens captured at the border and those illegally residing within the United States would fall

1 under § 1225. This would include Petitioner as an alien who is present in the country
2 without being admitted.

3 And now, the Board of Immigration Appeals (BIA) has confirmed the application of
4 § 1225 in a published formal decision: “Based on the plain language of section 235(b)(2)(A)
5 of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration
6 Judges lack authority to hear bond requests or to grant bond to aliens who are present in the
7 United States without admission.” *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
8 Indeed, §1225 applies to aliens who are present in the country *even for years* and who have
9 not been admitted. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 226 (BIA 2025) (“the
10 statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention
11 of all aliens who are applicants for admission, without regard to how many years the alien
12 has been residing in the United States without lawful status.” (citing 8 U.S.C. §1225)). The
13 BIA found § 1225 clear and unambiguous as explained above. Thus, because the alien was
14 present in the United States (regardless of how long) and because he was never admitted, he
15 shall be detained during his removal proceedings. *See id.* at 228. In doing so, the BIA
16 rejected the same arguments raised by Petitioner and by other similar petitioners in this
17 District. For example, the BIA rejected the “legal conundrum” postulated by the alien that
18 while he may be an applicant for admission under the statute, he is somehow not actually
19 “seeking admission.” *Id.* at 221. The BIA explained that such a leap failed to make sense
20 and violated the plain meaning of the statute. *See id.* Next, the BIA rejected the alien’s
21 argument that the mandatory detention scheme under § 1225 rendered the recent
22 amendment to § 1226 under the Laken Riley Act superfluous. *Id.* The BIA explained,
23 “nothing in the statutory text of section 236(c), including the text of the amendments made
24 by the Laken Riley Act, purports to alter or undermine the provisions of section
25 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the
26 definition of the statute ‘shall be detained for [removal proceedings].’” *Id.* at 222. The BIA
27 explained further that any redundancy between the two statutes does not give license to
28 “rewrite or eviscerate” one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239

1 (2020)). Also, the BIA reasoned that it matters not that the alien was initially served with a
2 warrant listing 8 U.S.C. § 1226 and informing him of his ability to seek bond—an
3 Immigration Court cannot bestow jurisdiction upon itself with that initial paperwork when
4 said jurisdiction has been specifically revoked by Congress in § 1225. *See id.* at 226-27
5 (explaining “the mere issuance of an arrest warrant does not endow an Immigration Judge
6 with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8
7 U.S.C. § 1225(b)(2)(A).”) The BIA further pointed out, “Our acknowledgement that aliens
8 detained under section 236(a) may be eligible for discretionary release on bond does not
9 mean that *all* aliens detained while in the United States with a warrant of arrest are detained
10 under section 236(a) and entitled to a bond hearing before the Immigration Judge,
11 regardless of whether they are applicants for admission under section 235(b)(2)(A) of the
12 INA, 8 U.S.C. § 1225(b)(2)(A).” *Id.* at 227 (quotations omitted). Thus, the BIA rejected this
13 and every argument raised by the alien to find § 1225 applied to him despite residing in the
14 country for years. *Id.* The BIA mandate is also sweeping. The *Hurtado* decision was
15 unanimous, conducted by a three-appellate judge panel. *See id. generally.* It is binding on all
16 immigration judges in the United States. 8 C.F.R. § 1003.1(g)(1) (“[D]ecisions of the Board
17 and decisions of the Attorney General are binding on all officers and employees of DHS or
18 immigration judges in the administration of the immigration laws of the United States.”).
19 And because the decision was published, a majority of the entire Board must have voted to
20 publish it, which establishes the decision “to serve as precedent[] in all proceedings
21 involving the same issue or issues.” *See* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law
22 of the land in immigration court today. *See also* 8 C.F.R. § 1003.1(d)(1) (explaining “the
23 Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the
24 immigration judges, and the general public on the proper interpretation and administration
25 of the Act and its implementing regulations.”). And in the Board’s own words, *Hurtado* is a
26 “precedential opinion.” *Id.* at 216.

27 Here, the Petitioner did not request a bond hearing before an IJ. Instead, Petitioner
28 filed an asylum application which was denied. The IJ also denied his request for adjustment

1 of status and a waiver under INA § 212(h). Exhibit A. The IJ granted his application for
2 withholding of removal to Cuba but withheld his decision on the CAT application.
3 Petitioner cannot claim that his application under CAT was granted. Petitioner currently
4 has a pending appeal before the BIA regarding the IJ's order. Thus, Petitioner has failed to
5 exhaust his administrative remedies which is a requirement by the Ninth Circuit. Pursuant
6 to the statutory and Supreme Court case law, Petitioner's detention under § 1225(b) is
7 lawful while the appeal on his removal proceedings is pending. Any argument by Petitioner
8 that his detention exceeds statutory authority is clearly invalid and should be rejected. The
9 United States respectfully maintains §1225 straightforwardly applies to Petitioner, especially
10 in light of *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (explaining "an alien who "arrives
11 in the United States," or "is present" in this country but "has not been admitted," is treated
12 as "an applicant for admission." § 1225(a)(1)). Petitioner is properly detained under § 1225
13 and cannot show an entitlement to relief and/or likelihood of success on the merits.

14 **2. Irreparable Harm Has Not Been Shown.**

15 To prevail on their request for interim injunctive relief, Petitioner must demonstrate
16 "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668,
17 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football*
18 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable
19 harm is insufficient. *See Winter*, 555 U.S. at 22. And as discussed above, detention alone is
20 not an irreparable injury. *See Reyes*, 2021 WL 662659, at *3, *aff'd sub nom. Diaz Reyes*, 2021
21 WL 3082403 ("[C]ivil detention after the denial of a bond hearing [does not] constitute[]
22 irreparable harm such that prudential exhaustion should be waived."). Further, "[i]ssuing a
23 preliminary injunction based only on a possibility of irreparable harm is inconsistent with
24 [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that
25 may only be awarded upon a clear showing that the plaintiff is entitled to such relief."
26 *Winter*, 555 U.S. at 22. Here, as explained above, because Petitioners' alleged harm "is
27 essentially inherent in detention, the Court cannot weigh this strongly in favor of"
28 Petitioners. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal.
Dec. 24, 2018).

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

2 It is well settled that the public interest in enforcement of the United States'
3 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58
4 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that
5 the public interest in enforcement of the immigration laws is significant.") (citing cases); *see*
6 *also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of
7 removal orders: The continued presence of an alien lawfully deemed removable undermines
8 the streamlined removal proceedings IIRIRA established and permits and prolongs a
9 continuing violation of United States law.") (internal quotation omitted). The BIA also has
10 an "institutional interest" to protect its "administrative agency authority." *See McCarthy v.*
11 *Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*,
12 534 U.S. 516 (2002). "Exhaustion is generally required as a matter of preventing premature
13 interference with agency processes, so that the agency may function efficiently and so that it
14 may have an opportunity to correct its own errors, to afford the parties and the courts the
15 benefit of its experience and expertise, and to compile a record which is adequate for
16 judicial review." *Global Rescue Jets, LLC v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905,
17 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed,
18 "agencies, not the courts, ought to have primary responsibility for the programs that
19 Congress has charged them to administer." *McCarthy*, 503 U.S. at 145. Moreover,
20 "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the
21 determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV
22 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting
23 *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above, Petitioner cannot
24 succeed on the merits of his claims, because he does not have a final order of removal, and
25 he is detained under § 1225(b), not § 1231. The balancing of equities and the public interest
weigh heavily against granting Petitioner's equitable relief.

26 **b. Petitioner Has Failed to Exhaust Administrative Remedies**

27 Similarly, requiring exhaustion here would be consistent with Congressional intent
28 to have claims, such as Petitioner's, subject to the channeling provisions of § 1252(b)(9) that

1 provide for appeal to the BIA and then, if unsuccessful, the Ninth Circuit. “Exhaustion can
2 be either statutorily or judicially required.” *Acevedo–Carranza v. Ashcroft*, 371 F.3d 539, 541
3 (9th Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is
4 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
5 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential requirement, a court has
6 discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26
7 (9th Cir. 1981)). Here, Petitioner is appealing the IJ’s order, and such appeal is currently
8 pending before the BIA. Instead, he filed the instant motion for TRO before the Court,
9 attempting to bypass the administrative scheme, which is contrary to Congressional intent.

10 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
11 corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That section does not
12 specifically require petitioners to exhaust direct appeals before filing petitions for habeas
13 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas
14 petitioners exhaust available judicial and administrative remedies before seeking relief under
15 § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency expertise
16 makes agency consideration necessary to generate a proper record and reach a proper
17 decision; (2) relaxation of the requirement would encourage the deliberate bypass of the
18 administrative scheme; and (3) administrative review is likely to allow the agency to correct
19 its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d
20 812, 815 (9th Cir. 2007) (internal quotation marks omitted).

21 “When a petitioner does not exhaust administrative remedies, a district court
22 ordinarily should either dismiss the petition without prejudice or stay the proceedings until
23 the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v. Crawford*,
24 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th
25 Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071,
26 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s
27 administrative proceedings before the BIA). Moreover, a “petitioner cannot obtain review of
28 procedural errors in the administrative process that were not raised before the agency merely
by alleging that every such error violates due process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th

1 Cir. 1987); *see also Sola v. Holder*, 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to
2 address a due process argument that was not raised below because it could have been
3 addressed by the agency).

4 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA is
5 the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
6 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned
7 to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See*
8 *Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept.
9 15, 2017) (noting a denial of bond to an immigration detainee was “a question well suited
10 for agency expertise”); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay
11 of §§ 1225(b)(1) and 1226). *But see Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896-97 (9th Cir.
12 2021); *Vasquez Garcia*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4-5.

13 Waiving exhaustion would also “encourage other detainees to bypass the BIA and
14 directly appeal their no-bond determinations from the IJ to federal district court.” *Aden*,
15 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek
16 relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
17 straight-to-federal-court strategy would needlessly increase the burden on district courts. *See*
18 *Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419,
19 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion
20 requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting
21 “exhaustion promotes efficiency”). If the IJs erred as Petitioner alleges or may eventually
22 allege, this Court should allow the administrative process to correct itself. *See id.*

23 Moreover, detention alone is not an irreparable injury. Discretion to waive
24 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
25 Petitioners bear the burden to show that an exception to the exhaustion requirement applies.
26 *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention after the
27 denial of a bond hearing [does not] constitute[] irreparable harm such that prudential
28 exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3

1 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL
2 3082403 (9th Cir. July 21, 2021).

3 Because Petitioner has not exhausted his administrative remedies, his motion should
4 be dismissed.

5 **VI. Conclusion**

6 For the foregoing reasons, Federal Respondents respectfully request that the Court
7 deny the Petitioner's Motion for Preliminary Injunction.

8 Respectfully submitted this 7th day of January 2026.

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