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

11 FLORENCIO PADILLA PEREZ,  
12  
13 Petitioner,  
v.

Case No. 2:25-cv-02399-RFB-DJA

**Federal Respondents' Response to  
Order to Show Cause, ECF No. 5**

14 KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
15 Security (DHS); TODD LYONS, in his  
official capacity as Acting Director of  
16 Immigration and Customs Enforcement  
(ICE); FIELD OFFICE DIRECTOR, for  
17 Immigration and Customs Enforcement  
(ICE) for Southern Nevada; JOHN  
18 MATTOS, in his official capacity as Warden  
of the Nevada Southern Detention Center;  
19 PAMELA BONDI, in her official capacity  
as the United States Attorney General; THE  
20 EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; UNITED  
21 STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT (ICE),

22 Respondents.  
23

24 The Federal Respondents hereby submit this Response to the Court's Order to  
25 Show Cause why Petitioner's Petition for Writ of Habeas Corpus and Motion for  
26 Temporary Restraining Order should not be granted. (ECF Nos. 1, 4, 5). Petitioner's  
27 requested relief should be denied because he has failed to demonstrate that he is entitled to  
28

1 a preliminary injunction. In addition, Petitioner's Petition for Writ of Habeas Corpus  
2 should be dismissed as Petitioner is subject to mandatory detention under 8 U.S.C. §  
3 1225(b)(2). This response is supported by the following memorandum of points and  
4 authorities.

5 Federal Respondents waive oral argument related to this pleading.

### 6 **I. Introduction**

7 Petitioner is detained in Immigration and Customs Enforcement (ICE) custody at the  
8 Nevada Southern Detention Center, in Pahrump, Nevada pending removal proceedings.  
9 ECF No. 1 at ¶1. Petitioner has been detained since August 4, 2025. *Id.* at ¶2. In September,  
10 Petitioner was granted bond by an Immigration Judge in the amount of \$2,500. *Id.* at ¶3.  
11 Following the Court's Order, DHS sought reconsideration. Thereafter, the IJ reversed its  
12 decision and ordered that bond could not be granted because it lacked jurisdiction to do so  
13 under the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.* at ¶¶4-5. In October  
14 2025, an IJ entered an order granting Petitioner's Application for Cancellation of Removal.  
15 *Id.* at ¶7. DHS timely filed an appeal within 30 days. *See* Exhibits A, B.

16 Petitioner filed the instant action on December 3, 2025 and a Motion for Temporary  
17 Restraining Order on December 9, 2025. ECF No. 9.

18 Petitioner is claiming that he is unlawfully detained by DHS because DHS filed an  
19 untimely appeal of the IJ's order granting his application for cancellation of removal and  
20 because mandatory detention under § 1225(b)(2)(A) does not apply to him since he  
21 previously entered and is now residing in the United States and such individuals are subject  
22 to a different statute, § 1226(a), that allows for release on conditional parole or bond. ECF  
23 No. 1 at 12-14, 15-16. Petitioner's motion for injunctive relief requests that this Court order  
24 that Petitioner be immediately released without any bond conditions. ECF No. 2 at 10.  
25 Even apart from these preliminary issues, Petitioner cannot show a likelihood of success on  
26 the merits because DHS's appeal was timely filed and because Petitioner seeks to circumvent  
27 the detention statute under which he is rightfully detained to secure a bond hearing to which  
28 he is not entitled. The Court should deny Petitioner's Petition for Writ of Habeas Corpus

1 and Motion for Temporary Restraining Order.

## 2 **II. Statutory Background**

### 3 **A. Detention Under 8 U.S.C. § 1225**

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

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

19 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583  
20 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*  
21 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a  
22 removal proceeding “if the examining immigration officer determines that [the] alien  
23 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §  
24 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are present  
25 in the United States without admission are applicants for admission as defined under section  
26 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of  
27 their removal proceedings.”); *Matter of Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens  
28 arriving in and seeking admission into the United States who are placed directly in full

1 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates  
2 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).  
3 However, the Department of Homeland Security (DHS) has the sole discretionary authority  
4 to temporarily release on parole “any alien applying for admission to the United States” on  
5 a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §  
6 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

7 In this case, Petitioner is an applicant for admission because he is an alien who  
8 arrived in the United States without being admitted. Under 8 U.S.C. § 1225(b)(2)(A)  
9 Petitioner is subject to mandatory detention until removal proceedings have concluded.

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

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

19 At a custody redetermination, the IJ may continue detention or release the alien on  
20 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad  
21 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,  
22 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs  
23 consider, an alien “who presents a danger to persons or property should not be released  
24 during the pendency of removal proceedings.” *Id.* at 38.

#### 25 **C. Review Before the Board of Immigration Appeals**

26 The Board of Immigration Appeals (BIA) is an appellate body within the Executive  
27 Office for Immigration Review (EOIR) and possesses delegated authority from the Attorney  
28 General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those

1 administrative adjudications under the [INA] that the Attorney General may by regulation  
2 assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1.  
3 A notice of administrative appeal must be filed with the BIA within 30 calendar days of the  
4 mailing of the IJ’s decision. 8 C.F.R. § 1003.38(b). The notice of appeal is deemed filed on  
5 the date that it is received by the BIA. *Id.* § 1003.38(c). An appeal is not considered properly  
6 filed unless it is received by the BIA, along with all required documents, within the 30-day  
7 window. *Id.* § 1003.3(a)(2). The BIA has the discretion to summarily dismiss an appeal  
8 where the appeal is untimely. *Id.* § 1003.1(d)(2)(i)(G).

9 The BIA not only resolves particular disputes before it, but is also directed to,  
10 “through precedent decisions, [] provide clear and uniform guidance to DHS, the  
11 immigration judges, and the general public on the proper interpretation and administration  
12 of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by  
13 the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §  
14 1003.1(d)(7).

### 15 **III. Argument**

#### 16 **A. Petitioner’s Claims Present No Case or Controversy.**

17 The Constitution limits federal judicial power to designated “cases” and  
18 “controversies.” U.S. Const., Art. III, § 2; *Sec. & Exch. Comm’n v. Med. Comm. for Hum. Rts.*,  
19 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case” or  
20 “controversy” within the meaning of Article III). “Absent a real and immediate threat of  
21 future injury there can be no case or controversy, and thus no Article III standing for a party  
22 seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412,  
23 at \*3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlow Env’t Servs., Inc.*, 528  
24 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it is the plaintiff’s burden  
25 to establish standing by demonstrating that, if unchecked by the litigation, the defendant’s  
26 allegedly wrongful behavior will likely occur or continue, and that the threatened injury if  
27 certainly impending.”). At the “irreducible constitutional minimum,” standing requires that  
28 Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the

1 challenged action of the United States and (3) likely to be redressed by a favorable decision.  
2 *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

3 **B. Petitioner’s Claims and Requests are Barred by 8 U.S.C. § 1252.**

4 Petitioner bears the burden of establishing that this Court has subject matter  
5 jurisdiction over his claims. *See Ass’n of Am. Med. Colleges v. United States*, 217 F.3d 770, 778–  
6 79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter,  
7 Petitioner’s claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C.  
8 § 1252(b)(9).

9 Courts lack jurisdiction over any claim or cause of action arising from any decision  
10 to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. §  
11 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of  
12 any alien arising from the decision or action by the Attorney General to *commence*  
13 *proceedings, adjudicate cases, or execute removal orders.*”) (emphasis added); *Reno v. Am.-Arab*  
14 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress  
15 to focus special attention upon, and make special provision for, judicial review of the  
16 Attorney General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]  
17 execut[ing] removal orders” — which represent the initiation or prosecution of various  
18 stages in the deportation process.”). In other words, § 1252(g) removes district court  
19 jurisdiction over “three discrete actions that the Attorney may take: [his] ‘decision or action’  
20 to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at  
21 482 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action  
22 by the Attorney General to commence proceedings [and] adjudicate cases,” over which  
23 Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

24 Section 1252(g) also bars district courts from hearing challenges to the method by  
25 which the government chooses to commence removal proceedings, including the decision to  
26 detain an alien pending removal. *See Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194,  
27 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
28

1 discretionary decisions to commence removal” and bars review of “ICE’s decision to take  
2 [plaintiff] into custody and to detain him during his removal proceedings”).

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

12 Other courts have held, “[f]or the purposes of § 1252, the Attorney General  
13 commences proceedings against an alien when the alien is issued a Notice to Appear before  
14 an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008  
15 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien  
16 against whom proceedings are commenced and detain that individual until the conclusion  
17 of those proceedings.” *Id.* at \*3. “Thus, an alien’s detention throughout this process arises  
18 from the Attorney General’s decision to commence proceedings” and review of claims  
19 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d  
20 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at \*6; 8 U.S.C. § 1252(g). *But see*  
21 *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at \*4 (S.D. Cal. Sept. 3,  
22 2025).

23 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and  
24 fact . . . arising from any action taken or proceeding brought to remove an alien from the United States  
25 under this subchapter shall be available only in judicial review of a final order under this  
26 section.” Further, judicial review of a final order is available only through “a petition for  
27 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). The Supreme  
28 Court has made clear that § 1252(b)(9) is “the unmistakable ‘zipper’ clause,” channeling

1 “judicial review of all” “decisions and actions leading up to or consequent upon final orders  
2 of deportation,” including “non-final order[s],” into proceedings before a court of appeals.  
3 *Reno*, 525 U.S. at 483, 485; see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting  
4 § 1252(b)(9) is “breathtaking in scope and vise-like in grip and therefore swallows up  
5 virtually all claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and  
6 § 1252(b)(9) mean that *any* issue — whether legal or factual — arising from *any* removal-  
7 related activity can be reviewed *only* through the [petition for review] PFR process.”  
8 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge their  
9 removal proceedings, they are not jurisdiction-stripping statutes that, by their terms,  
10 foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial  
11 review over final orders of removal to the courts of appeal.”) (emphasis in original); see *id.* at  
12 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-  
13 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

14 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring one.”  
15 *Aguilar v. U.S. Immigr. & Customs Enft Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir.  
16 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision  
17 of this chapter . . . shall be construed as precluding review of constitutional claims or  
18 questions of law raised upon a petition for review filed with an appropriate court of appeals  
19 in accordance with this section.” See also *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008)  
20 (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The  
21 petition-for-review process before the court of appeals ensures that noncitizens have a  
22 proper forum for claims arising from their immigration proceedings and “receive their day  
23 in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); see also *Rosario v.*  
24 *Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
25 obviate . . . Suspension Clause concerns” by permitting judicial review of  
26 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
27 law.”). These provisions divest district courts of jurisdiction to review both direct and  
28 indirect challenges to removal orders, including decisions to detain for purposes of removal

1 or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges  
2 to the “decision to detain [an alien] in the first place or to seek removal”).

3 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has  
4 explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*,  
5 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to  
6 review both direct and indirect challenges to removal orders, including decisions to detain  
7 for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section  
8 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to  
9 seek removal[.]”). Here, Petitioner challenges the government’s decision and action to  
10 detain him, which arises from DHS’s decision to commence removal proceedings, and is  
11 thus an “action taken . . . to remove [him] from the United States.” *See* 8 U.S.C. §  
12 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842,  
13 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because  
14 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-  
15 00106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no  
16 judicial review of the threshold detention decision, which flows from the government’s  
17 decision to “commence proceedings”). *But see Garcia*, 2025 WL 2549431, at \*3-4. As such,  
18 the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why  
19 Petitioner’s claims are unreviewable here.

20 While holding that it was unnecessary to comprehensively address the scope of §  
21 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that  
22 may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found  
23 that “§ 1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . .  
24 [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this  
25 case, Petitioner does challenge the government’s decision to detain him in the first place and  
26 argues that such detention is a violation of his rights. ECF No. 2, Sections IV. B, D. Though  
27 Petitioner attempts to frame his challenge as one relating to detention authority, rather than  
28 a challenge to DHS’s decision to detain him in the first instance, such creative framing does

1 not evade the preclusive effect of § 1252(b)(9). Indeed, that Petitioner is challenging the  
2 basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an  
3 ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J.,  
4 concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioner’s claims would be more  
5 appropriately presented before the appropriate federal court of appeals because he  
6 challenges the government’s decision or action to detain him, which must be raised before a  
7 court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

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

10 **C. Petitioner Has Failed to Exhaust Administrative Remedies.**

11 Similarly, requiring exhaustion here would be consistent with Congressional intent  
12 to have claims, such as Petitioner’s, subject to the channeling provisions of § 1252(b)(9) that  
13 provide for appeal to the BIA and then, if unsuccessful, the Ninth Circuit. “Exhaustion can  
14 be either statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541  
15 (9th Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is  
16 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d  
17 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential requirement, a court has  
18 discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26  
19 (9th Cir. 1981)). Here, Petitioner is attempting to bypass the administrative scheme by not  
20 appealing his bond denial to the BIA.

21 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas  
22 corpus.” *Castro-Cortez v. I.N.S.*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That section does not  
23 specifically require petitioners to exhaust direct appeals before filing petitions for habeas  
24 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas  
25 petitioners exhaust available judicial and administrative remedies before seeking relief under  
26 § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency expertise  
27 makes agency consideration necessary to generate a proper record and reach a proper  
28 decision; (2) relaxation of the requirement would encourage the deliberate bypass of the

1 administrative scheme; and (3) administrative review is likely to allow the agency to correct  
2 its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d  
3 812, 815 (9th Cir. 2007) (internal quotation marks omitted).

4 “When a petitioner does not exhaust administrative remedies, a district court  
5 ordinarily should either dismiss the petition without prejudice or stay the proceedings until  
6 the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v. Crawford*,  
7 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th  
8 Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071,  
9 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s  
10 administrative proceedings before the BIA). Moreover, a “petitioner cannot obtain review of  
11 procedural errors in the administrative process that were not raised before the agency merely  
12 by alleging that every such error violates due process.” *Vargas v. U.S. Dep’t of Immigr. &*  
13 *Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*, 720 F.3d 1134, 1135–  
14 36 (9th Cir. 2013) (declining to address a due process argument that was not raised below  
15 because it could have been addressed by the agency).

16 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA is  
17 the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-  
18 1441RSL, 2019 WL 5802013, at \*2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned  
19 to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See*  
20 *Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at \*2 (W.D. Wash. Sept.  
21 15, 2017) (noting a denial of bond to an immigration detainee was “a question well suited  
22 for agency expertise”); *Matter of M-S-*, 27 I. & N. Dec. 509, 515–18 (2019) (addressing  
23 interplay of §§ 1225(b)(1) and 1226). *But see Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896–  
24 97 (9th Cir. 2021); *Garcia*, 2025 WL 2549431, at \*4-5.

25 Waiving exhaustion would also “encourage other detainees to bypass the BIA and  
26 directly appeal their no-bond determinations from the IJ to federal district court.” *Aden*,  
27 2019 WL 5802013, at \*2. Individuals, like Petitioner, would have little incentive to seek  
28 relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-

1 straight-to-federal-court strategy would needlessly increase the burden on district courts. *See*  
2 *Bd. of Trs. of Constr. Laborers' Pension Tr. for S. California v. M.M. Sundt Constr. Co.*, 37 F.3d  
3 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion  
4 requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting  
5 “exhaustion promotes efficiency”). If the IJs erred as Petitioners allege or may eventually  
6 allege, this Court should allow the administrative process to correct itself. *See id.*

7 Moreover, detention alone is not an irreparable injury. Discretion to waive  
8 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).

9 Petitioners bear the burden to show that an exception to the exhaustion requirement applies.

10 *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at \*3. “[C]ivil detention after the  
11 denial of a bond hearing [does not] constitute[] irreparable harm such that prudential  
12 exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at \*3  
13 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL  
14 3082403 (9th Cir. July 21, 2021). Petitioner cannot claim that he is exempt from exhausting  
15 administrative remedies, when he has refused to participate in the administrative process. It  
16 is unclear but it appears that Petitioner has not appealed the IJ’s decision to deny bond to  
17 the BIA. Moreover, Petitioner’s arguments concerning the timeliness of DHS’ Notice of  
18 Appeal can be addressed with the BIA, which is currently hearing the merits of Petitioner’s  
19 Cancellation of Removal. The BIA also has the ability to dismiss an untimely appeal. *See* 8  
20 C.F.R. § 1003.1(d)(2)(i)(G). In addition, if Petitioner disagrees with the BIA decision,  
21 Congress is clear that an appeal of a BIA decision is before the circuit courts not district  
22 courts. Because Petitioner has not exhausted his administrative remedies, this matter should  
23 be dismissed.

#### 24 **D. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief.**

25 Alternatively, Petitioner’s motion for temporary restraining order should be denied  
26 because he has not established that he is entitled to interim injunctive relief. The legal  
27 standard for issuing a TRO is essentially identical to the standard for issuing a preliminary  
28 injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.

1 2001); *see also Zamfir v. Casperlabs, LLC*, 528 F. Supp. 3d 1136, 1142 (S.D. Cal. 2021). “A  
2 party seeking a preliminary injunction must meet one of two variants of the same standard.”  
3 *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017). Under the *Winter*  
4 standard, a party is entitled to a preliminary injunction if he demonstrates (1) that he is  
5 likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence  
6 of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an  
7 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
8 *see Nken v. Holder*, 556 U.S. 418, 426 (2009). A party must make a showing on all four  
9 prongs. *A Woman’s Friend Pregnancy Res. Clinic v. Becerra*, 901 F.3d 1166, 1167 (9th Cir. 2018)  
10 (cleaned up). Plaintiffs must demonstrate a “substantial case for relief on the merits.” *Leiva-*  
11 *Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When “a plaintiff has failed to show  
12 the likelihood of success on the merits, we need not consider the remaining three [*Winter*  
13 factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

14 The final two factors required for preliminary injunctive relief — balancing of the  
15 harm to the opposing party and the public interest — merge when the Government is the  
16 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically  
17 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure  
18 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*  
19 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. of California v. Orrin W.*  
20 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211,  
21 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant  
22 seeking injunctive relief “must show either (1) a probability of success on the merits and the  
23 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance  
24 of hardships tips sharply in the moving party’s favor.”) (quoting *Andreiu v. Ashcroft*, 253 F.3d  
25 477, 483 (9th Cir. 2001)).

26 In his motion, Petitioner has not argued that the Ninth Circuit’s more demanding  
27 standard for a mandatory, rather than prohibitory, injunction applies. In the absence of such  
28 argument, and considering the Ninth Circuit’s classification of an injunction seeking to

1 “prohibit[ ] the government from conducting new bond hearings under procedures that will  
2 likely result in unconstitutional detentions” as “a classic form of prohibitory injunction,”  
3 *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017), the Court should apply the  
4 prohibitory standard here. See *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL  
5 2730228 (S.D. Cal. Sept. 24, 2025). Under the Ninth Circuit’s “serious questions” test, “a  
6 ‘sliding scale’ variant of the *Winter* test,” a party is “entitled to a preliminary injunction if it  
7 demonstrates (1) serious questions going to the merits, (2) a likelihood of irreparable injury,  
8 (3) a balance of hardships that tips sharply towards the [petitioner], and (4) the injunction is  
9 in the public interest.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180,  
10 1190 (9th Cir. 2024) (internal quotation marks omitted). “[I]f a [petitioner] can only show  
11 that there are serious questions going to the merits—a lesser showing than likelihood of  
12 success on the merits—then a preliminary injunction may still issue if the balance of  
13 hardships tips sharply in the [petitioner’s] favor, and the other two *Winter* factors are  
14 satisfied.” *Alliance for the Wild Rockies*, 865 F.3d at 1217 (internal quotation marks omitted).

15 Petitioner cannot establish that he is likely to succeed on the underlying merits, there  
16 is no showing of irreparable harm, and the equities do not weigh in his favor.

17 ***1. Petitioner is not likely to succeed on the underlying merits.***

18 A preliminary injunction is an “extraordinary remedy never awarded as of right.”  
19 *Winter*, 555 U.S. at 7, 24. The first *Winter* factor — likely success on the merits — is “the  
20 most important” and is a threshold inquiry. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.  
21 2015). Petitioners carry the burden of demonstrating a likelihood of success (or alternatively  
22 showing “serious questions going to the merits”). See *A Woman’s Friend Pregnancy Resource*  
23 *Clinic*, 901 F.3d at 1167; *Alliance for the Wild Rockies*, 865 F.3d at 1217.

24 ***i. DHS’ Appeal was Timely Filed***

25 Petitioner’s argument in support of emergency relief—that the Department of  
26 Homeland Security’s (“DHS”) appeal was untimely—is legally and factually incorrect. The  
27 record establishes that DHS filed its appeal within the thirty-day period prescribed by  
28 regulation, and Petitioner’s reliance on a later internal processing date does not alter that

1 conclusion.

2 Under 8 C.F.R. § 1003.38(b), a party must file a notice of appeal with the BIA within  
3 thirty days of the Immigration Judge’s decision. The regulations further provide that an  
4 appeal is considered “filed” on the date it is received by the BIA, not on the date it is  
5 processed or docketed. 8 C.F.R. § 1003.38(c); *see also Matter of Liadov*, 23 I. & N. Dec. 990,  
6 993 (BIA 2006) (holding that the BIA lacks authority to extend filing deadlines and that  
7 timeliness is determined by receipt).

8 Here, DHS’s notice of appeal was received by the BIA on November 18, 2025—well  
9 within the thirty-day filing deadline. *See* Exhibits A, B. That date controls for purposes of  
10 determining timeliness under the governing regulation. Petitioner’s focus on a later  
11 “processing” or “entered” date of November 24, 2025 is misplaced. Administrative  
12 processing or docketing that occurs after receipt does not retroactively render an otherwise  
13 timely appeal untimely, nor does it negate the fact that the appeal was filed in accordance  
14 with the regulation. To hold otherwise would inject uncertainty into a regulatory scheme  
15 that expressly hinges on the date of receipt and would penalize parties for matters entirely  
16 outside their control.

17 Because DHS complied with the thirty-day filing requirement set forth in 8 C.F.R. §  
18 1003.38(b)–(c), Petitioner cannot show a likelihood of success on the merits of his claim that  
19 the appeal was untimely.

20 *ii. Petitioner is Subject to Mandatory Detention Under sec. 1225*

21 In this case, Petitioner cannot establish that he is likely to succeed on the underlying  
22 merits of his claims for alleged statutory and constitutional violations because he is subject  
23 to mandatory detention under 8 U.S.C. § 1225. Petitioner contends that because he is a  
24 noncitizen residing in the United States who originally entered the United States without  
25 inspection or parole, and have not affirmatively sought admission, § 1225(b)(2)’s mandatory  
26 detention provision does not apply to him. ECF No. 1 at 10-16. Instead, he claims that he is  
27 likely to succeed on the merits based on the text of § 1225(b)(2) and its interplay with §  
28 1226(a), the legislative history of the Illegal Immigration Reform and Immigrant

1 Responsibility Act of 1996 (“IIRIRA”), and the BIA’s previous longstanding agency  
2 practice of granting bond redetermination for noncitizens present in the U.S. under §  
3 1226(a). ECF No. 2, Section IV.B.

4 Petitioner’s interpretation is inconsistent with the text of § 1225(b). The Court should  
5 reject Petitioner’s argument that § 1226(a) governs his detention instead of § 1225. When  
6 there is “an irreconcilable conflict in two legal provisions,” then “the specific governs over  
7 the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). 8  
8 U.S.C. § 1226(a) applies to those arrested and detained pending a decision on removal. 8  
9 U.S.C. § 1226(a); In contrast, § 1225 is narrower. *See* 8 U.S.C. § 1225. It applies only to  
10 “applicants for admission”; that is, as relevant here, aliens present in the United States who  
11 have not been admitted. *See id.*; *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275  
12 (N.D. Fla. 2023). Because Petitioner falls within that category, the specific detention  
13 authority under § 1225 governs over the general authority found at § 1226(a).

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

1 subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section  
2 1225(b) therefore applies because Petitioner is present in the United States without being  
3 admitted.

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

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

25 Petitioner’s interpretation also reads “applicant for admission” out of §  
26 1225(b)(2)(A). One of the most basic interpretative canons instructs that a “statute should be  
27 construed so that effect is given to all its provisions.” See *Corley v. United States*, 556 U.S. 303,  
28 314 (2009) (cleaned up). Petitioner’s interpretation fails that test. It renders the phrase

1 “applicant for admission” in § 1225(b)(2)(A) “inoperative or superfluous, void or  
2 insignificant.” *See id.* If Congress did not want § 1225(b)(2)(A) to apply to “applicants for  
3 admission,” then it would not have included the phrase “applicants for admission” in the  
4 subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

5 The district court’s decision in *Florida v. United States* is instructive here. There, the  
6 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission  
7 throughout removal proceedings, rejecting the assertion that DHS has discretion to choose  
8 to detain an applicant for admission under either section 1225(b) or 1226(a). 660 F. Supp.  
9 3d at 1275. The court held that such discretion “would render mandatory detention under §  
10 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border  
11 crossers would make little sense if DHS retained discretion to apply § 1226(a) and release  
12 illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore v. Kim*,  
13 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale failure” by  
14 the federal government motivated the 1996 amendments to the INA. *Florida*, 660 F. Supp.  
15 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. at 516, in which the  
16 Attorney General explained “section [1225] (under which detention is mandatory) and  
17 section [1226(a)] (under which detention is permissive) can be reconciled only if they apply  
18 to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

19 When the plain text of a statute is clear, “that meaning is controlling” and courts  
20 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842,  
21 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the  
22 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir.  
23 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were  
24 attempting to lawfully enter the United States were in a worse position than persons who  
25 had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en  
26 banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see*  
27 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at  
28 225 (1996)). It “intended to replace certain aspects of the [then] current ‘entry doctrine,’

1 under which illegal aliens who have entered the United States without inspection gain  
2 equities and privileges in immigration proceedings that are not available to aliens who  
3 present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1,  
4 at 225). The Court should reject Petitioner’s interpretation because it would put aliens who  
5 “crossed the border unlawfully” in a better position than those “who present themselves for  
6 inspection at a port of entry.” *Id.* Aliens who presented at a port of entry would be subject to  
7 mandatory detention under § 1225, but those who crossed illegally would be eligible for a  
8 bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225 (“The House  
9 Judiciary Committee Report makes clear that Congress intended to eliminate the prior  
10 statutory scheme that provided aliens who entered the United States without inspection  
11 more procedural and substantive rights that those who presented themselves to authorities  
12 for inspection.”).

13 In addition, on September 24, 2025, the Court in *Chavez v. Noem*, denied a TRO after  
14 finding that Petitioners who do not contest that they are “aliens present in the United States  
15 who have not been admitted.” *Chavez*, 2025 WL 2730228. “By the plain language of §  
16 1225(a)(1), then Petitioners are applicants for admission and thus subject to the mandatory  
17 detention provision of applicants for admission under § 1225(b)(2)” *Id.* Such a reading of the  
18 statute comports with Congress’ addition of §1225(a)(1) by IIRIRA in 1996. Prior to  
19 IIRIRA, an “anomaly” existed “whereby immigrants who were attempting to lawfully enter  
20 the United States were in a worse position than persons who had crossed the border  
21 unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). The addition of § 1225(a)(1)  
22 “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their  
23 physical presence in the country, are placed on equal footing in removal proceedings under  
24 the INA — in the position of an ‘applicant for admission.’” *Id.* As the Ninth Circuit did  
25 recently in *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024), we thus also  
26 “refuse to interpret the INA in a way that would in effect repeal that statutory fix” intended  
27 by Congress in enacting IIRIRA. *Chavez*, at 4. Because Petitioner is properly detained under  
28 § 1225, he cannot show entitlement to relief.

1                   **2. Petitioner cannot show irreparable harm.**

2           To prevail on his request for interim injunctive relief, Petitioner must demonstrate  
3 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th  
4 Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197,  
5 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See*  
6 *Winter*, 555 U.S. at 22. And as discussed above, detention alone is not an irreparable injury.  
7 *See Reyes*, 2021 WL 662659, at \*3 (“[C]ivil detention after the denial of a bond hearing [does  
8 not] constitute[] irreparable harm such that prudential exhaustion should be waived.”).  
9 Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm  
10 is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an  
11 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
12 entitled to such relief.” *Winter*, 555 U.S. at 22. Here, as explained above, because  
13 Petitioner’s alleged harm “is essentially inherent in detention, the Court cannot weigh this  
14 strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL  
15 7474861, at \*10 (N.D. Cal. Dec. 24, 2018).

16                   **3. Balance of Equities does not tip in Petitioner’s favor.**

17           It is well settled that the public interest in enforcement of the United States’  
18 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58  
19 (1976); *Blackie’s House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has recognized  
20 that the public interest in enforcement of the immigration laws is significant.”) (citing cases);  
21 *see also Nken*, 556 U.S. at 435 (“There is always a public interest in prompt execution of  
22 removal orders: The continued presence of an alien lawfully deemed removable undermines  
23 the streamlined removal proceedings IIRIRA established and permits and prolongs a  
24 continuing violation of United States law.”) (internal quotation omitted). The BIA also has  
25 an “institutional interest” to protect its “administrative agency authority.” *See McCarthy v.*  
26 *Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*,  
27 534 U.S. 516 (2002). “Exhaustion is generally required as a matter of preventing premature  
28 interference with agency processes, so that the agency may function efficiently and so that it

1 may have an opportunity to correct its own errors, to afford the parties and the courts the  
2 benefit of its experience and expertise, and to compile a record which is adequate for  
3 judicial review.” *Glob. Rescue Jets, LLC v. Kaiser Found. Health Plan, Inc.*, 30 F.4th 905, 913  
4 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not  
5 the courts, ought to have primary responsibility for the programs that Congress has charged  
6 them to administer.” *McCarthy*, 503 U.S. at 145.

7 Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large  
8 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*  
9 *Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at \* 4 (D. Ariz. Dec. 13,  
10 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above,  
11 Petitioner cannot succeed on the merits of his claims because his detention is under  
12 §1225(b)(2)(A). The balancing of equities and the public interest weigh heavily against  
13 granting Petitioner equitable relief.

#### 14 **IV. Conclusion**

15 For the reasons stated herein Petitioner cannot satisfy the standards for such  
16 emergency relief. Petitioner’s Petition for Habeas Corpus similarly fails. The Order to Show  
17 Cause should be discharged and the Petitioner’s requested relief should be denied.

18 Respectfully submitted this 19th day of December 2025.

19  
20 TODD BLANCHE  
21 Deputy Attorney General of the United States  
22 SIGAL CHATTAH  
23 First Assistant United States Attorney

24  
25 /s/ Summer A. Johnson  
26 SUMMER A. JOHNSON  
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28

