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9

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

12 Alexis Ivan Venegas Banuelos,
13 Petitioner,

14 v.

15 Kristi NOEM, Secretary, U.S. Department
of Homeland Security, Pamela BONDI,
16 U.S. Attorney General, Jason KNIGHT,
Field Office Director of Enforcement and
Removal Operations, Salt Lake City Field
17 Office, John MATTOS, Warden of Nevada
Southern Detention Center,
18

19 Respondents.

Case No. 2:25-cv-02483-RFB-BNW

**Federal Respondents' Response to
Order to Show Cause, ECF No. 6**

21 The Federal Respondents hereby submit this Response to the Court's Order to
22 Show Cause why Petitioner's Motion for Temporary Restraining Order should not be
23 granted. (ECF Nos. 2, 6). Petitioner's motion should be denied because he has failed to
24 demonstrate that he is entitled to a preliminary injunction. In addition, Petitioner is subject
25 to mandatory detention under 8 U.S.C. § 1225(b)(2). This response is supported by the
26 following memorandum of points and authorities.

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28 / / /

I. Introduction

Petitioner is detained in Immigration and Customs Enforcement (ICE) custody at the Nevada Southern Detention Center, in Pahrump, Nevada pending removal proceedings. ECF No. 2 at 1. Petitioner has been detained since November 23, 2025, after being arrested for Driving Under the Influence. *Id.* at 2. Petitioner has a master calendar hearing in front of an Immigration Judge on January 6, 2026. *See* Exhibit A.

Petitioner is seeking to challenge the policy adopted by the Board of Immigration Appeals (“BIA”) in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.* at 2. Petitioner is claiming that he is unlawfully detained by DHS because the mandatory detention under § 1225(b)(2)(A) does not apply to him since he previously entered and is now residing in the United States and such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. ECF No. 2, Sections IV.B, D. Petitioner’s motion for injunctive relief requests that this Court order that Petitioner be provided a bond redetermination hearing to be held by the Immigration Court within seven (7) days, or failing that, be immediately released. ECF No. 2 at 21-22. Even apart from these preliminary issues, Petitioner cannot show a likelihood of success on the merits because he seeks to circumvent the detention statute under which he is rightfully detained to secure a bond hearing to which he is not entitled. The Court should deny Petitioner’s motion for temporary restraining order.

II. Statutory Background

A. Detention Under 8 U.S.C. § 1225

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

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid

1 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens
2 are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But
3 if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,”
4 immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii).
5 An alien “with a credible fear of persecution” is “detained for further consideration of the
6 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to
7 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” they
8 are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

9 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
10 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
11 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
12 removal proceeding “if the examining immigration officer determines that [the] alien
13 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
14 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are present
15 in the United States without admission are applicants for admission as defined under section
16 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of
17 their removal proceedings.”); *Matter of Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens
18 arriving in and seeking admission into the United States who are placed directly in full
19 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
20 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).
21 However, the Department of Homeland Security (DHS) has the sole discretionary authority
22 to temporarily release on parole “any alien applying for admission to the United States” on
23 a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §
24 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

25 In this case, Petitioner is an applicant for admission because he is an alien who
26 arrived in the United States without being admitted. Under 8 U.S.C. § 1225(b)(2)(A)
27 Petitioner is subject to mandatory detention until removal proceedings have concluded.
28

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

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

10 At a custody redetermination, the IJ may continue detention or release the alien on
11 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
12 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,
13 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
14 consider, an alien “who presents a danger to persons or property should not be released
15 during the pendency of removal proceedings.” *Id.* at 38.

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

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

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III. Argument

A. **Petitioner's Claims Present No Case or Controversy.**

The Constitution limits federal judicial power to designated “cases” and “controversies.” U.S. Const., Art. III, § 2; *Sec. & Exch. Comm’n v. Med. Comm. for Hum. Rts.*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case” or “controversy” within the meaning of Article III). “Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlow Env’t Servs., Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur or continue, and that the threatened injury if certainly impending.”). At the “irreducible constitutional minimum,” standing requires that Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

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

Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings, adjudicate cases, or execute removal orders.*”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress

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

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

16 In this case, Petitioner’s claims stem from ICE’s decision to commence removal
17 proceedings and therefore detain him. His detention arises from the decision to commence
18 proceedings against him. *See, e.g., Valencia-Mejia v. United States*, No. CV 08-2943 CAS
19 PJWX, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain
20 plaintiff until his hearing before the Immigration Judge arose from this decision to
21 commence proceedings.”); *Wang v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL
22 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. United States*, 975 F.3d 292,
23 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of
24 jurisdiction to review action to execute removal order).

25 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
26 commences proceedings against an alien when the alien is issued a Notice to Appear before
27 an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008
28 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien

1 against whom proceedings are commenced and detain that individual until the conclusion
2 of those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises
3 from the Attorney General’s decision to commence proceedings” and review of claims
4 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
5 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see*
6 *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3,
7 2025).

8 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and
9 fact . . . arising from any action taken or proceeding brought to remove an alien from the United States
10 under this subchapter shall be available only in judicial review of a final order under this
11 section.” Further, judicial review of a final order is available only through “a petition for
12 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). The Supreme
13 Court has made clear that § 1252(b)(9) is “the unmistakable ‘zipper’ clause,” channeling
14 “judicial review of all” “decisions and actions leading up to or consequent upon final orders
15 of deportation,” including “non-final order[s],” into proceedings before a court of appeals.
16 *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting
17 § 1252(b)(9) is “breathtaking in scope and vise-like in grip and therefore swallows up
18 virtually all claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
19 § 1252(b)(9) mean that *any* issue — whether legal or factual — arising from *any* removal-
20 related activity can be reviewed *only* through the [petition for review] PFR process.”
21 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge their
22 removal proceedings, they are not jurisdiction-stripping statutes that, by their terms,
23 foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial
24 review over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
25 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
26 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

27 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring one.”
28 *Aguilar v. U.S. Immigr. & Customs Enf’t Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir.

1 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision
2 of this chapter . . . shall be construed as precluding review of constitutional claims or
3 questions of law raised upon a petition for review filed with an appropriate court of appeals
4 in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008)
5 (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The
6 petition-for-review process before the court of appeals ensures that noncitizens have a
7 proper forum for claims arising from their immigration proceedings and “receive their day
8 in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v.*
9 *Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
10 obviate . . . Suspension Clause concerns” by permitting judicial review of
11 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
12 law.”). These provisions divest district courts of jurisdiction to review both direct and
13 indirect challenges to removal orders, including decisions to detain for purposes of removal
14 or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges
15 to the “decision to detain [an alien] in the first place or to seek removal”).

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

1 judicial review of the threshold detention decision, which flows from the government's
2 decision to "commence proceedings"). *But see Garcia*, 2025 WL 2549431, at *3-4. As such,
3 the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why
4 Petitioner's claims are unreviewable here.

5 While holding that it was unnecessary to comprehensively address the scope of §
6 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that
7 may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found
8 that "§ 1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . .
9 [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this
10 case, Petitioner does challenge the government's decision to detain him in the first place and
11 argues that such detention is a violation of his rights. ECF No. 2, Sections IV. B, D. Though
12 Petitioner attempts to frame his challenge as one relating to detention authority, rather than
13 a challenge to DHS's decision to detain him in the first instance, such creative framing does
14 not evade the preclusive effect of § 1252(b)(9). Indeed, that Petitioner is challenging the
15 basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention is an
16 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J.,
17 concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioner's claims would be more
18 appropriately presented before the appropriate federal court of appeals because he
19 challenges the government's decision or action to detain him, which must be raised before a
20 court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

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

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

24 Similarly, requiring exhaustion here would be consistent with Congressional intent
25 to have claims, such as Petitioner's, subject to the channeling provisions of § 1252(b)(9) that
26 provide for appeal to the BIA and then, if unsuccessful, the Ninth Circuit. "Exhaustion can
27 be either statutorily or judicially required." *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541
28 (9th Cir. 2004). "If exhaustion is statutory, it may be a mandatory requirement that is

1 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
2 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential requirement, a court has
3 discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26
4 (9th Cir. 1981)). Here, Petitioner is attempting to bypass the administrative scheme by not
5 appealing his bond denial to the BIA.

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

17 “When a petitioner does not exhaust administrative remedies, a district court
18 ordinarily should either dismiss the petition without prejudice or stay the proceedings until
19 the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v. Crawford*,
20 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th
21 Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071,
22 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s
23 administrative proceedings before the BIA). Moreover, a “petitioner cannot obtain review of
24 procedural errors in the administrative process that were not raised before the agency merely
25 by alleging that every such error violates due process.” *Vargas v. U.S. Dep’t of Immigr. &*
26 *Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*, 720 F.3d 1134, 1135–
27 36 (9th Cir. 2013) (declining to address a due process argument that was not raised below
28 because it could have been addressed by the agency).

1 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA is
2 the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
3 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned
4 to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See*
5 *Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept.
6 15, 2017) (noting a denial of bond to an immigration detainee was “a question well suited
7 for agency expertise”); *Matter of M-S-*, 27 I. & N. Dec. 509, 515–18 (2019) (addressing
8 interplay of §§ 1225(b)(1) and 1226). *But see Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896–
9 97 (9th Cir. 2021); *Garcia*, 2025 WL 2549431, at *4-5.

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

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

1 Petitioner does not know what the BIA will decide if Petitioner decides to appeal an
2 Immigration Judge’s decision, which has not even occurred. In addition, if Petitioner
3 disagrees with the BIA decision, Congress is clear that an appeal of a BIA decision is before
4 the circuit courts not district courts. Because Petitioner has not exhausted his administrative
5 remedies, this matter should be dismissed.

6 **D. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief.**

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

24 The final two factors required for preliminary injunctive relief — balancing of the
25 harm to the opposing party and the public interest — merge when the Government is the
26 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
27 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
28 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*

1 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. of California v. Orrin W.*
2 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211,
3 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant
4 seeking injunctive relief “must show either (1) a probability of success on the merits and the
5 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance
6 of hardships tips sharply in the moving party’s favor.”) (quoting *Andreiu v. Ashcroft*, 253 F.3d
7 477, 483 (9th Cir. 2001)).

8 In his motion, Petitioner has not argued that the Ninth Circuit’s more demanding
9 standard for a mandatory, rather than prohibitory, injunction applies. In the absence of such
10 argument, and considering the Ninth Circuit’s classification of an injunction seeking to
11 “prohibit[] the government from conducting new bond hearings under procedures that will
12 likely result in unconstitutional detentions” as “a classic form of prohibitory injunction,”
13 *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017), the Court should apply the
14 prohibitory standard here. See *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL
15 2730228 (S.D. Cal. Sept. 24, 2025). Under the Ninth Circuit’s “serious questions” test, “a
16 ‘sliding scale’ variant of the *Winter* test,” a party is “entitled to a preliminary injunction if it
17 demonstrates (1) serious questions going to the merits, (2) a likelihood of irreparable injury,
18 (3) a balance of hardships that tips sharply towards the [petitioner], and (4) the injunction is
19 in the public interest.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180,
20 1190 (9th Cir. 2024) (internal quotation marks omitted). “[I]f a [petitioner] can only show
21 that there are serious questions going to the merits—a lesser showing than likelihood of
22 success on the merits—then a preliminary injunction may still issue if the balance of
23 hardships tips sharply in the [petitioner’s] favor, and the other two *Winter* factors are
24 satisfied.” *Alliance for the Wild Rockies*, 865 F.3d at 1217 (internal quotation marks omitted).

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

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

28 A preliminary injunction is an “extraordinary remedy never awarded as of right.”

1 *Winter*, 555 U.S. at 7, 24. The first *Winter* factor — likely success on the merits — is “the
2 most important” and is a threshold inquiry. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.
3 2015). Petitioners carry the burden of demonstrating a likelihood of success (or alternatively,
4 showing “serious questions going to the merits”). See *A Woman's Friend Pregnancy Resource*
5 *Clinic*, 901 F.3d at 1167; *Alliance for the Wild Rockies*, 865 F.3d at 1217.

6 In this case, Petitioner cannot establish that he is likely to succeed on the underlying
7 merits of his claims for alleged statutory and constitutional violations because he is subject
8 to mandatory detention under 8 U.S.C. § 1225. Petitioner contends that because he is a
9 noncitizen residing in the United States who originally entered the United States without
10 inspection or parole, and have not affirmatively sought admission, § 1225(b)(2)'s mandatory
11 detention provision does not apply to him. ECF No. 2, Sections IV.B, C. Instead, he claims
12 that he is likely to succeed on the merits based on the text of § 1225(b)(2) and its interplay
13 with § 1226(a), the legislative history of the Illegal Immigration Reform and Immigrant
14 Responsibility Act of 1996 (“IIRIRA”), and the BIA’s previous longstanding agency
15 practice of granting bond redetermination for noncitizens present in the U.S. under §
16 1226(a). ECF No. 2, Section IV.B.

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

27 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien
28 present in the United States who has not been admitted or who arrives in the United

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

17 The BIA has long recognized that “many people who are not *actually* requesting
18 permission to enter the United States in the ordinary sense are nevertheless deemed to be
19 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734,
20 743 (BIA 2012). Petitioner “provide[s] no legal authority for the proposition that after some
21 undefined period of time residing in the interior of the United States without lawful status,
22 the INA provides that an applicant for admission is no longer ‘seeking admission,’ and has
23 somehow converted to a status that renders him or her eligible for a bond hearing under
24 section 236(a) of the INA.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221 (citing *Matter of*
25 *Lemus-Losa*, 25 I. & N. Dec. at 743).

26 Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36
27 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569
28 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of

1 the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are
2 both those individuals present without admission and those who arrive in the United States.
3 See 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under §1225(a)(1).
4 See *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221; *Matter of Lemus-Losa*, 25 I. & N. Dec. at
5 743. Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants
6 for admission or otherwise seeking admission” to be inspected by immigration officers. 8
7 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive – a word or phrase that
8 is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).”
9 *United States v. Woods*, 571 U.S. 31, 45 (2013).

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

18 The district court’s decision in *Florida v. United States* is instructive here. There, the
19 court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission
20 throughout removal proceedings, rejecting the assertion that DHS has discretion to choose
21 to detain an applicant for admission under either section 1225(b) or 1226(a). 660 F. Supp.
22 3d at 1275. The court held that such discretion “would render mandatory detention under §
23 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border
24 crossers would make little sense if DHS retained discretion to apply § 1226(a) and release
25 illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore v. Kim*,
26 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale failure” by
27 the federal government motivated the 1996 amendments to the INA. *Florida*, 660 F. Supp.
28 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. at 516, in which the

1 Attorney General explained “section [1225] (under which detention is mandatory) and
2 section [1226(a)] (under which detention is permissive) can be reconciled only if they apply
3 to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

4 When the plain text of a statute is clear, “that meaning is controlling” and courts
5 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842,
6 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the
7 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir.
8 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were
9 attempting to lawfully enter the United States were in a worse position than persons who
10 had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en
11 banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see*
12 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at
13 225 (1996)). It “intended to replace certain aspects of the [then] current ‘entry doctrine,’
14 under which illegal aliens who have entered the United States without inspection gain
15 equities and privileges in immigration proceedings that are not available to aliens who
16 present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1,
17 at 225). The Court should reject Petitioner’s interpretation because it would put aliens who
18 “crossed the border unlawfully” in a better position than those “who present themselves for
19 inspection at a port of entry.” *Id.* Aliens who presented at a port of entry would be subject to
20 mandatory detention under § 1225, but those who crossed illegally would be eligible for a
21 bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225 (“The House
22 Judiciary Committee Report makes clear that Congress intended to eliminate the prior
23 statutory scheme that provided aliens who entered the United States without inspection
24 more procedural and substantive rights than those who presented themselves to authorities
25 for inspection.”).

26 In addition, on September 24, 2025, the Court in *Chavez v. Noem*, denied a TRO after
27 finding that Petitioners who do not contest that they are “aliens present in the United States
28 who have not been admitted.” *Chavez*, 2025 WL 2730228. “By the plain language of §

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

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

15 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
16 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th
17 Cir. 1988) (citing *Los Angeles Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197,
18 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See*
19 *Winter*, 555 U.S. at 22. And as discussed above, detention alone is not an irreparable injury.
20 *See Reyes*, 2021 WL 662659, at *3 (“[C]ivil detention after the denial of a bond hearing [does
21 not] constitute[] irreparable harm such that prudential exhaustion should be waived.”).
22 Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm
23 is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an
24 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
25 entitled to such relief.” *Winter*, 555 U.S. at 22. Here, as explained above, because
26 Petitioner’s alleged harm “is essentially inherent in detention, the Court cannot weigh this
27 strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL
28 7474861, 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, Inc.*, 659 F.2d at 1221 (“The Supreme Court has recognized
5 that the public interest in enforcement of the immigration laws is significant.”) (citing cases);
6 *see 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.” *Glob. Rescue Jets, LLC v. Kaiser Found. Health Plan, Inc.*, 30 F.4th 905, 913
17 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not
18 the courts, ought to have primary responsibility for the programs that Congress has charged
19 them to administer.” *McCarthy*, 503 U.S. at 145.

20 Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large
21 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
22 *Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13,
23 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above,
24 Petitioner cannot succeed on the merits of his claims because his detention is under
25 §1225(b)(2)(A). The balancing of equities and the public interest weigh heavily against
26 granting Petitioner equitable relief.

27 ///

28 ///

1 **IV. Conclusion**

2 For the reasons stated herein Petitioner cannot satisfy the standards for such
3 emergency relief. The Order to Show Cause should be discharged and the Motion for
4 Temporary Restraining Order be denied in full.

5 Respectfully submitted this 19th day of December 2025.

6
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11 */s/ Summer A. Johnson*
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