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

11 ALEJANDRO DOROTEO-CHAVEZ,

12 Petitioner,

13 v.

14 KRISTI NOEM, *et.al.*,

15 Respondents.

Case No. 2:26-cv-00049-RFB-DJA

**Federal Respondents Response to the
Order to Show Cause (ECF No. 5)**

16
17 Federal Respondents hereby submit this Response to the Court's Order to Show
18 Cause why Petitioner's Motion for Preliminary Injunction should not be granted. (ECF No
19 5). Petitioner's requested relief should be denied because he has failed to demonstrate that
20 he is entitled to a preliminary injunction. This response is supported by the following
21 memorandum of points and authorities.

22 Federal Respondents waive oral argument with respect to the Petition for Writ of
23 Habeas Corpus, the Court's Order to Show Cause, this Response, and any Reply filed by
24 Petitioner.

25 **I. Introduction**

26 Petitioner is detained in Immigration and Customs Enforcement (ICE) custody at the
27 Henderson Detention Center, in Henderson, Nevada pending removal proceedings. ECF
28 No. 1 at 2. Petitioner has been detained since October 13, 2025. *Id* at 1-2. In December 8,

1 2025, Petitioner has a bond reconsideration hearing. ECF 1-3 at 2. The Immigration Judge
2 ruled that bond could not be granted because it lacked jurisdiction to do so under the *Matter*
3 *of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id* at 2.

4 Petitioner filed the instant action on January 9, 2026 (ECF No. 1) and a Motion for
5 Preliminary Injunction on January 9, 2026. ECF No. 2.

6 Petitioner is claiming that he is unlawfully detained by DHS as mandatory detention
7 under § 1225(b)(2)(A) does not apply to him since he previously entered and is now residing
8 in the United States and such individuals are subject to a different statute, § 1226(a), that
9 allows for release on conditional parole or bond. ECF No. 2 at 2. Petitioner’s motion for
10 injunctive relief requests that this Court order that Respondents release him on parole or, in
11 the alternative, to provide him a bond hearing and enjoin Respondents from applying
12 *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025) to his bond proceedings. ECF
13 No. 2 at 21. Petitioner cannot show a likelihood of success on the merits because Petitioner
14 seeks to circumvent the detention statute under which he is rightfully detained to secure a
15 bond hearing to which he is not entitled. The Court should deny Petitioner’s Motion for
16 Preliminary Injunction and discharge the Order to Show Cause.

17 **II. Statutory Background**

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

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

24 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
25 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
26 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens
27 are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But
28 if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,”

1 immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii).
2 An alien “with a credible fear of persecution” is “detained for further consideration of the
3 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to
4 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” they
5 are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

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

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

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

26 Section 1226 provides for arrest and detention “pending a decision on whether the
27 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
28 government may detain an alien during his removal proceedings, release him on bond, or

1 release him on conditional parole. By regulation, immigration officers can release aliens
2 upon demonstrating that the alien “would not pose a danger to property or persons” and “is
3 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request
4 a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of
5 removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

6 At a custody redetermination, the IJ may continue detention or release the alien on
7 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
8 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,
9 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
10 consider, an alien “who presents a danger to persons or property should not be released
11 during the pendency of removal proceedings.” *Id.* at 38.

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

13 The Board of Immigration Appeals (BIA) is an appellate body within the Executive
14 Office for Immigration Review (EOIR) and possesses delegated authority from the Attorney
15 General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those
16 administrative adjudications under the [INA] that the Attorney General may by regulation
17 assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1.

18 The BIA not only resolves particular disputes before it, but is also directed to,
19 “through precedent decisions, [] provide clear and uniform guidance to DHS, the
20 immigration judges, and the general public on the proper interpretation and administration
21 of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by
22 the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
23 1003.1(d)(7).

24 **III. Argument**

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

26 Petitioner bears the burden of establishing that this Court has subject matter
27 jurisdiction over his claims. *See Ass’n of Am. Med. Colleges v. United States*, 217 F.3d 770, 778–
28

1 79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter
2 Petitioner’s claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8
3 U.S.C. § 1252(b)(9).

4 Courts lack jurisdiction over any claim or cause of action arising from any decision
5 to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. §
6 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of
7 any alien arising from the decision or action by the Attorney General to *commence*
8 *proceedings, adjudicate cases, or execute removal orders.*”) (emphasis added); *Reno v. Am.-Arab*
9 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress
10 to focus special attention upon, and make special provision for, judicial review of the
11 Attorney General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
12 execut[ing] removal orders” — which represent the initiation or prosecution of various
13 stages in the deportation process.”). In other words, § 1252(g) removes district court
14 jurisdiction over “three discrete actions that the Attorney may take: [his] ‘decision or action’
15 to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at
16 482 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action
17 by the Attorney General to commence proceedings [and] adjudicate cases,” over which
18 Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

19 Section 1252(g) also bars district courts from hearing challenges to the method by
20 which the government chooses to commence removal proceedings, including the decision to
21 detain an alien pending removal. *See Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194,
22 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
23 discretionary decisions to commence removal” and bars review of “ICE’s decision to take
24 [plaintiff] into custody and to detain him during his removal proceedings”).

25 In this case, Petitioner’s claims stem from ICE’s decision to commence removal
26 proceedings and therefore detain him. His detention arises from the decision to commence
27 proceedings against him. *See, e.g., Valencia-Mejia v. United States*, No. CV 08-2943 CAS
28 PJWX, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain

1 plaintiff until his hearing before the Immigration Judge arose from this decision to
2 commence proceedings.”); *Wang v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL
3 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. United States*, 975 F.3d 292,
4 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of
5 jurisdiction to review action to execute removal order).

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

17 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and
18 fact . . . arising from any action taken or proceeding brought to remove an alien from the United States
19 under this subchapter shall be available only in judicial review of a final order under this
20 section.” Further, judicial review of a final order is available only through “a petition for
21 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). The Supreme
22 Court has made clear that § 1252(b)(9) is “the unmistakable ‘zipper’ clause,” channeling
23 “judicial review of all” “decisions and actions leading up to or consequent upon final orders
24 of deportation,” including “non-final order[s],” into proceedings before a court of appeals.
25 *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016)
26 (noting § 1252(b)(9) is “breathtaking in scope and vise-like in grip and therefore swallows up
27 virtually all claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5)
28

1 and § 1252(b)(9) mean that *any* issue — whether legal or factual — arising from *any*
2 removal-related activity can be reviewed *only* through the [petition for review] PFR
3 process.” *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can
4 challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their
5 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial
6 review over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
7 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
8 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

9 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring one.”
10 *Aguilar v. U.S. Immigr. & Customs Enft Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir.
11 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision
12 of this chapter . . . shall be construed as precluding review of constitutional claims or
13 questions of law raised upon a petition for review filed with an appropriate court of appeals
14 in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008)
15 (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The
16 petition-for-review process before the court of appeals ensures that noncitizens have a
17 proper forum for claims arising from their immigration proceedings and “receive their day
18 in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v.*
19 *Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
20 obviate . . . Suspension Clause concerns” by permitting judicial review of
21 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
22 law.”). These provisions divest district courts of jurisdiction to review both direct and
23 indirect challenges to removal orders, including decisions to detain for purposes of removal
24 or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges
25 to the “decision to detain [an alien] in the first place or to seek removal”).

26 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
27 explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*,
28 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to

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

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

1 challenges the government's decision or action to detain him, which must be raised before a
2 court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

3 As such, the Court should deny the pending motion and dismiss this matter for lack
4 of jurisdiction under 8 U.S.C. § 1252.

5 **B. Petitioner Has Failed to Exhaust Administrative Remedies.**

6 Similarly, requiring exhaustion here would be consistent with Congressional intent
7 to have claims, such as Petitioner's, subject to the channeling provisions of § 1252(b)(9) that
8 provide for appeal to the BIA and then, if unsuccessful, the Ninth Circuit. "Exhaustion can
9 be either statutorily or judicially required." *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541
10 (9th Cir. 2004). "If exhaustion is statutory, it may be a mandatory requirement that is
11 jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
12 742, 747 (9th Cir. 1991)). "If, however, exhaustion is a prudential requirement, a court has
13 discretion to waive the requirement." *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26
14 (9th Cir. 1981)). Here, Petitioner is attempting to bypass the administrative scheme by not
15 allowing the pending bond order appeal to be heard by the BIA and, if necessary, the Ninth
16 Circuit Court of Appeal.

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

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

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

22 Waiving exhaustion would also “encourage other detainees to bypass the BIA (or
23 dual track the BIA and district court) and directly appeal their no-bond determinations from
24 the IJ to federal district court.” *Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner,
25 would have little incentive to seek relief before the BIA if this Court permits review here.
26 And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
27 increase the burden on district courts. *See Bd. of Trs. of Constr. Laborers’ Pension Tr. for S.*
28 *California v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is

1 an important purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598
2 U.S. 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the IJs erred as
3 Petitioners allege or may eventually allege, this Court should allow the administrative
4 process to correct itself. *See id.*

5 Moreover, detention alone is not an irreparable injury. Discretion to waive
6 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
7 Petitioners bear the burden to show that an exception to the exhaustion requirement applies.
8 *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention after the
9 denial of a bond hearing [does not] constitute[] irreparable harm such that prudential
10 exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3
11 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL
12 3082403 (9th Cir. July 21, 2021). If Petitioner disagrees with the BIA decision, Congress is
13 clear that an appeal of a BIA decision is before the circuit courts not district courts. Because
14 Petitioner has not fully exhausted his administrative remedies, this matter should be
15 dismissed.

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

17 Alternatively, Petitioner’s motion for preliminary injunction should be denied
18 because he has not established that he is entitled to interim injunctive relief. The legal
19 standard for issuing a TRO is essentially identical to the standard for issuing a preliminary
20 injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
21 2001); *see also Zamfir v. Casperlabs, LLC*, 528 F. Supp. 3d 1136, 1142 (S.D. Cal. 2021). “A
22 party seeking a preliminary injunction must meet one of two variants of the same standard.”
23 *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017). Under the *Winter*
24 standard, a party is entitled to a preliminary injunction if he demonstrates (1) that he is
25 likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence
26 of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an
27 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
28 *see Nken v. Holder*, 556 U.S. 418, 426 (2009). A party must make a showing on all four

1 prongs. *A Woman’s Friend Pregnancy Res. Clinic v. Becerra*, 901 F.3d 1166, 1167 (9th Cir. 2018)
2 (cleaned up). Plaintiffs must demonstrate a “substantial case for relief on the merits.” *Leiva-*
3 *Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When “a plaintiff has failed to show
4 the likelihood of success on the merits, we need not consider the remaining three [*Winter*
5 factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

6 The final two factors required for preliminary injunctive relief — balancing of the
7 harm to the opposing party and the public interest — merge when the Government is the
8 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
9 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
10 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*
11 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. of California v. Orrin W.*
12 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211,
13 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant
14 seeking injunctive relief “must show either (1) a probability of success on the merits and the
15 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance
16 of hardships tips sharply in the moving party’s favor.”) (quoting *Andreiu v. Ashcroft*, 253 F.3d
17 477, 483 (9th Cir. 2001)).

18 In his motion, Petitioner has not argued that the Ninth Circuit’s more demanding
19 standard for a mandatory, rather than prohibitory, injunction applies. In the absence of such
20 argument, and considering the Ninth Circuit’s classification of an injunction seeking to
21 “prohibit[] the government from conducting new bond hearings under procedures that will
22 likely result in unconstitutional detentions” as “a classic form of prohibitory injunction,”
23 *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017), the Court should apply the
24 prohibitory standard here. *See Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL
25 2730228 (S.D. Cal. Sept. 24, 2025). Under the Ninth Circuit’s “serious questions” test, “a
26 ‘sliding scale’ variant of the *Winter* test,” a party is “entitled to a preliminary injunction if it
27 demonstrates (1) serious questions going to the merits, (2) a likelihood of irreparable injury,
28 (3) a balance of hardships that tips sharply towards the [petitioner], and (4) the injunction is

1 in the public interest.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180,
2 1190 (9th Cir. 2024) (internal quotation marks omitted). “[I]f a [petitioner] can only show
3 that there are serious questions going to the merits—a lesser showing than likelihood of
4 success on the merits—then a preliminary injunction may still issue if the balance of
5 hardships tips sharply in the [petitioner’s] favor, and the other two *Winter* factors are
6 satisfied.” *Alliance for the Wild Rockies*, 865 F.3d at 1217 (internal quotation marks omitted).

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

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

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

16 ***i. Petitioner is Subject to Mandatory Detention Under sec. 1225***

17 In this case, Petitioner cannot establish that he is likely to succeed on the underlying
18 merits of his claims for alleged statutory and constitutional violations because he is subject
19 to mandatory detention under 8 U.S.C. § 1225. Petitioner contends that because he is a
20 noncitizen residing in the United States who originally entered the United States without
21 inspection or parole, and have not affirmatively sought admission, § 1225(b)(2)’s mandatory
22 detention provision does not apply to him. ECF No. 1 at 10-16. Instead, he claims that he is
23 likely to succeed on the merits based on the text of § 1225(b)(2) and its interplay with §
24 1226(a), the legislative history of the Illegal Immigration Reform and Immigrant
25 Responsibility Act of 1996 (“IIRIRA”), and the BIA’s previous longstanding agency
26 practice of granting bond redetermination for noncitizens present in the U.S. under §
27 1226(a). ECF No. 2, Section I A.1-2, at 6-11.

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

11 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien
12 present in the United States who has not been admitted or who arrives in the United
13 States.” Applicants for admission “fall into one of two categories, those covered
14 by §1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section
15 1225(b)(2) — the provision relevant here — is the “broader” of the two. *Id.* It “serves as a
16 catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)
17 (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at
18 297; *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. at 218-19 (for “those aliens who are
19 seeking admission and who an immigration officer has determined are ‘not clearly and
20 beyond a doubt entitled to be admitted’ . . . the INA explicitly requires that this third
21 ‘catchall’ category of applicants for admission be mandatorily detained for the duration of
22 their immigration proceedings”); *Matter of Li*, 29 I. & N. Dec. at 69 (“[A]n applicant for
23 admission who is arrested and detained without a warrant while arriving in the United
24 States, whether or not at a port of entry, and subsequently placed in removal proceedings is
25 detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any
26 subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section
27 1225(b) therefore applies because Petitioner is present in the United States without being
28 admitted.

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

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

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

1 admission,” then it would not have included the phrase “applicants for admission” in the
2 subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

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

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

1 present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1,
2 at 225). The Court should reject Petitioner’s interpretation because it would put aliens who
3 “crossed the border unlawfully” in a better position than those “who present themselves for
4 inspection at a port of entry.” *Id.* Aliens who presented at a port of entry would be subject to
5 mandatory detention under § 1225, but those who crossed illegally would be eligible for a
6 bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225 (“The House
7 Judiciary Committee Report makes clear that Congress intended to eliminate the prior
8 statutory scheme that provided aliens who entered the United States without inspection
9 more procedural and substantive rights than those who presented themselves to authorities
10 for inspection.”).

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

27 ***2. Petitioner cannot show irreparable harm.***
28

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

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

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

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

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

13 **IV. Conclusion**

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

17
18 Respectfully submitted this 23rd day of January 2026.

19
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27
28