

1 SIGAL CHATTAH
 Acting United States Attorney
 2 District of Nevada
 Nevada Bar No. 8264
 3 CHRISTIAN R. RUIZ
 Assistant United States Attorney
 4 501 Las Vegas Blvd. So., Suite 1100
 Las Vegas, Nevada 89101
 5 Phone: (702) 388-6336
 Fax: (702) 388-6787
 6 Christian.Ruiz@usdoj.gov

7 *Attorneys for the Federal Respondents*

8
 9 **UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

10 Jefferson Dominguez-Lara, et al.,

11 Petitioners,

12 v.

13 Kristi Noem, et al.,

14 Federal Respondents.

Case No. 2:25-cv-01553-JAD-BNW

**Federal Respondents' Opposition to
 Petitioners' Motion for Preliminary
 Injunction**

15
 16 The Federal Respondents hereby submit this Opposition to Petitioners' Motion for
 17 Preliminary Injunction (ECF No. 3).

18 **I. Introduction**

19 Petitioners ask this Court to override Congress's detention scheme and short-circuit
 20 ongoing appeals before the Board of Immigration Appeals (BIA). They are not entitled to
 21 that extraordinary relief. As "applicants for admission" who were never admitted,
 22 Petitioners are lawfully detained under 8 U.S.C. § 1225(b)(2), which mandates custody
 23 through the conclusion of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281,
 24 297–99 (2018). Because § 1225 controls, Petitioners are not eligible for bond and any
 25 interim release lies, if at all, in DHS's case-by-case parole, 8 U.S.C. § 1182(d)(5)(A).

26 In *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082
 27 (D. Nev. Sept. 17, 2025), this Court confronted the United States' reliance on § 1225(b)(2).
 28 That decision, however, did not have the benefit of recent and subsequent authorities to aid

1 the Court in its statutory analysis of § 1225(b)(2). Just one week after this Court’s order in
2 *Maldonado*, the Southern District of California, in *Chavez v. Noem*, No. 3:25-cv-02325 (S.D.
3 Cal. Sept. 24, 2025), inherently adopted the reasoning set forth in *Matter of Yajure Hurtado*,
4 29 I&N Dec. 216, 218 (BIA 2025), and held that aliens who entered without inspection fall
5 within § 1225(b)(2), leaving immigration judges without jurisdiction to conduct bond
6 hearings.

7 The case at bar thus presents an opportunity to refine and reconsider the statutory
8 grounds set forth in *Maldonado*. Because other courts have addressed the question
9 differently, the statutory interpretation issue remains live and in need of clarification.
10 Although the BIA’s precedential decision in *Matter of Yajure Hurtado* is not binding on this
11 Court, the decision is entitled to consideration under *Skidmore v. Swift & Co.*, 323 U.S. 134
12 (1944) and presents the most thorough and reasoned analysis we have, and it captures the
13 *specialized expertise* of the agency that Congress charged with administering the INA. Under
14 *Skidmore*, *Matter of Yajure Hurtado* should be accorded significant weight in construing the
15 scope of § 1225(b)(2).

16 II. Background

17 A. Statutory and Regulatory Background

18 Congress has created a multi-layered statutory scheme for the civil detention of
19 aliens pending removal proceedings and removal. *See, e.g.*, 8 U.S.C. §§ 1225, 1226, 1231.
20 Whether an alien falls within this statutory scheme is determined by the time and
21 circumstances of entry, as well as the stage of the removal process.

22 1. Detention under 8 U.S.C. § 1225

23 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
24 present in the United States who [have] not been admitted” or “who arrive[] in the United
25 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
26 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287;
27 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 218.
28

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

11 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
 12 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
 13 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
 14 removal proceeding “if the examining immigration officer determines that [the] alien
 15 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
 16 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are
 17 present in the United States without admission are applicants for admission as defined
 18 under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for
 19 the duration of their removal proceedings.”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA
 20 2025) (“for aliens arriving in and seeking admission into the United States who are placed
 21 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
 22 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
 23 *Jennings*, 583 U.S. at 299). However, the Department of Homeland Security (DHS) has the
 24 sole discretionary authority to temporarily release on parole “any alien applying for
 25 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons
 26 or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806
 27 (2022).

28 2. Detention under 8 U.S.C. § 1226(a)

1 Section 1226 provides the general detention authority for aliens in removal
2 proceedings. An alien “may be arrested and detained 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 United States 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 if
6 the alien demonstrates that he “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
8 request a custody redetermination (often called a bond hearing) by an IJ at any time before
9 a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1),
10 1236.1(d)(1), 1003.19.

11 At a custody redetermination, the IJ may continue detention or release the alien on
12 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration
13 judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*,
14 24 I. & N. Dec. 37, 39–40 (BIA 2006). The IJ should consider the following factors during
15 a custody redetermination: (1) whether the alien has a fixed address in the United States;
16 (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the
17 United States; (4) the alien’s employment history; (5) the alien’s record of appearance in
18 court; (6) the alien’s criminal record, including the extensiveness of criminal activity, time
19 since such activity, and the seriousness of the offense; (7) the alien’s history of immigration
20 violations; (8) any attempts by the alien to flee prosecution or otherwise escape authorities;
21 and (9) the alien’s manner of entry to the United States. *Id.* at 40. But regardless of these
22 factors, an alien “who presents a danger to persons or property should not be released
23 during the pendency of removal proceedings.” *Id.* at 38.

24 **3. Review at the Board of Immigration Appeals**

25 The BIA is an appellate body within the Executive Office for Immigration Review
26 (EOIR) “charged with the review of those administrative adjudications under the [INA]
27 that the Attorney General may by regulation assign to it.” 8 C.F.R. § 1003.1(d)(1). By
28 regulation, it has authority to review IJ custody determinations. 8 C.F.R. §§ 236.1; 1236.1.

1 The BIA not only resolves particular disputes before it, but also “through precedent
 2 decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and
 3 the general public on the proper interpretation and administration of the [INA] and its
 4 implementing regulations.” *Id.* § 1003.1(d)(1).

5 **B. Factual Background**

6 Petitioner Jefferson Dominguez-Lara is currently detained at the Nevada Southern
 7 Detention Center (NSDC). ECF No. 1, ¶ 17. On July 21, 2025, an immigration judge
 8 granted him a \$5,000 bond on July 21, 2025, which the Department of Homeland Security
 9 stayed when it filed a Notice of Intent to Appeal. *Id.*

10 Petitioner Jose Ramirez is also currently detained at the Nevada Southern
 11 Detention Center (NSDC). *Id.* ¶ 18. On July 16, 2025, an immigration judge granted him a
 12 \$3,000 bond, which the Department of Homeland Security immediately stayed when it
 13 filed a Notice of Intent to Appeal. *Id.*

14 **III. Standard of Review**

15 A preliminary injunction is “an extraordinary remedy that may only be awarded
 16 upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat’l Res. Def.*
 17 *Council, Inc.*, 555 U.S. 7, 22 (2008). It is “never awarded as of right.” *Id.* at 24. The moving
 18 party must establish: (1) a likelihood of success on the merits, (2) irreparable harm, (3) that
 19 the balance of equities tips in their favor, and (4) that an injunction serves the public
 20 interest. *Id.* at 20. When the nonmovant is the United States, the last two factors “merge.”
 21 *Baird v. Bonta*, 81 F. 4th 1036, 1040 (9th Cir. 2023).

22 The Ninth Circuit employs a “sliding scale” approach to the four factors. *All. for*
 23 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v.*
 24 *McNair*, 537 F.3d 981, 987 (9th Cir. 2008). If the moving party raises “serious questions”
 25 going to the merits, the balance of hardships must “tip sharply” in his favor to secure a
 26 preliminary injunction. *Id.* Even under the sliding scale approach, the moving party must
 27 still show a likelihood of irreparable harm and that the injunction is in the public interest.
 28 *Id.* at 1125.

IV. Argument

The current operative mechanism of Petitioners' detention is an automatic stay of release on bond for a maximum of 90 days under 8 C.F.R. § 1003.19(i)(2), but this confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention throughout their entire removal proceedings. Petitioners fall within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement. Petitioners are "applicant[s] for admission" to the United States. An "applicant for admission" is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Congress's broad language here is unequivocally intentional—an undocumented alien is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Regardless of Petitioners' characterization that "an applicant for admission" should only include "recent arrivals" to the country, they are "deemed" applicants for admission based on their undocumented status, which has not been disputed. *See* ECF No. 1, ¶¶ 17–18, 3, 28. And because Petitioners have not demonstrated to an examining immigration officer that they are "clearly and beyond a doubt entitled to be admitted," their detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, Petitioners are properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

The Supreme Court has confirmed an alien present in the country but never admitted is deemed "an applicant for admission" and that "detention must continue" "until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings v. Rodriguez*, 583 U.S. 281, 289 & 299 (2018). Applying this reasoning, the United States District Court for the District of Massachusetts recently confirmed in a habeas action that an unlawfully present alien, who had been unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission" upon the straightforward application of the statute. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025). The Court explained this resulted in the "continued detention" of an alien during removal proceedings as commanded by statute. *Id.* Because Petitioners shall be detained during their removal proceedings and their proceedings are ongoing, their temporary detention is lawful.

1 Similarly, the United States District Court for the Southern District of California's
 2 decision in *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D.
 3 Cal. Sept. 24, 2025), is instructive. The *Chavez* court denied the motion for TRO based on
 4 the plain language of §§ 1225 and 1226. *Id.* Beginning and ending with the statutory text, the
 5 *Chavez* court found that the *Chavez* petitioners are subject to the mandatory detention
 6 provisions of “applicants for admission” under § 1225(b)(2) because petitioners did not
 7 contest that they are “alien[s] present in the United States who ha[ve] not been admitted,”
 8 and they thus are “applicants for admission.” *Id.* at *4.

9 **A. Petitioners have failed to demonstrate that they are entitled to a preliminary**
 10 **injunction.**

11 Petitioners’ motion should be denied because they have not established that they are
 12 entitled to a preliminary injunction relief. To prevail on a motion for a preliminary
 13 injunction, a plaintiff or petitioner must “establish that he is likely to succeed on the merits,
 14 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
 15 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*
 16 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426
 17 (2009). Plaintiffs or petitioners must demonstrate a “substantial case for relief on the
 18 merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When “a plaintiff has
 19 failed to show the likelihood of success on the merits, we need not consider the remaining
 20 three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

21 The final two factors required for preliminary injunctive relief — balancing of the
 22 harm to the opposing party and the public interest — merge when the United States is the
 23 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
 24 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
 25 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*
 26 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. Of California v. Orrin W.*
 27 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211,
 28 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant

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

5 **1. Petitioners Are Not Likely to Succeed on the Merits.**

6 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740.
 7 Petitioners cannot establish that they are likely to succeed on the underlying merits because
 8 they are lawfully subject to mandatory detention under 8 U.S.C. § 1225 and Petitioners’
 9 temporary detention does not violate due process.

10 **i. Section 1225 governs Petitioners’ detention**

11 The Court should reject Petitioners’ argument that § 1226(a) governs their detention
 12 instead of § 1225. *See* ECF No. 3, at 6.

13 In *Chavez v. Noem*, the United States District Court for the Southern District of
 14 California’s denied a motion for a temporary restraining order (“TRO”) filed by petitioners
 15 who are detained under 8 U.S.C § 1225(b)(2). *Chavez*, 2025 WL 2730228, at *1. The *Chavez*
 16 petitioners argued they should not be mandatorily detained and instead they should receive
 17 bond redetermination hearings under § 1226(a) and related agency regulations. *Id.* The
 18 *Chavez* petitioners filed a motion for TRO, seeking to “enjoin[] Respondents from
 19 continuing to detain them unless [they] are provided an individualized bond hearing . . .
 20 pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO, with instructions that the
 21 immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.” *Id.*

22 In denying the TRO, the *Chavez* court went no further than applying the plain
 23 language of § 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez*
 24 court correctly found that because petitioners did not contest that they are “alien[s] present
 25 in the United States who ha[ve] not been admitted,” then the *Chavez* petitioners are
 26 “applicants for admission” and thus subject to the mandatory detention provisions of
 27 “applicants for admission” under § 1225(b)(2). *Id.*; *see also Matter of Yajure Hurtado*, 29 I. &
 28 N. Dec. at 221–222 (finding that an alien who entered without inspection is an “applicant

1 for admission” and his argument that he cannot be considered as “seeking admission” is
 2 unsupported by the plain language of the INA, and further stating, “[i]f he is not admitted
 3 to the United States . . . but he is not ‘seeking admission’ . . . then what is his legal
 4 status?”).

5 The issue of statutory interpretation of the INA is complicated by a patchwork of
 6 statutes implemented at different times and intended to address different issues. The INA is
 7 complex. Where the provisions impact one another, they should not be read in vacuum.
 8 The BIA is well-positioned to assess how agency practice affects the interplay between
 9 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL
 10 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration
 11 detainee was “a question well suited for agency expertise”); *Matter of M-S-*, 27 I&N Dec.
 12 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

13 Here, the BIA has spoken through its precedential decision¹ in *Matter of Yajure*
 14 *Hurtado*. While *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), eliminated
 15 Chevron deference, *Matter of Yajure Hurtado* nonetheless should be afforded substantial
 16 weight under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed
 17 to an agency interpretation depends on “the thoroughness evident in its consideration, the
 18 validity of its reasoning, its consistency with earlier and later pronouncements, and all those
 19 factors which give it power to persuade, if lacking power to control.” *Id.* at 140. *Matter of*
 20 *Yajure Hurtado* scores highly on these factors.

21 First, the BIA applied its specialized expertise in immigration detention law, the very
 22 subject Congress charged it with administering. Its decision addressed the interplay between
 23 §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of
 24 experience resolving custody questions. Second, the BIA’s reasoning is thorough and well
 25 supported. It carefully explained why noncitizens who entered without inspection remain
 26 “applicants for admission” under § 1225(a)(1), and why reclassifying them under § 1226(a)

27
 28 ¹ The BIA’s precedential decisions “serve as precedents in all proceedings involving the
 same issue or issues.” 8 CFR § 1003.1(g)(1); *see also id.* § 1003.1(d)(i).

1 would create statutory gaps and undermine congressional intent. Third, the BIA's
2 interpretation is consistent with Supreme Court precedent, including *Jennings v. Rodriguez*,
3 583 U.S. 281 (2018), which recognized that detention under § 1225(b) is mandatory.
4 Finally, adopting *Matter of Yajure Hurtado* promotes uniformity and coherence in federal
5 immigration law by preventing detention outcomes from turning on the happenstance of
6 when and where a noncitizen is apprehended.

7 In short, the Court should accord *Matter of Yajure Hurtado* significant persuasive
8 weight under *Skidmore*. And in *Matter of Yajure Hurtado*, the BIA affirmed “the Immigration
9 Judge’s determination that he did not have authority over [a] bond request because aliens
10 who are present in the United States without admission are applicants for admission as
11 defined under . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their
12 removal proceedings.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). The
13 BIA concluded that aliens like Petitioners in the case at bar, “who surreptitiously cross into
14 the United States remain applicants for admission until and unless they are lawfully
15 inspected and admitted by an immigration officer.” *Id.* at 228. “Remaining in the United
16 States for a lengthy period of time following entry without inspection, by itself, does not
17 constitute an ‘admission.’” *Id.*; see 8 U.S.C. § 1101(a)(13)(A) (2018) (defining “admission”).
18 To hold otherwise would lead to an “incongruous result” that rewards aliens who
19 unlawfully enter the United States without inspection and subsequently evade apprehension
20 for number of years. *See id.*

21 In so concluding, the BIA rejected the alien’s argument that “because he has been
22 residing in the interior of the United States for almost 3 years . . . he cannot be considered
23 as ‘seeking admission.’” *See id.* at 221. The BIA determined that this argument “is not
24 supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the
25 alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’
26 (as he contends), then what is his legal status?” *Id.*

27 Therefore, just as immigration judges have no authority to redetermine the custody
28 of arriving aliens who present themselves at a port of entry, they likewise have no authority

1 to redetermine the custody conditions of an alien who crossed the border unlawfully
2 without inspection, even if that alien has avoided apprehension for more than 2 years.

3 Petitioners' argument that the phrase "alien seeking admission" limits the scope of §
4 1225(b)(2)(A) is unpersuasive. *See* ECF No. 3, at 8–10. The BIA has long recognized that
5 "many people who are not actually requesting permission to enter the United States in the
6 ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration
7 laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012); *Matter of Yajure Hurtado*,
8 29 I&N Dec. at 221, 228 ("Congress has defined the concept of an 'applicant for admission'
9 in an unconventional sense, to include not just those who are expressly seeking permission
10 to enter, *but also those who are present in this country without having formally requested or received*
11 *such permission . . .*"). Statutory language "is known by the company it keeps." *Marquez-*
12 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*,
13 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read
14 in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for
15 admission are both *those individuals present without admission* and those who arrive in the
16 United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission"
17 under §1225(a)(1). *See Matter of Lemus-Losa*, 25 I. & N. Dec. at 743; *Matter of Yajure Hurtado*,
18 29 I. & N. Dec. at 221. Congress made that clear in § 1225(a)(3), which requires all aliens
19 "who are applicants for admission or otherwise seeking admission" to be inspected by
20 immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an
21 appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,'
22 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

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

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 also instructive. 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). *See Florida v.*
7 *United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, No. 23-11528,
8 2023 WL 5212561 (11th Cir. July 11, 2023). The court held that such discretion “would
9 render mandatory detention under § 1225(b) meaningless. Indeed, the 1996 expansion of §
10 1225(b) to include illegal border crossers would make little sense if DHS retained discretion
11 to apply § 1225(a) and release illegal border crossers whenever the agency saw fit.” *Id.* The
12 court pointed to *Demore v. Kim*, in which the Supreme Court explained that “wholesale
13 failure” by the federal government motivated the 1996 amendments to the INA. *Florida*,
14 660 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516
15 (2019), in which the Attorney General explained “section [1225] (under which detention is
16 mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled
17 only if they apply to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275.

18 Petitioners’ reliance on the Laken Riley Act is similarly misplaced. When the plain
19 text of a statute is clear, “that meaning is controlling” and courts “need not examine
20 legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011).
21 But to the extent legislative history is relevant here, nothing “refutes the plain language” of
22 § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress
23 passed IIRIRA to correct “an anomaly whereby immigrants who were attempting to
24 lawfully enter the United States were in a worse position than persons who had crossed the
25 border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), declined to
26 extend by *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *Chavez*, 2025 WL
27 2730228, at *4. It “intended to replace certain aspects of the [then] current ‘entry doctrine,’
28 under which illegal aliens who have entered the United States without inspection gain

equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Torres*, 976 F.3d at 928 (quoting H.R. Rep. 104-469, pt. 1, at 225); *Chavez*, 2025 WL 2730228, at *4 (The addition of § 1225(a)(1) “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an ‘applicant for admission.’ ”).

As the pertinent House Judiciary Committee Report explains: “[Before the IIRIRA], aliens who [had] entered without inspection [were] deportable under section 241(a)(1)(B).” H.R. Rep. No. 104-469, pt. 1, at 225 (1996). But “[u]nder the new ‘admission’ doctrine, such aliens *will not be considered to have been admitted*, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, *based on their presence without admission*.” *Id.* Thus, applicants for admission remain such unless an immigration officer determines that they are “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 228. Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens “shall be detained for a proceeding under section 240.” 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 288.

The Court should thus reject Petitioners’ interpretation because it would make aliens who presented at a port of entry subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

For the foregoing reasons, and because Petitioners are properly detained under § 1225, they cannot show entitlement to relief and likelihood to succeed on the merits.

ii. 8 C.F.R. § 1003.19(i)(2) Does not violate Petitioners’ Procedural and Substantive Due Process Rights

a. Petitioners’ procedural due process rights are not violated.

The temporary detention does not violate due process because Petitioners cannot show their temporary detention violate the law. “Detention during removal proceedings is a constitutionally permissible part of that process.” *Demore*, 538 U.S. at 531. The automatic

1 stay does not violate due process because it permits the United States an opportunity to
2 appeal an IJ bond decision before the detainee is released. The Supreme Court has
3 expressed a "longstanding view that the Government may constitutionally detain
4 deportable aliens during the limited period necessary for their removal
5 proceedings." *Demore*, 538 U.S. at 526. "As we said more than a century ago, deportation
6 proceedings 'would be vain if those accused could not be held in custody pending the
7 inquiry into their true character.'" *Id.* at 523 (citing *Wong Wing v. United States*, 163 U.S.
8 228, 235, 16 S. Ct. 977, 41 L. Ed. 140 (1896)). Here, a stay of some length is afforded
9 precisely because it allows the United States an opportunity to appeal before a detainee
10 might flee. *El-Dessouki*, 2006 U.S. Dist. LEXIS 68745, 2006 WL 2727191, at *3 ("a finite
11 period of detention to allow the BIA an opportunity to review the immigration judge's
12 bond redetermination is a narrowly tailored procedure that serves the United States'
13 interest in preventing flight of aliens likely to be ordered removable and in protecting the
14 community"). *Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175819, at 10-11. Although
15 Petitioners are detained pending appeal to the BIA, the question is whether permitting an
16 automatic stay violates Petitioners' due process rights. Petitioners and others have a right to
17 appeal an adverse custody decision to the BIA. *See* 8 CFR §§ 1003.19(a), 1236.1(d).
18 Similarly, the United States may appeal an adverse bond decision. An automatic stay of
19 limited duration allows the United States to pursue its appeal before the subject might post
20 bond and flee. *See Demore*, 538 U.S. at 528 ("detention necessarily serves the purpose of
21 preventing deportable criminal aliens from fleeing prior to or during their removal
22 proceedings"). *Id.* at 11-12.

23 In this case, Petitioners who are present in the United States without admission or
24 parole, are applicants for admission in INA § 240 removal proceedings and are therefore
25 detained pursuant to INA § 235(b)(2)(A). As discussed above, their detention is mandatory
26 and the IJ does not have jurisdiction to issue a bond. The only mechanism for Petitioners'
27 release is statutory, 8 U.S.C. § 1182(d)(5). Because the IJ conducted a bond hearing and
28 ordered a bond in error, this matter is proceeding through the BIA appellate process

1 whereby DHS is seeking a review of the IJ's decision. 8 C.F.R. § 1003.19(i)(2) does not
 2 violate the due process of Petitioners because they do not have a right to a bond hearing and
 3 DHS is entitled to appeal the IJ's decision to the contrary to the BIA, where this case is
 4 currently pending. Additionally, the limited nature of 90 days for the BIA to render a
 5 decision, the due process of Petitioner has not been violated. The United States District
 6 Court for the District of Massachusetts (case mentioned above) dismissed a habeas action,
 7 finding that it was not a violation of due process to detain an undocumented alien during
 8 the course of his removal proceedings. *See Pena*, 2025 WL 2108913, at *1.

9 As explained in *Altayar*, the automatic stay also does not turn the IJ decision into a
 10 meaningless formality because it affords the BIA time to consider an appeal. The purpose of
 11 the automatic stay is to "avoid the necessity of having to decide whether to order a stay on
 12 extremely short notice with only the most summary presentation of the issues." Review of
 13 Custody Determinations, 71 FR 57873-01, 2006 WL 2811410; *Altayar* at 12-13. An
 14 automatic stay of up to 90 days does not violate due process because it is narrowly tailored
 15 to serve a compelling United States interest. *Id.* In *Altayar*, the Court found there is no
 16 procedural due process violation from § 1003.19(i)(2). An alien's right to procedural due
 17 process is violated "only if [1] the proceeding was 'so fundamentally unfair that the alien
 18 was prevented from reasonably presenting his case,'" and [2] the alien proves that "the
 19 alleged violation prejudiced his or her interests." *Id.* at 13, *Mendez—Garcia v. Lynch*, 840 F.3d
 655 (9th Cir. 2016) (citations omitted).

20 In this case, Petitioners' temporary detention pending their removal proceedings do
 21 not violate their procedural due process rights. Petitioners were permitted to present their
 22 case to the IJ satisfying the first prong. DHS followed the law and invoked § 1003.19(i)(2) to
 23 appeal the decision by the IJ which satisfies the second prong.

24 **b. Petitioners' substantive due process rights are not violated.**

25 As explained in *Altayar*, the Court also finds there is no substantive due process
 26 violation. Laws that infringe a "fundamental" right protected by the Due Process Clause are
 27 constitutional only if "the infringement is narrowly tailored to serve a compelling state
 28 interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). Substantive due process protections apply

1 to resident aliens. *See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77, 96 S. Ct. 1883, 48 L. Ed. 2d 478
 2 (1976). *Id.* at 14. An automatic stay of up to 90 days does not violate due process because it
 3 remains in effect until the BIA has an opportunity to review the appeal. In the context of
 4 post-removal detention, the Court in *Zadvydas* wrote that “we think it practically necessary
 5 to recognize some presumptively reasonable period of detention....” *Zadvydas v. Davis*, 533
 6 U.S. 678, 701, (2001). The Court determined that “an argument can be made for confining
 7 any presumption to 90 days” but set a limit of 180 days before a detainee in removal
 8 proceedings would be entitled to a bond hearing. *Id.* In the absence of other authority (and
 9 Petitioners present none), Petitioners have not established that an automatic stay of up to 90
 10 days in this appeal provision violates due process. *Id.* at 14-15. The purpose of the automatic
 11 stay provision is to provide a means for DHS to maintain the status quo in those cases
 12 where it chooses to seek an expedited review of the IJ's custody order by BIA. 71 Fed. Reg.
 13 57873. To the extent the challenged regulation represents the judgment of the Attorney
 14 General as to how best to implement the authority granted him by 8 U.S.C. § 1226, judicial
 15 review may be barred by § 1226(e). But even if it is not, providing for an automatic stay until
 16 the BIA can review the IJ's order for release is not unreasonable. *Hussain v. Gonzales*, 492 F.
 17 Supp. 2d 1024, 1031-1032 (E.D. Wis.), *aff'd sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th
 18 Cir. 2007). In *Hussain* the court explained, “It also appears that the lower court decisions
 19 finding the automatic stay provision invalid were based on a misunderstanding of the
 20 relationship between DHS, the IJs, and the BIA, and their respective roles in exercising the
 21 authority of the Attorney General to make custody determinations in cases involving the
 22 removal of aliens.” *Id.* at 1032. As the Attorney General explained in connection with the
 23 implementation of the current regulation,

24 In most cases, an immigration judge's order granting an alien release will
 25 result in the alien's release upon the posting of bond or on recognizance, in
 26 compliance with the immigration judge's decision. The Attorney General has
 27 determined, however, that certain bond cases require additional safeguards
 28 before an alien is released during the pendency of removal proceedings
 against him or her. In these cases, the immigration judge's order is only an
 interim one, pending review and the exercise of discretion by another of the
 Attorney General's delegates, the Board. Barring review by the Attorney
 General, it is the Board's decision that the Attorney General has designated as

the final agency action with respect to whether the alien merits bond. Thus, the Attorney General made an operational decision under section 236(a) of the INA with respect to how his discretion should be exercised in a limited class of cases where DHS, which now has independent statutory authority in this area, had sought to detain the alien without bond or with a bond of \$ 10,000 or more and disagrees with the immigration judge's interim custody decision. citing to 71 Fed. Reg. 57873, 80. *Id. at* 1032.

In essence, the challenged regulation reveals the division of authority the Attorney General has established within the executive branch to exercise her overall authority to determine the custodial status of aliens facing removal proceedings. It is difficult to see how DHS's exercise of its responsibilities within that system operates as a denial of due process. *Id. at* 1032. This is particularly important in a case such as this one, where DHS's independent statutory authority to detain, and to release only in its sole discretion pursuant to 8 U.S.C. § 1182(d)(5), is the provision at issue and DHS is seeking to correct the IJ's legal error in reviewing the Petitioner's detention under the incorrect statutory provision.

In this case, DHS exercised its responsibility by lawfully invoking § 1003.19(i)(2) to appeal the decision by the IJ. In the BIA's decision that the Attorney General has designated as the final agency action with respect to whether the Petitioner merits bond. Petitioner's ample available process in his current removal proceedings demonstrate no lack of procedural due process. Congress simply made the decision to detain Petitioner pending removal which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

2. Petitioners Have Failed to Show an Irreparable Harm.

To prevail on their request for injunctive relief, Petitioners must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear

1 showing that the plaintiff is entitled to such relief.” *Id.* Here, as explained above, because
 2 Petitioners’ alleged harm “is essentially inherent in detention, the Court cannot weigh this
 3 strongly in favor of” Petitioners and his proposed class. *Lopez Reyes v. Bonnar*, No. 18-CV-
 4 07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

5 **3. Balance of Equities Does Not Tip in Petitioners’ Favor.**

6 It is well settled that the public interest in enforcement of the United States’
 7 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-
 8 58 (1976); *Blackie’s House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has
 9 recognized that the public interest in enforcement of the immigration laws is significant.”)
 10 (citing cases); *see also Nken*, 556 U.S. at 435 (“There is always a public interest in prompt
 11 execution of removal orders: The continued presence of an alien lawfully deemed
 12 removable undermines the streamlined removal proceedings IIRIRA established and
 13 permits and prolongs a continuing violation of United States law.”) (internal quotation
 14 omitted). The BIA also has an “institutional interest” to protect its “administrative agency
 15 authority.” *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992), superseded by statute
 16 as recognized in *Porter v. Nussle*, 534 U.S. 516 (2002). “Exhaustion is generally required as a
 17 matter of preventing premature interference with agency processes, so that the agency may
 18 function efficiently and so that it may have an opportunity to correct its own errors, to
 19 afford the parties and the courts the benefit of its experience and expertise, and to compile a
 20 record which is adequate for judicial review.” *Glob. Rescue Jets, LLC v. Kaiser Found. Health*
 21 *Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765
 22 (1975)). Indeed, “agencies, not the courts, ought to have primary responsibility for the
 23 programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145.

24 Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large
 25 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
 26 *Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec.
 27 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above,
 28 Petitioners cannot succeed on the merits of his claims as his detention is lawful and the

balancing of equities and the public interest weigh heavily against granting Petitioners equitable relief.

4. The United States Has a Compelling Interest in Allowing the BIA to Speak and Provide Guidance on the Issues.

Where, as here, the moving party only raises “serious questions going to the merits,” the balance of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)). Petitioners fail to do so here. *See id.* The United States has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public interest in the United States enforcement of its immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s interest in enforcing immigration laws is enormous.”). Judicial intervention would only disrupt the status quo. *See, e.g., Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D. Wash. Nov. 2, 2017).

The BIA also has an “institutional interest” to protect its “administrative agency authority.” *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). “Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” *Global Rescue Jets, LLC v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145. The Court should allow the BIA the opportunity to weigh in on the issues he raises on appeal—

1 which are the same issues raised in this action. *See id.*

2 Allowing Petitioners to bypass the BIA and obtain a different result here would not
3 only contravene judicial economy, see *Bd. of Tr. of Constr. Laborers' Pension Tr. for S. Cal. v.*
4 *M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994), but would also erode national
5 consistency in the application of the INA. The administrative process should be allowed to
6 correct itself. See *Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (exhaustion promotes
7 efficiency).

8 Further, the BIA is well-positioned to assess how agency practice affects the interplay
9 between 8 U.S.C. §§ 1225 and 1226. See *Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017
10 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration
11 detainee was “a question well suited for agency expertise”); *Matter of M-S-*, 27 I&N Dec.
12 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226). This case especially
13 calls for judicial restraint because the BIA has spoken through its precedential decision in
14 *Matter of Yajure Hurtado*, which should be afforded significant persuasive weight under the
15 *Skidmore* standard as further discussed above (*See* Section IV.A.1.i., *supra*).

16 **B. The Court should deny the Motion for Preliminary Injunction because**
17 **Petitioners has failed to exhaust his administrative remedies before the BIA and**
Petitioners' detention alone is insufficient to excuse exhaustion.

18 DHS is appealing the IJ's custody redetermination decision regarding Petitioners
19 before the BIA. Petitioners' due process regarding the bond which appeal triggered the
20 automatic stay is his response to the appeal. Instead of allowing the administrative process
21 to be completed, Petitioners assert that they should be released from detention. ECF No. 3,
22 at 17, 23. Bypassing review at the BIA is “improper.” *Id.* The Ninth Circuit identifies three
23 reasons to require exhaustion before entertaining a habeas petition. See *Puga v. Chertoff*, 488
24 F.3d 812, 815 (9th Cir. 2007). First, the agency's “expertise” makes its “consideration
25 necessary to generate a proper record and reach a proper decision.” *Id.* (quoting *Noriega-*
26 *Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Second, excusing exhaustion
27 encourages “the deliberate bypass of the administrative scheme.” *Id.* (quoting *Noriega-Lopez*,
28 335 F.3d at 881). And third, “administrative review is likely to allow the agency to correct

its own mistakes and to preclude the need for judicial review.” *Id.* (quoting *Noriega-Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*, 488 F.3d at 815.

1. *Exhaustion is warranted because agency’s expertise is needed, excusal will only encourage other detainees to bypass administrative remedies, and appellate review at the BIA may preclude the need for judicial intervention.*

Petitioners rely on an administrative agency’s “record and longstanding practice” to support a claim that detention under § 1226(a) applies. ECF No. 3, at 12. Yet at the same time, he seeks to bypass administrative review. *See id.* Before addressing how an agency’s “longstanding practice” affects the statutory analysis, the Court would surely benefit from the BIA’s expertise. *See Puga*, 488 F.3d at 815. After all, “the BIA is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-1441-RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was “a question well suited for agency expertise”); *Matter of M-S-*, 27 I. & N. Dec. at 515–18 (addressing interplay of §§ 1225(b)(1) and 1226).

Green-lighting Petitioners’ skip-the-BIA-and-go-straight-to-federal-court strategy also needlessly increases the burden on district courts. *See Bd. of Trs. of Const. Laborers’ Pension Tr. for S. Calif. v. M.M. Sundt Const. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting “exhaustion promotes efficiency”). This Court should allow the administrative process to correct itself. *See id.*

2. *Petitioners’ reasons to waive exhaustion would swallow the rule.*

First, detention alone is not an irreparable injury. Discretion to waive exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Petitioners bears the burden to show that an exception to the exhaustion requirement applies. *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011); *Aden*, 2019 WL 5802013, at *3. And

1 detention alone is insufficient to excuse exhaustion. *See, e.g., Delgado*, 2017 WL 4776340, at
 2 *2. Adopting such a rationale “would essentially mandate the release of all detainees while
 3 their appeals were pending and thereby stand the exhaustion requirement on its head.”
 4 *Meneses v. Jennings*, No. 21-CV-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14,
 5 2021), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024); *see also*
 6 *Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 n. 6 (S.D.N.Y. 2017) (noting that “continued
 7 detention . . . is insufficient to qualify as irreparable injury justifying non-exhaustion”)
 8 (quotation marks omitted). “[C]ivil detention after the denial of a bond hearing [does not]
 9 constitute[] irreparable harm such that prudential exhaustion should be waived.” *Reyes v.*
 10 *Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom.*
 11 *Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021); *see also*
 12 *Aden*, 2019 WL 5802013, at *3 (Petitioners “cites no authority for the position that detention
 13 following a bond hearing constitutes irreparable harm sufficient to waive the exhaustion
 14 requirement.”).

15 Petitioners “ha[ve] not carried [their] burden” in showing “that prudential
 16 exhaustion should be waived.” *Aden*, 2019 WL 5802013, at *3. They allege that their
 17 detention alone irreparable harm. *See* ECF No. 3, ¶¶ 14-16. But if Petitioners’ proffered
 18 standard for irreparable harm is correct, then every single individual who alleges unlawful
 19 detention would similarly meet the irreparable-harm-standard. *See, e.g., Delgado*, 2017 WL
 20 4776340, at *2. The exception would swallow the rule. *See id.* (“[b]ecause all immigration
 21 habeas petitions could raise the same argument [that detention is irreparable injury], if it
 22 were decisive, the prudential exhaustion requirement would always be waived—but it is
 23 not.”).

24 Petitioners’ argument also “begs the question of whether they have suffered a
 25 constitutional deprivation.” *Meneses*, 2021 WL 4804293, at *5. Petitioners’ “simply assume[]
 26 a deprivation to assert the resulting harm. That will not do.” *Id.* at *5. Federal courts are
 27 “not free to address the underlying merits without first determining the exhaustion
 28 requirement has been satisfied or properly waived.” *Laing*, 370 F.3d at 998.

1 *Second*, Petitioners have not established that appellate review at the BIA would be
 2 inadequate or futile. Aside from irreparable harm, exhaustion can be excused only on a
 3 showing that review at the BIA is “inadequate or not efficacious” or “would be a futile
 4 gesture.” *Laing*, 370 F.3d at 1000. Critically, there has not been a delay in Petitioners’ case
 5 at the BIA, because DHS’s appeal was submitted timely and proceedings are ongoing. Even
 6 accepting Petitioners’ argument that the prudential exhaustion is not required because the
 7 exceptions regarding irreparable injury and agency delay apply (ECF No. 3, at 18), in *Reyes*,
 8 the court rejected the claim that “the indefinite timeframe of the BIA’s review” constituted
 9 irreparable harm. *Reyes*, 2021 WL 662659, at *3. Although the petitioner’s BIA appeal in
 10 *Reyes* had been pending for around 45 days, she had been detained for over two years. *Id.* at
 11 *1. Similarly, in *Chavez*, the petitioner had been detained for a year when the court
 12 dismissed for failing to exhaust his claim. *Chavez v. Immigr. & Customs Enft Field Off. Dir.*,
 13 2024 WL 1661159, at *1, *3 (W.D. Wash. Jan. 25, 2024), *report and recommendation adopted*,
 14 2024 WL 1658973 (W.D. Wash. Apr. 17, 2024). And in *Delgado*, the petitioner had been
 15 detained for around four months and appealed the IJ’s to the BIA. *Delgado*, 2017 WL
 16 4776340, at *1. The court believed the situation called “for agency expertise” and was “not
 17 persuaded” by “petitioner’s claim of irreparable injury due to continued detention.” *Id.* at
 18 *2. The Court should take a similar approach here.

19 **C. There is No Class Certification.**

20 Petitioners seek an order requiring, on a class-wide basis, that the BIA adjudicate
 21 bond appeals within 30 days and enjoining, on a class-wide basis, the Federal Respondents
 22 from applying the automatic-stays found in 8 C.F.R. § 1003.6 to bond appeals to the BIA for
 23 bond grants for class members. ECF No. 3, at 23. Although Petitioners styled this case as a
 24 class action, the Court has not certified the proposed classes in this case and thus “there is
 25 no class of plaintiffs before the Court at this time towards whom relief could be directed.”
 26 *Russell v. Barry*, Civil Action No. 87-2072, 1987 WL 15697, at *2 (D.D.C. Jul. 30, 1987). To
 27 the extent Petitioners seeks relief for others, this Court should not grant relief to parties not
 28 before it. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“A federal court may issue

an injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the rights of persons not before the court.”); *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 205 n.4 (D.D.C. 2018) (“[I]t is not clear that the Court can or should issue class-wide injunctive relief without a certified class.”); *Dorfmann v. Boozer*, 414 F.2d 1168, 1171 n.8 (D.C. Cir. 1969) (preliminary injunction “should not have been issued before the action was certified as a class action” where injunction “worked a transfer of money belonging to persons who were not within the jurisdiction of the court”).

D. Class-wide Relief Runs Afoul of Section 1252(f)(1).

Petitioners’ request for injunctive relief cannot prevail because the Court does not have the authority to award class-wide coercive relief due to the limitations in 8 U.S.C. § 1252(f)(1). Congress in 8 U.S.C. § 1252(f)(1) expressly deprived district courts of jurisdiction to enter class-wide injunctions in the immigration context. As the Supreme Court held in *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022), Section 1252(f)(1) “prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out” the relevant provisions of the INA. The Court specifically rejected attempts by detained aliens to obtain systemic relief requiring bond hearings on a class-wide basis, concluding that Section 1252(f)(1) “deprived the District Courts of jurisdiction to entertain respondents’ requests for class-wide injunctive relief.” *Id.* at 546.

Petitioners’ proposed class-wide relief—an order requiring the BIA to adjudicate bond appeals for all class members within 30 days and enjoining application of the automatic-stay regulation in 8 C.F.R. § 1003.6 on a class-wide basis (*see* ECF No. 3, Motion for Preliminary Injunction, at 23—falls squarely within *Aleman Gonzalez*. Both forms of relief would restructure how the INA’s detention and bond provisions are enforced, implemented, or otherwise carried out on a class-wide basis. That is what Section 1252(f)(1) forbids. The requested relief is thus jurisdictionally barred.

//

//

V. Conclusion

For the foregoing reasons, the Court should deny Petitioners' Motion for a Preliminary Injunction.

Respectfully submitted this 26th day of September 2025.

SIGAL CHATTAH
Acting United States Attorney

/s/ Christian R. Ruiz
CHRISTIAN R. RUIZ
Assistant United States Attorney