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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 JOSE IVAR PINEDA CAMPOS,

13 Petitioner-Plaintiff,

14 v.

15 SERGIO ALBARRAN, Field Office Director of
the San Francisco Immigration and Customs
16 Enforcement Office¹; TODD LYONS, Acting
Director of United States Immigration and
17 Customs Enforcement; KRISTI NOEM,
Secretary of the United States Department of
18 Homeland Security, PAMELA BONDI,
Attorney General of the United States, acting in
19 their official capacities,

20 Respondents-Defendants.
21

CASE NO. 3:25-cv-06920-JD

**RESPONDENTS' OPPOSITION TO
PRELIMINARY INJUNCTION MOTION**

Date: September 18, 2025
Time: 10:00 am
Location: Courtroom 11, 19th Floor

Judge: Hon. James Donato

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27 ¹ Sergio Albarran is automatically substituted for Polly Kaiser as a defendant in this matter
28 pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

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I. INTRODUCTION

Petitioner has moved for a preliminary injunction (“PI”) enjoining the government from re-detaining him “during these habeas proceedings” absent a pre-detention hearing before a neutral decision maker. But under the applicable immigration statutes, Petitioner is an “applicant[] for admission” subject to mandatory detention under 8 U.S.C. § 1225(b). *See* 8 U.S.C. § 1225(a)(1); 8 U.S.C. § 1182(a)(6)(A)(i) (categorizing certain classes of aliens as inadmissible, and therefore ineligible to be admitted to the United States, including those “present in the United States without being admitted or paroled”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–140 (2020) (an alien who is neither admitted nor paroled, nor otherwise lawfully present in this country, remains an “applicant for admission” who is “on the threshold” of initial entry, even if released into the country “for years pending removal,” and continues to be “‘treated’ for due process purposes ‘as if stopped at the border’”); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (such aliens are “treated as ‘an applicant for admission’”).

“Applicants for admission,” which includes aliens present without being admitted or paroled (“PWAP”)—as is the case with Petitioner, “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”). They are not entitled to custody redetermination hearings, whether pre- or post-detention. *Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”). Petitioner thus cannot show a likelihood of success on his claim that he is entitled to a custody redetermination hearing prior to re-detention.

Nor could Petitioner show a likelihood of success on his claim even if he were subject to 8 U.S.C. § 1226(a) instead of the mandatory detention framework of § 1225(b). Section 1226(a) does not provide for pre-detention immigration judge review but instead sets out a procedure for review of detention by a U.S. Immigration and Customs Enforcement (“ICE”) officer once an alien is in custody—a process that the Ninth Circuit has found ensures “that the risk of erroneous deprivation would be ‘relatively small.’” *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196–97 (9th Cir. 2022).

II. STATUTORY BACKGROUND

A. “Applicants for Admission” Under 8 U.S.C. § 1225

1 The Immigration and Nationality Act (“INA”) defines an “applicant for admission” as an “alien
 2 present in the United States who has not been admitted or who arrives in the United States (whether or not at
 3 a designated port of arrival . . .).” 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 140 (“an alien who tries
 4 to enter the country illegally is treated as an ‘applicant for admission’”) (citing 8 U.S.C. § 1225(a)(1));
 5 *Matter of Lemus*, 25 I & N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant
 6 for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to
 7 enter, but also those who are present in this country without having formally requested or received such
 8 permission[.]”). However long they have been in this country, an alien who is present in the United States
 9 but has not been admitted “is treated as ‘an applicant for admission.’” *Jennings*, 583 U.S. at 287.

10 Under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of aliens are inadmissible —
 11 and therefore ineligible to be admitted to the United States — including those “present in the United States
 12 without being admitted or paroled[.]” *Id.* § 1182(a)(6)(A)(i).

13 **B. Detention Under 8 U.S.C. § 1225**

14 Applicants for admission, including those like Petitioner who are PWAP, may be removed from the
 15 United States by expedited removal under § 1225(b)(1), or full removal proceedings before an immigration
 16 judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission “fall into one of two
 17 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
 18 mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate
 19 detention for applicants for admission until certain proceedings have concluded.”).

20 **1. Section 1225(b)(1)**

21 Congress established the expedited removal process in § 1225(b)(1) to ensure that the Executive
 22 could “expedite removal of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*,
 23 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 (“[Congress] crafted a system for
 24 weeding out patently meritless claims and expeditiously removing the aliens making such claims from the
 25 country.”). This provision authorizes immigration officers to order certain inadmissible aliens “removed
 26 from the United States without further hearing or review.” Section 1225(b)(1) applies to “arriving aliens” and
 27 “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid
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documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) also allows for the expedited removal of any alien “described in” § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General (“AG”) or Secretary of Homeland Security—that is, any alien not “admitted or paroled into the United States” and “physically present” fewer than two years—who is inadmissible under § 1182(a)(7) at the time of “inspection.” *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible aliens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects an alien for admission under § 1225(a)(3), that alien lacks entry documents and so is subject to § 1182(a)(7). The AG’s or Secretary’s authority to “designate” classes of aliens as subject to expedited removal is subject to his or her “sole and unreviewable discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); *American Immigration Lawyers Ass’n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding expedited removal statute).

On five occasions, the Secretary (and earlier, the AG) has designated categories of aliens for expedited removal under § 1225(b)(1)(A)(iii). In 2004, citing “the interests of focusing enforcement resources upon unlawful entries that have a close spatial and temporal nexus to the border,” the Secretary designated for expedited removal those “aliens encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border.” *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004). More recently, the Secretary restored the expedited removal scope to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The current notice enables DHS “to exercise the full scope of its statutory authority to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility,” who were not otherwise covered by prior designations. *Id.* at 8139–40.²

Expedited removal proceedings under § 1225(b)(1) include additional procedures if an alien

² On August 29, 2025, a D.C. district court stayed the government’s enforcement of this 2025 notice. *Make the Road New York, et al., v. Noem, et al.*, No. 25-cv-190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 29, 2025), *appeal docketed*, No. 25-5320 (D.C. Cir. Sept. 5, 2025). The district court denied the government’s motion for emergency stay pending appeal, which is now pending with the D.C. Circuit.

1 indicates an intention to apply for asylum or expresses a fear of persecution, torture, or return to the alien's
 2 country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that situation, the alien is given a
 3 non-adversarial interview with an asylum officer, who determines whether the alien has a “credible fear of
 4 persecution” or torture. *Id.* §§ 1225(b)(1)(A)(ii), (b)(1)(B)(iii)(II), (b)(1)(B)(iv), (v); *see also* 8 C.F.R. §
 5 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the credible fear process). The alien may also
 6 pursue *de novo* review of that determination by an immigration judge (“IJ”). 8 U.S.C.
 7 § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the credible fear process, an alien
 8 may consult with an attorney or representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5).
 9 However, an alien subject to these procedures “shall be detained pending a final determination of credible
 10 fear of persecution and, if found not to have such a fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

11 If the asylum officer or IJ does not find a credible fear, the alien is “removed from the United
 12 States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii),
 13 (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or IJ finds a credible fear, the
 14 alien is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to
 15 mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

16 Expedited removal under § 1225(b)(1) is a statutory procedure distinct from § 1229a. Section
 17 1229a governs full removal proceedings initiated by a notice to appear and conducted before an IJ, during
 18 which the alien may apply for relief or protection. By contrast, expedited removal under § 1225(b)(1)
 19 applies in narrower, statutorily defined circumstances—typically to individuals apprehended at or near the
 20 border who lack valid entry documents or commit fraud upon entry—and allows for their removal without
 21 a hearing, subject to limited exceptions. For these aliens, DHS has discretion to pursue expedited removal
 22 under § 1225(b)(1) or § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 524 (BIA 2011).

23 2. Section 1225(b)(2)

24 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It
 25 “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under Section 1225(b)(2), an alien
 26 “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if
 27 the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a
 28

doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such aliens “be detained for a proceeding under section 1229a of this title”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (proceedings under section 1229a are “full removal proceedings under section 240 of the INA”); *see also id.* (“[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, [] 8 U.S.C. § 1225(b)(2)(A)[] mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under § 1225(b)(1) “shall be detained” pursuant to § 1225(b)(2)). DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see also Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Detention Under 8 U.S.C. § 1226(a)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a) provides for the arrest and detention of these aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.³ By regulation, immigration officers can release an alien if he demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (*i.e.*, a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

Until recently, the government interpreted § 1226(a) to be an available detention authority for

³ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

1 aliens PWAP placed directly in full removal proceedings under § 1229a. *See, e.g., Ortega-Cervantes*, 501
2 F.3d at 1116. In view of legal developments, the government has determined that this interpretation was
3 incorrect, and that § 1225 is the sole applicable immigration detention authority for *all* applicants for
4 admission. *See Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate
5 detention of applicants for admission until certain proceedings have concluded.”).

6 **III. BACKGROUND**

7 On April 17, 2024, Petitioner—a native and citizen of Nicaragua—entered the U.S. without
8 inspection, admission or parole; Border Patrol (“BP”) encountered him outside of designated ports of entry
9 within 100 miles of the border at or near San Ysidro, California. Decl. of Gwendolyn Ng (“Ng Decl.”), Exs.
10 1, 2. BP agents determined that he had unlawfully entered the U.S., then apprehended and transported him to
11 a nearby BP facility for processing. *Id.*, Ex. 2. He lacked any valid immigration documents that would allow
12 him to legally enter, pass through, or remain in the U.S.; he admitted to entering without presenting himself
13 to an immigration officer for inspection at a designated port of entry *Id.*, Ex. 2.

14 On April 18, 2025, Petitioner was “processed as NTA/OR due to lack of bed space.” *Id.* ¶ 5, Ex. 2.
15 He was served an arrest warrant (Form I-220A), *id.*, Ex. 3; Ex. 2 at 2; a Notice to Appear (Form I-862)
16 finding him inadmissible as a noncitizen “present in the United States without being admitted or paroled, or
17 who arrived in the United States at any time or place other than as designated by the [AG],” *id.*, Ex. 1 at 1
18 (quoting 8 U.S.C. § 1182(a)(6)(A)(i)); *id.*, Ex. 2 at 2; a Notice of Custody Determination (Form I-286), *id.*,
19 Ex. 5; and an Order of Release on Recognizance pending his removal proceedings to commence on February
20 21, 2025, *id.*, Ex. 4. On February 21, 2025, Petitioner appeared for his first master calendar hearing where he
21 was advised of his rights by an IJ. *Id.* ¶ 6. His case was continued for him to obtain counsel. *Id.*

22 On August 15, 2025, Petitioner appeared for a second master calendar hearing in immigration court.
23 *Id.* ¶ 7. DHS counsel moved to dismiss his removal proceedings to initiate expedited removal, but the IJ did
24 not rule. *Id.* After the hearing, ICE Enforcement and Removal Operations (“ERO”) officers took him into
25 custody pursuant to a warrant (Form I-200). *Id.* ¶ 9, Ex. 6, Ex. 7 at 3.

26 On August 15, 2025, Petitioner filed his habeas petition. ECF No. 1. On August 16, 2025, he moved
27 *ex parte* for a TRO. ECF Nos. 2, 3. The same day, the duty judge issued a TRO requiring immediate release
28

1 and enjoining re-detention without a pre-deprivation hearing. ECF No. 4 at 5-6. The TRO was to remain in
 2 effect until 5:00 p.m. on August 30, 2025. The government filed a status report on August 17, 2025
 3 confirming that Petitioner was released from ICE custody at approximately 8:20 a.m. that day. ECF No. 5.
 4 On August 25, 2025, the Court vacated the schedule set by the duty judge, terminated the government's brief
 5 (ECF No. 12), and set a new schedule. ECF No. 14. Petitioner filed its PI motion on August 26, 2025. ECF
 6 Nos. 15, 16. On September 3, 2025, the IJ granted DHS's motion to dismiss. Ng. Decl. Ex. 10.

7 **IV. ARGUMENT**

8 **A. Legal Standard**

9 A PI is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a
 10 clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To
 11 obtain relief, the moving party must show that "he is likely to succeed on the merits, that he is likely to suffer
 12 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
 13 injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

14 **B. Petitioner Cannot Show a Likelihood of Success on the Merits**

15 **1. Under the Plain Text of 8 U.S.C. § 1225, Petitioner Must Be Detained 16 Pending the Outcome of His Removal Proceeding**

17 Petitioner cannot show a likelihood of success on his claim that he is entitled to a custody hearing
 18 prior to re-detention. This is because Petitioner is an "applicant for admission" due to his presence in the U.S.
 19 without having been either "admitted or paroled." *See* Ng Decl. Ex. 1 at 1. Such aliens are subject to the
 20 mandatory detention framework of 8 U.S.C. § 1225(b) that specifically applies to them, not the general
 21 provisions of § 1226(a).

22 Indeed, Petitioner fell within the scope of the 2004 expedited removal designation that was in place
 23 at the time of his arrival (in addition to the more recent 2025 designation that expands enforcement to the full
 24 scope of the statute). *See* 69 Fed. Reg. at 48879. Because he was apprehended by CBP officers within 14
 25 days of his entry and within 100 miles of the border, Petitioner indisputably falls squarely within both the
 26 statutory and regulatory definition of an applicant for admission subject to expedited removal proceedings.

27 Recent BIA authority confirms that Petitioner is subject to expedited removal and mandatory
 28 detention under § 1225(b). In *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), the BIA held that,

1 based on the plain text of the statute, an alien who entered without inspection remains an “applicant for
 2 admission” who is “seeking admission,” and is therefore subject to mandatory detention without a bond
 3 hearing, even if that alien has been present in the U.S. for years. *Id.*, slip op. at 220. Thus, the BIA also held
 4 that IJs lack authority to hold bond hearings for aliens in such circumstances. *Id.* The BIA considered, and
 5 rejected, the individual’s argument that the government’s “‘longstanding practice’ of treating aliens who are
 6 present in the United States without inspection as detained under [] 8 U.S.C.A. § 1226(a), and therefore
 7 eligible for a bond.” *Id.* at 225. Citing the Supreme Court’s decision in *Loper Bright Enterprises v.*
 8 *Raimondo*, 603 U.S. 369 (2024), the BIA explained that such a practice could be relevant where the statute is
 9 “doubtful and ambiguous,” but here, “the statutory text of the INA . . . is instead clear and explicit in
 10 requiring mandatory detention of all aliens who are applicants for admission, without regard to how many
 11 years the alien has been residing in the United States without lawful status.” *Hurtado*, slip op. at 226. Nor did
 12 it matter that “DHS [had] issued an arrest warrant in conjunction with the Notice to Appear and a Notice of
 13 Custody Determination”: “the mere issuance of an arrest warrant does not endow an [IJ] with authority to set
 14 bond for an alien who falls under section 235(b)(2)(A) of the INA . . . If it did, it would render meaningless
 15 the many prohibitions cited above on the authority of an [IJ] to set bond.” *Id.* at 227 (citing, e.g., *Matter of Q.*
 16 *Li*, 29 I&N Dec. 66, 69 (BIA 2025)). The BIA has therefore now confirmed, in a decision binding on IJs
 17 nationwide, what the government is arguing here: individuals such as Petitioner are “applicants for
 18 admission” subject to mandatory detention under § 1225(b), and have no right to a bond hearing.

19 Respondents recognize that recent district court PI decisions have concluded that § 1225(b) is not
 20 applicable to other aliens who were conditionally released in the past under § 1226(a).⁴ While in his PI
 21 motion Petitioner does not argue that his release under § 1226(a) in the past renders § 1225(b) inapplicable to
 22 him (and makes no argument that his detention is governed by § 1226), these non-binding decisions do not
 23 grapple with the textual argument that the BIA just held was “clear and explicit.” *Hurtado*, slip op. at 226.

24 Taken together, the plain language of §§ 1225(a) and 1225(b) indicate that applicants for admission,
 25

26 ⁴ *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);
 27 *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*,
 28 No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025). This Court recently issued a TRO in a
 similar case but that order did not address this point. *Caicedo Hinestroza et al. v. Kaiser*, No. 25-CV-07559-
 JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025).

1 including those “present” in the U.S.—like Petitioner—are subject to mandatory detention under Section
 2 1225(b). When there is “an irreconcilable conflict in two legal provisions,” then “the specific governs over
 3 the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). While § 1226(a)
 4 applies generally to aliens who are “arrested and detained pending a decision on” removal, § 1225 applies
 5 more narrowly to “applicants for admission”—*i.e.*, aliens present in the U.S. who have not been admitted.
 6 Because Petitioner falls within this latter category, the specific detention authority under § 1225 controls over
 7 the general authority found at § 1226(a).

8 As an alien PWAP subject to mandatory detention under § 1225(b), Petitioner is not entitled to
 9 custody redetermination hearings at any time, whether pre- or post-detention. *Jennings*, 583 U.S. at 297
 10 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”). In addition,
 11 although DHS initially elected to place Petitioner in full removal proceedings under § 1229a, Petitioner
 12 remains an individual PWAP who is amenable to expedited removal and subject to mandatory detention due
 13 to his presence in the U.S. without having been either “admitted or paroled” or physically present in the U.S.
 14 continuously for the two-year period immediately preceding the date of the determination of inadmissibility.

15 While the IJ recently granted DHS’s motion to dismiss Petitioner’s full removal proceeding, his
 16 detention remains mandatory under § 1225(b)(2) but the detention authority will shift to § 1225(b)(1) upon
 17 expiration of Petitioner’s appeal rights. Petitioner will receive the expedited removal procedures under 8
 18 U.S.C. § 1252(e)(2) and, as is the case under § 1225(b)(2), cannot challenge their mandatory detention. 8
 19 U.S.C. § 1225(b)(1)(B)(iii)(IV) (“Any alien subject to the procedures under this clause shall be detained
 20 pending a final determination of credible fear of persecution and, if found not to have such a fear, until
 21 removed.”). But if an asylum officer or IJ finds a credible fear of persecution or torture, he may be placed in
 22 full removal proceedings under 8 U.S.C. § 1229a, *see* 8 C.F.R. § 208.30(f), although he will remain subject
 23 to mandatory detention under § 1225(b)(2)(A).

24 Because § 1225(b) mandates detention of applicants for admission placed in removal proceedings,
 25 Petitioner cannot succeed on his claim that he is entitled to a hearing to contest his re-detention.

26 **2. The *Mathews* Factors Do Not Apply**

27 Given his status as an applicant for admission subject to mandatory detention, Petitioner’s reliance on
 28

1 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) is misplaced. As an initial matter, the Supreme Court has
 2 upheld mandatory civil immigration detention without utilizing the multi-factor “balancing test” of *Mathews*.
 3 See *Demore v. Kim*, 538 U.S. 510 (2003) (upholding mandatory detention under 8 U.S.C. § 1226(c)); cf.
 4 *Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under 8 U.S.C. § 1231(a)(6) for six
 5 months after the 90-day removal period).⁵

6 In any event, applicants for admission like Petitioner, who were not admitted or paroled into the
 7 country, lack a liberty interest in additional procedures, including a custody redetermination hearing. *Landon*
 8 *v. Plasencia*, 459 U.S. 21, 32 (1982) (“[A]n alien seeking initial admission to the United States requests a
 9 privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is
 10 a sovereign prerogative”); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (“At the
 11 outset we wish to point out that an alien who seeks admission to this country may not do so under any claim
 12 of right.”). Indeed, for “applicants for admission” who are amenable to § 1225(b)(1)—i.e., because they were
 13 not physically present for at least two years on the date of inspection, 8 U.S.C. § 1225(b)(1)(A)(iii)(II)—
 14 “[w]hatever the procedure authorized by Congress . . . is due process,” whether or not they are apprehended
 15 at the border or after entering the country. *Knauff*, 338 U.S. at 544; accord *Thuraissigiam*, 591 U.S. at 138–
 16 139 (“This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S.
 17 soil.”). These aliens have “only those rights regarding admission that Congress has provided by statute.” *Id.*
 18 at 140; see *Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Petitioner is entitled only to the protections
 19 set forth by statute, and “the Due Process Clause provides nothing more.” *Thuraissigiam*, 591 U.S. at 140.

20 3. Congress Did Not Intend to Treat Individuals Who Unlawfully Enter the 21 Country Better than Those Who Appear at a Port of Entry

22 When the plain text of a statute is clear, “that meaning is controlling” and courts “need not examine
 23 legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the
 24 extent legislative history is relevant here, nothing “refutes the plain language” of § 1225. *Suzlon Energy Ltd.*

25 ⁵ As the Ninth Circuit recognized in *Rodriguez Diaz*, “the Supreme Court when confronted with
 26 constitutional challenges to immigration detention has not resolved them through express application of
 27 *Mathews*.” *Rodriguez Diaz v. Garland*, 53 F.4th 1206 (9th Cir. 2022) (citations omitted). Whether the
 28 *Mathews* test applies in this context is an open question in the Ninth Circuit. See *Rodriguez Diaz*, 53 F.4th at
 1207 (applying *Mathews* factors to uphold constitutionality of Section 1226(a) procedures in a prolonged
 detention context; “we assume without deciding that *Mathews* applies here”).

1 *v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and
 2 Immigrant Responsibility Act of 1996 to correct “an anomaly whereby immigrants who were attempting to
 3 lawfully enter the United States were in a worse position than persons who had crossed the border
 4 unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It “intended to replace certain
 5 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United States
 6 without inspection gain equities and privileges in immigration proceedings that are not available to aliens
 7 who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). For
 8 that reason, Petitioner—who entered the United States without inspection, miles from the nearest port of
 9 entry, and was processed and released outside of a port of entry—should be treated no differently than
 10 noncitizens who present at a port of entry and are subject to mandatory detention under § 1225, including
 11 pending further consideration of their applications for asylum. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

12 **4. Petitioner’s Detention Authority Cannot Be Converted to § 1226(a)**

13 As an “applicant for admission,” Petitioner’s detention is governed by the § 1225(b) framework. This
 14 remains true even where the government previously released him under 8 U.S.C. § 1226(a). By citing §
 15 1226(a), DHS does not permanently alter an alien’s status as an “applicant for admission” under § 1225; to
 16 the contrary, the alien’s release is expressly subject to an order to appear for removal proceedings based on
 17 *unlawful* entry. Nor is DHS prevented from clarifying the detention authority to conform to the requirements
 18 of the statutory framework as DHS now interprets it. *See, e.g., United Gas Improvement v. Callery*, 382 U.S.
 19 223, 229 (1965) (explaining that an agency can correct its own error). Pursuant to the statutory framework,
 20 an alien’s conditional release is not the type of “lawful entry into this country” that is necessary to “establish[
 21] connections” that could form a liberty interest requiring additional process, and he or she remains an
 22 “applicant for admission” who is “at the threshold of initial entry” and subject to mandatory detention under
 23 § 1225. *Thuraissigiam*, 591 U.S. at 106–07 (“While aliens who have established connections in this country
 24 have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set
 25 the conditions for an alien’s lawful entry into this country and that, as a result, an alien at the threshold of
 26 initial entry cannot claim any greater rights under the Due Process Clause.”)

27 This binding Supreme Court authority is therefore in conflict with recent district court decisions

finding that the government’s “election to place Petitioner in full removal proceedings under § 1229a and releasing Petitioner under § 1226(a) provided Petitioner a liberty interest that is protected by the Due Process Clause.” *Ramirez Clavijo*, 2025 WL 2419263, *3. The government’s decision to place an alien like Petitioner in full removal proceedings under § 1229a is consistent with § 1225(b)(2), and its decision to cite § 1226(a) in releasing him does not render his entry lawful; it remains unlawful (as the alien’s release is conditioned on appearing for removal proceedings based on *unlawful* entry), and as the Supreme Court confirmed in *Thuraissigiam*, the alien remains “on the threshold of initial entry,” is “treated for due process purposes as if stopped at the border,” and “cannot claim any greater rights under the Due Process Clause” than what Congress provided in § 1225. *Thuraissigiam*, 591 U.S. at 139–40.

The Supreme Court’s holding in *Thuraissigiam* is consistent with *Landon*, where the Court observed that only “once an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[.]” 459 U.S. at 32. In *Thuraissigiam*, the Court reiterated that “established connections” contemplate “an alien’s lawful entry into this country.” 591 U.S. at 106–07. In this case, Petitioner was neither admitted nor paroled, nor lawfully present in this country as required by *Landon* and *Thuraissigiam* to claim due process rights beyond what § 1225(b) provides. He instead remains an applicant for admission who—even if released into the country “for years pending removal”—continues to be “‘treated’ for due process purposes ‘as if stopped at the border.’” *Thuraissigiam*, 591 U.S. at 139–140.

5. Petitioner Is Not Entitled to a Pre-Detention Hearing Under § 1226(a)

Even if this Court finds that § 1226(a) applies here, Petitioner would still not be entitled to a pre-detention hearing. For aliens detained under § 1226(a), “an ICE officer makes the initial custody determination” *post*-detention, which the alien can later request to have reviewed by an IJ. *Rodriguez Diaz*, 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of the basic process of immigration detention. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that “the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations”); *Abel v. United States*, 362 U.S. 217, 233–34 (1960) (noting the “impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation”); *Carlson v. Landon*, 342 U.S.

524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.”). Thus, under Section 1226(a), aliens are not guaranteed *pre*-detention review and may instead only seek review of their detention by an ICE official once they are in custody—a process that the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz*, 53 F.4th at 1196–97.⁶

6. Petitioner Cannot Obtain an Injunction Prohibiting Transfer

To the extent that Petitioner seeks an injunction that prohibits transferring him out of this District, he cannot succeed. The AG has discretion to determine the appropriate place of detention. *Milan-Rodriguez v. Sessions*, No. 16-cv-01578-AWI, 2018 WL 400317, *10 (E.D. Cal. Jan. 12, 2018) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)). And while the Court may review whether such discretion resulted in a deprivation of rights, Petitioner has not shown how his mandatory detention or any transfer would interfere with his ability to present his cases or access counsel any more than any other similarly situated detainee. *See Milan-Rodriguez*, 2018 WL 400317, *10.

C. Petitioner Cannot Establish Irreparable Harm

Petitioner does not establish that he will be irreparably harmed absent a PI. The “unlawful deprivation of physical liberty” is a harm that “is essentially inherent in detention,” and thus “the Court cannot weigh this strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24, 2018). It is also countervailed by authority mandating—and upholding—his categorical detention as lawful. Indeed, the alleged infringement of constitutional rights is insufficient where, as here, he fails to demonstrate “a sufficient likelihood of success on the merits of [his] constitutional claims to warrant the grant of a preliminary injunction.” *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc’d Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *Meneses v. Jennings*, No. 21-cv-07193-JD,

⁶ Although *Rodriguez Diaz* did not arise in the pre-detention context, the Ninth Circuit noted that the petition argued that the Section 1226(a) framework was unlawful “for any length of detention” and concluded that the challenge to Section 1226(a) failed “whether construed as facial or as-applied challenges to § 1226(a).” *Rodriguez Diaz*, 53 F.4th at 1203.

2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner “assume[d] a deprivation to assert the resulting harm”). Further, any alleged harm from the detention alone is insufficient because “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523; *see also Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And as noted by the Ninth Circuit in *Rodriguez Diaz*, if treated as detention under § 1226(a), the risk of erroneous deprivation and value of additional process is small due to the procedural safeguards that Section 1226(a) provides. Thus, Petitioner cannot establish that his lawfully authorized mandatory detention would cause irreparable harm.

D. The Balance of Equities and Public Interest Do Not Favor an Injunction

When the government is a party, the balance of equities and public interest merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Further, where a 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)).

Here, the government has a compelling interest in the steady enforcement of its immigration laws. *See Demore*, 538 U.S. at 523; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court “should give due weight to the serious consideration of the public interest” in enacted laws); *see also Ubiquity Press 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”). Indeed, the government “suffers a form of irreparable injury” “[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J.) (citation omitted).

Petitioner’s claimed harms cannot outweigh this public interest in the application of the law, particularly since courts “should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). Recognizing the availability of an injunction under these circumstances would permit any “applicant for admission” subject to § 1225(b) to obtain additional review simply because he or she was

1 released—even if that release is expressly conditioned on appearing at removal proceedings for *unlawful*
 2 entry—circumventing the comprehensive statutory scheme that Congress enacted. That statutory scheme
 3 —and judicial authority upholding it—likewise favors the government. While it is “always in the public
 4 interest to protect constitutional rights,” if, as here, a petitioner has not shown a likelihood of success on
 5 the merits of her claim, that public interest does not outweigh the competing public interest in enforcement
 6 of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and
 7 governmental interest in applying the established procedures for “applicants for admission,” including
 8 their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

9 **E. Any Injunction Should Not Reverse the Burden of Proof**

10 At any bond hearing, Petitioner should have the burden of demonstrating that he is *not* a flight risk or
 11 danger to the community. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I&N
 12 Dec. 37, 40 (B.I.A. 2006) (“The burden is on the alien to show to the satisfaction of the [IJ] that he or she
 13 merits release on bond.”). It would be improper to reverse the burden of proof and place it on the government
 14 in these circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210-12 (“Nothing in this record suggests that
 15 placing the burden of proof on the government was constitutionally necessary to minimize the risk of error,
 16 much less that such burden-shifting would be constitutionally necessary in all, most, or many cases.”).

17 The Ninth Circuit previously held that the government bears the burden by clear and convincing
 18 evidence that an alien is not a flight risk or danger to the community for bond hearings in certain
 19 circumstances. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011) (bond hearing after allegedly
 20 prolonged detention). But following intervening Supreme Court decisions, the Ninth Circuit has explained
 21 that “*Singh’s* holding about the appropriate procedures for those bond hearings . . . was expressly premised
 22 on the (now incorrect) assumption that these hearings were statutorily authorized.” *Rodriguez Diaz*, 53 F.4th
 23 at 1196, 1200-01 (citing *Jennings*, 583 U.S. 281, and *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022)).
 24 Thus, the prior Ninth Circuit decisions imposing such a requirement are “no longer good law” on this issue,
 25 *Rodriguez Diaz*, 53 F.4th at 1196, and the Court should follow *Rodriguez Diaz* and the Supreme Court cases.

26 **V. CONCLUSION**

27 The government respectfully requests that Petitioner’s motion for a PI and habeas petition be denied.

1 DATED: September 12, 2025

Respectfully submitted,

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