

1 CRAIG H. MISSAKIAN (CABN 125202)

United States Attorney

2 PAMELA T. JOHANN (CABN 145558)

Assistant United States Attorney

3 Chief, Civil Division

4 450 Golden Gate Avenue, Box 36055

San Francisco, California 94102-3495

5 Telephone: 415-436-7200

Facsimile: 415-436-6748

6 pamela.johann@usdoj.gov

7 Attorneys for Respondents

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 LESLIE HERNANDEZ NIEVES,

12 Petitioner,

13 v.

14 POLLY KAISER, *et al.*,

15 Respondents.

) Case No. 3:25-cv-6921-LB

)
)
) **RESPONDENTS' OPPOSITION**
) **TO PETITIONER'S MOTION FOR**
) **PRELIMINARY INJUNCTION**

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1 **I. INTRODUCTION**

2 The United States “[has] often been described as ‘a nation of immigrants.’” *Foley v. Connelie*,
 3 435 U.S. 291, 294 (1978). “As a Nation we exhibit extraordinary hospitality to those who come to our
 4 country,” and “[i]ndeed, aliens lawfully residing in this society have many rights which are accorded to
 5 noncitizens by few other countries.” *Id.* Immigrants “have in turn richly contributed to our country’s
 6 success.” *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 218 L. Ed. 2d 71 (Feb. 20, 2024) (Alito, J., dissenting
 7 from denial of certiorari). Yet Congress has also identified a “crisis at the land border” that involves
 8 “hundreds of thousands” of noncitizens entering the country illegally each year, H.R. Rep. 104-469 at
 9 107, and the resulting need “to expedite the removal from the United States of aliens who indisputably
 10 have no authorization to be admitted,” H.R. Rep. 104-828 at 209.

11 For these reasons, “[t]he decisions of [the Supreme] Court with regard to the rights of aliens
 12 living in our society,” including the “restraints imposed” upon them, “have reflected fine, and often
 13 difficult, questions of values.” *Foley*, 435 U.S. at 294. Mindful of these values, Congress has created
 14 — and courts have upheld — procedures unique to noncitizens subject to expedited removal that are
 15 “coextensive” with due process. *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021) (“[I]n the
 16 expedited removal context, a petitioner’s due process rights are coextensive with the statutory rights
 17 Congress provides.”) (citing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020)).
 18 These procedures include the right to a non-adversarial interview before a trained asylum officer,
 19 administrative review before an immigration judge, and limited judicial review. 8 U.S.C. § 1252(e)(2);
 20 8 C.F.R. §§ 208.30, 235.3, 1208.30. But they do not permit these noncitizens to challenge their
 21 mandatory detention or entitle them to pre-detention hearings. *See* 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV);
 22 (b)(2)(A).

23 Petitioner is an applicant for admission under 8 U.S.C. § 1225. As such, she is subject to
 24 mandatory detention, and due process does not require that the Court enjoin Petitioner’s re-detention
 25 absent a hearing. Where, as here, the government properly exercises its authority to pursue expedited
 26 removal under 8 U.S.C. § 1225(b), those procedures fully satisfy due process and preclude Petitioner
 27 from clearing the high bar for a preliminary injunction requiring any such additional process. Under the
 28 plain text of Section 1225, Petitioner cannot show a likelihood of success on the merits, establish

1 irreparable harm, or countervail the government’s compelling interest in enforcing mandatory detention
 2 for the narrow category of noncitizens to which she belongs.

3 **II. STATUTORY FRAMEWORK**

4 **A. Applicants for Admission.**

5 The Immigration and Nationality Act (“INA”) defines an “applicant for admission” as an “alien
 6 present in the United States who has not been admitted or who arrives in the United States (whether or
 7 not at a designated port of arrival . . .).” 8 U.S.C. § 1225(a)(1); *Dep’t of Homeland Sec. v.*
 8 *Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country
 9 illegally is treated as an ‘applicant for admission’” (citing INA § 235(a)(1)); *Matter of Lemus*, 25 I&N
 10 Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an
 11 unconventional sense, to include not just those who are expressly seeking permission to enter, but also
 12 those who are present in this country without having formally requested or received such permission”).
 13 Under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of noncitizens are inadmissible,
 14 and therefore ineligible to be admitted to the United States, including those “present in the United States
 15 without being admitted or paroled[.]” 8 U.S.C. § 1182(a)(6)(A)(i). However long he has been in this
 16 country, a noncitizen who is present in the United States but has not been admitted “is treated as ‘an
 17 applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

19 Applicants for admission, including those present without being admitted or paroled (“PWAP”)
 20 may be removed from the United States by, *inter alia*, expedited removal under 8 U.S.C. § 1225(b)(1) or
 21 removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a. These noncitizens “fall into
 22 one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which
 23 are subject to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1)
 24 and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”).

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

26 Congress established the expedited removal process in 8 U.S.C. § 1225(b)(1) to ensure that the
 27 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
 28 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 (“[Congress]

1 crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making
2 such claims from the country.”). This provision authorizes immigration officers to order certain
3 inadmissible noncitizens “removed from the United States without further hearing or review.” Section
4 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially determined to be
5 inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C.
6 §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen
7 “described in” § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland
8 Security — that is, any noncitizen not “admitted or paroled into the United States” and “physically
9 present” fewer than two years — who is inadmissible under § 1182(a)(7) at the time of “inspection.”
10 *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents).
11 Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether,
12 when an officer inspects a noncitizen for admission under § 1225(a)(3), that noncitizen lacks entry
13 documents and so is subject to § 1182(a)(7). The Attorney General’s or Secretary’s authority to
14 “designate” classes of noncitizens as subject to expedited removal is subject to his or her “sole and
15 unreviewable discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass’n*
16 *v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

17 The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for
18 expedited removal under § 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited
19 removal scope to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited*
20 *Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables the U.S. Department of Homeland
21 Security (“DHS”) “to exercise the full scope of its statutory authority to place in expedited removal,
22 with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)]
23 who have not been admitted or paroled into the United States and who have not affirmatively shown, to
24 the satisfaction of an immigration officer, that they have been physically present in the United States
25 continuously for the two-year period immediately preceding the date of the determination of
26 inadmissibility,” who were not otherwise covered by prior designations. *Id.* at 8139–40.

27 Expedited removal proceedings under Section 1225(b)(1) include additional procedures if a
28

1 noncitizen indicates an intention to apply for asylum¹ or expresses a fear of persecution, torture, or
 2 return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that
 3 situation, the noncitizen is given a non-adversarial interview with an asylum officer, who determines
 4 whether the noncitizen has a "credible fear of persecution" or torture. *Id.* §§ 1225(b)(1)(A)(ii),
 5 (b)(1)(B)(iii)(II), (b)(1)(B)(iv), (v); *see also* 8 C.F.R. § 208.30; *Thuraissigiam*, 591 U.S. at 109–11
 6 (describing the credible fear process). The noncitizen may also pursue *de novo* review of that
 7 determination by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d),
 8 1208.30(g). During the credible fear process, a noncitizen may consult with an attorney or
 9 representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5). However, a noncitizen subject to
 10 these procedures "shall be detained pending a final determination of credible fear of persecution and, if
 11 found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

12 If the asylum officer or immigration judge does not find a credible fear, the noncitizen is
 13 "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
 14 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer
 15 or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings
 16 under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C.
 17 § 1225(b)(1)(B)(iii)(IV).

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

27 ¹ Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C.
 28 § 1558(a)(2)(B), except if the noncitizen can demonstrate "extraordinary circumstances" that justify
 moving that deadline. *Id.* § 1558(a)(2)(D).

1 **2. Section 1225(b)(2)**

2 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287.
 3 It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), a
 4 noncitizen “who is an applicant for admission” is subject to mandatory detention pending full removal
 5 proceedings “if the examining immigration officer determines that [the] alien seeking admission is not
 6 clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such
 7 noncitizens “be detained for a proceeding under section 1229a of this title”); *Matter of Q. Li*, 29 I. & N.
 8 Dec. 66, 68 (BIA 2025) (explaining that proceedings under section 1229a are “full removal proceedings
 9 under section 240 of the INA”); *see also id.* (“[F]or aliens arriving in and seeking admission into the
 10 United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8
 11 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
 12 *Jennings*, 583 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (providing that a noncitizen placed into Section
 13 1229a removal proceedings in lieu of expedited removal proceedings under Section 1225(b)(1) “shall be
 14 detained” pursuant to 8 U.S.C. § 1225(b)(2)). DHS has the sole discretionary authority to temporarily
 15 release on parole “any alien applying for admission to the United States” on a “case-by-case basis for
 16 urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597
 17 U.S. 785, 806 (2022).

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

19 A different statutory detention authority, 8 U.S.C. § 1226, applies to noncitizens who have been
 20 admitted to the United States but are deportable and subject to removal proceeding. Section 1226(a)
 21 provides for the arrest and detention of noncitizens “pending a decision on whether the alien is to be
 22 removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion,
 23 detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional
 24 parole.² By regulation, immigration officers can release a noncitizen if he demonstrates that he “would
 25 not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R.

26 _____
 27 ² Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled
 28 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)).

§ 236.1(c)(8). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge 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 immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider).

Until recently, the government interpreted Section 1226(a) to be an available detention authority for noncitizens PWAP placed directly in full removal proceedings under Section 1229a. *See, e.g., Ortega-Cervantes*, 501 F.3d at 1116. In view of legal developments, the government has determined that this interpretation was incorrect, and that Section 1225 is the sole applicable immigration detention authority for *all* applicants for admission. *See Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded”).

III. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico who entered the United States without inspection on or about May 23, 2024. Declaration of Juan Abad (“Abad Decl.”) ¶¶ 5 & Ex. 2. DHS Border Patrol encountered Petitioner near the port of entry in Sasabe, Arizona. *Id.* Ex. 2 at 3. DHS took Petitioner into custody and transported her to a facility in Tucson for processing. *Id.* During processing, Petitioner admitted to lacking valid immigration documents that would allow her to legally enter, pass through, or remain in the United States. *Id.* Petitioner also admitted to having entered the United States the same day without presenting herself to an immigration officer for inspection at a designated port of entry. *Id.* Petitioner “stated that she [did] not have fear of persecution or torture if returned to Mexico.” *Id.* The following day, May 24, 2024, DHS issued Petitioner a Notice to Appear (Form I-862) finding that she is “an alien present in the United States without being admitted or paroled,” *id.* Ex. 1 (quoting 8 U.S.C. § 1182(a)(6)(A)(i)), and released her on her own recognizance “due to humanitarian reasons and a lack of detention space” pending her removal proceedings, including an immigration court appearance on August 28, 2025, in San Francisco. *Id.* Exs. 1, 2 at 3, 3.

1 On August 15, 2025, Petitioner appeared for a master calendar hearing in San Francisco
2 immigration court. *Id.* Ex. 4 at 4. Immigration and Customs Enforcement (“ICE”) Enforcement and
3 Removal Operations (“ERO”) reviewed the case and determined that Petitioner was subject to expedited
4 removal under the 2025 designation. *Id.* ¶ 8 & Ex. 4 at 4. At the hearing, DHS counsel filed a motion to
5 dismiss Petitioner’s removal proceedings, and the Immigration Judge reset the merits hearing to give
6 Petitioner time to get legal counsel and to respond to the motion to dismiss. *Id.* ¶ 7 & Ex. 4 at 4. After
7 the hearing concluded, ERO officers located outside of the courtroom identified themselves as
8 deportation officers to Petitioner, verified her identity, and took her into custody. *Id.* ¶ 8 & Ex. 4 at 4.
9 She was transferred to Mesa Verde ICE Processing Center in Bakersfield, California later that day. *Id.*
10 ¶ 9 & Ex. 5.

11 Petitioner is currently subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). *See id.* ¶ 8.
12 Section 1225(b)(2)(A) requires noncitizens to “be detained for a proceeding under section 1229a of this
13 title,” which are “full removal proceedings under section 240 of the INA.” *Matter of Q. Li*, 29 I. & N.
14 Dec. at 68. As noted above, DHS has moved to dismiss those full removal proceedings to initiate
15 expedited removal under 8 U.S.C. § 1225(b)(1). Abad Decl. ¶¶ 7, 8. If this motion is granted, DHS
16 intends to initiate expedited removal proceedings, during which Petitioner remain subject to mandatory
17 detention under Section 1225(b)(1)(B)(iii)(IV).

18 IV. PROCEDURAL BACKGROUND

19 Petitioner commenced this action on August 15, 2025, by filing a petition for writ of habeas
20 corpus, ECF No. 1. The next day, Saturday, August 16, 2025, Petitioner moved *ex parte* for a TRO,
21 ECF No. 8. The Court granted the TRO that evening, ECF No. 10, and counsel for Petitioner emailed
22 the order to counsel for Respondents on Sunday morning, August 17, 2025.³ The TRO ordered
23 Petitioner’s release “until the court decides the motion for a preliminary injunction.” *Id.* at 3. Pursuant
24 to the TRO, the government released Petitioner from custody on Sunday, August 17, 2025, at
25 approximately 3:10 p.m. ECF No. 11.

26
27
28 ³ Counsel for Respondents did not receive ECF notification of the Order until Monday, August 18, 2025, at 7:32 a.m.

V. ARGUMENT

A. Legal Standard

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

B. Petitioner Fails to Meet the High Bar for Injunctive Relief

1. Petitioner Cannot Show a Likelihood of Success on the Merits

(i) Under the Plain Text of § 1225, Petitioner Must Be Detained Pending the Outcome of Her Removal Proceeding

Petitioner cannot show a likelihood of success on her claim that she is entitled to a custody hearing prior to re-detention. This is because Petitioner is an applicant for admission due to her presence in the United States without having been either “admitted or paroled.” Abad Decl. Ex. 1 at 1. Such noncitizens are subject to the mandatory detention framework of 8 U.S.C. § 1225(b). As a noncitizen PWAP subject to mandatory detention under § 1225(b), Petitioner is not entitled to a custody redetermination hearing by an immigration judge or a pre-deprivation hearing before re-detention. *Jennings*, 583 U.S. at 297 (“neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”). Nor is her release authorized by statute. *Jennings*, 583 U.S. at 297 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”). In addition, although DHS initially elected to place Petitioner in full removal proceedings under Section 1229a, she remains a noncitizen PWAP who is amenable to expedited removal due to her presence in the United States without having been either “admitted or paroled” or physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility.

Because Petitioner was re-detained while her full removal proceedings were still pending — *i.e.*, before the immigration court decided DHS’s motion to dismiss those proceedings — her detention was

1 pursuant to Section 1225(b)(2). If the immigration court grants DHS's motion to dismiss Petitioner's
2 removal proceedings, her re-detention will remain mandatory, but the detention authority will shift to
3 § 1225(b)(1). Petitioner will receive the expedited removal procedures under 8 U.S.C. § 1252(e)(2) and,
4 as is the case under Section 1225(b)(2), cannot challenge her mandatory detention. 8 U.S.C.
5 § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained
6 pending a final determination of credible fear of persecution and, if found not to have such a fear, until
7 removed."). However, as noted above, if an asylum officer or immigration judge determines that she
8 has a credible fear of persecution or torture, Petitioner may be placed in full removal proceedings under
9 8 U.S.C. § 1229a, *see* 8 C.F.R. § 208.30(f), although she will remain subject to mandatory detention
10 under § 1225(b)(2)(A).

11 Thus, because Section 1225(b) mandates the detention of all applicants for admission placed in
12 removal proceedings, including Petitioner, she cannot succeed on her claim that she is entitled to an
13 "opportunity to contest" her re-detention.

14 **(ii) The *Mathews* Factors Do Not Apply**

15 The Supreme Court has never utilized the multi-factor "balancing test" of *Mathews v. Eldridge*,
16 424 U.S. 319, 335 (1976), in addressing due process claims raised by noncitizens held in civil
17 immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See*
18 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when
19 confronted with constitutional challenges to immigration detention has not resolved them through
20 express application of *Mathews*." (citations omitted); *id.* at 1214 ("In resolving familiar immigration-
21 detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J.,
22 concurring). Nor has the Ninth Circuit embraced the *Mathews* test. While leaving open the question of
23 whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez*
24 *Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that "*Mathews* remains a flexible test that can
25 and must account for the heightened governmental interest in the immigration detention context." *Id.* at
26 1206.

27 In any event, given her status as an applicant for admission and a noncitizen amenable to
28 expedited removal, Petitioner's reliance on *Mathews* in asserting that she should be prohibited from re-

1 detention absent a custody hearing is misplaced. In *Mathews*, the Supreme Court explained that
2 “[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of
3 ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth
4 Amendment.” 424 U.S. at 332. Yet noncitizens subject to expedited removal like Petitioner, who were
5 not admitted or paroled into the country, nor physically present for at least two years on the date of
6 inspection — as a class — lack any liberty interest in avoiding removal or to certain additional
7 procedures. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). As to such noncitizens, “[w]hatever the procedure
8 authorized by Congress . . . is due process.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
9 544 (1950); *accord Thuraissigiam*, 591 U.S. at 138–139 (“This rule would be meaningless if it became
10 inoperative as soon as an arriving alien set foot on U.S. soil.”); *Landon v. Plasencia*, 459 U.S. 21, 32
11 (1982) (“[A]n alien seeking initial admission to the United States requests a privilege and has no
12 constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign
13 prerogative”); *Knauff*, 338 U.S. at 542 (“At the outset we wish to point out that an alien who seeks
14 admission to this country may not do so under any claim of right.”).

15 Thus, noncitizens amenable to expedited removal cannot assert a protected property or liberty
16 interest in additional procedures not provided by the statute, 8 U.S.C. § 1225. *See Dave v. Ashcroft*, 363
17 F.3d 649, 653 (7th Cir. 2004). Instead, those noncitizens — including Petitioner — have “only those
18 rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140.
19 Petitioner is entitled only to the protections set forth by statute, and “the Due Process Clause provides
20 nothing more.” *Thuraissigiam*, 591 U.S. at 140.

21 This remains true even where, as here, the government cites 8 U.S.C. § 1226(a) in connection
22 with its release or re-arrest of a noncitizen subject to 8 U.S.C. § 1225. *But cf. Ramirez Clavijo v. Kaiser*,
23 No. 25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025) (finding that the government’s “election to place
24 Petitioner in full removal proceedings under § 1229a and releasing Petitioner under § 1226(a) provided
25 Petitioner a liberty interest that is protected by the Due Process Clause”). By citing § 1226(a), DHS
26 does not alter a noncitizen’s status as an “applicant for admission” under Section 1225; to the contrary,
27 the noncitizen’s release into the country is expressly subject to an order to appear for removal
28 proceedings based on unlawful entry. *Abad Decl. Ex. 2 at 3*. Thus, even where DHS cites Section

1 1226(a) in connection with a noncitizen's release, the release is still expressly not the type of "lawful
 2 entry into this country" that is necessary to "establish[] connections" that could form a liberty interest
 3 requiring additional process. *Thuraissigiam*, 591 U.S. at 106–07 ("While aliens who have established
 4 connections in this country have due process rights in deportation proceedings, the Court long ago held
 5 that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a
 6 result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process
 7 Clause.").

8 The Supreme Court's holding in *Thuraissigiam* is consistent with its earlier holding in *Landon*.
 9 In *Landon*, the Court observed that only "once an alien gains admission to our country and begins to
 10 develop the ties that go with permanent residence [does] his constitutional status change[]." 459 U.S. at
 11 32. In *Thuraissigiam*, the Court reiterated that "established connections" contemplate "an alien's lawful
 12 entry into this country." 591 U.S. at 106–07. Petitioner here was neither admitted nor paroled, nor
 13 lawfully present in this country as required by *Landon* and *Thuraissigiam* to claim due process rights
 14 beyond what Section 1225(b) provides. She instead remains an "applicant for admission" who — even
 15 if released into the country "for years pending removal" — continues to be "'treated' for due process
 16 purposes 'as if stopped at the border.'" *Thuraissigiam*, 591 U.S. at 139–140 (explaining that such
 17 noncitizens remain "on the threshold" of initial entry). Accordingly, Petitioner remains within the
 18 category of noncitizens who are owed only what the statute provides.

19 (iii) **Congress Did Not Intend to Treat Individuals Who Unlawfully Enter**
 20 **the Country Better than Those Who Appear at a Port of Entry**

21 When the plain text of a statute is clear, "that meaning is controlling" and courts "need not
 22 examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011).
 23 But to the extent legislative history is relevant here, nothing "refutes the plain language" of Section
 24 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the
 25 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to correct "an anomaly whereby
 26 immigrants who were attempting to lawfully enter the United States were in a worse position than
 27 persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en
 28 banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended

1 to replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have
 2 entered the United States without inspection gain equities and privileges in immigration proceedings that
 3 are not available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R.
 4 Rep. 104-469, pt. 1, at 225). For that reason, Petitioner — who entered the United States without
 5 inspection, miles from the nearest port of entry, and was processed and released outside of a port of
 6 entry — should be treated no differently than noncitizens who present at a port of entry and are subject
 7 to mandatory detention under Section 1225(b), including pending further consideration of their
 8 applications for asylum. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

9 **(iv) Petitioner Cannot Obtain an Injunction Prohibiting Her Transfer**

10 To the extent that Petitioner seeks an injunction that would “prohibit[] the government from
 11 transferring her out of this [d]istrict,” ECF 8 at 19, she cannot succeed. The Attorney General has
 12 discretion to determine the appropriate place of detention. *Milan-Rodriguez v. Sessions*, No. 16-cv-
 13 01578, 2018 WL 400317, *10 (Jan. 12, 2018) (citing *Rios-Berrios*, 776 F.2d 859, 863 (9th Cir. 1985)
 14 (“We wish to make ourselves clear. We are not saying that the petitioner should not have been
 15 transported to Florida. That is within the province of the Attorney General to decide.”)). And while the
 16 Court may review whether such discretion resulted in a deprivation of rights, Petitioner has not shown
 17 how her mandatory detention or any transfer would interfere with the ability to present her case or
 18 access counsel more than any other similarly situated detainee. *See Milan-Rodriguez*, 2018 WL 400317,
 19 *10 (“There is nothing in the record to indicate that Petitioner’s transfer was irregular or anything other
 20 than an ordinary incident of immigration detention.”).

21 **2. Petitioner Cannot Establish Irreparable Harm**

22
 23 In addition to her failure to show a likelihood of success on the merits, Petitioner does not meet
 24 her burden of establishing that she will be irreparably harmed absent a preliminary injunction. First,
 25 Petitioner’s assertion that she is “medically vulnerable,” ECF No. 8 at 17, appears to be based on a
 26 concern about access to medication, but there is no indication that she would not have access to
 27 medications or medical care while in ICE custody. In any event, this claim is contradicted by the
 28 August 15, 2025, intake record, in which Petitioner “claims good health” and stated that “she does not

1 have any medical issues and is not on any medication.” Abad Decl. Ex. 4 at 1, 4. Second, her
 2 remaining alleged injury — the “unlawful deprivation of physical liberty,” *id.* — is a harm that “is
 3 essentially inherent in detention,” and therefore “the Court cannot weigh this strongly in favor of”
 4 Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24,
 5 2018). It is also countervailed by authority mandating — and upholding — her mandatory detention as
 6 lawful. *See supra* Part V.B.1. Indeed, the alleged infringement of constitutional rights is insufficient
 7 where, as here, a petitioner fails to demonstrate “a sufficient likelihood of success on the merits of [her]
 8 constitutional claims to warrant the grant of a preliminary injunction.” *Marin All. For Med. Marijuana*
 9 *v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc’d Gen. Contractors of Cal., Inc.*
 10 *v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-
 11 cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner
 12 “assume[d] a deprivation to assert the resulting harm”). Further, any alleged harm from the fact of
 13 detention alone is insufficient because “detention during deportation proceedings [is] a constitutionally
 14 valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Reno v.*
 15 *Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Accordingly, given her
 16 status as a noncitizen subject to expedited removal, Petitioner cannot establish that her lawfully
 17 authorized mandatory detention would cause her irreparable harm.

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

19 When the government is a party, the balance of equities and public interest merge. *Drakes Bay*
 20 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435
 21 (2009)). Further, where a moving party only raises “serious questions going to the merits,” the balance
 22 of hardships must “tip sharply” in her favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35
 23 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

24 Here, the government has a compelling interest in the steady enforcement of its immigration
 25 laws. *See, e.g., Demore*, 538 U.S. at 523; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009)
 26 (holding that the court “should give due weight to the serious consideration of the public interest” in
 27 enacted laws); *see also Ubiquity Press Inc. v. Baran*, No 20-cv-01809, 2020 WL 8172983, at *4 (C.D.
 28 Cal. Dec. 20, 2020) (explaining that “the public interest in the United States’ enforcement of its

1 immigration laws is high”); *United States v. Arango*, No. 09-cv-178, 2015 WL 11120855, at 2 (D. Ariz.
2 Jan. 7, 2015) (finding that “the Government’s interest in enforcing immigration laws is enormous”).
3 Indeed, the government “suffers a form of irreparable injury” “[a]ny time [it] is enjoined by a court from
4 effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303
5 (2012) (Roberts, C.J., in chambers) (citation omitted).

6 Petitioner’s claimed harm cannot outweigh this public interest in the application of the law,
7 particularly since courts “should pay particular regard for the public consequences in employing the
8 extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)
9 (citation omitted). Recognizing the availability of a preliminary injunction under these circumstances
10 would permit any noncitizen subject to expedited removal to obtain additional review, circumventing the
11 comprehensive statutory scheme that Congress enacted. That statutory scheme — and judicial authority
12 upholding it — likewise favors the government. While it is “always in the public interest to protect
13 constitutional rights,” if, as here, a petitioner has not shown a likelihood of success on the merits of her
14 claim, that public interest does not outweigh the competing public interest in enforcement of existing
15 laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental
16 interest in applying the established procedures for noncitizens subject to expedited removal, including
17 their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

18 VI. CONCLUSION

19 For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner’s
20 motion for preliminary injunction.

21
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Respectfully submitted,

23 CRAIG H. MISSAKIAN
24 United States Attorney

25 /s/ Pam Johann
26 PAMELA T. JOHANN
Assistant United States Attorney

27 Attorneys for Respondents
28