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

12 GERARDO ROMAN VALENCIA ZAPATA,
13 *et al.*,

14 Petitioners,

15 v.

16 POLLY KAISER, *et al.*,

17 Respondents.

) Case No. 3:25-cv-7492-RFL

) **RESPONDENTS' OPPOSITION**
) **TO PETITIONERS' MOTION FOR**
) **PRELIMINARY INJUNCTION; RESPONSE TO**
) **ORDER TO SHOW CAUSE; RETURN TO**
) **HABEAS PETITION**

) Date: September 18, 2025
) Time: 10:00 a.m.
) Location: Courtroom 15, 18th Floor

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)
18 _____) The Hon. Rita F. Lin
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1 **I. INTRODUCTION**

2 Petitioners Gerardo Roman Valencia Zapata, David Rafael Colon Solano, Keymaris Alvarez
3 Miranda, and Gabriela Alondra Vargas Plasencia Gonzalez (collectively, “Petitioners”) have moved for a
4 preliminary injunction enjoining the government from re-detaining them absent pre-detention hearings
5 before an immigration judge. But under the applicable immigration statutes, Petitioners are “applicants
6 for admission” subject to mandatory detention under 8 U.S.C. § 1225(b). *See* 8 U.S.C. § 1225(a)(1); 8
7 U.S.C. § 1182(a)(6)(A)(i) (categorizing certain classes of aliens as inadmissible, and therefore ineligible
8 to be admitted to the United States, including those “present in the United States without being admitted
9 or paroled”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–140 (2020) (explaining that
10 an alien who is neither admitted nor paroled, nor otherwise lawfully present in this country, remains an
11 “applicant for admission” who is “on the threshold” of initial entry, even if released into the country “for
12 years pending removal,” and continues to be “‘treated’ for due process purposes ‘as if stopped at the
13 border’”); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (explaining that such aliens are “treated as
14 ‘an applicant for admission’”).

15 These “applicants for admission,” including those present without being admitted or paroled
16 (“PWAP”), “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
17 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead
18 most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
19 proceedings have concluded.”). They are not entitled to custody redetermination hearings, whether pre-
20 or post-detention. *Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything
21 whatsoever about bond hearings.”).

22 Petitioners thus cannot show a likelihood of success on their claim that they are entitled to
23 custody redetermination hearings prior to re-detention. The Court should deny the preliminary injunction
24 and deny the habeas petition.¹

25 //

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27
28 ¹ This Response serves as Respondents’ return to the habeas petition. *See* 28 U.S.C. § 2243.
RESPS.’ OPP. TO PETRS.’ MOT. FOR PI; RETURN TO HABEAS PET.
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II. STATUTORY BACKGROUND

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

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

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

B. Detention Under 8 U.S.C. § 1225

Applicants for admission, including those like Petitioners who are PWAP, may be removed from the United States by, *inter alia*, expedited removal under § 1225(b)(1), or full removal proceedings before an immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission “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.”).

1. Section 1225(b)(1)

Congress established the expedited removal process in § 1225(b)(1) to ensure that the Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 (“[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such

claims from the country.”). This provision authorizes immigration officers to order certain inadmissible aliens “removed from the United States without further hearing or review.” Section 1225(b)(1) applies to “arriving aliens” and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any alien “described in” § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General 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 Attorney General’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); *see also American Immigration Lawyers Ass’n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of aliens for expedited removal under § 1225(b)(1)(A)(iii) on five occasions. 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 thus enables the U.S. Department of Homeland Security (“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

1 two-year period immediately preceding the date of the determination of inadmissibility,” who were not
 2 otherwise covered by prior designations. *Id.* at 8139–40.²

3 Expedited removal proceedings under § 1225(b)(1) include additional procedures if an alien
 4 indicates an intention to apply for asylum³ or expresses a fear of persecution, torture, or return to the
 5 alien’s 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
 6 given a non-adversarial interview with an asylum officer, who determines whether the alien has a
 7 “credible fear of persecution” or torture. *Id.* §§ 1225(b)(1)(A)(ii), (b)(1)(B)(iii)(II), (b)(1)(B)(iv), (v);
 8 *see also* 8 C.F.R. § 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the credible fear process).
 9 The alien may also pursue *de novo* review of that determination by an immigration judge. 8 U.S.C.
 10 § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the credible fear process, an alien
 11 may consult with an attorney or representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5).
 12 However, an alien subject to these procedures “shall be detained pending a final determination of
 13 credible fear of persecution and, if found not to have such a fear, until removed.” 8 U.S.C.
 14 § 1225(b)(1)(B)(iii)(IV).

15 If the asylum officer or immigration judge does not find a credible fear, the alien is “removed
 16 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C);
 17 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or
 18 immigration judge finds a credible fear, the alien is generally placed in full removal proceedings under 8
 19 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C.
 20 § 1225(b)(1)(B)(iii)(IV).

21 Expedited removal under § 1225(b)(1) is a statutory procedure that is distinct from removal
 22

23 ² On August 29, 2025, a district court in the District of Columbia stayed the Government’s
 24 implementation and enforcement of the expansion of expedited removal to the fullest extent authorized
 25 by Congress. *Make the Road New York, et al., v. Noem, et al.*, No. 25-cv-190 (JMC), 2025 WL 2494908
 26 (D.D.C. Aug. 29, 2025), *appeal docketed*, No. 25-5320 (D.C. Cir. Sept. 5, 2025). The government’s
 position is that *Make the Road* was wrongly decided, and has appealed that decision. *Id.* at ECF No.
 66. The government has moved for an emergency stay pending appeal in the Court of Appeals for the
 D.C. Circuit.

27 ³ Aliens 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 alien can demonstrate “extraordinary circumstances” that justify moving
 that deadline. *Id.* § 1558(a)(2)(D).

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

2. Section 1225(b)(2)

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under Section 1225(b)(2), an alien “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a 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) (explaining that 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, section 235(b)(2)(A) of the INA, 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) (providing that 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 United States 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

1 to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its
 2 discretion, detain an alien during his removal proceedings, release him on bond, or release him on
 3 conditional parole.⁴ By regulation, immigration officers can release an alien if he demonstrates that he
 4 “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8
 5 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an
 6 immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8
 7 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may
 8 continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R.
 9 § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on
 10 bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges
 11 to consider).

12 Until recently, the government interpreted § 1226(a) to be an available detention authority for
 13 aliens PWAP placed directly in full removal proceedings under § 1229a. *See, e.g., Ortega-Cervantes*,
 14 501 F.3d at 1116. In view of legal developments, the government has determined that this interpretation
 15 was incorrect, and that § 1225 is the sole applicable immigration detention authority for *all* applicants
 16 for admission. *See Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus
 17 mandate detention of applicants for admission until certain proceedings have concluded.”).

18 **III. BACKGROUND⁵**

19 Petitioners are natives and citizens of Venezuela, Colombia, and Peru who entered the United
 20 States without inspection, admission or parole between November 2023 and May 2024. DHS Border
 21 Patrol encountered Petitioners outside of designated ports of entry within 100 miles of the border. DHS
 22 took Petitioners into custody the same day they entered the country, processed them, and released them
 23 on orders of recognizance pending their removal proceedings.

24
 25 ⁴ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled
 26 into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d
 27 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)).

28 ⁵ Unless otherwise noted, the facts set forth herein are taken from the declarations of Deportation
 Officers regarding each Petitioner filed concurrently with this Opposition.

On September 4, 2025, Petitioners appeared for hearings in San Francisco immigration court. At the hearings, DHS counsel entered motions to dismiss the removal proceedings. The immigration judge deferred resolution of those motions.

The same day, each Petitioner was taken into custody under Section 235(b) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b). Section 1225(b)(2)(A) requires noncitizens to “be detained for a proceeding under section 1229a of this title,” which are “full removal proceedings under section 240 of the INA.” *Matter of Q. Li*, 29 I. & N. Dec. at 68. As noted above, DHS moved to dismiss those full removal proceedings to initiate expedited removal under 8 U.S.C. § 1225(b)(1). Thus, for each petitioner, DHS intends to initiate expedited removal proceedings, during which Petitioners will remain subject to mandatory detention under § 1225(b)(1)(B)(iii)(IV).

Petitioners commenced this action on September 4, 2025, by filing a petition for writ of habeas corpus, Dkt. No. 2 (“Pet.”), and moving *ex parte* for a TRO, Dkt. No. 4 (“Mot.”).⁶ On September 5, the Court granted the TRO as modified, ordering Respondents to immediately release Petitioners and enjoining Respondents “from re-detaining Petitioners for any purpose, including for the purpose of removing them from the United States, without notice and a pre-deprivation hearing before a neutral decisionmaker.” Dkt No. 9 at 9. Petitioners were released later that day. *See* Dkt. No. 10.

IV. ARGUMENT

A. Legal Standard

A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted

⁶ The Petition joins four separate petitioners with four sets of underlying factual circumstances in a single habeas petition. *See* Pet. ¶¶ 9-12, 51-54. Petitioners do not cite any authority for bringing a group petition with multiple petitioners, and Respondents are unaware of any authority that would permit joinder of separate petitioners. *Cf. Acord v. California*, No. 17-cv-01089, 2017 WL 4699835, at *1 (E.D. Cal. Oct. 19, 2017) (“There is no authority for permitting multiple petitioners to file a single habeas petition under 28 U.S.C. § 2254, and doing so generally is not permitted.”). Indeed, this request for relief for multiple individual aliens would appear to contravene the prohibition contained in 8 U.S.C. § 1252(f)(1), which states that “no court (other than the Supreme Court) shall have the jurisdiction or authority to enjoin or restrain . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.” Respondents reserve their right to move to sever the petition. *See Acord*, 2017 WL 4699835, at *1; *see also Buriev v. Warden, Geo. Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL 1906626, *1 (S.D. Fla. Mar. 18, 2025) (denying motion for joinder of two habeas petitions); *Rubinstein v. United States*, No. 23-cv-12685, 2024 WL 37931, *3 (E.D. Mich. Jan. 3, 2024) (finding misjoinder of multiple parties in a single habeas petition).

1 unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d
 2 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that “he is likely to succeed
 3 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
 4 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC*,
 5 555 U.S. 7, 20 (2008).

6 **B. Petitioners Fail to Meet the High Bar for Injunctive Relief**

7 **1. Petitioners Cannot Show a Likelihood of Success on the Merits**

8 **(i) Under the Plain Text of § 1225, Petitioners Must Be Detained Pending**
 9 **the Outcome of Their Removal Proceedings**

10 Petitioners cannot show a likelihood of success on their claim that they are entitled to a custody
 11 determination hearing prior to re-detention. This is because Petitioners are “applicants for admission”
 12 due to their presence in the United States without having been either “admitted or paroled.” Such aliens
 13 are subject to the mandatory detention framework of 8 U.S.C. § 1225(b) that specifically applies to
 14 them, not the general provisions of § 1226(a).

15 Indeed, each Petitioner fell within the scope of the 2004 expedited removal designation that was
 16 in place at the time of their arrival (in addition to the more recent 2025 designation that expands
 17 enforcement to the full scope of the statute). *See* 69 Fed. Reg. at 48879. Each Petitioner was
 18 apprehended by CBP officers within 14 days of their entry and within 100 miles of the border. *See* DO
 19 Declarations; *see also generally* Pet. Petitioners do not deny that they are properly identified as
 20 applicants for admission, or that they are properly designated for expedited removal processing. *See*
 21 *generally* Pet. Consequently, Petitioners have effectively waived the opportunity to contest the
 22 applicability of expedited-removal processing. There is no question that each Petitioner falls squarely
 23 within both the statutory and regulatory definition of an applicant for admission subject to expedited
 24 removal proceedings.

25 Recent Board of Immigration Appeals authority confirms that Petitioners are subject to expedited
 26 removal and mandatory detention under § 1225(b). In *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216
 27 (BIA 2025), the BIA held that, based on the plain text of the statute, an alien who entered without
 28 inspection remains an “applicant for admission” who is “seeking admission,” and is therefore subject to

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

19 Respondents recognize that recent district court decisions in this District and elsewhere have
20 concluded that § 1225(b) is not applicable to other aliens who were conditionally released in the past
21 under § 1226(a). *See Ramirez Clavijo v. Kaiser*, No. 5:25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025);
22 *Hernandez Nieves v. Kaiser*, No. 3:25-cv-06921-LB (N.D. Cal. Sept. 3, 2025). But here, first of all,
23 Petitioners do not allege that they were expressly released under § 1226(a) in the past. *See generally*
24 *Mot., Pet.* Indeed, Petitioners make no argument that their detention is governed by § 1226 whatsoever.
25 Even if they did, the Court should decline to follow these recent non-binding decisions, which
26 Respondents respectfully submit were wrongly decided and are vulnerable to reversal on appeal in the
27 near future. Indeed, these district court decisions have failed to grapple with the very textual argument
28 that the BIA just held was "clear and explicit." *Hurtado*, slip op. at 226.

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

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

17 Given that Petitioners’ full removal proceedings are still pending (*i.e.*, until the immigration
18 court decides DHS’s motions to dismiss those proceedings), their detention is mandatory under
19 § 1225(b)(2). If the immigration court grants DHS’s motions to dismiss Petitioners’ full removal
20 proceedings, their re-detention will remain mandatory, but the detention authority will shift to
21 § 1225(b)(1). Petitioners will receive the expedited removal procedures under 8 U.S.C. § 1252(e)(2)
22 and, as is the case under § 1225(b)(2), cannot challenge their mandatory detention. 8 U.S.C.
23 § 1225(b)(1)(B)(iii)(IV) (“Any alien subject to the procedures under this clause shall be detained
24 pending a final determination of credible fear of persecution and, if found not to have such a fear, until
25 removed.”). However, as noted above, if an asylum officer or immigration judge finds a credible fear of
26 persecution or torture for any petitioner, that petitioner may be placed in full removal proceedings under
27 8 U.S.C. § 1229a, *see* 8 C.F.R. § 208.30(f), although they will still remain subject to mandatory
28 detention under § 1225(b)(2)(A).

Thus, because § 1225(b) mandates the detention of all applicants for admission placed in removal proceedings, including Petitioners, they cannot succeed on their claim that they are entitled to an opportunity to contest their re-detention.

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

Given their status as “applicants for admission” subject to mandatory detention, Petitioners’ reliance on *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) in asserting that they should be prohibited from re-detention absent a custody hearing is misplaced. As an initial matter, the Supreme Court has upheld mandatory civil immigration detention without utilizing the multi-factor “balancing test” of *Mathews*. See *Demore v. Kim*, 538 U.S. 510 (2003) (upholding mandatory detention under 8 U.S.C. § 1226(c)); cf. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under 8 U.S.C. § 1231(a)(6) for six months after the 90-day removal period).⁷

In any event, applicants for admission like Petitioners, who were not admitted or paroled into the country, lack a liberty interest in additional procedures, including a custody redetermination hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative”); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (“At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right.”). Indeed, for “applicants for admission” like Petitioners who are amenable to § 1225(b)(1) — *i.e.*, because they were not physically present for at least two years on the date of inspection, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) — “[w]hatever the procedure authorized by Congress . . . is due process,” whether or not they are apprehended at the border or after entering the country. *Knauff*, 338 U.S. at 544; accord *Thuraissigiam*, 591 U.S. at 138–139 (“This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil.”). These aliens — including Petitioners — have “only those rights regarding admission that Congress has provided by

⁷ Indeed, as the Ninth Circuit recognized in *Rodriguez Diaz*, “the Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.” *Rodriguez Diaz v. Garland*, 53 F.4th 1206 (9th Cir. 2022) (citations omitted). Whether the *Mathews* test applies in this context is an open question in the Ninth Circuit. See *id.* 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”).

statute.” *Thuraissigiam*, 591 U.S. at 140; *see Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004).

Petitioners are entitled only to the protections set forth by statute, and “the Due Process Clause provides nothing more.” *Thuraissigiam*, 591 U.S. at 140.

(iii) Petitioners’ Detention Authority Cannot Be Converted to § 1226(a)

As applicants for admission, Petitioners’ detention is governed by the framework set out in § 1225(b), for the reasons explained in detail above. Petitioners nevertheless provide a string-cite of recent cases considering detentions under § 1226(a). *See* Mot. 8-9. But again, Petitioners provide no argument that § 1226(a) applies here instead of § 1225(b). *See generally* Mot.; Pet. And to the extent recent District Court decisions have concluded in other cases that § 1226(a) could apply, those non-binding decisions have relied on the government’s prior invocation of 1226(a) in the petitioners’ proceedings—which Petitioners do not allege here, *see* Pet., Mot.—and have failed to address the government’s textual argument for why the more specific provisions of § 1225 apply here. *See, e.g., Ramirez Clavijo v. Kaiser*, No. 5:25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025) (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”).

The fact that Petitioners were previously released does not change the analysis or conclusion. Indeed, pursuant to the comprehensive statutory framework created by Congress, an alien’s conditional release is not the type of “lawful entry into this country” that is necessary to “establish[] connections” that could form a liberty interest requiring additional process, and he or she remains an “applicant for admission” who is “at the threshold of initial entry,” and subject to mandatory detention under § 1225. *Thuraissigiam*, 591 U.S. at 106–07 (“While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien’s lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.”).

The Supreme Court’s holding in *Thuraissigiam* is consistent with its earlier holding in *Landon*. In *Landon*, 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. Petitioners here were 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. They instead remain “applicants for admission” who — even if released into the country “for years pending removal” — continue to be “‘treated’ for due process purposes ‘as if stopped at the border.’” *Thuraissigiam*, 591 U.S. at 139–140 (explaining that such aliens remain “on the threshold” of initial entry).

But even if this Court were to find that § 1226(a), and not the mandatory detention framework of § 1225(b), applies here, Petitioners would still not be entitled to pre-detention hearings before an immigration judge. Rather, 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 immigration judge. *Rodriguez Diaz*, 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of the basic process of immigration detention. *See, e.g., 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 § 1226(a), aliens are not guaranteed *pre*-detention immigration-judge 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. *See Rodriguez Diaz*, 53 F.4th at 1196–97.⁸

⁸ 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.

2. Petitioners Cannot Establish Irreparable Harm

In addition to their failure to show a likelihood of success on the merits, Petitioners do not meet their burden of establishing that they will be irreparably harmed absent an injunction. The “deprivation of liberty” is a harm that “is essentially inherent in detention,” and therefore “the Court cannot weigh this strongly in favor of” Petitioners. *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—their categorical detention as lawful. *See supra* Part IV.B.1.

Indeed, the alleged infringement of constitutional rights is insufficient where, as here, Petitioners fail to demonstrate “a sufficient likelihood of success on the merits of [their] 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)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 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 fact of 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. Accordingly, Petitioners cannot establish that their lawfully authorized mandatory detention would cause irreparable harm.

3. 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 their 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, e.g., 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 Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (explaining that “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) (finding that “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., in chambers) (citation omitted).

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

C. Any Injunction Should Not Reverse the Burden of Proof

The Court should deny the requested preliminary injunction for the reasons set forth above. If the Court nevertheless is inclined to grant an injunction, it should deny the specific relief requested by Petitioners.

Specifically, at any pre-detention bond hearing the Court may order, each Petitioner should have

1 the burden of demonstrating that they are *not* a flight risk or danger to the community. That is the
 2 ordinary standard applied by immigration judges conducting bond hearings. *See, e.g., Guerra*, 24 I. & N.
 3 Dec. at 40 (“The burden is on the alien to show to the satisfaction of the Immigration Judge that he or she
 4 merits release on bond.”). It would be improper to reverse the burden of proof and place it on the
 5 government in these circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210-12 (“Nothing in this record
 6 suggests that placing the burden of proof on the government was constitutionally necessary to minimize
 7 the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or
 8 many cases.”).

9 To be sure, the Ninth Circuit previously held that the government bears the burden of proof by
 10 clear and convincing evidence that an alien is not a flight risk or danger to the community for certain
 11 bond hearings. *See, e.g., Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011) (hearing after
 12 allegedly prolonged detention). However, following intervening Supreme Court decisions, the Ninth
 13 Circuit has since explained that “*Singh*’s holding about the appropriate procedures for those bond
 14 hearings . . . was expressly premised on the (now incorrect) assumption that these hearings were
 15 statutorily authorized.” *Rodriguez Diaz*, 53 F.4th at 1196; *see also id.* at 1200-01 (citing *Jennings*, 583
 16 U.S. 281, and *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022)). Thus, prior Ninth Circuit decisions
 17 imposing such a requirement are “no longer good law” on this issue, *Rodriguez Diaz*, 53 F.4th at 1196,
 18 and the Court should instead follow *Rodriguez Diaz* and the Supreme Court cases on which it relied.

19 V. CONCLUSION

20 For the foregoing reasons, the government respectfully requests that the Court deny Petitioners’
 21 motion for a preliminary injunction and deny the habeas petition.
 22

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Respectfully submitted,

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