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

12 NARCILO CAICEDO HINESTROZA, JAIRO) Case No. 3:25-cv-07559-JD
13 ANDRES DANGOND LOPEZ, JHELVIN)
14 JHERH RAMOS HUAMAN,)

14 Petitioners,)

15 v.)

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

21 Respondents.)
22

**RESPONDENTS' OPPOSITION TO
PRELIMINARY INJUNCTION MOTION**

Date: September 22, 2025
Time: 10:30 am
Location: Courtroom 11, 19th Floor

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

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I. INTRODUCTION

Petitioners seek a preliminary injunction (“PI”) enjoining the government from re-detaining them absent a pre-detention hearing before a neutral decision maker. But under the applicable immigration statutes, Petitioners are “applicants 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 Petitioners, “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.”). Petitioners thus cannot show a likelihood of success on their claim that they are entitled to custody redetermination hearings prior to re-detention.

Nor could Petitioners show a likelihood of success on their claim even if they 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 Petitioners who are PWAP, may be removed from
 15 the United States by expedited removal under § 1225(b)(1), or full removal proceedings before an
 16 immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission “fall into
 17 one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are
 18 subject to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2)
 19 mandate 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
 28 documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) also allows for the expedited

1 removal of any alien “described in” § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General (“AG”)
 2 or Secretary of Homeland Security—that is, any alien not “admitted or paroled into the United States” and
 3 “physically present” fewer than two years—who is inadmissible under § 1182(a)(7) at the time of
 4 “inspection.” *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible aliens without valid entry documents).
 5 Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an
 6 officer inspects an alien for admission under § 1225(a)(3), that alien lacks entry documents and so is subject
 7 to § 1182(a)(7). The AG’s or Secretary’s authority to “designate” classes of aliens as subject to expedited
 8 removal is subject to his or her “sole and unreviewable discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); *American*
 9 *Immigration Lawyers Ass’n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding expedited removal statute).

10 On five occasions, the Secretary (and earlier, the AG) has designated categories of aliens for
 11 expedited removal under § 1225(b)(1)(A)(iii). In 2004, citing “the interests of focusing enforcement
 12 resources upon unlawful entries that have a close spatial and temporal nexus to the border,” the Secretary
 13 designated for expedited removal those “aliens encountered within 14 days of entry without inspection and
 14 within 100 air miles of any U.S. international land border.” *Designating Aliens for Expedited Removal*, 69
 15 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004). More recently, the Secretary restored the expedited removal
 16 scope to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed.
 17 Reg. 8139 (Jan. 24, 2025). The current notice enables DHS “to exercise the full scope of its statutory
 18 authority to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under
 19 [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who
 20 have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically
 21 present in the United States continuously for the two-year period immediately preceding the date of the
 22 determination of inadmissibility,” who were not otherwise covered by prior designations. *Id.* at 8139–40.²

23 Expedited removal proceedings under § 1225(b)(1) include additional procedures if an alien
 24 indicates an intention to apply for asylum or expresses a fear of persecution, torture, or return to the alien’s
 25 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
 26

27 ² On August 29, 2025, a D.C. district court stayed the government’s enforcement of this 2025 notice.
 28 *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 non-adversarial interview with an asylum officer, who determines whether the alien has a “credible fear of
 2 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. §
 3 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the credible fear process). The alien may also
 4 pursue *de novo* review of that determination by an immigration judge (“IJ”). 8 U.S.C.
 5 § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the credible fear process, an alien
 6 may consult with an attorney or representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5).
 7 However, an alien subject to these procedures “shall be detained pending a final determination of credible
 8 fear of persecution and, if found not to have such a fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

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

14 Expedited removal under § 1225(b)(1) is a statutory procedure distinct from § 1229a. Section
 15 1229a governs full removal proceedings initiated by a notice to appear and conducted before an IJ, during
 16 which the alien may apply for relief or protection. By contrast, expedited removal under § 1225(b)(1)
 17 applies in narrower, statutorily defined circumstances—typically to individuals apprehended at or near the
 18 border who lack valid entry documents or commit fraud upon entry—and allows for their removal without
 19 a hearing, subject to limited exceptions. For these aliens, DHS has discretion to pursue expedited removal
 20 under § 1225(b)(1) or § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 524 (BIA 2011).

21 2. Section 1225(b)(2)

22 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It
 23 “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under Section 1225(b)(2), an alien
 24 “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if
 25 the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a
 26 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such aliens “be detained for a
 27 proceeding under section 1229a of this title”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025)
 28 (proceedings under section 1229a are “full removal proceedings under section 240 of the INA”); *see also id.*

1 (“[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal
 2 proceedings, [] 8 U.S.C. § 1225(b)(2)(A)[] mandates detention ‘until removal proceedings have
 3 concluded.’”) (citing *Jennings*, 583 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (an alien placed into § 1229a
 4 removal proceedings in lieu of expedited removal proceedings under § 1225(b)(1) “shall be detained”
 5 pursuant to § 1225(b)(2)). DHS has the sole discretionary authority to temporarily release on parole “any
 6 alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons
 7 or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see also Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

9 A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully
 10 admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a) provides for
 11 the arrest and detention of these aliens “pending a decision on whether the alien is to be removed from the
 12 United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain an alien during his
 13 removal proceedings, release him on bond, or release him on conditional parole.³ By regulation,
 14 immigration officers can release an alien if he demonstrates that he “would not pose a danger to property
 15 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
 16 request a custody redetermination (*i.e.*, a bond hearing) by an IJ at any time before a final order of removal
 17 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
 18 redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C.
 19 § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on
 20 bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

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

26 ³ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into
 27 the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111,
 28 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)).

detention of applicants for admission until certain proceedings have concluded.”).

III. BACKGROUND

Petitioner Narcilo Caicedo Hinestroza is a native and citizen of Colombia who entered the U.S. on December 8, 2023 near El Paso, Texas without inspection, admission or parole; Border Patrol encountered him that same day and released him on recognizance due to detention capacity issues. Decl. of Jesse Cruz ¶ 5. On December 12, 2023, Petitioner Hinestroza was placed in removal proceedings as an alien PWAP and charged with removability under INA section 212(a)(6)(A)(i). *Id.* ¶ 6. On September 5, 2025, Petitioner Hinestroza appeared for a master calendar hearing in immigration court. *Id.* ¶ 7. DHS counsel moved to dismiss his removal proceedings to initiate expedited removal. *Id.* The IJ found him removable and granted voluntary departure. *Id.* After the hearing, Petitioner Hinestroza was taken into custody under INA section 235(b). *Id.* ¶ 8.

Petitioner Jairo Andres Dangond Lopez is a native and citizen of Colombia who entered the U.S. on December 9, 2023 near Tecate, California without inspection, admission or parole; Border Patrol encountered him that same day and released him on recognizance due to detention capacity issues. Decl. of Paul Villagran ¶ 4. On May 8, 2024, Petitioner Lopez was placed in removal proceedings as an alien PWAP and charged with removability under INA section 212(a)(6)(A)(i). *Id.* ¶ 5. On September 5, 2025, Petitioner Lopez appeared for a master calendar hearing in immigration court. *Id.* ¶ 6. DHS counsel moved to dismiss his removal proceedings to initiate expedited removal. *Id.* The IJ continued the hearing to give Petitioner Lopez time to respond to the motion. *Id.* After the hearing, Petitioner Lopez was taken into custody under INA section 235(b). *Id.* ¶ 7.

Petitioner Jhelvin Jherh Ramos Huaman is a native and citizen of Peru who entered the U.S. on February 29, 2024 near San Ysidro, California without inspection, admission or parole; Border Patrol encountered him that same day and released him on recognizance due to detention capacity issues. Decl. of Glorimar Alvarez ¶ 4. On March 1, 2024, Petitioner Huaman was placed in removal proceedings as an alien PWAP and charged with removability under INA section 212(a)(6)(A)(i). *Id.* ¶ 5. On September 5, 2025, Petitioner Huaman appeared for a master calendar hearing in immigration court. *Id.* ¶ 6. DHS counsel moved to dismiss his removal proceedings to initiate expedited removal. *Id.* The IJ continued the hearing to give Petitioner Huaman time to respond to the motion. *Id.* After the hearing, Petitioner Huaman was taken into

1 custody under INA section 235(b). *Id.* ¶ 7.

2 Petitioners jointly⁴ filed a petition for writ of habeas corpus on September 5, 2025 and moved for a
3 TRO. ECF Nos. 1, 2, 3. The Court granted a TRO on September 9, 2025 ordering Respondents to
4 immediately release Petitioners, enjoining Respondents from detaining Petitioners “without a pre-
5 detention hearing before a neutral decisionmaker,” and enjoining Respondents from transferring them
6 “out of the District without the Court’s prior approval.” ECF No. 8 at 4. The Court ordered Respondents
7 to show cause why a preliminary injunction should not be entered. *Id.* Petitioners were released from
8 custody that day.

9 **IV. ARGUMENT**

10 **A. Legal Standard**

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

16 **B. Petitioners Cannot Show a Likelihood of Success on the Merits**

17 **1. Under the Plain Text of 8 U.S.C. § 1225, Petitioners Must Be Detained 18 Pending the Outcome of Their Removal Proceedings**

19 Petitioners cannot show a likelihood of success on their claim that they are entitled to a custody
20 hearing prior to re-detention. This is because Petitioners are “applicants for admission” due to their presence
21

22 ⁴ The Petition joins three separate petitioners with three sets of underlying factual circumstances
23 in a single habeas petition. Petitioners do not cite any authority for bringing a group petition with
24 multiple petitioners, and Respondents are unaware of any authority that would permit joinder of separate
25 petitioners. *Cf. Acord v. California*, No. 17-cv-01089, 2017 WL 4699835, at *1 (E.D. Cal. Oct. 19,
26 2017) (“There is no authority for permitting multiple petitioners to file a single habeas petition under 28
27 U.S.C. § 2254, and doing so generally is not permitted.”). Indeed, this request for relief for multiple
28 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 in the U.S. without having been either “admitted or paroled.” Such aliens are subject to the mandatory
2 detention framework of 8 U.S.C. § 1225(b) that specifically applies to them, not the general provisions of §
3 1226(a).

4 Indeed, each Petitioner fell within the scope of the 2004 expedited removal designation that was in
5 place at the time of their arrival (in addition to the more recent 2025 designation that expands enforcement to
6 the full scope of the statute). *See* 69 Fed. Reg. at 48879. Because each Petitioner was apprehended by CBP
7 officers within 14 days of their entry and within 100 miles of the border, they indisputably fall squarely
8 within both the statutory and regulatory definition of an applicant for admission subject to expedited removal
9 proceedings.

10 Recent BIA authority confirms that Petitioners are subject to expedited removal and mandatory
11 detention under § 1225(b). In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that,
12 based on the plain text of the statute, an alien who entered without inspection remains an “applicant for
13 admission” who is “seeking admission,” and is therefore subject to mandatory detention without a bond
14 hearing, even if that alien has been present in the U.S. for years. *Id.*, slip op. at 220. Thus, the BIA also held
15 that IJs lack authority to hold bond hearings for aliens in such circumstances. *Id.* The BIA considered, and
16 rejected, the individual’s argument that the government’s “‘longstanding practice’ of treating aliens who are
17 present in the United States without inspection as detained under [] 8 U.S.C.A. § 1226(a), and therefore
18 eligible for a bond.” *Id.* at 225. Citing the Supreme Court’s decision in *Loper Bright Enterprises v.*
19 *Raimondo*, 603 U.S. 369 (2024), the BIA explained that such a practice could be relevant where the statute is
20 “doubtful and ambiguous,” but here, “the statutory text of the INA . . . is instead clear and explicit in
21 requiring mandatory detention of all aliens who are applicants for admission, without regard to how many
22 years the alien has been residing in the United States without lawful status.” *Hurtado*, slip op. at 226. Nor did
23 it matter that “DHS [had] issued an arrest warrant in conjunction with the Notice to Appear and a Notice of
24 Custody Determination”: “the mere issuance of an arrest warrant does not endow an [IJ] with authority to set
25 bond for an alien who falls under section 235(b)(2)(A) of the INA . . . If it did, it would render meaningless
26 the many prohibitions cited above on the authority of an [IJ] to set bond.” *Id.* at 227 (citing, *e.g.*, *Matter of Q.*
27 *Li*, 29 I&N Dec. 66, 69 (BIA 2025)). The BIA has therefore now confirmed, in a decision binding on IJs
28 nationwide, what the government is arguing here: individuals such as Petitioners are “applicants for

admission” subject to mandatory detention under § 1225(b) and have no right to a bond hearing.

Respondents recognize that recent district court PI decisions have concluded that § 1225(b) is not applicable to other aliens who were conditionally released in the past under § 1226(a).⁵ While Petitioners do not argue that they were released under § 1226(a) in the past (and make no argument that their detention is governed by § 1226), these non-binding decisions do not grapple with the textual argument that the BIA just held was “clear and explicit.” *Hurtado*, slip op. at 226.

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

As aliens PWAP subject to mandatory detention under § 1225(b), Petitioners are not entitled to custody redetermination hearings at any time, 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.”). In addition, although DHS initially elected to place Petitioners in full removal proceedings under § 1229a, Petitioners remain individuals PWAP who are amenable to expedited removal and subject to mandatory detention due to their presence in the U.S. without having been either “admitted or paroled” or physically present in the U.S. continuously for the two-year period immediately preceding the date of the determination of inadmissibility.

Because § 1225(b) mandates detention of applicants for admission placed in removal proceedings, Petitioners cannot succeed on their claim that they are entitled to a hearing to contest their re-detention.

⁵ *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 WL 2430609 (N.D. Cal. Aug. 22, 2025); *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025).

2. 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) 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).⁶

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" 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 have "only those rights regarding admission that Congress has provided by statute." *Id.* at 140. Petitioners are entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Id.* at 140.

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

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine

⁶ 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 *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").

legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to correct “an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It “intended to replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). For that reason, Petitioners—who entered the United States without inspection—should be treated no differently than noncitizens who present at a port of entry and are subject to mandatory detention under § 1225, including pending further consideration of their applications for asylum. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

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

As “applicants for admission,” Petitioners’ detention is governed by the § 1225(b) framework. This remains true even if the government previously released them. Even when citing § 1226(a), DHS does not permanently alter an alien’s status as an “applicant for admission” under § 1225; to the contrary, the alien’s release is expressly subject to an order to appear for removal proceedings based on *unlawful* entry. Nor is DHS prevented from clarifying the detention authority to conform to the requirements of the statutory framework as DHS now interprets it. *See, e.g., United Gas Improvement v. Callery*, 382 U.S. 223, 229 (1965) (explaining that an agency can correct its own error). Pursuant to the statutory framework, 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.”)

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

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

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

18 **5. Petitioners Are Not Entitled to a Pre-Detention Hearing Under § 1226(a)**

19 Even if this Court finds that § 1226(a) applies here, Petitioners would still not be entitled to a pre-
 20 detention hearing. For aliens detained under § 1226(a), “an ICE officer makes the initial custody
 21 determination” *post*-detention, which the alien can later request to have reviewed by an IJ. *Rodriguez Diaz*,
 22 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of the basic process of
 23 immigration detention. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that
 24 “the INS procedures are faulty because they do not provide for automatic review by an immigration judge of
 25 the initial deportability and custody determinations”); *Abel v. United States*, 362 U.S. 217, 233–34 (1960)
 26 (noting the “impressive historical evidence of acceptance of the validity of statutes providing for
 27 administrative deportation arrest from almost the beginning of the Nation”); *Carlson v. Landon*, 342 U.S.
 28 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United*

1 *States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the
 2 means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.”).
 3 Thus, under Section 1226(a), aliens are not guaranteed *pre*-detention review and may instead only seek
 4 review of their detention by an ICE official once they are in custody—a process that the Ninth Circuit has
 5 found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz*, 53 F.4th at 1196–97.⁷

6 **6. Petitioners Cannot Obtain an Injunction Prohibiting Transfer**

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

14 **C. Petitioners Cannot Establish Irreparable Harm**

15 Petitioners do not establish that they will be irreparably harmed absent a PI. The “unlawful
 16 deprivation of physical liberty” is a harm that “is essentially inherent in detention,” and thus “the Court
 17 cannot weigh this strongly in favor of” Petitioners. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL
 18 7474861 at *10 (N.D. Cal. Dec. 24, 2018). It is also countervailed by authority mandating—and
 19 upholding—their categorical detention as lawful. Indeed, the alleged infringement of constitutional rights is
 20 insufficient where, as here, they fail to demonstrate “a sufficient likelihood of success on the merits of
 21 [their] constitutional claims to warrant the grant of a preliminary injunction.” *Marin All. For Med.*
 22 *Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc’d Gen. Contractors of*
 23 *Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *Meneses v. Jennings*, No. 21-cv-
 24 07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner “assume[d] a
 25 deprivation to assert the resulting harm”). Further, any alleged harm from the detention alone is insufficient

26
 27 ⁷ Although *Rodriguez Diaz* did not arise in the pre-detention context, the Ninth Circuit noted that the
 28 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.

1 because “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation
 2 process.” *Demore*, 538 U.S. at 523; *see also Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And as noted
 3 by the Ninth Circuit in *Rodriguez Diaz*, if treated as detention under § 1226(a), the risk of erroneous
 4 deprivation and value of additional process is small due to the procedural safeguards that Section 1226(a)
 5 provides. Thus, Petitioners cannot establish that their lawfully authorized mandatory detention would cause
 6 irreparable harm.

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

8 When the government is a party, the balance of equities and public interest merge. *Drakes Bay*
 9 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435
 10 (2009)). Further, where a moving party only raises “serious questions going to the merits,” the balance
 11 of hardships must “tip sharply” in their favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35
 12 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

13 Here, the government has a compelling interest in the steady enforcement of its immigration laws.
 14 *See Demore*, 538 U.S. at 523; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that
 15 the court “should give due weight to the serious consideration of the public interest” in enacted laws); *see*
 16 *also Ubiquity Press v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20,
 17 2020) (“the public interest in the United States’ enforcement of its immigration laws is high”); *United States*
 18 *v. Arango*, 09-cv-178- TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s
 19 interest in enforcing immigration laws is enormous”). Indeed, the government “suffers a form of irreparable
 20 injury” “[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its
 21 people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J.) (citation omitted).

22 Petitioners’ claimed harms cannot outweigh this public interest in the application of the law,
 23 particularly since courts “should pay particular regard for the public consequences in employing the
 24 extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation
 25 omitted). Recognizing the availability of an injunction under these circumstances would permit any
 26 “applicant for admission” subject to § 1225(b) to obtain additional review simply because he or she was
 27 released—even if that release is expressly conditioned on appearing at removal proceedings for *unlawful*
 28 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.

E. Any Injunction Should Not Reverse the Burden of Proof

At any bond hearing, Petitioners should have the burden of demonstrating that they are *not* a flight risk or danger to the community. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I&N 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 merits release on bond.”). It would be improper to reverse the burden of proof and place it on the government in these circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210-12 (“Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases.”).

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

V. CONCLUSION

The government respectfully requests that Petitioners’ request for a PI and habeas petition be denied.

1 DATED: September 15, 2025

Respectfully submitted,

2
3 CRAIG H. MISSAKIAN
United States Attorney

4 /s/ Sapna Mehta
5 SAPNA MEHTA
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