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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VASQUEZ ALVA, BRISA YADIRA,
Petitioner,

v.

KRISTI NOEM, et al,
Respondents

CASE NO. 1:25-CV-01600-DJC-CSK

OPPOSITION TO PETITIONER'S MOTION FOR
TEMPORARY RESTRAININT ORDER

DATE:

TIME:

COURT: Hon. Chi Soo Kim

I. INTRODUCTION

Petitioner is not entitled to the extraordinary remedy of a temporary restraining order ("TRO") because she is an applicant for admission subject to mandatory detention. Petitioner fails to meet the burden of proof required for injunctive relief, and the TRO should be denied.

Respondents acknowledge that several courts have, in similar circumstances, issued this relief in other cases, including *Salazar v. Kaiser*, No. 1:25-cv-01017-JLT-SAB, 2025 WL 2456232 (E.D. Cal. Aug 26, 2025); *Castellon v. Kaiser*, No. 1:25-cv-00968-JLT-EPG, 2025 WL 2373425 (E.D. Cal. Aug. 15, 2025); *Maklad v. Murray*, NO. 1:25-CV-00946-JLT-SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025).

A number of other district courts, in contrast, have denied TROs in similar circumstances. See *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830,

2025 WL 3171331 (S.D. Tx. Nov. 13, 2025.)

II. FACTUAL BACKGROUND

The United States concurs with the following relevant facts as asserted by Petitioner: (1) Petitioner entered the country without inspection on or about March 7, 2024; (2) Petitioner is a native/citizen of Peru; (3) Petitioner was identified as an ineligible applicant for admission under 8 U.S.C. § 1182(a)(6)(A)(i) and thus is identified as an applicant for admission; (4) Petitioner was subsequently released from detention; (5) Petitioner was taken into custody by ICE on September 17, 2025, and is currently detained at the California City ICE Processing Center; and (6) Petitioner was taken into custody pursuant to 8 U.S.C. § 1225(b)(2).

III. LEGAL STANDARD

“The standard for a [temporary restraining order] is the same as for a preliminary injunction.” *Rovio Entm't Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1092 (N.D. Cal. 2012) (citing *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)). Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the [petitioner] is entitled to such relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). “A [petitioner] seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest.” *Id.*, *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). These same elements apply to Petitioner’s TRO. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). The last two factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

“[I]f a [petitioner] can only show that there are ‘serious questions going to the merits’—then a preliminary injunction may still issue if the ‘balance of hardships tips sharply in the [petitioner’s] favor,’ and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013); see also *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Importantly, a temporary restraining order “is an extraordinary and drastic remedy, [and] one

that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek*, 520 U.S. at 972. Indeed, the moving party bears the burden of meeting all prongs of the *Winter* test. *DISH Network Corp. v. FCC*, 653 F.3d 771, 776 (9th Cir. 2011) (“To warrant a preliminary injunction [or TRO], [the petitioner] must demonstrate that it meets all four of the elements of the preliminary injunction test established in *Winter*[.]”).

IV. LEGAL ANALYSIS

A. Petitioner Is Not Likely to Succeed on the Merits.

1. Petitioner Is an Applicant for Admission Subject to Mandatory Detention.

The Executive Branch has broad statutory power to effect removal of aliens apprehended at the border.¹ “Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The Immigration and Nationality Act (“INA”), originally enacted in 1952, sets forth a comprehensive plan to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. As set forth therein, the President, through the Department of State, the Department of Justice, and Department of Homeland Security, decides which aliens may enter and remain in the United States. *See generally* 8 U.S.C. §§ 1103, 1104.

Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute defines an “applicant for admission” as “[a]n 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). Thus, the statute identifies two categories of aliens: (1) those “present in the United States who ha[ve] not been admitted”; and (2) those “who arrive[] in the United States . . . whether or not at a designated port of arrival.” *Id.* The statute expressly treats a person in *either* category as an “applicant for admission.” *Id.*; *see also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“Congress has defied 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

¹ This word “alien” is used herein as a term of art in the immigration context.

1 having formally requested or received such permission”).²

2 Applicants for admission must be inspected by immigration officers to determine whether they
3 can be admitted to the United States under immigration laws. 8 U.S.C. § 1225(a)(3); *Jennings v.*
4 *Rodriguez*, 583 U.S. 281, 287 (2018). 8 U.S.C. § 1225(b) governs the detention of “applicants for
5 admission” during their removal proceedings. Applicants for admission fall into three categories. The
6 first two categories consist of: (1) arriving aliens who are inadmissible because they lack proper entry
7 documents or have falsified/misrepresented their entry documents; and (2) those aliens who have not
8 established to the satisfaction of an immigration officer that they have been physically present in the
9 United States for two years or more. Aliens that fall into either one of these two categories: (a) are
10 subject to expedited removal; and (b) are subject to mandatory detention during the expedited removal
11 process. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV).³

12 The third category of applicants for admission consists of those aliens who are “seeking
13 admission” and who an immigration officer has determined are “not clearly and beyond a doubt entitled
14 to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A). Aliens who fall within this third category are eligible for
15 standard removal proceedings, but they are nevertheless subject to mandatory detention during their
16 standard removal proceedings. *Id.*; *Jennings*, 583 U.S. at 299 (stating that aliens subject to section
17 1225(b)(1) and aliens subject to section 1225(b)(2) are both subject to mandatory detention for the
18 duration of removal proceedings); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (stating that “for
19 aliens arriving in and seeking admission into the United States who are placed directly in full removal
20 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until
21

22 ² Section 1225 was added by Congress under the IIRIRA to correct “an anomaly whereby immigrants
23 who were attempting to lawfully enter the United States were in a worse position than persons who had
24 crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to*
25 *extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain
26 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United
27 States without inspection gain equities and privileges in immigration proceedings that are not available
28 to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1,
at 225).

29 ³ If an alien who is subject to an expedited removal order raises a fear of persecution in their home
30 country, the immigration officer refers the alien for a “credible fear interview” that is conducted by an
31 asylum officer. If the asylum officer finds that the alien has a credible fear of persecution, the alien is
32 then moved to the standard removal proceeding (a removal proceeding under 8 U.S.C. § 1229a), but the
33 alien is still subject to mandatory detention during that standard removal proceeding.

removal proceedings have concluded.”) (citing *Jennings*, 583 U.S. at 299).

Petitioner here is an “applicant for admission” by virtue of seeking admission into the United States without being clearly and beyond a doubt entitled to be admitted. Further, she was classified as being ineligible for admission. Accordingly, Petitioner is subject to the mandatory detention requirement of 8 U.S.C. § 1225(b)(2)(A). *Alonzo v. Noem*, 1:25-CV-01519-WBS-SCR (E.D. Cal, Nov. 17, 2025); *see also Ramos v. Lyons*, 2:25-cv-09785-SVW-AJR (C.D. Cal., Nov. 12, 2025); *Sandoval v. Acuna et al.*, No. 6:25-cv-1467, 2025 WL 3048926, at *4 (W.D. La. Oct. 31, 2025); *Chave v. Noem*, No. 3:25-cv-2325-CAB-DBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, No. 8:25-cv-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

DHS’s initial exercise of its discretion to release Petitioner on her own recognizance, place her in the ISAP program, and initiate routine removal proceedings, does not preclude ICE from re-detaining Petitioner. As discussed above, she is subject to mandatory detention. Additionally, here, an “examining immigration officer”—*i.e.*, the immigration officers who detained Petitioner—“determine[d] that [Petitioner] is not clearly and beyond a doubt entitled to be admitted.”⁴ 8 U.S.C. § 1225(b)(2)(A); *see also* 8 U.S.C. § 1101 (defining “immigration officer” broadly as “any employee or class of employees of the [Immigration and Naturalization Service] or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title”).

2. Petitioner’s Due Process Arguments Lack Merit and Petitioner Is Not Entitled to a Pre-Re-Detention Hearing

Petitioner incorrectly argues that, because DHS released her on her own recognizance after she entered the United States without valid documents allowing entry, the Due Process clause entitles her to a hearing before a neutral decisionmaker prior to re-detention at which the government must establish by clear and convincing evidence that she is either a danger to the community or a flight risk. ECF 2. Not so.

Petitioner’s conditional release from DHS custody did not change her status as an applicant for

⁴ Indeed, her initial intake was that she was an illegal entrant.

1 admission within the meaning of 8 U.S.C. § 1225(b), nor does the Due Process Clause entitle her to a
2 pre-re-detention hearing. Under the doctrine of “entry fiction,” aliens seeking admission to the United
3 States, even if “allowed within its borders pending a determination of admissibility... are legally
4 considered to be detained at the border and hence as never having effected entry into” the United States.
5 *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc).⁵ Thus, even if an alien
6 seeking admission is physically present on U.S. soil and has been “paroled elsewhere in the country for
7 years pending removal,” he still is “treated . . . as if stopped at the border” for immigration law purposes.
8 *Dept. Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020); *see also United States v. Balde*,
9 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they remain ‘at
10 the border’ for the purposes of immigration law and are treated as applicants into the country.”). “The
11 distinction between an alien who has effected an entry into the United States and one who has never
12 entered” is a fundamental one that “runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S.
13 678, 693 (2001).

14 Here, Petitioner was never admitted to the United States – she applied for admission without
15 having the required documents for admission. For immigration law purposes, she is treated as being
16 stopped at the border, even though she has been physically present within the United States since March
17 2024. *Barrera-Echavarria*, 44 F.3d at 1450. This carries significant implications for the contours of
18 Petitioner’s due process rights. An alien who has not effected a legal entry, *i.e.*, has not been admitted
19 into the United States, is only entitled to “[w]hatever the procedure authorized by Congress is.”
20 *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United States ex rel.*
21 *Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (an alien
22 detained after unlawful entry “has only those rights regarding admission that Congress has provided by
23 statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for “those . . . who have never technically
24 ‘entered’ the United States . . . procedural due process is simply whatever the procedure authorized by
25

26 ⁵ The scope of *Barrera-Echavarria*’s holding has been complicated by statutory amendments in the
27 Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009
28 (1996). But those amendments “do[] not undermine *Barrera-Echavarria*’s reasoning as it relates to
aliens . . . to whom the entry fiction clearly applies,” such as in this case. *Rodriguez v. Robbins*, 715 F.3d
1127, 1140-41 (9th Cir. 2013).

1 Congress happens to be”) (cleaned up). This makes sense, since “an alien seeking initial admission to
2 the United States requests a privilege and has no constitutional rights regarding his application.”
3 *Barrera-Echavarria*, 44 F.3d at 1449.

4 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
5 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-
6 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien
7 denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has “not
8 ‘technically entered the United States,’ [the Court] examine[s] only whether the government violated the
9 statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th
10 Cir. 2020) (citation omitted). Accordingly, Petitioner is subject to mandatory detention. *See Matter of*
11 *Yajure Hurtado*, 29 I & N Dec. 216, 220 (BIA 2025) (holding that the Immigration and Nationality Act
12 makes all applicants for admission subject to mandatory detention for the duration of their immigration
13 proceedings—even those who have entered without admission or inspection and have been residing in the
14 United States for years without lawful status).

15 **B. Petitioner Has Not Met Her Heavy Burden To Show Likely Irreparable Harm.**

16 Petitioner claims she will suffer irreparable harm from continued detention during her removal
17 proceedings. ECF 2 at 11. However, as set forth above, Petitioner has not technically entered the
18 United States and is only entitled to the minimal rights and processes that Congress has given her.
19 Petitioner has received those. Immigration laws have long authorized immigration officials to charge
20 aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens pending
21 removal. *Demore*, 538 U.S. at 523-26. Through the INA, Congress created a multi-layered statutory
22 scheme for aliens’ detention during removal, including mandatory detention for aliens in Petitioner’s
23 position. *See* 8 U.S.C. § 1225(b). “Detention is necessarily a part of [the] deportation procedure.”
24 *Carlson*, 342 U.S. at 538.

25 Nor do Petitioner’s alleged conditions of detention demonstrate irreparable harm. Any
26 conditions of detention that Petitioner deems unsatisfactory are not cognizable in habeas proceedings.
27 “The appropriate remedy for such constitutional violations, if proven, would be a judicially mandated
28 change in conditions and/or an award of damages, but not release from confinement.” *Crawford v. Bell*,

599 F.2d 890, 892 (9th Cir. 1979). Further, a habeas petition is not the proper mechanism for challenging conditions of detention. *Pinson v. Carvajal*, 69 F.4th 1059, 1065, 1073-75 (9th Cir. 2023); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Conditions of detention/confinement challenges, rather, are properly brought in a civil rights action. *Id.*; *Brown v. Blanckensee*, 857 F. App'x 289, 290 (9th Cir. 2021); *Alcala v. Rios*, 434 F. App'x 668, 669-70 (9th Cir. 2011). Thus, to the extent Petitioner relies on conditions of confinement as a basis for habeas relief, her petition cannot succeed.

C. The Balance of Equities and Public Interest Do Not Favor Petitioner.⁶

“The government’s interest in efficient administration of the immigration laws” is “weighty,” and “it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon*, 459 U.S. at 34. Further, the government’s interest in protecting the public and preventing deportable aliens from fleeing are strong and compelling. *See e.g., Rodriguez Diaz*, 53 F.4th at 1208 (government’s interests in “protecting the public from dangerous criminal aliens” and “increas[ing] the chance that, if ordered removed, the aliens will be successfully removed” are “interests of the highest order that only increase with the passage of time”).

Those interests are compelling here. Congress determined that aliens who were stopped at the border should be detained during expedited removal proceedings or pending resolution of their standard removal proceedings. 8 U.S.C. § 1225(b). It not only made such detention mandatory, but severely curtailed ICE’s ability to release § 1225(b) aliens. *Jennings*, 583 U.S. at 299, 311; *Thuraissigiam*, 591 U.S. at 111. The government seeks to vindicate those interests here, whereas Petitioner seeks to exempt himself from the governing statutes. Petitioner’s requested relief, meanwhile, would undermine the immigration statutory framework. Section 1225(b) largely precludes discretionary relief from removal, but Petitioner demands creation of an entirely new arrest standard under it. Application of § 1225(b) involves a subject matter entrusted to Congress and the Executive Branch.

V. HEARING

The United States does not request a hearing on this matter.

⁶ When the government is a party, the third and fourth preliminary injunction factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

VI. CONCLUSION

For the foregoing reasons, Petitioner's Motion for Temporary Restraining Order should be denied.

Dated: November 24, 2025

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