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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 JOSUE DANIEL CRUZ BANOS,
12 Petitioner,

13 v.

14 Sergio ALBARRAN, Acting Field Office
Director of San Francisco Office of Detention
15 and Removal, U.S. Immigrations and Customs
Enforcements; U.S. Department of Homeland
16 Security;

17 Todd M. LYONS, Acting Director, Immigration
and Customs Enforcement, U.S. Department of
18 Homeland Security;
19

20 Kristi NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
21 Security; and

22 Pam BONDI, in her Official Capacity, Attorney
General of the United States,
23

24 Respondents.
25

CASE NO. 1:25-CV-1634-DMC-CSK

**MOTION TO DISMISS PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER**

26 **I. INTRODUCTION**

27 Petitioner is an applicant for admission to the United States and is subject to mandatory detention
28 under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) pending a determination by an asylum officer of his claim of

1 fear of persecution if removed to Cuba. For the reasons set forth below, the Court should deny his
2 motion for a temporary restraining order.

3 4 II. BACKGROUND

5 Petitioner is a native and citizen of Cuba. Habeas Petition ¶ 2. He entered the United States on
6 April 2, 2022, without inspection. Upon his apprehension, he raised a fear of persecution if returned to
7 Cuba and is awaiting a “credible fear interview” with an asylum officer from the United States
8 Citizenship and Immigration Services. Habeas Petition ¶¶ 47, 49. He was initially released from
9 detention on his own recognizance but was re-detained on November 21, 2025. *Id.* at ¶ 7. He is
10 detained under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) at the California City Detention Center.

11 III. DISCUSSION

12 A. The case should be dismissed for failure to name the proper respondent

13 A petition for habeas relief requires that the petition “shall allege the facts concerning the
14 applicant’s commitment or detention, *the* name of the person who has custody over him and what claim
15 or authority, if known.” 28 U.S.C. § 2242 (emphasis added); *see also Doe v. Garland*, 109 4th 1188,
16 1195 (9th Cir. 2024) (the plain text delineates that petitions must include the name of “the” person
17 maintaining custody over the petitioner). To issue a writ of habeas, the writ must be “directed to *the*
18 person having custody of the person detained.” 28 U.S.C. § 2243 (emphasis added). “Congress chose to
19 use a definite article, “the,” to make clear that only one person can be said to maintain custody over the
20 detained petitioner, and that person is the proper respondent to a core habeas challenge.” *Doe*, 109 4th
21 at 1195.

22 The sole proper respondent in habeas cases is the warden of the facility where the prisoner is
23 held, not the Attorney General or some other remote supervisory official. 28 U.S.C. § 2242; *Rumsfeld v.*
24 *Padilla*, 542 U.S. 426, 430 (2004); *Ortriz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). For
25 immigration detainees, the proper respondent is the warden for the detention facility. *Doe v. Garland*,
26 109 F.4th at 1197.

27 None of the individuals listed as respondents in this case are wardens of the facility where
28 Petitioner is detained, and they must be dismissed from the case. Petitioner did not list the sole

1 individual that must be listed as a respondent—the warden for the detention facility where Petitioner is
2 detained. For this reason, the case should be dismissed.

3 B. Petitioner is Subject to Mandatory Detention

4 8 U.S.C. § 1225(b) governs the detention of “applicants for admission” during their removal
5 proceedings. Applicants for admission fall into three categories. The first two categories consist of:
6 (1) arriving aliens who are inadmissible because they lack proper entry documents or have
7 falsified/misrepresented their entry documents; and (2) those aliens who have not established to the
8 satisfaction of an immigration officer that they have been physically present in the United States for two
9 years or more. Aliens that fall into either one of these two categories: (1) are subject to expedited
10 removal; and (2) are subject to mandatory detention during the expedited removal process. *See* 8 U.S.C.
11 § 1225(b)(1)(B)(ii), (iii)(IV). Where, as here, an alien who is subject to the expedited removal raises a
12 fear of persecution in his home country, the immigration officer refers the alien for a “credible fear
13 interview” that is conducted by an asylum officer from the United States Citizenship and Immigration
14 Services. Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) as
15 that process is ongoing. Even, if the asylum officer finds that the alien has a credible fear of persecution,
16 the alien is then moved to the standard removal proceeding, a removal proceeding under 8 U.S.C. §
17 1229a, but the alien is still subject to mandatory detention during that standard removal proceeding. *See*
18 8 U.S.C. § 1225(b)(1)(B)(ii).

19 The third category of applicants for admission consists of those aliens who are “seeking
20 admission” and who an immigration officer has determined are “not clearly and beyond a doubt entitled
21 to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A). Aliens who fall within this third category are subject to
22 the standard removal proceeding (not to an expedited removal proceeding), but they are nevertheless
23 subject to mandatory detention during their standard removal proceedings. *See* 8 U.S.C.
24 § 1225(b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (stating that aliens subject to
25 section 1225(b)(1) and aliens subject to section 1225(b)(2) are both subject to mandatory detention for
26 the duration of removal proceedings); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (stating that
27 “for aliens arriving in and seeking admission into the United States who are placed directly in full
28 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention

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

2 In sum, all applicants for admission are subject to mandatory detention. *See Jennings*, 583 U.S.
3 at 299 (interpreting the “plain meaning” of sections 1225(b)(1) and (b)(2) as requiring mandatory
4 detention during removal proceedings). Specifically here, Petitioner is detained pursuant to 8 U.S.C. §
5 1225(b)(1)(B)(iii)(IV), which provides: “Any alien subject to the procedures under this clause shall be
6 detained pending a final determination of credible fear or persecution and, if found not to have such a
7 fear, until removed.” Further, Petitioner has only been detained five days as of the date of this pleading,
8 which is not a prolonged period of detention, especially considering his detention is mandatory while a
9 determination is made on his credible fear claim.

10 C. Petitioner Has Not Shown a Likelihood of Success on the Merits

11 The petitioner is an applicant for admission who is subject to mandatory detention for the
12 duration of his credible fear determination, and if found to not have such a fear, until removed. 8 U.S.C.
13 § 1225(b)(1)(B)(iii)(IV). It appears the petitioner was in fact released under 8 U.S.C. § 1226(a) because
14 for many years DHS treated aliens who entered the country without admission as being subject to
15 discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C.
16 § 1225(b)(2).¹ *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 n.6 (BIA 2025); *Alonzo v.*
17 *Noem*, ___ F.3d ___, 2025 WL 3208284, at *2 (E.D. Cal. Nov. 17, 2025). The agency has since
18 revisited its legal position on detention and release authorities and issued interim guidance that brought
19 its practices in line with the statute’s plain text. *Alonzo*, 2025 WL 3208284, at *2. Specifically, DHS
20 concluded that all aliens who enter the country without being admitted or who otherwise arrive in the
21 United States without proper documentation are subject to detention under 8 U.S.C. § 1225(b) and may
22 not be released from ICE custody except parole under 8 U.S.C. § 1182(d)(5). As a result, the only aliens
23 eligible for a custody determination and release on recognizance, bond, or other conditions under the 8
24 U.S.C. § 1226(a) are aliens admitted to the United States and chargeable with deportability under 8
25 U.S.C. § 1227.

26 The Board of Immigration Appeals recently affirmed this interpretation in *Yajure Hurtado*. The

27
28 ¹ While Petitioner in the present case is detained under 8 U.S.C. § 1225(b)(1), both (b)(1) and (b)(2)
apply to applicants for admission who are subject to mandatory detention; thus, the analysis is the same.

1 Board concluded that section 1225(b)(2)'s mandatory detention regime applies to *all* aliens who entered
 2 the United States without inspection:

3 Aliens ... who surreptitiously cross into the United States remain applicants for
 4 admission until and unless they are lawfully inspected and admitted by an immigration
 5 officer. Remaining in the United State for a lengthy period of time following entry
 6 without inspection, by itself, does not constitute an "admission."

7 29 I. & N. Dec. at 228; *id.* at 225 ("Immigration Judges lack authority to hear bond requests or to grant
 8 bond to aliens ... who are present in the United States without admission"); *see also Matter of Q. Li*, 29
 9 I. & N. Dec. 66, 68 (BIA 2025) (stating that "for aliens arriving in and seeking admission into the
 10 United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8
 11 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing
 12 *Jennings*, 583 U.S. at 299).

13 The fact that the petitioner was released on his own recognizance does not entitle him, under the
 14 Due Process Clause, to a bond hearing before the agency re-detains him during the pendency of his
 15 determination of credible fear, as required by section 1225(b)(1)(B)(iii)(IV). Under the doctrine of
 16 "entry fiction," aliens seeking admission to the United States, even if "allowed within its borders
 17 pending a determination of admissibility, . . . are legally considered to be detained at the border and
 18 hence as never having effected entry into" the United States. *Barrera-Echavarria v. Rison*, 44 F.3d
 19 1441, 1450 (9th Cir. 1995) (en banc).² Thus, even if an alien seeking admission is physically present on
 20 United States soil and has been "paroled elsewhere in the country for years pending removal," he still is
 21 "treated . . . as if stopped at the border" for immigration law purposes. *DHS v. Thurassigiam*, 591 U.S.
 22 103, 139 (2020); *see also United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) ("Parole does not
 23 change parolees' immigration status: they remain 'at the border' for the purposes of immigration law
 24 and are treated as applicants into the country."). "The distinction between an alien who has effected an
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26 ² 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 entry into the United States and one who has never entered” is a fundamental one that “runs throughout
2 immigration law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

3 Here, Petitioner was never admitted to the United States. For immigration law purposes, he is
4 treated as being stopped at the border, even though he has been physically present within the United
5 States since April 2, 2022. *Barrera-Echavarria*, 44 F.3d at 1450; *Thuraissigiam*, 591 U.S. at 139.

6 And that carries significant implications for the contours of his due process rights. An alien who
7 has not effected a legal entry, i.e., has not been admitted into the United States, is entitled only to
8 “[w]hatever the procedure authorized by Congress is.” *Shaughnessy v. United States ex rel. Mezei*, 345
9 U.S. 206, 212 (1953) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950));
10 see also *Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry “has only those rights
11 regarding admission that Congress has provided by statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th
12 Cir. 2015) (for “those . . . who have never technically ‘entered’ the United States . . . procedural due
13 process is simply whatever the procedure authorized by Congress happens to be” (cleaned up)). This
14 makes sense, since “an alien seeking initial admission to the United States requests a privilege and has
15 no constitutional rights regarding his application.” *Barrera-Echavarria*, 44 F.3d at 1449.

16 Put tersely, “applicants for admission have virtually no constitutional rights regarding their
17 applications.” *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*,
18 459 U.S. 21, 33-34 (1982)); *Thuraissigiam*, 591 U.S. at 138–140 (explaining that an alien who has never
19 been lawfully admitted to the United States is “‘treated’ for due process purposes ‘as if stopped at the
20 border,” “has only those rights regarding admission that Congress has provided by statute,” and that “the Due
21 Process Clause provides nothing more.”). “Whatever the procedure authorized by Congress is, it is due
22 process as far as an alien denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where the
23 petitioner has “not ‘technically entered the United States,’ [the Court] examine[s] only whether the
24 government violated the statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*,
25 959 F.3d 1233, 1241 (9th Cir. 2020) (citation omitted). In other words, “the procedure authorized by
26 Congress” in 8 U.S.C. § 1225 constitutes procedural “due process” as far as petitioner is concerned.
27 *Shaughnessy*, 345 U.S. at 212; see also *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for
28 noncitizen who “never technically ‘entered’ the United States,” “procedural due process is simply

1 whatever the procedure authorized by Congress happens to be.” (citation modified)); *Grigoryan v. Barr*,
 2 959 F.3d 1233, 1241 (9th Cir. 2020) (same). The government recognizes that this Court and many
 3 others have held against the government on similar and related cases, but believes that the analysis set
 4 forth in *Alonzo v. Noem*, ___ F.3d ___, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025), is the correct one.
 5 Because section 1225(b)(2)(A) does not “say[] anything whatsoever about bond hearings,” petitioner is
 6 not entitled to one, even if he was released on an order of recognizance. *Jennings*, 583 U.S. at 297.
 7 Further, Petitioner’s detention has not been prolonged, as he has only been detained for five days as of
 8 the date of this pleading and is awaiting a credible fear interview with USCIS.

9 Finally, even if the Court determines that the petitioner should receive a bond hearing the proper
 10 course is to order that such hearing occur—not immediate release from custody. *See Waldman Pub.*
 11 *Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) (“Injunctive relief should be narrowly tailored to
 12 fit specific legal violations.”); *see also, e.g., Javier Ceja Gonzalez v. Noem*, No. 25-02054, 2025 WL
 13 2633187, at *6 (C.D. Cal. Aug. 13, 2025) (ordering the government to “release Petitioners or, in the
 14 alternative, provide each Petitioner with an individualized bond hearing before an immigration judge
 15 pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order”).

16 D. Petitioner has not shown he is likely to suffer irreparable harm.

17 Although an alleged constitutional violation may alone constitute irreparable harm, that
 18 presumption does not apply where a petitioner fails to demonstrate “a sufficient likelihood of success on
 19 the merits of his constitutional claims to warrant the grant of a preliminary injunction.” *Associated Gen.*
 20 *Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (citing *Goldie’s*
 21 *Bookstore v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984)). As detailed above, the petitioner fails
 22 to show that he is being detained in violation of any constitutional, statutory, or other requirement. And,
 23 his detention has not been prolonged, as he has only been detained five days as of the date of this
 24 pleading while he awaits is credible fear interview with USCIS. Immigration laws, moreover, have long
 25 authorized officials to detain noncitizens pending removal to “assur[e] the alien’s presence at the
 26 moment of removal.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001); *see Demore*, 538 U.S. at 523
 27 (removal is “a constitutionally valid aspect of the deportation process”); *Carlson v. Landon*, 342 U.S.
 28 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”).

1 E. Petitioner Has Not Shown that the Balance of Equities and Public Interest Favor Tip in His Favor

2 It is well settled that the public interest in enforcement of the United States' immigration laws is
3 significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House*
4 *of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that
5 the public interest in enforcement of the immigration laws is significant.” (collecting cases)); *see also*
6 *Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of
7 removal orders[.]”). This public interest outweighs Petitioner’s private interest here.

8
9 **IV. CONCLUSION**

10 For the reasons set forth above, the Court should dismiss this case for failure to include the
11 proper respondent or deny the motion for a temporary restraining order.

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13 Dated: November 26, 2025

ERIC GRANT
United States Attorney

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15 By: /s/ Robin Tubesing
16 ROBIN TUBESING
Assistant United States Attorney
17 Attorneys for Respondent
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