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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

R.I.,

Petitioner,

v.

MINGA WOFFORD, et al.

Respondents.¹

CASE NO. 1:25-CV-01637-KES-SKO

OPPOSITION TO PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION, AND ANSWER TO
PETITION FOR WRIT OF HABEAS CORPUS²

I. INTRODUCTION

Petitioner is not entitled to the extraordinary remedy of a temporary restraining order ("TRO") because he is an applicant for admission subject to mandatory detention. Additionally, Petitioner's repeated violations of the Alternative to Detention program ("ATD") justified Immigration and Customs Enforcement's ("ICE") decision to re-detain him. Petitioner fails to meet the burden of proof required for injunctive relief, and both the TRO and habeas relief should be denied.

In its order, the Court directed the parties to state whether or not a hearing is required on the motion. ECF 7. After review of Petitioner's motions and supporting documents, the government believes there is no substantial dispute in facts and the legal issues presented in this case can be decided on the

¹ The Court should dismiss all respondents other than the Warden of the Mesa Verde ICE Processing Center because the only proper respondent to a habeas petition is the custodian having immediate custody of the petitioner. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

² Petitioner's request for a TRO is largely duplicative of his request for a habeas petition, and so the Government requests the court receive this filing in opposition to both motions.

parties' filings.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Russia who applied for admission to the United States on June 8, 2021. Exhibit 1, Declaration of Deportation Officer Christopher. T. Jerome ("Jerome Decl.") ¶ 4. Customs and Border Protection ("CBP") determined Petitioner did not have legal documents to enter, pass, or remain in the United States. *Id.* On June 12, 2021, Petitioner was interviewed by CBP and expressed fear of returning to Russia. *Id.*

On or about June 12, 2021, Petitioner was released pursuant to 8 C.F.R. § 212.5 into the Alternative to Detention ("ATD") program, which has compliance and reporting requirements, and then released. Jerome Decl. ¶ 5. While in ATD, between September 2023 and August 2025 Petitioner incurred 11 compliance violations including missing check-ins and checking in from outside the authorized zone. Jerome Decl. ¶ 7-17. Petitioner was arrested by ICE's Enforcement Removal Operations division ("ERO") on November 3, 2025. Jerome Decl. ¶ 18. Petitioner was and continues to be detained under INA § 235(b)(2)(A)/8 USC § 1225(b)(2)(A). Jerome Decl. ¶ 19.

On November 24, 2025, Petitioner filed a habeas petition and TRO motion alleging violations of procedural and substantive due process. ECF 1, 2. Petitioner's TRO seeks: (1) release; (2) a prohibition on Petitioner's re-arrest until he is afforded a hearing before a neutral adjudicator on whether a change in custody is justified by clear and convincing evidence that he is a danger to the community or a flight risk; and (3) a prohibition on sending Petitioner to any place outside the United States. ECF 2. Respondents hereby timely oppose the TRO in compliance with the Court's December 4, 2025, deadline. ECF 7. Petitioner's reply is due by December 8, 2025. *Id.*

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.³ “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

³ This word “alien” is used herein as a term of art in the immigration context.

1 remain in the United States. *See generally* 8 U.S.C. §§ 1103, 1104.

2 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for
3 admission, if the examining immigration officer determines that an alien seeking admission is not
4 clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute defines an
5 “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who
6 arrives in the United States...whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1).
7 Thus, the statute identifies two categories of aliens: (1) those “present in the United States who ha[ve]
8 not been admitted”; and (2) those “who arrive[] in the United States . . . whether or not at a designated
9 port of arrival.” *Id.* The statute expressly treats a person in *either* category as an “applicant for
10 admission.” *Id.*; *see also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“Congress has
11 defied the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those
12 who are expressly seeking permission to enter, but also those who are present in this country without
13 having formally requested or received such permission”).⁴

14 Applicants for admission must be inspected by immigration officers to determine whether they
15 can be admitted to the United States under immigration laws. 8 U.S.C. § 1225(a)(3); *Jennings v.*
16 *Rodriguez*, 583 U.S. 281, 287 (2018). 8 U.S.C. § 1225(b) governs the detention of “applicants for
17 admission” during their removal proceedings. Applicants for admission fall into three categories. The
18 first two categories consist of: (1) arriving aliens who are inadmissible because they lack proper entry
19 documents or have falsified/misrepresented their entry documents; and (2) those aliens who have not
20 established to the satisfaction of an immigration officer that they have been physically present in the
21 United States for two years or more. Aliens that fall into either one of these two categories: (a) are
22 subject to expedited removal; and (b) are subject to mandatory detention during the expedited removal
23

24
25 ⁴ Section 1225 was added by Congress under the IIRIRA to correct “an anomaly whereby immigrants
26 who were attempting to lawfully enter the United States were in a worse position than persons who had
27 crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to*
28 *extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). 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).

process. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV).⁵

The third category of applicants for admission—applicable here—consists of those aliens who are “seeking admission” and who an immigration officer has determined are “not clearly and beyond a doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A). Aliens who fall within this third category are eligible for standard removal proceedings, but they are nevertheless subject to mandatory detention during their standard removal proceedings. *Id.*; *Jennings*, 583 U.S. at 299 (stating that aliens subject to section 1225(b)(1) and aliens subject to section 1225(b)(2) are both subject to mandatory detention for the duration of removal proceedings); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (stating that “for 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). Those aliens, like Petitioner, who arrive at a port of entry seeking admission into the United States are within “arriving alien” subset of applicant for admission. Such “arriving aliens” are defined in 8 C.F.R. § 1001.1(q):

The term *arriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.

Petitioner here is an “arriving alien” and therefore an “applicant for admission” by virtue of seeking admission into the United States without being clearly and beyond a doubt entitled to be admitted. . Jerome Decl. ¶ 4. 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,

⁵ If an alien who is subject to an expedited removal order raises a fear of persecution in their home country, the immigration officer refers the alien for a “credible fear interview” that is conducted by an asylum officer. If the asylum officer finds that the alien has a credible fear of persecution, the alien is then moved to the standard removal proceeding (a removal proceeding under 8 U.S.C. § 1229a), but the alien is still subject to mandatory detention during that standard removal proceeding.

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 his own recognizance, place him in the ATD program, and initiate routine removal proceedings, does not preclude ICE from re-detaining Petitioner; indeed, the revocation of parole is explicitly contemplated in 8 C.F.R. § 1001.1(q). As discussed above, he 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." 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.

a. Petitioner Is Not Entitled to a Pre-Re-Detention Hearing.

Petitioner admits "[t]he statute and regulations grant ICE the ability to unilaterally revoke any alien's release and re-arrest the alien at any time. 8 U.S.C. § 236.1(c)(9)." ECF 2, TRO at 14. Despite that admission, Petitioner then incorrectly argues that, because DHS released him on his own recognizance after he entered the United States without valid documents allowing entry, the Due Process clause entitles him to a hearing before a neutral decisionmaker prior to re-detention at which the government must establish by clear and convincing evidence that he 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 his status as an applicant for admission within the meaning of 8 U.S.C. § 1225(b), nor does the Due Process Clause entitle him to a pre-re-detention hearing. Under the doctrine of "entry fiction," aliens seeking admission to the United States, even if "allowed within its borders pending a determination of admissibility... are legally considered to be detained at the border and hence as never having effected entry into" the United States. *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc).⁶ Thus, even if an alien

⁶ The scope of *Barrera-Echavarria*'s holding has been complicated by statutory amendments in the

1 seeking admission is physically present on U.S. soil and has been “paroled elsewhere in the country for
 2 years pending removal,” he still is “treated . . . as if stopped at the border” for immigration law purposes.
 3 *Dept. Homeland Security v. Thurassigiam*, 591 U.S. 103, 139 (2020); *see also United States v. Balde*,
 4 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they remain ‘at
 5 the border’ for the purposes of immigration law and are treated as applicants into the country.”). “The
 6 distinction between an alien who has effected an entry into the United States and one who has never
 7 entered” is a fundamental one that “runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S. 678,
 8 693 (2001).

9 Here, Petitioner was never admitted to the United States – he applied for admission without
 10 having the required documents for admission. *See* Jerome Decl. ¶ 4. For immigration law purposes, he is
 11 treated as being stopped at the border, even though he has been physically present within the United
 12 States since June 2021. *Barrera-Echavarria*, 44 F.3d at 1450. This carries significant implications for
 13 the contours of Petitioner’s due process rights. An alien who has not effected a legal entry, *i.e.*, has not
 14 been admitted into the United States, is only entitled to “[w]hatever the procedure authorized by
 15 Congress is.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United*
 16 *States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140
 17 (an alien detained after unlawful entry “has only those rights regarding admission that Congress has
 18 provided by statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for “those . . . who have never
 19 technically ‘entered’ the United States . . . procedural due process is simply whatever the procedure
 20 authorized by Congress happens to be”) (cleaned up). This makes sense, since “an alien seeking initial
 21 admission to the United States requests a privilege and has no constitutional rights regarding his
 22 application.” *Barrera-Echavarria*, 44 F.3d at 1449.

23 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
 24 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-
 25 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien

26 _____
 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 denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has “not
 2 ‘technically entered the United States,’ [the Court] examine[s] only whether the government violated the
 3 statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th
 4 Cir. 2020) (citation omitted). Accordingly, Petitioner is subject to mandatory detention. *See Matter of*
 5 *Yajure Hurtado*, 29 I & N Dec. 216, 220 (BIA 2025) (holding that the Immigration and Nationality Act
 6 makes all applicants for admission subject to mandatory detention for the duration of their immigration
 7 proceedings—even those who have entered without admission or inspection and have been residing in the
 8 United States for years without lawful status).

9 **b. Changed Circumstances Were Not Required for Re-Detention.**

10 Petitioner wrongly argues that DHS must demonstrate changed circumstances before re-
 11 detaining him (ECF 2, TRO at 14) yet he also concedes “[t]he statute and regulations grant ICE the
 12 ability to unilaterally revoke any non-citizen’s release and re-arrest the noncitizen at any time. 8 U.S.C.
 13 § 236.1(c)(9).” ECF 2, TRO at 14. Petitioner’s reliance on the Supreme Court’s decisions in *Zadvydas*
 14 and *Demore v. Kim*, 538 U.S. 510 (2003), is also misplaced because those cases concerned aliens
 15 admitted into the country who had obtained lawful status, rather than an arriving alien such as Petitioner
 16 (and the petitioners in *Thuraissigiam*, *Mezei*, *Knauff*, and *Nishimura Ekiu*).⁷ This distinction “[m]akes
 17 all the difference” when it comes to due process. *Zadvydas*, 533 U.S. at 693. Indeed, *Zadvydas* made just
 18 this point: Acknowledging that “[t]he distinction between a[n] [alien] who has effected an entry into the
 19 United States and one who has never entered runs throughout immigration law.” *Id.* at 682. The
 20 Supreme Court conceded that aliens “who have not yet gained initial admission to this country *would*
 21 *present a very different question.*” *Id.* at 693 (“[C]ertain constitutional protections available to persons
 22 inside the United States are unavailable to non-citizens outside of our geographic borders.”). So even on
 23 its own terms, *Zadvydas*’s analysis of the process due to an alien admitted into the country says nothing
 24 about the process which an arriving alien, such as Petitioner, is entitled.

25
 26 ⁷ *See Thuraissigiam*, 591 U.S. at 138-40 (rejecting claim that due process entitled arriving aliens to
 27 judicial review of asylum request); *Mezei*, 345 U.S. at 212 (holding that former resident aliens exclusion
 28 and resulting prolonged detention did not violate due process); *Knauff*, 338 U.S. at 544 (rejecting war
 bride’s petition seeking review of her exclusion and concomitant detention); *Nishimura Ekiu*, 142 U.S.
 at 660 (holding that detention of arriving aliens after determination that she should not be allowed to
 land did not violate due process).

Demore is even less helpful to Petitioner. There, the Supreme Court held that mandatory civil detention of a legal permanent resident during removal proceedings—with no opportunity to seek release on bond—did not violate due process. *See* 538 U.S. at 526 (“[T]he Government may constitutionally detain deportable [aliens] during the limited period necessary for their removal proceedings”). Far from suggesting that arriving aliens have extra-statutory due process rights concerning their civil detention, *Demore* held that even aliens admitted into the country, with a stronger liberty interest, do not necessarily possess such rights. *Id.* at 523 (In so holding, the court reaffirmed that proceedings to remove aliens from the country “would be in vain if those accused could not be held in custody pending the inquiry into their true character) (quoting *Wong Wing*, 163 U.S. at 235). This principle applies with at least equal force to Petitioner’s detention.

For these same reasons, Petitioner’s argument is not supported by the Board of Immigration Appeals’ holding that DHS must demonstrate changed circumstances before detaining someone previously released by an IJ on bond. *Matter of Sugay*, 17 I&N Dec. 647 (BIA 1981) (TRO at 13). That holding is irrelevant to this case since Petitioner was not released under § 1226 or issued a bond by an immigration judge.⁸ Indeed, none of the bond cases that Petitioner cites apply to his detention in this case. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) (involved due process issues when the court did not consider an immigrant’s ability to afford the bond) (ECF 2, TRO at 7); *Nielsen v. Preap*, 586 U.S. 392 (2019) (concerned § 1226(c)) (ECF 2, TRO at 12); *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) (involved minors and bond) (ECF 2, TRO at 9); *Padilla v. U.S. Immigr. And Customs Enf’t*, 704 F. Sup. 3d 1163, 1173 (W.D. Wash. 2023) (bond) (ECF 2, TRO at 13); *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (released on bond) (ECF 2, TRO at 14).

Petitioner’s argument is likewise not supported by *Mahdawi v. Trump*, 781 F.Supp.3d 214 (2d. Cir. 2025), which concerned whether the alien was detained for improper motives and retaliatory reasons in violation of the First Amendment. ECF 2, TRO at 12. Petitioner relies on several cases which are distinguishable from the instant case because those cases involve the rights of American citizens in prison or other contexts, whereas Petitioner here is not a U.S. citizen. *Wolff v. McDonnell*, 418 U.S. 539

⁸ § 1226(b) does not apply here because that is not the provision he was detained or released under.

(1974) (due process challenge by citizen inmate to prison's disciplinary process) (ECF 2, TRO at 11); *Cnty. of Sacramento v. Lewis*, 523 U.S. 833 (1998) (Section 1983 claim alleged substantive due process right to life violation after motorcyclist killed during police chase) (ECF 2, TRO at 11); *Jackson v. Indiana*, 406 U.S. 715 (1972) (challenge to Indiana state prison's pretrial commitment process of incapacitated criminal defendants) (ECF 2, TRO at 12).⁹ Importantly, the Supreme Court has expressly recognized that "in the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1972).

Petitioner cites twelve district court cases for his argument that he has a due process right to not be detained absent changed circumstances for individuals stopped at the border but later released. Six of those cases are inapposite because they involved a bond issued by an IJ.¹⁰ Three of those cases determined petitioners were not released under §1225 as ICE claimed but instead under §1226.¹¹ With regard to the final three cases, which involved Petitioners released on their own recognizance, the Government respectfully maintains they were wrongly decided. Significantly, all of the cases relied on due process decisions involving American citizens' release from prison or being paroled, while failing to appreciate the different due process standards for aliens who have never entered the United States, as noted in *Barrera-Echavarria*, *Mezei*, *Knauff*, and similar Supreme Court and Ninth Circuit precedents.

Finally, even if changed circumstances are required, they exist here because Petitioner repeatedly

⁹ *Young v. Harper*, 520 U.S. 143 (1997) (TRO at 16); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (TRO at 16); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (TRO at 16); *Gonzalez-Fuentes v. Molina*, 607 F.3d 864 (1st Cir. 2010) (TRO at 17); *Hurd v. Dist. of Columbia*, 864 F.3d 671 (D.C. Cir. 2017) (TRO at 17); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (TRO at 17); *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en banc) (TRO at 18); *Zinerman v. Burch*, 494 U.S. 113 (1990) (TRO at 18); *Youngberg v. Romero*, 457 U.S. 307 (1982) (TRO at 18); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (TRO at 19); *United States v. Knights*, 534 U.S. 112 (2001) (TRO at 19); *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (TRO at 19); *Foucha v. Louisiana*, 504 U.S. 71 (1992) (TRO at 20).

¹⁰ See *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019) (TRO at 15); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020) (TRO at 15); *Jorge M.F. v. Wilkinson*, No. 21-cv-1434-JST, 2021 WL 783561 (N.D. Cal. Mar. 1, 2021) (TRO at 15); *Romero v. Kaiser*, No. 22-cv-2508-TSH, 2022 WL 1443250 (N.D. Cal. May 6, 2022) (TRO at 15); *Enamorado v. Kaiser*, 2025 WL 1382859 (N.D. Cal. May 12, 2025) (TRO at 15); *Doe v. Becerra*, 787 F. Supp. 3d 1093 (E.D. Cal. 2025) (TRO at 15).

¹¹ *Ramirez Clavijo v. Kaiser*, No. 25-cv-6248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (TRO at 15); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025) (TRO at 15); *Hernandez Nieves v. Kaiser*, No. 25-cv-6921, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025) (TRO at 15).

1 failed to comply with the conditions of his conditional release. Jerome Decl., ¶ 7-17.

2 **3. The *Mathews* Factors Do Not Mandate a Remedy.**

3 Petitioner wrongly argues that the multi-factor balancing test of *Mathews v. Eldridge*, 424 U.S.
4 319 (1976) entitles him to release under due process. ECF 2, TRO at 18-23. *Mathews* does not, however,
5 appear to govern due process claims raised by detained aliens. Indeed, the Supreme Court has not
6 adjudicated due process challenges to detainment through the *Mathews* factors despite several
7 opportunities. See *Rodriguez Diaz v. Garland*, 53 F.4th at 1189, 1206, 1214 (9th Cir. 2022) (Bumatay,
8 J., concurring) (“In resolving similar immigration-detention challenges, the Supreme Court has not
9 relied on the *Mathews* framework.”) (citing *Demore*, 538 U.S. at 521-31; *Reno v. Flores*, 507 U.S. 292,
10 299–315 (1993)).

11 Regardless, the *Mathews* factors do not create the free-standing liberty interest that Petitioner
12 seeks. *Mathews* considers three factors: (1) the private interest that will be affected; (2) the risk of an
13 erroneous deprivation of such interest through the procedures used and the value, if any, of additional or
14 substitute safeguards; and (3) the government’s interest. *Id.* at 1207. In applying these factors, the Court
15 “can and must account for the heightened governmental interest in the immigration detention context.”
16 *Id.* at 1206.

17 None of the factors support habeas relief for Petitioner here. The first factor does not weigh
18 strongly in his favor because “detention during deportation proceedings [is] a constitutionally valid
19 aspect of the deportation process.” *Demore*, 538 U.S. at 523; see also *Reno*, 507 U.S. at 306; *Carlson v.*
20 *Landon*, 342 U.S. 524, 538 (1952). In this case, § 1225(b) makes detention mandatory. Further,
21 Petitioner has not been detained for a long period of time (since November 3, 2025), nor is his detention
22 indefinite—by law, it ends once his removal proceedings are completed. 8 U.S.C. § 1125(b)(2);
23 *Jennings*, 583 U.S. at 299 (§ 1225(b) “provide[s] for detention for a specified period of time”); compare
24 *Zadvydas*, 533 U.S. at 690-91, 698 (concerned with “indefinite, perhaps permanent, detention” and
25 establishing a presumptively reasonable six-month detention period to effectuate removal).

26 The second factor likewise does not assist Petitioner. As discussed above, aliens who have not
27 legally entered the country are only entitled to the due process that Congress has statutorily created.
28 *Mezei*, 345 U.S. at 212; *Angov*, 788 F.3d at 898; *Barrera-Echavarria*, 44 F.3d at 1449; *Shaughnessy*,

1 338 U.S. at 544. “[A]n alien at the threshold of initial entry cannot claim any greater rights under the
2 Due Process Clause.” *Thuraissigiam*, 591 U.S. at 107. Because detention is mandatory, and
3 § 1225(b) only allows release through parole under narrow circumstances, any additional hearings could
4 not provide relief to Petitioner. *See Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018)
5 (holding that “for aliens on the ‘threshold of initial entry,’ due process is whatever procedure has been
6 ‘authorized by Congress,’” and “because the immigration statutes at issue here do not authorize a bond
7 hearing, *Mezei* dictates that due process does not require one here”); *compare Gonzalez-Fuentes v.*
8 *Molina*, 607 F.3d 864, 894 (1st Cir. 2010) (the law “provide[d] a valid, independent basis for the
9 deprivation of liberty” and thus any procedural due process violation could not vindicate petitioner’s
10 liberty interest or justify habeas relief).

11 Finally, the Government has a significant interest in Petitioner’s detention. Even if Petitioner
12 specifically does not appear to be a danger or flight risk, the Government has a strong interest in
13 effectuating the “system Congress devised.” *Thuraissigiam*, 591 U.S. at 106. “The government’s interest
14 in efficient administration of the immigration laws” is “weighty,” and “it must weigh heavily in the
15 balance that control over matters of immigration is a sovereign prerogative, largely within the control of
16 the executive and the legislature.” *Landon*, 459 U.S. at 34. The system Congress devised requires
17 detention until Petitioner’s removal proceedings are completed and forbids his release absent narrow
18 circumstances not applicable here.

19 **B. Petitioner Has Not Met His Heavy Burden To Show Likely Irreparable Harm.**

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

Nor do Petitioner's alleged conditions of detention demonstrate irreparable harm. Any conditions of detention that Petitioner deems unsatisfactory are not cognizable in habeas proceedings. "The appropriate remedy for such constitutional violations, if proven, would be a judicially mandated 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, his petition cannot succeed.

C. The Balance of Equities and Public Interest Do Not Favor Petitioner.¹²

"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,

¹² 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).

1 but Petitioner demands creation of an entirely new arrest standard under it. Application of § 1225(b)
2 involves a subject matter entrusted to Congress and the Executive Branch.

3 **D. Petitioner's Requested Remedy Exceeds Permissible Bounds of Habeas Relief.**

4 Habeas is properly “a means to secure *release* from unlawful detention,” not a means of
5 “achiev[ing] an entirely different end,” such as “obtain[ing] additional administrative review.”
6 *Thuraissigiam*, 591 U.S. at 107. Here, Petitioner does not just seek release from confinement. He also
7 demands that before the Government may lawfully re-arrest him, it must establish, by clear and
8 convincing evidence before a neutral decisionmaker, that he is a danger to the community or a flight risk
9 and thus reincarceration is necessary. ECF 2, TRO at 26. By doing so, Petitioner requests that the Court
10 create an affirmative right completely absent from the governing statute. *See* 8 U.S.C. § 1225(b).
11 Petitioner's call for an extra-statutory right to stay in the United States is especially apparent given that
12 “simply releasing him would not provide the right to stay in the country... Without a change in status, he
13 would remain subject to arrest, detention, and removal.” *Thuraissigiam*, 591 U.S. at 119.

14 To the extent that Petitioner seeks habeas relief beyond release from confinement, it is not
15 cognizable and should be rejected.

16 **V. CONCLUSION**

17 For the foregoing reasons, Petitioner's Motion for Temporary Restraining Order should be
18 denied. Because his habeas petition, ECF 1, is substantially identical to his Motion for Temporary
19 Restraining Order, it, too, should be denied and dismissed.

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22 Dated: December 4, 2025

ERIC GRANT
United States Attorney

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24 By: /s/ ROBERT L. VENEMAN-HUGHES
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26 Assistant United States Attorney
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