

1 ERIC GRANT
United States Attorney
2 ROBIN TUBESING
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5

6 Attorneys for the United States of America
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 JAWAD GHOLAMI and
ALI REZA GHOLAMI,

12 Petitioners,
13

14 v.

15 CHRISTOPHER CHESTNUT, warden of
California City Detention Center, et al.

16 Respondents.¹
17

CASE NO. 1:25-CV-01644-DAD-DMC

**OPPOSITION TO MOTION FOR A
TEMPORARY RESTRAINING ORDER**

18 **I. BACKGROUND**

19 Petitioners are citizens of Afghanistan. Habeas Petition ¶42. Petitioners made an appointment
20 via the CBP One App to present themselves at the San Ysidro, California port of entry. *Id.* at ¶ 2. On
21 or about January 23, 2024, Petitioners came to the port of entry in San Ysidro, California, and were
22 granted parole with a notice to appear, which initiated removal proceedings. *Id.* at ¶¶ 47-49; TRO
23 Memorandum 2:21. On or about September 8, 2025, Petitioners were re-detained. *Id.* at ¶ 3. Petitioners
24 are mandatorily detained under 8 U.S.C. § 1225(b)(2).
25

26
27 ¹ This Court should dismiss all respondents other than the warden of the California City Detention
28 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).

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is “substantially identical” to that for a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Preliminary injunctions are extraordinary remedies “never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation marks omitted). This burden is aptly described as “heavy.” *Id.*

“A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show “serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third . . . factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

A. Pre-IIRIRA, Aliens Unlawfully Present in the United States Had Preferential Treatment

Prior to 1996, the INA treated aliens differently based on whether the alien had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in

1 deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on
2 bond.” *Id.*

3 Thus, the INA’s prior framework distinguishing between aliens based on physical “entry” had
4 the ‘unintended and undesirable consequence’ of having created a
5 statutory scheme where aliens who entered without inspection ‘could take
6 advantage of the greater procedural and substantive rights afforded in
7 deportation proceedings,’ *including the right to request release on bond*,
while aliens who had ‘actually presented themselves to authorities for
inspection ... were subject to mandatory custody.

8 *Id.* (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012));
9 *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996)
10 (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain
11 equities and privileges in immigration proceedings that are not available to aliens who present
12 themselves for inspection”).

13 **B. IIRIRA Eliminated This Preference and Mandated Detention of Applicants for Admission**

14 Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009
15 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all immigrants who have
16 not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing
17 in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

18 To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful
19 “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of the
20 alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C.
21 § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish
22 aliens based on whether they had managed to evade detection and enter the country without permission.
23 Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been
24 *lawfully* admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).
25 IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings
26 into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

27 IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:
28

1 **Section 1225(a):** Section 1225(a) codifies Congress’s decision to make lawful “admission,”
2 rather than physical entry, the touchstone. That provision states that an alien “present in the United
3 States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant
4 for admission”:

5 An 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
7 and including an alien who is brought to the United States after having
been interdicted in international or United States waters) shall be deemed
for purposes of this chapter an applicant for admission.

8 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise
9 seeking admission or readmission to or transit through the United States” are required to “be inspected
10 by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed
11 to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to
12 removal proceedings.

13 **Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—expedited removal
14 and non-expedited “Section 240” proceedings—and mandated that applicants for admission be detained
15 pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

16 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Thuraissigiam*, 591
17 U.S. at 109-113, which can potentially be applied to a subset of aliens—those who (1) are “arriving in
18 the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not
19 affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically
20 present in the United States continuously for the 2-year period immediately prior to the date of the
21 determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration
22 officer shall “order the alien removed from the United States without further hearing or review unless
23 the alien indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.*
24 § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible
25 fear or persecution and, if found not to have such fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see*
26 *also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an
27 intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C.
28 § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

1 Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not
2 covered by [subsection (b)(1)].” *Jennings*, 583 U.S. at 287. It requires that those aliens be detained
3 pending Section 240 removal proceedings:

4 Subject to subparagraphs (B) and (C), in the case of an alien who is an
5 applicant for admission, if the examining immigration officer determines
6 that an alien seeking admission is not clearly and beyond a doubt entitled
to be admitted, the alien *shall be detained* for a proceeding under section
1229a of this title [Section 240].

7 8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section
8 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s]
9 detention of aliens throughout the completion of applicable proceedings and not just at the moment
10 those proceedings begin”).

11 **Section 1226:** IIRIRA also created a separate authority addressing the arrest, detention, and
12 release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is
13 the only provision that governs the detention of aliens who, for example, lawfully enter the country but
14 overstay or otherwise violate the terms of their visas, or are later determined to have been improperly
15 admitted. The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be
16 arrested and detained pending a decision on whether the alien is to be removed from the United States.”
17 *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may”
18 either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.*
19 § 1226(a)(1)-(2).²

20 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1,
21 § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are
22 inadmissible because they are physically present in the United States without admission or parole, have
23 committed a material misrepresentation or fraud, or lack required documentation; and (2) are “charged
24 with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which
25 constitute the essential elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).
26
27

28 ² Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

IV. LEGAL ANALYSIS

A. Petitioners Are Not Likely to Succeed on the Merits

1. Petitioners Are Applicants for Admission Under § 1225(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 having formally requested or received such permission”).

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

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

³ If an alien who is subject to an expedited removal order establishes a credible fear of persecution in his home country, 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 under section 1225(b)(1) during that standard removal proceeding.

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). Petitioners are applicants for admission detained under Section 1225(b)(2), and the detention is mandatory.

2. Petitioners Have Not Clearly Shown that the Due Process Clause Requires a Bond Hearing Under the Circumstances

The fact that the petitioners were released does not entitle them, under the Due Process Clause, to a bond hearing before the agency re-detains them during the pendency of his removal proceedings, as required by section 1225(b). 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).⁴ Thus, even if an alien seeking admission is physically present on United States soil and has been “paroled elsewhere in the country for years pending removal,” he still is “treated . . . as if stopped at the border” for immigration law purposes. *DHS v. Thurassigiam*, 591 U.S. 103, 139 (2020); *see also United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they remain ‘at the border’ for the purposes of immigration law and are treated as applicants into the country.”). “The distinction between an alien who has effected an entry into the United States and one

⁴ The scope of *Barrera-Echavarria*’s holding has been complicated by statutory amendments in the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (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 who has never entered” is a fundamental one that “runs throughout immigration law.” *Zadvydas v.*
2 *Davis*, 533 U.S. 678, 693 (2001).

3 Here, Petitioners were never admitted to the United States—they entered through the San Ysidro
4 port of entry and given a notice to appear for removal proceedings before being released on parole. For
5 immigration purposes, they are treated as being stopped at the border, even though they have been
6 physically present in the United States since January 23, 2024. *Barrera-Echavarria*, 44 F.3d at 1450;
7 *Thuraissigiam*, 591 U.S. at 139.

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

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

1 *Shaughnessy*, 345 U.S. at 212; *see also Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for
 2 noncitizen who “never technically ‘entered’ the United States,” “procedural due process is simply
 3 whatever the procedure authorized by Congress happens to be.” (citation modified)); *Grigoryan v. Barr*,
 4 959 F.3d 1233, 1241 (9th Cir. 2020) (same). The government recognizes that this Court and many
 5 others have held against the government on this issue, but believes that the analysis set forth in *Alonzo v.*
 6 *Noem*, ___ F.3d ___, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025), is the correct one. Because section
 7 1225(b)(2)(A) does not “say[] anything whatsoever about bond hearings,” petitioner is not entitled to
 8 one, even if she was released on an order of recognizance. *Jennings v. Rodriguez*, 583 U.S. 281, 297
 9 (2018).

10 4. *Mathews v. Eldridge*

11 In *Mathews v. Eldridge*, the Supreme Court held that the “identification of the specific dictates of
 12 due process generally requires consideration of three distinct factors.” 424 U.S. 319, 334–35 (1976).
 13 They are (1) “the private interest that will be affected by the official action”; (2) “the risk of an
 14 erroneous deprivation of such interest through the procedures used, and the probable value, if any, of
 15 additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the
 16 function involved and the fiscal and administrative burdens that the additional or substitute procedural
 17 requirement would entail.” *Id.* at 335.

18 The Supreme Court, however, has never used this balancing test to divine the due-process
 19 requirements for immigration detention. *Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“[T]he
 20 Supreme Court when confronted with constitutional challenges to immigration detention has not
 21 resolved them through express application of *Mathews*.” (citations omitted)); *id.* at 1214 (“In resolving
 22 familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews*
 23 framework.”) (Bumatay, J., concurring). This is particularly unsurprising for noncitizens in Petitioner’s
 24 situation because, according to longstanding precedent, noncitizens who were neither admitted nor
 25 paroled into the United States have “only those rights regarding admission that Congress has provided
 26 by statute,” and “the Due Process Clause provides nothing more.” *Thuraissigiam*, 591 U.S. at 140;
 27 *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (“Whatever the procedure
 28 authorized by Congress is, it is due process . . .”); *see Cortes Alonzo*, 2025 WL 3208284, at *5 (holding

1 that, if a bond hearing is not required by § 1225, then the failure to provide one to an “applicant for
2 admission” cannot be a violation of due process); *Altamirano Ramos*, 2025 WL 3199872, at *5 (same)

3 In any event, even if the *Matthews* test applied here, Petitioners have not clearly shown that the
4 test requires a bond hearing.

5 First, although a noncitizen’s private interest in “freedom from prolonged detention” is
6 “unquestionably substantial,” *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011), the same cannot be
7 said for freedom from all detention itself. Petitioners have been detained for approximately 3 months
8 pending their removal proceedings. The Supreme Court and this Court have repeatedly upheld
9 mandatory detention during removal proceedings against due-process challenges, even where removal
10 proceedings are prolonged. *Demore v. Kim*, 538 U.S. 510, 530–31 (2003); *Keo v. Warden of the Mesa*
11 *Verde ICE Processing Center*, No. 24-00919, 2025 WL 1029392, at *8 (E.D. Cal. Apr. 7, 2025)
12 (holding that the mandatory detention of a lawful permanent resident for 22 months during removal
13 proceedings was constitutional, and no bond hearing was required, because the removal proceedings had
14 a “definite termination point” and the petitioner’s detention was not indefinite (citing *Jennings*, 583 U.S.
15 304; *Demore*, 538 U.S. at 527, 538)).

16 Second, Petitioners have not clearly shown that a bond hearing would decrease the risk of them
17 being erroneously deprived of their liberty. Petitioners are “applicant[s] for admission,” and there is no
18 evidence that they “[are] clearly and beyond a doubt entitled to be admitted” to the United States, and it
19 thus appears they are subject to mandatory detention. 8 U.S.C. §§ 1225(a)(1), (b)(2)(A).

20 Finally, “the government clearly has a strong interest in preventing aliens from ‘remain[ing] in
21 the United States in violation of our law.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir.
22 2022) (quoting *Demore*, 538 U.S. at 518). And, “[t]hrough detention, the government likewise seeks to
23 ‘increas[e] the chance that, if ordered removed, the aliens will be successfully removed.’” *Id.* (quoting
24 *Demore*, 538 U.S. at 528); see also *Nken v. Holder*, 556 U.S. 418, 436 (2009) (“There is always a public
25 interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed
26 removable . . . permits and prolongs a continuing violation of United States law.”). In addition, “[t]he
27 risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent.”
28 *Rodriguez Diaz*, 53 F.4th at 1208.

1 **5. Even if Petitioners Clearly Show They are Entitled to Preliminary Relief, That**
 2 **Relief Should be the Provision of a Bond Hearing—Not Immediate Release.**

3 As discussed, Petitioners have failed to clearly show that they are entitled to a bond hearing, as
 4 they are subject to mandatory detention under § 1225(b)(2). But even if the Court determines that
 5 Petitioners should receive a bond hearing, the proper course is to order that such hearing occur—not
 6 immediate release from custody. *See Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir.
 7 1994) (“Injunctive relief should be narrowly tailored to fit specific legal violations.”); *see also, e.g.,*
 8 *Javier Ceja Gonzalez v. Noem*, No. 25-02054, 2025 WL 2633187, at *6 (C.D. Cal. Aug. 13, 2025)
 9 (ordering the government to “release Petitioners or, in the alternative, provide each Petitioner with an
 10 individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven
 11 (7) days of this Order”).

12 Petitioners wrongly argue that they have a constitutional right to additional process, including a
 13 pre- re-detention hearing. Here, Petitioners were never admitted to the United States. They appeared at
 14 the San Ysidro point of entry making an appointment on an app, were released with a notice to appear,
 15 and removal proceedings were immediately initiated. For immigration law purposes, they are treated as
 16 being stopped at the border, even though they have been physically present within the United States
 17 since January 23, 2024. This carries significant implications for the contours of Petitioner’s due process
 18 rights. An alien who has not effected a legal entry, *i.e.*, has not been admitted into the United States, is
 19 only entitled to “[w]hatever the procedure authorized by Congress is.” *Shaughnessy v. United States ex*
 20 *rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S.
 21 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry “has
 22 only those rights regarding admission that Congress has provided by statute”); *Angov v. Lynch*, 788 F.3d
 23 893, 898 (9th Cir. 2015) (for “those . . . who have never technically ‘entered’ the United States . . .
 24 procedural due process is simply whatever the procedure authorized by Congress happens to be”)
 25 (cleaned up). This makes sense, since an alien seeking initial admission to the United States requests a
 26 privilege and has no constitutional rights regarding his application. *Landon*, 459 U.S. at 33-34.

27 The Supreme Court has long recognized that Congress exercises “plenary power to make rules
 28 for the admission of foreign nationals and to exclude those who possess those characteristics which

1 Congress has forbidden.” *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that
2 longstanding doctrine, “an alien seeking initial admission to the United States requests a privilege and
3 has no constitutional rights regarding his application, for the power to admit or exclude aliens is a
4 sovereign prerogative.” *Landon*, 459 U.S. at 32. Accordingly, “certain constitutional protections
5 available to persons inside the United States are unavailable to aliens outside of our geographical
6 borders.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

7 The Supreme Court has explained that applicants for admission lack any constitutional due
8 process rights with respect to admission aside from the rights provided by statute: “[w]hatever the
9 procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned,”
10 *Mezei*, 345 U.S. at 212, and “it is not within the province of any court, unless expressly authorized by
11 law, to review [that] determination,” *Knauff*, 338 U.S. at 537. The Supreme Court reaffirmed “[its]
12 century-old rule regarding the due process rights of an alien seeking initial entry” in *Thuraissigiam*,
13 explaining that an individual who illegally crosses the border—like Petitioner—is an applicant for
14 admission and “has only those rights regarding admission that Congress has provided by statute.”
15 *Thuraissigiam*, 591 U.S. at 139-40.

16 As explained by the Supreme Court, “[w]hen an alien arrives at a port of entry—for example, an
17 international airport—the alien is on U.S. soil, but the alien is not considered to have entered the
18 country.” *Id.* Stated further, “aliens who arrive at ports of entry—even those paroled elsewhere in the
19 country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’”
20 *Id.* (quoting *Mezei*, 345 U.S. at 215).

21 In short, because Petitioners are inadmissible applicants for admission seeking initial entry into
22 this country, they therefore “request[] a privilege and [have] no constitutional rights regarding [their]
23 application[s]” See *Landon*, 459 U.S. at 32; *Knauff*, 338 U.S. at 542 (“At the outset we wish to point out
24 that an alien who seeks admission to this country may not do so under any claim of right.”). Instead,
25 Petitioners have “only those rights regarding admission that Congress has provided by statute.” See
26 *Thuraissigiam*, 591 U.S. at 140. That is, Petitioners are entitled only to the protections set forth by
27 statute and “the Due Process Clause provides nothing more.” *Id.*; cf. *Guzman v. Tippy*, 130 F.3d 64, 66
28 (2d Cir. 1997) (the rights of excluded aliens “are determined by the procedures established by Congress

1 and not by the due process protections of the Fifth Amendment”).

2 **B. Petitioners Have Not Shown They are Likely to Suffer Irreparable Harm**

3 Although an alleged constitutional violation may alone constitute irreparable harm, that
4 presumption does not apply where a plaintiff fails to demonstrate “a sufficient likelihood of success on
5 the merits of [his or her] constitutional claims to warrant the grant of a preliminary injunction.”
6 *Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)
7 (citing *Goldie's Bookstore v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984)). As detailed above,
8 Petitioners fail to show that they are being detained in violation of any constitutional, statutory, or other
9 requirement. Immigration laws, moreover, have long authorized officials to detain noncitizens pending
10 removal to “assur[e] the alien’s presence at the moment of removal.” *Zadvydas v. Davis*, 533 U.S. 678,
11 699 (2001); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of [the]
12 deportation procedure.”).

13 **C. Petitioners Have Not Shown That the Balance of the Equities and the Public Interest Favor**
14 **Their Immediate Release**

15 It is well settled that the public interest in enforcement of the United States’ immigration laws is
16 significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House*
17 *of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that
18 the public interest in enforcement of the immigration laws is significant.” (collecting cases)). This
19 public interest outweighs Petitioners’ private interests here.

20 **V. CONCLUSION**

21 For the foregoing reasons, Petitioners’ Motion for a Temporary Restraining Order should be
22 denied.

23 Dated: December 11, 2025

ERIC GRANT
United States Attorney

25 By: /s/ Robin Tubesing
26 ROBIN TUBESING
Assistant United States Attorney
27 Attorneys for Respondent
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