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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

M.J.B.Z,

Petitioner,

v.

MINGA WOFFORD, et. al,

Respondents¹.

CASE NO. 1:25-CV-01800-DC-DMC

OPPOSITION TO PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

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. In accordance with this Court's order, Respondents submit that the legal framework of this case largely aligns with this Court's holdings in *Labrador-Prato v. Noem et al.*, 1:25-cv-01598-DC-SCR, 2025 WL 3458802 (E.D. Cal. Dec. 2, 2025) and *Selis Tonoco v. Noem, et al.*, 1:25-cv-01831-DC-AC, 2025 WL 3567862 (E.D. Cal. Dec. 14, 2025), and is not substantively distinguishable from these other cases.

¹ Respondents move to strike and dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, among other things, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent).

II. FACTUAL BACKGROUND

Respondents concur with the following relevant facts raised by Petitioner: (1) that he is a citizen of Mexico; (2) that he was encountered and applied for admission on August 2, 2024, at the border in San Ysidro, CA; (3) that he was charged with being an alien subject to removal because he was not in possession of the necessary documentation to enter the United States; (4) that he was released on parole with a Notice to Appear on March 30, 2027, at a removal hearing; (5) that he violated conditions of release at least once, by checking-in from a location that was not his home²; and (6) that he was detained on September 13, 2025, pursuant to 8 U.S.C. § 1225(b)(2).

On December 10, 2025, Petitioner filed a habeas petition and motion for a TRO alleging violations of procedural and substantive due process. ECF Nos. 1, 2. Petitioner's TRO seeks: (1) immediate release; (2) an order preventing his re-arrest "unless and 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) an order preventing his removal to a place outside the United States.

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).

"[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

² Respondents proffer that Petitioner actually violated his conditions a second time as well, by missing a check-in appointment in November 2024.

1 Cir. 2014) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)
 2 (emphasis in original); see also *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

3 Importantly, a temporary restraining order “is an extraordinary and drastic remedy, [and] one that
 4 should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek*,
 5 520 U.S. at 972. Indeed, the moving party bears the burden of meeting all prongs of the *Winter* test. *DISH*
 6 *Network Corp. v. FCC*, 653 F.3d 771, 776 (9th Cir. 2011) (“To warrant a preliminary injunction [or TRO],
 7 [the petitioner] must demonstrate that it meets all four of the elements of the preliminary injunction test
 8 established in *Winter*[.]”).

9 IV. LEGAL ANALYSIS

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

11 1. Petitioner is Subject to Mandatory Detention

12 The Immigration and Nationality Act (INA) governs detention and release during and following
 13 removal proceedings. See *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA defines an
 14 “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who
 15 arrives in the United States . . . whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1).
 16 Thus, the statute identifies two categories of aliens: (1) those “present in the United States who ha[ve]
 17 not been admitted”; and (2) those “who arrive[] in the United States . . . whether or not at a designated
 18 port of arrival.” *Id.* The statute expressly treats a person in *either* category as an “applicant for
 19 admission.” *Id.*; see also *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“Congress has
 20 defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those
 21 who are expressly seeking permission to enter, but also those who are present in this country without
 22 having formally requested or received such permission”).³

23
 24
 25 ³ Congress added Section 1225 to correct “an anomaly whereby immigrants who were
 26 attempting to lawfully enter the United States were in a worse position than persons who had crossed the
 27 border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*,
 28 *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).

Such aliens are subject to mandatory detention. Under 8 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)). Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).⁴ “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances,’ . . .” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); see *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (“It is well established that when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” (quotation marks omitted)).

As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. While § 1225(b)(2) does not allow for aliens to be released on bond, DHS has discretion to exercise its parole authority to temporarily release an applicant for admission “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). When the Secretary determines that “the purposes of such parole . . . has been served,” the “alien shall . . . be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5).

⁴ Section 1225(b)(1), in turn, applies when an alien has indicated either an intent to apply for asylum or a fear of persecution, but notably, also mandates detention. 8 U.S.C. § 1225(b)(1)(D).

1 On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N
 2 Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination that he
 3 did not have authority over [a] bond request because aliens who are present in the United States without
 4 admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
 5 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure Hurtado*, 29
 6 I&N Dec. at 220.⁵ The BIA concluded that aliens “who surreptitiously cross into the United States remain
 7 applicants for admission until and unless they are lawfully inspected and admitted by an immigration
 8 officer. Remaining in the United States for a lengthy period of time following entry without inspection,
 9 by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous
 10 result” that rewards aliens who unlawfully enter the United States without inspection and subsequently
 11 evade apprehension for number of years. *Id.*

12 In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the
 13 interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at
 14 221. The BIA determined that this argument “is not supported by the plain language of the INA” and
 15 creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is
 16 not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original).
 17 The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C.
 18 § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw issued
 19 subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b)
 20 applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is “quite clear”
 21 and “unequivocally mandate[s]” detention. *Jennings*, 583 U.S. at 300, 303 (explaining that “the word
 22 ‘shall’ usually connotes a requirement”) (quoting *Kingdomware Technologies, Inc. v. United States*, 579
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 24

25 ⁵ Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8
 26 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly
 27 in 8 U.S.C. § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747
 28 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N
 Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA,
 the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29
 I. & N. Dec. at 216.

1 U.S. 162, 171 (2016)). Detention is mandatory “throughout the completion of applicable proceedings.”
2 *Id.* at 302.

3 Here, it is not in dispute that Petitioner is an applicant for admission placed into removal
4 proceedings under 8 U.S.C. § 1229a and that he has never been granted admission. Petitioner is therefore
5 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond hearing
6 before a “neutral adjudicator.”

7 2. Mandatory Detention is Constitutional

8 While *Jennings* did not explicitly address constitutionality arguments on mandatory detention, the
9 Supreme Court rejected a facial challenge to a noncitizen’s mandatory civil detention pending removal
10 proceedings under a different statute, 8 U.S.C. § 1226(c), in a prior case. *See Demore v. Kim*, 538 U.S.
11 510 (2003). In *Demore*, the Supreme Court affirmed that “detention during deportation proceedings a[re]
12 a constitutionally valid aspect of the deportation process” and is “constitutionally permissible.” *Demore*,
13 538 U.S. at 523, 530-31. While the Supreme Court recognized that mandatory detention normally lasts
14 for a “limited period” of time, the Court held that mandatory detention could run for a longer period while
15 still being constitutional, for instance, where the noncitizen took actions to continue and lengthen his
16 removal proceedings. *Id.* at 531; *see also Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008)
17 (“there is little question that the civil detention of [noncitizens] during removal proceedings can serve a
18 legitimate government purpose, which is ‘preventing deportable... [noncitizens] from fleeing prior to or
19 during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens]
20 will be successfully removed,’” citing *Demore*, 538 U.S. at 528).

21 As a general matter, the Supreme Court has long recognized that Congress exercises “plenary
22 power to make rules for the admission of aliens.” *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972).
23 Pursuant to that longstanding doctrine, “an alien seeking initial admission to the United States requests a
24 privilege and has no constitutional rights regarding his application, for the power to admit or exclude
25 aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst*, 408
26 U.S. at 767. Thus, applicants for admission, such as Petitioner, lack any constitutional due process rights
27 with respect to admission aside from the rights provided by statute. “Whatever the procedure authorized
28 by Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy v. United*

1 *States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (superseded by statute as stated in *DHS v. Thuraissigiam*,
 2 591 U.S. 103 (2020)). In 2020, the Supreme Court reaffirmed “[its] century-old rule regarding the due
 3 process rights of an alien seeking initial entry” explaining that an individual who illegally crosses the
 4 border is an applicant for admission and “has only those rights regarding admission that Congress has
 5 provided by statute.” *Thuraissigiam*, 591 U.S. at 139–40. Ultimately, “[t]he recognized liberty interests
 6 of U.S. citizens and aliens are not coextensive: the Supreme Court has “firmly and repeatedly endorsed
 7 the proposition that Congress may make rules as to aliens that would be unacceptable if applied to
 8 citizens.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at
 9 522).

10 Following *Jennings*, several district courts have repeatedly refused to identify a specific time
 11 period after which a noncitizen’s detention will be considered presumptively violative of due process or
 12 require a bond hearing. See, e.g., *Navarrete-Leiva v. U.S. Attorney General, et al.*, No. 1:24-cv-00938-
 13 SKO, 2024 WL 5111780 (E.D. Cal. Dec. 13, 2024) (rejecting petitioner’s claim that the Constitution
 14 requires a bond hearing for continued detention during removal proceedings beyond six months)⁶; *Keo v.*
 15 *Warden of the Mesa Verde ICE Processing Center*, No. 1:24-CV-00919-HBK (HC), 2025 WL 1029392
 16 (E.D. Cal. Apr. 7, 2025), *appeal dismissed sub nom. Keo v. Warden*, No. 25-3546, 2025 WL 2528945 (9th
 17 Cir. June 27, 2025) (rejecting a due process challenge to a 22-month detention period and finding
 18 continued detention constitutional because removal proceedings contemplated a “definite termination
 19 point” at the conclusion of those proceedings and his detention was not indefinite); *Mendoza-Linares v.*
 20 *Garland*, No. 21-CV-1169-BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024) (finding
 21 Petitioner had no Fifth Amendment right to a bond hearing pending his removal proceedings under section
 22 1225).

23 Accordingly, Petitioner’s Constitutional challenges to his mandatory detention fail.

24 3. Section 1226 Does Not Apply to Petitioner

25 Section 1226(a) is the applicable detention authority for aliens who have been admitted and are

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 27 ⁶ The court in *Navarrete-Leiva* also noted that any due process concerns were mitigated by the
 28 fact that the statutory framework also allows for the grant of parole “on a case-by-case basis for urgent
 humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182 (d)(5); *Navarrete-Leiva*, 2024 WL
 5111780, at *3.

deportable and are subject to removal proceedings under 8 U.S.C. §§ 1226, 1227(a), and 1229a. It does not impact the directive in § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [§ 1229a],” § 1225(b)(2)(A).⁷ As the Supreme Court explained, § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I. & N. Dec. at 70; *see also Matter of M-S-*, 27 I. & N. Dec. 509, 516 (BIA 2019) (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225).

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to release on bond; rather, it permits broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Guerra*, 24 I. & N. Dec. at 39; *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under 8 U.S.C. § 1226(c). *See* 8 U.S.C. § 1226(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* at § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* 8 U.S.C. § 1226(c)(2). Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to § 1226. *See Barton v. Barr*, 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*, 586 U.S. 392, 416-19 (2019) (recognizing that aliens who are inadmissible for

⁷ The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). “[I]t is a commonplace of statutory construction that the specific governs the general . . .” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the prohibition is contradicted by a specific prohibition or permission” and in order to “eliminate the contradiction, the specific provision is construed as an exception to the general one”); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that “[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones”).

1 engaging in terrorist activity are subject to 8 U.S.C. § 1226(c)).

2 The statutory language of 8 U.S.C. § 1226(c) reflects a “congressional effort to be doubly sure”
3 that certain aliens are detained. *Barton*, 590 U.S. at 239. “Redundancy in one portion of a statute is not a
4 license to rewrite or eviscerate another portion of the statute contrary to its text . . .” *Id.*; *see also Hurtado*,
5 29 I. & N. Dec. at 222 (“Interpreting the provisions of section [1226(c)] as rendering null and void the
6 provisions of section [1225](b)(2)(A) (or even the provisions of section... 1225(b)(1)), would be in
7 contravention of the ‘cardinal principle of statutory construction,’ which is that courts are to give effect,
8 if possible, to every clause and word of a statute, rather than to emasculate an entire section.” (quoting
9 *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)).

10 To interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it
11 meaningless. Indeed, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens,
12 including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need
13 for Congress to make such a change if § 1226 was meant to apply to aliens present without admission.
14 Section 1226 simply does not have any controlling impact on applicants for admission under §
15 1225(b)(2)(A), like Petitioner, and cannot be used as the justification to release them—or preclude their
16 re-detention.

17 4. Petitioner’s Conditional Release Did Not Change His Status.

18 Petitioner’s conditional release from DHS custody did not change his status as an applicant for
19 admission within the meaning of 8 U.S.C. § 1225(b), nor does the Due Process Clause entitle him to a
20 pre-re-detention hearing. Under the doctrine of “entry fiction,” aliens seeking admission to the United
21 States, even if “allowed within its borders pending a determination of admissibility, . . . are legally
22 considered to be detained at the border and hence as never having effected entry into” the United States.
23 *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc).⁸ Thus, even if an alien seeking
24 admission is physically present on U.S. soil and has been “paroled elsewhere in the country for years
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26 ⁸ The scope of *Barrera-Echavarria*’s holding has been complicated by statutory amendments in
27 the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009
28 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 pending removal,” he still is “treated . . . as if stopped at the border” for immigration law purposes.
2 *Thuraissigiam*, 591 U.S. at 139. “The distinction between an alien who has effected an entry into the
3 United States and one who has never entered” is a fundamental one that “runs throughout immigration
4 law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)⁹.

5 Here, Petitioner was never admitted to the United States—he was encountered at a port of entry
6 and was deemed inadmissible because of his lack of proper documents. For immigration law purposes, he
7 is treated as an applicant for admission, even though he has been physically present within the United
8 States. *Barrera-Echavarria*, 44 F.3d at 1450. Petitioner’s due process rights are limited because as an
9 alien who has not effected a legal entry, *i.e.*, has not been admitted into the United States, he is only
10 entitled to “[w]hatever the procedure authorized by Congress is.” *Shaughnessy*, 345 U.S. at 212; *see also*
11 *Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry “has only those rights regarding
12 admission that Congress has provided by statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for
13 “those . . . who have never technically ‘entered’ the United States . . . procedural due process is simply
14 whatever the procedure authorized by Congress happens to be”) (cleaned up).

15 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
16 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon*, 459 U.S. at 33-34). “Whatever
17 the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.”
18 *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has “not ‘technically entered the United States,’
19 [the Court] examine[s] only whether the government violated the statutory rights that Congress afforded
20 such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th Cir. 2020) (citation omitted). Accordingly,
21 Petitioner is subject to mandatory detention.

22 5. The Mathews Factors Do Not Mandate a Remedy.

23 Petitioner wrongly argues that the multi-factor balancing test of *Mathews v. Eldridge*, 424 U.S.
24 319 (1976) entitles him to release under due process. ECF No. 2 at 19. *Mathews* does not, however, govern
25 due process claims raised by detained aliens. Indeed, the Ninth Circuit recognizes that the Supreme Court
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27 ⁹ Petitioner’s repeated citation to *Zadvydas* fails for this reason – unlike the petitioner in
28 *Zadvydas*, who was subject to a final order of removal and argued that he was indefinitely detained
admission. *See Zadvydas*, 533 U.S. at 684.

1 has not adjudicated due process challenges to detention using the *Mathews* factors, despite several
2 opportunities. See *Rodriguez-Diaz*, 53 F.4th at 1189, 1206, 1214.

3 Regardless, the *Mathews* factors do not create the independent liberty interest that Petitioner seeks.
4 *Mathews* considers three factors: (1) the private interest that will be affected; (2) the risk of an erroneous
5 deprivation of such interest through the procedures used and the value, if any, of additional or substitute
6 safeguards; and (3) the government's interest. *Rodriguez-Diaz*, 53 F.4th at 1207. In applying these factors,
7 the Court "can and must account for the heightened governmental interest in the immigration detention
8 context." *Id.* at 1206.

9 None of the factors support habeas relief for Petitioner here. The first factor does not weigh
10 strongly in his favor because "detention during deportation proceedings [is] a constitutionally valid aspect
11 of the deportation process." *Demore*, 538 U.S. at 523. In this case, § 1225(b) makes detention mandatory.
12 Further, Petitioner has not been detained for a long period of time (since September 2025), nor is his
13 detention indefinite—by law, it ends once his removal proceedings are completed. 8 U.S.C. § 1125(b)(2);
14 *Jennings*, 583 U.S. at 299 (§ 1225(b) "provide[s] for detention for a specified period of time"); compare
15 *Zadvydas*, 533 U.S. at 690-91, 698 (concerned with "indefinite, perhaps permanent, detention" and
16 establishing a presumptively reasonable six-month detention period to effectuate removal.)

17 The second factor likewise does not assist Petitioner. As discussed above, aliens who have not
18 legally entered the country are only entitled to the due process that Congress has statutorily created. *Mezei*,
19 345 U.S. at 212; *Angov*, 788 F.3d at 898; *Barrera-Echavarria*, 44 F.3d at 1449; *Shaughnessy*, 338 U.S. at
20 544. "[A]n alien at the threshold of initial entry cannot claim any greater rights under the Due Process
21 Clause." *Thuraissigiam*, 591 U.S. at 107. Because detention is mandatory, and
22 § 1225(b) only allows release through parole under narrow circumstances, any additional hearings could
23 not provide relief to Petitioner. See *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018)
24 (holding that "for aliens on the 'threshold of initial entry,' due process is whatever procedure has been
25 'authorized by Congress,'" and "because the immigration statutes at issue here do not authorize a bond
26 hearing, *Mezei* dictates that due process does not require one here").

27 Finally, the government has a significant interest in Petitioner's detention because it has a strong
28 interest in effectuating the "system Congress devised." *Thuraissigiam*, 591 U.S. at 106. "The

1 government's interest in efficient administration of the immigration laws" is "weighty," and "it must
2 weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely
3 within the control of the executive and the legislature." *Landon*, 459 U.S. at 34. The system Congress
4 devised requires detention until Petitioner's removal proceedings are completed and forbids his release
5 absent narrow circumstances not applicable here.

6 6. This Court Does Not Have Jurisdiction to Enjoin Removal

7 To the extent the TRO seeks to prevent Petitioner's removal, this Court lacks jurisdiction to do so.
8 The INA explicitly provides that "no court shall have jurisdiction to hear any cause or claim by or on
9 behalf of any alien arising from the decision or action by the Attorney General to commence proceedings,
10 adjudicate cases, or *execute removal orders* against any alien under this chapter." 8 U.S.C. § 1252(g)
11 (emphasis added). This provision clearly prohibits district courts from exercising injunctive relief to
12 forestall removal via habeas cases. *See Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (holding that the
13 district court could not enjoin removal via a habeas petition).

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

15 As set forth above, Petitioner has not technically entered the United States and is only entitled to
16 the minimal rights and processes that Congress has given him. Petitioner has received those. Immigration
17 laws have long authorized immigration officials to charge aliens as removable from the country, to arrest
18 aliens subject to removal, and to detain aliens pending removal. *Demore*, 538 U.S. at 523-26. Through the
19 INA, Congress created a multi-layered statutory scheme for aliens' detention during removal, including
20 mandatory detention for aliens in Petitioner's position. *See* 8 U.S.C. § 1225(b). "Detention is necessarily
21 a part of [the] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Here, Petitioner's
22 detention is authorized by the statutes and regulations discussed herein. The mere fact that he is detained
23 does not itself satisfy his burden of proving a likelihood of irreparable injury. While the Ninth Circuit has
24 recognized that "[a]n alleged constitutional infringement will often alone constitute irreparable harm,"
25 *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984), the Court should not apply
26 the presumption where, as here, a plaintiff fails to demonstrate "a sufficient likelihood of success on the
27 merits of its constitutional claims to warrant the grant of a preliminary injunction." *Assoc'd Gen.*
28 *Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir.1991)). As to any future,

1 unspecified re-arrest, Petitioner cannot establish irreparable harm because that circumstance has not yet
2 materialized.

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

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

12 Those interests are compelling here. Congress determined that aliens who were stopped at the
13 border should be detained during expedited removal proceedings or pending resolution of their standard
14 removal proceedings. 8 U.S.C. § 1225(b). It not only made such detention mandatory, but severely
15 curtailed ICE’s ability to release § 1225(b) aliens. *Jennings*, 583 U.S. at 299, 311; *Thuraissigiam*, 591
16 U.S. at 111. The government seeks to vindicate those interests here. Petitioner’s requested relief would
17 undermine the immigration statutory framework.

18 **V. WAIVER OF INDEPENDENT BRIEFING ON PRELIMINARY INJUNCTION**

19 The United States does not request an opportunity to independently brief the applicability of a
20 preliminary injunction. All arguments in opposition to a preliminary injunction have been included in this
21 briefing. The United States does not oppose the court ruling on both the motion for a TRO and for a
22 preliminary injunction jointly, in the interests of judicial economy.

23 **VI. CONCLUSION**

24 For the foregoing reasons, Petitioner’s Motion for Temporary Restraining Order and for a
25 preliminary injunction should be denied.
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28

Dated: December 17, 2025

ERIC GRANT
United States Attorney

By: /s/ DHRUV M. SHARMA
DHRUV M. SHARMA
Assistant United States Attorney