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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

PAULA SOFIA RAMIREZ CLAVIJO, Petitioner, v. POLLY KAISER, *et al.*, Respondents.	Case No. 5:25-cv-06248-BLF **RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

The United States "[has] often been described as 'a nation of immigrants.'" *Foley v. Connelie*, 435 U.S. 291, 294 (1978). "As a Nation we exhibit extraordinary hospitality to those who come to our country," and "[i]ndeed, aliens lawfully residing in this society have many rights which are accorded to noncitizens by few other countries." *Id.* Immigrants "have in turn richly contributed to our country's success." *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 218 L. Ed. 2d 71 (Feb. 20, 2024) (Alito, J., dissenting from denial of certiorari). Yet Congress has also identified a "crisis at the land border" that involves "hundreds of thousands" of noncitizens entering the country illegally each year, H.R. Rep. 104-469 at 107, and the resulting need "to expedite the removal from the United States of aliens who indisputably have no authorization to be admitted," H.R. Rep. 104-828 at 209.

For these reasons, "[t]he decisions of [the Supreme] Court with regard to the rights of aliens living in our society" — including the "restraints imposed" upon them — "have reflected fine, and often difficult, questions of values." *Foley*, 435 U.S. at 294. Mindful of these values, Congress has created — and courts have upheld — procedures unique to noncitizens subject to expedited removal that are "coextensive" with due process. *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021) (explaining that "in the expedited removal context, a petitioner's due process rights are coextensive with the statutory rights Congress provides") (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020)). These procedures include the right to a non-adversarial interview before a trained asylum officer, administrative review before an immigration judge, and limited judicial review. 8 U.S.C. § 1252(e)(2); 8 C.F.R. §§ 208.30, 235.3, 1208.30. But they do not permit noncitizens to challenge their mandatory detention or entitle them to pre-detention hearings. *See* 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV); (b)(2)(A).

Due process thus does not require that the Court enjoin Petitioner's re-detention absent a hearing. *See* ECF No. 3 ("Mot.") at 8. Where, as here, the government properly exercises its authority to pursue expedited removal under 8 U.S.C. §1225(b), those procedures fully satisfy due process and preclude Petitioner from clearing the high bar for a preliminary injunction requiring additional process. Under the plain text of § 1225, Petitioner cannot show a likelihood of success on the merits, establish irreparable harm, or countervail the government's compelling interest in enforcing mandatory detention pending expedited removal for the narrow category of noncitizens to which she belongs.

II. STATUTORY BACKGROUND

A. Detention Under 8 U.S.C. § 1225

Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.").

1. Section 1225(b)(1)

Section 1225(b)(1) applies to "arriving aliens" and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen "described in" § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland Security — that is, any noncitizen not "admitted or paroled into the United States" and "physically present" fewer than two years — who is inadmissible under § 1182(a)(7) at the time of "inspection." *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen for admission under § 1225(a)(3), that noncitizen lacks entry documents and so is subject to §1182(a)(7). The Attorney General's or Secretary's authority to "designate" classes of noncitizens as subject to expedited removal is subject to his or her "sole and unreviewable discretion." 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass'n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for

expedited removal under § 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to "the fullest extent authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables the U.S. Department of Homeland Security ("DHS") "to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," who were not otherwise covered by prior designations. *Id.* at 8139–40.

Expedited removal proceedings under § 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum[1] or expresses a fear of persecution, torture, or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that situation, the noncitizen is given a non-adversarial interview with an asylum officer, who determines whether the noncitizen has a "credible fear of persecution" or torture. *Id.* §§ 1225(b)(1)(A)(ii), (b)(1)(B)(iii)(II), (b)(1)(B)(iv), (v); *see also* 8 C.F.R. § 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the credible fear process). The noncitizen may also pursue *de novo* review of that determination by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the credible fear process, a noncitizen may consult with an attorney or representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5). However, a noncitizen subject to these procedures "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

If the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings

[1] Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.* § 1558(a)(2)(D).

under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under § 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under § 1225(b)(1) applies in narrower, statutorily defined circumstances — typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry — and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under § 1225(b)(1) or § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

2. Section 1225(b)(2)

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "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) (requiring that such noncitizens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (explaining that proceedings under section 1229a are "full removal proceedings under section 240 of the INA"); *see also id.* ("[F]or 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). Still, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), DHS

may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[2] By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider).

III. FACTUAL BACKGROUND

Petitioner is a native and citizen of Colombia who entered the United States without inspection, admission or parole on December 4, 2023. Declaration of Thomas Auer ("Auer Decl.") at ¶¶ 5–8, Ex. 1. DHS Border Patrol encountered Petitioner approximately two miles west of the San Ysidro Port of Entry and 106 yards north of the United States-Mexico international boundary. *Id.* ¶ 6, Ex. 1 at 2. DHS took Petitioner into custody and transported her for processing, first to a Border Patrol station and then, due to the "high volume of apprehensions," to a detention facility. *Id.* During processing, Petitioner admitted to lacking valid immigration documents that would allow her to legally enter, pass through, or remain in the United States. *Id.* ¶ 8. Petitioner also admitted to having entered the United States the same day without presenting herself to an immigration officer for inspection at a designated port of entry. *Id.* Petitioner "did not indicate fear of returning to Colombia." *Id.*, Ex. 1 at 3. The same day, DHS issued Petitioner a Notice to Appear (Form I-862) finding that she is "an alien present in the United States who has not been admitted or paroled," and released her pending an immigration court appearance on July 24, 2025. *Id.* ¶ 9, Exs. 1–2.

On July 24, 2025, Petitioner appeared at her first master calendar hearing in San Francisco

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[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

immigration court. *Id.* ¶ 10, Exs. 3–4. At the hearing, DHS counsel made an oral motion to dismiss, which Petitioner opposed. *Id.* ¶ 10, Ex. 4 at 4. The immigration judge continued the hearing until August 21, 2025, and gave Petitioner ten days to respond to the motion. *Id.* After the hearing concluded, U.S. Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO") officers located outside of the courtroom, "with badges displayed, identified themselves as [i]mmigration [o]fficers" to Petitioner, verified her identity, and took her into custody pursuant to a Warrant for Arrest (Form I-200) under 8 U.S.C. § 1226(a). *Id.* ¶¶ 11–12, Ex. 4 at 4, Ex. 5. Petitioner was placed in detention until ordered released by this Court. ECF No. 10.

Petitioner is currently subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 15. That section requires noncitizens to "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Section 1229a removal proceedings are "full removal proceedings under section 240 of the INA." *Matter of Q. Li*, 29 I. & N. Dec. at 68. As noted above, DHS has moved to dismiss those proceedings to initiate expedited removal under 8 U.S.C. § 1225(b)(1). Auer Decl. ¶ 10. If this motion is granted, DHS intends to initiate expedited removal proceedings, during which Petitioner will be subject to mandatory detention under § 1225(b)(1)(B)(iii)(IV).

IV. PROCEDURAL BACKGROUND

Petitioner commenced this action on July 25, 2025, by filing a petition for writ of habeas corpus, ECF No. 1, and moving this Court *ex parte* for a TRO, ECF No. 3. The same day, the Court granted Petitioner's *ex parte* TRO pending further briefing and a hearing on this matter, including the government's response to Petitioner's motion. ECF No. 10. The Court enjoined the government "from transferring Petitioner out of this district or deporting her pending these habeas proceedings," ordered the government "to immediately release Petitioner from Respondents' custody," and enjoined and restrained the government "from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker." *Id.* at 7. Before that order was entered, however, Petitioner was already on a flight en route to a detention center in Hawaii. Auer Decl. ¶ 13, Ex. 6. After the Court granted the TRO, ECF No. 10, the government released Petitioner from custody, formally releasing her upon her arrival in Hawaii. ECF No. 14. The government also offered, but Petitioner declined, assistance in returning her to this district. Auer Decl. ¶ 14.

The Court has scheduled an in-person hearing on August 14, 2025, for the government to show cause why a preliminary injunction should not issue, and extended the TRO until the following day. ECF Nos. 10, 15–16.

V. ARGUMENT

A. Legal Standard

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

B. Petitioner Fails to Meet the High Bar for Injunctive Relief

1. Petitioner Cannot Show a Likelihood of Success on the Merits

a. Under the Plain Text of § 1225, Petitioner Must Be Detained Pending the Outcome of Her Removal Proceeding

Petitioner cannot show a likelihood of success on her claim that she is entitled to a custody hearing prior to re-detention. Mot. 16. This is because Petitioner is a noncitizen subject to expedited removal due to her presence in the United States without having been either "admitted or paroled," Auer Decl. ¶ 9, Ex. 2, or "physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," as she unlawfully entered the country on the same day that she was apprehended and determined to be inadmissible. *Id.* ¶ 8, Ex. 1.

For such noncitizens, DHS may elect to apply either discretionary detention under 8 U.S.C. § 1226(a) (for noncitizens in ongoing section 240 removal proceedings), or the mandatory detention under 8 U.S.C. § 1225(b) that is also available for all noncitizens subject to expedited removal. If the government elects to place Petitioner in mandatory detention under § 1225(b), she would not be entitled to a custody redetermination hearing by an immigration judge or a pre-deprivation hearing before re-detention. *Jennings*, 583 U.S. at 297 ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded."); *see also Matter of Q.*

Li, 29 I & N. Dec. at 69 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). Thus, while DHS took Petitioner into custody on July 24, 2025, pursuant to an arrest warrant under § 1226(a), Auer Decl. ¶ 12, Ex. 5, the agency may elect to pursue mandatory detention under 8 U.S.C. § 1225(b) given that she is a noncitizen subject to expedited removal. Auer Decl. ¶ 15. That re-detention will be pursuant to either § 1225(b)(1) or (b)(2), both of which mandate detention. *Jennings*, 583 U.S. at 297.

If Petitioner is re-detained while her full removal proceedings are still pending — e.g., before the immigration court decides DHS's motion to dismiss those proceedings — then her detention will be under § 1225(b)(2). *See* Auer Decl. ¶ 15 ("Petitioner remains subject to mandatory detention under [8 U.S.C. § 1225(b)(2)(A)]."). That section requires noncitizens who are subject to expedited removal to be detained even where they are receiving "full removal proceedings under section 240 of the INA," *Matter of Q. Li*, 29 I. & N. Dec. at 68 — i.e., that they "be detained for a proceeding under section 1229a of this title" (which are full removal proceedings). 8 U.S.C. § 1225(b)(2)(A).

If the immigration court grants DHS's motion to dismiss Petitioner's removal proceedings, her re-detention will remain mandatory but proceed under § 1225(b)(1). Petitioner will receive the expedited removal procedures under 8 U.S.C. § 1252(e)(2) and, as is the case under § 1225(b)(2), cannot challenge her mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."). However, as noted above, if an asylum officer or immigration judge determines that she has a credible fear of persecution or torture, Petitioner may be placed in full removal proceedings under 8 U.S.C. § 1229a, *see* 8 C.F.R. § 208.30(f), although she will remain subject to mandatory detention under § 1225(b)(2)(A).

Thus, because § 1225(b) mandates the detention of noncitizens subject to expedited removal, including Petitioner, she cannot succeed on her claim that she is entitled to an "opportunity to contest" her re-detention. Mot. 17.

b. The *Mathews* Factors Do Not Apply

The Supreme Court has never utilized the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), in addressing due process claims raised by noncitizens held in civil immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.") (citations omitted); *id.* at 1214 ("In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews* test. While leaving open the question of whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206.

In any event, given her status as a noncitizen subject to expedited removal, Petitioner's reliance on *Mathews* in asserting that she should be prohibited from re-detention absent a custody hearing, Mot. 16, is misplaced. In *Mathews*, the Supreme Court explained that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." 424 U.S. at 332. Yet noncitizens subject to expedited removal like Petitioner, who were not admitted or paroled into the country, nor physically present for at least two years on the date of inspection — as a class — lack any liberty interest in avoiding removal or to certain additional procedures. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). As to such noncitizens, "[w]hatever the procedure authorized by Congress . . . is due process." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *accord Thuraissigiam*, 591 U.S. at 138–139 ("This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Knauff*, 338 U.S. at 542 ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of

right.").

Thus, noncitizens subject to expedited removal cannot assert a protected property or liberty interest in additional procedures not provided by the statute, 8 U.S.C. § 1225. *See Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Instead, those noncitizens — including Petitioner — have "only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140. Petitioner is entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.

The Supreme Court's holding in *Thuraissigiam* is consistent with its earlier holding in *Landon*. In *Landon*, the Court observed that only "once an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." 459 U.S. at 32. In *Thuraissigiam*, the Court reiterated that "established connections" contemplate "an alien's lawful entry into this country." 591 U.S. at 106–07. Petitioner here was neither admitted nor paroled, nor lawfully present in this country as required by *Landon* and *Thuraissigiam* to claim due process rights beyond what § 1225(b)(1) provides. Accordingly, she remains within the category of noncitizens who are owed only what the statute provides.

c. Congress Did Not Intend to Treat Individuals Who Unlawfully Enter the Country Better than Those Who Appear at a Port of Entry

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to 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). For that reason, Petitioner — who entered the

United States without inspection, miles from the nearest port of entry, and was processed and released outside of a port of entry, Auer Decl. ¶¶ 6–9 — should be treated no differently than noncitizens who present at a port of entry and are subject to mandatory detention under § 1225, including pending further consideration of their applications for asylum. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

d. Petitioner Cannot Obtain an Injunction Prohibiting Her Transfer

To the extent that Petitioner seeks an injunction that would "prohibit[ ] the government from transferring her out of this [d]istrict," Mot. 21, she cannot succeed. The Attorney General has discretion to determine the appropriate place of detention. *Milan-Rodriguez v. Sessions*, No. 16-cv-01578-AWI, 2018 WL 400317, *10 (Jan. 12, 2018) (citing *Rios-Berrios*, 776 F.2d 859, 863 (9th Cir. 1985) ("We wish to make ourselves clear. We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide.")). And while the Court may review whether such discretion resulted in a deprivation of rights, Petitioner has not shown how her mandatory detention or any transfer would interfere with the ability to present her case or access counsel more than any other similarly situated detainee. *See Milan-Rodriguez*, 2018 WL 400317, *10 ("There is nothing in the record to indicate that Petitioner's transfer was irregular or anything other than an ordinary incident of immigration detention.").

2. Petitioner Cannot Establish Irreparable Harm

In addition to her failure to show a likelihood of success on the merits, Petitioner does not meet her burden of establishing that she will be irreparably harmed absent a preliminary injunction. First, Petitioner's assertion of "serious medical conditions" is conclusory, Mot. 19, and contradicted by the record. *See, e.g.*, Auer Decl. ¶ 4, Ex. 4 at 4 (noting that Petitioner "stated she does not have any medical issues and is not on any medication"). Second, her remaining alleged injury — the "unlawful deprivation of physical liberty," *id.* — is a harm that "is essentially inherent in detention," and therefore "the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24, 2018). It is also countervailed by authority mandating — and upholding — her categorical detention as lawful. *See supra* Part V.B.1. Indeed, the alleged infringement of constitutional rights is insufficient where, as here, a petitioner fails to demonstrate "'a sufficient likelihood of success on the merits of [her] constitutional claims to warrant

the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm"). Further, any alleged harm from the fact of detention alone is insufficient because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Accordingly, given her status as a noncitizen subject to expedited removal, Petitioner cannot establish that her lawfully authorized mandatory detention would cause her irreparable harm.

3. The Balance of Equities and Public Interest Do Not Favor an Injunction

When the government is a party, the balance of equities and public interest merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Further, where a moving party only raises "serious questions going to the merits," the balance of hardships must "tip sharply" in her favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

Here, the government has a compelling interest in the steady enforcement of its immigration laws. *See, e.g.*, *Demore*, 538 U.S. at 523; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court "should give due weight to the serious consideration of the public interest" in enacted laws); *see also Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (explaining that "the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (finding that "the Government's interest in enforcing immigration laws is enormous"). Indeed, the government "suffers a form of irreparable injury" "[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted).

Petitioner's claimed harm cannot outweigh this public interest in the application of the law, particularly since courts "should pay particular regard for the public consequences in employing the

extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). Recognizing the availability of a preliminary injunction under these circumstances would permit any noncitizen subject to expedited removal to obtain additional review, circumventing the comprehensive statutory scheme that Congress enacted. That statutory scheme — and judicial authority upholding it — likewise favors the government. While it is "always in the public interest to protect constitutional rights," if, as here, a petitioner has not shown a likelihood of success on the merits of her claim, that public interest does not outweigh the competing public interest in enforcement of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in applying the established procedures for noncitizens subject to expedited removal, including their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

VI. CONCLUSION

For the aforementioned reasons, the government respectfully requests that the Court deny Petitioner's motion for preliminary injunction.

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Respectfully submitted,

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