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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARMEN ARACELY PABLO SEQUEN, Petitioner-Plaintiff, v. Polly KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; Todd LYONS, Acting Director of the United States Immigration and Customs Enforcement; Kristi NOEM, Secretary of the United States Department of Homeland Security; Pamela BONDI, Attorney General of the United States, acting in their official capacities, Respondents-Defendants.	CASE NO. 25-cv-06487-PCP **RESPONDENTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER** Date: August 28, 2025 Time: 1:00 p.m. Courtroom: Courtroom 8 – 4th Floor Honorable P. Casey Pitts United States District Judge

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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. 6-1 ("Mot.") at 8, 15, 16. 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. Accordingly, and for the reasons expressed below, the government respectfully requests that the Court deny Petitioner's motion a temporary restraining order ("TRO") and not issue a preliminary injunction.

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).

[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).

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 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

A. Petitioner Unlawfully Entered the United States.

Petitioner is a native and citizen of Guatemala who entered the United States without inspection, admission, or parole on June 16, 2023. Declaration of Gwendolyn Ng ("Ng Decl.") at ¶¶ 5–8, Ex. 3. On June 23, 2023, United States Customs and Border Protection ("CBP") apprehended Petitioner near Sasabe, Arizona. *See id.* at ¶ 6, Ex. 3. CBP determined that Petitioner unlawfully entered the United States. *See id.* Petitioner did not have the necessary legal documents to enter, pass through, or remain in the United States. *See id.* CBP arrested and transported Petitioner to the Tucson Coordination Center in Tucson, Arizona. *See id.* at ¶¶ 6, 14, Ex. 3.

[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)).

B. CBP Placed Petitioner in Removal Proceedings.

At the Tucson Coordination Center, Petitioner admitted that she illegally crossed the border of the United States without being inspected by an immigration officer at a designated port of entry. *See id.* Petitioner stated that she does not fear persecution or torture if she is returned to Guatemala. *See id.* On June 23, 2023, the same day that she was apprehended, CBP released Petitioner on her own recognizance because of a lack of detention space pending her removal proceeding. *See id.* On July 28, 2023, CBP placed Petitioner in removal proceedings because she is an alien present in the United States without admission or parole. *See id.* at ¶ 7. CBP charged Petitioner with removability under the Immigration and Nationality Act ("INA"). *See id.*

C. The Immigration Court Granted DHS's Opposed Motion to Dismiss, and Petitioner Is Subject to Mandatory Detention and Expedited Removal.

On July 28, 2023, the immigration court rescheduled Petitioner's master calendar hearing. *See id.* at ¶ 8. On February 20, 2025, Petitioner appeared for her first master calendar hearing, which was continued to allow her to seek counsel. *See id.* at ¶ 9. On July 31, 2025, Petitioner appeared for her second master calendar hearing, and United States Immigration and Customs Enforcement ("ICE") filed a motion to dismiss seeking expedited removal. *See id.* at ¶ 10. The immigration court continued Petitioner's master calendar hearing to allow her to respond to ICE's motion to dismiss. *See id.* After the hearing, ICE detained Petitioner under the INA. *See id.* On August 1, 2025, ICE released Petitioner on her own recognizance in San Francisco, California. *See id.* at ¶ 11. On August 7, 2025, Petitioner filed an opposition to ICE's motion to dismiss. *See id.* at ¶ 12. On August 8, 2025, the immigration court granted ICE's motion to dismiss Petitioner's removal proceedings. *See id.* at ¶ 13, Ex. 4 at 1. The immigration court noted that her application on file contains minimal information and no corroborating evidence. *See id.* at ¶ 13, Ex. 4 at 2. The immigration court explained that Petitioner is not prohibited from seeking asylum, and if she is placed in expedited removal proceedings, she can pursue protection through a credible fear proceeding. *See id.*

Until the Immigration Judge's dismissal order becomes final, Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See id.* at ¶ 10. 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. Because the immigration court granted ICE's motion to dismiss, once the Immigration Judge's dismissal order becomes final, DHS can initiate expedited removal proceedings, during which Petitioner will be subject to mandatory detention under § 1225(b)(1)(B)(iii)(IV).

IV. PETITIONER'S HABEAS PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner commenced this action on August 1, 2025, by filing a petition for writ of habeas corpus, ECF No. 1, and moving this Court *ex parte* for a TRO, ECF No. 6. The same day, the Court granted Petitioner's *ex parte* TRO. ECF No. 7. The Court ordered Respondents to release Petitioner from custody and to file a status report by 5:00 p.m. on August 4, 2025, confirming that she had been released. *Id.* at 7. The Court enjoined the government from "re-detaining Ms. Pablo Sequen without notice and a pre-deprivation hearing before a neutral decisionmaker." *See id.* The Court scheduled an in-person hearing on August 11, 2025, for the government to show cause why a preliminary injunction should not issue, and extended the order granting the TRO until 5:00 p.m. on the date of the hearing. *See id.*

On August 4, 2025, Petitioner and Respondents filed a joint status report confirming that she had been released from custody. *See* ECF No. 10. On August 5, 2025, Petitioner and Respondents filed a stipulated joint request to set a briefing schedule for the TRO and continue the hearing for the TRO. *See* ECF No. 12. That same day, the Court granted Petitioner and Respondents' stipulated joint request to set a briefing schedule and continued the in-person hearing on the TRO until August 28, 2025, at 1:00 p.m. in San Jose, California. *See* ECF No. 14. Petitioner and Respondents stipulated that the Court's prior order on the TRO will remain in effect until the Court issues a further order after briefing and a hearing. *See id.*

V. ARGUMENT

A. Legal Standard.

The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24. 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).

"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) (citing *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) and *Winter*, 555 U.S. at 20). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011)). "[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). Petitioner's burden is aptly described as a "heavy" one. *Id.*

The purpose of a preliminary injunction "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo before judgment. *Sierra On-Line, Inc. v. Phx. Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

Accordingly, where a petitioner seeks mandatory injunctive relief — seeking to alter the status quo — "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319–20 (9th Cir. 1994). A mandatory injunction "goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 1320 (internal quotations and alteration omitted). A mandatory injunction "should not be issued unless the facts and law clearly favor the moving party." *Anderson v. United States,* 612 F.2d 1112, 1114 (9th Cir. 1979). Mandatory injunctions "are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* at 1115. Accordingly, the party seeking a mandatory injunction "must establish that the law and facts clearly favor her position, not simply that she is likely to succeed." *Garcia*, 786 F.3d at 740 (emphasis in original).

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. at 15-17. This is because Petitioner is a noncitizen amenable to expedited removal due to her presence in the United States without having been either "admitted or paroled," Ng Decl. ¶ 6, Ex. 3, 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 June 16, 2023, and she was apprehended and determined to be inadmissible on June 23, 2023. *Id.* ¶¶ 5-6, Ex. 3.

In this case, § 235 of the INA – 8 U.S.C. § 1225 – is the applicable immigration detention authority for all applicants for admission like Petitioner. By contrast, § 236 of the INA – 8 U.S.C. § 1226 – is the applicable detention authority for those who are already present in the United States after an admission and are deportable.

Under 8 U.S.C. § 1229a and 8 U.S.C. § 1225, in a case like here, DHS may elect to pursue removal proceedings before the Immigration Judge or may elect to dismiss those proceedings in favor of pursuing expedited removal. But, under either route that DHS elects to proceed, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b). If the government elects to pursue expedited removal, and mandatorily detains Petitioner 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)."). Even if Petitioner remains in removable proceedings, she is still subject to mandatory detention under 8 U.S.C. § 1225. Thus, while DHS took Petitioner into custody on June 23, 2023, and placed her in removal proceedings on July 28, 2023, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) given that she is a noncitizen subject to expedited removal. Ng Decl. ¶¶ 6-7.

If Petitioner is re-detained while her full removal proceedings are still pending — e.g., if Petitioner appeals the dismissal order to the Board of Immigration Appeals — then her detention will be under § 1225(b)(2). *See* Ng Decl. ¶ 12. 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).

Because the immigration court granted ICE's motion to dismiss, Petitioner's re-detention is mandatory and may proceed under § 1225(b)(1) subject to other factors.[3] 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

[3] Those other factors may include whether a person has claimed a fear of persecution or torture and any further appeals that are taken.

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. at 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. at 14-15, 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. *See* Ng. Decl. ¶¶ 5,6, 14, Ex. 3. 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 the Illegal Immigration Reform and Immigration Responsibility Act ("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 and was processed and released outside of a port of entry, Ng Decl. ¶¶ 5–6, Ex. 3 — 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. at 8, 19, 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. To start, Petitioner alleges that she will suffer irreparable harm "every day that she remains in detention." *See* Mot. at 18. However, Respondents immediately released Petitioner from custody. *See* Ng. Decl. ¶ 11; *see also* ECF No. 10 (Status Report About Petitioner's Release).

Next, her remaining alleged injury — a "constitutional injury" arising out of her prior detention, Mot. at 18 — 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." *See* Mot. at 18; *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.

4. *Pinchi* Is Distinguishable Because the Government Is Pursuing Removal Under Section 1225, Not Section 1226.

Petitioner and the Court argue that this case presents circumstances analogous to those in *Garro Pinchi v. Noem*, No. 25-cv-05621-RMI (RFL), 2025 WL 1853763 (N.D. Cal. July 4, 2025) and *Pinchi v. Noem*, No. 25-cv-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (collectively, "*Pinchi*"). *See* Mot. at 8, 17; Order at 4, 6. However, the *Pinchi* cases are distinguishable because they involved an intent to detain the petitioner under 8 U.S.C. § 1226(a). *See* Resp'ts Resp. to Order to Show Cause and Opp'n to Mot. for Prelim. Inj. at 1, No. 25-cv-05632-PCP, ECF No. 20. Here, by contrast, Respondents are pursuing the detention and removal of Petitioner under 8 U.S.C. §1225(b). For the reasons already expressed, 8 U.S.C. § 1225 and 8 U.S.C. § 1226 are different statutes. Each statute confers a different set of rights on a particular petitioner. And for the reasons already expressed, Respondents can detain and remove Petitioner under 8 U.S.C. § 1225. The *Pinchi* cases do not apply to this case.

VI. CONCLUSION

For the aforementioned reasons, the government respectfully requests that the Court deny Petitioner's motion a TRO and not issue a preliminary injunction.

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Respectfully submitted,

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