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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ursula Karina Gomez Velazquez, Petitioner, v. Fred Figueroa, et al., Respondents.	No. 2:25-cv-02851-KML-CDB **RESPONSE IN OPPOSITION TO PETITIONER'S RENEWED MOTION FOR TEMPORARY RESTRAINING ORDER (Doc. 10)**

I. INTRODUCTION.

Respondents Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS"); Todd M. Lyons, Acting Director of ICE; Kristi Noem, Secretary of DHS; and Pamela Bondi, Attorney General of the United States, ("Respondents"), by and through undersigned counsel, hereby respond in opposition to Petitioner's second, renewed Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 10).

II. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner Ursula Karina Gomez Valazquez is a native and citizen of Mexico. *See* Exhibit A, Declaration of Deportation Officer Ema V. Peru ¶ 4. She was born on September 26, 1983, in Mexico City, Mexico. *Id.* Petitioner was encountered by the former Immigration and Naturalization Service, which is now Immigration and Customs

Enforcement (ICE), on December 5, 2003. *Id.* ¶ 5. They became aware of Petitioner's unlawful presence in the United States when they encountered her in Los Angeles County Jail on charges of Murder, First-Degree Robbery, and First-Degree Residential Burglary. *Id.* On December 8, 2003, Petitioner was placed in removal proceedings and charged with removability pursuant to Immigration and Nationality Act (INA) section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an inadmissible alien who entered without admission, inspection or parole. *Id.* ¶ 6. On October 4, 2004, the immigration judge (IJ) administratively closed Petitioner's removal proceedings because Petitioner was in the Los Angeles County Jail. *Id.* ¶ 7.

On February 25, 2010, Petitioner was convicted in California Superior Court, in Los Angeles County, of Voluntary Manslaughter, First-Degree Robbery and First-Degree Residential Burglary. Exhibit A ¶ 8. Petitioner has appealed her criminal conviction. *Id.* ¶¶ 9-11. On July 31, 2024, Petitioner was taken into ICE custody. *Id.* ¶ 12. On August 1, 2024, Petitioner was transferred to the Northwest ICE Processing Center in Tacoma, Washington. Id. ¶ 13. On April 15, 2025, Petitioner was transferred to the Central Arizona Florence Correctional Center in Florence, Arizona. *Id.* ¶ 14. On April 17, 2025, Petitioner was transferred to the Eloy Detention Center in Eloy, Arizona, where she remains detained pending her removal from the United States.

III. LEGAL FRAMEWORK FOR TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS.

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. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter,* 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22.

Where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell,* 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder,* 556 U.S. 418, 435 (2009)). 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., Inc. v. VidAngel, Inc.,* 869 F.3d 848, 856 (9th Cir. 2017) (citing *Alliance 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.*

A preliminary injunction can take two forms. A "prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.,* 571 F.3d 873, 878-79 (9th Cir. 2009) (cleaned up). A "mandatory injunction orders a responsible party to take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 879 (cleaned up). A mandatory injunction is "subject to a higher degree of scrutiny because such relief is particularly disfavored under the law of this circuit." *Stanley v. Univ. of S. California,* 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be "extremely cautious" when issuing this type of relief, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied "unless extreme or very serious damage will result," and even then, not in "doubtful cases." *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts and law clearly favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

A. Petitioner cannot establish a likelihood of success on the merits.

Because Petitioner as an inadmissible alien who has not be admitted, inspected or paroled into the United States, she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and that detention throughout the remainder of her removal proceedings is lawful. Petitioner is currently in removal proceedings but does not have a final removal order issued against her. Her removal proceedings before the IJ concluded on August 27, 2025, however no final removal order has been issued. Exhibit A ¶¶ 16-17.

Noncitizens in pre-final-removal-order civil immigration detention generally fall within two categories: 8 U.S.C. § 1225, which consists of noncitizens seeking an initial entry, and 8 U.S.C. § 1226, which consists of noncitizens who entered the United States. Petitioner falls under 8 U.S.C. § 1225 because she was found to be inadmissible and was never lawfully admitted to the United States. The difference between the noncitizens in these two categories is significant for due process purposes. *See Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 106–07, 138–40; *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022).

The Supreme Court considered whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and whether such noncitizens detained under this statutory authority have a statutory right to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 296-303 (2018). The Supreme Court held that "nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings." *Id.* at 842. The sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225 is temporary parole at the discretion of DHS under 8 U.S.C. § 1182(d)(5). *Id.* at 844.

Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to aliens entering without inspection, who have not been admitted to the United States, like Petitioner, is critical because, for "more than a century" now, the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. at 660 (holding that with regard to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon*, 459 U.S. at 32 ("This Court has long held that an 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"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without a bond hearing violated their Fifth Amendment Due Process rights because "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'").

The Supreme Court's holding on this topic was reinforced most recently in *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry to the United States and detained under 8 U.S.C. § 1225 who raised a Fifth Amendment Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court "reiterated th[e] important rule," *id.* at 138, that a noncitizen seeking initial entry to the United States "has no entitlement" to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 ("Congress is entitled to set the conditions for an alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause."); *id.* (holding that a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *id.* at 140 (A noncitizen seeking initial entry to the United States "has only those rights regarding admission that Congress has provided by statute" and "the Due Process Clause provides nothing more[.]").

More broadly, the Supreme Court has long recognized that the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the Nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952). Preserving the political branches' authority to control the border serves "the obvious necessity that the Nation speak with one voice" on such matters. *Zadvydas v. Davis*, 533 U.S. 678, 711 (2001).

In addition to the sovereign, largely unreviewable prerogative of Congress and the Executive to admit or exclude aliens, *see Knauff*, 338 U.S. at 543 (1950), the Supreme Court also has recognized that aliens seeking admission to the United States do not have the same constitutional protections as individuals who have entered the United States. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the detention of aliens seeking initial entry, even for prolonged periods of time, and such detention does not deprive aliens "of any statutory or constitutional right." *See Mezei*, 345 U.S. at 212 (upholding detention of lawful permanent resident returning from trip abroad detained for over a year and a half).

Here, as an alien who has not been admitted, Petitioner has no due process protections beyond those afforded by statute. *Mezei*, 345 U.S. at 212 ("[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"); *Thuraissigiam*, 591 U.S. at 131. Here, Petitioner received all the protections allowed by the relevant statutes and remains mandatorily and lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

Petitioner contends that "[t]he majority of district courts in the Ninth Circuit apply the due process framework articulated by the Supreme Court in *Mathews v. Eldridge* to determine whether ongoing detention under 8 U.S.C. § 1226(c) violates a petitioner's due process rights." Mot. at p. 7 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This argument is fundamentally flawed because Petitioner has not been charged with removability on criminal grounds, although she would be amenable to such charges, and she is therefore not subject to mandatory criminal detention under 8 U.S.C. § 1226(c) as Petitioner contends. *See generally* Exhibit A.

Rather, Petitioner has been charged with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), INA § 212(a)(6)(A)(i), as an alien present in the United States without having been admitted or paroled. *Id.* ¶ 6. Accordingly, as an applicant for admission, who has not already been lawfully admitted or paroled into the United States, she is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). And, the Supreme Court has held in *Thuraissigiam* that mandatory detention for applicants for admission to the United States comports with due process. Accordingly, Petitioner's argument that her detention violates procedural due process under *Mathews v. Eldridge* is misplaced because she is not subject to 8 U.S.C. § 1226(c) detention but rather is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). As an applicant for admission, she has received all the process to which she is due under the statute. Petitioner has not established a likelihood of success on the merits.

B. Petitioner cannot establish irreparable harm absent injunctive relief.

The Court should deny Petitioner's Motion, because Petitioner "must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). The "possibility" of injury is "too remote and speculative to constitute an irreparable injury meriting preliminary injunctive relief." *Id.* "Subjective apprehensions and unsupported predictions . . . are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat of irreparable harm." *Id.* at 675-76. Petitioner's contentions regarding generalized conditions of confinement do not "rise to the level of "'immediate threatened injury' that is required to obtain a preliminary injunction." *Slaughter v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D. Wash. Aug. 10, 2006), *report and recommendation adopted*, 2008 WL 2434208 (W.D. Wash. June 16, 2008) ("Plaintiff's argument of possible harm does not rise to the level of 'immediate threatened injury'").

Petitioner cannot show that denying the temporary restraining order would make "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must] demonstrate that irreparable injury is likely in the absence of an injunction.") (emphasis in original). "[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury." *Id.* "Speculative injury does not constitute irreparable injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish irreparable harm if she is not released from detention. Rather, she is lawfully and mandatorily detained pending her removal from the United States as an inadmissible alien who entered the United States unlawfully and without admission, inspection or parole. 8 U.S.C. § 1225(b)(2)(A).

C. The equities and public interest favor the Government.

The third and fourth factors, "harm to the opposing party" and the "public interest," "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. "In exercising their sound discretion, courts of equity 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).

An adverse decision here would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws." *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined."). The public has a legitimate interest in the government's enforcement of its laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the rules that are the subject of this appeal.").

While it is in the public interest to protect constitutional rights, if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Here, the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's undisputed and violent criminal history, the public and governmental interest in permitting her detention to effectuate removal is significant. Thus, Petitioner has not established that she merits a temporary restraining order.

D. Petitioner should be required to post bond.

Finally, if the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states "The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added).

V. CONCLUSION.

Every habeas corpus petition necessarily alleges the same basic ground for relief, i.e., that the petitioner is detained in violation of the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 2241. Only when it is clear on the face of a petition that exceptional circumstances require immediate review of a petitioner's claims will consideration of his petition be advanced at the expense of prior, pending petitions. Upon the current record, it is not plain that the merits of Petitioner's claims are so strong as to warrant expedited adjudication and Petitioner is not likely to succeed on the merits of her claim for the reasons argued above. *See In re Roe*, 257 F.3d 1077, 1081 (9th Cir. 2001) (declining to resolve issue of whether a district court has the authority to release a prisoner pending resolution of a habeas case, but holding that if such authority does exist, it can only be exercised in an "extraordinary case involving special circumstances"). Accordingly, Petitioner's Motion should be denied.

Respectfully submitted this 15th day of September, 2025.

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