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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MARINA JIMENEZ GARCIA,

Petitioner,

v.

POLLY KAISER, *et al.*,

Respondents.

Case No. 4:25-cv-06916-YGR

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) ("[I]n 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 these 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).

Petitioner is an applicant for admission under 8 U.S.C. § 1225. As such, she is subject to mandatory detention, and due process does not require that the Court enjoin Petitioner's re-detention absent a hearing. Where, as here, the government properly exercises its authority to pursue 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 any additional process. Under the plain text of Section 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 for the narrow

category of noncitizens to which she belongs.

II. Statutory Background

A. Applicants For Admission

The Immigration and Nationality Act ("INA") defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)." 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 140 (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing INA Section 235(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission").

Under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of noncitizens are inadmissible, and therefore ineligible to be admitted to the United States, including those "present in the United States without being admitted or paroled[.]" 8 U.S.C. § 1182(a)(6)(A)(i). However long they have been in this country, a noncitizen who is present in the United States but has not been admitted "is treated as 'an applicant for admission.'" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

B. Detention Under 8 U.S.C. § 1225

Applicants for admission, including those present without being admitted or paroled ("PWAP") may be removed from the United States by, *inter alia*, expedited removal under 8 U.S.C. § 1225(b)(1) or removal proceedings before an immigration judge under 8 U.S.C. § 1229a pursuant to Section 1225(b)(2). All 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*, 583 U.S. at 287 ("[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)

Congress established the expedited removal process in 8 U.S.C. § 1225(b)(1) 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."). This provision authorizes immigration officers to order certain inadmissible noncitizens "removed from the United States without further hearing or review." 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" Section 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 Section 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 Section 1225(a)(3), that noncitizen lacks entry documents and so is subject to Section 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 Section 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 exercise the full scope of its statutory authority 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 Section 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); *see also* 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 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 Section 1225(b)(1) is a distinct statutory procedure from removal under Section 1229a. Section 1229a 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 Section 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 Section 1225(b)(1) or Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec.

[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).

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 Section 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); 8 C.F.R. § 235.3(b)(3) (providing that a noncitizen placed into Section 1229a removal proceedings in lieu of expedited removal proceedings under Section 1225(b)(1) "shall be detained" pursuant to 8 U.S.C. § 1225(b)(2)). 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." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Detention Under 8 U.S.C. § 1226(a)

A different statutory detention authority, 8 U.S.C. § 1226, applies to noncitizens who have been admitted to the United States but are deportable and subject to removal proceeding. 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 Section 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

[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 Section 1226(a) is not a parole, the alien was not eligible for adjustment of status under Section 1255(a)).

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).

Until recently, the government interpreted Section 1226(a) to be an available detention authority for noncitizens PWAP placed directly in full removal proceedings under Section 1229a. *See, e.g.*, *Ortega-Cervantes*, 501 F.3d at 1116. In view of legal developments, the government has determined that this interpretation was incorrect, and that Section 1225 is the sole applicable immigration detention authority for all applicants for admission. *See Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded").

III. Factual Background

Petitioner is a native and citizen of Guatemala who entered the United States without inspection, admission, or parole on November 13, 2023. Declaration of Daniel Martinez ("Martinez Decl.") ¶ 6 & Ex. 1. DHS Border Patrol encountered Petitioner near Sasabe, Arizona. *Id.* ¶ 6, Ex. 1 at 3. Petitioner was not at a designated port of entry. *Id.* ¶ 6. DHS took Petitioner into custody for processing. *Id.* ¶ 7 & Ex. 1 at 3. During processing, Petitioner admitted that she had illegally crossed the international boundary on November 13, 2023 near Sasabe, Arizona without being inspected by an immigration officer at a designated port of entry. *Id.* ¶ 7 & Ex. 1 at 3. Petitioner also stated that she was a citizen and national of Guatemala and that she lacked the necessary legal documents to enter, pass through, or remain in the United States. *Id.* ¶ 7 & Ex. 1 at 3.

On November 14, 2023, DHS issued Petitioner a Notice to Appear (Form I-862) finding her inadmissible as a noncitizen "present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General" and released her on an order for recognizance "for humanitarian reasons" pending her removal proceedings, including

a first immigration court appearance on February 14, 2025. *Id.* ¶ 8 & Exs. 1-2 (quoting 8 U.S.C. § 1182(a)(6)(A)(i)).

On August 15, 2025, Petitioner appeared at her master calendar hearing in San Francisco immigration court. *Id.* ¶ 9. At the hearing, the immigration judge continued the hearing until October 31, 2025 due to an electronic connectivity issue. *Id.* ¶ 9 & Ex. 3. After the hearing concluded, U.S. Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO") officers located outside of the courtroom, "identified themselves as immigration officers" to Petitioner, confirmed her identity, and took her into custody pursuant to a Warrant of Arrest (Form I-200) under 8 U.S.C. § 1226(a). *Id.* ¶ 10 & Ex. 4. DHS has also requested dismissal of immigration court proceedings with the intent of ERO processing Petitioner for expedited removal. *Id.* ¶ 11. Petitioner's next court hearing in immigration court is currently set for October 31, 2025 at 1:00 p.m. *Id.* ¶ 13. Petitioner was detained until ordered released in these district court proceedings. ECF Nos. 6 & 7.

Petitioner is currently subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Martinez Decl. ¶ 12. Section 1225(b)(2)(A) requires noncitizens to "be detained for a proceeding under section 1229a of this title," which 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 full removal proceedings to initiate expedited removal under 8 U.S.C. § 1225(b)(1). Martinez Decl. ¶ 11. If this motion is granted, DHS intends to initiate expedited removal proceedings, during which Petitioner will remain subject to mandatory detention under Section 1225(b)(1)(B)(iii)(IV).

IV. Procedural Background

Petitioner commenced this action on August 15, 2025, by filing a petition for writ of habeas corpus, (ECF No. 1) and moving this Court *ex parte* for a TRO (ECF Nos. 4-5). On August 17, 2025, 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. 6. The Court enjoined the government "from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker, and from removing her from the United States." *Id.* at 5-6. The Court also ordered the government "to immediately release petitioner from Respondent's custody." *Id.* at 5. The TRO does not enjoin the government from transferring petitioner out of this District. *Id.* at 6 n.1. Pursuant to the TRO, the government released

Petitioner from custody. ECF No. 7. The case was thereafter reassigned to this Court, with the reassignment serving to vacate the previously scheduled hearing on August 29, 2025. ECF No. 6 at 6; ECF No. 8.

V. Legal Standard For Preliminary Injunctions

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).

VI. Petitioner Fails To Meet The High Bar For Injunctive Relief

A. Petitioner Cannot Show A Likelihood Of Success On The Merits

1. Under The Plain Text Of Section 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. *See* ECF No. 5 ("Mot.") at 15. This is because Petitioner is an applicant for admission due to her presence in the United States without having been either "admitted or paroled." Martinez Decl. ¶ 6 & Ex. 1 at 3, Ex. 2 at 1. Such noncitizens are subject to the mandatory detention framework of 8 U.S.C. § 1225(b). As a noncitizen PWAP subject to mandatory detention under Section 1225(b), Petitioner is not entitled to a custody redetermination hearing by an immigration judge or a pre-deprivation hearing before re-detention. *Jennings*, 583 U.S. at 297 ("neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings"). Nor is her release authorized by statute. *Id.* ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded."). In addition, although DHS initially elected to place petitioner in full removal proceedings under Section 1229a, she remains a noncitizen PWAP who is amenable to expedited removal due to her presence in the United States without having been either "admitted or paroled" or physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility. Martinez Decl. ¶ 10 & Ex. 4.

Because Petitioner was re-detained while her full removal proceedings were still pending — *e.g.*, before the immigration court decided DHS's motion to dismiss those proceedings — her detention was pursuant to Section 1225(b)(2). If the immigration court grants DHS's motion to dismiss Petitioner's removal proceedings, her re-detention will remain mandatory, but the detention authority will shift to Section 1225(b)(1). Petitioner will receive the expedited removal procedures under 8 U.S.C. § 1252(e)(2) and, as is the case under Section 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 Section 1225(b)(2)(A).

Thus, because Section 1225(b) mandates the detention of all applicants for admission placed in removal proceedings, including Petitioner, she cannot succeed on her claim that she is entitled to an opportunity to contest her re-detention.

2. 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); *see also Demore v. Kim*, 538 U.S. 510 (2003) (upholding mandatory detention under 8 U.S.C. § 1226(c)). 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 an applicant for admission and a noncitizen amenable to expedited removal, Petitioner's reliance on *Mathews* in asserting that she should be prohibited from re-detention absent a custody hearing 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 amenable 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." *Id.*

This remains true even where, as here, the government cites 8 U.S.C. § 1226(a) in connection with its release or re-arrest of a noncitizen subject to 8 U.S.C. § 1225. *But cf. Ramirez Clavijo v. Kaiser*, No. 5:25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025) (finding that the government's "election to place Petitioner in full removal proceedings under § 1229a and releasing Petitioner under § 1226(a) provided Petitioner a liberty interest that is protected by the Due Process Clause"). By citing Section 1226(a), DHS does not alter a noncitizen's status as an "applicant for admission" under Section 1225; to the contrary,

the noncitizen's release into the country is expressly subject to an order to appear for removal proceedings based on unlawful entry. Martinez Decl. ¶ 8 & Ex. 2. Thus, even where DHS cites Section 1226(a) in connection with a noncitizen's release, the release is still expressly not the type of "lawful entry into this country" that is necessary to "establish[ ] connections" that could form a liberty interest requiring additional process. *Thuraissigiam*, 591 U.S. at 106–07 ("While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.").

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 Section 1225(b)(1) provides. She instead remains an "applicant for admission" who — even if released into the country "for years pending removal" — continues to be "'treated' for due process purposes 'as if stopped at the border.'" *Thuraissigiam*, 591 U.S. at 139–140 (explaining that such noncitizens remain "on the threshold" of initial entry). Accordingly, Petitioner remains within the category of noncitizens who are owed only what the statute provides.

3. 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 Section 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 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, not at a port of entry, and was processed and released outside of a port of entry, Martinez Decl. ¶¶ 6–8 — should be treated no differently than noncitizens who present at a port of entry and are subject to mandatory detention under Section 1225, including pending further consideration of their applications for asylum. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

4. Petitioner Is Not Entitled To A Pre-Detention Hearing

With respect to Petitioner's claim that she is entitled to a custody hearing *prior* to re-detention, as a general rule, noncitizens have no right to an immigration judge hearing before they are detained for removal proceedings. Rather, "an ICE officer makes the initial custody determination," which the noncitizen can later request to have reviewed by an immigration judge. *Rodriguez Diaz*, 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of this basic process. *See, e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233–34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). Thus, even those noncitizens who are entitled to request a custody redetermination — *e.g.*, those detained under § 1226(a) — are not guaranteed pre-detention immigration judge review and are instead provided with avenues to seek review of their detention only once they are in custody — a process that the Ninth Circuit has already found constitutionally sufficient. *See Rodriguez Diaz*, 53 F.4th at 1196–97.

5. Petitioner Cannot Obtain An Injunction Prohibiting Her Transfer

Finally, to the extent that Petitioner seeks an injunction that would "prohibit[ ] the government from transferring her out of this [d]istrict," Mot. at 8 & 18, she cannot succeed. The Attorney General has discretion to determine the appropriate place of detention. *Milan-Rodriguez v. Sessions*, No. 16-cv-01578, 2018 WL 400317, at *10 (E.D. Cal. Jan. 12, 2018) (citing *Rios-Berrios v. I.N.S.*, 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, at *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.").

B. 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 claim that she suffers from "high blood pressure" is conclusory, and Petitioner never identifies the potential consequences of detention with this claimed medical condition. Mot. at 17. 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 VI.A. 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*, 538 U.S. at 523; *see also Reno*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. Accordingly, given her status as an applicant for admission under 8 U.S.C. § 1225, Petitioner cannot establish that her lawfully authorized mandatory detention would cause her irreparable harm.

C. 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.

VII. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's motion for preliminary injunction.

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Respectfully submitted,

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