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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOSE IVAR PINEDA CAMPOS, Petitioner-Plaintiff, v. POLLY KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of 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. 3:25-cv-06920-JD **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE AS TO WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE** Date: August 29, 2025 Time: 1:00 pm Location: Courtroom 11, 19th Floor Judge: Hon. James Donato

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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, he 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 satisfy due process and preclude him from clearing the high bar for a preliminary injunction requiring additional process. Under the plain text of § 1225, he cannot show a likelihood of success, establish irreparable harm, or countervail the government's compelling

interest in enforcing mandatory detention for the narrow category of noncitizens to which he 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); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing INA § 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 he has 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

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

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

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

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).

C. 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

[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)).

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, Jose Ivar Pineda Campos, is a native and citizen of Nicaragua. Declaration of Gwendolyn Ng ("Ng Decl.") ¶ 4, Exhs. 1, 2.[3] On April 17, 2024, he entered the United States from Mexico into the San Diego Border Patrol Sector area at or near San Ysidro, California, where he encountered U.S. Customs and Border Protection not at a designated port of entry. *Id.*, Exhs. 1, 2. Border Patrol agents determined that Petitioner had unlawfully entered the United States, then apprehended and transported him to a nearby Border Patrol facility for processing. *Id.*, Exh. 2. During processing, Petitioner lacked any valid immigration documents that would allow him to legally enter, pass through, or remain in the United States. *Id.*, Exh. 2. Petitioner admitted to entering without presenting himself to an immigration officer for inspection at a designated port of entry. *Id.*

On April 18, 2025, Petitioner was "processed as NTA/OR due to lack of bed space." Ng Decl. ¶ 5, Exh. 2. At 3:19 p.m., he was served a Warrant for Arrest of Alien (Form I-220A). *Id.*, Exh. 3; *see also id.*, Exh. 2 at 2. Hours later he was served with a Notice to Appear (Form I-862) finding him inadmissible as a noncitizen "present in the United States without being admitted or paroled, or who

[3] Confidential information subject to Fed. R. Civ. P. 5.2 has been redacted from the Exhibits.

arrived in the United States at any time or place other than as designated by the Attorney General." *Id.*, Exh. 1 at 1 (quoting 8 U.S.C. § 1182(a)(6)(A)(i)); *see also id.*, Exh. 2 at 2. And Petitioner also was served a Notice of Custody Determination (Form I-286), Ng Decl., Exh. 5, and an Order of Release on Recognizance pending his removal proceedings that included a first immigration court appearance scheduled on February 21, 2025, *id.*, Exh. 4. On February 21, 2025, while in removal proceedings, Petitioner appeared for his first master calendar hearing where he was advised of his rights by an Immigration Judge ("IJ"). *Id.* ¶ 6. His case was continued for him to obtain counsel. *Id.*

On August 15, 2025, Petitioner appeared for a second master calendar hearing in San Francisco immigration court. Ng Decl. ¶ 7. At the hearing, DHS counsel moved to dismiss Petitioner's removal proceedings. *Id.* The IJ did not rule on the motion and gave Petitioner time to respond to the motion, setting a hearing on November 7, 2025. *Id.* 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 deportation officers to Petitioner and took him into custody pursuant to a Warrant for Arrest (Form I-200) under 8 U.S.C. § 1226(a). *Id.* ¶ 9, Exh. 6, Exh. 7 at 3. Petitioner was placed in detention, *id.*, Exh. 7 at 3, until ordered released the next day by the Honorable United States District Judge Eumi K. Lee. *Id.* ¶ 10, Exh. 8; *see also* ECF No. 4.

Petitioner is currently subject to mandatory detention pursuant to § 1225(b). Ng Decl. ¶ 11. 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. DHS moved to dismiss those removal proceedings to initiate expedited removal under § 1225(b)(1). Ng. Decl. ¶ 7. If this motion is granted, DHS intends to initiate expedited removal proceedings, during which Petitioner will remain subject to mandatory detention under § 1225(b)(1)(B)(iii)(IV).

IV. PROCEDURAL HISTORY

Petitioner commenced this action on August 15, 2025, by filing a petition for writ of habeas corpus. ECF No. 1. On August 16, 2025, Petitioner moved this Court *ex parte* for a TRO. ECF Nos. 2, 3. The same day, the Court granted Petitioner's *ex parte* TRO, ordering the government "to immediately release Petitioner from Respondent's custody," and enjoining and restraining the government from "re-detaining

Petitioner without notice and a pre-deprivation hearing" and "removing him from the United States." ECF No. 4 at 5-6. The TRO shall remain in effect until 5:00 p.m. on August 30, 2025. *Id.* The Court ordered the government to file a status report, which it di on Sunday, August 17, 2025 "confirm[ing] that Petitioner was released from ICE custody at approximately 8:20 a.m. Pacific Daylight Time on Sunday, August 17, 2025," ECF No. 5. The Court also ordered the government to show cause why a preliminary injunction should not issue, setting (1) August 22, 2025 as the date by which the government shall file a response to Petitioner's TRO motion, (2) August 26, 2025 as Petitioner's deadline for a reply and (3) August 29, 2025 as the date for an in-person hearing with the assigned Judge ("or as otherwise directed by that Judge"). ECF No. 4 at 6.

V. ARGUMENT

A. Legal Standard

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

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

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

(i) Under the Plain Text of 8 U.S.C. § 1225, Petitioner Must Be Detained Pending the Outcome of His Removal Proceeding

Petitioner cannot show a likelihood of success on his claim that he is entitled to a custody hearing prior to re-detention. This is because Petitioner is a noncitizen subject to expedited removal due to his presence in the United States without having been either "admitted or paroled," Ng Decl. Exh. 1 at 1, or physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility, as he unlawfully entered the country on the same day that he was apprehended and determined to be inadmissible, *id.*, Ex. 2 at 2. 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 § 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 his release authorized by statute. *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)."). In addition, although DHS initially elected to place Petitioner in full removal proceedings under § 1229a, he remains a noncitizen PWAP who is amenable to expedited removal due to his presence in the U.S. without having been either "admitted or paroled" or physically present in the U.S. continuously for the two-year period immediately preceding the date of the determination of inadmissibility.

Because Petitioner was re-detained while his full removal proceedings were still pending — *i.e.*, before the immigration court decided DHS's motion to dismiss those proceedings, his detention was pursuant to Section 1225(b)(2). If the immigration court grants DHS's motion to dismiss Petitioner's removal proceedings, his re-detention will remain mandatory, but the detention authority will shift to § 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 his 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, if an asylum officer or immigration judge determines that he 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 he will remain subject to mandatory detention under § 1225(b)(2)(A).

While DHS took Petitioner into custody on August 15, 2025, pursuant to an arrest warrant under § 1226(a), Ng Decl. Exh. 6, he has now been released, Ng Decl. ¶ 10, and the agency may elect to pursue mandatory detention under 8 U.S.C. § 1225(b) given that he has always remained an applicant for admission subject to expedited removal, Ng Decl. ¶ 11. That re-detention will be pursuant to either § 1225(b)(1) or (b)(2), both of which mandate detention. *Jennings*, 583 U.S. at 297.

Thus, because § 1225(b) mandates the detention of "applicants for admission," which includes Petitioner, he cannot succeed on his claim that he is entitled to contest his re-detention.

(ii) 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 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 his status as a noncitizen subject to expedited removal, Petitioner's reliance on *Mathews* to prohibit his 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. filed 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 § 1226(a), DHS does not alter a noncitizen's status as an "applicant for admission" under § 1225; to the contrary, the noncitizen's release into the country is for the express purpose of appearing for removal proceedings based on unlawful entry. Ng Decl. ¶ 5, Exh. 4. Thus, even where DHS cites § 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 § 1225(b)(1) provides. He 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.

(iii) 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 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, miles from the nearest port of entry, and was processed and released outside of a port of entry, Ng Decl. Exh. 2 — 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).

(iv) Section 1226(a) Does Not Mandate a Pre-Deprivation Hearing

Even if the Court were to find that the statutory framework of Section 1225 does not apply here, Petitioner would not be entitled to a pre-deprivation hearing before an immigration judge. There is no statutory or regulatory requirement that entitles Petitioner to a "pre-arrest" hearing under Section 1226 and, thus, Petitioner can cite no liberty interest to which due process protections attach. For individuals detained under § 1226(a), the Ninth Circuit has held that the process afforded the individuals are constitutionally

adequate to prevent the risk of erroneous deprivation of their liberty interests. *Rodriguez Diaz*, 53 F.4th at 1203. More specifically, the Ninth Circuit has observed that Section 1226(a) already offers significant procedural safeguards through "extensive procedural protections that are unavailable under other detention provisions, including several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change." *Id.* at 1202.

Further, the posture of this case is different from that in the purported supporting case law cited by Petitioner in his motion, *see* ECF No. 3. While Petitioner suggests that the available processes would be insufficient because they do not occur prior to re-arrest, the cases he cites do not arise in the distinct arena of immigration law, and they are therefore inapposite. *See, e.g., Zinermon v. Burch*, 494 U.S. 113 (1990) (mental treatment facility); *Hurd v. District of Columbia, Government*, 864 F.3d 671 (D.C. Cir. 2017) (re-incarceration of inmate); *Gagnon v. Scarpelli*, 41 U.S. 782 (1973) (probation revocation). In addition, Petitioner's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972), is misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation of parole, *id.* at 472-73, and did not arise in the context of immigration. And moreover, the Supreme Court in *Morrissey* explicitly noted "due process is flexible and calls for such procedural protections as the particular situation demands," *id.* at 481. Accordingly, the Supreme Court has long held that "Congress regularly makes rules" regarding immigration that "would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Here, the procedural process that would be provided to the noncitizen Petitioner under § 1226(a) if he was re-arrested—in which ICE would be required to give him the option of requesting a review of his custody determination and, if the he sought review, he would then be scheduled for a custody redetermination hearing before an IJ—is constitutionally adequate in the circumstances and no additional process would be required.

(v) Petitioner Cannot Obtain an Injunction Prohibiting Transfer

To the extent that Petitioner seeks an injunction that would prohibit the government from transferring him out of this district, he 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 (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 his mandatory detention or any transfer would interfere with the ability to present his 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 his failure to show a likelihood of success on the merits, Petitioner does not meet his burden of establishing that he will be irreparably harmed absent a preliminary injunction. His alleged injury — the "unlawful deprivation of physical liberty," ECF No. 3 at 17 — 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 — his categorical detention as lawful. *See supra* Part V.B.1. Indeed, the alleged infringement of constitutional rights is insufficient where, as here, a petitioner fails to demonstrate "'a sufficient likelihood of success on the merits of [her] constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm"). Further, any alleged harm from the fact of detention alone is insufficient because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Accordingly, given his status as a noncitizen subject to expedited removal, Petitioner cannot establish that his lawfully authorized mandatory detention would cause his 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 his 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 his claim, that public interest does not outweigh the competing public interest in enforcement of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in applying the established procedures for noncitizens subject to expedited removal, including their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

VI. CONCLUSION

The government respectfully requests that the Court not issue a preliminary injunction.

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Respectfully submitted,

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