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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Bo Li,

Petitioner

v.

John E. Cantu, et al.,

Respondents.

No. CV-25-02989-PHX-SPL(CDB)

**RESPONSE TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
(DOC. 8)**

I. INTRODUCTION.

Petitioner is currently in removal proceedings under INA § 240, 8 U.S.C. § 1229a and is detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). While Petitioner's habeas petition seeks release and a pre-detention bond hearing, and broadly asserts that his detention is unlawful, his habeas petition also attacks decisions that have not occurred yet, namely termination of his INA § 240, 8 U.S.C. § 1229a proceedings and commencement of expedited removal proceedings under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). As Petitioner is challenging actions that have not happened, his claims present no controversy, and he lacks standing. Apart from the fact that many of the challenged actions have not yet occurred, Petitioner is also unlikely to succeed on the merits of his claims because: (1) the claims presented are not proper habeas claims, and (2) multiple provisions of 8 U.S.C. § 1252 unambiguously strip federal courts

1 of jurisdiction over challenges to the commencement of removal proceedings, claims
2 arising from removal proceedings, and the application of expedited removal proceedings.
3 Regardless of what any piece of processing paper Petitioner received indicates, Petitioner
4 is an arriving alien as defined by the statute. As such, Petitioner is subject to mandatory
5 detention without bond, under 8 U.S.C. § 1225(b)(2), which the Supreme Court has held
6 comports with due process. Further, because he is an applicant for admission as defined
7 by the statute, his due process rights are limited to those proscribed by Congress. Petitioner
8 is unlikely to succeed on the merits of the claims raised in his habeas petition. He therefore
9 cannot establish he is entitled to injunctive relief at this preliminary stage of the litigation.
10 Respondents respectfully request that the Court deny Petitioner's requests for such relief.

11 II. FACTUAL AND PROCEDURAL BACKGROUND.

12 Petitioner Bo Li is a native and citizen of China, born on  1993. See
13 Exhibit A, Declaration of ICE Deportation Officer Kelly Bisher ¶ 3. On November 13,
14 2023, Petitioner entered the United States without being admitted, inspected or paroled by
15 an immigration officer. *Id.* ¶ 4. On the same date, Petitioner was encountered near San
16 Diego, California by Border Patrol. *Id.* ¶ 5. Generally, arriving aliens found at or near the
17 border who have not been admitted or paroled are found to be inadmissible and processed
18 under expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225, and subject
19 to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b). However, Petitioner was
20 issued an order of release on recognizance and a Notice to Appear in general removal
21 proceedings under INA § 240, 8 U.S.C. § 1229a. *Id.* The NTA charged Petitioner with
22 removability pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

23 On April 16, 2024, Petitioner filed a Form I-589, Application for Asylum, Withholding
24 of Removal and Protection under the Convention Against Torture. Exhibit A ¶ 6. On July
25 31, 2025, Petitioner appeared for his initial master calendar hearing before an Immigration
26 Judge (IJ) in San Francisco, California. *Id.* ¶ 7. During the initial master calendar hearing,
27 the Department of Homeland Security (DHS) made an oral motion to dismiss Petitioner's
28 INA § 240, 8 U.S.C. § 1229a removal proceedings, so that he could be re-processed and

1 placed in expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225. *Id.* ¶ 8.
2 The IJ provided the respondent ten (10) days to respond to DHS' motion to dismiss the
3 INA § 240, 8 U.S.C. 1229a removal proceedings. *Id.* On July 31, 2025, ICE officers
4 arrested Petitioner after his immigration hearing and took him into custody. *Id.* ¶ 9. On
5 August 2, 2025, Petitioner was transferred to Central Arizona Florence Correctional Center
6 in Florence, Arizona. *Id.* ¶ 10.

7 On August 8, 2025, Petitioner filed a motion for custody redetermination before the IJ
8 in Florence, Arizona. Exhibit A ¶ 11. On August 13, 2025, the IJ in Florence denied
9 Petitioner's request for a bond redetermination finding that Petitioner was an applicant for
10 admission detained under INA § 235, 8 U.S.C. § 1225, and therefore subject to mandatory
11 detention under INA § 235(b), 8 U.S.C. § 1225b). *Id.* ¶ 12. On the same date, Petitioner
12 appeared for his master calendar hearing before the IJ in Florence and requested additional
13 time to respond to DHS's motion to dismiss his INA § 240, 8 U.S.C. § 1229a proceedings.
14 *Id.* ¶ 13. The IJ granted Petitioner's request for additional time and advised the parties that
15 DHS must submit a written motion to dismiss Petitioner's INA § 240, 8 U.S.C. § 1229a
16 proceedings by August 20, 2025, and that Petitioner's response would be due August 27,
17 2025. *Id.*

18 On August 14, 2025, DHS filed a written motion to dismiss the INA § 240, 8 U.S.C. §
19 1229a removal proceedings to pursue expedited removal proceedings under INA § 235,
20 8 U.S.C. § 1225. Exhibit A ¶ 14. On August 27, 2025, Petitioner filed his response to
21 DHS' motion to dismiss. *Id.* ¶ 15. Petitioner's INA § 240, 8 U.S.C. § 1229(a) proceedings
22 have not been dismissed, and his case is still pending before the IJ, with his next scheduled
23 hearing on September 3, 2025. *Id.* ¶ 16.

24 On August 18, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. Doc. 1.
25 Petitioner, on the same date, filed an Ex Parte Motion for Temporary Restraining Order
26 and Preliminary Injunction. Doc. 2. The Court denied it due to a procedural defect. Doc.
27 6. Petitioner refiled. Doc. 8. The Court denied the motion to the extent it sought ex parte
28 relief and ordered Respondents to respond to the Motion for Temporary Restraining Order

1 and Preliminary Injunction with notice by September 2, 2025. Doc. 9.

2 **III. LEGAL FRAMEWORK FOR TEMPORARY RESTRAINING ORDERS**
3 **AND PRELIMINARY INJUNCTIONS**

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

10 Preliminary injunctions are intended to preserve the relative positions of the parties
11 until a trial on the merits can be held, “preventing the irreparable loss of a right or
12 judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.
13 1984). Preliminary injunctions are “not a preliminary adjudication on the merits.” *Id.* A
14 court should not grant a preliminary injunction unless the applicant shows: (1) a strong
15 likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable
16 injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4)
17 the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm,
18 a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.*
19 at 22.

20 Where the government is a party, courts merge the analysis of the final two *Winter*
21 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*,
22 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).
23 Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’
24 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and
25 third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d
26 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-
27 35 (9th Cir. 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in
28 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 a “heavy” one. *Id.*

1 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a
 2 party from taking action and preserves the status quo pending a determination of the action
 3 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
 4 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party
 5 to take action. . . . A mandatory injunction goes well beyond simply maintaining the status
 6 quo pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory
 7 injunction is “subject to a higher degree of scrutiny because such relief is particularly
 8 disfavored under the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313,
 9 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be
 10 “extremely cautious” when issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740
 11 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied “unless
 12 extreme or very serious damage will result,” and even then, not in “doubtful cases.” *Marlyn*
 13 *Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of*
 14 *Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740
 15 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts
 16 and law clearly favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

17 **IV. PETITIONER CANNOT ESTABLISH A LIKELIHOOD OF SUCCESS** 18 **ON THE MERITS OF HIS CLAIMS.**

19 **A. No Case or Controversy.**

20 No case or controversy exists to the extent Petitioner challenges DHS’s dismissal of his
 21 INA § 240, 8 U.S.C. § 1229a removal proceedings to pursue expedited removal
 22 proceedings under INA § 235, 8 U.S.C. § 1225. *See* Mot. at 15-17; Pet. at 21-22. The
 23 Constitution limits federal judicial power to designated “cases” and “controversies.” U.S.
 24 Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407
 25 (1972) (federal courts may only entertain matters that present a “case” or “controversy”
 26 within the meaning of Article III). “Absent a real and immediate threat of future injury
 27 there can be no case or controversy, and thus no Article III standing for a party seeking
 28 injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3

1 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlow Env't Servs., Inc.*,
2 528 U.S. 167, 190 (2000)). At the “irreducible constitutional minimum,” standing requires
3 that Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to
4 the challenged action of the United States and (3) likely to be redressed by a favorable
5 decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

6 The Court should not entertain Petitioner’s motion for injunctive relief to the extent
7 he is challenging actions that have not yet occurred. Petitioner is currently in proceedings
8 under INA § 240, 8 U.S.C. § 1229a and is not in expedited removal proceedings pursuant
9 to INA § 235, 8 U.S.C. § 1225. The IJ has not granted DHS’s motion to dismiss. As such,
10 there is currently no controversy concerning his INA § 240 proceedings or placement in
11 expedited removal proceedings for the Court to resolve. This is true to the extent he
12 challenges such a decision in this case or at large. Federal courts simply do not have
13 jurisdiction “to give opinion upon moot questions or abstract propositions, or to declare
14 principles or rules of law which cannot affect the matter in issue in the case before it.”
15 *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). The Court therefore
16 lacks jurisdiction with respect to any challenge to DHS’s motion to dismiss INA § 240,
17 8 U.S.C. § 1229(a) proceedings to pursue INA § 235, 8 U.S.C. § 1225 proceedings because
18 it is premature and there is no live case or controversy. *See Powell v. McCormack*, 395
19 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

20 **B. This Court lacks subject matter jurisdiction under 8 U.S.C. § 1252.**

21 Petitioner cannot show a likelihood of success on the merits, because the Court lacks
22 jurisdiction over Petitioner’s claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
23 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).
24 Petitioner brings his habeas action under 28 U.S.C. § 2241, but jurisdiction over his claims
25 is plainly barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), § 1252(g), and § 1252(b)(9).

26 In general, courts lack jurisdiction to review a decision to commence or adjudicate
27 removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall
28 have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the

1 decision or action by the Attorney General to commence proceedings, adjudicate cases, or
2 execute removal orders.”); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
3 483 (1999) (“There was good reason for Congress to focus special attention upon, and
4 make special provision for, judicial review of the Attorney General’s discrete acts of
5 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—
6 which represent the initiation or prosecution of various stages in the deportation process.”);
7 *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
8 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest
9 and detain an alien at the commencement of removal proceedings are not within any court’s
10 jurisdiction”).

11 In other words, § 1252(g) removes district court jurisdiction over “three discrete
12 actions that the Attorney may take: [his] ‘decision or action’ to ‘commence proceedings,
13 adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed).
14 Here, Petitioner’s claims necessarily arise “from the decision or action by the Attorney
15 General to commence proceedings [and] adjudicate cases,” over which Congress has
16 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

17 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
18 and fact . . . arising from any action taken or proceeding brought to remove an alien from
19 the United States under this subchapter shall be available only in judicial review of a final
20 order under this section.” Further, judicial review of a final order is available only through
21 “a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5).
22 The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable ‘zipper’ clause,”
23 channeling “judicial review of all” “decisions and actions leading up to or consequent upon
24 final orders of deportation,” including “non-final order[s],” into proceedings before a court
25 of appeals. *Reno*, 525 U.S. at 483, 485; see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th
26 Cir. 2016) (noting § 1252(b)(9) is “breathtaking in scope and vise-like in grip and therefore
27 swallows up virtually all claims that are tied to removal proceedings”). “Taken together, §
28 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from

1 any removal-related activity can be reviewed only through the [petition for review] PFR
2 process.” *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit how immigrants can
3 challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by
4 their terms, foreclose all judicial review of agency actions. Instead, the provisions channel
5 judicial review over final orders of removal to the courts of appeal.”) (emphasis in
6 original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims,
7 including policies-and-practices challenges . . . whenever they ‘arise from’ removal
8 proceedings”). Petitioner’s challenges to the administrations practice of dismissing INA §
9 240 proceedings to pursue INA § 235 proceedings are foreclosed by sections 1252(a)(5)
10 and (b)(9) in addition to section 1252(g).

11 Moreover, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling
12 provision, which bars review of almost ‘every aspect of the expedited removal process.’”
13 *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at *1 (9th Cir.
14 Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1154 (9th Cir. 2022)
15 (describing the operation of § 1252(a)(2)(A)). These jurisdiction-stripping provisions cover
16 “the ‘procedures and policies’ that have been adopted to ‘implement’ the expedited
17 removal process; the decision to ‘invoke’ that process in a particular case; the ‘application’
18 of that process to a particular alien; and the ‘implementation’ and ‘operation’ of any
19 expedited removal order.” *Mendoza-Lineras*, 51 F.4th at 1155. “Congress chose to strictly
20 cabin this court’s jurisdiction to review expedited removal orders.” *Guerrier v. Garland*,
21 18 F.4th 304, 313 (9th Cir. 2021) (finding that the Supreme Court abrogated any “colorable
22 constitutional claims” exception to the limits placed by § 1252(a)(2)(A)); *see Dep’t of*
23 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (holding that limitations within §
24 1252(a)(2)(A) do not violate the Suspension Clause). “Congress has chosen to explicitly
25 bar nearly all judicial review of expedited removal orders concerning such aliens, including
26 ‘review of constitutional claims or questions of law.’” *Mendoza-Linares*, 51 F.4th at 1148
27 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see Dept. of Homeland Sec. v. Thuraissigiam*, 591
28 U.S. 103, 138-39 (2020) (explicitly rejecting Ninth Circuit’s holding that an arriving alien

1 has a “constitutional right to expedited removal proceedings that conform to the dictates of
2 due process”).

3 “Congress could scarcely have been more comprehensive in its articulation of the
4 general prohibition on judicial review of expedited removal orders.” *Mendoza-Liner*as, 51
5 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

6 (2) Matters not subject to judicial review

7 (A) Review relating to section 1225(b)(1)

8 Notwithstanding any other provision of law (statutory or nonstatutory), including
9 section 2241 of Title 28, or any other habeas corpus provision, and sections 1361
10 and 1651 of such title, no court shall have jurisdiction to review-

11 (i) except as provided in subsection (e), any individual determination or to entertain
12 any other cause or claim arising from or relating to the implementation or operation
13 of an order of removal pursuant to section 1225(b)(1) of this title,

14 (ii) except as provided in subsection (e), a decision by the Attorney General to
15 invoke the provisions of such section,

16 (iii) the application of such section to individual aliens, including the determination
17 made under section 1225(b)(1)(B) of this title, or

18 (iv) except as provided in subsection (e), procedures and policies adopted by the
19 Attorney General to implement the provisions of section 1225(b)(1) of this title.

20 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of jurisdiction
21 to hear a ‘cause or claim arising from or relating to the implementation or operation of an
22 order of removal pursuant to section 1225(b)(1),’ which plainly includes [Petitioner’s]
23 collateral attacks on the validity of the expedited removal order.” *Azimov*, 2024 WL
24 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M. v. Lynch*, 837
25 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from” language in
26 neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards and process of
27 expedited removal proceedings, Petitioner necessarily asks the Court “to do what the
28 statute forbids [it] to do, which is to review ‘the application of such section to him.’”
Mendoza-Linares, 51 F.4th at 1155. Most notably, a determination made concerning
inadmissibility “is not subject to judicial review.” *Gomez-Cantillano v. Garland*, No. 19-
72682, 2021 WL 5882034 (9th Cir. Dec. 13, 2021) (citing 8 U.S.C § 1252(a)(2)(A)(iii)).

1 “And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction to review ‘procedures and policies
2 adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this
3 title,’ which plainly includes [Petitioner’s] claims regarding how [Respondents may]
4 implement[.]” § 1225(b)(1). *Azimov*, 2024 WL 687442, at *1 (citing *Mendoza-Linares*, 51
5 F.4th at 1154–55).

6 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal
7 orders, Congress expressly limited available relief: “Without regard to the nature of the
8 action or claim and without regard to the identity of the party or parties bringing the action,
9 no court may” “enter declaratory, injunctive, other equitable relief in any action pertaining
10 to an order to exclude an alien in accordance with section § 1225(b)(1) of this title except
11 as specifically authorized in a subsequent paragraph of this subsection.” 8 U.S.C. §
12 1252(e)(1)(A). Congress delineated two limited avenues for judicial review concerning
13 expedited removal orders: (1) narrow habeas corpus proceedings under § 1252(e)(2); and
14 (2) challenges to the validity of the system under § 1252(e)(3). Any permissible challenge
15 to the validity of the system “is available [only] in an action in the United States District
16 Court for the District of Columbia” 8 U.S.C. § 1252(e)(3).

17 Narrow habeas corpus proceedings are expressly “limited to determinations” of
18 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was
19 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove by
20 a preponderance of the evidence that the petitioner is an alien” who has been granted status
21 as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C). “In
22 determining whether an alien has been ordered removed under section 235(b)(1) [8 U.S.C.
23 § 1225(b)(1)], the court’s inquiry shall be limited to whether such an order in fact was
24 issued and whether it relates to the petitioner. There shall be no review of whether the alien
25 is actually inadmissible or entitled to any relief from removal.” 8 U.S.C. § 1252(e)(5)
26 (emphasis added). To the extent Petitioner is challenging the expedited process, each of
27 Petitioner’s claims fall outside the limited habeas corpus authority provided within §
28 1252(e)(2).

1 Put simply, Petitioner cannot establish a likelihood of success on the merits of his
2 habeas petition sufficient to grant preliminary relief, where this Court lacks jurisdiction
3 over the issues raised in the petition under these various provisions of 8 U.S.C. § 1252.

4 **C. Petitioner brings improper habeas claims.**

5 An individual may seek habeas relief under 28 U.S.C. § 2241 if she is “in custody”
6 under federal authority “in violation of the Constitution or laws or treaties of the United
7 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge *only* the legality
8 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
9 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
10 *Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
11 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The
12 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
13 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the
14 relevant question is whether, based on the allegations in the petition, release is legally
15 required irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072; *see also Nettles v.*
16 *Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the
17 petitioner’s claim would “necessarily lead to immediate or speedier release.”).

18 Notably, seeking judicial review under the Administrative Procedure Act (APA) is not
19 properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133,
20 1140 (9th Cir. 2000) (“For purposes of immigration law, at least, “judicial review” refers
21 to petitions for review of agency actions, which are governed by the Administrative
22 Procedure Act, while habeas corpus refers to habeas petitions brought directly in district
23 court to challenge illegal confinement.”). Here, Petitioner’s APA attack on the Trump
24 Administration’s policy regarding the expansion of expedited removals fall outside the
25 scope of relief provided for in a habeas petition particularly where it fails to challenge the
26 legality or duration of Petitioner’s confinement. *Giron Rodas v. Lyons*, No. 25cv1912-LL-
27 AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks
28 jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as

1 attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).
 2 Thus, Petitioner is unlikely to succeed on the merits of her claims because they are not
 3 properly raised where they do not arise under § 2241.

4 **D. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) which**
 5 **comports with his procedural and substantive due process rights.**

6 Section 1225 applies to “applicants for admission,” such as Petitioner, who are
 7 defined as “alien[s] present in the United States who [have] not been admitted” or “who
 8 arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into
 9 one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”
 10 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

11 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
 12 determined to be inadmissible due to fraud, misrepresentation, or lack of valid document.”
 13 *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited
 14 removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an
 15 intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer
 16 the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible
 17 fear of persecution” is “detained for further consideration of the application for asylum.”
 18 *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express
 19 a fear of persecution, or is “found not to have such a fear,” they are detained until removed
 20 from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

21 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
 22 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
 23 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
 24 removal proceeding “if the examining immigration officer determines that [the] alien
 25 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
 26 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
 27 in and seeking admission into the United States who are placed directly in full removal
 28 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates

1 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).
2 However, DHS has the sole discretionary authority to temporarily release on parole “any
3 alien applying for admission to the United States” on a “case-by-case basis for urgent
4 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v.*
5 *Texas*, 597 U.S. 785, 806 (2022).

6 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. §
7 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate
8 detention of applicants for admission until certain proceedings have concluded.” 583 U.S.
9 at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on
10 the length of detention” and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything
11 whatsoever about bond hearings.” *Id.* The Court added that the sole means of release for
12 noncitizens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United
13 States is temporary parole at the discretion of the Attorney General under 8 U.S.C. §
14 1182(d)(5). *Id.* at 300. The Court observed that because aliens held under § 1225(b) may
15 be paroled for “urgent humanitarian reasons or significant public benefit,” “[t]hat express
16 exception to detention implies that there are no other circumstances under which aliens
17 detained under 1225(b) may be released.” *Id.* (citations and internal quotation omitted)
18 (emphasis in the original). Courts thus may not validly draw additional procedural
19 limitations “out of thin air.” *Id.* at 312. The Supreme Court concluded: “In sum, §§
20 1225(b)(1) and (b)(2) mandate detention of [noncitizens] throughout the completion of
21 applicable proceedings.” *Id.* at 302.

22 As Petitioner is subject to mandatory detention and lawfully detained under 8 U.S.C.
23 § 1225(b)(2), DHS was not required to show changed circumstances to detain him, nor did
24 due process require a bond hearing prior to his detention. Moreover, due process did not
25 prohibit ICE from re-detaining Petitioner. There is no statutory or regulatory requirement
26 that entitles Petitioner to a “pre-detention” hearing. For this Court to read one into the
27 immigration custody statute would be to create a process that the current statutory and
28 regulatory scheme do not provide for. See *Johnson v. Arteaga-Martinez*, 596 U.S. 573,

1 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process
2 protections attach, particularly where Petitioner is subject to mandatory detention under
3 8 U.S.C. § 1225(b)(2) .

4 Petitioner's reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny is
5 misplaced. See Mot. at 13. *Morrissey* arose from the due process requirement for a hearing
6 for revocation of parole. *Id.* at 472–73. It did not arise in the context of immigration.
7 Moreover, in *Morrissey*, the Supreme Court reaffirmed that “due process is flexible and
8 calls for such procedural protections as the particular situation demands.” *Id.* at 481. In
9 addition, the “[c]onsideration of what procedures due process may require under any given
10 set of circumstances must begin with a determination of the precise nature of the
11 government function.” *Id.* With respect to the precise nature of the government function,
12 the Supreme Court has long held that “Congress regularly makes rules” regarding
13 immigration that “would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S.
14 67, 79-80 (1976). Under these circumstances, Petitioner does not have a cognizable liberty
15 interest in a pre-detention hearing.

16 “Procedural due process imposes constraints on governmental decisions which
17 deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the [Fifth
18 Amendment] Due Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The
19 fundamental requirement of [procedural] due process is the opportunity to be heard ‘at a
20 meaningful time and in a meaningful manner.’” *Id.* at 333 (quoting *Armstrong v. Manzo*,
21 380 U.S. 545, 552 (1965)).

22 To determine whether procedural protections satisfy the Due Process Clause, courts
23 consider three factors: (1) “the private interest that will be affected by the official action”;
24 (2) “the risk of an erroneous deprivation of such interest through the procedures used, and
25 the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
26 Government’s interest, including the function involved and the fiscal and administrative
27 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.
28

1 The first factor favors Respondents. The Supreme Court has long recognized that
2 due process is limited when it comes to noncitizens seeking admission. Understanding the
3 statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to “arriving aliens”
4 like Petitioner, is critical because, for “more than a century” now, the Supreme Court has
5 held that the rights of such noncitizens are confined exclusively to those granted by
6 Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. 651, 660
7 (1892) (holding that with regard to “foreigners who have never been naturalized, nor
8 acquired any domicile or residence within the United States, nor even been admitted into
9 the country pursuant to law,” “the decisions of executive or administrative officers, acting
10 within powers expressly conferred by Congress, are due process of law.”); *Landon v.*
11 *Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that an alien seeking initial
12 admission to the United States requests a privilege and has no constitutional rights
13 regarding his application, for the power to admit or exclude aliens is a sovereign
14 prerogative”); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)
15 (rejecting noncitizens’ habeas petitions premised on their claim that their detention without
16 a bond hearing violated their Fifth Amendment Due Process rights because “an alien on
17 the threshold of initial entry stands on a different footing: ‘Whatever the procedure
18 authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”).

19 The Supreme Court’s holding on this topic was reinforced most recently in
20 *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry
21 to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment
22 Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court “reiterated
23 th[e] important rule,” *id.* at 138, that a noncitizen seeking initial entry to the United States
24 “has no entitlement” to any legal rights, constitutional or otherwise, other than those
25 expressly provided by statute. *Id.* at 107 (“Congress is entitled to set the conditions for an
26 alien’s lawful entry into this country and [] as a result [] an alien at the threshold of initial
27 entry cannot claim any greater rights under the Due Process Clause.”); *id.* (holding that a
28 noncitizen seeking initial entry “has no entitlement to procedural rights other than those

1 afforded by statute”); *id.* at 140 (A noncitizen seeking initial entry to the United States “has
2 only those rights regarding admission that Congress has provided by statute” and “the Due
3 Process Clause provides nothing more[.]”).

4 The second Mathews factor also favors Respondents. Under the existing procedures,
5 aliens including Petitioner face little risk of erroneous deprivation. As explained above,
6 there is no risk of erroneous deprivation because there is no due process right to a bond
7 hearing under 8 U.S.C. §1225(b)(2).

8 The third Mathews factor—the value of additional safeguards relative to the fiscal
9 and administrative burdens that they would impose—weighs heavily in favor of
10 Respondents. There is no administrative process in place for giving an arriving alien
11 subject to mandatory detention, a bond hearing before IJ, because the statute does not
12 provide for one. Respondents recognize that Petitioner is making an individualized
13 challenge here. However, the additional procedure he is requesting would have a
14 significant impact on the removal system. It would require ICE and the Executive Office
15 of Immigration Review to set up a novel administrative process for Petitioner who—for all
16 intents and purposes—are subject to mandatory detention without a bond hearing.
17 Therefore, considering all of the *Mathews* factors together, due process does not require a
18 pre-detention hearing for arriving aliens such as Petitioner subject to mandatory detention.

19 **E. Petitioner’s arrest did not violate his fourth amendment rights.**

20 The legality of an arrest of an alien based upon a civil immigration violation is well
21 established. *See Abel v. United States*, 362 U.S. 217, 230 (1960)(“Statutes authorizing
22 administrative arrest to achieve detention pending deportation have the sanction of time.”).
23 The statute authorizing the warrantless arrest of an alien by an ICE officer does not
24 expressly require probable cause but authorizes the arrest if the officer “has reason to
25 believe” that the alien is in the United States in violation of a law governing admission or
26 removal of aliens and is likely to escape before a warrant is issued. 8 U.S.C. § 1357(a)(2).
27 ICE had reason to believe Petitioner was unlawfully present in the United States without
28 having been admitted. Therefore, his re-arrest did not violate his fourth amendment rights.

1 **V. PETITIONER CANNOT ESTABLISH IRREPARABLE HARM.**

2 Petitioner cannot show that denying the temporary restraining order would make
3 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]
4 demonstrate that irreparable injury is likely in the absence of an injunction.”) (emphasis in
5 original). “[A] preliminary injunction will not be issued simply to prevent the possibility
6 of some remote future injury.” *Id.* “Speculative injury does not constitute irreparable
7 injury.” *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th
8 Cir. 1984). Petitioner has not established he will suffer irreparable harm if he is not released
9 from detention and provided a pre-detention hearing where he is lawfully detained under
10 8 U.S.C. § 1225(b)(2) and subject to mandatory detention.

11 **VI. THE EQUITIES AND PUBLIC INTEREST DO NOT FAVOR**
12 **PETITIONER.**

13 The third and fourth factors, “harm to the opposing party” and the “public interest,”
14 “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “In exercising
15 their sound discretion, courts of equity should pay particular regard for the public
16 consequences in employing the extraordinary remedy of injunction.” *Weinberger v.*
17 *Romero-Barcelo*, 456 U.S. 305, 312 (1982).

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

1 FRESPECTFULLY SUBMITTED September 2, 2025.

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9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on September 2, 2025, I electronically transmitted the attached
11 document to the Clerk's Office using the CM/ECF System for filing:

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