ERIC GRANT
United States Attorney
JESSICA DELANEY
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2700
Facsimile: (916) 554-2900

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARIANELA LEON ESPINOZA, et al., Petitioners, v. POLLY KAISER, et al., Respondents.	CASE NO. 1:25-CV-01101-JLT-SKO OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER DATE: September 5, 2025 TIME: 9:30 a.m. COURT: Hon. Jennifer L. Thurston

Petitioners Marianela Leon Espinoza, Mayra Mendez, Lorgia Bolainez Diaz, Yury Vasquez Perez, Ammy Vargas Baquedano, and Mariela Ramos jointly filed a petition for writ of habeas corpus and a motion for a temporary restraining order. This Court should deny the temporary restraining order as to each petitioner as they are mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1). Each of the petitioners' argument falls short of demonstrating a likelihood of success on the merits or an entitlement to the requested release.

In accordance with the Court order, Respondents acknowledge that this Court has, in similar circumstances, issued this relief in other cases, including *Salazar v. Kaiser*, No. 1:25-cv-01017-JLT-SAB, 2025 WL 2456232 (E.D. Cal. Aug 26, 2025); *Castellon v. Kaiser*, No. 1:25-cv-00968-JLT-EPG, 2025 WL 2373425 (E.D. Cal. Aug. 15, 2025); *Maklad v. Murray*, NO. 1:25-CV-00946-JLT-SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025). With the exception of Petitioner Vasquez Perez, who failed to comply with conditions of her release on her own recognizance, petitioners' claims largely align with those of earlier cases.

I. BACKGROUND

A. Petitioner Marianela Leon Espinoza

Petitioner Leon Espinoza is a native and citizen of Peru who entered the United States without inspection on or about July 11, 2022. (Appendix 013 ¶ 4-5). On July 21, 2022, Petitioner Leon Espinoza was issued a Form I-220A, Order of Release on Recognizance. (*Id.*, ¶ 6). A few weeks ago, on July 18, 2025, U.S. Immigration and Customs Enforcement ("ICE") moved to dismiss Petitioner Leon Espinoza's removal proceedings. (*Id.* ¶ 7). The Immigration Judge did not rule on the motion and gave Petitioner Leon Espinoza time to respond. That same day, ICE detained Petitioner Leon Espinoza because she was amenable to Expedited Removal pursuant to section 235 of the Immigration and Nationality Act. (*Id.*, ¶ 8).

B. Petitioner Mayra Mendez

Petitioner Mendez is a native and citizen of Belize who entered the United States without inspection on or about January 8, 2024. (Appendix, pg. 2, ¶ 4-5). That same day, she was issued a Form I-220A, Order of Release on Recognizance. (*Id.*, ¶ 6). On August 1, 2025, ICE moved to dismiss Petitioner's removal proceedings, though the Immigration Judge did not rule on the motion and gave Petitioner Mendez time to respond. (*Id.*, ¶ 7). That same day, ICE detained Petitioner Mendez because she was amendable to Expedited Removal pursuant to section 235 of the Immigration ad Nationality Act.

C. Petitioner Mariela Ramos

Petitioner Ramos is a native and citizen of Guatemala who entered the United States without inspection on or about November 18, 2024. (Appendix 016 ¶ 4-5.). That same day she was issued a Notice and Order of Expedited Removal as well as an Order of Release on Recognizance. (*Id.*, ¶ 6). On or about December 9, 2024, a supervisory asylum officer issued Petitioner Ramos a Notice to Appear following a Credible Fear Review. On July 26, 2025, Petitioner Ramos was taken into ICE custody following service of an arrest warrant. (*Id.*, ¶ 8).

D. Petitioner Vasquez Perez

Petitioner Vasquez Perez is a native and citizen of Guatemala who entered the United States without inspection on or about January 31, 2024. ("Appendix 024 ¶ 5-6). On February 1, 2024, she was

issued an Order of Release on Recognizance, conditioned on compliance with reporting requirements to Enforcement and Removal Operations ("ERO"). (*Id.*, ¶ 7). On May 20, 2025, Petitioner failed to report for a scheduled check-in with ERO. (*Id.*, ¶ 8). On June 3, 2025, she reported to the ERO office in Eugene, Oregon, and provided an identification card listing an address that differed from the address on file with ERO. (*Id.*) As a result of her failed compliance, she was issued an arrest warrant and taken into ICE custody that same day. (*Id.*)

On July 28, 2025, an Immigration Judge found that Petitioner Vasquez Perez was ineligible for bond because she was subject to mandatory detention. (Appendix 025 ¶ 9, Appendix 026).

E. Petitioner Bolainez-Diaz

Petitioner Bolainez-Diaz is a native and citizen of Nicaragua who entered the United States without inspection on or about March 19, 2024. (Appendix 005, ¶ 5-6). On March 20, 2024, Petitioner Bolainez-Diaz was issued a Form I-860, Notice and Order of Expedited Removal. (*Id.*, ¶ 7). On March 23, 2024, U.S. Citizenship and Immigration Services ("USCIS") issued a Notice of Referral to Immigration Judge for a review of an asylum officer's determination that Petitioner Bolainez-Diaz did not have a credible fear of persecution or torture. (*Id.*, ¶ 8, Appendix 007). The following day, an Immigration Judge vacated the order of removal, finding that the asylum officer had improperly assessed Petitioner Bolainez-Diaz's claim as pursuing asylum from Mexico, rather than from Nicaragua. (Appendix 005, ¶ 9, Appendix 009). The case was returned to the Department of Homeland Security ("DHS") in order for Petitioner Bolainez-Diaz to present her asylum claim through removal proceedings. (Appendix 011).

Almost a year later, but within the one-year requirement for submitting a claim of asylum, on March 7, 2025, Petitioner Bolainez-Diaz filed an Application for Asylum with USCIS. (Appendix 005 ¶ 10).

On August 6, 2025, Petitioner Bolainez-Diaz was taken into ICE custody and the following day was issued a Notice to Appear in Removal Proceedings. (Appendix 006 ¶ 11). On August 13, 2025, Petitioner Bolainez-Diaz appeared before an Immigration Judge who denied her request for release on bond, finding her subject to mandatory custody pursuant to section 235(b) of the Immigration and Nationality Act. (*Id.*, ¶ 12). Petitioner's removal proceedings are set for September 22, 2025. (*Id.*, ¶

13).

F. Petitioner Vargas Baquedano

Petitioner Vargas Baquedano is a native and citizen of Nicaragua who entered the United States without inspection on or about April 12, 2022. (Appendix 019 ¶ 5-6). That same day she was issued an Order of Release on Recognizance. (*Id.*, ¶ 7).

On July 30, 2025, Petitioner Vargas Baquedano was taken into ICE custody following a scheduled hearing with the Immigration Court. (*Id.*, ¶ 8).

On August 25, 2025, an Immigration Judge found Petitioner Vargas Baquedano ineligible for bond because she was subject to mandatory detention. (*Id.*, ¶ 9, Appendix 021).

II. PROCEDURAL BACKGROUND

Petitioners jointly commenced this action on August 29, 2025, by filing a petition for writ of habeas corpus, and that same day, filing a motion for a temporary restraining order. (ECF 3.) This Court made a preliminary finding that all six Petitioners can likely demonstrate that their circumstances warrant relief. (ECF 5.) The Court also issued an order to show cause as to why the Court should not grant Petitioners' motion for a temporary restraining order. (*Id.*) Undersigned counsel has reviewed the previous cases cited by this Court and acknowledges that while here are some factual distinctions between all of the cases, the legal arguments advanced in this briefing are substantially the same as those advanced in previous cases before this Court.

On September 2, 2025, Respondents filed a motion to sever the petitioners' cases.

III. LEGAL BACKGROUND

A. The Standard for Temporary Restraining Orders.

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a "difficult task" in showing that they are entitled to such an "extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

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

B. Statutory Framework for Expedited Removal Proceedings

1. 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 one 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).

2. 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.")

3. 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

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[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).

"removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under § 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under § 1225(b)(1) applies in narrower, statutorily defined circumstances—typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry—and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under § 1225(b)(1) or § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

4. 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).

5. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[2] By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider).

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").

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[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)).

IV. ANALYSIS AND ARGUMENT

A. Petitioners Cannot Meet the High Bar for Injunctive Relief

1. Under the Plain Text of 8 U.S.C. § 1225, Petitioners Must Be Detained Pending the Outcome of Their Removal Proceedings

Each of the Petitioners is a noncitizen subject to expedited removal, as each entered the country unlawfully on the same day that they were apprehended and determined to be inadmissible. *See* 8 U.S.C. § 1225(b)(1)(A)(i). As noncitizen PWAPs, subject to the mandatory detention framework of Section 1225(b), Petitioners are not entitled to custody redetermination hearings by immigration judges or pre-deprivation hearings before re-detention. *Jennings*, 583 U.S. at 297 ("neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings"). This very fact was acknowledged by immigration judges when Petitioners Bolainez-Diaz, Vasquez Perez and Vargas Baquedano requested bond during administrative hearings.[3]

Just as Petitioners are not entitled to custody redeterminations by statute, their release is not otherwise 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).").

Petitioners Leon Espinoza and Mendez were re-detained while their full removal proceedings were still pending – *i.e.*, before the immigration court decided DHS's motion to dismiss those proceedings. Their detention is therefore pursuant to Section 1225(b)(2). If the immigration court grants DHS's motion to dismiss Petitioners' removal proceedings, their re-detention will remain mandatory, but the detention authority will shift to Section 1225(b)(1). Petitioners will then receive the

[3] In their filing, Petitioners alleged that none of the petitioners received any bond or custody redetermination hearings. (ECF 3 at 7). However, as demonstrated by the Declaration of Deportation Officer Juan Abad, three of the petitioners (Vasquez Perez, Bolainez-Diaz, and Vargas Baquedano) have had bond and custody redetermination hearings. Factual discrepancies such as these are the basis for the Government's earlier filing to sever the defendants' claims.

expedited removal procedures under 8 U.S.C. § 1252(e)(2) and, as is the case under Section 1225(b)(2), cannot challenge their mandatory detentions. 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.").

Petitioners Ramos, Vasquez Perez, Bolainez-Diaz, and Vargas Baquedano are all subject to mandatory detention under Section 1225(b).

Finally, Petitioners have alleged that there was "no change" in any Petitioners' status prior to their arrests. (ECF 2 at 6-7.) Petitioner Vasquez Perez failed to report for a scheduled check-in with ERO, and when she ultimately reported, two weeks later, she provided identification that indicated she had a residence that had not been previously reported to ERO. While not the most severe of infractions, these do constitute a failure to comply with the conditions of her release and constitute a basis to detain her following the initial release on her own recognizance.[4]

2. The *Mathews* Factors Do Not Mandate a Remedy

The Supreme Court has never utilized the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), in addressing due process claims raised by noncitizens held in civil immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.") (citations omitted); *id.* at 1214 ("In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews* test. While leaving open the question of whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206.

[4] This factual distinction between Petitioner Vasquez Perez and the other Petitioners demonstrates again why joinder of habeas petitioners may be problematic to a court's resolution of the claim.

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 Petitioners, 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. Petitioners are entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.

That said, Respondent acknowledges that this Court has applied the *Mathews* factors in similar situations. This Court has held, on multiple occasions, that immigration detention, the economic burdens imposed as a result of detention, and the potential inability to pursue a petition for review may all constitute irreparable harm under the *Mathews* factors. *See, e.g, Salazar*, 2025 WL 2456232; *Castellon* 2025 WL 2373425; *Maklad*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025). However, that 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). 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).

As to the second and third *Mathews* factors, 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)). 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).

Petitioners 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.

V. WAIVER OF HEARING

By prior order, this Court set the matter for a hearing on Friday, September 5, 2025. The parties have met and conferred and jointly agree to waive a hearing and request the Court rule on the filed submissions.

VI. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny Petitioners' motion for a temporary restraining order.

Dated: September 3, 2025

ERIC GRANT
United States Attorney

By: /s/ JESSICA DELANEY
JESSICA DELANEY
Assistant United States Attorney