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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

GERARDO ROMAN VALENCIA ZAPATA, *et al.*, Petitioners, v. POLLY KAISER, *et al.*, Respondents.	Case No. 3:25-cv-7492-RFL **RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER** The Hon. Rita F. Lin

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I. INTRODUCTION

In this habeas case, petitioners Gerardo Roman Valencia Zapata, David Rafael Colon Solano, Keymaris Alvarez Miranda, and Gabriela Alondra Vargas Plasencia Gonzalez (collectively, "Petitioners") have moved for a temporary restraining order ("TRO") seeking their immediate release from custody and enjoining the government from re-detaining them absent pre-detention hearings before an immigration judge. Yet under the applicable immigration statutes, Petitioners are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b). *See* 8 U.S.C. § 1225(a)(1); 8 U.S.C. § 1182(a)(6)(A)(i) (categorizing certain classes of aliens as inadmissible, and therefore ineligible to be admitted to the United States, including those "present in the United States without being admitted or paroled"); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–140 (2020) (explaining that an alien who is neither admitted nor paroled, nor otherwise lawfully present in this country, remains an "applicant for admission" who is "on the threshold" of initial entry, even if released into the country "for years pending removal," and continues to be "'treated' for due process purposes 'as if stopped at the border'"); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (explaining that such aliens are "treated as 'an applicant for admission'").

These "applicants for admission," including those present without being admitted or paroled ("PWAP"), "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."). They are not entitled to custody redetermination hearings, whether pre- or post-detention. *Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.").

Petitioners thus cannot show a likelihood of success on their claim that they are entitled to custody redetermination hearings prior to re-detention. The Court should deny the TRO.

II. STATUTORY BACKGROUND

A. "Applicants for Admission" Under 8 U.S.C. § 1225

The Immigration and Nationality Act ("INA") defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or

not at a designated port of arrival . . .)." 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 140 (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'") (citing 8 U.S.C. § 1225(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[.]"). However long they have been in this country, an alien who is present in the United States but has not been admitted "is treated as 'an applicant for admission.'" *Jennings*, 583 U.S. at 287.

Moreover, under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of aliens are inadmissible — and therefore ineligible to be admitted to the United States — including those "present in the United States without being admitted or paroled[.]" *Id.* § 1182(a)(6)(A)(i).

B. Detention Under 8 U.S.C. § 1225

Applicants for admission, including those like Petitioners who are PWAP, may be removed from the United States by, *inter alia*, expedited removal under § 1225(b)(1), or full removal proceedings before an immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.").

1. Section 1225(b)(1)

Congress established the expedited removal process in § 1225(b)(1) to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). This provision authorizes immigration officers to order certain inadmissible aliens "removed from the United States without further hearing or review." Section 1225(b)(1) applies to "arriving aliens" and "certain other" aliens "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 alien "described in" § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland Security — that is, any alien 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 aliens 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 an alien for admission under § 1225(a)(3), that alien lacks entry documents and so is subject to §1182(a)(7). The Attorney General's or Secretary's authority to "designate" classes of aliens 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 aliens 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.[1]

Expedited removal proceedings under § 1225(b)(1) include additional procedures if an alien indicates an intention to apply for asylum[2] or expresses a fear of persecution, torture, or return to the

[1] On August 29, 2025, a district court in the District of Columbia stayed the Government's implementation and enforcement of the expansion of expedited removal to the fullest extent authorized by Congress. *Make the Road New York, et al., v. Noem*, et al., 25-cv-190 (JMC) (D.D.C. Aug. 29, 2025), ECF Nos. 64, 65, *appeal docketed*, No. 25-5320 (D.C. Cir. Sept. 5, 2025). The government's position is that *Make the Road* was wrongly decided, and has appealed that decision. *Id.* at ECF No. 66. The Government will move for an emergency stay pending appeal in the Court of Appeals for the D.C. Circuit.

[2] Aliens must apply for asylum within one year of arriving in the United States, 8 U.S.C.

alien's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that situation, the alien is given a non-adversarial interview with an asylum officer, who determines whether the alien 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 alien 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, an alien may consult with an attorney or representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5). However, an alien 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 alien 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 alien 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 statutory procedure that is distinct from removal under § 1229a. Section 1229a governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the alien 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 aliens, 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.

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§ 1558(a)(2)(B), except if the alien can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.* § 1558(a)(2)(D).

It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under Section 1225(b)(2), an alien "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 aliens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (explaining that proceedings under section 1229a are "full removal proceedings under section 240 of the INA"); *see also id.* ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under § 1225(b)(1) "shall be detained" pursuant to § 1225(b)(2)). DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see also Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Detention Under 8 U.S.C. § 1226(a)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully admitted into the United States but are deportable and subject to removal proceedings. Section 1226(a) provides for the arrest and detention of these aliens "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 an alien during his removal proceedings, release him on bond, or release him on conditional parole.[3] By regulation, immigration officers can release an alien 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). An alien 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

[3] 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(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the alien 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 an alien 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 § 1226(a) to be an available detention authority for aliens PWAP placed directly in full removal proceedings under § 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 § 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

Petitioners are natives and citizens of Venezuela, Colombia, and Peru who entered the United States without inspection, admission or parole between November 2023 and May 2024. DHS Border Patrol encountered Petitioners outside of designated ports of entry. DHS took Petitioners into custody, processed them, and released them on orders of recognizance pending their removal proceedings.

On September 4, 2025, Petitioners appeared for hearings in San Francisco immigration court. At the hearings, DHS counsel entered motions to dismiss the removal proceedings. The immigration judge deferred resolution of those motions. After Petitioners' hearings concluded, ICE Enforcement and Removal Operations ("ERO") officers located outside of the courtroom took them into custody. ICE ERO determined that Petitioners were subject to expedited removal under the 2025 designation. Petitioners have been placed in mandatory detention.

Petitioners are currently subject to mandatory detention under 8 U.S.C. § 1225(b). Section 1225(b)(2)(A) requires noncitizens to "be detained for a proceeding under section 1229a of this title," which are "full removal proceedings under section 240 of the INA." *Matter of Q. Li*, 29 I. & N. Dec. at 68. As noted above, DHS moved to dismiss those full removal proceedings to initiate expedited removal under 8 U.S.C. § 1225(b)(1). Thus, for each petitioner, DHS intends to initiate expedited removal proceedings, during which Petitioners will remain subject to mandatory detention under

§ 1225(b)(1)(B)(iii)(IV).

IV. PROCEDURAL BACKGROUND

Petitioners commenced this action on September 4, 2025, by filing a petition for writ of habeas corpus, Dkt. No. 2 ("Pet."), and moving *ex parte* for a TRO, Dkt. No. 4 ("Mot.").[4] Petitioners request that the Court "(1) order Petitioners' immediate release from Respondents' custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) order Petitioners' immediate release from Respondents' custody and, within 14 days, order a pre-deprivation bond hearing before the San Francisco Immigration Court, where Respondents shall bear the burden of proof to show, by clear and convincing evidence, that Petitioners are a danger or a flight risk." Mot. 2. "Petitioners further seek an order (3) enjoining Respondents from transferring Petitioners out of this District or deporting them during the pendency of the underlying proceedings." *Id.*[5]

V. ARGUMENT

A. Legal Standard

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Such an injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that "he is likely to

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[4] The Petition joins four separate petitioners with four sets of underlying factual circumstances in a single habeas petition. *See* Pet. ¶¶ 9-12, 51-54. Petitioners do not cite any authority for bringing a group petition with multiple petitioners, and Respondents are unaware of any authority that would permit joinder of separate petitioners. *Cf. Acord v. California*, No. 17-cv-01089, 2017 WL 4699835, at *1 (E.D. Cal. Oct. 19, 2017) ("There is no authority for permitting multiple petitioners to file a single habeas petition under 28 U.S.C. § 2254, and doing so generally is not permitted."). Indeed, this request for relief for multiple individual aliens would appear to contravene the prohibition contained in 8 U.S.C. § 1252(f)(1), which states that "no court (other than the Supreme Court) shall have the jurisdiction or authority to enjoin or restrain . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." Respondents reserve their right to move to sever the petition. *See Acord*, 2017 WL 4699835, at *1; *see also Buriev v. Warden, Geo, Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL 1906626, *1 (S.D. Fla. Mar. 18, 2025) (denying motion for joinder of two habeas petitions); *Rubinstein v. United States*, No. 23-cv-12685, 2024 WL 37931, *3 (E.D. Mich. Jan. 3, 2024) (finding misjoinder of multiple parties in a single habeas petition).

[5] Petitioners are currently detained at the Mesa Verde ICE Processing Center, which is located in Bakersfield, CA, in the Eastern District of California.

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).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action," as Petitioners seek here. *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Ibid.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Ibid.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Courts have also denied TRO motions where the relief the plaintiffs seek is the same relief sought on the merits, because "[j]udgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Mendez v. ICE*, No. 23-cv-00829-TLT, 2023 WL 2604585, at *3 (N.D. Cal. Mar. 15, 2023) (quoting *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)).

B. Petitioners Fail to Meet the High Bar for Injunctive Relief

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

(i) Under the Plain Text of § 1225, Petitioners Must Be Detained Pending the Outcome of Their Removal Proceedings

Petitioners cannot show a likelihood of success on their claim that they are entitled to a custody determination hearing prior to re-detention. This is because Petitioners are "applicants for admission" due to their presence in the United States without having been either "admitted or paroled." Such aliens

are subject to the mandatory detention framework of 8 U.S.C. § 1225(b) that specifically applies to them, not the general provisions of § 1226(a).

Respondents recognize that recent district court decisions in this District and elsewhere have concluded that § 1225(b) is not applicable to other aliens who were conditionally released in the past under § 1226(a). *See Ramirez Clavijo v. Kaiser*, No. 5:25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025); *Hernandez Nieves v. Kaiser*, No. 3:25-cv-06921-LB (N.D. Cal. Sept. 3, 2025). But here, Petitioners do not allege that they were expressly released under § 1226(a) in the past. *See generally* Mot., Pet. In any event, Respondents respectfully disagree with these non-binding decisions. Taken together, the plain language of Sections 1225(a) and 1225(b) indicate that applicants for admission, including those "present" in the United States, are subject to mandatory detention under Section 1225(b). When there is "an irreconcilable conflict in two legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). While § 1226(a) applies generally to aliens who are "arrested and detained pending a decision on" removal, § 1225 applies more narrowly to "applicants for admission" — *i.e.*, aliens present in the United States who have not been admitted. Because Petitioners fall within this latter category, the specific detention authority under § 1225 controls over the general authority found at § 1226(a).

As aliens PWAP subject to mandatory detention under § 1225(b), Petitioners are not entitled to custody redetermination hearings at any time, whether pre- or post-detention. *Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). In addition, although DHS initially elected to place Petitioners in full removal proceedings under § 1229a, Petitioners remain individuals PWAP who are amenable to expedited removal due to their presence in the United States without having been either "admitted or paroled" or physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility.

Given that Petitioners' full removal proceedings are still pending (*i.e.*, until the immigration court decides DHS's motions to dismiss those proceedings), their detention is mandatory under § 1225(b)(2). If the immigration court grants DHS's motions to dismiss Petitioners' full removal proceedings, their re-detention will remain mandatory, but the detention authority will shift to

§ 1225(b)(1). Petitioners will receive the expedited removal procedures under 8 U.S.C. § 1252(e)(2) and, as is the case under § 1225(b)(2), cannot challenge their mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."). However, as noted above, if an asylum officer or immigration judge finds a credible fear of persecution or torture for any petitioner, that petitioner may be placed in full removal proceedings under 8 U.S.C. § 1229a, *see* 8 C.F.R. § 208.30(f), although they will still remain subject to mandatory detention under § 1225(b)(2)(A).

Thus, because § 1225(b) mandates the detention of all applicants for admission placed in removal proceedings, including Petitioners, they cannot succeed on their claim that they are entitled to an opportunity to contest their re-detention.

(ii) The *Mathews* Factors Do Not Apply

Given their status as "applicants for admission" subject to mandatory detention, Petitioners' reliance on *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) in asserting that they should be prohibited from re-detention absent a custody hearing is misplaced. As an initial matter, the Supreme Court has upheld mandatory civil immigration detention without utilizing the multi-factor "balancing test" of *Mathews*. *See Demore v. Kim*, 538 U.S. 510 (2003) (upholding mandatory detention under 8 U.S.C. § 1226(c)); *cf. Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under 8 U.S.C. § 1231(a)(6) for six months after the 90-day removal period).[6]

In any event, applicants for admission like Petitioners, who were not admitted or paroled into the country, lack a liberty interest in additional procedures, including a custody redetermination hearing. *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

[6] Indeed, as the Ninth Circuit recognized in *Rodriguez Diaz*, "the Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*." *Rodriguez Diaz v. Garland*, 53 F.4th 1206 (9th Cir. 2022) (citations omitted). Whether the *Mathews* test applies in this context is an open question in the Ninth Circuit. *See Rodriguez Diaz*, 53 F.4th at 1207 (applying *Mathews* factors to uphold constitutionality of Section 1226(a) procedures in a prolonged detention context; "we assume without deciding that *Mathews* applies here").

exclude aliens is a sovereign prerogative"); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) ("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."). Indeed, for "applicants for admission" like Petitioners who are amenable to § 1225(b)(1) — *i.e.*, because they were not physically present for at least two years on the date of inspection, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) — "[w]hatever the procedure authorized by Congress . . . is due process," whether or not they are apprehended at the border or after entering the country. *Knauff*, 338 U.S. at 544; *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."). These aliens — including Petitioners — have "only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140; *see Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). 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.

(iii) Petitioners' Detention Authority Cannot Be Converted to Section 1226(a)

As applicants for admission, Petitioners' detention is governed by the framework set out in § 1225(b), for the reasons explained in detail above. Petitioners nevertheless provide a string-cite of recent cases considering detentions under § 1226(a). *See* Mot. 8-9. But Petitioners provide no argument that § 1226(a) applies here instead of § 1225(b). *See generally* Mot.; Pet. And to the extent recent District Court decisions have concluded in other cases that § 1226(a) could apply, those non-binding decisions have relied on the government's prior invocation of 1226(a) in the petitioners' proceedings – which Petitioners do not allege here, *see* Pet., Mot. – and have failed to address the government's textual argument for why the more specific provisions of § 1225 apply here. *See, e.g.*, *Ramirez Clavijo v. Kaiser*, No. 5:25-cv-06248-BLF (N.D. Cal. Aug. 21, 2025) (finding that the government's "election to place Petitioner in full removal proceedings under § 1229a and releasing Petitioner under § 1226(a) provided Petitioner a liberty interest that is protected by the Due Process Clause").

The fact that Petitioners were previously released does not change the analysis or conclusion. Indeed, pursuant to the comprehensive statutory framework created by Congress, an alien's conditional release is not the type of "lawful entry into this country" that is necessary to "establish[ ] connections"

that could form a liberty interest requiring additional process, and he or she remains an "applicant for admission" who is "at the threshold of initial entry," and subject to mandatory detention under § 1225. *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. Petitioners here were 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) provides. They instead remain "applicants for admission" who — even if released into the country "for years pending removal" — continue to be "'treated' for due process purposes 'as if stopped at the border.'" *Thuraissigiam*, 591 U.S. at 139–140 (explaining that such aliens remain "on the threshold" of initial entry).

But even if this Court were to find that § 1226(a), and not the mandatory detention framework of § 1225(b), applies here, Petitioners would still not be entitled to pre-detention hearings before an immigration judge. Rather, for aliens detained under § 1226(a), "an ICE officer makes the initial custody determination" *post*-detention, which the alien can later request to have reviewed by an immigration judge. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). The Supreme Court has long upheld the constitutionality of the basic process of immigration detention. *See, e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233–34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v.*

United States, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). Thus, under § 1226(a), aliens are not guaranteed *pre*-detention review by immigration judge review, and may instead only seek review of their detention by an ICE official once they are in custody — a process that the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *See Rodriguez Diaz*, 53 F.4th at 1196–97.[7]

2. Petitioners Cannot Establish Irreparable Harm

In addition to their failure to show a likelihood of success on the merits, Petitioners do not meet their burden of establishing that they will be irreparably harmed absent a TRO. The "deprivation of liberty" is a harm that "is essentially inherent in detention," and therefore "the Court cannot weigh this strongly in favor of" Petitioners. *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 — their categorical detention as lawful. *See supra* Part V.B.1.

Indeed, the alleged infringement of constitutional rights is insufficient where, as here, petitioners fail to demonstrate "'a sufficient likelihood of success on the merits of [their] constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm").

Further, any alleged harm from the fact of detention alone is insufficient because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And as noted by the Ninth Circuit in *Rodriguez Diaz*, if treated as detention under Section 1226(a), the risk of erroneous deprivation and value of additional process is small due to the procedural safeguards that Section

[7] Although *Rodriguez Diaz* did not arise in the pre-detention context, the Ninth Circuit noted that the petition argued that the Section 1226(a) framework was unlawful "'for any length of detention'" and concluded that the challenge to Section 1226(a) failed "whether construed as facial or as-applied challenges to § 1226(a)." *Rodriguez Diaz*, 53 F.4th at 1203.

1226(a) provides. Accordingly, Petitioners cannot establish that their lawfully authorized mandatory detention would cause 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 their 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 harms 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 TRO under these circumstances would permit any "applicant for admission" subject to § 1225(b) to obtain additional review simply because he or she was conditionally released — even if that release is expressly conditioned on appearing at removal proceedings for *unlawful* entry — 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 "applicants for admission," including their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

C. Any TRO Should Not Provide for Immediate Release, Should Not Reverse the Burden of Proof, and Should Not Require a Post-Release Hearing Deadline

The Court should deny the requested TRO for the reasons set forth above. If the Court nevertheless is inclined to grant a TRO, it should deny the specific relief requested by Petitioners.

First, immediate release is improper in these circumstances, where Petitioners are subject to mandatory detention. If the Court is inclined to grant any relief whatsoever, such relief should be limited to providing Petitioners with a bond hearing while they remain detained. *See, e.g.*, *Javier Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (C.D. Cal. Aug. 13, 2025) (ordering the government to "release Petitioners or, in the alternative, provide each Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order").

Second, at any bond hearing, each Petitioner should have the burden of demonstrating that they are not a flight risk or danger to the community. It would be improper to reverse the burden of proof and place it on the government in these circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210-12 ("Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases.").

Finally, Petitioners' TRO papers request both their immediate release, and a bond hearing within 14 days of their release. But if Petitioners obtain immediate release (which they should not), the Court should not also require a bond hearing, much less one that must take place on such an expedited basis. While the Court may order that Petitioners may not be re-detained without a bond hearing, going further to order a post-release bond hearing in these circumstances, regardless of DHS's intention to re-detain Petitioners, is unnecessary (because a bond hearing is only relevant in the context of detention), unauthorized by statute, and in any event inappropriate on a motion for TRO because it is not necessary to preserve the status quo. Thus, Petitioners' request for a post-release bond hearing by a specific

deadline is improper.

VI. CONCLUSION

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

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Respectfully submitted,

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