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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Francisco Cerritos Echevarria,

Petitioner,

v.

Pam Bondi, et al,

Respondents.

No. CV-25-03252-PHX-DWL (ESW)

RESPONSE TO PETITIONER'S VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
and
PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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), which he challenges. He has been detained since July 2, 2025, *i.e.,* 74 days.

For both his Habeas Petition and his TRO Application, Petitioner is unlikely to succeed on the merits of his claims because (1) the claims he presents are not proper habeas claims, (2) application of his own legal analysis undermines his arguments, and (3) multiple provisions of 8 U.S.C. § 1252 unambiguously strip the federal courts of jurisdiction over challenges to the commencement of removal proceedings, claims arising from removal proceedings, and the application of expedited removal proceedings.

Petitioner is subject to mandatory detention without bond, under 8 U.S.C. § 1225(b)(2), which the Supreme Court holds comports with Due Process. He is an applicant for admission as defined by the statute. His Due Process rights are limited to those proscribed by Congress. Thus Petitioner cannot establish he is entitled to injunctive relief at this stage of the litigation. Respondents respectfully request that the Court deny his requests for such relief.

I. Factual and procedural background.

Francisco Cerritos Echevarria is a native and citizen of El Salvador, born on [redacted] 1975, in Barrio Concepcion, San Vicente, El Salvador. *See* Ex., A, Declaration of DHS Supervisory Deportation Officer Carey S. Crook, at ¶ 4.

On May 1, 2001, the United States Border Patrol (USBP) encountered the Petitioner at or near Douglas, Arizona. *Id.* at ¶ 5. Generally, arriving aliens found at or near the border who have not been admitted or paroled are found to be inadmissible and processed under expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225, and subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b). However, after encountering USBP, Petitioner was processed as a Voluntary Return and was returned to Mexico. *Id.*

Petitioner alleges he "voluntarily returned" to the United States in 2001, but had no contact with immigration authorities. Application for TRO at 3-4. He entered at an unknown date and place, without being admitted or paroled after inspection by an immigration officer.

On December 22, 2011, the Southern California Security Communities Support Center received an Immigration Alien Response from Law Enforcement. *See* Petition, Ex. A, DHS Form I-213, Record of Deportable/Inadmissible Alien. DHS determined he was amenable to be reinstated and an ICE Immigration detainer was lodged. *Id.*

On December 23, 2011, the Superior Court of California in Los Angeles County convicted Petitioner for driving under the influence of alcohol. He was sentenced to forty-eight months of probation and four days in jail. *See* Ex. A, Crook Dec., at ¶ 4.

On August 14, 2019, the Superior Court of California in Los Angeles County again convicted Petitioner for driving under the influence of alcohol. He was sentenced to thirty-six months of probation and thirteen days in jail. *Id. at* ¶ 7.

The Superior Court of California in Los Angeles County convicted Petitioner a third time for driving under the influence of alcohol. He was sentenced to 36 months of probation and 13 days in jail. *Id.* at ¶ 8.

On September 6, 2019, Petitioner was again encountered by the Southern California Security Communities Support Center who had received an Immigration Alien Response form Law Enforcement. *See* Petition, Ex. A, DHS Form I-213, Record of Deportable/Inadmissible Alien. DHS again determined he was amenable to be reinstated and an ICE Immigration detainer was lodged. *Id.*

On July 2, 2025, ICE/ERO along with DEA brought Petitioner into ICE custody. Ex. A, Crook Dec., at ¶ 9.

On July 3, 2025, Petitioner was transferred from Los Angeles to Florence, Arizona. After Arriving there, he was processed into the Eloy Detention Center in Eloy, Arizona. *Id.* at ¶ 11.

On July 7, 2025, Petitioner was placed into removal proceedings under the Immigration and Nationality Act, § 212(a)(6)(A)(i). *Id.* at ¶ 11; *see also* Ex. A, Attachment A.

On July 14, 2025, an Immigration Judge denied bond to Petitioner stating that the court lacked jurisdiction pursuant to *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025); *Id.* at ¶ 12; *see also* Ex. A, Attachment A.

Petitioner does not allege what occurred after July 14, 2025; however, the record shows that on July 18, 2025, he was found to be subject to removal from the United States as an alien present in the United States who has not been admitted or paroled, and was charged under 212 (a)(b) (A) (i) of the INA. *See* Ex. A, Attachment A.

On August 13, 2025, the Petitioner filed an application for relief from removal. *See* Ex. A, Crook Dec., at ¶ 14.

On August 15, 2025, the Petitioner requested that the immigration court reconsider its July 14, 2025 decision. *Id.* at ¶ 13.

On August 20, 2025, an Immigration Judge denied Petitioner's request to reconsider, finding "no good cause." *See* Ex. A, at ¶ 15; see also Ex. A, Attachment C.

On August 23, 2025, the Immigration Court scheduled Petitioner's removal hearing to

occur on September 12, 2025. *See* Ex. A, ¶ 16, *see also* Attachment D.

On September 5, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. Doc. 1. On the same date he filed an Application Temporary Restraining Order (TRO) and Preliminary Injunction.[1] Doc. 2.

II. This Court lacks subject matter jurisdiction under 8 U.S.C. § 1252.

The Court lacks jurisdiction over Petitioner's claims. *Assoc'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir.2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioner brings his habeas action under 28 U.S.C. § 2241, but 8 U.S.C. § 1252(a)(2)(A), § 1252(e), § 1252(g), and § 1252(b)(9) bar jurisdiction over his claims.

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g): ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders" – which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed.App'x 429 (9th Cir.2020) (District Court properly dismissed petitioner's claim under 8 U.S.C. § 1252(g) because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction).

In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482. Here, Petitioner's claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases" – over which Congress has explicitly foreclosed district

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[1] On information and belief, as of the dictation of this Response, there has been no Order of Final Removal issued as a result of the September 12, 2025 hearing.

court jurisdiction. 8 U.S.C. § 1252(g).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact…arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." Judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir.2016) (noting that § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition for review] PFR process." *Id.* at 1031 ("[W]hile these sections limit how immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose all judicial review of agency actions. Instead, its provisions channel judicial review over final orders of removal to the courts of appeal."); *see Id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges…whenever they 'arise from' removal proceedings"). Petitioner's challenges to the administration's practice of dismissing INA § 240 proceedings to pursue INA § 235 proceedings are foreclosed by §§ 1252(a)(5) and (b)(9) and additionally by §1252(g).

Further, "[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling provision, which bars review of almost 'every aspect of the expedited removal process.'" *Azimov v. U.S. Dep't of Homeland Sec.*, 2024 WL 687442, at *1 (9th Cir. Feb. 20, 2024), *quoting Mendoza-Linares v. Garland*, 51 F. 4th 1146, 1154 (9th Cir.2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-stripping provisions cover "the 'procedures and policies' that have been adopted to 'implement' the expedited removal process; the decision to 'invoke'

that process in a particular case; the 'application' of that process to a particular alien; and the 'implementation' and 'operation' of any expedited removal order." *Mendoza-Lineras*, 51 F.4th at 1155. "Congress chose to strictly cabin this court's jurisdiction to review expedited removal orders." *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir.2021) (the Supreme Court abrogated any "colorable constitutional claims" exception to the limits placed by § 1252(a)(2)(A)); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (limitations within § 1252(a)(2)(A) do not violate the Suspension Clause). "Congress has chosen to explicitly bar nearly all judicial review of expedited removal orders concerning such aliens, including 'review of constitutional claims or questions of law.'" *Mendoza-Linares*, 51 F.4th at 1148, *citing* 8 U.S.C. § 1252(a)(2)(A), (D); *Thuraissigiam*, 591 U.S. 103, 138-39 (explicitly rejecting Ninth Circuit's holding that an arriving alien has a "constitutional right to expedited removal proceedings that conform to the dictates of due process").

By challenging the standards and process of expedited removal proceedings, Petitioner is asking the Court "to do what the 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*, 2021 WL 5882034 (9th Cir. Dec. 13, 2021), *citing* 8 U.S.C. § 1252(a)(2)(A)(iii); § 1252(a)(2)(A)(iv) deprives courts of jurisdiction to review 'procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title,' which plainly includes [Petitioner's] claims regarding how [Respondents may] implement[]" § 1225(b)(1). *Azimov*, 2024 WL 687442, at *1, *citing Mendoza-Linares*, 51 F.4th at 1154–55.

In setting forth provisions for judicial review of § 1225(b)(1) expedited removal orders, Congress expressly limited available relief:

> Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may" "enter declaratory, injunctive, other equitable relief in any action pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection. 8 U.S.C. § 1252(e)(1)(A).

Congress delineated two limited avenues for judicial review concerning expedited

removal orders: (1) narrow habeas corpus proceedings under § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any permissible challenge to the validity of the system "is available [only] in an action in the United States District Court for the District of Columbia…." 8 U.S.C. § 1252(e)(3).

Narrow habeas corpus proceedings are expressly "limited to determinations" of three questions: (1) "whether the petitioner is an alien"; (2) "whether the petitioner was ordered removed under [section 1225(b)(1)]"; and (3) "whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien" who has been granted status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C). "There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal." 8 U.S.C. § 1252(e)(5). To the extent Petitioner is challenging the expedited process, his claims fall outside the limited habeas corpus authority provided in § 1252(e)(2).

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

III. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), as shown by the statutory framework, which comports with his procedural and substantive Due Process rights.

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

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 document." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum…or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained

for further consideration of the application for asylum." *Id.*, § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "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); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for 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. However, 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).

In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b). The Court stated that "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate detention of applicants for admission until certain proceedings have concluded." 583 U.S. at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither…say[] anything whatsoever about bond hearings." *Id.* Thus, here, Petitioner's request for a bond hearing is improper. The Court added that the sole means of release for noncitizens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300. The Court observed that because aliens held under § 1225(b) may be paroled for "urgent humanitarian reasons or significant public benefit," "[t]hat express exception to detention implies that there are no other circumstances under which aliens detained under 1225(b) may be released." *Id.* Courts thus may not validly draw additional

procedural limitations "out of thin air." *Id.* at 312. The Supreme Court concluded that "In sum, §§ 1225(b)(1) and (b)(2) mandate detention of [noncitizens] throughout the completion of applicable proceedings." *Id.* at 302.

Since Petitioner is subject to mandatory detention and lawfully detained under 8 U.S.C. § 1225(b)(2), DHS was not required to show changed circumstances to detain him. Due process did not prohibit ICE from re-detaining him.

A. Petitioner ignores 8 U.S.C. § 1226(b).

Petitioner's argument that the Court should give effect to all of a statute's provisions so that no part will be inoperative, void, or insignificant (Application for TRO at 7-8) is particularly ironic. While Petitioner relies on § 1226(a), arguing that this provision has been applied to inadmissible aliens like Petitioner "who are present without admission in the United States" (*Id.* at 6), he fails to cite the next section, § 1226(b), which expressly specifies that "the Attorney General at any time may revoke a bond or parole under subsection (a), rearrest the alien under the original warrant, and detain the alien." As Petitioner himself argues, the Court should give effect to § 1226(b) – as the law of superfluities requires. The Court must presume that this clear statutory language means what it says. *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992) ("in a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished").

Nor is there is a statutory or regulatory requirement that entitles Petitioner to a "pre-detention" bond hearing as Petitioner argues. Application for TRO at 2. To read such a requirement into the immigration custody statutes would create an extra-statutory process which the current statutory and regulatory scheme do not provide. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). Thus, Petitioner can cite no liberty interest in his case to which due process protections attach, particularly where he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

B. Petitioner cannot meet the factors establishing a Due Process violation.

"Procedural due process imposes constraints on governmental decisions which deprive

individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333; *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

To determine whether procedural protections satisfy the Due Process Clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews,* 424 U.S. at 335.

The first *Mathews* factor favors Respondents. The Supreme Court recognizes that due process is limited when it comes to noncitizens seeking admission. Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to "arriving aliens" like Petitioner is critical. For "more than a century," the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (for "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an 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"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without a bond hearing violated their Fifth Amendment Due Process rights because "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'").

The Supreme Court's view on this topic was reinforced most recently in *Thuraissigiam*, a habeas action involving a noncitizen. Similar to Petitioner, *Thuraissigiam* sought entry to the United States. He was detained under 8 U.S.C. § 1225(b) and raised a Fifth Amendment Due Process Clause challenge. 591 U.S. 106-07. The Supreme Court "reiterated th[e] important rule" (*Id.* at 138) that a noncitizen seeking entry to the United States "has no entitlement" to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 ("Congress is entitled to set the conditions for an alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause."); *Id.* (a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *Id.* at 140 (a noncitizen seeking entry to the United States "has only those rights regarding admission that Congress has provided by statute"; "the Due Process Clause provides nothing more[.]").

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

The third *Mathews* factor – the value of additional safeguards relative to the fiscal and administrative burdens that they would impose – also weighs heavily in favor of Respondents. There is no administrative process in place giving an arriving alien subject to mandatory detention a bond hearing before an IJ because the statute does not provide for one. Petitioner is making an individualized challenge here; however, the additional procedure he is requesting would have a significant impact on the removal system; it would require ICE and the Executive Office of Immigration Review (EOIR) to set up a novel administrative process for him alone who – for all intents and purposes – is subject to mandatory detention without a bond hearing.

Considering all of the *Mathews* factors together, Due Process does not require a pre-detention hearing for arriving aliens such as Petitioner subject to mandatory detention.

IV. Petitioner brings improper habeas claims.

An individual may seek habeas relief under 28 U.S.C. § 2241 if she is "in custody" under

federal authority "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). But habeas relief is available to challenge *only* the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir.2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir.1979); *Thuraissigiam*, 591 U.S. 103 at 117 (The writ of habeas corpus historically "provide[s] a means of contesting the lawfulness of restraint and securing release."). The Ninth Circuit explained how to decide whether a claim sounds in habeas jurisdiction: "[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is legally required irrespective of the relief requested." *Pinson*, 69 F.4th at 1072; *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir.2016) (The key inquiry is whether success on the petitioner's claim would "necessarily lead to immediate or speedier release.").

A. Petitioner is not entitled to a bond hearing.

Nor is Petitioner entitled to a bond hearing. In *Castaneda v. Souza*, 810 F.3d 15, 60–61 (1st Cir.2015), the Court explained why the mere passage of time outside of detention should not entitle an alien to a bond hearing under § 1226(c). The court addressed whether aliens subject to § 1226(c), who were not detained immediately after release from criminal custody, and who instead remained in the community without incident, were entitled to a bond hearing – similar to Petitioner's argument. The Court rejected a claim that "if there is an individual fact showing a person poses a lesser risk of flight or danger (*e.g.,* has been living in a community for years), then that person is constitutionally entitled to a bail hearing." *Id.* at 61-62. The court rejected the unsupported argument that once a law-breaking alien has been out of custody for several years he can no longer be regarded as presenting a sufficiently heightened risk of danger or flight. *Id.* It held that Congress reasonably regarded criminal aliens "as categorically posing a flight risk" because of their "commission of the designated crimes." *Id.* Petitioner's own repetitive criminal history amplifies this concern.

B. The Administrative Procedure Act (APA) does not apply.

Petitioner's request for judicial review under the APA is improper for a habeas petition. *Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th Cir.2000) ("For purposes of immigration

law, at least, "judicial review" refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement."). Here, Petitioner's APA attack on Administration policy regarding the expansion of expedited removals falls outside the scope of relief provided for in a habeas petition, particularly where it fails to challenge the legality or duration of Petitioner's confinement. *Giron Rodas v. Lyons*, 2025 WL 2300781, at *3 (S.D.Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement'"), *quoting Pinson*, 69 F.4th at 1065.

V. The legal framework for a temporary restraining order and preliminary injunction shows that Petitioner's Application must be denied.

Petitioner's motion for a TRO is also improper. Petitioner is not seeking to merely preserve the *status quo* on a temporary basis. Rather, he seeks an injunction that would *alter* the status quo by providing him the ultimate relief he seeks in this litigation. As a matter of law, he is not entitled to what amounts to a judgment on the merits at a preliminary stage. *Mendez v. U.S. Immigration and Customs Enforcement*, 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) ("judgment on the merits in the guise of preliminary relief is a highly inappropriate relief."). The motion should be denied on this basis.

That said, the substantive standard for issuing a TRO is 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). An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.,* 739 F.2d 1415, 1422 (9th Cir.1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should

not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22.

As will be discussed, where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell,* 747 F.3d 1073, 1092 (9th Cir.2014), *citing Nken v. Holder*, 556 U.S. 418, 435 (2009). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enterps., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir.2017), *citing Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.2011). "[P]laintiffs seeking a preliminary injunction face a difficult task in 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.*

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

In such cases, district courts should deny preliminary relief unless the facts and law clearly favor the moving party. Garcia, 786 F.3d at 740.

A. Petitioner cannot show a strongly likelihood of success on the merits.

Respondents have already shown why Petitioner cannot establish a strong likelihood of success on the merits in Sections II, III, and IV. The Court lacks subject matter jurisdiction under § 1252(g) which limits the remedies available to him. The statutes establish that no review is required on the issue of whether Petitioner, who is deemed inadmissible, is entitled to any relief from removal. 8 U.S.C. § 1252(e)(5). Further, applying the plain language of §§ 1225 and 1226, Petitioner's status – and the Attorney General's discretion in exercising decisions about it – is well established. Finally, Petitioner's claims are not properly raised since they do not arise under § 2241. The first factor favors Respondents.

B. Petitioner cannot establish irreparable harm.

Nor can Petitioner show that denying the TRO would "irreparably harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs…[must] demonstrate that irreparable injury is likely in the absence of an injunction."). "[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury." *Id.* "Speculative injury does not constitute irreparable injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir.1984). Petitioner has not established that he will suffer irreparable harm if he is not released from detention or provided a pre-detention hearing, given that he is lawfully detained under 8 U.S.C. § 1225(b)(2),and subject to mandatory detention.

C. The equities and public interest do not favor Petitioner.

The third and fourth factors, "harm to the opposing party" and the "public interest," "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. "In exercising their sound discretion, courts of equity 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).

An adverse decision here would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws." *Sasso v.*

Milhollan, 735 F.Supp. 1045, 1049 (S.D.Fla.1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir.1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined."). The public has a legitimate interest in the government's enforcement of its laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir.2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the rules that are the subject of this appeal").

VI. Conclusion

For all the foregoing reasons, Petitioner's Request for a Writ of Habeas Corpus, and his Application for a TRO must be denied.

RESPECTFULLY SUBMITTED September 15, 2025.

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