ERIC GRANT
United States Attorney
JUSTIN J. GILIO
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

QUIRINO GUERRERO LEPE, Petitioner, v. TONYA ANDREWS, ET AL, Respondents.	CASE NO. 1:25-CV-01163-KES-SKO OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Aliens can enter the country in one of two ways, through formal application or through sneaking in. Congress chose to treat the latter entrants—aliens who unlawfully enter without formally applying—as "applicants" and subject them to mandatory detention pending removal proceedings. *See* 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Indeed, treating them otherwise would provide the unlawful entrant a benefit—a chance to remain in this country while immigration proceedings were pending—that the lawful applicant was not afforded.

Quirino Guerrero Lepe ("Lepe") snuck into this country illegally, without being lawfully admitted. When he was recently caught, immigration officials deemed him an "applicant," 8 U.S.C. § 1225(a)(1), subject to mandatory detention, 8 U.S.C. § 1225(b)(2)(A) ("[T]he alien shall be detained for a proceeding under section 1229a of this title."). Lepe sought a detention hearing in immigration

court. And an Immigration Judge denied his request.

Now, Lepe has applied to this Court for habeas and a temporary restraining order, seeking either immediate release or a detention hearing. The hearing he seeks, however, is afforded to aliens who initially applied, entered, and resided in this country lawfully before being later charged as removable. Indeed, for those lawful entrants, Congress established a detention/bail scheme to address their custody status while their immigration proceedings progressed. *See* 8 U.S.C. § 1226. Because Lepe never lawfully applied to enter this country and was never lawfully admitted, he falls under § 1225 (mandatory detention) not § 1226's (bond scheme). Thus, he is unlikely to succeed on the merits of his claim, and his motion for a temporary restraining order should be denied.

II. BACKGROUND

Petitioner Lepe is currently detained at the Golden State Annex in McFarland, California. (Government's Exhibit 1, Decl., at par. 9). He has been in custody since July 1, 2025, when Immigration and Customs Enforcement ("ICE") agents found him in San Pablo, California and arrested him. (*Id.* at par. 8; Doc. 2, Mtn., at 7). He is an illegal alien, who entered the United States on an unknown date without being lawfully admitted. (Government's Exhibit 1 at pars. 5 and 7). He has no pending or approved immigration petitions filed with the Department of Homeland Security (DHS). (*Id.* at par. 7). So ICE has processed Lepe for a Notice to Appear alleging he is removable from the United States under 8 U.S.C. § 1182(a)(6)(A)(i), as being present in the United States without being admitted or paroled. (*Id.* at par. 8).

Lepe applied for a bond hearing under 8 U.S.C. § 1226. (Doc. 2 at 14). On August 27, 2025, an Immigration judge ("IJ") denied Lepe's request, finding that he was an "applicant for admission" under 8 U.S.C. § 1225(a)(1) and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). (*Id.*)[1] Instead of appealing the bond denial order to the Board of Immigration Appeals ("BIA"), Lepe filed a petition for a writ of habeas corpus with this Court, making the following claims for relief:

- Lepe's Detention is in Violation of 8 U.S.C. § 1226(a);
- Lepe's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2); and

[1] Lepe's counsel had also asked for a ruling on his "Motion to Deem Respondent Detained under § 236(a)." The IJ denied that request for the same reason.

- Lepe's Detention Violates His Fifth Amendment Right to Due Process.

(Doc. 1 at 22–24). Alongside his petition, he filed a motion for a temporary restraining order ("TRO"), seeking his release from custody or alternatively, "an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a)[.]" (Doc. 2 at 1–2).

III. LEGAL STANDARD

The legal standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). As most relevant for this case, the moving party must show a likelihood of success on the merits.

Under the *Winter* standard, a party must demonstrate (1) "that he is likely to succeed on the merits," (2) "that he is likely to suffer irreparable harm in the absence of preliminary relief," (3) "that the balance of equities tips in his favor," and (4) "that an injunction is in the public interest." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, a plaintiff can show "serious questions going to the merits" and the "balance of hardships . . . tips sharply towards" it, as long as the second and third factors are satisfied. *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Under the Ninth Circuit's "serious questions" test, "a 'sliding scale' variant of the *Winter* test," a party is "entitled to a preliminary injunction if it demonstrates (1) 'serious questions going to the merits,' (2) 'a likelihood of irreparable injury,' (3) 'a balance of hardships that tips sharply towards the [petitioner],' and (4) 'the injunction is in the public interest.'" *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (citation omitted). "[I]f a [petitioner] can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips sharply in the [petitioner's] favor,' and the other two *Winter* factors are satisfied." *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017) (citation omitted).

A district court may consider "the parties' pleadings, declarations, affidavits, and exhibits submitted in support of and in opposition to the application." *Cal. Rifle & Pistol Ass'n, Inc. v. Los Angeles Cnty. Sheriff's Dep't*, 745 F. Supp. 3d 1037, 1048 (C.D. Cal. 2024). Any evidentiary issues "properly go to weight rather than admissibility." *Am. Hotel & Lodging Ass'n v. City of Los Angeles*,

119 F. Supp. 3d 1177, 1185 (C.D. Cal. 2015).

IV. DISCUSSION

Lepe cannot meet either the high bar for injunctive relief. First, he is unlikely to succeed on the merits because he is an "applicant" properly subject to mandatory detention under 8 U.S.C. § 1225, and he has never been subject to the admitted-alien bond scheme set out in 8 U.S.C § 1226. And second, the limited public interest in enforcing his constitutional rights does not outweigh the competing public interest in applying the established procedures for aliens subject to expedited removal, including their lawful, mandatory detention. Thus, his motion for a temporary restraining order should be denied.

A. Lepe Is Unlikely to Succeed on the Merits Because He Is Properly Detained Under 8 U.S.C. § 1225(b).

On this issue of detention, Congress has drawn a bright-line between aliens who have never been admitted to the United States and those who have been lawfully admitted but are later charged as removable. By statute, Lepe falls into the first category and is therefore subject to mandatory detention under § 1225(b), not discretionary detention under § 1226.

1. Congress created a mandatory-detention scheme for those who entered the country unlawfully, and that scheme mandates Lepe's detention.

The Immigration and Nationality Act is explicit: "an alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Congress's use of the phrase "for purposes of this chapter" makes clear that this definition applies throughout the INA—including the detention mandate in § 1225(b), which is categorical and not subject to case-by-case bond hearings. 8 U.S.C. § 1225(b)(2)(A) (requiring that such aliens "be detained for a proceeding under section 1229a of this title").

Lepe, who entered the United States without inspection and has never been lawfully admitted, Government's Exhibit 1 at pars. 5–7, falls squarely within this definition. Indeed, under 8 U.S.C. § 1182(a), certain classes of aliens are inadmissible, and therefore ineligible to be admitted to the United States, including those—like Lepe—"present in the United States without being admitted or paroled." 8 U.S.C. § 1182(a)(6)(A)(i).

For these unadmitted applicants, the Supreme Court has held that detention under § 1225(b) is

mandatory. In *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018), the Court rejected the attempt to graft a bond-hearing requirement onto § 1225(b), holding instead that "[§ 1225(b)(1)] mandate[s] detention of applicants for admission until certain proceedings have concluded." 138 S. Ct. at 842 (holding that detention under § 1225(b) is mandatory for applicants for admission); *see also Demore v. Kim*, 538 U.S. 510 (2003) (upholding Congress's authority to require mandatory detention of certain categories of aliens pending removal proceedings).

Because Lepe has never been lawfully admitted to the United States, the statutory framework requires that he be detained under 8 U.S.C. § 1225(b). Indeed, this is the very approach the Board of Immigration Appeals (BIA) decided in *Matter of Yajure Hurtado*, 26 I&N Dec. 216 (BIA 2025). *See* Government's Exhibit 2, BIA opinion in Matter of Jonathan Javier YAJURE HURTADO. In that case, the alien crossed the border illegally into the United States without inspection. *Matter of Yajure Hurtado*, 29 I&N Dec. at 216. The Board conducted a thorough statutory analysis and determined that those who are applicants for admission, like Lepe, are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). *Id.* at 228.

2. The plain text of the INA (and the Supreme Court's reading of it) are also supported by strong policy considerations.

Treating illegal aliens who sneak into the country as "applicants" who are subject to mandatory detention promotes fairness between lawful applicants and unlawful entrants and avoids arbitrary and unworkable distinctions between unlawful entrants. Allowing unlawful entrants a chance at bond would provide them with a potential benefit that lawful applicants did not receive. Specifically, that rule would force many lawful applicants to wait outside the country while their immigration proceedings are pending, while allowing unlawful entrants to remain in this country on bond while their immigration status is being settled. Congress reasonably determined that affording the unlawful entrants this benefit would create an incentive for aliens to enter unlawfully and take their chance at a bond hearing, rather than formally applying.

The plain reading of the INA, applying it both at the border and inside the country, also fairly applies the mandatory-detention scheme to all unlawful entrants, regardless of when and where they are caught. Indeed, treating those caught at the border differently than those caught inside the country

would create an arbitrary distinction. An unlawful entrant's ability to successfully sneak across the border without encountering border patrol should not be rewarded with a chance at bond. Nor would it make sense for this country's immigration laws to provide a chance at bond to an unlawful entrant who successfully hides in this country for years, as opposed to one caught near-in-time to unlawful entry. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission." *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). Congress reasonably drew a clean line: never-admitted aliens are § 1225 detainees (mandatory detention); admitted-but-removable aliens are § 1226 detainees (subject to a bond hearing).

B. Lepe's Arguments to the Contrary Are Unpersuasive.

1. Lepe overreads the heading of Section 1225.

Titles and headings "are but tools available for the resolution of a doubt," they "cannot limit the plain meaning of the text." *Brotherhood of Railroad Trainmen v. Baltimore & Ohio Railroad Co.*, 331 U.S. 519, 529 (1947). And the text of § 1225(a)(1) squarely covers an "alien present in the United States who has not been admitted." That provision deems such aliens to be "applicants for admission" and subjects them to § 1225(b)'s mandatory detention. Nothing in the statutory text confines § 1225 to border inspections or expedited removal. *See e.g. Matter of Yajure Hurtado*, 29 I&N Dec. at 228.

Indeed, the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018), applied § 1225(b) to never-admitted aliens without suggesting its reach was limited to "arriving" aliens or expedited removal. Lepe's reading would nullify § 1225(a)(1)'s express deeming clause and carve out a class Congress intended to include: aliens unlawfully present in the interior who were never admitted.

2. Lepe reads an at-the-border requirement into Supreme Court precedent that does not exist.

Lepe asks the Court to read § 1225 narrowly based on language in the Supreme Court's *Jennings* case. But *Jennings's* descriptive language about the process generally beginning at the country's "borders and ports of entry" supplies a policy rationale, not a limiting rule. *Jennings* upheld § 1225(b) as a mandatory-detention scheme for applicants for admission; it did not hold that Congress intended § 1225 to be confined only to literal border-gate encounters. *Jennings* does not require arbitrary and absurd results (e.g., one foot inside the port = no bond; miles inland = bond) that Congress plainly did

not intend. The proper reading gives effect to the operative deeming clause and to Congress's choice to distinguish "admission" status (§ 1225) from post-admission removability (§ 1226).

3. Lepe reads an at-the-border requirement into § 1225 that does not exist.

Lepe contends that some phrases in § 1225(b)(2)(A)—"examining immigration officer," a "determination" that an alien "seeking admission" is "not clearly and beyond a doubt entitled to be admitted"—must be read as jurisdictional prerequisites that confine § 1225 to literal border inspections. But the reasonableness of this constricted reading collapses when confronted with the statute's operative text. Congress did not say "aliens at the border"; it said that "an alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. §1225(a)(1). That deeming clause is the statute's engine: it defines the class to which §1225's detention rules apply. The procedural phrases in §1225(b)(2)(A) describe how expedited removal normally operates at ports of entry. They are part of the parliamentary mechanism for implementing § 1225 in its typical context. But they do not nullify the statutory deeming clause or convert every element of §1225(b) into a geographic limitation. Indeed, the deeming clause, read in context, supplies the limitation Lepe seeks—it targets admission status, not geography. The canon that words be read in a non-hypertechnical manner and with an eye toward context (*see Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989)) helps the Government here: the contextual place of §1225(a)(1) within the INA shows Congress intended to treat never-admitted persons as "applicants for admission" for purposes of the chapter wherever they are found.

Nor does giving effect to every word, as Scalia & Garner urge, require Lepe's cramped reading. Read properly, the "examining officer" and "not clearly and beyond a doubt" language specify the *process* by which an officer commonly places someone into expedited removal; they do not purport to redefine who counts as an "applicant for admission." When an alien was never admitted, DHS may make the requisite admissibility determination by whatever administrative means are appropriate (file review, interview, or other officer determination) and thereby invoke §1225(b). Relying on the subsection's procedural wording to cabin § 1225 would improperly import technical prerequisites that are designed for one common setting into all settings. Statutory provisions that describe a normal procedure do not necessarily create exclusive jurisdictional gates. Thus, context and the INA's overall

scheme demonstrate that admission *status* (not location, timing of apprehension, or the paperwork used) determines which detention statute applies.

4. Congress's addition of § 1226(c)(1)(E) does not override the categorical command of § 1225(a)(1).

The 2025 Laken Riley Act amendment did not silently gut § 1225. Instead, it supplemented § 1226 by imposing additional mandatory-detention requirements for a subset of cases. The statutes work in parallel: § 1225 continues to mandate detention of never-admitted aliens as applicants for admission, while § 1226(c)(1)(E) expands mandatory detention in criminal cases for those placed in § 1226 custody. Section 1226(c)(1)(E) applies when DHS has already chosen to place a noncitizen in § 1226 proceedings (i.e., treating the alien as detained under § 1226 rather than § 1225). For that subset of cases, Congress added further mandatory-detention rules tied to criminal history. In other words: Congress created belt-and-suspenders authority. The government retains its § 1225 detention power for never-admitted aliens, but if for any reason an alien is in § 1226 proceedings, the Laken Riley Act ensures mandatory detention applies when they also have disqualifying criminal histories. The Supreme Court has repeatedly said that statutory overlap is not the same thing as superfluity. *United States v. Atl. Research Corp.*, 551 U.S. 128, 137 (2007) (affirming plain reading of a statute despite its providing "similar and somewhat overlapping" effect with another provision of the same statute). Far from being superfluous, the two provisions operate together to broaden DHS's detention authority and foreclose loopholes. Indeed, courts presume Congress legislates against the backdrop of existing law, not by implied repeal. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018).

Lepe points to nothing in the text or legislative history of the Act that suggests Congress meant to strip DHS of its § 1225(b) detention authority. To the contrary, Congress's goal was to *expand mandatory detention* by capturing more criminal aliens, not to *reduce* detention by carving away § 1225. Reading the amendment as impliedly repealing § 1225 would invert Congress's purpose. Courts must give full effect to both provisions. And the correct reading gives meaning to both statutes:

- § 1225(b): never-admitted aliens remain subject to mandatory detention as applicants for admission
- § 1226(c)(1)(E): Congress ensured that, in the event such aliens are in § 1226 custody,

criminal unlawful entrants cannot be released on bond.

5. The Use of a Warrant Form Does Not Transform Lepe's Detention Into § 1226 Custody.

Lepe argues that because ICE used a Form I-200 "Warrant for Arrest of Alien," his detention must fall under § 1226(a), which references warrants, rather than under § 1225(b). That argument fails too. Administrative forms cannot override Congress's mandatory-detention statutory framework. Thus, while ICE may document arrests with a warrant form, that paperwork does not change the statutory basis for detention. Being arrested pursuant to a warrant and placed into removal proceedings does not constitute an admission. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). Nothing in § 1225(b) prohibits ICE from using warrants to effectuate arrests of applicants for admission encountered in the interior. And similarly, "the mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for an alien who falls under . . . 8 U.S.C. § 1225(b)(2)(A)." *Matter of Yajure Hurtado*, 29 I&N Dec. at 216.

Indeed, the "warrant" language in § 1226(a) is not exclusive. Section 1226(a) authorizes detention on "a warrant issued by the Attorney General," but that clause does not mean detention pursuant to a warrant can occur only under § 1226. Statutes often describe procedures for one context without foreclosing their use in another. Indeed, *Jennings* itself described detention under §§ 1225(b)(1) and (b)(2) as mandatory, while also recognizing that § 1226(a) references warrants. 583 U.S. at 302. The Court did not suggest that the existence of a warrant categorically proves § 1226 detention. To the contrary, it confirmed that detention under § 1225(b) remains mandatory for applicants for admission regardless of process. *Id.* at 842–47.

Lepe cites *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025), for the proposition that the use of a warrant "unequivocally" establishes § 1226 detention. Of course, that out-of-circuit district decision does not bind this court. More importantly, *Lopez Benitez* involved an illegal alien who was facing a different procedural posture. He was initially encountered at the border in 2023 and released into this country on his own recognizance under 8 U.S.C. § 1226. In other words, the government had placed him into 8 U.S.C. § 1226 long before it sought to detain him under § 1225. (The government had previously misinterpreted Section 1226(a) to be an available detention authority for

aliens who entered the country illegally). Unlike the illegal alien in *Lopez Benitez*, Lepe has never been subject to 8 U.S.C. § 1226. This differentiates his case from those non-binding district court cases that Lepe cites. *See* Doc. 2 at 23–24. Indeed, he has highlighted no case—let alone any binding on this Court—that requires a § 1226 bond hearing be given to a never contacted unlawful entrant.

6. The record contains evidence that Lepe is an applicant for admission.

Lepe argues that because the immigration judge ruled that the Form I-213 was inadmissible, there was no evidence in the record that Lepe was an "alien" or a person who entered without inspection, which makes it "all the more inappropriate to subject [him] to 1225(b)(2)(A)'s mandatory detention provision." (Doc. 2 at 22). Whatever evidence may have been allegedly lacking at the time that Lepe applied for a bond hearing, that is no longer the case. *See* Government's Exhibit 1 at pars. 5-7 ("Petitioner is a native and citizen of Mexico who entered the United States at an unknown place at an unknown time. Petitioner does not have any pending or approved immigration petitions filed with DHS. There is no evidence of Petitioner having a lawful entry into the United States."). Thus, on the current record, Lepe is unlikely to prevail on an argument that he is not an applicant under 8 U.S.C. § 1225(a).

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

The Supreme Court has never used the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), in addressing due process claims raised by aliens 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 similar 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.

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 aliens subject to expedited removal like Lepe, who were not admitted or paroled into the country lack any liberty interest in avoiding removal or to certain additional procedures. 8 U.S.C. § 1225(b). For these aliens, "[w]hatever the procedure authorized by Congress is, it 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, aliens 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 aliens—including Lepe—have "only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140. And so Lepe is entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.

The government acknowledges that courts have 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" Lepe. *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).

Lepe's claimed harm cannot outweigh this public interest in the application of the law, particularly since courts "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). Recognizing the availability of a preliminary injunction under these circumstances would permit any alien 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 aliens 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. CONCLUSION

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

Dated: September 16, 2025

ERIC GRANT
United States Attorney

By: /s/ JUSTIN J. GILIO
JUSTIN J. GILIO
Assistant United States Attorney