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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Hector Lopez-Melo,

12
13 Petitioner,

14 v.

15 Pamela Bondi, et al.,

16 Respondents.

No. 25-CV-03394-PHX-DJH (JZB)

**RESPONSE IN OPPOSITION TO
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION
(Doc. 2)**

17
18 **I. INTRODUCTION.**

19 Respondents Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu, Field Office
20 Director, U.S. Immigration and Customs Enforcement (“ICE”), U.S. Department of Homeland
21 Security (“DHS”); Todd M. Lyons, Acting Director of ICE; Kristi Noem, Secretary of DHS;
22 and Pam Bondi, Attorney General of the United States, (“Respondents”), by and through
23 undersigned counsel, hereby respond in opposition to Petitioner’s Motion for Temporary
24 Restraining Order and Preliminary Injunction (Doc. 2).

25 The plain language of the Immigration and Nationality Act (INA) mandates that
26 Petitioner—who is present in the United States without being admitted—is correctly
27 considered an “applicant for admission” and therefore subject to detention under 8 U.S.C. §
28 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“Read most naturally, §§

1 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain
2 proceedings have concluded.”) The best reading of the statutes is that Congress ensured that
3 all aliens would be inspected by immigration authorities, by treating aliens, who are present in
4 the United States without having been inspected and admitted, as applicants for admission.
5 Aliens, like Petitioner, who are present without having been inspected and admitted have the
6 benefit of full removal proceedings and are not subject to expedited removal. But they *are*
7 subject to detention during their removal proceedings. Because Petitioner entered without
8 inspection or admission, he is subject to mandatory detention under the plain language of the
9 statute and his habeas petition should be denied.

10 II. LEGAL BACKGROUND.

11 A. Applicants for Admission.

12 “The phrase ‘applicant for admission’ is a term of art denoting a particular legal status.”
13 *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

14 (1) Aliens treated as applicants for admission.— An alien present in the United
15 States who has not been admitted or who arrives in the United States (whether or
16 not at a designated port of arrival ...) shall be deemed for the purposes of this Act
17 an applicant for admission.

18 8 U.S.C. § 1225(a)(1).¹ Section 1225(a)(1) was added to the INA as part of the Illegal
19 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-
20 208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an entry
21 into the United States and one who has never entered runs throughout immigration law.”
22 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

23 Before IIRIRA, “immigration law provided for two types of removal proceedings:
24 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999)
25 (en banc). A deportation hearing was a proceeding against an alien already physically present
26 in the United States, whereas an exclusion hearing was against an alien outside of the United

27
28 ¹ Admission is the “lawful entry of an alien into the United States after inspection
and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13).

1 States seeking admission. *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether
2 an applicant was eligible for “admission” was determined only in exclusion proceedings, and
3 exclusion proceedings were limited to “entering” aliens— those aliens “coming ... into the
4 United States, from a foreign port or place or from an outlying possession.” *Plasencia*, 459
5 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]on-citizens who had entered
6 without inspection could take advantage of greater procedural and substantive rights afforded
7 in deportation proceedings, while non-citizens who presented themselves at a port of entry for
8 inspection were subjected to more summary exclusion proceedings.” *Hing Sum v. Holder*, 602
9 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to IIRIRA, aliens
10 who attempted to lawfully enter the United States were in a worse position than aliens who
11 crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-
12 469, pt. 1, at 225-229 (1996). IIRIRA “replaced deportation and exclusion proceedings with a
13 general removal proceeding.” *Hing Sum*, 602 F.3d at 1100.

14 IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants who have not been
15 lawfully admitted, regardless of their physical presence in the country, are placed on equal
16 footing in removal proceedings under the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep.
17 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced “certain aspects of the current
18 ‘entry doctrine,’” under which illegal aliens who entered the United States without inspection
19 gained equities and privileges in immigration proceedings unavailable to aliens who presented
20 themselves for inspection at a port of entry). The provision “places some physically-but not-
21 lawfully present noncitizens into a fictive legal status for purposes of removal proceedings.”
22 *Torres*, 976 F.3d at 928.

23 **B. Expedited Removal under 8 U.S.C. § 1225.**

24 IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat. 3009,
25 3009-546 (1996). Removal proceedings under § 1225 are known as “expedited removal
26 proceedings.” *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109– 113 (2020)
27 (citing provisions). Only two categories of aliens are eligible for expedited removal, rather
28 than full removal proceedings, (1) “arriving aliens” and (2) aliens who “ha[ve] not been

1 admitted or paroled into the United States” and have not been “physically present in the United
2 States” for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). “Arriving aliens” are defined by
3 regulation as “an applicant for admission coming or attempting to come into the United States
4 at a port-of-entry ...” 8 C.F.R. § 1.2.

5 Expedited removal proceedings are conducted by an immigration officer, not an
6 Immigration Judge (IJ). The immigration officer asks the applicant for admission questions to
7 determine (a) “identity, alienage, and inadmissibility,” and (b) whether the alien intends to
8 apply for asylum. 8 C.F.R. § 235.3(b)(2)(i), (b)(4). Aliens are not entitled to counsel, and no
9 recording or transcript is made. *Id.* § 235.3(b)(2)(i). If the alien is inadmissible and does not
10 intend to apply for asylum, the immigration officer, after supervisory review, issues a Notice
11 and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i).

12 The alien has no right to appeal to an IJ, the Board of Immigration Appeals (BIA) or any
13 other court. *Id.* § 235.3(b)(2)(ii); 8 U.S.C. § 1252(a)(2)(A)(i). Unlike section 240 proceedings,
14 which often take place over the course of several months, the expedited removal process is
15 “conducted on a very compressed schedule and can result in deportation in hours or days.”
16 *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4
17 (D.D.C. Aug. 1, 2025).

18 **C. Removal Proceedings under 8 U.S.C. § 1229(a).**

19 Removal proceedings under § 1229a are commonly referred to as “full removal
20 proceedings” or “240 removal proceedings” due to the statutory section of the INA in which
21 they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an
22 employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a
23 proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C. § 1158
24 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C.
25 § 1255 (adjustment of status). These are adversarial proceedings in which the alien has the
26 right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. §
27 1229a(b)(4). Either party may appeal the IJ decision to the BIA. 8 U.S.C. § 1229a(b)(4)(C);
28

1 *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the alien may also seek
2 judicial review at a U.S. court of appeals through a petition for review. 8 U.S.C. § 1252.

3 **D. Detention under the INA.**

4 The INA authorizes civil detention of aliens during removal proceedings and “[d]etention
5 is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538
6 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). “Where an alien falls within this
7 statutory scheme can affect whether his detention is mandatory or discretionary, as well as the
8 kind of review process available to him if he wishes to contest the necessity of his detention.”
9 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

10 **i. Detention under Section 1225.**

11 The INA mandates the detention of applicants for admission such as Petitioner. 8 U.S.C. §
12 1225(b)(1) and (2); *see also Jennings*, 583 U.S. at 287 (Applicants for admission “fall into one
13 of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”). As
14 explained above, arriving aliens and aliens present less than two years are subject to expedited
15 removal. 8 U.S.C. § 1225(b)(1). If an alien “indicates an intention to apply for asylum,” the
16 alien proceeds through the credible fear process and is subject to mandatory detention. 8 U.S.C.
17 § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(B)(1)(B)(iii)(IV).

18 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at
19 287. The Supreme Court recognized that 1225(b)(2) “applies to all applicants for admission
20 not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for
21 admission” shall be detained for a removal proceeding “if the examining immigration officer
22 determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
23 admitted.” 8 U.S.C. § 1225(b)(2)(A). While section 1225 does not provide for aliens to be
24 released on bond, DHS has the sole discretionary to release any applicant for admission on a
25 “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. §
26 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

1 **ii. Detention under Section 1226.**

2 Section 1226 provides that “an alien may be arrested and detained pending a decision on
3 whether the alien is to be removed.” 8 U.S.C. § 1226(a). Under § 1226(a), the government may
4 detain an alien during his removal proceedings, release him on bond, or release him on
5 conditional parole. By regulation, immigration officers can release an alien if the alien
6 demonstrates that he “would not pose a danger to property or persons” and “is likely to appear
7 for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request custody
8 redetermination (i.e., a bond hearing) by an IJ at any time before a final order in this country
9 but an alien that “has not been admitted,” is treated as “an applicant for admission.” 8 U.S.C.
10 § 1225(a)(1). *Jennings*, 583 U.S. at 286–87.

11 **III. FACTUAL AND PROCEDURAL BACKGROUND.**

12 Petitioner Hector Lopez-Melo was first encountered by United States Border Patrol
13 (USBP) on January 23, 2012, after having unlawfully entered the United States without
14 admission or inspection by an immigration officer. Exhibit A, Declaration of Deportation
15 Officer Ema Peru, ¶ 3. He was apprehended and detained by USBP and on January 26, 2012,
16 he was issued a Notice to Appear (NTA) in removal proceedings, charging him with
17 removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA),
18 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶¶ 3-4. Petitioner remained in civil immigration detention
19 until, on February 15, 2012, an IJ granted Petitioner bond in the amount of \$3,000. *Id.* ¶ 5.
20 Petitioner posted the \$3,000 bond and was released on the following day, February 6, 2012.
21 *Id.* ¶ 6. On May 2, 2013, Petitioner appeared before the IJ, and through counsel, admitted the
22 charge of removability. *Id.* ¶ 7. On September 6, 2013, Petitioner requested that the IJ cancel
23 his removal order under INA § 240(A)(b), 8 U.S.C. § 1229b(a)-(b). *Id.* ¶ 8.

24 On December 15, 2013, the IJ administratively closed Petitioner’s removal proceedings.
25 Exhibit A ¶ 9. Administrative closure in immigration proceedings temporarily removes the
26 proceedings from the immigration court’s active docket. It is like a pause in immigration
27 proceedings and can be requested by either party, the noncitizen or the government. Similarly,
28 once proceedings in immigration court have been administratively closed, either party can

1 request reopening by filing a motion to re-calendar the proceedings, effectively putting the
2 case back on the immigration court's active docket. Here, both Parties agreed to administrative
3 closure and waived appeal of the IJ's decision administratively closing Petitioner's immigration
4 proceedings. *Id.*

5 On September 19, 2019, the government, United States Immigration and Customs
6 Enforcement's Office of the Principal Legal Advisor (ICE-OPLA), filed a motion to
7 re-calendar Petitioner's removal proceedings in immigration court. Exhibit A ¶ 10. On March
8 4, 2020, the IJ granted ICE-OPLA's motion to re-calendar. *Id.* ¶ 11. On November 16, 2021,
9 before the IJ, both parties filed a joint motion to dismiss Petitioner's removal proceedings. *Id.*
10 ¶ 12. The following day, on November 17, 2021, the IJ dismissed Petitioner's removal
11 proceedings. *Id.* ¶ 13.

12 On June 4, 2025, ICE Homeland and Security Investigations (HSI) apprehended Petitioner.
13 Exhibit A ¶ 14. ICE-HSI charged Petitioner with removability under the same provisions of
14 the INA they originally did, that is, INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an
15 alien having entered without having been admitted or paroled by an immigration officer. *Id.* ¶
16 15. On June 5, 2025, Petitioner was transferred to Eloy Detention Facility in Eloy, Arizona.
17 *Id.* ¶ 16. On July 15, 2025, ICE-OPLA filed a Form I-261 to include additional charges of
18 inadmissibility/deportability. *Id.* ¶ 17. In the Form I-261, ICE-OPLA added the additional
19 charge of removability under INA § 212(a)(7), 8 U.S.C. § 1182(a)(7), as an alien present in
20 the United States without a valid entry document. *Id.* At a hearing before the IJ, on July 15,
21 2025, Petitioner, through counsel, admitted the allegations in the NTA and conceded both
22 charges of removability. *Id.* ¶ 18. Petitioner also indicated his intent to seek relief from
23 removal. *Id.* Also at that hearing, Petitioner requested a custody redetermination hearing
24 (similar to a bond hearing) before the IJ. *Id.* ¶ 19. At the custody redetermination hearing on
25 July 23, 2025, the IJ denied Petitioner's request for a custody redetermination, finding that he
26 lacked jurisdiction to set a bond under INA § 235(b), 8 U.S.C. § 1225(b), which provides for
27 mandatory detention of inadmissible aliens who have not been admitted or paroled into the
28 United States, such as Petitioner. *Id.* ¶ 20.

1 On August 4, 2025, Petitioner, through counsel again requested a custody redetermination
2 hearing before the IJ. Exhibit A ¶ 21. At a hearing on August 8, 2025, the IJ denied the custody
3 redetermination request because Petitioner failed to show materially changed circumstances
4 since the last hearing. *Id.* On August 20, 2025, Petitioner, through counsel again requested a
5 custody redetermination before the IJ. *Id.* ¶ 22. On September 4, 2025, the IJ denied the custody
6 redetermination request because Petitioner once again failed to show a material change in
7 circumstances since the last hearing. *Id.* On September 22, 2025, Petitioner filed an application
8 for cancellation of removal under INA § 240(A)(b), 8 U.S.C. § 1229b(a)-(b). *Id.* ¶ 23.

9 **IV. LEGAL STANDARDS FOR TEMPORARY RESTRAINING ORDERS**
10 **AND PRELIMINARY INJUNCTIONS.**

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

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

26 Where the government is a party, courts merge the analysis of the final two *Winter* factors,
27 the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073,
28 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a

1 plaintiff can show that there are “‘serious questions going to the merits’ and the ‘balance of
2 hardships tips sharply towards’ [plaintiff], as long as the second and third *Winter* factors are
3 [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)
4 (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)).
5 “[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are
6 entitled to this ‘extraordinary remedy.’” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th
7 Cir. 2010). Petitioner’s burden is a “heavy” one. *Id.*

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

24 V. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

25 A. Petitioner cannot establish a likelihood of success on the merits.

26 i. Petitioner brings improper habeas claims.

27 An individual may seek habeas relief under 28 U.S.C. § 2241 if she is “in custody”
28 under federal authority “in violation of the Constitution or laws or treaties of the United

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

12 Notably, seeking judicial review under the Administrative Procedure Act (APA) is not
13 properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133,
14 1140 (9th Cir. 2000) (“For purposes of immigration law, at least, “judicial review” refers to
15 petitions for review of agency actions, which are governed by the Administrative Procedure
16 Act, while habeas corpus refers to habeas petitions brought directly in district court to
17 challenge illegal confinement.”). Here, Petitioner’s APA attack on the Department of
18 Homeland Security’s interpretation of the INA to include individuals apprehended in the
19 interior long after arrival as inadmissible aliens is beyond the scope of relief provided for in a
20 habeas petition particularly to the extent that it fails to directly challenge the legality or
21 duration of Petitioner’s confinement. *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025
22 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over
23 Petitioner’s § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality or
24 duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065). Petitioner is unlikely to
25 succeed on the merits of this claim because it does not arise under § 2241.

26 **ii. Petitioner’s detention is lawful and mandatory.**

27 The plain language of the statute is clear: Petitioner is subject to detention under §
28 1225(b)(2) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N.

1 Dec. 216, 220 (BIA 2025). The INA specifies that “an alien present in the United States who
2 has not been admitted” “shall be deemed . . . an applicant for admission.” 8 U.S.C. § 1225(a).
3 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and
4 those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

5 As the Supreme Court indicated in *Jennings*, “[r]ead most naturally, §§ 1225(b)(1) and
6 (b)(2) thus mandate detention of applicants of admission until certain proceedings have
7 concluded.” *Jennings*, 583 U.S. at 297. Section 1225(b)(1) covers which applicants for
8 admission, including arriving aliens or aliens who have not been admitted and have been
9 present for less than two years, and directs that both of those classes of applicants for admission
10 are subject to expedited removal. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2) “serves as a
11 catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific
12 exceptions not relevant here).”² *Jennings*, 583 U.S. at 287. *Jennings* recognized that 1225(b)(2)
13 mandates detention. *Id.* at 297; *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (“[A]n
14 applicant for admission . . . whether or not at a port of entry and subsequently placed in removal
15 proceedings is detained under . . . 8 U.S.C. § 1225(b) and is ineligible for any subsequent
16 release on bond.”). Petitioner, present in the United States without being admitted, is an
17 applicant for admission and is therefore subject to mandatory detention without bond under 8
18 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216.

19 **iii. Petitioner’s detention does not violate Due Process.**

20 As Petitioner is subject to mandatory detention and lawfully detained under 8 U.S.C. §
21 1225(b)(2), DHS was not required to show changed circumstances to detain him, nor did due
22 process require a pre-deprivation hearing prior to his detention. Moreover, due process did not
23 prohibit ICE from re-detaining Petitioner. There is no statutory or regulatory requirement that
24 entitles Petitioner to a “pre-detention” hearing. For this Court to read one into the immigration
25 custody statute would be to create a process that the current statutory and regulatory scheme
26 do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). Thus,

27
28 ² The two exceptions are crewmen and stowaways. *See* 8 U.S.C. §§ 1225(a)(2),
1281, and 1282(b).

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

3 Petitioner's reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny is
4 misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation of
5 parole. *Id.* at 472–73. It did not arise in the context of immigration. Moreover, in *Morrissey*,
6 the Supreme Court reaffirmed that “due process is flexible and calls for such procedural
7 protections as the particular situation demands.” *Id.* at 481. In addition, the “[c]onsideration of
8 what procedures due process may require under any given set of circumstances must begin
9 with a determination of the precise nature of the government function.” *Id.* With respect to the
10 precise nature of the government function, the Supreme Court has long held that “Congress
11 regularly makes rules” regarding immigration that “would be unacceptable if applied to
12 citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under these circumstances, Petitioner
13 does not have a cognizable liberty interest in a pre-detention hearing where, by statutory
14 definition, he is subject to mandatory detention under section 1225(b).

15 “Procedural due process imposes constraints on governmental decisions which deprive
16 individuals of ‘liberty’ or ‘property’ interests within the meaning of the [Fifth Amendment]
17 Due Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental
18 requirement of [procedural] due process is the opportunity to be heard ‘at a meaningful time
19 and in a meaningful manner.’” *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552
20 (1965)). To determine whether procedural protections satisfy the Due Process Clause, courts
21 consider three factors: (1) “the private interest that will be affected by the official action”; (2)
22 “the risk of an erroneous deprivation of such interest through the procedures used, and the
23 probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
24 Government’s interest, including the function involved and the fiscal and administrative
25 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

26 The first factor favors Respondents. The Supreme Court has long recognized that due
27 process is limited when it comes to noncitizens seeking admission. Understanding the statutory
28 interpretation of 8 U.S.C. § 1225(b) and the rights it affords to aliens seeking admission, like

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

15 The Supreme Court’s holding on this topic was reinforced most recently in *Thuraissigiam*,
16 a habeas action involving a noncitizen, like Petitioner, seeking initial entry to the United States
17 and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment Due Process Clause
18 challenge. 591 U.S. 106–07. Therein, the Supreme Court “reiterated th[e] important rule,” *id.*
19 at 138, that a noncitizen seeking initial entry to the United States “has no entitlement” to any
20 legal rights, constitutional or otherwise, other than those expressly provided by statute. *Id.* at
21 107 (“Congress is entitled to set the conditions for an alien’s lawful entry into this country and
22 [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under
23 the Due Process Clause.”); *id.* (holding that a noncitizen seeking initial entry “has no
24 entitlement to procedural rights other than those afforded by statute”); *id.* at 140 (A noncitizen
25 seeking initial entry to the United States “has only those rights regarding admission that
26 Congress has provided by statute” and “the Due Process Clause provides nothing more[.]”).

27 The second *Mathews* factor also favors Respondents. Under the existing procedures,
28 aliens including Petitioner face little risk of erroneous deprivation. As explained above, there

1 is no risk of erroneous deprivation because there is no due process right to a bond hearing
2 under 8 U.S.C. §1225(b)(2). The third *Mathews* factor—the value of additional safeguards
3 relative to the fiscal and administrative burdens that they would impose—weighs heavily in
4 favor of Respondents. There is no administrative process in place for giving an inadmissible
5 alien subject to mandatory detention, a bond hearing before IJ, because the statute does not
6 provide for one. Respondents recognize that Petitioner is making an individualized challenge
7 here. However, the additional procedure he is requesting would have a significant impact on
8 the removal system. It would require ICE and the Executive Office of Immigration Review to
9 set up a novel administrative process for Petitioner who—for all intents and purposes—are
10 subject to mandatory detention without a bond hearing. Therefore, considering all of the
11 *Mathews* factors together, due process does not require a pre-detention hearing for
12 inadmissible aliens such as Petitioner subject to mandatory detention.

13 **B. Petitioner cannot establish irreparable harm.**

14 The Court should deny Petitioner’s Motion, because Petitioner “must demonstrate
15 immediate threatened injury as a prerequisite to preliminary injunctive relief.” *Caribbean*
16 *Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). The “possibility” of injury
17 is “too remote and speculative to constitute an irreparable injury meriting preliminary
18 injunctive relief.” *Id.* “Subjective apprehensions and unsupported predictions . . . are not
19 sufficient to satisfy a plaintiff’s burden of demonstrating an immediate threat of irreparable
20 harm.” *Id.* at 675-76. Petitioner’s contentions regarding being subject to unlawful detention do
21 not “rise to the level of “‘immediate threatened injury’ that is required to obtain a preliminary
22 injunction.” *Slaughter v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at
23 *4 (W.D. Wash. Aug. 10, 2006), *report and recommendation adopted*, 2008 WL 2434208
24 (W.D. Wash. June 16, 2008) (“Plaintiff’s argument of possible harm does not rise to the level
25 of ‘immediate threatened injury’”). Particularly, whereas here, Respondent’s have established
26 Petitioner’s detention is both lawful and mandatory.

27 Generalized complaints about conditions in civil immigration to detention do not meet
28 Petitioner’s burden to show that denying the temporary restraining order would make

1 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]
2 demonstrate that irreparable injury is likely in the absence of an injunction.”) (emphasis in
3 original). “[A] preliminary injunction will not be issued simply to prevent the possibility of
4 some remote future injury.” *Id.* “Speculative injury does not constitute irreparable injury.”
5 *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984).
6 Petitioner cannot establish irreparable harm if he is not released from detention and provided
7 a pre-detention hearing prior to the full adjudication of the merits of his habeas petition.
8 Neither one is constitutionally required. Instead, he is subject to mandatory detention for the
9 reasons established above.

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

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

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

26 While it is in the public interest to protect constitutional rights, if, as here, the Petitioner
27 has not shown a likelihood of success on the merits of that claim, that presumptive public
28 interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Here, the

1 public interest lies in the Executive’s ability to enforce U.S. immigration laws. *El Rescate*
2 *Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) (“Control
3 over immigration is a sovereign prerogative.”). Thus, Petitioner has not established that she
4 merits a temporary restraining order or that irreparable harm will result absent injunctive relief.

5 **D. Petitioner should be required to post bond in the event relief is granted.**

6 Finally, if the Court decides to grant relief, it should order a bond pursuant to Fed. R.
7 Civ. P. 65(c), which states “The court may issue a preliminary injunction or a temporary
8 restraining order only if the movant gives security in an amount that the court considers proper
9 to pay the costs and damages sustained by any party found to have been wrongfully enjoined
10 or restrained.” Fed. R. Civ. P. 65(c) (emphasis added).

11 **V. CONCLUSION.**

12 Every habeas corpus petition necessarily alleges the same basic ground for relief, *i.e.*, that
13 the petitioner is detained in violation of the Constitution, laws or treaties of the United States.
14 *See* 28 U.S.C. § 2241. Only when it is clear on the face of a petition that exceptional
15 circumstances require immediate review of a petitioner’s claims will consideration of his
16 petition be advanced at the expense of prior, pending petitions. Upon the current record, it is
17 not plain that the merits of Petitioner’s claims are so strong as to warrant expedited
18 adjudication and Petitioner is not likely to succeed on the merits of her claim. *See In re Roe*,
19 257 F.3d 1077, 1081 (9th Cir. 2001) (declining to resolve issue of whether a district court has
20 the authority to release a prisoner pending resolution of a habeas case, but holding that if such
21 authority does exist, it can only be exercised in an “extraordinary case involving special
22 circumstances”). Petitioner’s Motion for Temporary Restraining Order and Preliminary
23 Injunction should be denied.

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Respectfully submitted this 24th day of September 2025.

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s/Theo Nickerson

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