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

11 Maria Aide Vargas-Murillo,
 12
 13 Petitioner,
 14 v.
 15 Pamela Bondi, et al.,
 16 Respondents.

No. 2:25-cv-03396-MTL--CDB

**RESPONSE TO PETITIONER'S
 MOTION FOR TEMPORARY
 RESTRAINING ORDER AND
 PRELIMINARY INJUNCTION**

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

23 **I. STATUTORY BACKGROUND.**

24 "The distinction between an alien who has effected an entry into the United States
 25 and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533
 26 U.S. 678, 693 (2001). "The phrase 'applicant for admission' is a term of art denoting a
 27 particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc), *declined*
 28 *to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024).

1 Section 1225(a)(1) was added to the Immigration and Nationality Act (“INA”) as part
2 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”).
3 Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. IIRIRA added Section 1225(a)(1) to
4 “ensure[] that all immigrants who have not been lawfully admitted, regardless of their
5 physical presence in the country, are placed on equal footing in removal proceedings under
6 the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that
7 § 1225(a)(1) replaced “certain aspects of the current ‘entry doctrine,’” under which illegal
8 aliens who entered the United States without inspection gained equities and privileges in
9 immigration proceedings unavailable to aliens who presented themselves for inspection at a
10 port of entry). The provision “places some physically-but not-lawfully present noncitizens
11 into a fictive legal status for purposes of removal proceedings.” *Torres*, 976 F.3d at 928.

12 **A. Detention under the INA.**

13 The INA authorizes civil detention of aliens during removal proceedings and
14 “[d]etention is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S.
15 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). “Where an alien falls
16 within this statutory scheme can affect whether his detention is mandatory or discretionary,
17 as well as the kind of review process available to him if he wishes to contest the necessity of
18 his detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

19 **1. Detention under 8 U.S.C. § 1225.**

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

24 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
25 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
26 documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to

27

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

1 expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates
2 an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer
3 the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear
4 of persecution” is “detained for further consideration of the application for asylum.” *Id.* §
5 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear
6 of persecution, or is “found not to have such a fear,” he is detained until removed. *Id.* §§
7 1225(b)(1)(A)(i), (B)(iii)(IV).

8 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
9 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
10 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
11 removal proceeding “if the examining immigration officer determines that [the] alien seeking
12 admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C.
13 § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
14 in and seeking admission into the United States who are placed directly in full removal
15 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention
16 ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, DHS
17 has the sole discretionary authority to temporarily release on parole “any alien applying for
18 admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or
19 significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806
20 (2022).

21 2. Detention under 8 U.S.C. § 1226(a).

22 Section 1226 provides for arrest and detention “pending a decision on whether the
23 alien is to be removed.” 8 U.S.C. § 1226(a). Under section 1226(a), the government may
24 detain an alien during his removal proceedings, release him on bond, or release him on
25 conditional parole.² By regulation, immigration officers can release an alien if the alien

26 ² Being “conditionally paroled under the authority of § 1226(a)” is distinct from being
27 “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes*
28 *v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on
“conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment
of status under § 1255(a)).

1 demonstrates that he “would not pose a danger to property or persons” and “is likely to
2 appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request custody
3 redetermination (i.e., a bond hearing) by an IJ at any time before a final order but an alien
4 that “has not been admitted,” is treated as “an applicant for admission.” 8 U.S.C.
5 § 1225(a)(1); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19; *Jennings*, 583 U.S. at 286-87.

6 At a custody redetermination, the IJ may continue detention or release the alien on
7 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
8 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,
9 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
10 consider, an alien “who presents a danger to persons or property should not be released
11 during the pendency of removal proceedings.” *Id.* at 38.

12 **II. FACTUAL BACKGROUND.**

13 Petitioner was encountered by United States Border Patrol (“USBP”) on January 16,
14 2004, and issued a voluntary return to Mexico. Exhibit A, Declaration of Deportation Officer
15 Melissa Ramirez, ¶ 3. Petitioner was next encountered on June 4, 2025, when she was
16 arrested by agents from DHS’s Homeland Security Investigations (“HSI”). *Id.* ¶ 5. Petitioner
17 stated she entered the United States without admission or inspection on January 17, 2004.
18 *Id.* ¶ 4. On June 4, 2025, HSI issued Petitioner a Notice to Appear (“NTA”) in removal
19 proceedings, charging her with removability under section 212(a)(6)(A)(i) of the INA (8
20 U.S.C. § 1182(a)(6)(A)(i)). *Id.* ¶ 6. Petitioner requested a custody redetermination hearing
21 before an IJ on June 16, 2025, but withdrew her request shortly thereafter. *Id.* ¶¶ 7-8. On
22 June 24, 2025, Petitioner appeared before the IJ and admitted the charge of removability. *Id.*
23 ¶ 9. On July 11, 2025, Petitioner, through counsel, filed an application for cancellation of
24 removal under INA § 240(A)(b) (8 U.S.C. § 1229b(a)-(b)). *Id.* ¶ 10. On July 15, 2025,
25 Petitioner, through counsel, requested another custody redetermination hearing before the IJ.
26 *Id.* ¶ 11. On July 23, 2025, the IJ denied the request finding that they did not have jurisdiction
27 to set a bond pursuant to section 235(a) of the INA (8 U.S.C. § 1225(a)). *Id.* ¶ 12. Petitioner
28 did not appeal that decision to the BIA. *Id.*

1 On August 4, 2025, DHS filed Form I-261 to add an additional charge to the NTA for
2 being present in the United States without a valid immigrant document. *Id.* ¶ 13. On August
3 4, 2025, Petitioner, through counsel, requested another custody redetermination hearing,
4 which the IJ denied because Petitioner failed to show a material change in circumstances
5 since the prior bond hearing. *Id.* ¶¶ 14-15. Petitioner did not appeal that decision to the BIA.
6 *Id.* On August 22, 2025, the IJ scheduled Petitioner’s hearing to adjudicate her cancellation
7 of removal application for September 9, 2025, but her counsel moved to continue the hearing.
8 *Id.* ¶ 16. On August 25, 2025, Petitioner, through counsel, requested a custody
9 redetermination hearing, but withdrew the request shortly thereafter. *Id.* ¶¶ 17, 19. The IJ
10 granted the motion to continue the hearing to adjudicate Petitioner’s cancellation of removal
11 application and reset the hearing to September 29, 2025. *Id.* ¶ 18. Petitioner’s counsel moved
12 to continue the hearing due to a scheduling conflict. *Id.* ¶ 20. The hearing to adjudicate
13 Petitioner’s application for cancellation of removal is currently scheduled for October 17,
14 2025. *Id.* ¶¶ 21-22.

15 **III. ARGUMENT**

16 **A. The Court lacks jurisdiction under 8 U.S.C. § 1252.**

17 As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner’s
18 claims. Accordingly, Petitioner is unable to show a likelihood of success on the merits.

19 First, section 1252(g) specifically deprives courts of jurisdiction, including habeas
20 corpus jurisdiction, to review “any cause or claim by or on behalf of an alien arising from
21 the decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate*
22 *cases*, or [3] *execute removal orders* against any alien under this chapter.”³ 8 U.S.C.
23 § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as provided
24 in this section and notwithstanding any other provision of law (statutory or nonstatutory),
25 including section 2241 of title 28, United States Code, or any other habeas corpus provision,

26 _____
27 ³ Much of the Attorney General’s authority has been transferred to the Secretary of
28 Homeland Security and many references to the Attorney General are understood to refer to
the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

1 and sections 1361 and 1651 of such title.”⁴ Except as provided in § 1252, courts “cannot
2 entertain challenges to the enumerated executive branch decisions or actions.” *E.F.L. v.*
3 *Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021).

4 Section 1252(g) also bars district courts from hearing challenges to the *method* by
5 which the Secretary of Homeland Security chooses to commence removal proceedings,
6 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
7 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
8 discretionary decisions to commence removal” and also to review “ICE’s decision to take
9 [plaintiff] into custody and to detain him during removal proceedings”).

10 Petitioner’s claim stems from her detention during removal proceedings. *See, e.g.*,
11 Doc. 2 at 2. That detention arises from the decision to commence such proceedings against
12 her. *See, e.g., Valencia-Mejia v. United States*, No. CV 08-2943 CAS (PJWx), 2008 WL
13 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing
14 before the Immigration Judge arose from this decision to commence proceedings[.]”); *Wang*
15 *v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
16 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298-99 (3d Cir. 2020) (holding that 8
17 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute
18 removal order).

19 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
20 commences proceedings against an alien when the alien is issued a Notice to Appear before
21 an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008
22 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien
23 against whom proceedings are commenced and detain that individual until the conclusion of
24 those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from
25 the Attorney General’s decision to commence proceedings” and review of claims arising

26 ⁴ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In
27 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section
28 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361
and 1651 of such title” after “notwithstanding any other provision of law.” REAL ID Act of
2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947,
2 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial
3 review of DHS’s decision to detain Petitioner under § 1225(b) is barred by § 1252(g). The
4 Court should dismiss for lack of jurisdiction.

5 Second, under § 1252(b)(9), “judicial review of all questions of law . . . including
6 interpretation and application of statutory provisions . . . arising from any action taken . . . to
7 remove an alien from the United States” is only proper before the appropriate federal court
8 of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. §
9 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).
10 Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all
11 [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*;
12 *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20,
13 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579-80 (2020)).

14 Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for
15 judicial review of immigration proceedings:

16 Notwithstanding any other provision of law (statutory or nonstatutory), . . . a
17 petition for review filed with an appropriate court of appeals in accordance
18 with this section shall be the sole and exclusive means for judicial review of
19 an order of removal entered or issued under any provision of this chapter,
20 except as provided in subsection (e) [concerning aliens not admitted to the
21 United States].

22 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—
23 whether legal or factual—arising from *any* removal-related activity can be reviewed *only*
24 through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir.
25 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of
26 all claims, including policies-and-practices challenges . . . whenever they ‘arise from’
27 removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only
28 when the action is “unrelated to any removal action or proceeding” is it within the district
court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir.
2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple”

1 (internal quotation marks omitted)).

2 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.”
3 *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides
4 that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding
5 review of constitutional claims or questions of law raised upon a petition for review filed
6 with an appropriate court of appeals in accordance with this section.” *See also Ajlani v.*
7 *Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested
8 exclusively in the courts of appeals[.]”). The petition-for-review process before the court of
9 appeals ensures that aliens have a proper forum for claims arising from their immigration
10 proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031-32 (internal
11 quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL
12 ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting
13 judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or
14 questions of law.”).

15 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained
16 that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d
17 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both
18 direct and indirect challenges to removal orders, including decisions to detain for purposes
19 of removal or for proceedings. *See Jennings*, 583 U.S. at 294-95 (section 1252(b)(9) includes
20 challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here,
21 Petitioner challenges the government’s decision to detain her, which arises from DHS’s
22 decision to commence removal proceedings, and is thus an “action taken . . . to remove [her]
23 from the United States.”⁵ *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at
24 294-95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C.
25 § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial
26 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D.
27 Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention

28 ⁵ Petitioner also seeks an order restraining Respondents from “sending her to any place
outside of the United States,” Doc. 2 at 16, which the Court lacks the jurisdiction to do.

1 decision, which flows from the government’s decision to “commence proceedings”). As
2 such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why
3 Petitioner’s claims are unreviewable here.

4 While holding that it was unnecessary to comprehensively address the scope of
5 § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of
6 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293-94.
7 The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where
8 “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at
9 294-95. In this case, Petitioner *does* challenge the government’s decision to detain her in the
10 first place. *See, e.g.*, Doc. 2 at 3, 5-6. Though Petitioner may attempt to frame her challenge
11 as one relating to detention authority, rather than a challenge to DHS’s decision to detain
12 her, such creative framing does not evade the preclusive effect of § 1252(b)(9).

13 Indeed, the fact that Petitioner is challenging the basis upon which she is detained is
14 enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an
15 alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The
16 Court should dismiss the bond denial claim for lack of jurisdiction under § 1252(b)(9). If
17 anything, Petitioner must present her claim before the appropriate federal court of appeals
18 because she challenges the government’s decision or action to detain her, which must be
19 raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

20 **B. Even assuming jurisdiction, Petitioner fails to meet the high bar for
21 temporary and/or preliminary injunctive relief.**

22 **1. Standard governing preliminary injunctive relief.**

23 The substantive standard for issuing a temporary restraining order is identical to the
24 standard for issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush
25 & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Preliminary injunctions are intended to
26 preserve the relative positions of the parties until a trial on the merits can be held, “preventing
27 the irreparable loss of a right or judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*,
28 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are “not a preliminary
adjudication on the merits.” *Id.* “[A] preliminary injunction is an extraordinary and drastic

1 remedy, one that should not be granted unless the movant, *by a clear showing*, carries the
2 burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)
3 (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, pp.
4 129-130 (2d ed. 1995) (emphasis in original). To obtain a preliminary injunction, the moving
5 party must show “that he is likely to succeed on the merits, that he is likely to suffer
6 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
7 favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*,
8 555 U.S. 7, 20 (2008); *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052
9 (9th Cir. 2009). To show harm, a movant must allege that concrete, imminent harm is likely
10 with particularized facts. *Winter*, 555 U.S. at 22. An injunction is a matter of equitable
11 discretion and is “an extraordinary remedy that may only be awarded upon a clear showing
12 that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. Preliminary injunctions
13 are “never awarded as of right.” *Id.* at 24.

14 Where the government is a party, courts merge the analysis of the final two *Winter*
15 factors: the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747
16 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).
17 Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’ and
18 the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and third
19 *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856
20 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.
21 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they
22 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.*

23 **2. Petitioner cannot establish a likelihood of success on the merits.**

24 **a. Petitioner brings improper habeas claims.**

25 Count II of the habeas petition alleges that Respondents have violated the
26 Administrative Procedures Act (“APA”) by “revers[ing]” a “settled interpretation” that
27 U.S.C. § 1226(a) applied to aliens apprehended in the interior of the United States long after
28 their illegal entry into the country “without explanation or notice and comment”. Doc. 1 at

1 23. Seeking judicial review under the APA is not properly sought through a habeas petition.
2 *See Flores-Miramontes v. INS*, 212 F.3d 1133, 1140 (9th Cir. 2000) (“For purposes of
3 immigration law, at least, ‘judicial review’ refers to petitions for review of agency actions,
4 which are governed by the Administrative Procedure Act, while habeas corpus refers to
5 habeas petitions brought directly in district court to challenge illegal confinement.”). Here,
6 Petitioner’s APA attack on DHS’s interpretation of the INA to include individuals
7 apprehended in the interior long after arrival as inadmissible aliens is beyond the scope of
8 relief provided for in a habeas petition particularly to the extent that it fails to directly
9 challenge the legality or duration of Petitioner’s confinement. Petitioner is unlikely to
10 succeed on the merits of this claim because it does not arise under § 2241.

11 Second, even if Petitioner’s APA claim was cognizable in habeas, it would fail
12 because the asserted longstanding agency practice carries little, if any, weight under *Loper*
13 *Bright*. The weight given to agency interpretations “must always ‘depend upon their
14 thoroughness, the validity of their reasoning, the consistency with earlier and later
15 pronouncements, and all those factors which give them power to persuade.’” *Loper Bright*
16 *Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift & Co.*, 323
17 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis to support its
18 reasoning. *See* 62 Fed. Reg. at 10323; *see also Maldonado v. Bostock*, No. 2:23-cv-00760-
19 LK-BAT, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency
20 provided “no authority” to support its reading of the statute). To be sure, “when the best
21 reading of the statute is that it delegates discretionary authority to an agency,” the Court must
22 “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*, 603
23 U.S. at 395 (cleaned up). But “read most naturally, §§ 1225(b)(1) and (b)(2) mandate
24 detention for applicants for admission until certain proceedings have concluded.” *Jennings*,
25 583 U.S. at 297 (cleaned up). Petitioner thus cannot show a likelihood of success on the
26 merits on Count II.

26 **b. Under the plain text of § 1225, Petitioner must be detained**
27 **pending the outcome of her removal proceedings.**

28 The Court should reject Petitioner’s argument that § 1226(a) governs her detention

1 instead of § 1225. *See* Doc. 1 at 2. When there is “an irreconcilable conflict in two legal
2 provisions,” then “the specific governs over the general.” *Karczewski v. DCH Mission Valley*
3 *LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). Section 1226(a) “applies to aliens “arrested and
4 detained pending a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower.
5 *See* 8 U.S.C. § 1225. It applies only to “applicants for admission”; that is, as relevant here,
6 aliens present in the United States who have not be admitted. *See id.*; *see also Florida v.*
7 *United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioner falls within
8 that category, the specific detention authority under § 1225 governs over the general
9 authority found at § 1226(a).

10 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien present
11 in the United States who has not been admitted or who arrives in the United States.”
12 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and
13 those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the
14 provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision
15 that applies to all applicants for admission not covered by § 1225(b)(1) (with specific
16 exceptions not relevant here).” *Id.* And section 1225(b)(2) mandates detention. *Id.* at 297;
17 *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant for
18 admission who is arrested and detained without a warrant while arriving in the United States,
19 whether or not at a port of entry, and subsequently placed in removal proceedings is detained
20 under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent
21 release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section 1225(b)
22 therefore applies because Petitioner is present in the United States without being admitted.

23 The BIA has long recognized that “many people who are not *actually* requesting
24 permission to enter the United States in the ordinary sense are nevertheless deemed to be
25 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.
26 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*
27 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*,
28 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read
in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for

1 admission are both those individuals present without admission and those who arrive in the
2 United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission”
3 under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in
4 § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise
5 seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word
6 “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what
7 precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*,
8 571 U.S. 31, 45 (2013).

9 One of the most basic interpretative canons instructs that a “statute should be
10 construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S.
11 303, 314 (2009) (cleaned up). The court’s decision in *Florida v. United States* is instructive
12 here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for
13 admission throughout removal proceedings, rejecting the assertion that DHS has discretion
14 to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660
15 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention
16 under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal
17 border crossers would make little sense if DHS retained discretion to apply § 1225(a) and
18 release illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore*
19 *v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale
20 failure” by the federal government motivated the 1996 amendments to the INA. *Florida*, 660
21 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G.
22 2019), in which the Attorney General explained “section [1225] (under which detention is
23 mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled
24 only if they apply to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275. Petitioner,
25 present in the United States without being admitted, is an applicant for admission and is
26 therefore subject to mandatory detention without bond under 8 U.S.C. § 1225(b). *Matter of*
Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025).

1 **c. Congress did not intend to treat individuals who unlawfully**
2 **enter the country better than those who appear at a port of**
3 **entry.**

4 When the plain text of a statute is clear, “that meaning is controlling” and courts “need
5 not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848
6 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the
7 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th
8 Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were
9 attempting to lawfully enter the United States were in a worse position than persons who had
10 crossed the border unlawfully.” *Torres*, 976 F.3d at 928. The Court should reject the
11 Petitioner’s interpretation because it would put aliens who “crossed the border unlawfully”
12 in a better position than those “who present themselves for inspection at a port of entry.” *Id.*
13 Aliens who presented at port of entry would be subject to mandatory detention under § 1225,
14 but those who crossed illegally would be eligible for a bond under § 1226(a).

15 **d. Petitioner’s detention does not violate Due Process.**

16 As Petitioner is subject to mandatory detention and lawfully detained under 8 U.S.C.
17 § 1225(b)(2), DHS is not required to provide a “deprivation hearing before a neutral
18 adjudicator.” Doc. 2 at 10. Petitioner’s reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972)
19 and its progeny is misplaced. *Morrissey* arose from the due process requirement for a hearing
20 for revocation of parole. *Id.* at 472-73. It did not arise in the context of immigration.
21 Moreover, in *Morrissey*, the Supreme Court reaffirmed that “due process is flexible and calls
22 for such procedural protections as the particular situation demands.” *Id.* at 481. In addition,
23 the “[c]onsideration of what procedures due process may require under any given set of
24 circumstances must begin with a determination of the precise nature of the government
25 function.” *Id.* With respect to the precise nature of the government function, the Supreme
26 Court has long held that “Congress regularly makes rules” regarding immigration that
27 “would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).
28 Under these circumstances, Petitioner does not have a cognizable liberty interest in a bond
hearing given that—by statute—she is subject to mandatory detention under section 1225(b).

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

13 The first factor favors Respondents. The Supreme Court has long recognized that due
14 process is limited when it comes to noncitizens seeking admission. Understanding the
15 statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to aliens seeking
16 admission, like Petitioner, is critical because, for “more than a century” now, the Supreme
17 Court has held that the rights of such noncitizens are confined exclusively to those granted
18 by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. 651,
19 660 (1892) (holding that with regard to “foreigners who have never been naturalized, nor
20 acquired any domicile or residence within the United States, nor even been admitted into the
21 country pursuant to law,” “the decisions of executive or administrative officers, acting within
22 powers expressly conferred by Congress, are due process of law.”); *Plasencia*, 459 U.S. at
23 32 (“This Court has long held that an alien seeking initial admission to the United States
24 requests a privilege and has no constitutional rights regarding his application, for the power
25 to admit or exclude aliens is a sovereign prerogative”); *Shaugnessy v. United States ex rel.*
26 *Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens’ habeas petitions premised on their
27 claim that their detention without a bond hearing violated their Fifth Amendment Due
28 Process rights because “an alien on the threshold of initial entry stands on a different footing:

1 ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien denied
2 entry is concerned.’”).

3 The Supreme Court’s jurisprudence on this topic was reinforced most recently in
4 *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry
5 to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment
6 Due Process Clause challenge. 591 U.S. 106-07. The Supreme Court “reiterated th[e]
7 important rule,” *id.* at 138, that a noncitizen seeking initial entry to the United States “has no
8 entitlement” to any legal rights, constitutional or otherwise, other than those expressly
9 provided by statute. *Id.* at 107 (“Congress is entitled to set the conditions for an alien’s lawful
10 entry into this country and [] as a result [] an alien at the threshold of initial entry cannot
11 claim any greater rights under the Due Process Clause.”); *id.* (a noncitizen seeking initial
12 entry “has no entitlement to procedural rights other than those afforded by statute”); *id.* at
13 140 (a noncitizen seeking initial entry to the United States “has only those rights regarding
14 admission that Congress has provided by statute” and “the Due Process Clause provides
15 nothing more[.]”).

16 The second *Mathews* factor also favors Respondents. As explained above, there is no
17 risk of erroneous deprivation because there is no due process right to a bond hearing under
18 8 U.S.C. §1225(b)(2). The third *Mathews* factor—the value of additional safeguards relative
19 to the fiscal and administrative burdens that they would impose—weighs heavily in favor of
20 Respondents. There is no administrative process in place for giving an inadmissible alien
21 subject to mandatory detention a bond hearing before IJ because the statute does not provide
22 for one. Respondents recognize that Petitioner is making an individualized challenge here.
23 However, the additional procedure she is requesting would have a significant impact on the
24 removal system. It would require ICE and the Executive Office of Immigration Review to
25 set up a novel administrative process for Petitioner who is subject to mandatory detention
26 without a bond hearing. Therefore, considering all of the *Mathews* factors together, due
27 process does not require a pre-detention hearing for inadmissible aliens such as Petitioner
28 subject to mandatory detention.

1 **3. Petitioner cannot establish irreparable harm.**

2 The Court should deny Petitioner’s Motion for Temporary Restraining Order and
3 Preliminary Injunction, because Petitioner “must demonstrate immediate threatened injury
4 as a prerequisite to preliminary injunctive relief.” *Caribbean Marine Servs. Co. v. Baldridge*,
5 844 F.2d 668, 674 (9th Cir. 1988). The “possibility” of injury is “too remote and speculative
6 to constitute an irreparable injury meriting preliminary injunctive relief.” *Id.* “Subjective
7 apprehensions and unsupported predictions . . . are not sufficient to satisfy a plaintiff’s
8 burden of demonstrating an immediate threat of irreparable harm.” *Id.* at 675-76. Petitioner’s
9 contentions regarding being subject to unlawful detention do not “rise to the level of
10 “‘immediate threatened injury’ that is required to obtain a preliminary injunction.” *Slaughter*
11 *v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D. Wash. Aug.
12 10, 2006), *report and recommendation adopted*, 2008 WL 2434208 (W.D. Wash. June 16,
13 2008) (“Plaintiff’s argument of possible harm does not rise to the level of ‘immediate
14 threatened injury’”). This is particularly true given that Respondents have established that
15 Petitioner’s detention is both lawful and mandatory.

16 **4. The equities and public interest do not favor Petitioner.**

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

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

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

5 **5. Petitioner should be required to post bond if 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
9 proper to pay the costs and damages sustained by any party found to have been wrongfully
10 enjoined or restrained.” Fed. R. Civ. P. 65(c).

11 **IV. CONCLUSION.**

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

23 Respectfully submitted this 26th day of September, 2025.

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