ERIC GRANT
United States Attorney
JAMES R. CONOLLY
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2700
Facsimile: (916) 554-2900

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ARELY ALEJANDRA FERNANDEZ LOPEZ, Petitioner, v. MINGA WOFFORD, ET AL., [1] Respondents.	CASE NO. 1:25-CV-1226-KES-SKO OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Arely Alejandra Fernandez Lopez ("Fernandez") has filed a petition for writ of habeas corpus and a motion for a preliminary injunction and temporary restraining order. ECF Nos. 2, 6. This Court should deny the temporary restraining order as Fernandez's detention is mandatory, pursuant to 8 U.S.C. § 1225(b)(1). Fernandez entered the United States without permission in 2025, she is in expedited removal, she has no statutory entitlement to being present in the United States, and in this context, neither does she have any constitutional entitlement. Her argument falls short of demonstrating a likelihood of success on the merits or an entitlement to the requested release.

Fernandez' TRO motion also overlaps with her petition for writ of habeas corpus, and it fails to

[1] Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief is limited to name only the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). Here, Petitioner's custodian is the facility administrator at the Mesa Verde Ice Processing Center in Bakersfield, California.

demonstrate a likelihood of success on the merits or entitlement to her requested relief for largely the same reasons.[2] The hearing she seeks is of the type afforded to aliens who applied, entered, and resided in this country lawfully, before being later charged as removable. Fernandez is not such an applicant.

In accordance with the Court order, Respondents acknowledge that this Court has, in similar circumstances, issued this relief in other cases, including *Salazar v. Kaiser*, No. 1:25-cv-01017-JLT-SAB, 2025 WL 2456232 (E.D. Cal. Aug 26, 2025); *Castellon v. Kaiser*, No. 1:25-cv-00968-JLT-EPG, 2025 WL 2373425 (E.D. Cal. Aug. 15, 2025); *Maklad v. Murray*, NO. 1:25-CV-00946-JLT-SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025). Fernandez' claims largely align with those of earlier cases.

I. BACKGROUND

Fernandez is a native and citizen of Chile who entered the United States at or near Del Rio, Texas, on or about August 7, 2021. She was not then admitted or paroled after inspection by an Immigration Officer. See Declaration of Deportation Officer Daniel Martinez (Martinez Decl.), ¶ 5, Exh. 1.

On August 22, 2025, Fernandez was taken into ICE custody. *Id.* ¶ 6. On the same date, DHS personnel interviewed Fernandez and determined that she lacked a credible fear of persecution. *Id.* ¶ 7, Exh. 2. Fernandez requested review of the decision, and DHS issued a Notice of Referral to Immigration Judge. *Id.* On August 28, 2025, an Immigration Judge issued an order vacating the negative credible fear determination by DHS. *Id.* ¶ 8, Exh. 3.

On September 17, 2025, DHS initiated removal proceedings under section 240 of the Act by issuance of a Notice to Appear, charging Fernandez with inadmissibility under two independent charges: (1) INA § 212(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General); and (2) INA § 212(a)(7)(A)(i)(I) (alien who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section

[2] The Court has not yet set a briefing schedule for petition for writ of habeas corpus, so the Respondent will file its response to the petition according to that schedule, once issued. ECF No. 7.

211(a) of the Act). *Id.* ¶ 9, Exh. 1.

On September 22, 2025, Fernandez filed an application for immigration relief with the Immigration Court. *Id.* ¶ 10. There is currently no scheduled hearing date for this application. *Id.*

Fernandez is currently detained at Mesa Verde ICE Processing Center pursuant to section 235(b) of the Act. *Id.* ¶ 11.

Fernandez filed her motion for a TRO on September 19, 2025, after being detained for about four weeks. ECF No. 6. She claims that she has been unlawfully detained by ICE at the Mesa Verde Detention Center following an interview with ICE officials on August 22, 2025, during which ICE determined that her claim of fear of persecution if returned to her native Chile was not credible. ECF No. 6 at 7. She seeks an order from this Court finding that she was denied a hearing before a neutral decision maker before ICE detained her in August 2025 and ordering Respondents to release her immediately. She also asks the Court to enjoin the Respondents from transferring her to another detention center outside the Eastern District of California. ECF No. 6 at 16.[3]

Two days before filing the instant motion for a TRO, Fernandez filed a habeas petition, under 28 U.S.C. § 2241. ECF No. 2. In it, she claims that she has been unlawfully detained, without a hearing to determine if she poses a risk of flight or danger to the community sufficient to warrant detention, and that her conditions of confinement are unreasonable. ECF No. 2, at 3. In that petition, she seeks an order from this Court (1) issuing an immediate writ of habeas corpus; (2) determining that her detention is not justified because the government has not established by the proper standard that she is a risk for flight, or for posing a danger to the community; and (3) ordering her immediate release. *Id.* at 4.

On Saturday, September 20, 2025, the Court directed Respondents to file a response to Fernandez' motion for a TRO by September 29, 2025. ECF No. 10.

[3] Fernandez' motion also asks the Court to issue a writ of habeas corpus requiring her release. ECF No. 6 at 17. Relief under the habeas framework is properly addressed in the context of Fernandez' 28 U.S.C. § 2241 petition, not under the legal authority governing temporary restraining orders.

II. LEGAL BACKGROUND

A. The Standard for Temporary Restraining Orders.

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a "difficult task" in showing that they are entitled to such an "extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

The purpose of a preliminary injunction "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

B. Statutory Framework for Expedited Removal Proceedings

1. Applicants for Admission

The Immigration and Nationality Act ("INA") defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)." 8 U.S.C. § 1225(a)(1); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing INA § 235(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an

unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission"). Under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of noncitizens are inadmissible, and therefore ineligible to be admitted to the United States, including those "present in the United States without being admitted or paroled[.]" 8 U.S.C. § 1182(a)(6)(A)(i). However long one has been in this country, a noncitizen who is present in the United States but has not been admitted "is treated as 'an applicant for admission.'" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

2. Detention Under 8 U.S.C. § 1225

Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission, including those present without being admitted or paroled ("PWAP") may be removed from the United States by, *inter alia*, expedited removal under 8 U.S.C. § 1225(b)(1) or removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a. These noncitizens "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.")

a. Section 1225(b)(1)

Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). This provision authorizes immigration officers to order certain inadmissible noncitizens "removed from the United States without further hearing or review." Section 1225(b)(1) applies to "arriving aliens" and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen "described in" § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland

Security—that is, any noncitizen not "admitted or paroled into the United States" and "physically present" fewer than two years—who is inadmissible under § 1182(a)(7) at the time of "inspection." *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen for admission under § 1225(a)(3), that noncitizen lacks entry documents and so is subject to § 1182(a)(7). The Attorney General's or Secretary's authority to "designate" classes of noncitizens as subject to expedited removal is subject to his or her "sole and unreviewable discretion." 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass'n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under § 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to "the fullest extent authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables the U.S. Department of Homeland Security ("DHS") "to exercise the full scope of its statutory authority to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," who were not otherwise covered by prior designations. *Id.* at 8139–40.

Expedited removal proceedings under § 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum[4] or expresses a fear of persecution, torture, or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that situation, the noncitizen is given a non-adversarial interview with an asylum officer, who determines whether the noncitizen has a "credible fear of persecution" or torture. *Id.* §§ 1225(b)(1)(A)(ii), (b)(1)(B)(iii)(II), (b)(1)(B)(iv), (v); *see also* 8 C.F.R. § 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the

[4] Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.* § 1558(a)(2)(D).

credible fear process). The noncitizen may also pursue *de novo* review of that determination by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the credible fear process, a noncitizen may consult with an attorney or representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5). However, a noncitizen subject to these procedures "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

If the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under § 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under § 1225(b)(1) applies in narrower, statutorily defined circumstances—typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry—and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under § 1225(b)(1) or § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

b. Section 1225(b)(2)

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I. & N.

Dec. 66, 68 (BIA 2025) (explaining that proceedings under section 1229a are "full removal proceedings under section 240 of the INA"); *see also id.* ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

3. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[5] By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider).

Until recently, the government interpreted Section 1226(a) to be an available detention authority for noncitizens PWAP placed directly in full removal proceedings under Section 1229a. *See, e.g.*, *Ortega-Cervantes*, 501 F.3d at 1116. In view of legal developments, the government has determined that this interpretation was incorrect, and that Section 1225 is the sole applicable immigration detention

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

authority for *all* applicants for admission. *See Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded")

III. ANALYSIS AND ARGUMENT

A. Fernandez Cannot Meet the High Bar for Injunctive Relief

1. Under the Plain Text of 8 U.S.C. § 1225, Fernandez Must Be Detained Pending the Outcome of Her Removal Proceedings

Fernandez is a noncitizen subject to expedited removal, as she entered the country unlawfully on or about August 7, 2021, at which time she was not admitted or paroled after inspection by an immigration officer. *See* 8 U.S.C. § 1225(b)(1)(A)(i); Martinez Decl. ¶ 5. As noncitizen PWAPs, subject to the mandatory detention framework of Section 1225(b), petitioners, like Fernandez, are not entitled to custody redetermination hearings by immigration judges or pre-deprivation hearings before re-detention. *Jennings*, 583 U.S. at 297 ("neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings"). Fernandez argues that she should have been afforded another hearing when she was re-detained on August 22, 2025, but she was not entitled it. ECF No. 6 at 13, 15.

Just as Fernandez is not entitled to a custody redetermination by statute, her release is not otherwise authorized by statute. *Jennings*, 583 U.S. at 297 ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded."); *see also Matter of Q. Li*, 29 I & N. Dec. at 69 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). The fact that she was previously released when first apprehended in August 2021 does not change any of this. As discussed above, it was within ICE's discretion to detain or release her. The fact that ICE chose at that time to release her did not convey a right to release at all other times in her immigration proceedings, nor even a hearing on the matter.

Fernandez was re-detained while her full removal proceedings were still pending. Her detention is therefore pursuant to Section 1225(b)(2). Fernandez presently has an application for immigration

relief pending before the Immigration Court and has asserted that she has a credible fear of persecution if returned to Chile. If the Immigration Court denies that application, she will be subject to removal, as she has been for the past four years, during which time ICE has exercised its discretion not to detain her. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."). Even if the Immigration Court finds ultimately that she has a credible fear of persecution, detention until that time remains mandatory. 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.").

Finally, Fernandez claims that there has been no change in her status before ICE took her into detention on August 22, 2025. ECF 6 at 11. She alleges that she is entitled to a hearing on detention to determine whether anything has changed to warrant her being taken into ICE custody. *Id.* at 13. But no provision of the INA entitled her to release initially and the Act does not require proof of such a change. The government notes that the Interim Notice Authorizing Parole states that Fernandez' release was a matter entirely in the discretion of ICE and valid for one year. It makes clear that her parole "can be terminated at any time for any reason." ECF No. 6, Ex. 5.

2. **Fernandez overstates the liberty interest she argues has been harmed.**

Fernandez' contention that she maintains a protected liberty interest in her parole status is based on authority that does not apply to parole in the context of immigration proceedings and misreads the INA's carefully constructed detention statutes. Here, Fernandez' parole is not the same as the parole imposed by a court, as post-incarceration supervision, following conviction of a crime. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Parole in that context is a judicially imposed term, during which a parolee's liberty interests are curtailed to a lesser extent than full incarceration, allowing the parolee to live in the community while still under a sentence of judicial punishment. As used here, in contrast, parole is defined within the INA's statutory framework and ICE has the power to grant it (or revoke it).

Moreover, there are several conditions under which ICE may revoke parole that have nothing to

do with the petitioner's compliance with parole terms, as the Interim Notice Authorizing Parole that ICE issued to Fernandez makes clear. The clear language of that notice states that (1) Fernandez' parole authorization was valid for one year; (2) it would automatically terminate on her departure or removal from the United States, or at the end of the one-year period unless ICE provided her with an extension "at its discretion;" (3) ICE could terminate parole on notice, ahead of the automatic termination date; (4) parole was "entirely in the discretion of ICE and can be terminated at any time for any reason." ECF No. 6, Ex. 5. Moreover, the notice made clear that her limited parole was not valid for work authorization and was not "an admission in lawful status." In short, Fernandez' parole (as that term is employed under the INA) was left to the discretion of ICE, revocable at any time, and did not convey the expansive liberty interest Fernandez now argues under the common understanding of judicially imposed parole. Fernandez argues that there was an "implicit promise" to allow her to remain at liberty if she continued to comply with her parole terms but cites no authority for that proposition.

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

The Supreme Court has not used the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), in addressing due process claims raised by noncitizens 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 familiar 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 noncitizens subject to expedited removal, like Fernandez, 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)(1)(A)(iii)(II). As to such noncitizens, "[w]hatever the procedure authorized by Congress . . . 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, noncitizens 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 noncitizens—including Fernandez—have "only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140. Petitioners are entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.

Nevertheless, Respondent acknowledges that this Court has applied the *Mathews* factors in similar situations. This Court has 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" Fernandez. *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).

Fernandez' 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 noncitizen 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 noncitizens subject to expedited removal, including their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

/ / /

IV. CONCLUSION

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

Dated: September 29, 2025

ERIC GRANT
United States Attorney

By: /s/ JAMES R. CONOLLY
JAMES R. CONOLLY
Assistant United States Attorney