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

10 Silvia Elizabeth Colman-Randas,

11 Petitioner,

12 v.

13 John E. Cantu, Immigration and Customs
14 Enforcement Phoenix Field Office
15 Director, et al.,

16 Respondents.
17

No. CV-25-03594-PHX-MTL(ASB)


**RESPONSE TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER
(DOC. 2)**

18 **I. INTRODUCTION.**

19 Respondents, John Cantu, Arizona Field Office Director, U.S. Immigration and
20 Customs Enforcement ("ICE"), Todd Lyons, Acting Director of ICE, Kristi Noem,
21 Secretary of the Department of Homeland Security, and David R. Rivas, Warden, San Luis
22 Detention Center, by and through counsel, hereby respond to the Motion for Temporary
23 Restraining Order ("TRO"). Doc. 2. Petitioner is an "applicant for admission" who must
24 therefore be detained pending removal proceedings. The plain language of the Immigration
25 and Nationality Act ("INA") establishes that any noncitizen present in the United States
26 without being admitted is indeed an "applicant for admission" and therefore subject to
27 mandatory detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281,
28 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of

1 applicants of admission until certain proceedings have concluded.”). Accordingly, pursuant
2 to the INA, Petitioner is properly subject to mandatory detention during the pendency of
3 her removal proceedings, which are currently being reviewed by the Ninth Circuit of
4 Appeals. The Court should deny the Motion for TRO.

5 **II. FACTUAL AND PROCEDURAL BACKGROUND.**

6 Petitioner is a native and citizen of Guatemala and was born on 
7 See Exhibit A, Declaration of Deportation Officer Fernando Valenzuela ¶ 7. On December
8 29, 2018, Petitioner was apprehended by a Border Patrol agent after effecting an illegal
9 entry into the United States near San Ysidro, California on the same date. *Id.* ¶ 8. On
10 December 28, 2019, Petitioner was issued a Notice to Appear in removal proceedings
11 pursuant to section 240 of the INA. *Id.* ¶ 9. On December 31, 2018, Petitioner was issued
12 an order of release on recognize (Form I-220A) as part of ICE-ERO’s Alternatives to
13 Detention Program (ATD).¹ *Id.* ¶ 10.

14 On April 16, 2019, Petitioner was issued a superseding Notice to Appear in removal
15 proceedings pursuant to section 240 of the INA. Exhibit A ¶ 11. On May 2, 2019, Petitioner
16 had a master calendar hearing before an immigration judge (IJ). *Id.* ¶ 12. On June 6, 2019,
17 Petitioner filed a form I-589 application for asylum, withholding of removal and protection
18 under the Convention Against Torture (CAT) with the IJ. *Id.* ¶ 13. On July 19, 2019, the IJ
19 denied Petitioner’s application for asylum, withholding of removal and protection under
20 CAT and ordered that Petitioner be removed to Guatemala. *Id.* ¶ 14. On August 6, 2019,
21 Petitioner filed an appeal with the Board of Immigration Appeals (“BIA”). *Id.* ¶ 15. On
22 March 17, 2023, the BIA denied Petitioner’s appeal. *Id.* ¶ 12.

23 On April 17, 2023, Petitioner filed a petition for review of the BIA’s decision with the
24 Ninth Circuit Court of Appeals (Case No. 23-676). Exhibit A ¶ 13. On September 15, 2023,
25 the petition for review was dismissed because Petitioner failed to file an opening brief. *Id.*
26

27 ¹ Although Petitioner was released on an order of recognize, it is ICE’s position that
28 this was done in error and that Petitioner should have been subject to mandatory detention
as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A), for the reasons argued in
full below.

1 ¶ 14. On October 6, 2023, the mandate was issued by the Ninth Circuit. *Id.* ¶ 15. On May
2 15, 2025, Petitioner reported to ICE-ERO as part of the ATD program. *Id.* ¶ 16. At that
3 time, it was determined that Petitioner was subject to an administratively final order of
4 removal and that her petition for review had been dismissed by the Ninth Circuit on
5 September 15, 2023. *Id.* ¶ 21. Accordingly, Petitioner was detained on May 15, 2025,
6 pursuant to her administratively final removal order, in order for ICE-ERO to effectuate
7 removal. *Id.* ¶ 22.

8 On June 16, 2025, through new counsel, Petitioner filed a motion to recall the mandate
9 and re-instate her Ninth Circuit appeal. Exhibit A ¶ 23. On July 10, 2025, the Ninth Circuit
10 granted Petitioner's motion to recall the mandate and reinstated petitioner's appeal. *Id.* ¶
11 24. In its July 10, 2025, order reinstating Petitioner's appeal, the Ninth Circuit also ordered
12 a stay of Petitioner's removal pending her appeal before the Ninth Circuit until the mandate
13 issues. *Id.* ¶ 25. The execution of Petitioner's final removal order is currently stayed
14 pending the resolution of her petition for review before the Ninth Circuit. *Id.* ¶ 26.

15 Since entering ICE custody on May 15, 2025, Petitioner has been examined by medical
16 personnel employed by ICE Health Services Corps (IHSC) on several occasions. Exhibit
17 A ¶ 27. During visits with medical providers, Petitioner has variously complained of
18 musculoskeletal pain and limited range of motion, intermittent abdominal pain, athlete's
19 foot, toothache, and blurred vision. Petitioner has been administered prescription and over
20 the counter medications to address her pain and athlete's foot complaints. *Id.* On June 5,
21 2025, an X-ray of Petitioner's right knee was taken. *Id.* On September 1, 2025, an IHSC
22 provider referred Petitioner for an appointment with a dentist to address her dental
23 concerns. *Id.* On September 30, 2025, IHSC referred Petitioner to a radiology provider for
24 an MRI of her right knee and an ultrasound of her left upper abdomen. The Petitioner's
25 diagnostic imaging appointment is scheduled for October 9, 2025. *Id.* On October 1, 2025,
26 Petitioner was notified that eyeglasses with prescription lenses had been ordered for her
27 from a vendor and that it was anticipated that the glasses would be shipped to the facility
28 within two weeks. *Id.*

1 **III. LEGAL FRAMEWORK FOR TEMPORARY RESTRAINING ORDERS**
2 **AND PRELIMINARY INJUNCTIONS**

3 The substantive standard for issuing a temporary restraining order is identical to the
4 standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D.*
5 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable
6 discretion and is “an extraordinary remedy that may only be awarded upon a clear showing
7 that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
8 7, 22 (2008). Preliminary injunctions are “never awarded as of right.” *Id.* at 24.

9 Preliminary injunctions are intended to preserve the relative positions of the parties
10 until a trial on the merits can be held, “preventing the irreparable loss of a right or
11 judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.
12 1984). Preliminary injunctions are “not a preliminary adjudication on the merits.” *Id.* A
13 court should not grant a preliminary injunction unless the applicant shows: (1) a strong
14 likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable
15 injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4)
16 the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm,
17 a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.*
18 at 22.

19 Where the government is a party, courts merge the analysis of the final two *Winter*
20 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*,
21 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).
22 Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’
23 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and
24 third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d
25 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-
26 35 (9th Cir. 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in
27 proving that they are entitled to this ‘extraordinary remedy.’ *Earth Island Inst. v. Carlton*,
28 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s burden is a “heavy” one. *Id.*

1 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a
2 party from taking action and preserves the status quo pending a determination of the action
3 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
4 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party
5 to take action. . . . A mandatory injunction goes well beyond simply maintaining the status
6 quo pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory
7 injunction is “subject to a higher degree of scrutiny because such relief is particularly
8 disfavored under the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313,
9 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be
10 “extremely cautious” when issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740
11 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied “unless
12 extreme or very serious damage will result,” and even then, not in “doubtful cases.” *Marlyn*
13 *Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of*
14 *Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740
15 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts
16 and law clearly favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

17 **IV. PETITIONER CANNOT ESTABLISH A LIKELIHOOD OF SUCCESS**
18 **ON THE MERITS OF HER CLAIMS.**

19 Petitioner cannot establish a likelihood of success on the merits of her habeas petition
20 because she is subject to mandatory detention as an inadmissible alien under 8 U.S.C. §
21 1225(b)(2).²

22 **A. Applicants for Admission.**

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

25

26

27 ² Although the BIA has entered a final removal order, because the Ninth Circuit
28 Court of Appeals has issued a stay of removal pending the Court’s review of that final
order, the statutory removal period has not yet begun under 8 U.S.C. § 1231(a)(1)(B), and
therefore Petitioner’s detention does not yet fall under Section 1231. *Prieto-Romero v.*
Clark, 534 F.3d 1053, 1059 (9th Cir. 2008).

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

5 8 U.S.C. § 1225(a)(1).³ Section 1225(a)(1) was added to the INA as part of the Illegal
6 Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. No.
7 104-208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an
8 entry into the United States and one who has never entered runs throughout immigration
9 law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

10 Before IIRIRA, “immigration law provided for two types of removal proceedings:
11 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir.
12 1999) (en banc). A deportation hearing was a proceeding against a noncitizen already
13 physically present in the United States, whereas an exclusion hearing was against a
14 noncitizen outside of the United States seeking admission. *Id.* (quoting *Landon v.*
15 *Plasencia*, 459 U.S. 21, 25 (1982)). Whether an applicant was eligible for “admission” was
16 determined only in exclusion proceedings, and exclusion proceedings were limited to
17 “entering” noncitizens — those noncitizens “coming ... into the United States, from a
18 foreign port or place or from an outlying possession.” *Plasencia*, 459 U.S. at 24 n.3
19 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]on-citizens who had entered without
20 inspection could take advantage of greater procedural and substantive rights afforded in
21 deportation proceedings, while non-citizens who presented themselves at a port of entry
22 for inspection were subjected to more summary exclusion proceedings.” *Hing Sum v.*
23 *Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior
24 to IIRIRA, noncitizens who attempted to lawfully enter the United States were in a worse
25 position than noncitizens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at
26 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA “replaced
27 deportation and exclusion proceedings with a general removal proceeding.” *Hing Sum*, 602

28 ³ 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 F.3d at 1100.

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

11 **B. Expedited Removal Under 8 U.S.C. § 1225.**

12 IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat.
13 3009, 3009-546 (1996). Removal proceedings under § 1225 are known as “expedited
14 removal proceedings.” *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109–
15 113 (2020) (citing provisions). Only two categories of noncitizens are eligible for expedited
16 removal, rather than full removal proceedings, (1) “arriving aliens” and (2) noncitizens
17 who “ha[ve] not been admitted or paroled into the United States” and have not been
18 “physically present in the United States” for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).
19 “Arriving aliens” are defined by regulation as “an applicant for admission coming or
20 attempting to come into the United States at a port-of-entry ...” 8 C.F.R. § 1.2.

21 Expedited removal proceedings are conducted by an immigration officer, not an IJ. The
22 immigration officer asks the applicant for admission questions to determine (a) “identity,
23 alienage, and inadmissibility,” and (b) whether the noncitizen intends to apply for asylum.
24 8 C.F.R. § 235.3(b)(2)(i), (b)(4). Noncitizens are not entitled to counsel, and no recording
25 or transcript is made. *Id.* § 235.3(b)(2)(i). If the noncitizen is inadmissible and does not
26 intend to apply for asylum, the immigration officer, after supervisory review, issues a
27 Notice and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i). The noncitizen has no right
28 to appeal to an IJ, the BIA, or any other court. *Id.* § 235.3(b)(2)(ii); 8 U.S.C. §
1252(a)(2)(A)(i). Unlike section 240 proceedings, which often take place over the course

1 of several months, the expedited removal process is “conducted on a very compressed
2 schedule and can result in deportation in hours or days.” *Coal. for Humane Immigrant Rts.*
3 *v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4 (D.D.C. Aug. 1, 2025).

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

5 Removal proceedings under § 1229a are commonly referred to as “full removal
6 proceedings” or “240 removal proceedings” due to the statutory section of the INA in
7 which they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ,
8 an employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Noncitizens in
9 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C.
10 § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent
11 residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in
12 which the noncitizen has the right to hire counsel, examine and present evidence, and cross-
13 examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the
14 BIA. 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order
15 of removal, the noncitizen may also seek judicial review at a U.S. Court of Appeals through
16 a petition for review. 8 U.S.C. § 1252.

17 **D. Detention under the INA.**

18 The INA authorizes civil detention of noncitizens during removal proceedings and
19 “[d]etention is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S.
20 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). “Where an alien falls
21 within this statutory scheme can affect whether his detention is mandatory or discretionary,
22 as well as the kind of review process available to him if he wishes to contest the necessity
23 of his detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

24 **i. Detention under Section 1225.**

25 The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and
26 (2); *see also Jennings*, 583 U.S. at 287 (Applicants for admission “fall into one of two
27 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”). As
28 explained above, arriving noncitizens and noncitizens present less than two years are
subject to expedited removal. 8 U.S.C. § 1225(b)(1). If a noncitizen “indicates an intention

1 to apply for asylum,” the noncitizen proceeds through the credible fear process and is
2 subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. §
3 1225(B)(1)(B)(iii)(IV).

4 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S.
5 at 287. The Supreme Court recognized that 1225(b)(2) “applies to all applicants for
6 admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), a noncitizen “who is an
7 applicant for admission” shall be detained for a removal proceeding “if the examining
8 immigration officer determines that [the] alien seeking admission is not clearly and beyond
9 a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). While section 1225 does not
10 provide for noncitizens to be released on bond, DHS has the sole discretionary to release
11 any applicant for admission on a “case-by-case basis for urgent humanitarian reasons or
12 significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785,
13 806 (2022).

14 **ii. Detention under Section 1226.**

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

24 **E. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).**

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

1 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
2 determined to be inadmissible due to fraud, misrepresentation, or lack of valid document.”
3 *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited
4 removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an
5 intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer
6 the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible
7 fear of persecution” is “detained for further consideration of the application for asylum.”
8 *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express
9 a fear of persecution, or is “found not to have such a fear,” they are detained until removed
10 from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

11 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S.
12 at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under
13 § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal
14 proceeding “if the examining immigration officer determines that [the] alien seeking
15 admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
16 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
17 in and seeking admission into the United States who are placed directly in full removal
18 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
19 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).

20 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. §
21 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate
22 detention of applicants for admission until certain proceedings have concluded.” 583 U.S.
23 at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on
24 the length of detention” and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything
25 whatsoever about bond hearings.” *Id.* The Court added that the sole means of release for
26 noncitizens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United
27 States is temporary parole at the discretion of the Attorney General under 8 U.S.C. §
28 1182(d)(5). *Id.* at 300. The Court observed that because aliens held under § 1225(b) may
be paroled for “urgent humanitarian reasons or significant public benefit,” “[t]hat express

1 exception to detention implies that there are no other circumstances under which aliens
2 detained under 1225(b) may be released.” *Id.* (citations and internal quotation omitted)
3 (emphasis in the original). Courts thus may not validly draw additional procedural
4 limitations “out of thin air.” *Id.* at 312. The Supreme Court concluded: “In sum, §§
5 1225(b)(1) and (b)(2) mandate detention of [noncitizens] throughout the completion of
6 applicable proceedings.” *Id.* at 302.

7 Respondents maintain that because Petitioner is and always has been subject to
8 mandatory detention under section 1225(b)(2)(A), any issuance of an order of release on
9 recognizance was in error. In any event, the release order would have lapsed when she
10 became subject to a final order when the Ninth Circuit originally dismissed her petition for
11 review. Therefore, Respondents did not, nor where they required to, revoke the order of
12 release. Rather, Petitioner was taken into custody pursuant to a valid, final and executable
13 (at the time) removal order. However, when the Ninth Circuit reinstated the appeal and
14 issued a stay pending Petitioner’s appeal, Respondents determined she was an inadmissible
15 applicant for admission subject to mandatory detention under 1225(b)(2)(A) for the reasons
16 argued. For these reasons, Petitioner is unable to establish a likelihood of success on the
17 merits of her habeas petition.

18 **F. Petitioner brings improper habeas claims.**

19 An individual may seek habeas relief under 28 U.S.C. § 2241 if she is “in custody”
20 under federal authority “in violation of the Constitution or laws or treaties of the United
21 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge *only* the legality
22 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
23 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
24 *Thuraissigiam*, 591 U.S. at 117 (The writ of habeas corpus historically “provide[s] a means
25 of contesting the lawfulness of restraint and securing release.”). The Ninth Circuit squarely
26 addressed how to decide whether a claim sounds in habeas jurisdiction: “[O]ur review of
27 the history and purpose of habeas leads us to conclude the relevant question is whether,
28 based on the allegations in the petition, release is legally required irrespective of the relief
requested.” *Pinson*, 69 F.4th at 1072; *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th

1 Cir. 2016) (The key inquiry is whether success on the petitioner’s claim would “necessarily
2 lead to immediate or speedier release.”).

3 Notably, seeking judicial review under the Administrative Procedure Act (APA) is not
4 properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133,
5 1140 (9th Cir. 2000) (“For purposes of immigration law, at least, “judicial review” refers
6 to petitions for review of agency actions, which are governed by the Administrative
7 Procedure Act, while habeas corpus refers to habeas petitions brought directly in district
8 court to challenge illegal confinement.”). Here, Petitioner’s APA attack on any policy
9 regarding the expansion of expedited removals fall outside the scope of relief provided for
10 in a habeas petition particularly where it fails to challenge the legality or duration of
11 Petitioner’s confinement. *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL
12 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over
13 Petitioner’s § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality
14 or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065). Thus, Petitioner is
15 unlikely to succeed on the merits of her APA claims because they are not properly raised
16 under § 2241.

17 Finally, conditions of confinement claims, such as Petitioner’s claims to be
18 receiving inadequate healthcare are generally not cognizable in a habeas petition. A writ of
19 habeas corpus is the proper avenue for prisoners to challenge the fact or duration of their
20 confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (a writ of habeas corpus
21 is the sole available federal remedy when a prisoner challenges “the fact or duration of his
22 confinement”). However, challenges to conditions of confinement are generally brought
23 pursuant to a civil rights statute, such as § 1983 or *Bivens*. *See Nelson v. Campbell*, 541
24 U.S. 637, 643 (2004) (“[C]onstitutional claims that merely challenge the conditions of a
25 prisoner’s confinement, whether the inmate seeks monetary or injunctive relief, fall outside
26 of that core and may be brought pursuant to § 1983 in the first instance.”); *Muhammad v.*
27 *Close*, 540 U.S. 749, 750 (2004) (“Challenges to the validity of any confinement or to
28 particulars affecting its duration are the province of habeas corpus ...; requests for relief
turning on circumstances of confinement may be presented in a § 1983 action.”). “A civil

1 rights action ... is the proper method of challenging 'conditions of confinement.'" *Badea v.*
2 *Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser*, 411 U.S. at 498-99). Accordingly,
3 Petitioner's claims regarding inadequate access to healthcare are not cognizable within the
4 instant habeas petition. Nor are these supported by any factual basis where ICE can
5 establish that it is providing Petitioner with adequate healthcare. Exhibit A ¶ 27. For these
6 reasons too, Petitioner is unlikely to succeed on the merits of the claims in her petition, and
7 therefore her request for a TRO should be denied.

8 V. PETITIONER CANNOT ESTABLISH IRREPARABLE HARM.

9 Petitioner cannot show that denying the temporary restraining order would make
10 "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must]
11 demonstrate that irreparable injury is likely in the absence of an injunction.") (emphasis in
12 original). "[A] preliminary injunction will not be issued simply to prevent the possibility
13 of some remote future injury." *Id.* "Speculative injury does not constitute irreparable
14 injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th
15 Cir. 1984). Petitioner has not established she will suffer irreparable harm if she is not
16 released from detention where she is lawfully detained under 8 U.S.C. § 1225(b)(2) and
17 subject to mandatory detention.

18 VI. THE EQUITIES AND PUBLIC INTEREST DO NOT FAVOR 19 PETITIONER.

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

25 An adverse decision here would negatively impact the public interest by jeopardizing
26 "the orderly and efficient administration of this country's immigration laws." *See Sasso v.*
27 *Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v.*
28 *Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable

1 injury whenever an enactment of its people or their representatives is enjoined.”). The
2 public has a legitimate interest in the government’s enforcement of its laws. *See, e.g.,*
3 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he district court should
4 give due weight to the serious consideration of the public interest in this case that has
5 already been undertaken by the responsible state officials in Washington, who unanimously
6 passed the rules that are the subject of this appeal.”).

7 **VII. CONCLUSION.**

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

20 **RESPECTFULLY SUBMITTED** October 8, 2025.

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