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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROMAN PEREZ-GONZALEZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al.,

Respondents.

Case No.: 25-cv-02727 JO DEB

RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

I. Introduction

Petitioner cannot show a likelihood of success on the merits because he seeks to circumvent the statute under which he is legally detained. Moreover, there is no irreparable harm in Petitioner's detention pending removal, which stems from the enforcement of the nation's longstanding immigration laws. As a result, the Court should deny Petitioner's motion for immediate injunctive relief.

II. Factual and Procedural Background

Petitioner is a native and citizen of Mexico who illegally entered the United States in 2010. Form I-213, attached as Ex. A to habeas response.[1] On July 9, 2025, Petitioner was arrested on a warrant and placed in removal proceedings. Form I-830E, attached as Ex. B. In connection with those proceedings, an Immigration Judge (IJ) granted Petitioner a $1,500 bond. On August 1, 2025, DHS appealed the IJ bond order, arguing that the IJ did not have authority to redetermine Petitioner's custody. On October 10, 2025, the Board of Immigration Appeals (BIA) sustained DHS's appeal and vacated the bond order. BIA decision, attached as Ex. C. As a result, Petitioner remains detained at the Otay Mesa Detention Facility pursuant to 8 U.S.C. § 1225(b)(2).

III. Argument

A. Petitioner Fails to Establish Entitlement to Immediate Injunctive Relief

Petitioner's motion should be denied because he has not established that he is entitled to immediate injunctive relief. In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat.*

[1] Pursuant to Federal Rule of Evidence 201, Respondents request that the Court take judicial notice of the documents attached to Respondents' habeas response, which contain facts not reasonably in dispute.

Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief – balancing of the equities and the public interest – merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party's favor.") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

1. No Likelihood of Success on the Merits

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Here, Petitioner cannot establish that he is likely to succeed on the merits of his claims for alleged statutory and constitutional violations because he is subject to mandatory detention under 8 U.S.C. § 1225. *See Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding that "[b]y the plain language of § 1225(a)(1)," immigration detainees are "'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2)")

The Court should reject Petitioner's argument that § 1226(a) governs his detention instead of § 1225. When there is "an irreconcilable conflict in two legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission*

Valley LLC, 862 F.3d 1006, 1015 (9th Cir. 2017). As relevant here, § 1226(a) applies to those "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C. § 1225. It applies to "applicants for admission"; that is, aliens present in the United States who have not be admitted. *See id.; see also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioner falls within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

Under 8 U.S.C. § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." Applicants for admission "fall into one of two categories, those covered by §1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(2) – the provision applicable to Petitioner – is the "broader" of the two. *Id.* It "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)" and mandates detention. *Id.* at 297; *see also Matter of Yajure Hurtado*, 29 I&N Dec. at 218-19 (for "those aliens who are seeking admission and who an immigration officer has determined are 'not clearly and beyond a doubt entitled to be admitted' . . . the INA explicitly requires that this third 'catchall' category of applicants for admission be mandatorily detained for the duration of their immigration proceedings"); *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)."). Section 1225(b) therefore applies because Petitioner is present in the United States without being admitted.

Any argument that the phrase "alien seeking admission" limits the scope of § 1225(b)(2)(A) is unpersuasive. The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense

are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012). Petitioner "provide[s] no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

Moreover, statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must therefore be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive – a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

Petitioner's interpretation also reads "applicant for admission" out of § 1225(b)(2)(A). One of the most basic interpretative canons instructs that a "statute should be construed so that effect is given to all its provisions." *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Petitioner's interpretation fails that test. It renders the phrase "applicant for admission" in § 1225(b)(2)(A) "inoperative or superfluous, void or insignificant." *See id.* If Congress did not want § 1225(b)(2)(A) to apply to "applicants for admission," then it would not have included the phrase

"applicants for admission" in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Given this history, the Court should reject Petitioner's interpretation because it would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* In other words, aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 ("The House Judiciary Committee Report makes clear that Congress intended to eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights that those who presented themselves to authorities for inspection.").

In short, because Petitioner is properly detained under § 1225, he cannot show entitlement to relief. *See Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, *9 (D. Neb. Sept. 30, 2025) (concluding on very similar facts that petitioner "is an alien

within the 'catchall' scope of § 1225(b)(2) subject to detention without possibility of release on bond").

2. Legal Detention Does No Constitute Irreparable Harm

To prevail on his request for immediate injunctive relief, Petitioner must also demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Legal detention, however, does not constitute an irreparable injury. *See Reyes*, 2021 WL 662659, at *3, *aff'd sub nom. Diaz Reyes*, 2021 WL 3082403 ("[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived."). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. In this case, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this [factor] strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018).

3. Immediate Injunctive Relief is not in the Public Interest

It is well-settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.")

(internal quotation omitted). The BIA also has an "institutional interest" in its "administrative agency authority." *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). Indeed, "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U.S. at 145.

Moreover, the balance of the relative equities often depends "'to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). As explained above, Petitioner cannot succeed on the merits of his claims. Accordingly, the public interest weighs against granting Petitioner immediate injunctive relief.

V. CONCLUSION

Respondents respectfully request that the Court deny Petitioner's motion for a temporary restraining order.

DATED: October 24, 2025

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