TIMOTHY COURCHAINE
United States Attorney
District of Arizona
BROOKS CHUPP
Assistant United States Attorney
Arizona State Bar No. 040231
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Fax: (602) 514-7760
Email: brooks.chupp@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Cesar Millan-Osuna, Petitioner, v. John E. Cantu, *et al.* Respondents.	No. CV-25-04019-PHX-MTL (JFM) **RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION**

Respondents, by and through counsel, respond to the Petition for a Writ of Habeas Corpus (Doc. 1) and Motion for a Preliminary Injunction (Doc. 2). Petitioner Cesar Millan-Osuna is a national of Mexico who entered the United States illegally by crossing the border without inspection by immigration officials. He was determined to be inadmissible when United States Immigration and Customs Enforcement ("ICE") encountered him for the first time on September 5, 2025. ICE kept him in custody pending his removal hearing, and he was denied bond as an "arriving alien." In this habeas petition and motion for injunctive relief, Petitioner seeks an order directing Respondents to immediately release him from immigration detention and to provide him with a bond hearing. Petitioner further seeks an injunction preventing Respondents from removing him to a country other than Mexico without an opportunity to respond. Respondents respectfully request that this Court

deny the Petition and Motion because Petitioner has been lawfully detained, and because Petitioner cannot establish that he is at risk of removal to a country other than Mexico. For these reasons, which are explained fully below, the Court should deny the Petition and Motion.

I. FACTUAL BACKGROUND

Petitioner entered the United States without inspection "at an unknown time and unknown date." Declaration of Alex Embernate, Deportation Officer, Enforcement and Removal Operations, attached as Exhibit A, at ¶ 4. On September 5, 2025, Petitioner was arrested by ICE. *Id.* at ¶ 5. On September 7, 2025, ICE placed Petitioner into Immigration and Nationality Act ("INA") § 240 removal proceedings on the grounds that he is inadmissible because he entered without admission. *Id.* at ¶ 7. On October 9, 2025, Petitioner moved the immigration court to grant him release on bond. *Id.* at ¶ 13. The immigration court denied the motion, holding that it had no jurisdiction to grant Petitioner's release, since he was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Id.*

II. THE HABEAS PETITION SHOULD BE DENIED

A. Petitioner's detention is lawful because he is an applicant for admission.

Petitioner argues that his detention is unlawful because Respondents denied him a bond hearing, which Respondents did because of an immigration judge's finding that Respondent was categorically ineligible for release. Petitioner argues that denying him a bond hearing constitutes a violation of his due process rights.

Petitioner is an "applicant for admission" who is "seeking admission" to the United States. All such people must be detained for removal proceedings under 8 U.S.C. 1225(b)(2)(A) in most circumstances.

Federal immigration law groups aliens who come to the United States into two broad categories: aliens who are admissible into the United States, *see* 8 U.S.C. §§ 1181–1189 (governing which aliens are admissible), and aliens who are not. A federal immigration officer must inspect all aliens who want to enter United States territory to determine whether the aliens are admissible. 8 U.S.C. § 1225(a)(3) ("All aliens . . . who are applicants

for admission or otherwise seeking admission or readmission to or transit through the United States *shall be inspected* by immigration officers.") (emphasis added). If, during an inspection, an immigration officer determines that an alien is "not clearly and beyond a doubt entitled to be admitted," the officer must detain the alien for removal proceedings. 8 U.S.C. § 1225(b)(2)(A). An immigration court may not release an alien on bond who is subject to mandatory detention under this section. 8 C.F.R. § 1003.19(h).

This inspection requirement does not exist only at the national borders, however; the law clearly states that "an alien present in the United States who has not been admitted or who arrives in the United" is considered an "applicant for admission" whom an immigration officer must inspect, even if they do not arrive at a "designated port of arrival." 8 U.S.C. § 1225(a)(1), (3). The logic of this position is clear: if an alien could avoid a mandatory inspection simply by entering the United States without appearing at a port of entry, aliens who evaded inspection by entering the country illegally would have greater protections than aliens who tried to enter lawfully. *See Chavez v. Noem*, 2025 U.S. Dist. LEXIS 192940 at *12 (S.D. Cal. Sept. 24, 2025); *Torres v. Barr*, 976 F.3d 918, 927–28 (9th Cir. 2020) ("[Section 1225(a)(1)] ensures that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'") The language of the statute clearly shows that all aliens who enter the United States must undergo inspection by an immigration officer, no matter when or where the immigration officer encounters them. Further, the law clearly states that an alien whom an immigration officer determines is "not clearly and beyond a doubt entitled to be admitted" must be detained pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner admits that he entered the United States without being admitted. Doc. 1 at ¶ 42. Thus, Petitioner is subject to mandatory detention and may not be released.

Respondents are aware of a prior ruling in this District that rejected a similar argument. *See Echevarria v. Bondi*, 2:25-cv-03252-DWL-ESW (D. Ariz. Oct. 3, 2025). Respondents respectfully maintain their position that a person is an "applicant for

admission" until an immigration official has inspected that person and determined that they are admissible into the United States.

In *Echevarria*, the Court determined that the phrase "alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that an alien who is already present in the United States cannot be "seeking admission":

> The word "seeking" is the present participle of the verb "seek." It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.
>
> It is hard to see how Petitioner could be deemed to have been "seeking" admission at the time of the encounter on July 2, 2025. By that point, Petitioner had already been present in the United States for 24 years, having arrived and entered in 2001. Moreover, under Respondents' interpretation of § 1225(a)(1), Petitioner became an "applicant for admission" in 2001, upon his arrival and entry. Implicit in Respondents' position, then, is that Petitioner somehow existed in a perpetual state of "seeking" admission during the 24-year period between when he first became an "applicant for admission" in 2001, by virtue of his entry into the country, and when he was encountered and inspected by an immigration officer in 2025.

Echevarria, 2025 U.S. Dist. LEXIS 196174, at *16–17 (internal citations omitted).

However, this analysis fails to consider other pieces of statutory context. The phrase "applicants for admission" carves out a subset of those who are "seeking admission." For example, elsewhere in Section 1225, the statute says that "[a]ll aliens who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). *Otherwise*, when used as an adverb, means "in a different way or manner." Otherwise, *Webster's Third New International Dictionary* (13th ed. 1961). In other words, 8 U.S.C. § 1225(a)(3) shows that an applicant for admission is inherently "seeking admission." As discussed earlier, the phrase "applicant for admission" unambiguously includes aliens who have already entered the United States. "In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (citing *Ratzlaf v.*

United States, 510 U. S. 135, 143 (1994)); *see also Boise Cascade Corp. v. United States Env't Prot. Agency*, 942 F.2d 1427, 1432 (9th Cir. 1991) ("We must presume that words used more than once in the same statute have the same meaning."). Courts should "therefore avoid interpretations that would attribute different meanings to the same phrase." *Id.* (quoting *Reno v. Bossier Parish School Bd.*, 528 U. S. 320, 329 (2000)) (internal quotation marks omitted). Thus, the *Echevarria* court's holding does not align with the broader text of the statute.

Other courts have issued decisions that similarly do not comport with the text of the statute. One recent trend among some courts has been to make a negative inference from a provision of the Laken Riley Act, which amended 8 U.S.C. § 1226(c) to subject to mandatory detention, among others, "alien[s] present in the United States without being admitted or paroled" who commit certain offenses. Pub. L. No. 119-1; *codified at* 8 U.S.C. § 1226(c)(1)(E). Some courts have held that this provision of the Laken Riley Act would have been entirely superfluous if all aliens present in the United States were subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and hence those courts have declined to interpret Section 1225(b)(2)(A) in that way, citing the canon against surplusage. *See, e.g.*, *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257–59 (W.D. Wash. April 24, 2025); *Gomez v. Hyde*, 2025 U.S. Dist. LEXIS 128085 at *17–19 (D. Mass. July 7, 2025). Other courts have held similarly that other subsections of Section 1226(c)(1) would be entirely superfluous under Respondents' proposed interpretation of Section 1225(b)(2)(A). *See, e.g.*, *Hasan v. Crawford*, 2025 WL 268225 at *22 (E.D. Va. Sept. 19, 2025).

The Court should decline to take this approach because the interpretation that Respondents propose does not render any statutory text meaningless. The canon against surplusage requires that courts construe a statute "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 55 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). However, this canon "is not an absolute rule," and it is only helpful "where a competing interpretation gives effect to every clause and word of a statute." *Marx v. Gen. Revenue*

Corp., 568 U.S. 371, 385 (2013) (citing *Arlington Central School Dist. Bd. of Ed. v. Murphy*, 548 U.S. 291, 299, n.1 (2006) and *Microsoft v. i4i Ltd. P'ship*, 564 U.S. 91, 106 (2011)). If both competing interpretations of a statute would make statutory language superfluous, the canon against surplusage should not be used. *Marx*, 568 U.S. at 385. Also, importantly, "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication," and "[s]ometimes the better overall reading of the statute contains some redundancy." *Barton v. Barr*, 590 U.S. 222, 239 (2020) (quoting *Rimini Street, Inc. v. Oracle USA*, 586 U. S. 334, 346 (2019)). Even if a statute may be redundant, this redundancy "is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.*

As discussed above, the plain text of the statute is clear, and to the extent that Sections 1225 and 1226 both subject some aliens to mandatory detention, Respondents argue that this was simply a congressional effort to be sure that provides no basis for this court to judicially rewrite the statute. However, even if this Court chooses to analyze this issue using the canon against surplusage, Petitioner's argument fails because Section 1226(c)(1) is not redundant with Section 1225(b)(2)(A). Section 1225(b)(2)(B) states that aliens who are crewmen, asylees, or stowaways are not subject to mandatory detention under Section 1225(b)(2)(A). Section 1225(c), including the Laken Riley Act, has no such carveout. *See* 8 U.S.C. 1226(c)(1). Thus, Respondents' proposed interpretation would still permit Section 1226(c)(1) to have "real and substantial effect," *see Stone v. Immigr. and Naturalization Serv.*, 514 U.S. 386, 397 (1995), because it would subject even crewmen, asylees, and stowaways to mandatory detention.

Further, the Court should note that Petitioner's proposed interpretation itself runs afoul of at least one canon of construction. If Section 1225(b)(2)(A) does not apply to "alien[s] present in the United States without being admitted or paroled," like Petitioner is, then it must follow either that those aliens are not included in the definition of "applicants

for admission," or those aliens are not "seeking admission." Section 1225(a)(1) explicitly defines "[a]n alien present in the United States who has not been admitted" as an applicant for admission, and as discussed above, Section 1225(a)(3) clearly considers "applicants for admission" to be "seeking admission," or else the word "otherwise" used in that section would have no meaning. Thus, Petitioner's proposed interpretation either renders statutory language meaningless or requires a statutory term to have two different meanings in the same section, so the canon against surplusage cannot support Petitioner's argument. This Court should therefore deny the Petition and Motion.

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF

A. Legal Standard

Petitioner asks this Court to issue a preliminary injunction granting him three forms of relief: immediate release from custody (or else a hearing for release on bond), an injunction prohibiting Respondents from transferring him out of the District of Arizona, and prospective relief regarding ICE's ability to remove him to a third country. Respondents argue that this motion should be denied because Petitioner has not demonstrated entitlement to any of the relief he requests.

To obtain a preliminary injunction, a petitioner must show "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. Res. Def. Council*, 555 U.S. 7, 20 (2008). Injunctive relief is "an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 9.

B. The government is not seeking to remove Petitioner to a third country.

Petitioner asks this Court to enjoin Respondents from removing him to a third country without providing him procedural protections. However, because Petitioner is currently in INA § 240 removal proceedings, he is at no imminent risk of removal to any country, let alone a country other than Mexico. Further, Petitioner has presented no support for the proposition that ICE intends to remove him to a country other than Mexico. This Court has no jurisdiction to entertain an action when the petitioner lacks standing. *Lujan v.*

Defenders of Wildlife, 504 U.S. 555, 560 (1992). A petitioner lacks standing when their suit is not grounded in an "actual or imminent" injury. *Id.* Although "an allegation of future injury may suffice" for standing purposes, the threatened injury must be "certainly impending," or there must be a "substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 414 n.5 (2013)). Petitioner has not and cannot show that he is at substantial risk of removal to a third country, so this Court has no jurisdiction to grant relief based on speculation that he might be.

C. Petitioner is not likely to succeed on the merits.

Petitioner also requests that this Court order his immediate release and reinstate his prior order of supervision. As argued in Section III above, Petitioner's habeas claim should not be granted. For these same reasons, Petitioner cannot show that he is "likely to succeed on the merits," as is required for injunctive relief. *Winter*, 555 U.S. at 20.

D. Petitioner cannot establish irreparable harm.

The Court should deny Petitioner's Motion, because Petitioner "must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). The "possibility" of injury is "too remote and speculative to constitute an irreparable injury meriting preliminary injunctive relief." *Id.* "Subjective apprehensions and unsupported predictions . . . are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat of irreparable harm." *Id.* at 675-76.

Petitioner cannot show that denying the temporary restraining order would make "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must] demonstrate that irreparable injury is likely in the absence of an injunction.") (emphasis in original). "[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury." *Id.* "Speculative injury does not constitute irreparable injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention

where he is lawfully and constitutionally detained pursuant to federal law. Further, Petitioner cannot establish that his removal to a third country is "likely in the absence of an injunction," *Winter*, 555 U.S. at 22, because he is not yet subject to a final order of removal and thus cannot yet be removed to any country, let alone a country other than Mexico.

E. The equities and public interest do not favor Petitioner.

The third and fourth factors, "harm to the opposing party" and the "public interest," "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. "In exercising their sound discretion, courts of equity 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).

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

While it is in the public interest to protect constitutional rights, if the petitioner has not shown a likelihood of success on the merits of that claim—as Petitioner has not shown here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). And the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Petitioner admitted to entering the United States illegally, which renders him inadmissible,

so the public and governmental interest in permitting his continued detention to effectuate removal is significant. Because Petitioner is an inadmissible alien subject to mandatory detention, the public interest favors his continued detention.

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Preliminary Injunction (Doc. 2).

RESPECTFULLY SUBMITTED November 5, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/ Brooks Chupp
BROOKS CHUPP
Assistant United States Attorney
Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Lindsay Little
United States Attorney's Office