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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

J.A.M.C.,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents,

Case No. 3:25-cv-09649

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Date: November 21, 2025
Time: 11:00 AM
Place: Courtroom 2, 17th Floor

Hon. William H. Orrick

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I. Introduction

A preliminary injunction should not issue because U.S. Immigration and Customs Enforcement ("ICE") properly redetained Petitioner after he violated the conditions of his release on bond and now, after bond revocation, Petitioner is subject to mandatory detention. Petitioner's violations of the conditions of his participation in the Alternatives to Detention ("ATD") program constitute changed circumstances that under *Matter of Sugay* permit ICE to redetermine or revoke bond, even when bond was previously redetermined by an Immigration Judge. *See Matter of Sugay*, 17 I&N Dec. 637, 639-40 (BIA 1981).

Petitioner's ongoing detention following ICE's revocation of his bond places Petitioner within the category of "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b). *See* 8 U.S.C. § 1225(a)(1); 8 U.S.C. § 1182(a)(6)(A)(i) (categorizing certain classes of aliens as inadmissible, and therefore ineligible to be admitted to the United States, including those "present in the United States without being admitted or paroled"); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020) (an alien who is neither admitted nor paroled, nor otherwise lawfully present in this country, remains an "applicant for admission" who is "on the threshold" of initial entry, even if released into the country "for years pending removal," and continues to be "'treated' for due process purposes 'as if stopped at the border'"); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (such aliens are "treated as 'an applicant for admission'").

"Applicants for admission," which include aliens present without being admitted or paroled (PWAP), as is the case with Petitioner, "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."). They are not entitled to custody redetermination hearings, whether pre- or post-detention. *Id.* at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Petitioner thus cannot show a likelihood of success on his claim that he is not subject to detention and he is entitled to a custody redetermination hearing prior to re-detention.

Nor could Petitioner show a likelihood of success on his claims even if his ongoing detention were subject to 8 U.S.C. § 1226(a) instead of the mandatory detention framework of § 1225(b). Section 1226(a) does not provide for *pre*-detention immigration judge review but instead sets out a procedure for review of

detention by an ICE officer once an alien is in custody—a process that the Ninth Circuit has found ensures "that the risk of erroneous deprivation would be 'relatively small.'" *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196–97 (9th Cir. 2022).

II. Statutory Background

A. "Applicants For Admission" Under 8 U.S.C. § 1225

The Immigration and Nationality Act ("INA") deems an "applicant for admission" to be 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); *Thuraissigiam*, 591 U.S. at 140 ("an alien who tries to enter the country illegally is treated as an 'applicant for admission'") (citing 8 U.S.C. § 1225(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[.]"). However long they have been in this country, an alien who is present in the United States but has not been admitted "is treated as 'an applicant for admission.'" *Jennings*, 583 U.S. at 287. Thus, for example, an "applicant for admission" includes certain classes of aliens that are inadmissible and therefore ineligible to be admitted to the United States under Section 212(a) of the INA, since those aliens are "present in the United States without being admitted or paroled[.]" 8 U.S.C. § 1182(a)(6)(A)(i).

B. Detention Under 8 U.S.C. § 1225

Applicants for admission, including those like Petitioner who is PWAP, may be removed from the United States by expedited removal under § 1225(b)(1), or full removal proceedings before an immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which "mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 287.

1. Section 1225(b)(2)

Under Section 1225(b)(2), an alien "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 aliens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*,

29 I. & N. Dec. 66, 68 (BIA 2025) (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, [] 8 U.S.C. § 1225(b)(2)(A)[] mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under § 1225(b)(1) "shall be detained" pursuant to § 1225(b)(2)). The Department of Homeland Security ("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." 8 U.S.C. § 1182(d)(5)(A); *see also Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Detention Under 8 U.S.C. § 1226(a)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a) provides for the arrest and detention of these aliens "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 an alien during his removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release an alien 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). An alien 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 alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

Until recently, the government interpreted § 1226(a) to be an available detention authority for aliens PWAP placed directly in full removal proceedings under § 1229a. *See, e.g.*, *Ortega-Cervantes*, 501

[1] 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)).

F.3d at 1116. In view of legal developments, the government has determined that this interpretation was incorrect. But prior agency practice applying § 1226(a) to Petitioner does not require its continued application because the plain language of the statute, and not prior practice, controls. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225-26 (BIA 2025); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 408, 431-32 (2024) (explaining that "the basic nature and meaning of a statute does not change . . . just because the agency has happened to offer its interpretation through the sort of procedures necessary to obtain deference" and finding that the weight given to agency interpretations "must always "depend upon the[ir] thoroughness . . . , the validity of [their] reasoning, [their] consistency with earlier and later pronouncements, and all those factors which give [them] power to persuade '").

Section 1225 is the sole applicable immigration detention 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."). In *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))). Similarly, the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the Board of Immigration Appeals (BIA) held that an alien who illegally crossed into the United States between ports of entry and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. The BIA recently resolved the question of whether an alien PWAP released from DHS custody pursuant to INA § 236(a) is an applicant for admission detained under INA § 235(b)(2)(A) in the affirmative. *Matter of Yajure Hurtado*, 29 I&N Dec. 216.

This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing

that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit").[2] *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

III. Factual And Procedural Background

A. Petitioner's Immigration and Criminal History

Petitioner is a native and citizen of Mexico who entered the United States illegally on two different occasions at an unknown location and on unknown date. Declaration Of Deportation Officer Michael Silva ("Silva Decl.") ¶ 5. In July 2005, Petitioner was convicted for carrying a loaded firearm in violation of C.P.C Section 12031(A)(1), a felony. *Id.* ¶ 6. In June 2006, Petitioner was convicted for the offense of possession of ammunition when prohibited from owning or possessing a firearm in violation of CPC § 12316(B)(1). *Id.* ¶ 7. On or around January 23, 2008, ICE encountered Petitioner due to his incarceration at the Alameda County Jail Santa Rita. *Id.* ¶ 8. Petitioner admitted to being a citizen of Mexico who entered the United States around January 1991 without being inspected or paroled. *Id.*

On or around July 29, 2008, ICE arrested Petitioner and served him with a Notice to Appear ("NTA") and placed him in ICE custody pursuant to section 236(a) of the Immigration and Nationality Act ("INA"). *Id.* ¶ 9. The following day, Petitioner was ordered removed from the United States under stipulated removal. *Id.* On or around August 1, 2008, Petitioner was removed to Mexico afoot via San Ysidro, California. *Id.* Petitioner re-entered the United States illegally at an unknown location and unknown date. *Id.* ¶ 10. Petitioner was again convicted in state court in April 2024 for the offense of entering a noncommercial dwelling in violation of CPC § 602.5. *Id.* ¶ 11. Petitioner is a Norteño gang member. *Id.* ¶ 12.

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[2] Though not binding, the U.S. District Court for the Northern District of Florida's decision is instructive here. *Florida* held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either 8 U.S.C. §§ 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion "would render mandatory detention under 8 U.S.C. § 1225(b) meaningless." *Id.*

On or around February 19, 2025, ICE Enforcement and Removal Operations ("ERO") placed Petitioner in custody pursuant to INA § 236(a). *Id.* ¶ 13. ERO interviewed Petitioner and determined that neither bond nor the ATD program were appropriate to mitigate ERO's concerns with public safety and absconding. *Id.* On that same day, ERO served Petitioner with an NTA charging him with removability under INA § 212(a)(6)(A)(i), as an 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. *Id.*

On or about April 9, 2025, Petitioner requested a bond redetermination before an Immigration Judge. *Id.* ¶ 14. On April 15, 2025, an Immigration Judge granted Petitioner's request for a change in custody status and ordered Petitioner's release under bond of $10,000 and enrollment in the ATD program at the discretion of DHS. *Id.* Petitioner was released on bond and enrolled in the ATD program with a GPS monitoring device. *Id.*

On November 7, 2025, Petitioner was brought to the attention of ERO during a scheduled immigration check-in appointment due to multiple ATD violations. *Id.* ¶ 15. Petitioner had violated the conditions of his release on May 10, August 16, and August 19. Petitioner's GPS monitoring device indicates that, on these dates, he violated a zone boundary. *Id.* After a brief interview, ERO placed Petitioner in ICE custody. *Id.* The same day, ERO served Petitioner withan arrest warrant. *Id.*

B. Procedural History

On November 7, 2025, Petitioner filed a petition for writ of habeas corpus and an ex parte motion for a temporary restraining order with this Court. *See* Dkt. No. 1, 2. That same day, the Court granted Petitioner's motion for a temporary restraining order. Dkt. No. 6. The Court ordered Respondents to release Petitioner from custody; enjoined and restrained Respondents from re-detaining Petitioner without providing him with a pre-deprivation hearing before a neutral decisionmaker at which the government establishes by clear and convincing evidence that revocation of his previously-granted bond is appropriate because detention is necessary to prevent his flight or to protect the public; and ordered Respondents to show cause why a preliminary injunction should not issue. *Id.*

Petitioner's removal proceedings remain pending before the Concord Immigration Court. Silva Decl. ¶ 17. Petitioner is scheduled to appear for a hearing on March 20, 2028. *Id.* ¶ 16.

IV. Argument

A. Legal Standard

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). The moving party 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. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action," as Petitioners seek here. *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original).

B. Petitioner Cannot Show A Likelihood Of Success On The Merits

1. Petitioner's Repeated Violations Of The Conditions Of His Release On Bond Justified His Redetention By ICE

ICE properly exercised its authority to redetermine Petitioner's bond after he violated the terms of his release. ICE may redetermine bond or revoke bond if there are changed circumstances, even when bond was earlier redetermined by an Immigration Judge. *See Matter of Sugay*, 17 I&N Dec. 637, 639-40 (BIA 1981). *Matter of Sugay* permits DHS to redetermine or revoke bond based on changed

circumstances without first conducting a pre-deprivation hearing before an Immigration Judge, as it did with Petitioner. *Id.* at 638; *see also Martinez Hernandez v. Andrews*, No. 1:25-CV-01035 JLT HBK, 2025 WL 2495767, at *12 (E.D. Cal. Aug. 28, 2025) ("If Respondent's view of the facts is correct, it is at least arguable that providing Petitioner with notice and a pre-deprivation hearing would have been impracticable and/or would have motivated his flight.").

And like the noncitizen in *Matter of Sugay*, Petitioner can appeal the bond redetermination or revocation to the Immigration Judge and the Board of Immigration Appeals. *Id.* As a condition of his release on bond, the Immigration Judge ordered that Petitioner enroll in the ATD program at the discretion of DHS. Silva Decl. ¶ 14. After his release, ICE enrolled Petitioner in the ATD program and fitted him with a GPS monitoring device. *Id.* On three separate occasions – on May 10, August 16, and August 19, 2025 – Petitioner violated the conditions of his release in that Petitioner's GPS monitoring device indicated that, on these dates, he violated a zone boundary imposed by ICE.[3] *Id.* ¶ 15. These ATD violations are, by extension, violations of the IJ's bond redetermination order that authorized Petitioner's release. The violation of the IJ's bond order constitutes changed circumstances under *Matter of Sugay* that permit ICE to revoke bond and take Petitioner back into custody. *Matter of Sugay*, 17 I&N Dec. at 640; 8 U.S.C. 1226(b); *see also J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 WL 2938808, at *15 (E.D. Cal. Oct. 16, 2025) ("The change in circumstance may be [Petitioner's] ATD infractions").

Following the redetermination and revocation of his bond, Petitioner is now subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A).

2. Under The Plain Text Of 8 U.S.C. § 1225, Petitioner Must Be Detained Pending The Outcome Of His Removal Proceedings

Petitioner cannot show a likelihood of success on his claims that he either (1) cannot be detained or (2) is entitled to a custody hearing prior to re-detention. This is because Petitioner is an "applicant for admission" due to his presence in the United States without having been either "admitted or paroled." Such aliens are subject to the mandatory detention framework of 8 U.S.C. § 1225(b) that specifically applies to

[3] Petitioner claims that he was redetained after he went to Stinson Beach over Labor Day Weekend with the prior authorization of ICE. However, the dates of the GPS violations predated Labor Day.

them, not the general provisions of § 1226(a). The detention statute at issue here, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous:

> Subject to subparagraphs (B) and (C) [not relevant here], in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A). Even including the two definitional provisions that inform the material terms of § 1225(b)(2)—namely, 8 U.S.C. §§ 1101(a)(13)(A) and 1225(a)(1)—these provisions together are only three sentences long. Petitioner unambiguously meets every element in the text of § 1225(b)(2) and its definitional provisions, and, even if the text were ambiguous, the structure and history of the statute support Respondents' interpretation.

(i) Petitioner Is An "Applicant for Admission"

The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any foreign national "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* While this may seem like a counterintuitive way to define an "applicant for admission," "[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, under the plain text of the statute, Petitioner is an "applicant for admission" because he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by ICE. Additionally, Petitioner's application for asylum makes his an "applicant for admission."

(ii) Petitioner Is An "Alien Seeking Admission"

The next relevant portion of the statute refers to an "alien seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). This language is not interposed as a separate element but rather is used as descriptive phrase. But even if it were to be considered an independent requirement, it is satisfied here.

1. ***An Individual Who Desires To Remain In The United States Is Necessarily Seeking***

Admission. The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Therefore, the inquiry is whether an immigration officer determined that petitioner was seeking a "lawful entry." *See id.* A foreign national's past unlawful physical entry has no bearing on this analysis. *See id.* This element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021); *Gomez v. Lynch*, 831 F.3d 652, 658 (5th Cir. 2016) (distinguishing "admission," which is "an occurrence" where an individual "presents himself at an immigration checkpoint" and gains entry, with status, which "describes [an individual's] type of permission to be present in the United States"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he did not enter lawfully. *See* 8 U.S.C. § 1182(a)(6). So, unless he obtains a lawful admission in the future, he will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6).

The INA provides two examples of foreign nationals who are not "seeking admission." The first is someone who withdraws his application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States who have not been lawfully admitted and who do not agree to immediately depart are seeking lawful entry and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). In removal proceedings, if an unlawfully admitted foreign national does not accept removal, he can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b. Accordingly, Petitioner is still "seeking admission" under § 1225(b)(2) because he has not agreed to depart, and he has not yet conceded his removability or allowed his removal proceedings to play out—he wants to be admitted via his removal proceedings. *See Thuraissigiam*, 591 U.S. at 108–09 (discussing how 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)" is deemed "an applicant for admission"). Moreover, Petitioner is literally "seeking admission" because in September 2024 he submitted an application for asylum. Pet. ¶ 45.

2. ***"Seeking Admission" Is Not Limited To Aliens Who Take Action Toward Admission.*** At least one court in this district has found that "applicant for admission" is broader than "seeking admission" because it covers "someone who is not 'admitted' but is not *necessarily* 'seeking admission.'" *See Salcedo Aceros*, 2025 WL 2637503 at *11 (emphasis in original). As the argument goes, § 1225(b)(2) covers only a smaller set of aliens "actively seeking admission." But "seeking admission" is not a subcategory of "applicants for admission" referring only to aliens necessarily taking steps toward actual admission. "Seeking admission" is a term of art. *Matter of Lemus-Losa*, 25 I&N at 743 n.6 (BIA 2012). The INA provides that "many people who are not actually requesting permission to enter the United States in the ordinary sense [including aliens present who have not been admitted] are nevertheless deemed to be 'seeking admission' under immigration laws." *Id.* at 743; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 221 (BIA 2025); *see also Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015). The INA provides numerous examples of Congress using "seeks admission" to mean something more expansive than seeking an actual admission. *See, e.g.*, 8 U.S.C. § 1182(a)(9)(A) (an alien previously ordered removed and "who again seeks admission within 5 years" is inadmissible); 8 U.S.C. § 1182(a)(9)(B) (an alien unlawfully present for more than 180 days but less than a year who voluntarily departed and "again seeks admission within 3 years" is inadmissible). These latter two groups of aliens accrued past periods of "unlawful presence" in the United States and thus were deemed "applicants for admission" under § 1225(a)(1), but they were also "in a very meaningful (if sometimes artificial) sense, 'again seek[ing] admission.'" *Matter of Lemus-Losa*, 25 I&N at 743 n.6. Accordingly, Congress's use of "seeking admission" in § 1225(b)(2) did not mean to include only aliens who are "actually" or "necessarily" seeking admission.

Any argument that Petitioner is not "seeking admission" is not a reasonable interpretation of § 1225(b)(2)'s text. This is because Petitioner has not agreed to immediately depart, so logically he must be seeking to remain in this country, which requires an "admission" (which, as explained above, requires a lawful entry). And, as mentioned *supra*, Petitioner is "seeking admission" because he submitted an application for asylum.

3. ***"Seeking Admission" Is Not Coextensive With "Arriving Alien."*** At least one court in this district has concluded that "seeking admission" in § 1225(b)(2) applies narrowly to "arriving aliens." *See Salcedo Aceros*, 2025 WL 2637503 at *10, 11[4] But to apply § 1225(b)(2) narrowly to "arriving aliens" runs counter to Congress's specific use of "arriving aliens" elsewhere in § 1225. "[W]here Congress knows how to say something but chooses not to, its silence is controlling." *In re Griffith*, 206 F.3d 1389, 1394 (11th Cir. 2000) (holding that "Congress must have consciously chosen not to include the language 'or the payment thereof'" in one statutory section when it specifically chose to use that language in a different section); *see also BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994) ("'[I]t is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another . . . .'"). Congress knew how to use the word "arriving" and, to that end, twice included that word elsewhere in the *same* statutory section, both in the text and title of § 1225's expedited removal provision. *See* 8 U.S.C. § 1225(b)(1) ("Inspection of aliens *arriving* in the United States and certain other aliens who have not been admitted or paroled") (emphasis added); 8 U.S.C. § 1225(b)(1)(A)(i) ("If an immigration officer determines that an alien . . . who is *arriving* in the United States. . .") (emphasis added). Congress's decision not to use "arriving"—or any variant thereof—in § 1225(b)(2) was purposeful, and that word cannot now be read into that provision to unnecessarily limit Congress' express language. Had Congress intended to limit the mandatory detention provision of § 1225(b)(2) to arriving aliens, it would have used different, specific language. Accordingly, § 1225(b)(2) cannot be interpreted as limited to individuals arriving at the border; it also covers those in the country's interior who are present and not admitted. *See, e.g.*, *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, *1-3 (D. Mass. July 28, 2025) (holding that an alien living in the country and later detained after a traffic stop "remains an applicant for admission" and "his continued detention is therefore authorized by § 1225(b)(2)(A)" consistent with constitutional due process); *Sixtos Chavez, et al. v. Kristi Noem, et al.*, No. 3:25-cv-02325 (S.D. Cal. Sep. 24, 2025), ECF No. 8 (denying application for temporary restraining order and rejecting petitioners' argument that their detention was governed by § 1226, finding instead that they were subject to mandatory detention under the plain text of § 1225(b)(2)).

Nor does the implementing regulation for § 1225(b)(2) suggest that this statutory section "has limited

[4] Similarly, the petitioners' bar in this district have referred to § 1225(b)(2) as an "arriving alien statute." *See Salcedo Aceros v. Kaiser*, 3:25-cv-06924-EMC, ECF No. 24 (Sept. 4, 2025 H'rg Tr.) at 14:10, 23:4-5, 25:1-2.

application" and applies only to an "arriving aliens" subset of applicants for admission. *Cf. Salcedo Aceros*, 2025 WL 2637503 at *10 ("8 C.F.R. § 235.3 describes Section 1225(b)(2) as applying to 'any *arriving alien* who appears to the inspecting officer to be inadmissible.") (emphasis in original); *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876, *11 (N.D. Cal. Oct. 3, 2025). This regulation provides that the expedited removal provision of § 1225(b)(1) applies to "arriving aliens," 8 C.F.R. § 235.3(b)(1)(i), and that an arriving alien can be put into regular removal proceedings, 8 C.F.R. § 235.3(c)(1). But most significantly, the regulation expressly provides that § 1225(b)(2) is *not* limited to arriving aliens:

> An alien who was not inspected and *admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2–year period immediately prior to the date of determination of inadmissibility* shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.

8 C.F.R. § 235.3(b)(1)(ii) (emphasis added). This implementing regulation—applying § 1225(b)(2) to aliens able to establish their presence in the United States for two consecutive years—undermines the narrow interpretation that § 1225(b)(2) is limited to aliens arriving at the border.

4. ***The Use Of "Seeking Admission" Elsewhere In § 1225(b) Confirms The Interpretation Of § 1225(b)(2) As Applying to All Applicants For Admission.*** Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016). The phrase "seeking admission" appears one other time in § 1225(b): in § 1225(a)(3). The language in § 1225(a)(3) confirms that "seeking admission" is a broad category that includes all applicants for admission. In § 1225(a)(3), Congress provided that "[a]ll aliens (including alien crewmen) 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). This use of "or otherwise" to connect terms is a familiar legal construction where the specific items that precede that phrase are meant to be subsumed by what comes after it. *See, e.g.*, *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (*en banc*) (noting four Congressional statutes and three 11th Circuit procedural rules as exemplary of how the phrase "or otherwise" is to be construed such that "the first action is a subset of the second action"); *cf. Patrick's Payroll Servs., Inc. v. Comm'r of Internal Revenue*, 848 F. App'x 181, 183-84 (6th Cir. 2021) (interpreting the "plain meaning and ordinary usage of the phrase 'or did not otherwise'" to mean that what immediately preceded the phrase was "one of the most common examples" of what followed it). As such, "or otherwise" operates as a

catch-all category that serves to make clear that what precedes that phrase falls within the larger category that follows. *See Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019) (analyzing the "or otherwise" phrase in a Congressional statute and determining that Congress's "word choice is significant" in that it "employ[s] a catchall formulation"); *see also* Al *Otro Lado v. Executive Office for Immigration Review*, 138 F.4th 1102, 1119 (2025) (finding that in 8 U.S.C. §§ 1225(a)(2) and (a)(3) "Congress took care to provide for the inspection of both the *catch-all category of noncitizens 'otherwise seeking admission'* and stowaways") (emphasis added). The catch-all formulation does not render the phrase preceding "or otherwise" superfluous because "the specific items that precede it *are meant* to be subsumed by what comes after the 'or otherwise.'" *Villarreal*, 839 F.3d at 964 (emphasis in original) (citing *Begay v. United States*, 553 U.S. 137, 153 (2008) (Scalia, J., concurring) ("[T]he canon against surplusage has substantially less force when it comes to interpreting a broad residual clause . . . .")). To treat what follows "or otherwise" and what precedes it "as separate categories, does not give effect to every word because it reads 'otherwise' out of the statute." *Villarreal*, 839 F.3d at 964. To that end, Congress's use of "otherwise" immediately after "or" is textually significant since using the disjunctive word "or" by itself would have suggested a different interpretation "indicat[ing] alternatives and requir[ing] that those alternatives be treated separately." *Id.*

The import of these statutory construction rules is meaningful as applied to § 1225(b)(2). First, given Congress's use of "or otherwise" instead of simply "or" in § 1225(a)(3), it is clear that "applicant for admission" and "seeking admission" are not separate, independent categories. Second, based on the plain language of § 1225(a)(3), an "applicant for admission" is a subset of the larger category of individuals that are "seeking admission or readmission to or transit through the United States." This interpretation necessarily flows from the deliberate inclusion by Congress of the phrase "or otherwise" to define the relationship between the phrase "applicant for admission" that precedes it and the phrase "seeking admission or readmission to or transit through the United States" that follows it.

That the phrase "seeking admission" was not intended to be narrower than "applicant for admission" is confirmed by the Ninth Circuit in its *en banc* decision in *Al Otro Lado*. In that case, the Ninth Circuit compared the "applicant for admission" provision in § 1225(a)(1), which deems an "applicant for admission" to be "[a]n alien present in the United States who has not been admitted or who arrives in the United States," with the INA's asylum provision in 8 U.S.C. § 1158(a)(1), which utilizes similar language providing that an

"[a]ny alien who is physically present in the United States or who arrives in the United States . . . may apply for asylum." 138 F.4th at 1118-19. The Ninth Circuit did not find that "seeking admission" is a subset of "applicants for admission," but rather found it to be at least as broad as "applicant for admission." *Id.* at 1119 (concluding that "§ 1225(a)(1) is solely about people seeking admission to the country"). This finding is consistent with the fact that the INA provides other instances of individuals who are seeking admission but who do not fulfill the criteria for an "applicant for admission" since they are either not present in the United States or admitted. *See, e.g.*, *Ogbolumani v. U.S. Citizenship & Immigr. Servs.*, 523 F. Supp. 2d 864, 869 (N.D. Ill. 2007) (describing visa applicant at American embassy or consulate abroad as seeking admission); *Matter of Lemus-Losa*, 25 I&N Dec. 734, 741 (BIA 2012) (an alien "can 'seek admission' from anywhere in the world, for 'example by applying for a visa at a consulate abroad"); *see also* 8 U.S.C. § 1101(a)(13)(ii), (iv) (noting where an alien *lawfully admitted* for permanent residence can be regarded as "seeking an admission").

(iii) Petitioner Is "Not Clearly And Beyond A Doubt Entitled To Be Admitted"

Petitioner is "not clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Here, Petitioner has offered no evidence that he was or is entitled to be admitted, and thus cannot make a showing under this subsection.

(iv) Petitioner Is Subject To A Proceeding Under § 1229a

The final textual requirement is that petitioner "be detained for a" removal proceeding. 8 U.S.C. § 1225(b)(2)(A). Petitioner here is not in expedited removal. He has instead been placed in full removal proceedings where he will receive the benefits of the procedures (motions, hearings, testimony, evidence, and appeals) provided in 8 U.S.C. § 1229a. Therefore, Petitioner meets this element.

"Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g.*, *Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences"). Thus, no further exercise in statutory interpretation is necessary in this case and the Court should conclude that petitioner's detention under § 1225(b)(2) is lawful.

Recent BIA authority confirms that Petitioner is subject to expedited removal and mandatory detention under § 1225(b). In *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), the BIA held that, based on the plain text of the statute, an alien who entered without inspection remains an "applicant for admission" who is "seeking admission," and is therefore subject to mandatory detention without a bond hearing, even if that alien has been present in the United States for years. *Id.*, slip op. at 220. Thus, the BIA also held that IJs lack authority to hold bond hearings for aliens in such circumstances. *Id.* The BIA considered, and rejected, the individual's argument that the government's "'longstanding practice' of treating aliens who are present in the United States without inspection as detained under [] 8 U.S.C.A. § 1226(a), and therefore eligible for a bond." *Id.* at 225. Citing the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the BIA explained that such a practice could be relevant where the statute is "doubtful and ambiguous," but here, "the statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." *Hurtado*, slip op. at 226. Nor did it matter that "DHS [had] issued an arrest warrant in conjunction with the Notice to Appear and a Notice of Custody Determination": "the mere issuance of an arrest warrant does not endow an [Immigration Judge] with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA . . . If it did, it would render meaningless the many prohibitions cited above on the authority of an [Immigration Judge] to set bond." *Id.* at 227 (citing, *e.g.*, *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025)). The BIA has therefore now confirmed, in a decision binding on IJs nationwide, what the government is arguing here: individuals such as Petitioner are "applicants for admission" subject to mandatory detention under § 1225(b), and have no right to a bond hearing. Several recent district court decisions have similarly adopted this interpretation of § 1225(b)(2). *See Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States." (quoting 8 U.S.C. § 1225(b)(2)(A))); *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1274–75 (N.D. Fla. 2023).

Respondents recognize that recent district court preliminary injunction decisions have concluded that

§ 1225(b) is not applicable to aliens who were conditionally released in the past under § 1226(a).[5] But these non-binding decisions do not grapple with the textual argument that the BIA just held was "clear and explicit." *Hurtado*, slip op. at 226. Taken together, the plain language of §§ 1225(a) and 1225(b) indicate that applicants for admission, including those "present" in the United States—like Petitioner—are subject to mandatory detention under Section 1225(b). 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). While § 1226(a) applies generally to aliens who are "arrested and detained pending a decision on" removal, § 1225 applies more narrowly to "applicants for admission"—*i.e.*, aliens present in the United States who have not been admitted. Because Petitioner falls within this latter category, the specific detention authority under § 1225 controls over the general authority found at § 1226(a).

As an alien PWAP subject to mandatory detention under § 1225(b), Petitioner is not entitled to custody redetermination hearings at any time, whether pre- or post-detention. *Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."); *Matter of Yajure Hurtado*, I&N Dec. at 229 (holding that immigration judge "lacked authority to hear the respondent's request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)").

3. Policy Arguments Cannot Overcome The Unambiguous Language Of § 1225(b)(2)

As the Supreme Court explained in *Jennings*, 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)(1) covers certain applicants for admission, including arriving aliens or foreign nationals who have not been admitted and have been present for less than two years, and directs that both groups of applicants for admission are subject to expedited removal. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2) "serves as a catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. And *Jennings*

[5] *See, e.g.*, *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025).

recognized that 1225(b)(2) *mandates* detention: "Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants of admission until certain proceedings have concluded." *Id.* at 297; *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission . . . whether or not at a port of entry, and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond."). Thus, § 1225(b) applies to Petitioner because he is present in the United States without being admitted and is thus still an applicant for admission. *See Yajure Hurtado*, 29 I. & N. Dec. at 221.

(i) Congress Did Not Intend To Treat Individuals Who Unlawfully Enter Better Than Those Who Appear At A Port of Entry

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 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 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). 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). Petitioner, who entered the United States without inspection, admission, or parole and was processed and released outside of a port of entry, should be treated no differently than aliens who present at a port of entry and are subject to mandatory detention under § 1225, including pending further consideration of their asylum applications. *See* 8 U.S.C. § 1225(b)(1)(B)(ii). Petitioner's interpretation 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.* To hold that individuals like Petitioner are entitled to additional process would create perverse incentive for aliens to enter the country unlawfully. *See Thuraissigiam*, 591 U.S. at 140.

Nothing in the Laken Riley Act changes the analysis. Redundancies in statutory drafting are "common . . . sometimes in a congressional effort to be doubly sure." *Barton v. Barr*, 590 U.S. 222, 239

(2020). The Act arose after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it out of concern that the executive branch "ignore[d] its fundamental duty under the Constitution to defend its citizens." *Id.* at H269 (statement of Rep. Roy). One member even expressed frustration that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims." *Id.* at H278 (statement of Rep. McClintock). The Act reflects a "congressional effort to be doubly sure" that such unlawful aliens are detained. *Barton*, 590 U.S. at 239.

(ii) The *Mathews* Factors Do Not Apply

Given his status as an applicant for admission subject to mandatory detention, Petitioner's reliance on *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) is misplaced. As an initial matter, the Supreme Court has upheld mandatory civil immigration detention without utilizing the multi-factor "balancing test" of *Mathews*. *See Demore v. Kim*, 538 U.S. 510 (2003) (upholding mandatory detention under 8 U.S.C. § 1226(c)); *cf. Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under 8 U.S.C. § 1231(a)(6) for six months after the 90-day removal period).[6]

In any event, applicants for admission like Petitioner, who were not admitted or paroled into the country, lack a liberty interest in *additional* procedures including a custody redetermination or pre-detention bond hearing. Petitioner's conditional release does not provide his with additional rights above and beyond the specific process already provided by Congress in § 1225. *See Thuraissigiam*, 591 U.S. at 139 ("aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border'"); *Ma v. Barber*, 357 U.S. 185, 190 (1958) (concluding that the parole of an alien released into the country while admissibility decision was pending did not alter her legal status); *Pena*, 2025 WL 2108913 at *2 (finding that mandatory detention under § 1225(b)(2)(A) of an alien arrested at a traffic stop in the interior of the United States "comports with due process"). Indeed, for "applicants for admission" who are amenable to § 1225(b)(1)—*i.e.*, because they were

[6] As the Ninth Circuit recognized in *Rodriguez Diaz*, "the Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*." *Rodriguez Diaz v. Garland*, 53 F.4th 1206 (9th Cir. 2022) (citations omitted). Whether the *Mathews* test applies in this context is an open question in the Ninth Circuit. *See Rodriguez Diaz*, 53 F.4th at 1207 (applying *Mathews* factors to uphold constitutionality of Section 1226(a) procedures in a prolonged detention context; "we assume without deciding that *Mathews* applies here").

not physically present for at least two years on the date of inspection, 8 U.S.C. § 1225(b)(1)(A)(iii)(II)—"[w]hatever the procedure authorized by Congress . . . is due process," whether or not they are apprehended at the border or after entering the country. *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."). These aliens have "only those rights regarding admission that Congress has provided by statute." *Id.* at 140; *see Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Petitioner is entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.[7]

Petitioner's liberty interest is further diminished given that he was only recently released in April 2025. Though Petitioner has apparently lived illegally in the United States for over thirty years, whatever liberty interest he allegedly has did not begin to accrue at the moment he first entered illegally decades ago but instead began when he was released on bond in April 2025.

Moreover, Petitioner's claimed liberty interest resulting from his April 2025 release on bond is not, in fact, analogous to the liberty interest of criminal defendants on parole and probation. As the Supreme Court has repeatedly explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976); *see also Zadvydas,* 533 U.S., at 718 (Kennedy, J., dissenting) ("The liberty rights of the aliens before us here are subject to limitations and conditions not applicable to citizens"); *Reno v. Flores,* 507 U.S. 292, 305–306 (1993) ("Thus, 'in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unacceptable if applied to citizens" ' ") (quoting *Fiallo v. Bell,* 430 U.S. 787, 792 (1977), in turn quoting *Mathews, supra,* at 79–80); *United States v. Verdugo–Urquidez,* 494 U.S. 259, 273 (1990).

(iii) Petitioner's Ongoing Detention Authority Cannot Be Converted To § 1226(a)

As an "applicant for admission," Petitioner's detention is governed by the § 1225(b) framework.

[7] Courts in this district cite to *Morrissey v. Brewer*, 408 U.S. 471 (1972), in support of their conclusion that aliens in similar circumstances to Petitioner are entitled to a pre-deprivation hearing. While the Supreme Court did find that post-arrest process should be afforded to the parolee in *Morrissey*, the government respectfully submits that the framework for determining process for parolees differs from that for aliens illegally present in the United States. A fundamental purpose of the parole system is "to help individuals reintegrate into society" to lessen the chance of committing antisocial acts in the future. *See id.* at 478-80. That same goal of integration, in order to support the constructive development of parolees and to lessen any recidivistic tendencies, is not present with unlawfully present aliens.

This remains true even where the government previously released him under 8 U.S.C. § 1226(a). By previously releasing Petitioner under § 1226(a), DHS did not permanently alter Petitioner's status as an "applicant for admission" under § 1225; to the contrary, his release is expressly subject to an order to appear for removal proceedings based on *unlawful* entry. After revoking the previous bond due to Petitioner's ATD violations, DHS is not prevented from clarifying the detention authority to conform to the requirements of the statutory framework as DHS now interprets it. *See, e.g.*, *United Gas Improvement v. Callery*, 382 U.S. 223, 229 (1965) (explaining that an agency can correct its own error). Pursuant to the statutory framework, an alien's conditional release is not the type of "lawful entry into this country" that is necessary to "establish[] connections" that could form a liberty interest requiring additional process, and he or she remains an "applicant for admission" who is "at the threshold of initial entry" and subject to mandatory detention under § 1225. *Thuraissigiam*, 591 U.S. at 106–07 ("While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.")

This binding Supreme Court authority is therefore in conflict with recent district court decisions finding that the government's "election to place Petitioner in full removal proceedings under § 1229a and releasing Petitioner under § 1226(a) provided Petitioner a liberty interest that is protected by the Due Process Clause." *Ramirez Clavijo*, 2025 WL 2419263, *3. The government's decision to place Petitioner in full removal proceedings under § 1229a is consistent with § 1225(b)(2), and the government's prior reliance on § 1226(a) in giving him a bond redetermination hearing does not render his entry lawful. His entry remains unlawful given that his release is conditioned on appearing for removal proceedings based on *unlawful* entry. As the Supreme Court confirmed in *Thuraissigiam*, an alien like Petitioner remains "on the threshold of initial entry," is "treated for due process purposes as if stopped at the border," and "cannot claim any greater rights under the Due Process Clause" than what Congress provided in § 1225. *Thuraissigiam*, 591 U.S. at 139–40; *see also Pena*, 2025 WL 2108913 at *2 ("Based upon the inherent authority of the United States to expel aliens, however, applicants for admission are entitled only to those rights and protections Congress set forth by statute.").

The Supreme Court's holding in *Thuraissigiam* is consistent with its earlier holding in *Landon*,

where the Court observed that only "once an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." 459 U.S. at 32. In *Thuraissigiam*, the Court reiterated that "established connections" contemplate "an alien's lawful entry into this country." 591 U.S. at 106–07. In this case, Petitioner has never gained admission to this country. He was neither admitted nor paroled, nor is he lawfully present in this country as required by *Landon* and *Thuraissigiam* to claim due process rights beyond what § 1225(b) provides. He instead remains an applicant for admission who—even if released into the country "for years pending removal"—continues to be "'treated' for due process purposes 'as if stopped at the border.'" *Thuraissigiam*, 591 U.S. at 139–140 (explaining that such aliens remain "on the threshold" of initial entry).

4. Petitioner Is Not Entitled To A Pre-Detention Hearing Under § 1226(a)

Even if this Court finds that § 1226(a) applies here, Petitioner would still not be entitled to a pre-detention hearing. ICE may redetermine bond or revoke bond if there are changed circumstances, even when bond was earlier redetermined by an Immigration Judge. *See Matter of Sugay*, 17 I&N Dec. 637, 639-40 (BIA 1981). *Matter of Sugay* permits DHS to redetermine or revoke bond based on changed circumstances without first conducting a pre-deprivation hearing before an Immigration Judge, as it did with Petitioner. *Id.* At 638. And like the noncitizen in *Matter of Sugay*, Petitioner can appeal the bond redetermination or revocation to the Immigration Judge and the Board of Immigration Appeals. *Id*; *see also Pham v. Becerra,* No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (ordering post-deprivation hearing before the Immigration Judge).

The Supreme Court has long upheld the constitutionality of the basic process of immigration detention. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233–34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States,* 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). Under § 1226(a),

aliens are not guaranteed *pre*-detention review and may instead only seek review of their detention by an ICE official once they are in custody—a process that the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz*, 53 F.4th at 1196–97.[8]

C. Petitioner Cannot Establish Irreparable Harm

Petitioner does not establish that he will be irreparably harmed absent a preliminary injunction. The "unlawful deprivation of physical liberty" is a harm that "is essentially inherent in detention," and thus "the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24, 2018). It is also countervailed by authority mandating and upholding their categorical detention as lawful. Indeed, the alleged infringement of constitutional rights is insufficient where, as here, a petitioner fails to demonstrate "'a sufficient likelihood of success on the merits of his constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm"). Further, any alleged harm from detention alone is insufficient because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And as the Ninth Circuit noted in *Rodriguez Diaz*, if Petitioner is subject to detention under § 1226(a), the risk of erroneous deprivation and value of additional process is small due to the procedural safeguards in § 1226(a). As in *Matter of Sugay*, Petitioner can seek review of ICE's changed circumstances determination by appealing the bond redetermination to the Immigration Judge and subsequently to the Board of Immigration Appeals. Thus, Petitioner cannot establish that his lawfully authorized mandatory detention would cause irreparable harm.

D. The Balance Of Equities And Public Interest Do Not Favor An Injunction

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

[8] Although *Rodriguez Diaz* did not arise in the pre-detention context, the Ninth Circuit noted the petition's argument that the § 1226(a) framework was unlawful "'for any length of detention'" and concluded that the challenge failed "whether construed as facial or as-applied challenges to § 1226(a)." 53 F.4th at 1203.

(2009)). Further, where a moving party only raises "serious questions going to the merits," the balance of hardships must "tip sharply" in his 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 Noem v. Vasquez Perdomo*, 606 U.S. —, 2025 WL 2585637, at *4-5 (2025) (Kavanaugh, J., concurring) (finding that balance of harms and equities tips in favor of the government in immigration enforcement given the "myriad 'significant economic and social problems' caused by illegal immigration"); *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 v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("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) ("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.) (citation omitted).

Petitioner's claimed harms 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 an injunction under these circumstances would permit any "applicant for admission" subject to § 1225(b) to obtain additional review simply because he or she was released—even if that release is expressly conditioned on appearing at removal proceedings for *unlawful* entry—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 his 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 "applicants for admission," including their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

E. Any Court Order Should Not Provide For Immediate Release And Should Not Reverse The Burden Of Proof

Immediate release is improper in these circumstances, where Petitioner is subject to mandatory detention. If the Court is inclined to grant any relief whatsoever, such relief should be limited to providing Petitioner with a bond hearing while he remains detained. *See, e.g.*, *Javier Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (C.D. Cal. Aug. 13, 2025), ECF No. 12 (ordering the government to "release Petitioners or, in the alternative, provide each Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order").

Moreover, at any bond hearing, Petitioner should have the burden of demonstrating that he is not a flight risk or danger. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I&N Dec. 37, 40 (B.I.A. 2006) ("The burden is on the alien to show to the satisfaction of the [Immigration Judge] that he or she merits release on bond."). It would be improper to reverse the burden of proof and place it on the government in these circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210-12 ("Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases.").

The Ninth Circuit previously held that the government bears the burden by clear and convincing evidence that an alien is not a flight risk or danger to the community for bond hearings in certain circumstances. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011) (bond hearing after allegedly prolonged detention). But following intervening Supreme Court decisions, the Ninth Circuit has explained that "*Singh's* holding about the appropriate procedures for those bond hearings . . . was expressly premised on the (now incorrect) assumption that these hearings were statutorily authorized." *Rodriguez Diaz*, 53 F.4th at 1196, 1200-01 (citing *Jennings*, 583 U.S. 281, and *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022)). Thus, the prior Ninth Circuit decisions imposing such a requirement are "no longer good law" on this issue, *Rodriguez Diaz*, 53 F.4th at 1196, and the Court should follow *Rodriguez Diaz* and the Supreme Court cases.

V. Conclusion

For the foregoing reasons, the government respectfully requests that the Court deny the motion for a preliminary injunction.

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Respectfully submitted,

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