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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Fauser Reino Godinez-Jaurez,
13
14 Petitioner,
15 v.
16 Kristi Noem, et al.,
17
18 Respondents.

No. CV-25-04406-PHX-SMB (JFM)

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS
AND
MOTION FOR TEMPORARY
RESTRAINING ORDER OR
PRELIMINARY INJUNCTION**

19 Respondents Kristi Noem, Secretary of Homeland Security (“DHS”); Todd M. Lyons,
20 Acting Director of U.S. Immigration and Customs Enforcement (“ICE”); Fred Figueroa,
21 Warden, Eloy Detention Center; John Cantu, Phoenix Field Office Director, ICE,
22 Enforcement and Removal Operations (“ERO”); Sirce Owen, Acting Direction of Executive
23 Office for Immigration Review; and Luis Rosa, Jr., Warden of the Central Arizona Florence
24 Correctional Complex (“Respondents”), by and through undersigned counsel, hereby
25 respond in opposition to the Petition for Writ of Habeas Corpus (Doc. 1) and Motion for
26 Temporary Restraining Order or Preliminary Injunction (Doc. 2).

27 **I. INTRODUCTION.**

28 Before 1996, the federal immigration laws required the detention of aliens who
presented at a port of entry but allowed aliens who were already unlawfully present in the

1 United States to obtain release pending removal proceedings. Congress passed the Illegal
2 Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop
3 conferring greater privileges and benefits on aliens who enter the United States unlawfully
4 as compared to those who lawfully present themselves for inspection at a port of entry.

5 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the
6 detention of any alien “who is an applicant for admission” and defines that term to
7 encompass any “alien present in the United States who has not been admitted” following
8 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no
9 exception for how far into the country the alien traveled or how long the alien managed to
10 evade detection. Unless the Secretary exercises the narrow and discretionary parole
11 authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

12 Petitioner is an “applicant for admission” under Section 1225(a). That provision
13 specifically provides that any “alien present in the United States who has not been admitted
14 ... shall be deemed for purposes of this chapter an applicant for admission.” § 1225(a)(1).
15 Because Petitioner entered the country without inspection, however, he was never
16 “admitted” and thus unambiguously remains an “applicant for admission” who is subject to
17 mandatory detention.

18 **II. STATUTORY FRAMEWORK.**

19 **A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens 20 Unlawfully Present in the United States.**

21 The Immigration and Nationality Act (“INA”), as amended, contains a
22 comprehensive framework governing the regulation of aliens, including the creation of
23 proceedings for the removal of aliens unlawfully in the United States and requirements for
24 when the Executive is obligated to detain aliens pending removal.

25 Prior to 1996, the INA treated aliens differently based on whether the alien had
26 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-
27 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602
28 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien
into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically

1 entered the United States (or not) “dictated what type of [removal] proceeding applied” and
2 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at
3 1099.

4 At the time, the INA “provided for two types of removal proceedings: deportation
5 hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).
6 An alien who arrived at a port of entry would be placed in “exclusion proceedings and
7 subject to mandatory detention, with potential release solely by means of a grant of parole.”
8 *Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In
9 contrast, an alien who physically entered the United States unlawfully would be placed in
10 deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation
11 proceedings, unlike those in exclusion proceedings, “were entitled to request release on
12 bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

13 Thus, the INA’s prior framework distinguishing between aliens based on physical
14 “entry” had

15 the ‘unintended and undesirable consequence’ of having created a statutory
16 scheme where aliens who entered without inspection ‘could take advantage of
17 the greater procedural and substantive rights afforded in deportation
18 proceedings,’ *including the right to request release on bond*, while aliens who
19 had ‘actually presented themselves to authorities for inspection ... were
20 subject to mandatory custody.

21 *Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*,
22 693 F.3d 408, 413 n.5 (3d Cir. 2012)); see also *Hing Sum*, 602 F.3d at 1100 (similar); H.R.
23 Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the
24 United States without inspection gain equities and privileges in immigration proceedings
25 that are not available to aliens who present themselves for inspection”).

26 **B. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully
27 Present in the United States and Mandated Detention of all “Applicants
28 for Admission.”**

29 Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110
30 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that
31 all immigrants who have not been lawfully admitted, regardless of their legal presence in

1 the country, are placed on equal footing in removal proceedings under the INA.” *Torres v.*
2 *Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

3 To that end, IIRIRA replaced the prior focus on physical “entry” and instead made
4 lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the
5 *lawful* entry of the alien into the United States after inspection and authorization by an
6 immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the
7 immigration laws would no longer distinguish aliens based on whether they had managed
8 to evade detection and enter the country without permission. Instead, the “pivotal factor in
9 determining an alien’s status” would be “whether or not the alien has been *lawfully*
10 admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100
11 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated
12 both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

13 IIRIRA effected these changes through several provisions codified in Section 1225
14 of Title 8:

15 **Section 1225(a):** Section 1225(a) codifies Congress’s decision to make lawful
16 “admission,” rather than physical entry, the touchstone. That provision states that an alien
17 “present in the United States who has not been admitted or who arrives in the United States”
18 “shall be deemed ... an applicant for admission”:

19 An alien present in the United States who has not been admitted or who arrives
20 in the United States (whether or not at a designated port of arrival and
21 including an alien who is brought to the United States after having been
interdicted in international or United States waters) shall be deemed for
purposes of this chapter an applicant for admission.

22 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or
23 otherwise seeking admission or readmission to or transit through the United States” are
24 required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by
25 the immigration officer is designed to determine whether the alien may be lawfully
26 “admitted” to the country or, instead, must be referred to removal proceedings.

27 **Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—
28 expedited removal and non-expedited “Section 240” proceedings—and mandated that

1 applicants for admission be detained pending both types of proceedings. 8 U.S.C.
2 §§ 1225(b)(1)-(2).

3 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Dep’t of*
4 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be
5 applied to a subset of aliens—those who (1) are “arriving in the United States,” or who (2)
6 have “not been admitted or paroled into the United States” and have “not affirmatively
7 shown, to the satisfaction of an immigration officer, that the alien has been physically
8 present in the United States continuously for the 2-year period immediately prior to the date
9 of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens,
10 the immigration officer shall “order the alien removed from the United States without further
11 hearing or review unless the alien indicates either an intention to apply for asylum ... or a
12 fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained
13 pending a final determination of credible fear or persecution and, if found not to have such
14 fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An
15 alien processed for expedited removal who does not indicate an intent to apply for a form
16 of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i),
17 (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

18 Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission
19 not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It
20 requires that those aliens be detained pending Section 240 removal proceedings:

21 Subject to subparagraphs (B) and (C), in the case of an alien who is an
22 applicant for admission, if the examining immigration officer determines that
23 an alien seeking admission is not clearly and beyond a doubt entitled to be
24 admitted, the alien *shall be detained* for a proceeding under section 1229a of
25 this title [Section 240].

26 8 U.S.C. § 1225(b)(2)(A) (emphasis added).¹ *See* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring
27 Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section
28

¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen,
(3) stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of
arrival) from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-
(C).

1 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable
2 proceedings and not just at the moment those proceedings begin”).

3 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA
4 grants DHS discretion to exercise its parole authority to temporarily release an applicant for
5 admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant
6 public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as
7 admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority).
8 Moreover, when the Secretary determines that “the purposes of such parole ... been served,”
9 the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with
10 in the same manner as that of any other applicant for admission to the United States.” 8
11 U.S.C. § 1182(d)(5)(A).

12 **Section 1226:** IIRIRA also created a separate authority addressing the arrest,
13 detention, and release of aliens generally (versus applicants for admission specifically). *See*
14 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for
15 example, lawfully enter the country but overstay or otherwise violate the terms of their visas,
16 or are later determined to have been improperly admitted. The statute provides that “[o]n a
17 warrant issued by the Attorney General, an alien may be arrested and detained pending a
18 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).
19 Detention under this provision is generally discretionary: The Attorney General “may”
20 either “continue to detain the arrested alien” or release the alien on bond or conditional
21 parole. *Id.* § 1226(a)(1)-(2).²

22 That “default rule,” however, does not apply to certain criminal aliens who are being
23 released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see*
24 8 U.S.C. § 1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into
25 custody” certain classes of criminal aliens—those who are inadmissible or deportable
26 because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227;
27 or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must

28 ² Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

1 detain these aliens “when the alien is released, without regard to whether the alien is released
2 on parole, supervised release, or probation, and without regard to whether the alien may be
3 arrested or imprisoned again for the same offense.” *Id.*

4 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L.
5 No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for)
6 aliens who (1) are inadmissible because they are physically present in the United States
7 without admission or parole, have committed a material misrepresentation or fraud, or lack
8 required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[]
9 having committed, or admit[] committing acts which constitute the essential elements of”
10 certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

11 **C. Legal Framework for Temporary Restraining Orders and Preliminary 12 Injunctions.**

13 The substantive standard for issuing a temporary restraining order is identical to the
14 standard for issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush*
15 *& Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Preliminary injunctions are intended to
16 preserve the relative positions of the parties until a trial on the merits can be held, “preventing
17 the irreparable loss of a right or judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*,
18 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are “not a preliminary
19 adjudication on the merits.” *Id.* “[A] preliminary injunction is an extraordinary and drastic
20 remedy, one that should not be granted unless the movant, *by a clear showing*, carries the
21 burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)
22 (quoting 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948, pp.
23 129-130 (2d ed. 1995) (emphasis in original). To obtain a preliminary injunction, the moving
24 party must show “that he is likely to succeed on the merits, that he is likely to suffer
25 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
26 favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*,
27 555 U.S. 7, 20 (2008); *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052
28 (9th Cir. 2009). To show harm, a movant must allege that concrete, imminent harm is likely
with particularized facts. *Winter*, 555 U.S. at 22. An injunction is a matter of equitable

1 discretion and is “an extraordinary remedy that may only be awarded upon a clear showing
2 that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. Preliminary injunctions
3 are “never awarded as of right.” *Id.* at 24.

4 Where the government is a party, courts merge the analysis of the final two *Winter*
5 factors: the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747
6 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).
7 Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’ and
8 the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and third
9 *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856
10 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.
11 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they
12 are entitled to this ‘extraordinary remedy.’” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469
13 (9th Cir. 2010). Petitioner’s burden is a “heavy” one. *Id.*

14 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a
15 party from taking action and preserves the status quo pending a determination of the action
16 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
17 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party to
18 take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo
19 pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory injunction
20 is “subject to a higher degree of scrutiny because such relief is particularly disfavored under
21 the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994)
22 (citation omitted). The Ninth Circuit has warned courts to be “extremely cautious” when
23 issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984),
24 and requests for such relief are generally denied “unless extreme or very serious damage will
25 result,” and even then, not in “doubtful cases.” *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879;
26 accord *LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158 (9th Cir.
27 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases, district
28 courts should deny preliminary relief unless the facts and law *clearly* favor the moving party.
Garcia, 786 F.3d at 740 (emphasis in original).

1 **III. FACTUAL BACKGROUND.**

2 Petitioner is a citizen of Guatemala. Doc. 1 at 71. He entered the United States
3 without admission or parole on an unknown date at an unknown location. *Id.* at 62.³ On
4 September 10, 2025, Petitioner was encountered during a traffic stop. *Id.* at 56. On the same
5 day, ICE issued Petitioner a Notice to Appear (“NTA”) for removal proceedings alleging
6 that he is removeable from the United States for having entered without inspection or parole
7 and for being present in the United States without being admitted or paroled. *Id.* at 62.

8 **IV. THE HABEAS PETITION SHOULD BE DENIED**

9 **A. Under the plain text of § 1225, Petitioner must be detained pending the
10 outcome of his removal proceedings.**

11 The Court should reject Petitioner’s argument that § 1226(a) governs his detention
12 instead of § 1225. When there is “an irreconcilable conflict in two legal provisions,” then
13 “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d
14 1006, 1015 (9th Cir. 2017). Section 1226(a) applies to aliens “arrested and detained pending
15 a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C.
16 § 1225. It applies only to “applicants for admission”; that is, as relevant here, aliens present
17 in the United States who have not be admitted. *Id.*; *see also Fla. v. United States*, 660 F.
18 Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, No. 23-11528, 2023 WL 5212561
19 (11th Cir. July 11, 2023). Because Petitioner falls within that category, the specific detention
20 authority under § 1225 governs over the general authority found at § 1226(a).

21 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien present
22 in the United States who has not been admitted or who arrives in the United States.”
23 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and
24 those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the
25 provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision
26 that applies to all applicants for admission not covered by § 1225(b)(1) (with specific
27 exceptions not relevant here).” *Id.* And section 1225(b)(2) mandates detention. *Id.* at 297;
28 *see also* 8 U.S.C. § 1225(b)(2); *Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (“[A]n

³ Petitioner alleges he has resided in the United States since May 5, 2021. Doc. 1 at ¶ 71.

1 applicant for admission who is arrested and detained without a warrant while arriving in the
2 United States, whether or not at a port of entry, and subsequently placed in removal
3 proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible
4 for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”
5 Section 1225(b) therefore applies because Petitioner is present in the United States without
6 being admitted.

7 The Board of Immigration appeals (“BIA”) has long recognized that “many people
8 who are not *actually* requesting permission to enter the United States in the ordinary sense
9 are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Matter of*
10 *Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language “is known by the
11 company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting
12 *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in
13 § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in
14 § 1225(a)(1). Applicants for admission are both those individuals present without admission
15 and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to
16 be “seeking admission” under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743.
17 Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants for
18 admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C.
19 § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is
20 synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).”
United States v. Woods, 571 U.S. 31, 45 (2013).

21 One of the most basic interpretative canons instructs that a “statute should be
22 construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S.
23 303, 314 (2009) (cleaned up). The court’s decision in *Florida v. United States* is instructive
24 here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for
25 admission throughout removal proceedings, rejecting the assertion that DHS has discretion
26 to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660
27 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention
28 under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal

1 border crossers would make little sense if DHS retained discretion to apply § 1225(a) and
2 release illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore*
3 *v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale
4 failure” by the federal government motivated the 1996 amendments to the INA. *Florida*, 660
5 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G.
6 2019), in which the Attorney General explained “section [1225] (under which detention is
7 mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled
8 only if they apply to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275. Petitioner,
9 present in the United States without being admitted, is an applicant for admission and is
10 therefore subject to mandatory detention without bond under 8 U.S.C. § 1225(b).

11 **B. Congress did not intend to treat individuals who unlawfully enter the**
12 **United States better than those who appear at a port of entry.**

13 When the plain text of a statute is clear, “that meaning is controlling” and courts “need
14 not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848
15 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the
16 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th
17 Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were
18 attempting to lawfully enter the United States were in a worse position than persons who had
19 crossed the border unlawfully.” *Torres*, 976 F.3d at 928. The Court should reject the
20 Petitioner’s interpretation because it would put aliens who “crossed the border unlawfully”
21 in a better position than those “who present themselves for inspection at a port of entry.” *Id.*
22 Aliens who presented at port of entry would be subject to mandatory detention under § 1225,
23 but those who crossed illegally would be eligible for a bond under § 1226(a).

24 The BIA recognized this issue in *Matter of Yajure Hurtado*. In its decision, the BIA
25 affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond
26 request because aliens who are present in the United States without admission are applicants
27 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
28 and must be detained for the duration of their removal proceedings.” 29 I. & N. Dec. at 220.
The BIA concluded that aliens “who surreptitiously cross into the United States remain

1 applicants for admission until and unless they are lawfully inspected and admitted by an
2 immigration officer. Remaining in the United States for a lengthy period of time following
3 entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold
4 otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter
5 the United States without inspection and subsequently evade apprehension for number of
6 years. *Id.*

7 In so concluding, the BIA rejected the alien’s argument that “because he has been
8 residing in the interior of the United States for almost 3 years . . . he cannot be considered as
9 ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported
10 by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not
11 admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he
12 contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision
13 in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C.
14 § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw
15 issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that
16 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8
17 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at
18 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting
Kingdomware Technologies, Inc. v. United States, 579 U.S. 162, 171 (2016))).

19 Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and
20 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C.
21 §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I. & N. Dec.
22 at 516. The Attorney General also held—in an analogous context—that aliens present
23 without admission and placed into expedited removal proceedings are detained under 8
24 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. *Id.* at 518-19.
25 In *Matter of Li*, the BIA held that an alien who illegally crossed into the United States and
26 was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29
27 I. & N. Dec. at 71. This ongoing evolution of the law makes clear that all applicants for
28 admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593

1 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain
2 statutory command”); *see generally Florida*, 660 F. Supp. 3d at 1275 (explaining that “the
3 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if
4 DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the
5 agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it
6 says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F.
7 Supp. 3d at 1273.

8 **C. The Court should not follow the decision in *Echevarria*.**

9 Respondents are aware of this Court’s prior decision rejecting Respondents’ position,
10 *see Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct.
11 3, 2025), but respectfully maintain that Petitioner falls within the definition of an “arriving
12 alien” warranting mandatory detention as the removal process unfolds. Respondents also
13 respectfully maintain that an alien is an “applicant for admission” until an immigration
14 official has inspected that person and determined that he or she is admissible into the United
15 States.

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

19 The word “seeking” is the present participle of the verb “seek.” It thus has a
20 temporal element—Petitioner must have been in the process of seeking
admission at the time of the inspection.

21 It is hard to see how Petitioner could be deemed to have been “seeking”
22 admission at the time of the encounter on July 2, 2025. By that point,
23 Petitioner had already been present in the United States for 24 years, having
24 arrived and entered in 2001. Moreover, under Respondents’ interpretation of
25 § 1225(a)(1), Petitioner became an “applicant for admission” in 2001, upon
26 his arrival and entry. Implicit in Respondents’ position, then, is that
27 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.

28 *Echevarria*, 2025 WL 2821282, at *6 (internal citations omitted).

1 However, this analysis fails to consider other pieces of statutory context. Respondents
2 respectfully argue that the phrase “applicants for admission” carves out a subset of those who
3 are “seeking admission.” For example, elsewhere in section 1225, the statute says that “[a]ll
4 aliens who are applicants for admission *or otherwise seeking admission* or readmission to or
5 transit through the United States shall be inspected by immigration officers.” 8 U.S.C.
6 § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that an alien
7 may be “seeking admission” either by being an “applicant for admission,” or in some
8 different way. As discussed earlier, the phrase “applicant for admission” unambiguously
9 includes aliens who have already entered the United States. “In all but the most unusual
10 situations, a single use of a statutory phrase must have a fixed meaning.” *See Cochise*
11 *Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf*
12 *v. United States*, 510 U.S. 135, 143 (1994)). “We therefore avoid interpretations that would
13 ‘attribute different meanings to the same phrase.’” *Id.* (quoting *Reno v. Bossier Par. Sch.*
14 *Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* decision is not supported by the text
15 of the statute, and Respondents respectfully request the Court reach a different result in this
16 case.

17 Furthermore, Respondents direct the Court’s attention to a decision issued on
18 September 30, 2025, in the United States District Court for the District of Nebraska: *Vargas*
19 *Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In that case,
20 the court denied a similar habeas petition brought by an alien who entered the United States
21 in 2013, and held that the petitioner was properly detained under § 1225(b)(2) as an alien
22 within the “catchall” scope of § 1225(b)(2) subject to detention without possibility of release
23 on bond through § 1229a removal proceedings. 2025 WL 2780351, at *6-9. The court noted
24 that illegally remaining in the country for years did not mean the petitioner, who “wish[ed]
25 to stay in this country,” was suddenly not an “applicant for admission.” *Id.* at *9.
26 Additionally, “even if Vargas Lopez might fall within the scope of § 1226(a), he certainly
27 fits within the language of § 1225(b)(2) as well.” *Id.*

28 The *Vargas Lopez* decision also noted the “overlapping relationship between
§ 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions

1 but consistent with the interpretation of the two provisions under *Jennings*.” *Id.* The court
2 determined that § 1226 does not contain language limiting its application “to aliens already
3 present in the United States.” *Id.* (comparing *Jennings*’ statements that United States
4 immigration law “authorizes the Government to detain certain aliens already in the country
5 pending the outcome of removal proceedings under §§ 1226(a) and (c)[,]” and that “§ 1226
6 applies to aliens already present in the United States[.]” 583 U.S. at 289 (first quote) and 303
7 (second quote), with 8 U.S.C. § 1226(a) (containing no reference to aliens “present” or
8 “already present” in the United States) and 8 U.S.C. § 1226(c) (containing no reference to
9 “criminal aliens” “present” or “already present” in the United States). The court determined
10 that “references to ‘aliens’ in § 1226 must be read to mean ‘alien[s] present in the United
11 States who ha[ve] not been admitted’ within the meaning of § 1225(a)(1) and within at least
12 the ‘catchall provision that applies to all applicants for admission not covered by
13 § 1225(b)(1) in § 1225(b)(2).” 2025 WL2780351, at * 9 (citing *Jennings*, 583 U.S. at 287).

14 The Southern District of California also denied a temporary restraining order sought
15 by an alien who was detained under § 1225(b)(2) despite having been surreptitiously present
16 in the United States for years. *See Chavez v. Noem*, --F. Supp. 3d --, No. 3:25-cv-02325-
17 CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). The court noted, among other
18 arguments, that “Section 1225(a)(1) expressly defines that ‘[a]n alien present in the United
19 States who has not been admitted . . . shall be deemed for purposes of this Act *an applicant*
20 *for admission.*” *Id.* at *4 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). The court
21 reasoned that, “Petitioners do not contest that they are ‘alien[s] present in the United States
22 who ha[ve]not been admitted.’ By the plain language of § 1225(a)(1), then, Petitioners are
23 ‘applicants for admission’ and thus subject to the mandatory detention provisions of
24 ‘applicants for admission’ under § 1225(b)(2).” *Id.* (cleaned up). *See also Rojas v. Olson*,
25 No. 25-CV-1437-BHL, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Sandoval v.*
26 *Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v.*
27 *Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde*
28 *v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-*
Robledo v. Noem, 1:25-cv-00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830,

1 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-
2 09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-
3 CV-01519 WBS SCR, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

4 **V. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF**

5 **A. Legal Standard**

6 Petitioner asks this Court to issue a temporary restraining order and preliminary
7 injunction granting him immediate release from custody and preventing Respondents from
8 removing him from the District of Arizona until the Petition is disposed of. Respondents
9 argue that this motion should be denied because Petitioner has not demonstrated entitlement
10 to any of the relief he requests.

11 A temporary restraining order (“TRO”) should be granted to “preserv[e] the status
12 quo and prevent[] irreparable harm just so long as is necessary to hold a hearing and no
13 longer.” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting
14 *Granny Goose Foods v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423,
15 439 (1974)). A petitioner must show “that he is likely to succeed on the merits, that he is
16 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
17 equities tips in his favor, and that an injunction is in the public interest” to receive a TRO or
18 a preliminary injunction. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also*
19 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)
20 (stating that the “analysis is substantially identical for [an] injunction and [a] TRO”).
21 Injunctive relief is “an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S.
22 at 9. A TRO normally lasts for no longer than fourteen days, but a court may extend a TRO’s
23 duration for an additional fourteen days “for good cause.” FRCP 65(b)(2). However, a TRO
24 may not last longer than 28 days unless the adverse party consents. *Id.*; *see also H-D*
25 *Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 844 (“[T]he great weight
26 of authority support the view that 28 days is the outer limit for a TRO without the consent
27 of the enjoined party. . . .”).

27 **B. Petitioner is not likely to succeed on the merits.**

28 Petitioner requests that this Court order his immediate release or order that he be

1 given a bond hearing. As argued in Section III above, Petitioner's habeas claim should not
2 be granted. For these same reasons, Petitioner cannot show that he is "likely to succeed on
3 the merits," as is required for injunctive relief. *Winter*, 555 U.S. at 20. Thus, this Court
4 should issue neither a temporary restraining order nor a preliminary injunction.

5 **C. Petitioner cannot establish irreparable harm.**

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

13 Petitioner cannot show that denying the temporary restraining order would make
14 "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must]
15 demonstrate that irreparable injury is likely in the absence of an injunction.") (emphasis in
16 original). "[A] preliminary injunction will not be issued simply to prevent the possibility of
17 some remote future injury." *Id.* "Speculative injury does not constitute irreparable injury."
18 *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir.
19 1984). Petitioner cannot establish irreparable harm if he is not released from detention where
20 he is subject to mandatory detention.

21 **D. The equities and public interest do not favor Petitioner.**

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

27 An adverse decision here would negatively impact the public interest by jeopardizing
28 "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.*

1 *Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a state suffers irreparable injury
2 whenever an enactment of its people or their representatives is enjoined.”). The public has
3 a legitimate interest in the government’s enforcement of its laws. *See, e.g., Stormans, Inc.*
4 *v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he district court should give due weight
5 to the serious consideration of the public interest in this case that has already been
6 undertaken by the responsible state officials in Washington, who unanimously passed the
7 rules that are the subject of this appeal.”).

8 While it is in the public interest to protect constitutional rights, if the petitioner has
9 not shown a likelihood of success on the merits of that claim—as Petitioner has not shown
10 here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815,
11 826 (9th Cir. 2005). And the public interest lies in the Executive’s ability to enforce U.S.
12 immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742,
13 750 (9th Cir. 1991) (“Control over immigration is a sovereign prerogative.”).

14 **VI. CONCLUSION.**

15 In light of the above, Respondents respectfully request the Court deny Petitioner’s
16 Petition for Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining
17 Order or Preliminary Injunction (Doc. 2). If the Court grants the Petition or Motion, the
18 Court should order that Petitioner be given a bond hearing by the Immigration Court, not
19 direct Petitioner’s immediate release from immigration detention.

20 Respectfully submitted this 12th day of December, 2025.

21 TIMOTHY COURCHINE
22 United States Attorney
23 District of Arizona

24 *s/ Theo Nickerson* _____
25 THEO NICKERSON
26 Assistant United States Attorney
27 *Attorneys for Respondents*
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