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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 O.A.C.S.,
11
12 Petitioner,
v.
13 MINGA WOFFORD, et al.
14 Respondents.¹

CASE NO. 1:25-CV-01652-DAD CSK
OPPOSITION TO PETITIONER’S MOTION FOR
TEMPORARY RESTRAINING ORDER
DATE:
TIME:
COURT: Hon. DALE A. DROZD

15
16 I. INTRODUCTION

17 Petitioner is not entitled to the extraordinary remedy of a temporary restraining order (“TRO”)
18 because he is an applicant for admission subject to mandatory detention. Additionally, Petitioner’s
19 repeated violations of the Intensive Supervision Appearance Program (“ISAP”) justified Immigration
20 and Custom Enforcement’s (“ICE”) decision to re-detain him. Recognizing that Petitioner’s numerous
21 violations dooms his TRO motion, counsel alleges Petitioner submits a series of excuses, including an
22 excuse for not being present for a scheduled in-person home visit. ECF 2-2 ¶ 10. Petitioner fails to meet
23 his burden of proof and the TRO must be denied.
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27 ¹ The Court should dismiss all respondents other than the Warden of the Mesa Verde ICE Processing
28 Center because the only proper respondent to a habeas petition is the custodian having immediate
custody of the petitioner. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v.*
Garland, 109 F.4th 1188, 1197 (9th Cir. 2024).

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Peru. ECF 2-2 at ¶ 1. He first arrived in the United States on or about November 30, 2023, without being admitted or paroled. ECF 2-2 at ¶ 2; ECF 2-4. Border Patrol temporarily detained Petitioner, but released him on December 1, 2023 due to overcrowding, and subject to an Order of Release on Recognizance. ECF 2-2 at ¶¶ 2-3; ECF 2-3. Petitioner was given a Notice to Appear, charged with being an alien present without admission or parole, and given an initial hearing date of July 3, 2024. ECF 2-4.

On May 1, 2024 ICE ordered that Petitioner appear at the Intensive Supervision Appearance Program (ISAP) office on September 9, 2024. ECF 2-2 at ¶ 6.

On September 9, 2024, ICE enrolled the Petitioner in the ISAP program, which required the installation of a monitoring application on his personal cell phone and reporting on a weekly basis. The program required the Petitioner to take a photo each week, answer phone calls from ISAP officers and report periodically in person to ISAP and ICE offices. Decl. at ¶ 10; ECF 1 at 11; ECF 2 at 9; ECF 2-2 at ¶ 6. Failure to abide by the conditions of the ISAP results in a redetermination of release conditions or re-detention. *Id.*

By his own admission, while on the ISAP, Petitioner accumulated multiple violations, including failures to submit his weekly photo, and a missed video call. ECF 2-2 at ¶ 11. ICE’s Alternatives to Detention violation log indicates eleven (11) missed biometric check-ins, and a previous failed home visit on January 6, 2025. EXH. A. Petitioner admits that he was not home for a scheduled October 16, 2025 in-person home visit. ECF 2-2 at ¶ 10. As a result of these repeated ISAP violations, Petitioner was terminated from the Alternatives to Detention / ISAP, and ICE took Petitioner into custody on October 17, 2025. ECF 2-2 at ¶ 11; ECF 2-5.

Petitioner’s removal process is ongoing, and Petitioner has a hearing before the Immigration Judge on December 10, 2025 (notice served on November 19, 2025). EXH. B. Petitioner apparently has claimed fear of returning to Peru “because [REDACTED]” ECF 2-2 at ¶ 9. Petitioner has been detained for forty days at the time of the filing of the motion for a Temporary Restraining Order (“TRO”). ECF 2 at p. 10.

On November 26, 2025, Petitioner filed a habeas petition and TRO motion alleging violations of

1 procedural and substantive due process. ECF 1, 2. Petitioner’s TRO seeks: (1) release; (2) a prohibition
2 on Petitioner’s re-arrest until he is afforded a hearing before a neutral adjudicator on whether a change
3 in custody is justified by clear and convincing evidence that he is a danger to the community or a flight
4 risk; and (3) a prohibition on sending Petitioner to any place outside the United States. ECF 2,
5 Conclusion. Respondents hereby timely oppose the TRO in compliance with the Court’s November 26,
6 2025, deadline. ECF 7. This TRO is not currently set for a hearing. *Id.*

7 III. LEGAL STANDARD

8 “The standard for a [temporary restraining order] is the same as for a preliminary injunction.”
9 *Rovio Entm’t Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1092 (N.D. Cal. 2012) (citing
10 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)). Injunctive
11 relief is “an extraordinary remedy that may only be awarded upon a clear showing that the [petitioner] is
12 entitled to such relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520
13 U.S. 968, 972 (1997) (per curiam)). “A [petitioner] seeking a preliminary injunction must show that: (1)
14 he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of
15 preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public
16 interest.” *Id.*, *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). These same elements apply to
17 Petitioner’s TRO. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111,
18 1126 (E.D. Cal. 2001). The last two factors “merge when the Government is the opposing party.” *Nken*
19 *v. Holder*, 556 U.S. 418, 435 (2009).

20 “[I]f a [petitioner] can only show that there are ‘serious questions going to the merits’—then a
21 preliminary injunction may still issue if the ‘balance of hardships tips sharply in the [petitioner’s] favor,’
22 and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942
23 (9th Cir. 2014) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013);
24 *see also Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

25 Importantly, a temporary restraining order “is an extraordinary and drastic remedy, [and] one
26 that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.”
27 *Mazurek*, 520 U.S. at 972. Indeed, the moving party bears the burden of meeting all prongs of the
28 *Winter* test. *DISH Network Corp. v. FCC*, 653 F.3d 771, 776 (9th Cir. 2011) (“To warrant a

1 preliminary injunction [or TRO], [the petitioner] must demonstrate that it meets all four of the elements
2 of the preliminary injunction test established in *Winter*[.]”).

3 **IV. LEGAL ANALYSIS**

4 **A. Petitioner Is Not Likely to Succeed on the Merits.**

5 **1. Petitioner Has Not Established that ICE Lacked Authority to Revoke Petitioner’s
6 Release or to Detain Petitioner.**

7 The Immigration and Nationality Act (INA) governs detention and release during and following
8 removal proceedings. See *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The statute defines an
9 “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who
10 arrives in the United States . . . whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1).
11 Thus, the statute identifies two categories of aliens: (1) those “present in the United States who ha[ve]
12 not been admitted”; and (2) those “who arrive[] in the United States . . . whether or not at a designated
13 port of arrival.” *Id.* The statute expressly treats a person in *either* category as an “applicant for
14 admission.” *Id.*; see also *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“Congress has
15 defied the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those
16 who are expressly seeking permission to enter, but also those who are present in this country without
17 having formally requested or received such permission”).²

18 **2. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are
19 Mandatorily Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).**

20 Applicants for admission placed in § 1229a removal proceedings are subject to mandatory
21 detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present
22 without admission who are placed in 8 U.S.C. § 1229a removal proceedings are both applicants for
23 admission as defined in 8 U.S.C. § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in 8 U.S.C.
24 § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible

25 ² Congress added Section 1225 to correct “an anomaly whereby immigrants who were attempting to
26 lawfully enter the United States were in a worse position than persons who had crossed the border
27 unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United*
28 *States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). 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).

1 for a bond redetermination hearing before the IJ. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)
2 (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1)
3 and those covered by § 1225(b)(2)”).

4 Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission
5 not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287; see 8 U.S.C. § 1225(b)(2)(A), (B). Under 8
6 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding
7 under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking
8 admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis
9 added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings
10 in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to 8 U.S.C.
11 § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings
12 pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled
13 pursuant to 8 U.S.C. § 1182(d)(5)).
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16 According to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C.
17 § 1229a removal proceedings “*shall be detained.*” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). “The
18 ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only
19 in ‘rare and exceptional circumstances,’ . . .” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting
20 *Rubin v. United States*, 449 U.S. 424, 430 (1981)); see *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004)
21 (“It is well established that when the statute’s language is plain, the sole function of the courts—at least
22 where the disposition required by the text is not absurd—is to enforce it according to its terms.” (quotation
23 marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says
24 anything whatsoever about bond hearings.” 583 U.S. at 297.
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26 On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N
27 Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination that he
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1 did not have authority over [a] bond request because aliens who are present in the United States without
2 admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
3 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure Hurtado*, 29
4 I&N Dec. at 220.³ The BIA concluded that aliens “who surreptitiously cross into the United States remain
5 applicants for admission until and unless they are lawfully inspected and admitted by an immigration
6 officer. Remaining in the United States for a lengthy period of time following entry without inspection,
7 by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous
8 result” that rewards aliens who unlawfully enter the United States without inspection and subsequently
9 evade apprehension for number of years. *Id.*

11 In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the
12 interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at
13 221. The BIA determined that this argument “is not supported by the plain language of the INA” and
14 creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is
15 not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original).
16 The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C.
17 § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw issued
18 subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b)
19 applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is “quite clear”
20 and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually
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25 ³ Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8
26 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly
27 in 8 U.S.C. § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747
28 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N
I. & N. Dec. at 216.

1 connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171
2 (2016))).

3 Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the
4 Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not
5 overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—
6 in an analogous context—that aliens present without admission and placed into expedited removal
7 proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal
8 proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the BIA held that an alien who illegally crossed
9 into the United States between ports of entry and was apprehended without a warrant while arriving is
10 detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that
11 all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*,
12 593 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain statutory
13 command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023)
14 (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little
15 sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the
16 agency saw fit”).⁴ *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is
17 a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

18 Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both
19 arriving aliens and aliens present without admission alike, regardless of whether the alien was initially
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24 ⁴ Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et
25 al., Moore’s Federal Practice § 134.02[1] [d], p. 134–26 (3d ed.2011)) (providing that “[a] decision of a
26 federal district court judge is not binding precedent in either a different judicial district, the same judicial
27 district, or even upon the same judge in a different case”); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir.
28 2021) (same), 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.*

1 processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal
2 proceedings under 8 U.S.C. § 1229a—and “[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention
3 ... throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–03, IJs do not have
4 authority to redetermine the custody status of an alien present without admission.

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6 Here, Petitioner is an applicant for admission (specifically, an alien present without admission),
7 placed directly into removal proceedings under 8 U.S.C. § 1229a. Petitioner is therefore subject to
8 detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before
9 an IJ. “It is well established . . . that the Immigration Judges only have the authority to consider matters
10 that are delegated to them by the Attorney General and the [INA].” *Matter of A-W-*, 25 I&N Dec. 45, 46
11 (BIA 2009). “In the context of custody proceedings, an Immigration Judge’s authority to redetermine
12 conditions of custody is set forth in 8 C.F.R. § 1236.1(d)” *Id.* at 46. The regulation clearly states that
13 “the [IJ] is authorized to exercise the authority in [8 U.S.C. § 1226].” 8 C.F.R. § 1236.1(d); *see id.*
14 § 1003.19(a) (authorizing IJs to review “[c]ustody and bond determinations made by [DHS] pursuant to
15 8 C.F.R. part 1236”); *see id.* § 1003.19(h)(2)(i)(B) (“[A]n IJ may not redetermine conditions of custody
16 imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled
17 after arrival pursuant to [8 U.S.C. §1182(d)(5).]”). “An [IJ] is without authority to disregard the
18 regulations, which have the force and effect of law.” *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

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20 Aliens present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants for
21 admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. § 1225(b)(2)(A).
22 This is true even though “many people who are not *actually* requesting permission to enter the United
23 States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration
24 laws.” *Lemus*, 25 I&N Dec. at 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68
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1 n.3; *see also* *Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application
2 for admission [i]s a continuing one”).⁵

3 In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* explicitly stated that aliens
4 seeking admission are subject to 8 U.S.C. § 1225(b) detention: “In sum, U.S. immigration law authorizes
5 the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and
6 (b)(2).” *Id.* at 289. This was recently reiterated by the BIA in *Matter of Q. Li*, which held that for aliens
7 “seeking admission into the United States who are placed directly in full removal proceedings, [8 U.S.C.
8 § 1225(b)(2)(A)] . . . mandates detention ‘until removal proceedings have concluded.’” 29 I&N Dec. At
9 68 (quoting *Jennings*, 583 U.S. at 299).

10
11 The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant
12 Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) codified the
13 understanding that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). The
14 broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only
15 contemplated inspection of aliens arriving at ports of entry. *See* 8 U.S.C. § 1225(a) (1995) (discussing
16 “aliens arriving at ports of the United States”); *id.* § 1225(b) (1995) (discussing “the examining
17 immigration officer at the port of arrival”). Relatedly, any alien who was “in the United States” and within
18 certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of
19 deportable aliens included those “who entered the United States without inspection or at any time or place
20 other than as designated by the Attorney General.” *Id.* § 1231(a)(1)(B) (1995) (former deportation ground
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25 ⁵ Within the Ninth Circuit, not every “applicant for admission” is necessarily requesting
26 permission to enter. *See United States v. Gambino-Ruiz*, 91 F.4th at 989 (citing, *inter alia*, *Torres v. Barr*,
27 976 F.3d at 924-26 (en banc)). In particular, *Gambino-Ruiz* explained that the court in *Torres* held that
28 certain aliens within the Commonwealth of the Northern Mariana Islands (CNMI) never made an actual
application for admission “because they lawfully entered CNMI” and thereafter “the border crossed them”
once the INA began to apply in CNMI. *Id.* By contrast Petitioner, like the defendant in *Gambino-Ruiz*,
has admitted that he illegally crossed into the United States without entry documents, and is therefore an
applicant for admission. ECF 2-4.

1 relating to entry without inspection). Aliens were excludable if they were “seeking admission” at a port
2 of entry, or had been paroled into the United States. *See id.* §§ 1182(a), 1225(a) (1995). Deportation
3 proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings
4 (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and began with different charging
5 documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the “important
6 distinction” between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998)
7 (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement
8 of an alien in exclusion or deportation proceedings depended on whether the alien had made an “entry”
9 within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining “entry” as “any coming of
10 an alien into the United States, from a foreign port or place or from an outlying possession”); *see also*
11 *Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has
12 made an “entry” into the United States depends on whether, pursuant to the statutory definition, he or she
13 has intended to make a “meaningfully interruptive” departure).

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16 Former 8 U.S.C. § 1225 provided that aliens “seeking admission” at a port of entry who could not
17 demonstrate entitlement to be admitted (“excludable” aliens) were subject to mandatory detention, with
18 potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b)
19 (1995). “Seeking admission” in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens
20 arriving at a port of entry.⁶ *See id.* The legacy Immigration and Naturalization Service (“INS”) regulations
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23 ⁶ Given Congress’s overhaul of the INA, including wholesale revision of the definition of which
24 aliens are considered applying for or seeking admission, Congress clearly did not intend for the former
25 understanding of “seeking admission” to be retained in the new removal scheme. Generally, “[w]hen
26 administrative and judicial interpretations have settled the meaning of an existing statutory provision,
27 repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative
28 and judicial interpretations as well.” *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior
construction canon of statutory interpretation “is of little assistance here because, . . . this is not a case in
which ‘Congress re-enact[ed] a statute without change.’” *Public Citizen Inc. v. U.S. Dep’t of Health and
Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc.
v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption “of congressional ratification” of a
prior statutory interpretation “applies only when Congress reenacts a statute without relevant change.”
Holder v. Martinez Gutierrez, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs*

1 implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a port of entry had to be
2 detained without parole if they had “no documentation or false documentation,” 8 C.F.R. § 235.3(b)
3 (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c)
4 (1995). With regard to aliens who entered without inspection and were deportable under former 8 U.S.C.
5 § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other
6 deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. §
7 242.2(c)(1) (1995).

9 As a result, “[aliens] who had entered without inspection could take advantage of the greater
10 procedural and substantive rights afforded in deportation proceedings,’ while [aliens] who actually
11 presented themselves to authorities for inspection were restrained by ‘more summary exclusion
12 proceedings.’” *Martinez v. Att’y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (quoting *Hing Sum v. Holder*,
13 602 F.3d 1092, 1100 (9th Cir. 2010)). “To remedy this unintended and undesirable consequence, the
14 IIRIRA substituted ‘admission’ for ‘entry,’ and replaced deportation and exclusion proceedings with the
15 more general ‘removal’ proceeding.” *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA,
16 defines *all* those who have not been admitted to the United States as “applicants for admission.” IIRIRA
17 § 302.

19 Moreover, Congress’s use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A)
20 should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense
21 is significant in construing statutes.”). By using the present participle “seeking,” 8 U.S.C.
22 § 1225(b)(2)(A) “signal[s] present and continuing action.” *Westchester Gen. Hosp., Inc. v. Evanston Ins.*
23 *Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase “seeking admission” “does not include something
24 in the past that has ended or something yet to come.” *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d
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28 *Enforcement*, 543 U.S. 335, 349 (2005)).

1 331, 336 (7th Cir. 2019) (concluding that “having” is a present participle, which is “used to form a
2 progressive tense” that “means presently and continuously” (citing Bryan A. Garner, *Garner’s Modern*
3 *American Usage* 1020 (4th ed. 2016))). The present participle “expresses present action in relation to the
4 time expressed by the finite verb in its clause,” *Present Participle*, Merriam Webster,
5 <http://www.merriamwebster.com/dictionary/present%20participle> (last visited Aug. 7, 2025), with the
6 finite verb in the same clause of 8 U.S.C. § 1225(b)(2)(A) being “determines.” Thus, when pursuant to 8
7 U.S.C. § 1225(b)(2)(A) an “examining immigration officer determines” that an alien “is not clearly and
8 beyond a doubt entitled to be admitted” the officer does so contemporaneously with the alien’s present
9 and ongoing action of seeking admission. Interpreting the present participle “seeking” as denoting an
10 ongoing process is consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, 146 F.4th 128, 134
11 (1st Cir. 2025) (alien inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but “seeking to remain in the
12 country lawfully” applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th
13 Cir. 2025) (“USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. §
14 1255(m) to undergo a medical examination . . .”). Accordingly, just as the alien in *Samayoa* is not only
15 an alien present without admission but also seeking to remain in the United States, Petitioner in this case
16 is not only an alien present without admission, and therefore an applicant for admission as defined in 8
17 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

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21 Lastly, Congress’s significant amendments to the immigration laws in IIRIRA support DHS’s
22 position that such aliens are properly detained pursuant to 8 U.S.C. § 1225(b)—specifically, 8 U.S.C.
23 § 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who
24 illegally entered without inspection over aliens arriving at ports of entry. A rule that treated an alien who
25 enters the country illegally, such as Petitioner, more favorably than an alien detained after arriving at a
26 port of entry would “create a perverse incentive to enter at an unlawful rather than a lawful location.”
27 *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as
28

1 propounded by the defendant). Such a rule reflects “the precise situation that Congress intended to do
2 away with by enacting” IIRIRA. *Id.* “Congress intended to eliminate the anomaly ‘under which illegal
3 aliens who have entered the United States without inspection gain equities and privileges in immigration
4 proceedings that are not available to aliens who present themselves for inspection at a [POE]’” by enacting
5 IIRIRA. *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see*
6 *also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

8 As discussed by the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. at 222-24, during IIRIRA’s
9 legislative drafting process, Congress asserted the importance of controlling illegal immigration and
10 securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a “crisis at the
11 land border” allowing aliens to illegally enter the United States). As alluded to above, one goal of IIRIRA
12 was to “reform the legal immigration system and facilitate legal entries into the United States” H.R.
13 Rep. No. 104-828, at 1 (1996). Nevertheless, after the enactment of IIRIRA, the DOJ took the position—
14 consistent with pre-IIRIRA law—that “despite being applicants for admission, aliens who are present
15 without being admitted or paroled . . . will be eligible for bond and bond redetermination.” 62 Fed. Reg.
16 at 10,323. Affording aliens present without admission, who have evaded immigration authorities and
17 illegally entered the United States bond hearings before an IJ, but not affording such hearings to arriving
18 aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to
19 that goal. *Cf.* H.R. Rep. No. 104-469, pt. 1, at 225 (noting that IIRIRA replaced the concept of “entry”
20 with “admission,” as aliens who illegally enter the United States “gain equities and privileges in
21 immigration proceedings that are not available to aliens who present themselves for inspection at a
22 [POE]”).

25 Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in
26 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and
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28

1 is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination
2 hearing before an IJ.

3 Petitioner here is an “applicant for admission” who unlawfully entered the United States without
4 the necessary legal documents after illegally crossing the international boundary without being inspected
5 by an immigration officer at a designated port of entry. ECF 2-4. Accordingly, Petitioner is subject to the
6 mandatory detention requirement of 8 U.S.C. § 1225(b)(2)(A). *Ramos v. Lyons*, 2:25-cv-09785-SVW-
7 AJR (C.D. Cal., Nov. 12, 2025); *see also Sandoval v. Acuna et al.*, No. 6:25-cv-1467, 2025 WL 3048926,
8 at *4 (W.D. La. Oct. 31, 2025); *Chave v. Noem*, No. 3:25-cv-2325-CAB-DBC, 2025 WL 2730228 (S.D.
9 Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025);
10 *Vargas Lopez v. Trump*, No. 8:25-cv-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

11
12 **3. Petitioner’s Due Process Arguments Lack Merit.**

13 **a. Petitioner Is Not Entitled to a Pre-Re-Detention Hearing.**

14 Petitioner admits “[t]he statute and regulations grant ICE the ability to unilaterally revoke any
15 alien’s release and re-arrest the alien at any time. 8 U.S.C. § 236.1(c)(9).” ECF 2 at 13. Despite that
16 admission, Petitioner then argues that, because DHS released him on his own recognizance after he
17 entered the United States without valid documents allowing entry, the Due Process clause entitles him to
18 a hearing before a neutral decisionmaker prior to re-detention at which the government must establish by
19 clear and convincing evidence that he is either a danger to the community or a flight risk. ECF 2 at 13-
20 14.

21 Petitioner’s conditional release from DHS custody did not change his status as an applicant for
22 admission within the meaning of 8 U.S.C. § 1225(b), nor does the Due Process Clause entitle him to a
23 pre-re-detention hearing. Under the doctrine of “entry fiction,” aliens seeking admission to the United
24 States, even if “allowed within its borders pending a determination of admissibility, . . . are legally
25 considered to be detained at the border and hence as never having effected entry into” the United States.
26 *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc).⁷ Thus, even if an alien
27

28 ⁷ The scope of *Barrera-Echavarria*’s holding has been complicated by statutory amendments in the

1 seeking admission is physically present on U.S. soil and has been “paroled elsewhere in the country for
2 years pending removal,” he still is “treated . . . as if stopped at the border” for immigration law purposes.
3 *Dept. Homeland Security v. Thurassigiam*, 591 U.S. 103, 139 (2020); *see also United States v. Balde*,
4 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they remain ‘at
5 the border’ for the purposes of immigration law and are treated as applicants into the country.”). “The
6 distinction between an alien who has effected an entry into the United States and one who has never
7 entered” is a fundamental one that “runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S. 678,
8 693 (2001).

9 Here, Petitioner was never admitted to the United States—he was intercepted after illegally
10 entering near a port of entry and was deemed inadmissible because of his entry without inspection. ____
11 Dec., Ex. 1; ECF 2-4. For immigration law purposes, he is treated as an applicant for admission, even
12 though he has been physically present within the United States since October 2022. *Barrera-Echavarria*,
13 44 F.3d at 1450. Petitioner’s due process rights are limited because as an alien who has not effected a
14 legal entry, *i.e.*, has not been admitted into the United States, he is only entitled to “[w]hatever the
15 procedure authorized by Congress is.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212
16 (1953) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also*
17 *Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry “has only those rights regarding
18 admission that Congress has provided by statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015)
19 (for “those . . . who have never technically ‘entered’ the United States . . . procedural due process is
20 simply whatever the procedure authorized by Congress happens to be”) (cleaned up). Courts have taken
21 this position because, “an alien seeking initial admission to the United States requests a privilege and
22 has no constitutional rights regarding his application.” *Barrera-Echavarria*, 44 F.3d at 1449.

23 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
24 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-

25 _____
26
27 Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009
28 (1996). But those amendments “do[] not undermine *Barrera-Echavaria*’s reasoning as it relates to
aliens . . . to whom the entry fiction clearly applies,” such as in this case. *Rodriguez v. Robbins*, 715 F.3d
1127, 1140-41 (9th Cir. 2013).

1 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien
2 denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has “not
3 ‘technically entered the United States,’ [the Court] examine[s] only whether the government violated the
4 statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th
5 Cir. 2020) (citation omitted). Accordingly, Petitioner is subject to mandatory detention. *See Matter of*
6 *Yajure Hurtado*, 29 I & N Dec. 216, 220 (BIA 2025) (holding that the Immigration and Nationality Act
7 makes all applicants for admission subject to mandatory detention for the duration of their immigration
8 proceedings—even those who have entered without admission or inspection and have been residing in the
9 United States for years without lawful status).

10 b. **Changed Circumstances Were Not Required for Re-Detention, but in this**
11 **Case, They Exist.**

12 Petitioner wrongly argues that DHS must demonstrate changed circumstances before re-
13 detaining him (ECF 2 at 14) yet he also concedes “[t]he statute and regulations grant ICE the ability to
14 unilaterally revoke any non-citizen’s release and re-arrest the noncitizen at any time. 8 U.S.C.
15 § 236.1(c)(9).” ECF 2 at 13. The fact is, § 1225(b) detention does not require release based on a lack of
16 dangerousness or flight risk. Even if Petitioner was not subject to mandatory detention, Petitioner
17 acknowledged that violations of the ISAP program could result in his re-detention, and DHS / ICE was
18 well within its rights to re-detain him because of his violations.

19 DHS’s exercise of its discretion to release Petitioner on his own recognizance, and place him in
20 the ISAP program, does not prevent ICE from re-detaining Petitioner. The parties do not dispute that an
21 alien released “under an order of supervision or other conditions of release who violates the conditions
22 of release may be returned to custody.” 8 C.F.R. § 241.4(l)(1); ECF 2 at 13. This return to custody is
23 contemplated by the permissive language of the statute authorizing continued detention of certain aliens,
24 including Petitioner. *See* 8 U.S.C. § 1231(a)(6) (“An alien ordered removed . . . *may* be detained beyond
25 the removal period”) (emphasis added). The circumstances under which release may be revoked are
26 stated in 8 C.F.R. § 241.4(l)(2) as follows:

27 Release may be revoked in the exercise of discretion when, in the opinion
28 of the revoking official:

- (i) The purposes of release have been served;

1 (ii) The alien violates any condition of release;

2 (iii) It is appropriate to enforce a removal order or to commence removal
3 proceedings against an alien; or

4 (iv) The conduct of the alien, or any other circumstance, indicates that
5 release would no longer be appropriate.

6 In this case, Petitioner has eleven (11) violations for failure to submit biometric check-ins, and two
7 failed home visits. EXH A. It was only after the second failed home visit that ICE chose to revoke his
8 release for violating the ISAP conditions. ECF 2-4; ECF 2-2 at ¶ 10.

9 While ICE is complying with the regulations and the procedural safeguards those regulations
10 establish, these regulations “do not create independent substantive rights that override the statutory grant
11 of detention authority.” *Sanchez v. Pam Bondi, et al.*, 5:25-cv-02530-AB-DTB Dkt. 8, 2025 U.S. Dist.
12 LEXIS 196639, at *7 (C.D. CA Oct. 3, 2025) (citing *Zadvydas*, 533 U.S. at 701 and *Jane Doe 1 v.*
13 *Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018)) (concluding that agency rules must prescribe
14 substantive law, not merely procedural or policy guidance, to be enforceable). Injunctive relief must be
15 *narrowly tailored* to the wrong. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022)
16 (“And we note that even when there are deficiencies in individual § 1226(a) proceedings, they may be
17 redressable through means short of major changes to the burden of proof.”). ECF 2-2 at ¶ 10. To the
18 extent that Petitioner argues that he can only be re-detained on changed conditions, his numerous
19 violations while in the ISAP are changed conditions justifying his re-detention. ECF 2 at 13. Finally,
20 even *if* changed circumstances are required, they exist here because Petitioner repeatedly failed to
21 comply with the conditions of his conditional release. ECF 2-2 at ¶¶ 7, 10; EXH. A. Therefore, the
22 Petitioner was properly re-detained and this Court should not order his release.

23 **c. The cases cited by the Petitioner do not support his position because they do
24 not involve similarly situated aliens subject to mandatory detention.**

25 Petitioner’s reliance on the Supreme Court’s decisions in *Zadvydas* (ECF 2 at 11-15) and
26 *Demore v. Kim*, 538 U.S. 510 (2003) (ECF 2 at 12), is also misplaced because those cases concerned
27 aliens admitted into the country who had obtained lawful status, rather than an applicant for admission
28 such as Petitioner (and the petitioners in *Thuraissigiam*, *Mezei*, *Knauff*, and *Nishimura Ekiu*).⁸ This

⁸ See *Thuraissigiam*, 591 U.S. at 138-40 (rejecting claim that due process entitled aliens to judicial

1 distinction “[m]akes all the difference” when it comes to due process. *Zadvydas*, 533 U.S. at 693.
2 Indeed, *Zadvydas* made just this point: Acknowledging that “[t]he distinction between a[] [alien] who
3 has effected an entry into the United States and one who has never entered runs throughout immigration
4 law.” *Id.* at 682. The Supreme Court conceded that aliens “who have not yet gained initial admission to
5 this country *would present a very different question.*” *Id.* at 693 (“[C]ertain constitutional protections
6 available to persons inside the United States are unavailable to non-citizens outside of our geographic
7 borders.”). So even on its own terms, *Zadvydas*’s analysis of the process due to an alien admitted into
8 the country says nothing about the process which an applicant for admission such as Petitioner is
9 entitled.

10 In *Demore v. Kim*, the Supreme Court held that mandatory civil detention of a legal permanent
11 resident during removal proceedings—with no opportunity to seek release on bond—did not violate due
12 process. *See* 538 U.S. at 526 (“[T]he Government may constitutionally detain deportable [aliens] during
13 the limited period necessary for their removal proceedings”). Instead of suggesting that arriving aliens
14 have extra-statutory due process rights concerning their civil detention, *Demore* held that even aliens
15 admitted into the country, with a stronger liberty interest, do not necessarily possess non-statutory due
16 process rights. *Id.* at 523 (reaffirming that proceedings to remove aliens from the country “would be in
17 vain if those accused could not be held in custody pending the inquiry into their true character) (quoting
18 *Wong Wing*, 163 U.S. at 235). This principle applies with at least equal force to Petitioner’s detention.

19 For these same reasons, Petitioner’s argument is not supported by the Board of Immigration
20 Appeals’ holding that DHS must demonstrate changed circumstances before detaining someone
21 previously released by an IJ on bond. *Matter of Sugay*, 17 I&N Dec. 647 (BIA 1981) (ECF 2 at 13-14).
22 That holding is irrelevant to this case since Petitioner is now being held under mandatory detention.
23 Indeed, none of the bond cases that Petitioner cites apply to his detention in this case. *See, e.g.*,
24 *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) (involved due process issues when the court did not

25 _____
26 review of asylum request); *Mezei*, 345 U.S. at 212 (holding that former resident aliens exclusion and
27 resulting prolonged detention did not violate due process); *Knauff*, 338 U.S. at 544 (rejecting war bride’s
28 petition seeking review of her exclusion and detention); *Nishimura Ekiu*, 142 U.S. at 660 (holding that
detention of aliens after physical exclusion did not violate due process).

1 consider an immigrant's ability to afford the bond) (ECF 2 at 12-14; 21-25); *Nielsen v. Preap*, 586 U.S.
2 392 (2019) (concerned § 1226(c)) (ECF 2 at 12); *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal.
3 2017) (involved minors and bond) (ECF at 12, 14); *Padilla v. U.S. Immigr. And Customs Enf't*, 704 F.
4 Sup. 3d 1163, 1173 (W.D. Wash. 2023) (bond) (ECF 2 at 13); *Panosyan v. Mayorkas*, 854 F. App'x
5 787, 788 (9th Cir. 2021) (released on bond) (ECF at 14).

6 Petitioner's argument is likewise not supported by *Mahdawi v. Trump*, 781 F.Supp.3d 214 (2d.
7 Cir. 2025), which concerned whether the alien was detained for improper motives and retaliatory
8 reasons in violation of the First Amendment. ECF 2 at 12. Petitioner also cannot rely on cases involving
9 the rights of *American citizens* in prison or other contexts since Petitioner here is not a U.S. citizen and
10 does not enjoy those same rights. *Wolff v. McDonnell*, 418 U.S. 539 (1974) (due process challenge by
11 citizen inmate to prison's disciplinary process) (ECF 2 at 11); *Cnty. of Sacramento v. Lewis*, 523 U.S.
12 833 (1998) (Section 1983 claim alleged substantive due process right to life violation after motorcyclist
13 killed during police chase) (ECF 2 at 11); *Jackson v. Indiana*, 406 U.S. 715 (1972) (challenge to Indiana
14 state prison's pretrial commitment process of incapacitated criminal defendants) (ECF 2 at 12).⁹
15 Importantly, the Supreme Court has expressly recognized that "in the exercise of its broad power over
16 naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to
17 citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1972).

18 Petitioner cites twelve district court cases for his argument that he has a due process right to not
19 be detained absent changed circumstances for individuals stopped at the border but later released. Six of
20 those cases are inapposite because they involved a bond issued by an IJ.¹⁰ Three of those cases

21
22 ⁹ *Young v. Harper*, 520 U.S. 143 (1997) (ECF 2 at 15); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (ECF
23 2 at 16); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (ECF 2 at 16-19, 21); *Gonzalez-Fuentes v. Molina*,
24 607 F.3d 864 (1st Cir. 2010) (ECF 2 at 17, 19); *Hurd v. Dist. of Columbia*, 864 F.3d 671 (D.C. Cir.
25 2017) (ECF 2 at 17, 19); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (ECF 2 at 17, 19);
26 *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en banc) (ECF 2 at 18-19); *Zinerman v. Burch*, 494
U.S. 113 (1990) (ECF 2 at 18-19); *Youngberg v. Romero*, 457 U.S. 307 (1982) (ECF 2 at 19); *Lynch v.*
27 *Baxley*, 744 F.2d 1452 (11th Cir. 1984) (ECF 2 at 25); *United States v. Knights*, 534 U.S. 112 (2001)
28 (ECF 2 at 19); *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (ECF 2 at 19); *Foucha v. Louisiana*, 504 U.S.
71 (1992) (ECF 2 at 20).

¹⁰ See *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-cv-5785-
PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020) (cited ECF 2 at 17); *Jorge M.F. v. Wilkinson*, No.
21-cv-1434-JST, 2021 WL 783561 (N.D. Cal. Mar. 1, 2021) (cited ECF 2 at 14); *Romero v. Kaiser*, No.
22-cv-2508-TSH, 2022 WL 1443250 (N.D. Cal. May 6, 2022) (cited ECF 2 at 15); *Enamorado v.*

1 determined petitioners were not released under §1225 as ICE claimed but instead under §1226.¹¹ With
2 regard to the final three cases, which involved Petitioners released on their own recognizance, the
3 Government respectfully maintains they were wrongly decided. Significantly, all of the cases relied on
4 due process decisions involving American citizens' release from prison or being paroled, while failing to
5 appreciate the different due process standards for aliens who have never entered the United States, as
6 noted in *Barrera-Echavarria*, *Mezei*, *Knauff*, and similar Supreme Court and Ninth Circuit precedents.

7 **4. The *Mathews* Factors Do Not Mandate a Remedy.**

8 Petitioner wrongly argues that the multi-factor balancing test of *Mathews v. Eldridge*, 424 U.S.
9 319 (1976) entitles him to release under due process. ECF 2 at 18-21. *Mathews* does not, however,
10 govern due process claims raised by detained aliens. Indeed, The Ninth Circuit recognizes that the
11 Supreme Court has not adjudicated due process challenges to detention using the *Mathews* factors,
12 despite several opportunities. *See Rodriguez-Diaz v. Garland*, 53 F.4th at 1189, 1206, 1214 (9th Cir.
13 2022) (Bumatay, J., concurring) (“In resolving similar immigration-detention challenges, the Supreme
14 Court has not relied on the *Mathews* framework.”) (citing *Demore*, 538 U.S. at 521-31 and *Reno v.*
15 *Flores*, 507 U.S. 292, 299–315 (1993)).

16 Regardless, the *Mathews* factors do not create an independent liberty interest that Petitioner
17 seeks. *Mathews* considers three factors: (1) the private interest that will be affected; (2) the risk of an
18 erroneous deprivation of such interest through the procedures used and the value, if any, of additional or
19 substitute safeguards; and (3) the government's interest. *Rodriguez-Diaz*, at 1207. In applying these
20 factors, the Court “can and must account for the heightened governmental interest in the immigration
21 detention context.” *Id.* at 1206.

22 None of the factors support habeas relief for Petitioner here. The first factor does not weigh
23 strongly in his favor because “detention during deportation proceedings [is] a constitutionally valid

24
25 *Kaiser*, 2025 WL 1382859 (N.D. Cal. May 12, 2025) (cited ECF 2 at 15); *Doe v. Becerra*, 787 F. Supp.
26 3d. 1093 (E.D. Cal. 2025) (cited ECF 2 at 15).

27 ¹¹ *Ramirez Clavijo v. Kaiser*, No. 25-cv-6248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (cited ECF
28 2 at 14); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025) (cited ECF 2 at 14);
Hernandez Nieves v. Kaiser, No. 25-cv-6921, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025) (cited ECF 2
at 15).

1 aspect of the deportation process.” *Demore*, 538 U.S. at 523; *see also Reno*, 507 U.S. at 306; *Carlson v.*
2 *Landon*, 342 U.S. 524, 538 (1952). In this case, § 1225(b) makes detention mandatory. Further,
3 Petitioner has not been detained for a long period of time (since October 17, 2025), nor is his detention
4 indefinite—by law, it ends once his removal proceedings are completed. 8 U.S.C. § 1125(b)(2);
5 *Jennings*, 583 U.S. at 299 (§ 1225(b) “provide[s] for detention for a specified period of time”); *compare*
6 *Zadvydas*, 533 U.S. at 690-91, 698 (concerned with “indefinite, perhaps permanent, detention” and
7 establishing a presumptively reasonable six-month detention period to effectuate removal). The
8 Petitioner violated the conditions of ISAP, resulting in his re-detention. EXH. A. In this case, Petitioner
9 waited forty days after re-detention to file his petition. ECF 2. Furthermore, he has a hearing on his
10 underlying removal proceedings on December 10, 2025, so the proceedings are not indefinite. EXH. B.
11 As a result, the Petitioner’s private interest in release that he was not entitled to, the fact that he had
12 numerous violations that he understood could result in his re-detention, and the fact that he has an
13 upcoming hearing on his removal weaken his interest in release pending his removal proceedings.

14 The second factor likewise does not assist Petitioner. As discussed above, aliens who have not
15 legally entered the country are only entitled to the due process that Congress has statutorily created.
16 *Mezei*, 345 U.S. at 212; *Angov*, 788 F.3d at 898; *Barrera-Echavarria*, 44 F.3d at 1449; *Shaughnessy*,
17 338 U.S. at 544. “[A]n alien at the threshold of initial entry cannot claim any greater rights under the
18 Due Process Clause.” *Thuraissigiam*, 591 U.S. at 107. Because detention is mandatory, and
19 § 1225(b) only allows release through parole under narrow circumstances, any additional hearings could
20 not provide relief to Petitioner. *See Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018)
21 (holding that “for aliens on the ‘threshold of initial entry,’ due process is whatever procedure has been
22 ‘authorized by Congress,’” and “because the immigration statutes at issue here do not authorize a bond
23 hearing, *Mezei* dictates that due process does not require one here”); *compare Gonzalez-Fuentes v.*
24 *Molina*, 607 F.3d 864, 894 (1st Cir. 2010) (the law “provide[d] a valid, independent basis for the
25 deprivation of liberty” and thus any procedural due process violation could not vindicate petitioner’s
26 liberty interest or justify habeas relief).

27 Finally, the Government has a significant interest in Petitioner’s detention. Even if Petitioner
28 specifically does not appear to be a danger or flight risk, the Government has a strong interest in

1 effectuating the “system Congress devised.” *Thuraissigiam*, 591 U.S. at 106. “The government’s interest
2 in efficient administration of the immigration laws” is “weighty,” and “it must weigh heavily in the
3 balance that control over matters of immigration is a sovereign prerogative, largely within the control of
4 the executive and the legislature.” *Landon*, 459 U.S. at 34. The system Congress devised requires
5 detention until Petitioner’s removal proceedings are completed and forbids his release absent narrow
6 circumstances not applicable here.

7 **B. Petitioner Has Not Met His Heavy Burden To Show Likely Irreparable Harm.**

8 Petitioner claims he will suffer irreparable harm from continued detention during his removal
9 proceedings. ECF 2 at 23-24. As set forth above, Petitioner has not technically entered the United States
10 and is only entitled to the minimal rights and processes that Congress has given him. Petitioner has
11 received those. Immigration laws have long authorized immigration officials to charge aliens as
12 removable from the country, to arrest aliens subject to removal, and to detain aliens pending removal.
13 *Demore*, 538 U.S. at 523-26. Through the INA, Congress created a multi-layered statutory scheme for
14 aliens’ detention during removal, including mandatory detention for aliens in Petitioner’s position.¹² *See*
15 8 U.S.C. § 1225(b). “Detention is necessarily a part of [the] deportation procedure.” *Carlson*, 342 U.S.
16 at 538. Petitioner waited forty days after re-detention to file his petition and motion for a TRO,
17 weakening his claim to irreparable harm. ECF 2. Petitioner violated the conditions of the ISAP on
18 multiple occasions and failed to inform the Court of the nature and extent of the violations. EXH A;
19 ECF 2-2 at ¶¶ 7, 10. Further, Petitioner has a scheduled hearing in Immigration Court later this week on
20 Dec 10, 2025 at 8:30. EXH. B.

21 Nor do Petitioner’s alleged conditions of detention demonstrate irreparable harm. ECF 2 at 10,
22 23-24. Any conditions of detention that Petitioner deems unsatisfactory are not cognizable via temporary
23 restraining order. “The appropriate remedy for such constitutional violations, if proven, would be a
24 judicially mandated change in conditions and/or an award of damages, but not release from
25 confinement.” *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979). Further, a habeas petition / TRO is
26 not the proper mechanism for challenging conditions of detention. *Pinson v. Carvajal*, 69 F.4th 1059,

1 1065, 1073-75 (9th Cir. 2023); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Conditions of
2 detention/confinement challenges, rather, are properly brought in a civil rights action. *Id.*; *Brown v.*
3 *Blanckensee*, 857 F. App'x 289, 290 (9th Cir. 2021); *Alcala v. Rios*, 434 F. App'x 668, 669-70 (9th Cir.
4 2011). Thus, to the extent Petitioner relies on conditions of confinement as a basis for habeas relief, his
5 petition cannot succeed.

6 **C. The Balance of Equities and Public Interest Do Not Favor Petitioner.¹³**

7 “The government’s interest in efficient administration of the immigration laws” is “weighty,”
8 and “it must weigh heavily in the balance that control over matters of immigration is a sovereign
9 prerogative, largely within the control of the executive and the legislature.” *Landon*, 459 U.S. at 34.
10 Further, the government’s interest in protecting the public and preventing deportable aliens from fleeing
11 are strong and compelling. *See e.g., Rodriguez Diaz*, 53 F.4th at 1208 (government’s interests in
12 “protecting the public from dangerous criminal aliens” and “increas[ing] the chance that, if ordered
13 removed, the aliens will be successfully removed” are “interests of the highest order that only increase
14 with the passage of time”).

15 Those interests are compelling here. Congress determined that aliens who were stopped at the
16 border should be detained during expedited removal proceedings or pending resolution of their standard
17 removal proceedings. 8 U.S.C. § 1225(b). It not only made such detention mandatory, but severely
18 curtailed ICE’s ability to release § 1225(b) aliens. *Jennings*, 583 U.S. at 299, 311; *Thuraissigiam*, 591
19 U.S. at 111. The government seeks to vindicate those interests here, whereas Petitioner seeks to exempt
20 himself from the governing statutes. Petitioner’s requested relief, meanwhile, would undermine the
21 immigration statutory framework. Section 1225(b) largely precludes discretionary relief from removal,
22 but Petitioner demands creation of an entirely new arrest standard under it.

23 **V. CONCLUSION**

24 For the foregoing reasons, Petitioner’s Motion for Temporary Restraining Order should be
25 denied.

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27
28 ¹³ When the government is a party, the third and fourth preliminary injunction factors merge. *Drakes*
Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014).

1 Dated: December 1, 2025

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