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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

O.A.C.S., Petitioner, v. MINGA WOFFORD, ET AL., Respondents.	CASE NO. 1:25-CV-01652-DAD-CSK AMENDED[1] OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER DATE: TIME: COURT: Hon. Dale A. Drozd

OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

[1] Amended to incorporate table of contents and table of authorities and include the exhibits referenced in the opposition.

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I. INTRODUCTION

Petitioner is not entitled to the extraordinary remedy of a temporary restraining order ("TRO") because he is an applicant for admission subject to mandatory detention. Additionally, Petitioner's repeated violations of the Intensive Supervision Appearance Program ("ISAP") justified Immigration and Custom Enforcement's ("ICE") decision to re-detain him. Recognizing that Petitioner's numerous violations dooms his TRO motion, counsel alleges Petitioner submits a series of excuses, including an excuse for not being present for a scheduled in-person home visit. ECF 2-2 ¶ 10. Petitioner fails to meet his burden of proof and the TRO must be denied.

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

III. LEGAL STANDARD

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

"[I]f a [petitioner] can only show that there are 'serious questions going to the merits'—then a

preliminary injunction may still issue if the 'balance of hardships tips sharply in the [petitioner's] favor,' and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013); *see also Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Importantly, a temporary restraining order "is an extraordinary and drastic remedy, [and] one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek*, 520 U.S. at 972. Indeed, the moving party bears the burden of meeting all prongs of the *Winter* test. *DISH Network Corp. v. FCC*, 653 F.3d 771, 776 (9th Cvir. 2011) ("To warrant a preliminary injunction [or TRO], [the petitioner] must demonstrate that it meets all four of the elements of the preliminary injunction test established in *Winter*[.]").

IV. LEGAL ANALYSIS

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

1. Petitioner Has Not Established that ICE Lacked Authority to Revoke Petitioner's Release or to Detain Petitioner.

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

[2] Congress added Section 1225 to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without

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

Applicants for admission placed in § 1229a removal proceedings are subject to mandatory detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission who are placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) *and* aliens "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing before the IJ. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)").

Section 1225(b)(2)(A) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B). Under 8 U.S.C. § 1225(b)(2)(A), "an alien who is an applicant for admission" "*shall be detained* for a proceeding under [8 U.S.C. § 1229a]" "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 "shall be detained" pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that "any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]" unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

According to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings "*shall* be detained." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). "The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' . . . ." *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *see Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) ("It is well established that when the statute's language is plain, the sole function of the courts—at least

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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).

where the disposition required by the text is not absurd—is to enforce it according to its terms." (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings." 583 U.S. at 297.

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Yajure Hurtado*, 29 I&N Dec. at 220.[3] The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA's decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court's 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear"

[3] Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g.*, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

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

Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention

[4] Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., Moore's Federal Practice § 134.02[1] [d], p. 134–26 (3d ed.2011)) (providing that "[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case"); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir. 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.*

... throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody status of an alien present without admission.

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

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

[5] Within the Ninth Circuit, not every "applicant for admission" is necessarily requesting permission to enter. *See United States v. Gambino-Ruiz*, 91 F.4th at 989 (citing, *inter alia*, *Torres v. Barr*, 976 F.3d at 924-26 (en banc)). In particular, *Gambino-Ruiz* explained that the court in *Torres* held that 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.

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

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) codified the understanding that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at ports of entry. *See* 8 U.S.C. § 1225(a) (1995) (discussing "aliens arriving at ports of the United States"); *id.* § 1225(b) (1995) (discussing "the examining immigration officer at the port of arrival"). Relatedly, any alien who was "in the United States" and within certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of deportable aliens included those "who entered the United States without inspection or at any time or place other than as designated by the Attorney General." *Id.* § 1231(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were "seeking admission" at a port of entry, or had been paroled into the United States. *See id.* §§ 1182(a), 1225(a) (1995). Deportation proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the "important distinction" between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an "entry" within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession"); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has

made an "entry" into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a "meaningfully interruptive" departure).

Former 8 U.S.C. § 1225 provided that aliens "seeking admission" at a port of entry who could not demonstrate entitlement to be admitted ("excludable" aliens) were subject to mandatory detention, with potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b) (1995). "Seeking admission" in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens arriving at a port of entry.[6] *See id.* The legacy Immigration and Naturalization Service ("INS") regulations implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a port of entry had to be detained without parole if they had "no documentation or false documentation," 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). With regard to aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

As a result, "'[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' while [aliens] who actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings.'" *Martinez v. Att'y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). "To remedy this unintended and undesirable consequence, the IIRIRA substituted 'admission' for 'entry,' and replaced deportation and exclusion proceedings with the

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[6] Given Congress's overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of "seeking admission" to be retained in the new removal scheme. Generally, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative 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 Enforcement*, 543 U.S. 335, 349 (2005)).

more general 'removal' proceeding." *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as "applicants for admission." IIRIRA § 302.

Moreover, Congress's use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," 8 U.S.C. § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))). The present participle "expresses present action in relation to the time expressed by the finite verb in its clause," *Present Participle*, Merriam Webster, http://www.merriamwebster.com/dictionary/present%20participle (last visited Aug. 7, 2025), with the finite verb in the same clause of 8 U.S.C. § 1225(b)(2)(A) being "determines." Thus, when pursuant to 8 U.S.C. § 1225(b)(2)(A) an "examining immigration officer determines" that an alien "is not clearly and beyond a doubt entitled to be admitted" the officer does so contemporaneously with the alien's present and ongoing action of seeking admission. Interpreting the present participle "seeking" as denoting an ongoing process is consistent with its ordinary usage. *See, e.g.*, *Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (alien inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but "seeking to remain in the country lawfully" applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) ("USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. § 1255(m) to undergo a medical examination . . ."). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Petitioner in this case is not only an alien present without admission, and therefore an applicant for admission as defined in 8 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

Lastly, Congress's significant amendments to the immigration laws in IIRIRA support DHS's position that such aliens are properly detained pursuant to 8 U.S.C. § 1225(b)—specifically, 8 U.S.C.

§ 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at ports of entry. A rule that treated an alien who enters the country illegally, such as Petitioner, more favorably than an alien detained after arriving at a port of entry would "create a perverse incentive to enter at an unlawful rather than a lawful location." *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as propounded by the defendant). Such a rule reflects "the precise situation that Congress intended to do away with by enacting" IIRIRA. *Id.* "Congress intended to eliminate the anomaly '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 [POE]'" by enacting IIRIRA. *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

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

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

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

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

3. Petitioner's Due Process Arguments Lack Merit.

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

Petitioner admits "[t]he statute and regulations grant ICE the ability to unilaterally revoke any 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 admission, Petitioner then argues that, because DHS released him on his own recognizance after he entered the United States without valid documents allowing entry, the Due Process clause entitles him to a hearing before a neutral decisionmaker prior to re-detention at which the government must establish by clear and convincing evidence that he is either a danger to the community or a flight risk. ECF 2 at 13-14.

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

[7] The scope of *Barrera-Echavarria*'s holding has been complicated by statutory amendments in the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (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

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

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

"[A]pplicants for admission have virtually no constitutional rights regarding their applications." *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-34 (1982)). "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has "not

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1127, 1140-41 (9th Cir. 2013).

'technically entered the United States,' [the Court] examine[s] only whether the government violated the statutory rights that Congress afforded such applicants." *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th Cir. 2020) (citation omitted). Accordingly, Petitioner is subject to mandatory detention. *See Matter of Yajure Hurtado*, 29 I & N Dec. 216, 220 (BIA 2025) (holding that the Immigration and Nationality Act makes all applicants for admission subject to mandatory detention for the duration of their immigration proceedings–even those who have entered without admission or inspection and have been residing in the United States for years without lawful status).

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

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

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

> Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:
>
> (i) The purposes of release have been served;
>
> (ii) The alien violates any condition of release;

> (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
>
> (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

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

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

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

Petitioner's reliance on the Supreme Court's decisions in *Zadvydas* (ECF 2 at 11-15) and *Demore v. Kim*, 538 U.S. 510 (2003) (ECF 2 at 12), is also misplaced because those cases concerned aliens admitted into the country who had obtained lawful status, rather than an applicant for admission 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 review of asylum request); *Mezei*, 345 U.S. at 212 (holding that former resident aliens exclusion and resulting prolonged detention did not violate due process); *Knauff*, 338 U.S. at 544 (rejecting war bride's

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

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

For these same reasons, Petitioner's argument is not supported by the Board of Immigration Appeals' holding that DHS must demonstrate changed circumstances before detaining someone previously released by an IJ on bond. *Matter of Sugay*, 17 I&N Dec. 647 (BIA 1981) (ECF 2 at 13-14). That holding is irrelevant to this case since Petitioner is now being held under mandatory detention. Indeed, none of the bond cases that Petitioner cites apply to his detention in this case. *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) (involved due process issues when the court did not consider an immigrant's ability to afford the bond) (ECF 2 at 12-14; 21-25); *Nielsen v. Preap*, 586 U.S. 392 (2019) (concerned § 1226(c)) (ECF 2 at 12); *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal.

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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).

2017) (involved minors and bond) (ECF at 12, 14); *Padilla v. U.S. Immigr. And Customs Enf't*, 704 F. Sup. 3d 1163, 1173 (W.D. Wash. 2023) (bond) (ECF 2 at 13); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) (released on bond) (ECF at 14).

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

Petitioner cites twelve district court cases for his argument that he has a due process right to not be detained absent changed circumstances for individuals stopped at the border but later released. Six of those cases are inapposite because they involved a bond issued by an IJ.[10] Three of those cases determined petitioners were not released under §1225 as ICE claimed but instead under §1226.[11] With

[9] *Young v. Harper*, 520 U.S. 143 (1997) (ECF 2 at 15); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (ECF 2 at 16); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (ECF 2 at 16-19, 21); *Gonzalez-Fuentes v. Molina*, 607 F.3d 864 (1st Cir. 2010) (ECF 2 at 17, 19); *Hurd v. Dist. of Columbia*, 864 F.3d 671 (D.C. Cir. 2017) (ECF 2 at 17, 19); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (ECF 2 at 17, 19); *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en banc) (ECF 2 at 18-19); *Zinermon 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. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (ECF 2 at 25); *United States v. Knights*, 534 U.S. 112 (2001) (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. Kaiser*, 2025 WL 1382859 (N.D. Cal. May 12, 2025) (cited ECF 2 at 15); *Doe v. Becerra*, 787 F. Supp. 3d. 1093 (E.D. Cal. 2025) (cited ECF 2 at 15).

[11] *Ramirez Clavijo v. Kaiser*, No. 25-cv-6248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (cited ECF

regard to the final three cases, which involved Petitioners released on their own recognizance, the Government respectfully maintains they were wrongly decided. Significantly, all of the cases relied on due process decisions involving American citizens' release from prison or being paroled, while failing to appreciate the different due process standards for aliens who have never entered the United States, as noted in *Barrera-Echavarria*, *Mezei*, *Knauff*, and similar Supreme Court and Ninth Circuit precedents.

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

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

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

None of the factors support habeas relief for Petitioner here. The first factor does not weigh strongly in his favor because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also Reno*, 507 U.S. at 306; *Carlson v. Landon*, 342 U.S. 524, 538 (1952). In this case, § 1225(b) makes detention mandatory. Further, Petitioner has not been detained for a long period of time (since October 17, 2025), nor is his detention

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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).

indefinite—by law, it ends once his removal proceedings are completed. 8 U.S.C. § 1125(b)(2); *Jennings*, 583 U.S. at 299 (§ 1225(b) "provide[s] for detention for a specified period of time"); *compare Zadvydas*, 533 U.S. at 690-91, 698 (concerned with "indefinite, perhaps permanent, detention" and establishing a presumptively reasonable six-month detention period to effectuate removal). The Petitioner violated the conditions of ISAP, resulting in his re-detention. EXH. A. In this case, Petitioner waited forty days after re-detention to file his petition. ECF 2. Furthermore, he has a hearing on his underlying removal proceedings on December 10, 2025, so the proceedings are not indefinite. EXH. B. As a result, the Petitioner's private interest in release that he was not entitled to, the fact that he had numerous violations that he understood could result in his re-detention, and the fact that he has an upcoming hearing on his removal weaken his interest in release pending his removal proceedings.

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

Finally, the Government has a significant interest in Petitioner's detention. Even if Petitioner specifically does not appear to be a danger or flight risk, the Government has a strong interest in effectuating the "system Congress devised." *Thuraissigiam*, 591 U.S. at 106. "The government's interest in efficient administration of the immigration laws" is "weighty," and "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of

the executive and the legislature." *Landon*, 459 U.S. at 34. The system Congress devised requires detention until Petitioner's removal proceedings are completed and forbids his release absent narrow circumstances not applicable here.

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

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

Nor do Petitioner's alleged conditions of detention demonstrate irreparable harm. ECF 2 at 10, 23-24. Any conditions of detention that Petitioner deems unsatisfactory are not cognizable via temporary restraining order. "The appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." *Crawford v. Bell,* 599 F.2d 890, 892 (9th Cir. 1979). Further, a habeas petition / TRO is not the proper mechanism for challenging conditions of detention. *Pinson v. Carvajal*, 69 F.4th 1059, 1065, 1073-75 (9th Cir. 2023); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Conditions of detention/confinement challenges, rather, are properly brought in a civil rights action. *Id.*; *Brown v. Blanckensee,* 857 F. App'x 289, 290 (9th Cir. 2021); *Alcala v. Rios*, 434 F. App'x 668, 669-70 (9th Cir. 2011). Thus, to the extent Petitioner relies on conditions of confinement as a basis for habeas relief, his

petition cannot succeed.

C. The Balance of Equities and Public Interest Do Not Favor Petitioner.[13]

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

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

V. CONCLUSION

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

Dated: December 2, 2025

ERIC GRANT
United States Attorney

By: /s/ ROGER YANG
ROGER YANG
Assistant United States Attorney

[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).