

1 ERIC GRANT
United States Attorney
2 ANTONIO J. PATACA
Assistant United States Attorney
3 2500 Tulare Street
Fresno, California 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5

6 Attorneys for Respondents

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

10 JOSE PEDRO ORTEGA,
11
12 Petitioner,
13 v.
14 Kristi Noem, et al.
15 Respondents.¹

CASE NO. 1:25-CV-01663-DJC-CKD
OPPOSITION TO PETITIONER’S MOTION FOR
TEMPORARY RESTRAINING ORDER

16 I. INTRODUCTION

17 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. Petitioner fails to meet the burden of proof required for injunctive relief, and the TRO should be denied.

22 II. FACTUAL BACKGROUND

23 Petitioner is a native and citizen of Mexico who, on or about November 10, 2018, entered the United States without admission or parole. Declaration of Deportation Officer Christopher. T. Jerome (“Jerome Decl.”) ¶ 5. Petitioner applied for admission at the San Ysidro, California Port of Entry but

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27 ¹ The Court should dismiss all respondents other than the Warden of the Mesa Verde ICE Processing 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).
28

1 Customs and Border Protection (“CBP”) determined Petitioner did not have legal documents to enter,
2 pass, or remain in the United States. *Id.*

3 On or about November 13, 2018, Petitioner was enrolled into the ISAP, which has compliance
4 and reporting requirements, and then released. *Id.* at ¶ 7; *see also* Jerome Decl. Exhs. 1, 3. While in
5 ISAP, between August 2023 and March 2025, Petitioner incurred four compliance violations including
6 missing check-ins and checking in from outside the authorized zone. Jerome Decl. ¶ 7; *see also* Jerome
7 Decl. Exh. 4). When Petitioner reported to the ICE Field Office on September 20, 2025, ICE took him
8 into custody due to his ISAP violations. Jerome Decl. ¶ 8; *see also* Jerome Decl. Exh. 4. Petitioner was
9 and continues to be detained under INA § 235(b)(2)(A)/8 USC § 1225(b)(2)(A). Jerome Decl. ¶ 8.

10 On November 26, 2025, Petitioner filed a habeas petition and TRO motion alleging violations of
11 procedural and substantive due process. ECF 1, 2. Petitioner’s TRO seeks: (1) release; (2) a prohibition
12 on Petitioner’s re-arrest absent further order of this Court or after being afforded a hearing before a
13 neutral adjudicator on whether a change in custody is justified by clear and convincing evidence that he
14 is a danger to the community or a flight risk. ECF 2-2. Respondents hereby timely oppose the TRO in
15 compliance with the Court’s December 1, 2025, deadline. ECF 5.

16 III. LEGAL STANDARD

17 “The standard for a [temporary restraining order] is the same as for a preliminary injunction.”
18 *Rovio Entm't Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1092 (N.D. Cal. 2012) (citing
19 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)). Injunctive
20 relief is “an extraordinary remedy that may only be awarded upon a clear showing that the [petitioner] is
21 entitled to such relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520
22 U.S. 968, 972 (1997) (per curiam)). “A [petitioner] seeking a preliminary injunction must show that: (1)
23 he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of
24 preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public
25 interest.” *Id.*, *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). These same elements apply to
26 Petitioner’s TRO. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111,
27 1126 (E.D. Cal. 2001). The last two factors “merge when the Government is the opposing party.” *Nken*
28 *v. Holder*, 556 U.S. 418, 435 (2009).

1 “[I]f a [petitioner] can only show that there are ‘serious questions going to the merits’—then a
2 preliminary injunction may still issue if the ‘balance of hardships tips sharply in the [petitioner’s] favor,’
3 and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942
4 (9th Cir. 2014) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013);
5 *see also Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

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

12 IV. LEGAL ANALYSIS

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

14 1. Petitioner Is an Applicant for Admission Subject to Mandatory Detention.

15 The Executive Branch has broad statutory power to effect removal of aliens apprehended at the
16 border.² “Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec.*
17 *Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The Immigration and Nationality Act (“INA”),
18 originally enacted in 1952, sets forth a comprehensive plan to administer the immigration system. *See*
19 *generally* 8 U.S.C. Ch. 12. As set forth therein, the President, through the Department of State, the
20 Department of Justice, and Department of Homeland Security, decides which aliens may enter and
21 remain in the United States. *See generally* 8 U.S.C. §§ 1103, 1104.

22 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for
23 admission, if the examining immigration officer determines that an alien seeking admission is not
24 clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute defines an
25 “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who
26 arrives in the United States...whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1).

27
28 ² This word “alien” is used herein as a term of art in the immigration context.

1 Thus, the statute identifies two categories of aliens: (1) those “present in the United States who ha[ve]
2 not been admitted”; and (2) those “who arrive[] in the United States . . . whether or not at a designated
3 port of arrival.” *Id.* The statute expressly treats a person in *either* category as an “applicant for
4 admission.” *Id.*; *see also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“Congress has
5 defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those
6 who are expressly seeking permission to enter, but also those who are present in this country without
7 having formally requested or received such permission”).³

8 Applicants for admission must be inspected by immigration officers to determine whether they
9 can be admitted to the United States under immigration laws. 8 U.S.C. § 1225(a)(3); *Jennings v.*
10 *Rodriguez*, 583 U.S. 281, 287 (2018). 8 U.S.C. § 1225(b) governs the detention of “applicants for
11 admission” during their removal proceedings. Applicants for admission fall into three categories. The
12 first two categories consist of: (1) arriving aliens who are inadmissible because they lack proper entry
13 documents or have falsified/misrepresented their entry documents; and (2) those aliens who have not
14 established to the satisfaction of an immigration officer that they have been physically present in the
15 United States for two years or more. Aliens that fall into either one of these two categories: (a) are
16 subject to expedited removal; and (b) are subject to mandatory detention during the expedited removal
17 process. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV).⁴

18 The third category of applicants for admission—applicable here—consists of those aliens who
19 are “seeking admission” and who an immigration officer has determined are “not clearly and beyond a
20 doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A). Aliens who fall within this third category

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22 ³ Section 1225 was added by Congress under the IIRIRA to correct “an anomaly whereby immigrants
23 who were attempting to lawfully enter the United States were in a worse position than persons who had
24 crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to*
25 *extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain
26 aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United
27 States without inspection gain equities and privileges in immigration proceedings that are not available
28 to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1,
at 225).

⁴ If an alien who is subject to an expedited removal order raises a fear of persecution in their home
country, the immigration officer refers the alien for a “credible fear interview” that is conducted by an
asylum officer. If the asylum officer finds that the alien has a credible fear of persecution, the alien is
then moved to the standard removal proceeding (a removal proceeding under 8 U.S.C. § 1229a), but the
alien is still subject to mandatory detention during that standard removal proceeding.

1 are eligible for standard removal proceedings, but they are nevertheless subject to mandatory detention
2 during their standard removal proceedings. *Id.*; *Jennings*, 583 U.S. at 299 (stating that aliens subject to
3 section 1225(b)(1) and aliens subject to section 1225(b)(2) are both subject to mandatory detention for
4 the duration of removal proceedings); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (stating that
5 “for aliens arriving in and seeking admission into the United States who are placed directly in full
6 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention
7 ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).

8 Petitioner here is an “applicant for admission” by virtue of seeking admission into the United
9 States without being clearly and beyond a doubt entitled to be admitted. Jerome Decl. ¶ 5. Accordingly,
10 Petitioner is subject to the mandatory detention requirement of 8 U.S.C. § 1225(b)(2)(A). *See Alonzo v.*
11 *Noem*, 1:25-CV-01519-WBS-SCR, 2025 WL 3208284 (E.D. Cal., Nov. 17, 2025); *see also Altamirano*
12 *Ramos v. Lyons*, 2:25-cv-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal., Nov. 12, 2025); *Sandoval v.*
13 *Acuna et al.*, No. 6:25-cv-1467, 2025 WL 3048926, at *4 (W.D. La. Oct. 31, 2025); *Chave v. Noem*, No.
14 3:25-cv-2325-CAB-DBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-
15 NMG, 2025 WL 2108913 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, No. 8:25-cv-526, 2025 WL
16 2780351 (D. Neb. Sept. 30, 2025).

17 DHS’s initial exercise of its discretion to release Petitioner on his own recognizance, place him
18 in the ISAP program, and initiate routine removal proceedings, does not preclude ICE from re-detaining
19 Petitioner. As discussed above, he is subject to mandatory detention. Additionally, here, an “examining
20 immigration officer”—*i.e.*, the immigration officers who detained Petitioner—“determine[d] that
21 [Petitioner] is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see*
22 *also* 8 U.S.C. § 1101 (defining “immigration officer” broadly as “any employee or class of employees of
23 he [Immigration and Naturalization Service] or of the United States designated by the Attorney General,
24 individually or by regulation, to perform the functions of an immigration officer specified by this
25 chapter or any section of this title”).

26 **2. Petitioner’s Due Process Arguments Lack Merit.**

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

28 Petitioner argues that because DHS released him on his own recognizance after applying for

1 admission, the Due Process clause entitles him to a hearing prior to re-detention. ECF 2-2 at 6.

2 Petitioner’s argument is inapplicable to the facts in this case.

3 Petitioner’s conditional release from DHS custody did not change his status as an applicant for
4 admission within the meaning of 8 U.S.C. § 1225(b), nor does the Due Process Clause entitle him to a
5 pre-re-detention hearing. Under the doctrine of “entry fiction,” aliens seeking admission to the United
6 States, even if “allowed within its borders pending a determination of admissibility... are legally
7 considered to be detained at the border and hence as never having effected entry into” the United States.
8 *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc).⁵ Thus, even if an alien
9 seeking admission is physically present on U.S. soil and has been “paroled elsewhere in the country for
10 years pending removal,” he still is “treated . . . as if stopped at the border” for immigration law purposes.
11 *Dept. Homeland Security v. Thurassigiam*, 591 U.S. 103, 139 (2020); see also *United States v. Balde*,
12 943 F.3d 73, 84 (2d Cir. 2019) (“Parole does not change parolees’ immigration status: they remain ‘at
13 the border’ for the purposes of immigration law and are treated as applicants into the country.”). “The
14 distinction between an alien who has effected an entry into the United States and one who has never
15 entered” is a fundamental one that “runs throughout immigration law.” *Zadvydus v. Davis*, 533 U.S. 678,
16 693 (2001).

17 Here, Petitioner was never admitted to the United States – he applied for admission without
18 having the required documents for admission. See Jerome Decl. ¶ 5. For immigration law purposes, he is
19 treated as being stopped at the border, even though he has been physically present within the United
20 States since November 2018. *Barrera-Echavarria*, 44 F.3d at 1450. This carries significant implications
21 for the contours of Petitioner’s due process rights. An alien who has not effected a legal entry, *i.e.*, has
22 not been admitted into the United States, is only entitled to “[w]hatever the procedure authorized by
23 Congress is.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United*
24 *States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); see also *Thuraissigiam*, 591 U.S. at 140

25 _____
26 ⁵ The scope of *Barrera-Echavarria*’s holding has been complicated by statutory amendments in the
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-Echavarria*’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 (an alien detained after unlawful entry “has only those rights regarding admission that Congress has
2 provided by statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for “those . . . who have never
3 technically ‘entered’ the United States . . . procedural due process is simply whatever the procedure
4 authorized by Congress happens to be”) (cleaned up). This makes sense, since “an alien seeking initial
5 admission to the United States requests a privilege and has no constitutional rights regarding his
6 application.” *Barrera-Echavarria*, 44 F.3d at 1449.

7 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
8 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-
9 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien
10 denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has “not
11 ‘technically entered the United States,’ [the Court] examine[s] only whether the government violated the
12 statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th
13 Cir. 2020) (citation omitted). Accordingly, Petitioner is subject to mandatory detention. *See Matter of*
14 *Yajure Hurtado*, 29 I & N Dec. 216, 220 (BIA 2025) (holding that the Immigration and Nationality Act
15 makes all applicants for admission subject to mandatory detention for the duration of their immigration
16 proceedings—even those who have entered without admission or inspection and have been residing in the
17 United States for years without lawful status).

18 Petitioner’s reliance on *Zinerman v. Burch*, 494 U.S. 113 (1990) and *Ortega v. Bonnar*, 415 F.
19 Supp.3d 963, 970 (N.D. Ca. 2019) is misplaced. Unlike those cases, Congress has expressly mandated
20 detention under 8 U.S.C. § 1225 for certain categories of aliens. Because Petitioner was initially
21 encountered at the border, he remains an “applicant for admission” under 8 U.S.C. § 1225(b)(2), and that
22 statutory classification does not change simply because DHS exercised discretion to release him
23 temporarily. Courts have consistently upheld mandatory detention under § 1225(b)(2) as constitutionally
24 permissible, even without individualized bond hearings. *See Demore v. Kim*, 538 U.S. 510 (2003);
25 *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Where detention is mandatory, the *Mathews v. Eldridge*
26 balancing test does not apply, and Petitioner cannot establish a likelihood of success on the merits of his
27 due process claim. *See Valencia v. Chestnut*, --- F. Supp. 3d ---, 2025 U.S. Dist. LEXIS 225888, 2025
28 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Cortes Alonzo v. Noem*, --- F. Supp. 3d ---, 2025 U.S. Dist.

1 LEXIS 225883, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025).

2 **b. Changed Circumstances Were Not Required for Re-Detention.**

3 Petitioner suggests that DHS must demonstrate changed circumstances before re-detaining him
4 ECF 1, at 3. Petitioner's reliance on the Supreme Court's decisions in *Zadvydas* and *Demore v. Kim*, 538
5 U.S. 510 (2003), is also misplaced because those cases concerned aliens admitted into the country who
6 had obtained lawful status, rather than an arriving alien such as Petitioner (and the petitioners in
7 *Thuraissigiam*, *Mezei*, *Knauff*, and *Nishimura Ekiu*).⁶ This distinction "[m]akes all the difference" when
8 it comes to due process. *Zadvydas*, 533 U.S. at 693. Indeed, *Zadvydas* made just this point:
9 acknowledging that "[t]he distinction between a[n] [alien] who has effected an entry into the United
10 States and one who has never entered runs throughout immigration law." *Id.* at 682. The Supreme Court
11 conceded that aliens "who have not yet gained initial admission to this country *would present a very*
12 *different question.*" *Id.* at 693 ("[C]ertain constitutional protections available to persons inside the
13 United States are unavailable to aliens outside of our geographic borders."). So even on its own terms,
14 *Zadvydas's* analysis of the process due to an alien admitted into the country says nothing about the
15 process which an arriving alien, such as Petitioner, is entitled.

16 *Demore* is even less helpful to Petitioner. There, the Supreme Court held that mandatory civil
17 detention of a legal permanent resident during removal proceedings—with no opportunity to seek release
18 on bond—did not violate due process. *See* 538 U.S. at 526 ("[T]he Government may constitutionally
19 detain deportable aliens during the limited period necessary for their removal proceedings"). Far from
20 suggesting that arriving aliens have extra-statutory due process rights concerning their civil detention,
21 *Demore* held that even aliens admitted into the country, with a stronger liberty interest, do not
22 necessarily possess such rights. *Id.* at 523 (In so holding, the court reaffirmed that proceedings to
23 remove aliens from the country "would be in vain if those accused could not be held in custody pending
24 the inquiry into their true character) (quoting *Wong Wing*, 163 U.S. at 235). This principle applies with

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26 ⁶ *See Thuraissigiam*, 591 U.S. at 138-40 (rejecting claim that due process entitled arriving aliens to
27 judicial review of asylum request); *Mezei*, 345 U.S. at 212 (holding that former resident aliens exclusion
28 and resulting prolonged detention did not violate due process); *Knauff*, 338 U.S. at 544 (rejecting war
bride's petition seeking review of her exclusion and concomitant detention); *Nishimura Ekiu*, 142 U.S.
at 660 (holding that detention of arriving aliens after determination that she should not be allowed to
land did not violate due process).

1 at least equal force to Petitioner's detention.

2 Petitioner relies on several cases which are distinguishable from the instant case because those
3 cases involve the rights of American citizens in prison or other contexts, whereas Petitioner here is not a
4 U.S. citizen. *Wolff v. McDonnell*, 418 U.S. 539 (1974) (due process challenge by citizen inmate to
5 prison's disciplinary process) (ECF 1 at 6); *Cnty. of Sacramento v. Lewis*, 523 U.S. 833 (1998) (Section
6 1983 claim alleged substantive due process right to life violation after motorcyclist killed during police
7 chase) (ECF 1 at 6); *Jackson v. Indiana*, 406 U.S. 715 (1972) (challenge to Indiana state prison's pretrial
8 commitment process of incapacitated criminal defendants) (ECF 1 at 7).⁷ Importantly, the Supreme
9 Court has expressly recognized that "in the exercise of its broad power over naturalization and
10 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."
11 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1972).

12 Finally, even *if* changed circumstances are required, they exist here because Petitioner repeatedly
13 failed to comply with the conditions of his conditional release. Jerome Dec., ¶ 7.

14 3. The *Mathews* Factors Do Not Mandate a Remedy.

15 Petitioner incorrectly argues that the multi-factor balancing test of *Mathews v. Eldridge*, 424
16 U.S. 319 (1976) entitles him to release under due process. ECF 2-2 at 6-8. *Mathews* does not, however,
17 appear to govern due process claims raised by detained aliens. Indeed, the Supreme Court has not
18 adjudicated due process challenges to detainment through the *Mathews* factors despite several
19 opportunities. *See Rodriguez Diaz v. Garland*, 53 F.4th at 1189, 1206, 1214 (9th Cir. 2022) (Bumatay,
20 J., concurring) ("In resolving similar immigration-detention challenges, the Supreme Court has not
21 relied on the *Mathews* framework.") (citing *Demore*, 538 U.S. at 521-31; *Reno v. Flores*, 507 U.S. 292,
22 299-315 (1993)).

23 Regardless, the *Mathews* factors do not create the free-standing liberty interest that Petitioner
24 seeks. *Mathews* considers three factors: (1) the private interest that will be affected; (2) the risk of an
25 erroneous deprivation of such interest through the procedures used and the value, if any, of additional or
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27 ⁷ *Young v. Harper*, 520 U.S. 143 (1997) (ECF 1 at 7); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (ECF 1
28 at 7); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (ECF 1 at 7); *Hurd v. Dist. of Columbia*, 864 F.3d 671
(D.C. Cir. 2017) (ECF 1 at 7); *Zinerman v. Burch*, 494 U.S. 113 (1990) (ECF 1 at 7, 10).

1 substitute safeguards; and (3) the government’s interest. *Id.* at 1207. In applying these factors, the Court
2 “can and must account for the heightened governmental interest in the immigration detention context.”
3 *Id.* at 1206.

4 None of the factors support habeas relief for Petitioner here. The first factor does not weigh
5 strongly in his favor because “detention during deportation proceedings [is] a constitutionally valid
6 aspect of the deportation process.” *Demore*, 538 U.S. at 523; *see also Reno*, 507 U.S. at 306; *Carlson v.*
7 *Landon*, 342 U.S. 524, 538 (1952). In this case, § 1225(b) makes detention mandatory. Further,
8 Petitioner has not been detained for a long period of time (since September 30, 2025), nor is his
9 detention indefinite—by law, it ends once his removal proceedings are completed. 8 U.S.C. §
10 1125(b)(2); *Jennings*, 583 U.S. at 299 (§ 1225(b) “provide[s] for detention for a specified period of
11 time”); *compare Zadvydas*, 533 U.S. at 690-91, 698 (concerned with “indefinite, perhaps permanent,
12 detention” and establishing a presumptively reasonable six-month detention period to effectuate
13 removal).

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 2-2 at 8. However, as set forth above, Petitioner has not technically entered the United
10 States and is only entitled to the minimal rights and processes that Congress has given him. Petitioner
11 has 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. *See* 8
15 U.S.C. § 1225(b). “Detention is necessarily a part of [the] deportation procedure.” *Carlson*, 342 U.S. at
16 538.

17 **C. The Balance of Equities and Public Interest Do Not Favor Petitioner.⁸**

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

26 Those interests are compelling here. Congress determined that aliens who were stopped at the

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28 ⁸ 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 border should be detained during expedited removal proceedings or pending resolution of their standard
2 removal proceedings. 8 U.S.C. § 1225(b). It not only made such detention mandatory, but severely
3 curtailed ICE’s ability to release § 1225(b) aliens. *Jennings*, 583 U.S. at 299, 311; *Thuraissigiam*, 591
4 U.S. at 111. The government seeks to vindicate those interests here, whereas Petitioner seeks to exempt
5 himself from the governing statutes. Petitioner’s requested relief, meanwhile, would undermine the
6 immigration statutory framework. Section 1225(b) largely precludes discretionary relief from removal,
7 but Petitioner demands creation of an entirely new arrest standard under it. Application of § 1225(b)
8 involves a subject matter entrusted to Congress and the Executive Branch.

9 **D. Petitioner’s Requested Remedy Exceeds Permissible Bounds of Habeas Relief.**

10 Habeas is properly “a means to secure *release* from unlawful detention,” not a means of
11 “achiev[ing] an entirely different end,” such as “obtain[ing] additional administrative review.”
12 *Thuraissigiam*, 591 U.S. at 107. Here, Petitioner does not just seek release from confinement. He also
13 demands that before the Government may lawfully re-arrest him, it must establish, by clear and
14 convincing evidence before a neutral decisionmaker, that he is a danger to the community or a flight risk
15 and thus reincarceration is necessary. ECF 2-2 at 10-11. By doing so, Petitioner requests that the Court
16 create an affirmative right completely absent from the governing statute. *See* 8 U.S.C. § 1225(b).
17 Petitioner’s call for an extra-statutory right to stay in the United States is especially apparent given that
18 “simply releasing him would not provide the right to stay in the country... Without a change in status, he
19 would remain subject to arrest, detention, and removal.” *Thuraissigiam*, 591 U.S. at 119.

20 To the extent that Petitioner seeks habeas relief beyond release from confinement, it is not
21 cognizable and should be rejected.

22 **V. CONCLUSION**

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

1 Dated: December 3, 2025

ERIC GRANT
United States Attorney

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3 By: /s/ ANTONIO J. PATACA
ANTONIO J. PATACA
Assistant United States Attorney
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