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

10 J.S.,

11 Petitioner,

12 v.

13 WARDEN OF THE GOLDEN STATE
14 ANNEX DETENTION FACILITY, et al.,

15 Respondents.
16

CASE NO. 1:25-CV-1693-DAD-JDP

GOVERNMENT'S COMBINED RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS
AND REQUEST FOR TEMPORARY
RESTRAINING ORDER

17 **I. INTRODUCTION**

18 Petitioner requests two forms of relief: a writ of habeas corpus pursuant to 28 U.S.C. § 2241,¹
19 Dkt. No. 10 (hereinafter "*Habeas Pet.*"), and a temporary restraining order (TRO), Dkt. No. 11. Both
20 documents challenge the lawfulness of Petitioner's current detention by Immigration and Customs
21 Enforcement ("ICE"). Both documents also ask for the same substantive relief: prompt release from
22 custody, and an order enjoining ICE from re-detaining Petitioner absent a detention hearing before a
23 neutral adjudicator.

24 Respondents argue that Petitioner is an applicant for admission under 8 U.S.C. § 1225(a)(1), and
25

26 ¹ The Government moves to dismiss all respondents other than Tonya Andrews from this case.
A habeas petitioner may only name the officer having custody of him as the respondent to the petition.
27 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d
891, 894 (9th Cir. 1996). Here, Petitioner's custodian is the facility administrator at the Golden State
28 Annex, Tonya Andrews. Respondents Pamela Bondi, Kristi Noem, Todd Lyons, and Sergio Albaran are
not proper respondents.

as such is subject to mandatory detention without any right to a detention hearing under 8 U.S.C. § 1225(a)(2)(A). Respondents also argue that, due to the limited constitutional rights afforded aliens, ICE's compliance with the § 1225 detention framework does not violate the Due Process Clause as regards Petitioner's ongoing detention. Finally, even if this Court were to find that Petitioner is entitled to relief, the relief he requests does not align with the harms he alleges. The appropriate remedy would be to order ICE to conduct a prompt detention hearing, with no order preventing re-detention without another hearing.

Accordingly, Respondents request that this Court deny Petitioner's request for a writ of habeas corpus and a temporary restraining order.²

II. BACKGROUND

Petitioner is a citizen and national of India who entered the United States in December 2023. *Habeas Pet*, Dkt. No. 10, at 8. Petitioner asserts that he was detained upon entry into the United States and then released as part of the Intensive Supervision Appearance Program, presumably pursuant to 8 C.F.R. § 212.5. *Id.* at 10–11. On October 15, 2025, Petitioner was taken into immigration custody by ICE agents during a routine change-of-address appointment at the Stockton ICE field office. *Id.* at 11. At the time of this filing, Petitioner has been in custody for approximately 63 days. Petitioner has a pending application for asylum. *Id.* Petitioner most recently had a hearing before an Immigration Judge (IJ) on December 16, 2025, and he is scheduled for a merits hearing on April 15, 2026.

III. ARGUMENT

The Court should deny Petitioner's request for a writ of habeas corpus and temporary restraining order. Petitioner is subject to mandatory detention during the pendency of the asylum and removal process. Respondents assert that compliance with the relevant statutory scheme satisfies Petitioner's rights under the Due Process Clause.

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² The government waives oral argument on both the habeas petition and the TRO.

1 **A. The Court Should Dismiss the Petition Because Petitioner is Properly Detained**
 2 **Under 8 U.S.C. § 1225.**

3 1. As an applicant for admission, Petitioner is subject to the § 1225 statutory
 4 framework.

5 8 U.S.C. § 1225(a)(1) defines an “applicant for admission” as an “alien present in the United
 6 States who has not been admitted or who arrives in the United States (whether or not at a designated port
 7 of arrival . . .)” 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5
 8 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the
 9 border or inside the country, he or she will still be required to prove eligibility for admission.”).
 10 Accordingly, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens,
 11 and (2) aliens present without admission. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,
 12 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant
 13 for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012)
 14 (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to
 15 include not just those who are expressly seeking permission to enter, but also those who are present in
 16 this country without having formally requested or received such permission”); *Matter of E-R-M- &*
 17 *L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for
 18 admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted”
 19 (citing 8 U.S.C. § 1225(a)(1))); *but see M.R.R. v. Chestnut*, No. 1:25-CV-01517-JLT, 2025 WL 3265446
 20 (E.D. Cal. Nov. 24, 2025) (challenging the applicability of § 1225(b) to aliens already living in the
 21 United States). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or
 22 attempting to come into the United States at a port-of-entry [(“POE”)]” 8 C.F.R. §§ 1.2, 1001.1(q).

23 All aliens who are applicants for admission “shall be inspected by immigration officers.” 8
 24 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall
 25 be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection”).
 26 An applicant for admission seeking admission at a United States POE “must present whatever
 27 documents are required and must establish to the satisfaction of the inspecting officer that the alien is
 28 not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws .
 . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the

1 related burden of an applicant for admission in removal proceedings). “An alien present in the United
 2 States who has not been admitted or paroled or an alien who seeks entry at other than an open,
 3 designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C.
 4 § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2); *but see e.g., Ortiz Donis v. Chestnut*, No.
 5 1:25-CV-01228-JLT-SAB, 2025 WL 2879514, at *6–*11 (E.D. Cal. Oct. 9, 2025) (holding §
 6 1225(b)(2)(A) inapplicable to aliens living in United States for years).

7 2. Applicants for admission who are in removal proceedings are subject to
 8 mandatory detention per § 1225(b)(2)(A).

9 Applicants for admission whom DHS places in § 1229a removal proceedings are subject to
 10 detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present
 11 without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as
 12 defined in 8 U.S.C. § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in 8 U.S.C. §
 13 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus are
 14 ineligible for a bond determination hearing before the IJ.

15 Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are
 16 subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing
 17 before an IJ. Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for
 18 admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B).
 19 Under 8 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a
 20 proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien
 21 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A)
 22 (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal
 23 proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained”
 24 pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in
 25 removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C.
 26 § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

27 Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8
 28 U.S.C. § 1229a removal proceedings “*shall be detained*.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

1 “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is
 2 rebutted only in ‘rare and exceptional circumstances,’ . . .” *Ardestani v. INS*, 502 U.S. 129, 135–36
 3 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); see *Lamie*, 540 U.S. at 534 (“It is
 4 well established that when the statute’s language is plain, the sole function of the courts—at least where
 5 the disposition required by the text is not absurd—is to enforce it according to its terms.” (quotation
 6 marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says
 7 anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing
 8 that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. The distinction the Attorney General drew
 9 in the 1997 Interim Rule (addressed in detail below) between “arriving aliens,” see 8 C.F.R. §§ 1.2,
 10 1001.1(q), and “aliens who are present without being admitted or paroled,” Inspection and Expedited
 11 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
 12 Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997),³ finds no purchase in the statutory text. No
 13 provision within 8 U.S.C. § 1225(b)(2) refers to “arriving aliens,” or limits that paragraph to arriving
 14 aliens, as Congress intended for it to apply generally “in the case of an alien who is an applicant for
 15 admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving
 16 aliens,” it uses that specific term of art or similar phrasing. See, e.g., *id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

17 On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29
 18 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination
 19 that he did not have authority over [a] bond request because aliens who are present in the United States
 20 without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8
 21 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure*
 22 *Hurtado*, 29 I&N Dec. at 220.⁴

23
 24 ³ As discussed more below, the preamble language of the 1997 Interim Rule states that “[d]espite
 25 being applicants for admission, aliens who are present without having been admitted or paroled (formerly
 26 referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”
 27 62 Fed. Reg. at 10,323. However, preambular language is not binding and “should not be considered
 unless the regulation itself is ambiguous.” *El Comite Para El Bienestar de Earlimart v. Warmerdam*, 539
 F.3d 1062, 1070 (9th Cir. 2008); see also *Wards Cove Packing Corp. v. Nat’l Marine Fisheries Serv.*, 307
 F.3d 1214, 1219 (9th Cir. 2002) (“[T]he plain meaning of a regulation governs and deference to an
 agency’s interpretation of its regulation is warranted only when the regulation’s language is ambiguous.”
 (citing *Christensen v. Harris County*, 529 U.S. 576, 588 (2000))).

28 ⁴ Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8

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

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

20 _____
 21 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly
 22 in 8 U.S.C. § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747
 23 (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.

24 ⁵ 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 mandate detention ... throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–
 2 03, IJs do not have authority to redetermine the custody status of an alien present without admission.

3 Aliens present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants
 4 for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. §
 5 1225(b)(2)(A). As discussed above, such aliens placed in removal proceedings under 8 U.S.C. § 1229a
 6 are applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. §
 7 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. Such aliens are also
 8 considered “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). To be sure, “many
 9 people who are not *actually* requesting permission to enter the United States in the ordinary sense are
 10 nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Lemus*, 25 I&N Dec. at
 11 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of*
 12 *Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application for admission [i]s a
 13 continuing one”).⁶

14 Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C.
 15 § 1225(b) detention: “In sum, U.S. immigration law authorizes the Government to detain certain aliens
 16 seeking admission into the country under §§ 1225(b)(1) and (b)(2).” *Id.* at 289. This was recently
 17 reiterated by the BIA in *Matter of Q. Li*, which held that for aliens “seeking admission into the United
 18 States who are placed directly in full removal proceedings, [8 U.S.C. § 1225(b)(2)(A)] . . . mandates
 19 detention ‘until removal proceedings have concluded.’” 29 I&N Dec. At 68 (quoting *Jennings*, 583 U.S.
 20 at 299).

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23
 24 ⁶ Within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, in which this case
 25 arises, not every “applicant for admission” is necessarily requesting permission to enter. *See United States*
 26 *v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (citing, *inter alia*, *Torres v. Barr*, 976 F.3d 918, 924–
 27 26 (9th Cir. 2020) (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 [s/he] illegally crossed into the United States between POEs without entry documents,
 and in so doing was making an application for admission.

1 3. Petitioner's detention does not violate due process.

2 "[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years
3 pending removal—are 'treated' for due process purposes 'as if stopped at the border.'" *Dep't of*
4 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Shaughnessy v. United States ex*
5 *rel. Mezei*, 345 U.S. 206, 215 (1953)). This means that applicants for admission do not enjoy the same
6 set of procedural and substantive due process protections afforded to individuals lawfully in the United
7 States; indeed, "applicants for admission have virtually no constitutional rights regarding their
8 applications." *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (quoting *Landon v. Plasencia*,
9 459 U.S. 21, 33–34 (1982)). In other words, the only inquiry when an applicant for admission raises a
10 due process claim is "whether the government violated the statutory rights that Congress afforded such
11 applicants." *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th Cir. 2020) (citing *Angov v. Lynch*, 788 F.3d
12 893, 898–99 (9th Cir. 2015)); *see also Alonzo v. Noem*, No. 1:25-CV-01519-WBS-SCR, 2025 WL
13 3208284, at *5 (E.D. Cal. Nov. 17, 2025) (reasoning that "the procedure authorized by Congress" in 8
14 U.S.C. § 1225 constitutes procedural 'due process' as far as petitioner is concerned" (quoting
15 *Shaughnessy*, 345 U.S. at 212)).

16 As set forth above, a close reading of the relevant immigration statutes reveals that they do not
17 entitle applicants for admission like Petitioner to anything besides mandatory detention. *See Valencia*,
18 548 F.3d at 1263 (noting that "applicants for admission have virtually no constitutional rights regarding
19 their applications"); *Thuraissigiam*, 591 U.S. at 140 (reasoning that an applicant for admission "in
20 respondent's position has only those rights regarding admission that Congress has provided by statute");
21 *but see, e.g., Doe v. Becerra*, 787 F. Supp. 3d 1083, 1091 (E.D. Cal. 2025) (highlighting that "the Ninth
22 Circuit has raised significant questions about the constitutionality of section 1225(b)" when viewed
23 through a due process lens).

24 Respondents thus contend that Petitioner's Due Process Clause arguments are misplaced, and
25 that, as a result, ICE is not required to show a change of circumstances before re-detaining Petitioner.
26 *But see Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) (suggesting that ICE cannot re-
27 detain a previously-released alien absent a showing of changed circumstances); *Habeas Pet.*, at 12-13
28 (collecting recent California U.S. District Court cases where judges have held contrary to Respondents'

position); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (government authority to re-detain aliens released on parole is subject to Due Process Clause).

B. Petitioner Is Not Entitled to a Temporary Restraining Order.

Temporary restraining orders and preliminary injunctions are governed by the same standard. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show “serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third . . . factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Preliminary injunctions and temporary restraining orders are “never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiffs seeking either form of relief bear a “heavy” burden and “difficult task in proving that they are entitled to this extraordinary relief. *See Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

A court must exercise “heightened scrutiny” where a party seeks a mandatory injunction.”⁷ *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). If “a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction.” *Martin v. Int’l Olympic Cmte.*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Cmte. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1442 (9th Cir. 1986).

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

As discussed above, Petitioner is not likely to succeed on the merits of his habeas claim. He is subject to mandatory detention under § 1225(a)(2)(A) and is not entitled to a detention hearing.

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⁷ “A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014).

2. Petitioner Has Not Met His Burden to Show Likely Irreparable Harm

“Detention is necessarily a part of [the] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952). *Freno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.”) *but see Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1253 (W.D.Wash. 2025) (“The Ninth Circuit has recognized the irreparable harms imposed on anyone subject to immigration detention”) quoting *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017)). Petitioner cannot establish irreparable harm because he is being detained to effectuate his removal. *But see Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (holding that “the deprivation of constitutional rights unquestionably constitutes irreparable injury”).

3. The Balance of Equities Tips in Respondents’ Favor.

“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 v. Plasencia*, 459 U.S. 21, 34 (1982). “Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm”, but “[t]here is always a public interest in prompt execution of removal orders.” *Nken v. Holder*, 556 U.S. 418, 436 (2009). Here, there is a final removal order that Petitioner is not contesting. The public interest weighs in favor of executing that final order, and in favor of detaining Petitioner pending its outcome. *But see Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.”).

C. Petitioner Is Not Entitled to the Requested Relief.

Petitioner’s arguments in both the habeas petition and request for a TRO demand the same two remedies: (1) immediate release; and (2) an order that ICE not re-detain Petitioner without a pre-arrest detention hearing. *See Habeas Pet.* at 21–23. Even if this Court determines that Petitioner’s current detention is unlawful, Petitioner is not entitled to the remedies he requests.

First, if this Court finds that Petitioner’s current detention is unlawful on the basis that Petitioner has not received a detention hearing to which he is entitled, then the appropriate remedy is to order ICE

1 to provide Petitioner a detention hearing. Requiring such a hearing is a direct and appropriate response
2 to the alleged Due Process Clause violations; requiring immediate release would provide a response
3 which is greater in magnitude than the harm which Petitioner asserts was inflicted.

4 Second, the petitioner's demand for notice and a "pre-deprivation" hearing prior to being arrested
5 is without basis in law. No statute or regulation provides the petitioner with such a right. The petitioner's
6 reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced. *Morrissey* says nothing
7 about due process afforded in immigration cases. Moreover, in *Morrissey*, the Supreme Court reaffirmed
8 that "due process is flexible and calls for such procedural protections as the particular situation demands."
9 *Id.* at 481. The mere fact that any process afforded to aliens differs from that offered to citizens does not
10 inherently make it insufficient. *See Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976) ("The fact that an Act of
11 Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is
12 invidious.").

13 The petitioner is essentially asking the Court to invent a new procedure rule. There is no precedent
14 for notice and a hearing before immigration authorities can arrest someone that is unlawfully present in
15 the United States. Indeed, the petitioner's new procedural rule would afford non-citizen aliens greater
16 procedural protections than criminal defendants. A criminal defendant that is released on pre-trial
17 supervision does not get notice and hearing before they are arrested on a pretrial violation. *See* 18 U.S.C.
18 § 3148. Instead, such a person gets a hearing after they have been arrested. Similarly, a criminal defendant
19 that is subject to supervised release does not get notice and hearing before they are arrested on a supervised
20 release violation petition. *See* Fed. Rule Crim. Pro. 32.1. Instead, such a person gets a hearing after they
21 have been arrested. To the extent that the petitioner's initial release on bond is even relevant in this case
22 where the proceedings were terminated and the petitioner committed a new criminal offense, the petitioner
23 cannot demand greater procedural protections than criminal defendants. The Court should deny the
24 petitioner's request to create a new procedural rule because it is not supported by the law. *See Zinermon*
25 *v. Burch*, 494 U.S. 113, 127 (1990) (listing examples where pre-deprivation hearing is required and not
26 required).

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1 IV. CONCLUSION

2 Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A), and his continuing detention does
3 not violate due process principles. Accordingly, the Court should deny Petitioner's habeas petition.
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5 Dated: December 18, 2025

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