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

10 H.J.G.G.,
11
12 Petitioner,
13 v.
14 MINGA WOFFORD, ET AL.,
15 Respondents.¹

CASE NO. 1:25-CV-01718-JLT-EPG

RESPONDENTS' OPPOSITION TO
PETITIONER'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY
INJUNCTION, AND ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS

16
17 **I. INTRODUCTION**

18 Petitioner is not entitled to the extraordinary remedy of a temporary restraining order ("TRO")
19 because he is mandatorily detained as an "applicant for admission" pending further consideration of his
20 application for asylum pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). As such, Petitioner is ineligible for the
21 custody redetermination hearing he requests. Because Petitioner fails to meet the burden of proof
22 required for injunctive relief, the motion for a TRO should be denied.

23 The Court issued a minute order noting it would be converting Petitioner's motion for a TRO to
24 a motion for preliminary injunction. ECF 6. The Court directed the parties to indicate whether the
25 request for a TRO could be converted into a preliminary injunction without further briefing.

26
27 ¹ The Court should dismiss all respondents other than the Warden of the Mesa Verde ICE
28 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).

1 Respondents also note that Petitioner’s motion for a TRO is largely duplicative of his petition for a writ
2 of habeas corpus. ECF 1, 2. Based on the Court’s minute order and the similarities between the
3 Petitioner’s filings, Respondents request that the Court receive this filing as Respondents’ opposition to
4 both the motion for a TRO and preliminary injunction, as well as the petition for a writ of habeas corpus,
5 without further briefing.

6 Additionally, in its order, the Court directed the parties to state whether a hearing is required on
7 the motion. ECF 7. After review of Petitioner’s motion and supporting documents, the government
8 believes there is no substantial dispute in facts and the legal issues presented in this case can be decided
9 on the parties’ filings.

10 **II. BACKGROUND**

11 Petitioner H.J.G.G. is a native and citizen of Ecuador. Declaration of Deportation Officer Paul
12 Villagran (“Villagran Decl.”) ¶ 5. Petitioner entered the United States at an unknown place and
13 unknown time and was not then admitted or paroled. ¶ 5.

14 On September 19, 2023, officials with the Department of Homeland Security (“DHS”)
15 interviewed Petitioner. ¶ 6. DHS determined Petitioner had a credible fear of torture. ¶ 6.

16 On July 13, 2025, ICE took Petitioner into custody. ¶ 7.

17 On August 13, 2025, DHS initiated Petitioner’s removal proceedings pursuant to Immigration
18 and Nationality Act (“INA”) § 240 by issuing a Notice to Appear (“NTA”). ¶ 8. The NTA charged
19 Petitioner with inadmissibly under 1) INA § 212(a)(6)(A)(i), as an alien present in the United States
20 without being admitted or paroled, or who arrived in the United States at any time or place other than as
21 designated by the Attorney General, and 2) INA § 212(a)(7)(A)(i)(I), as an immigrant who, at the time
22 of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit,
23 border crossing card, or other valid entry document required by the INA, and a valid unexpired passport,
24 or other suitable travel document, or document of identity and nationality as required under the
25 regulations issued by the Attorney General under INA § 211(a). ¶ 8.

26 Petitioner is currently detained at Mesa Verde ICE Processing Center pursuant to INA §
27 235(b)(1)(B)(ii). ¶ 9. His next immigration hearing is scheduled for January 15, 2026, in Adelanto
28 Immigration Court, Adelanto, California. ¶ 10.

1 On December 3, 2025, Petitioner filed a Petition for Writ of Habeas Corpus and Complaint for
2 Declaratory and Injunctive Relief asserting two claims for relief: procedural and substantive due process
3 violations under the Fifth Amendment. ECF 1, at 23-24. The Petition sought Petitioner’s immediate
4 release from custody, an injunction prohibiting a re-arrest of Petitioner “unless and until a hearing can
5 be held before a neutral adjudicator to determine whether his re-incarceration would be lawful . . .,” and
6 a declaration that Petitioner cannot be re-arrested unless and until he is afforded a hearing on his re-
7 incarceration, among other relief sought. ECF 1, at 25-26. The same day, Petitioner filed a Ex Parte
8 Motion for Temporary Restraining Order largely reiterating his claims and seeking the same relief on an
9 emergent basis. *See generally*, ECF 3.

10 **III. ARGUMENT**

11 **A. The Standard for Preliminary Injunctions**

12 Temporary restraining orders (“TROs”) are governed by the same standard applicable to
13 preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F.
14 Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are “never awarded as of right.” *Winter*
15 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary
16 injunction faces a “difficult task” in showing that they are entitled to such an “extraordinary remedy.”
17 *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

18 “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the
19 merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
20 equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786
21 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show “serious
22 questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the
23 second and third . . . factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th
24 Cir. 2017).

25 The purpose of a preliminary injunction “is to preserve the status quo and the rights of the parties
26 until a final judgment issues in the cause.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094
27 (9th Cir. 2010). A preliminary injunction may not be used to obtain “a preliminary adjudication on the
28 merits,” but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix*

1 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

2 **B. Petitioner is Unlikely to Succeed on the Merits**

3 **1. Petitioner’s Detention is Mandated by Statute and Supreme Court Precedent**

4 The Supreme Court has upheld the Constitutionality of mandatory detention for certain
5 noncitizens. Petitioner is a noncitizen, “applicant for admission” mandatorily detained pursuant to INA
6 § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii), while his asylum application is being considered.
7 Contrary to his claim that his detention is “punitive and not justified by a legitimate purpose,”
8 Petitioner’s detention was both mandatory and constitutionally sound. ECF 2, at 14.

9 Section 1225(b) lays out two tracks for inspection of “applicants for admission” unlawfully in
10 the United States:

11 First, certain aliens claiming a credible fear of persecution under §1225(b)(1) ‘shall be
12 detained for further consideration of the application for asylum.’ §1225(b)(1)(B)(ii).
13 Second, aliens falling within the scope of §1225(b)(2) ‘shall be detained for a [removal]
14 proceeding.’ §1225(b)(2)(A). Read most naturally, §§ 1225(b)(1) and (b)(2) thus
mandate detention of applicants for admission until certain proceedings have concluded.

15 *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). In either track, detention is mandatory
16 “throughout the completion of applicable proceedings.” *Id.* at 302. Courts have recognized that
17 “there is little question that the civil detention of [noncitizens] during removal proceedings can
18 serve a legitimate government purpose, which is ‘preventing deportable ... [noncitizens] from
19 fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered
20 removed, the [noncitizens] will be successfully removed.’” *Prieto-Romero v. Clark*, 534 F.3d
21 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)). That statutory
22 mandate can be enforced as written: detention applies throughout removal proceedings.

23 Generally, detention during immigration proceedings is “a constitutionally valid aspect of the
24 deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). The Supreme Court has long
25 recognized that Congress exercises “plenary power to make rules for the admission of foreign nationals.
26 . . .” *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, “an alien
27 seeking initial admission to the United States requests a privilege and has no constitutional rights
28 regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v.*

1 *Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst*, 408 U.S. at 767.

2 Thus, “applicants for admission” lack any constitutional due process rights with respect to
3 admission aside from the rights provided by statute: “[w]hatever the procedure authorized by Congress
4 is, it is due process as far as an alien denied entry is concerned,” *Shaughnessy v. United States ex rel.*
5 *Mezei*, 345 U.S. 206, 212 (1953), and “it is not within the province of any court, unless expressly
6 authorized by law, to review [that] determination,” *United States ex rel. Knauff v. Shaughnessy*, 338
7 U.S. 537, 543 (1950). In 2020, the Supreme Court reaffirmed “[its] century-old rule regarding the due
8 process rights of an alien seeking initial entry” explaining that an individual who illegally crosses the
9 border is an applicant for admission and “has only those rights regarding admission that Congress has
10 provided by statute.” *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). Accordingly, Petitioner’s
11 due process rights are limited to whatever statutory rights Congress provides. *Zadvydas v. Davis*, 533
12 U.S. 678, 693 (2001) (“certain constitutional protections available to persons inside the United States are
13 unavailable to aliens outside of our geographical borders.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189,
14 1206 (9th Cir. 2022) (same). None of Petitioner’s constitutional or due process rights were violated and
15 his request for a preliminary injunction should be denied.

16 Here, Petitioner is detained as an “applicant for admission” pending determination of his asylum
17 application in accordance with INA § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii). Contrary to his
18 counsel’s claim that he “presented himself at a port-of-entry,” in August 2023, Petitioner, by his own
19 admission, “crossed the United States border” in August 2023 and “turned [himself] in to the
20 immigration officers.” ECF 2, at 10; ECF 2-1, at 2. Petitioner is accordingly an “alien present in the
21 United States who has not been admitted or who arrives in the United States,” and considered an
22 “applicant for admission.” Because Petitioner indicated an intention to apply for asylum, and an officer
23 later determined that he had a credible fear of persecution, Petitioner is an “applicant for admission”
24 pending determination of his asylum application. Accordingly, Petitioner is subject to mandatory
25 detention under INA § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii).

26 DHS’s initial exercise of its discretion to parole Petitioner, does not preclude ICE from re-
27 detaining Petitioner. A grant of parole does not transition Petitioner into an admitted alien. *See* 8
28 U.S.C. § 1182(d)(5); *Oliveria v. Albarran*, 2025 U.S. Dist. LEXIS 254870 (E.D. Cal. Dec. 9, 2025)

1 (“[t]he grant of parole has no impact on the mandatory nature of detention under § 1225”). In fact, 8
2 U.S.C. § 1182(d)(5) provides the following:

3 The Secretary of Homeland Security may, except as provided in subparagraph (B)
4 or in section 1184(f) of this title, in his discretion parole into the United States
5 temporarily under such conditions as he may prescribe only on a case-by-case
6 basis for urgent humanitarian reasons or significant public benefit any alien
7 applying for admission to the United States, but such parole of such alien shall not
8 be regarded as an admission of the alien and when the purposes of such parole
 shall, in the opinion of the Secretary of Homeland Security, have been served the
 alien shall forthwith return or be returned to the custody from which he was
 paroled and thereafter his case shall continue to be dealt with in the same manner
 as that of any other applicant for admission to the United States.

9 *See also* *Gevorg v. Warden of the Golden State Annex Det. Facility*, 2025 U.S. Dist. LEXIS 251666
10 (E.D. Cal. Dec. 5, 2025).² Because Petitioner is subject to mandatory detention under INA §
11 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii), he is unlikely to succeed on the merits. Petitioner’s
12 motion and petition for a writ of habeas corpus should be denied.

13 **2. Petitioner is Not Entitled to a Pre-Detention Hearing.**

14 Petitioner admits “[t]he statute and regulations grant ICE the ability to unilaterally revoke any
15 noncitizen’s release and re-arrest the noncitizen at any time.” ECF 2, at 15. Despite that admission,
16 Petitioner then incorrectly argues that, because the Department of Homeland Security (“DHS”) released
17 him on parole, the Due Process Clause entitles him to a hearing before a neutral adjudicator prior to re-
18 detention at which the government must establish by clear and convincing there has been a material
19 change in circumstances such that he is now a danger or a flight risk. ECF 2. Not so.

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

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27 ² Respondents note that this Court has held that when a petitioner has previously been paroled,
the Petitioner cannot be detained based on 8 U.S.C. § 1225(b)(1)(B)(ii). *See Harmpreet Singh v.*
Albarran, 2025 U.S. Dist. LEXIS 260000 (E.D. Cal. Dec. 16, 2025).

28 ³ The scope of *Barrera-Echavarria*’s holding has been complicated by statutory amendments in

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

8 Here, Petitioner was never admitted to the United States— Petitioner entered the United States at
 9 an unknown place and unknown time and was not at that time admitted or paroled. *See Villagran Decl.* ¶
 10 5. For immigration law purposes, he is treated as being stopped at the border, even though he has been
 11 physically present within the United States since at least September 2023. *Barrera-Echavarria*, 44 F.3d
 12 at 1450. This carries significant implications for the contours of Petitioner’s due process rights. An
 13 alien who has not effected a legal entry, *i.e.*, has not been admitted into the United States, Petitioner is
 14 only entitled to “[w]hatever the procedure authorized by Congress is.” *Shaughnessy v. United States ex*
 15 *rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S.
 16 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry “has
 17 only those rights regarding admission that Congress has provided by statute”); *Angov v. Lynch*, 788 F.3d
 18 893, 898 (9th Cir. 2015) (for “those . . . who have never technically ‘entered’ the United States . . .
 19 procedural due process is simply whatever the procedure authorized by Congress happens to be”)
 20 (cleaned up). This makes sense, since “an alien seeking initial admission to the United States requests a
 21 privilege and has no constitutional rights regarding his application.” *Barrera-Echavarria*, 44 F.3d at
 22 1449.

23 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
 24 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-
 25 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien

26 _____
 27 the 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 in the 1225(b) subclass 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 denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has “not
2 ‘technically entered the United States,’ [the Court] examine[s] only whether the government violated the
3 statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th
4 Cir. 2020) (citation omitted). Accordingly, Petitioner is subject to mandatory detention. *See Matter of*
5 *Yajure Hurtado*, 29 I & N Dec. 216, 220 (BIA 2025) (holding that the Immigration and Nationality Act
6 makes all applicants for admission subject to mandatory detention for the duration of their immigration
7 proceedings—even those who have entered without admission or inspection and have been residing in
8 the United States for years without lawful status).

9 3. Changed Circumstances were Not Required for Re-Detention.

10 Petitioner wrongly argues that DHS must demonstrate changed circumstances before re-
11 detaining him, yet he also concedes “[t]he statute and regulations grant ICE the ability to unilaterally
12 revoke any noncitizen’s release and re-arrest the noncitizen at any time.” ECF 2, at 15-16. Petitioner’s
13 reliance on the Supreme Court’s decisions in *Zadvydas* and *Demore v. Kim*, 538 U.S. 510 (2003), is also
14 misplaced because those cases concerned aliens admitted into the country who had obtained lawful
15 status, rather than an arriving alien such as Petitioner (and the petitioners in *Thuraissigiam*, *Mezei*,
16 *Knauff*, and *Nishimura Ekiu*).⁴ This distinction “[m]akes all the difference” when it comes to due
17 process. *Zadvydas*, 533 U.S. at 693. Indeed, *Zadvydas* made just this point: Acknowledging that “[t]he
18 distinction between a[n] [alien] who has effected an entry into the United States and one who has never
19 entered runs throughout immigration law.” *Id.* at 682. The Supreme Court conceded that aliens “who
20 have not yet gained initial admission to this country *would present a very different question.*” *Id.* at 693
21 (“[C]ertain constitutional protections available to persons inside the United States are unavailable to
22 non-citizens outside of our geographic borders.”). So even on its own terms, *Zadvydas*’s analysis of the
23 process due to an alien admitted into the country says nothing about the process which an arriving alien,
24 such as Petitioner, is entitled.

25
26 ⁴ *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
29 bride’s petition seeking review of her exclusion and concomitant detention); *Nishimura Ekiu*, 142 U.S.
30 at 660 (holding that detention of arriving aliens after determination that she should not be allowed to
31 land did not violate due process).

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

11 For these same reasons, Petitioner’s argument is not supported by the Board of Immigration
12 Appeals’ holding that DHS must demonstrate changed circumstances before detaining someone
13 previously released by an immigration judge on bond. *Matter of Sugay*, 17 I&N Dec. 647 (BIA 1981).
14 That holding is irrelevant to this case since Petitioner was not released under § 1226 or issued a bond by
15 an immigration judge.⁵ Indeed, none of the bond cases that Petitioner cites apply to his detention in this
16 case. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) (involved due process issues when
17 the court did not consider an immigrant’s ability to afford the bond) (ECF 2, TRO at 7); *Nielsen v.*
18 *Preap*, 586 U.S. 392 (2019) (concerned § 1226(c)) (ECF 2, TRO at 12); *Saravia v. Sessions*, 280 F.
19 Supp. 3d 1168 (N.D. Cal. 2017) (involved minors and bond) (ECF 2, TRO at 9); *Padilla v. U.S. Immigr.*
20 *And Customs Enf’t*, 704 F. Sup. 3d 1163, 1173 (W.D. Wash. 2023) (bond) (ECF 2, TRO at 13);
21 *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (released on bond) (ECF 2, TRO at 14).

22 Petitioner’s argument is likewise not supported by *Mahdawi v. Trump*, 781 F.Supp.3d 214 (2d.
23 Cir. 2025), which concerned whether the alien was detained for improper motives and retaliatory
24 reasons in violation of the First Amendment. ECF 2, at 12. Petitioner relies on several cases which are
25 distinguishable from the instant case because those cases involve the rights of American citizens in
26 prison or other contexts, whereas Petitioner here is not a U.S. citizen. *Wolff v. McDonnell*, 418 U.S. 539

27
28 ⁵ § 1226(b) does not apply here because that is not the provision he was detained or released under.

1 (1974) (due process challenge by citizen inmate to prison's disciplinary process) (ECF 2, at 2); *Cnty. of*
2 *Sacramento v. Lewis*, 523 U.S. 833 (1998) (Section 1983 claim alleged substantive due process right to
3 life violation after motorcyclist killed during police chase) (ECF 2, at 2); *Jackson v. Indiana*, 406 U.S.
4 715 (1972) (challenge to Indiana state prison's pretrial commitment process of incapacitated criminal
5 defendants) (ECF 2, at 13). Importantly, the Supreme Court has expressly recognized that "in the
6 exercise of its broad power over naturalization and immigration, Congress regularly makes rules that
7 would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1972).

8 Petitioner cites twelve district court cases for his argument that he has a due process right to not
9 be detained absent changed circumstances for individuals stopped at the border but later released. Six of
10 those cases are inapposite because they involved a bond issued by an immigration judge.⁶ Three of
11 those cases determined petitioners were not released under §1225 as ICE claimed but instead under
12 §1226.⁷ With regard to the final three cases, which involved Petitioners released on their own
13 recognizance, the Government respectfully maintains they were wrongly decided. Significantly, all of
14 the cases relied on due process decisions involving American citizens' release from prison or being
15 paroled, while failing to appreciate the different due process standards for aliens who have never entered
16 the United States, as noted in *Barrera-Echavarria*, *Mezei*, *Knauff*, and similar Supreme Court and Ninth
17 Circuit precedents.

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

19 Petitioner wrongly argues that the multi-factor balancing test of *Mathews v. Eldridge*, 424 U.S.
20 319 (1976) entitles him to release under due process. ECF 2, at 20-24. *Mathews* does not, however,
21 appear to govern due process claims raised by detained aliens. Indeed, the Supreme Court has not
22 adjudicated due process challenges to detainment through the *Mathews* factors despite several
23 opportunities. See *Rodriguez Diaz v. Garland*, 53 F.4th at 1189, 1206, 1214 (9th Cir. 2022) (Bumatay,

24 ⁶ See *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-cv-5785-
25 PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020); *Jorge M.F. v. Wilkinson*, No. 21-cv-1434-JST, 2021
26 WL 783561 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-2508-TSH, 2022 WL 1443250
(N.D. Cal. May 6, 2022); *Enamorado v. Kaiser*, 2025 WL 1382859 (N.D. Cal. May 12, 2025); *Doe v.*
Becerra, 787 F. Supp. 3d. 1093 (E.D. Cal. 2025).

27 ⁷ *Ramirez Clavijo v. Kaiser*, No. 25-cv-6248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Garcia v.*
28 *Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-
6921, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025).

1 J., concurring) (“In resolving similar immigration-detention challenges, the Supreme Court has not
2 relied on the *Mathews* framework.”) (citing *Demore*, 538 U.S. at 521-31; *Reno v. Flores*, 507 U.S. 292,
3 299–315 (1993)).

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

10 None of the factors support habeas relief for Petitioner here. The first factor does not weigh
11 strongly in his favor because “detention during deportation proceedings [is] a constitutionally valid
12 aspect of the deportation process.” *Demore*, 538 U.S. at 523; *see also Reno*, 507 U.S. at 306; *Carlson v.*
13 *Landon*, 342 U.S. 524, 538 (1952). In this case, § 1225(b) makes detention mandatory. Further,
14 Petitioner has not been detained for a long period of time, nor is his detention indefinite—by law, it ends
15 once his removal proceedings are completed. 8 U.S.C. § 1125(b)(2); *Jennings*, 583 U.S. at 299 (§
16 1225(b) “provide[s] for detention for a specified period of time”); *compare Zadvydas*, 533 U.S. at 690-
17 91, 698 (concerned with “indefinite, perhaps permanent, detention” and establishing a presumptively
18 reasonable six-month detention period to effectuate removal).

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

1 *Molina*, 607 F.3d 864, 894 (1st Cir. 2010) (the law “provide[d] a valid, independent basis for the
2 deprivation of liberty” and thus any procedural due process violation could not vindicate petitioner’s
3 liberty interest or justify habeas relief).

4 Finally, the Government has a significant interest in Petitioner’s detention. Even if Petitioner
5 specifically does not appear to be a danger or flight risk, the Government has a strong interest in
6 effectuating the “system Congress devised.” *Thuraissigiam*, 591 U.S. at 106. “The government’s
7 interest in efficient administration of the immigration laws” is “weighty,” and “it must weigh heavily in
8 the balance that control over matters of immigration is a sovereign prerogative, largely within the
9 control of the executive and the legislature.” *Landon*, 459 U.S. at 34. The system Congress devised
10 requires detention until Petitioner’s removal proceedings are completed.

11 **C. Petitioner Is Not Likely to Suffer Irreparable Harm.**

12 While the Ninth Circuit has recognized that “[a]n alleged constitutional infringement will often
13 alone constitute irreparable harm,” *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th
14 Cir. 1984), the Court should not apply the presumption where, as here, a plaintiff fails to demonstrate “a
15 sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a
16 preliminary injunction.” *Assoc’d Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d
17 1401, 1412 (9th Cir.1991)). Here, as demonstrated above and as in *Goldie’s Bookstore*, Petitioner’s
18 purported constitutional claim is “too tenuous” to support an injunction. *Goldie’s Bookstore*, 739 F.2d
19 at 472.

20 Further, Petitioner has not technically entered the United States and is only entitled to the
21 minimal rights and processes that Congress has given him. Petitioner has received those. Immigration
22 laws have long authorized immigration officials to charge aliens as removable from the country, to arrest
23 aliens subject to removal, and to detain aliens pending removal. *Demore*, 538 U.S. at 523-26. Through
24 the INA, Congress created a multi-layered statutory scheme for aliens’ detention during removal,
25 including mandatory detention for aliens in Petitioner’s position. See 8 U.S.C. § 1225(b). “Detention is
26 necessarily a part of [the] deportation procedure.” *Carlson*, 342 U.S. at 538.

27 Nor do Petitioner’s alleged conditions of detention demonstrate irreparable harm. Any
28 conditions of detention that Petitioner deems unsatisfactory are not cognizable in habeas proceedings.

1 “The appropriate remedy for such constitutional violations, if proven, would be a judicially mandated
2 change in conditions and/or an award of damages, but not release from confinement.” *Crawford v. Bell*,
3 599 F.2d 890, 892 (9th Cir. 1979). Further, a habeas petition is not the proper mechanism for
4 challenging conditions of detention. *Pinson v. Carvajal*, 69 F.4th 1059, 1065, 1073-75 (9th Cir. 2023);
5 *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Conditions of detention/confinement challenges,
6 rather, are properly brought in a civil rights action. *Id.*; *Brown v. Blanckensee*, 857 F. App’x 289, 290
7 (9th Cir. 2021); *Alcala v. Rios*, 434 F. App’x 668, 669-70 (9th Cir. 2011). Thus, to the extent Petitioner
8 relies on conditions of confinement as a basis for habeas relief, his petition cannot succeed.

9 **D. The Balance of Equities and the Public Interest Do Not Favor Petitioner.**⁸

10 The balance of the equities and public interest do not automatically tip toward Petitioner simply
11 because he has alleged a due process violation. Even where constitutional rights are implicated, where a
12 petitioner has not shown a likelihood of success on the merits of a claim, a court should not grant a
13 preliminary injunction. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The Executive
14 also has an important interest in exercising its enforcement authority. “The government has a strong
15 interest in enforcing immigration laws.” *Abdul-Samed v. Warden*, 2025 WL 2099343, at *8 (E.D. Cal.
16 July 25, 2025) (concluding, however, that the government interest in detention “without a bond hearing”
17 was outweighed by petitioner’s liberty interest). Further, the government’s interest in protecting the
18 public and preventing deportable aliens from fleeing are strong and compelling. *See e.g., Rodriguez*
19 *Diaz*, 53 F.4th at 1208 (government’s interests in “protecting the public from dangerous criminal aliens”
20 and “increas[ing] the chance that, if ordered removed, the aliens will be successfully removed” are
21 “interests of the highest order that only increase with the passage of time”).

22 Those interests are compelling here. Congress determined that aliens who were stopped at the
23 border should be detained during expedited removal proceedings or pending resolution of their standard
24 removal proceedings. 8 U.S.C. § 1225(b). It not only made such detention mandatory, but severely
25 curtailed ICE’s ability to release § 1225(b) aliens. *Jennings*, 583 U.S. at 299, 311; *Thuraissigiam*, 591
26 U.S. at 111. The government seeks to vindicate those interests here, whereas Petitioner seeks to exempt

27 _____
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 himself from the governing statutes. Petitioner's requested relief, meanwhile, would undermine the
2 immigration statutory framework. Section 1225(b) largely precludes discretionary relief from removal,
3 but Petitioner demands creation of an entirely new arrest standard under it. Application of § 1225(b)
4 involves a subject matter entrusted to Congress and the Executive Branch.

5 **IV. CONCLUSION**

6 Section 1225(b) mandates Petitioner's detention and the facts of this case present no due process
7 concern. Respondents respectfully request that the Court deny Petitioner's request for a TRO,
8 preliminary injunction, and habeas petition.

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10 Dated: December 23, 2025

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