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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SIMRANJIT SINGH,

Petitioner,

v.

Warden of Golden State Annex Detention Facility, et al.

Respondents.[1]

CASE NO. 1:25-CV-01739-TLN-CSK

OPPOSITION TO MOTION FOR A TEMPORARY RESTRAINING ORDER

[1] This Court should dismiss all respondents other than the Warden of the Golden State Annex Detention Facility 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).

I. BACKGROUND

Petitioner is a native and citizen of India who entered the United States at an unknown location around April 29, 2018, without admission or parole. Declaration of Mayra Gallenkamp ¶ 6-7. Upon apprehension, he was issued an expedited removal order pursuant to 8 U.S.C. § 1225(b). *Id.* The petitioner raised a fear of persecution in India, so was referred to an asylum officer for a credible fear hearing. *Id.* at ¶ 8. Because the asylum officer determined that the petitioner had raised a credible fear of persecution, the petitioner was issued a Notice to Appear and placed into full removal proceedings under 8 U.S.C. § 1229a on May 17, 2018. *Id.* He was released on a bond on May 29, 2018. *Id.* at ¶ 9. His bond was revoked after petitioner was convicted of felony grand theft and arrested for infliction of corporal injury in 2022. *Id.* at ¶¶ 10-13.

On August 13, 2025, an Immigration Judge denied the petitioner's application for relief and issued a removal order. Gallenkamp Declaration ¶ 15. The petitioner has appealed the removal order to the Board of Immigration Appeals. *Id.* at ¶ 16. That appeal is pending. *Id.* at ¶¶ 17-18. The petitioner is being detained under 8 U.S.C. 1225(b)(1). *Id.* at ¶ 13.

On December 4, 2025, Petitioner filed a habeas petition and TRO motion alleging he is not subject to mandatory detention and that he is entitled to a bond hearing under the Due Process Clause. Docket No. 1; Minute Order Dkt. 5.

II. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to that for a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Preliminary injunctions are extraordinary remedies "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation marks omitted). This burden is aptly described as "heavy." *Id.*

"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).

III. STATUTORY & REGULATORY FRAMEWORK

"The power to admit or exclude [non-citizens] is a sovereign prerogative." *Dep't of Homeland Sec. v. Thuraissigian*, 591 U.S. 103, 139 (2020) (alteration omitted) (*quoting Landon v. Plasencia*, 459 U.S. 21, 32 (1982)); *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). "[T]he Constitution gives 'the political department of the government' plenary authority to decide which [non-citizens] to admit." *Id., quoting Nishimuru Ekiu v. United States*, 142 U.S. 651, 659 (1892)); *see also Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

A. Pre-IIRIRA, Aliens Unlawfully Present in the United States Had Preferential Treatment

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Id.*

Thus, the INA's prior framework distinguishing between aliens based on physical "entry" had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Id. (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

B. IIRIRA Eliminated This Preference and Mandated Detention of Applicants for Admission

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United

States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission":

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). "All aliens … who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited "Section 240" proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *Thuraissigiam*, 591 U.S. at 109-113, which can potentially be applied to a subset of aliens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum … or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

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Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings*, 583 U.S. at 287. It requires that those aliens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[2]

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

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[2] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

IV. LEGAL ANALAYSIS

A. Petitioner is Not Likely to Succeed on the Merits

1. Petitioner Is an Applicant for Admission under §1225(a)

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

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

If an alien who is subject to an expedited removal order establishes a credible fear of persecution in his home country, 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 under section 1225(b)(1) during that standard removal proceeding. Petitioner falls into this category and is subject to mandatory detention under section 1225(b)(1).

The third category of applicants for admission consists of those aliens who are "seeking

admission" and who an immigration officer has determined are "not clearly and beyond a doubt entitled to be admitted." *See* 8 U.S.C. § 1225(b)(2)(A). Aliens who fall within this third category are eligible for standard removal proceedings, but they are nevertheless subject to mandatory detention during their standard removal proceedings. *Id.*; *Jennings*, 583 U.S. at 299 (stating that aliens subject to section 1225(b)(1) and aliens subject to section 1225(b)(2) are both subject to mandatory detention for the duration of removal proceedings); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (stating that "for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299).

2. Petitioner's Detention is Mandatory Under the Plain Language of § 1225(b)(1).

As set forth above, Congress has provided for an expedited removal proceeding under 8 U.S.C. § 1225 – a proceeding that is usually completed within a few days, if not hours. An immigration officer asks a series of questions to determine (a) the alien's identity, alienage, and inadmissibility, and (b) whether he intends to apply for asylum. If the alien is inadmissible and does not indicate a fear of persecution, the immigration officer issues an Order of Expedited Removal. However, where, as here, the alien raises a fear of persecution in his 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 the alien to have a credible fear of persecution, the alien is then moved to the standard section 240 removal proceeding. The alien is subject to mandatory detention during the pendency of the section 240 removal proceeding and Immigration Judges lack jurisdiction to hold bond hearings. *See Jennings*, 583 U.S. at 299 (stating that both 1225(b)(1) and (2) require mandatory detention for the duration of removal proceedings).

3. Petitioner Has Not Clearly Shown that the Due Process Clause Requires a Bond Hearing Under the Circumstances

The fact that the petitioner was released on a bond does not entitle him, under the Due Process Clause, to a bond hearing before the agency re-detains him during the pendency of his removal proceedings, as required by section 1225(b)(1). Under the doctrine of "entry fiction," aliens seeking admission to the United States, even if "allowed within its borders pending a determination of

admissibility, . . . are legally considered to be detained at the border and hence as never having effected entry into" the United States. *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc).[3] Thus, even if an alien seeking admission is physically present on United States soil and has been "paroled elsewhere in the country for years pending removal," he still is "treated . . . as if stopped at the border" for immigration law purposes. *DHS v. Thurassigiam*, 591 U.S. 103, 139 (2020); *see also United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) ("Parole does not change parolees' immigration status: they remain 'at the border' for the purposes of immigration law and are treated as applicants into the country."). "The distinction between an alien who has effected an entry into the United States and one who has never entered" is a fundamental one that "runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Here, Petitioner was never admitted to the United States—he was intercepted shortly after illegally entering and was deemed inadmissible due to lack of documentation. For immigration law purposes, he is treated as being stopped at the border, even though he has been physically present within the United States since April 29, 2018. *Barrera-Echavarria*, 44 F.3d at 1450; *Thuraissigiam*, 591 U.S. at 139.

And that carries significant implications for the contours of his due process rights. An alien who has not effected a legal entry, i.e., has not been admitted into the United States, is entitled only to "[w]hatever the procedure authorized by Congress is." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry "has only those rights regarding admission that Congress has provided by statute"); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for "those . . . who have never technically 'entered' the United States . . . procedural due process is simply whatever the procedure authorized by Congress happens to be" (cleaned up)). This makes sense, since "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application." *Barrera-Echavarria*, 44 F.3d at 1449.

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[3] The scope of *Barrera-Echavarria*'s holding has been complicated by statutory amendments in the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996). But those amendments "do[] not undermine *Barrera-Echavaria*'s reasoning as it relates to aliens . . . to whom the entry fiction clearly applies," such as in this case. *Rodriguez v. Robbins*, 715 F.3d 1127, 1140-41 (9th Cir. 2013).

Put tersely, "applicants for admission have virtually no constitutional rights regarding their applications." *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-34 (1982)); *Thuraissigiam*, 591 U.S. at 138–140 (explaining that an alien who has never been lawfully admitted to the United States is "'treated' for due process purposes 'as if stopped at the border," "has only those rights regarding admission that Congress has provided by statute," and that "the Due Process Clause provides nothing more."). "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has "not 'technically entered the United States,' [the Court] examine[s] only whether the government violated the statutory rights that Congress afforded such applicants." *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th Cir. 2020) (citation omitted). In other words, "the procedure authorized by Congress" in 8 U.S.C. § 1225 constitutes procedural "due process" as far as petitioner is concerned. *Shaughnessy*, 345 U.S. at 212; *see also Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for noncitizen who "never technically 'entered' the United States," "procedural due process is simply whatever the procedure authorized by Congress happens to be." (citation modified)); *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th Cir. 2020) (same). The government recognizes that this Court and many others have held against the government on this issue, but believes that the analysis set forth in *Alonzo v. Noem*, ___ F.3d ___, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025),[4] as well as *Doe v. Andrews*, No. 1:25-cv-00333-JLT-HBK (HC), 2025 WL 328077 (E.D. Cal. Nov. 25, 2025) (Findings and Recommendations) (finding no due process violation in petitioner's continued detention under § 1225(b)(1) without a bond hearing), is the correct one. Because "neither §1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings," petitioner is not entitled to one, even if he was released on bond. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

Petitioner has filed a formulaic threadbare petition which is devoid of any factual background or documentary evidence. Dkt. 1. In fact, petitioner has remained in the United States since 2018 and received significant procedural due process including an immigration bond on May 29, 2018, which was

[4] While *Alonzo* addressed 1225(b)(2), and Petitioner is detained under 8 U.S.C. § 1225(b)(1), both (b)(1) and (b)(2) apply to applicants for admission who are subject to mandatory detention. Thus, the analysis is the same.

revoked after petitioner was convicted of felony grand theft and arrested for infliction of corporal injury in 2022. Gallenkamp ¶¶ 8-11. He remains in detention due primarily to his own request or lack of diligence. *Id.* ¶¶ 13, 17.

4. *Mathews v. Eldridge*

In *Mathews v. Eldridge*, the Supreme Court held that the "identification of the specific dictates of due process generally requires consideration of three distinct factors." 424 U.S. 319, 334–35 (1976). They are (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

The Supreme Court, however, has never used this balancing test to divine the due-process requirements for immigration detention. *Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*." (citations omitted)); *id.* at 1214 ("In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J., concurring). This is particularly unsurprising for noncitizens in Petitioner's situation because, according to longstanding precedent, noncitizens who were neither admitted nor paroled into the United States have "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140; *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process . . . ."); *see Cortes Alonzo*, 2025 WL 3208284, at *5 (holding that, if a bond hearing is not required by § 1225, then the failure to provide one to an "applicant for admission" cannot be a violation of due process); *Altamirano Ramos*, 2025 WL 3199872, at *5 (same)

In any event, even if the *Mathews* test applied here, Petitioner has not clearly shown that the test requires a bond hearing.

First, although a noncitizen's private interest in "freedom from prolonged detention" is "unquestionably substantial," *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011), the same cannot be

said for freedom from all detention itself. Petitioner has been detained for approximately 22 months pending removal proceedings, and the Supreme Court and this Court have repeatedly upheld mandatory detention during removal proceedings against due-process challenges, even where removal proceedings are prolonged. *Demore v. Kim*, 538 U.S. 510, 530–31 (2003); *Keo v. Warden of the Mesa Verde ICE Processing Center*, No. 24-00919, 2025 WL 1029392, at *8 (E.D. Cal. Apr. 7, 2025) (holding that the mandatory detention of a lawful permanent resident for 22 months during removal proceedings was constitutional, and no bond hearing was required, because the removal proceedings had a "definite termination point" and the petitioner's detention was not indefinite (citing *Jennings*, 583 U.S. 304; *Demore*, 538 U.S. at 527, 538)).

Second, Petitioner has not clearly shown that a bond hearing would decrease the risk of him being erroneously deprived of his liberty. As noted, Petitioner must concede he is an "applicant for admission," there is no evidence that he "is not clearly and beyond a doubt entitled to be admitted" to the United States, and it thus appears that he is subject to mandatory detention. 8 U.S.C. §§ 1225(a)(1), (b)(1).

Finally, "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at 518). And, "[t]hrough detention, the government likewise seeks to 'increas[e] the chance that, if ordered removed, the aliens will be successfully removed.'" *Id.* (quoting *Demore*, 538 U.S. at 528); *see also Nken v. Holder*, 556 U.S. 418, 436 (2009) ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable . . . permits and prolongs a continuing violation of United States law."). In addition, "[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent." *Rodriguez Diaz*, 53 F.4th at 1208.

5. Even if Petitioner clearly shows he is entitled to preliminary relief, that relief should be the provision of a bond hearing—not immediate release.

As discussed, Petitioner has failed to clearly show that he is entitled to a bond hearing, as he is subject to mandatory detention under § 1225(b)(1). But even if the Court determines that Petitioner should receive a bond hearing, the proper course is to order that such hearing occur—not immediate

release from custody. *See Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) ("Injunctive relief should be narrowly tailored to fit specific legal violations."); *see also, e.g.*, *Javier Ceja Gonzalez v. Noem*, No. 25-02054, 2025 WL 2633187, at *6 (C.D. Cal. Aug. 13, 2025) (ordering the government to "release Petitioners or, in the alternative, provide each Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order").

Petitioner wrongly argues that he has a constitutional right to additional process, including a pre-re-detention hearing. Here, Petitioner was never admitted to the United States—he was intercepted after entering the United States without inspection and was deemed inadmissible due to lack of documentation. Gallenkamp Declaration ¶¶ 6-7. For immigration law purposes, he is treated as being stopped at the border, even though he has been physically present within the United States since approximately April 2018. *Id.* This carries significant implications for the contours of Petitioner's due process rights. An alien who has not effected a legal entry, *i.e.*, has not been admitted into the United States, is only entitled to "[w]hatever the procedure authorized by Congress is." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry "has only those rights regarding admission that Congress has provided by statute"); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for "those . . . who have never technically 'entered' the United States . . . procedural due process is simply whatever the procedure authorized by Congress happens to be") (cleaned up). This makes sense, since an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application. *Landon*, 459 U.S. at 33-34.

The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals and to exclude those who possess those characteristics which Congress has forbidden." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon*, 459 U.S. at 32. Accordingly, "certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders." *Zadvydas*

v. Davis, 533 U.S. 678, 693 (2001).

The Supreme Court has explained that applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Mezei*, 345 U.S. at 212, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *Knauff*, 338 U.S. at 537. The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, explaining that an individual who illegally crosses the border—like Petitioner—is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 139-40.

As explained by the Supreme Court, "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country." *Id.* Stated further, "aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). The Supreme Court held that this same "threshold" rule applies to individuals, like Petitioner, who are apprehended after trying "to enter the country illegally" because by statute, such individuals are also defined as applicants for admission. *Id.* at 139-40. Treating such an individual in a more favorable manner than an individual arriving at a port of entry would "create a perverse incentive to enter at an unlawful rather than a lawful location" and therefore the Supreme Court rejected the argument that an individual who "succeeded in making it 25 yards into U.S. territory before he was caught" should be entitled to additional constitutional protections. *Id.* at 140.

Instead, applying the "century-old rule regarding the due process rights of an alien seeking initial entry[,]" the Court explained that aliens arrested after crossing the border illegally, such as Petitioner, have "only those rights regarding admission that Congress has provided by statute." *Id.* at 140. The Court was clear: "the Due Process Clause provides nothing more" than the procedural protections set forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if he fears return to his home country and also seek parole from the agency. *Id.*

The Supreme Court's decision in *Thuraissigiam* is instructive. In relevant part, *Thuraissigiam*

concerned a due process challenge raised by an alien apprehended 25 yards from the border, which he crossed illegally. 591 U.S. at 139. DHS detained and processed him for expedited removal because he lacked valid entry documents. *Id.* at 114. An asylum officer then determined that Thuraissigiam lacked a credible fear of persecution. *Id.* Thuraissigiam petitioned for a writ of habeas corpus, asserting a fear of persecution and requesting another opportunity to apply for asylum. *Id.*

In its decision, the Supreme Court delineated the boundaries of due process claims that can be made by applicants for admission. Specifically, the Court held that for such aliens stopped at the border, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 131 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); *see also Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) ("In concluding that *Thuraissigiam*'s due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides.").

In short, because Petitioner is an inadmissible applicant for admission seeking initial entry into this country, he therefore "requests a privilege and has no constitutional rights regarding his application[.]" *See Landon*, 459 U.S. at 32; *Knauff*, 338 U.S. at 542 ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right."). Instead, Petitioner has "only those rights regarding admission that Congress has provided by statute." *See Thuraissigiam*, 591 U.S. at 140. That is, Petitioner is entitled only to the protections set forth by statute and "the Due Process Clause provides nothing more." *Id.*; *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment").

B. Petitioner Has Not Shown He is Likely to Suffer Irreparable Harm

Although an alleged constitutional violation may alone constitute irreparable harm, that presumption does not apply where a plaintiff fails to demonstrate "a sufficient likelihood of success on the merits of [his or her] constitutional claims to warrant the grant of a preliminary injunction." *Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (citing *Goldie's Bookstore v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984)). As detailed above,

Petitioner fails to show that he is being detained in violation of any constitutional, statutory, or other requirement. Immigration laws, moreover, have long authorized officials to detain noncitizens pending removal to "assur[e] the alien's presence at the moment of removal." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure.").

C. Petitioner has not shown that the balance of the equities and the public interest favor his Immediate release

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant." (collecting cases)). This public interest outweighs Petitioner's private interest here.

V. CONCLUSION

For the foregoing reasons, Petitioner's Motion for a Temporary Restraining Order should be denied, and the Court should dismiss the habeas petition in its entirety.

Dated: December 11, 2025

ERIC GRANT
United States Attorney

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