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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JIWAN SINGH,

Petitioner,

v.

SERGIO ALBARRAN, et. al,

Respondents.

CASE NO. 1:25-CV-01822-DC-AC

OPPOSITION TO PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY HEARING

DATE:

TIME:

COURT: Hon. Dena Coggins

I. INTRODUCTION

Petitioner is not entitled to the extraordinary remedy of a temporary restraining order ("TRO") because he is an applicant for admission subject to mandatory detention.

In accordance with this Court's order, Respondents provide notice to this Court that the legal framework of this case largely aligns with this Court's previous holdings, including in *Labrador-Prato v. Noem et al.*, 1:25-cv-01598-DC-SCR, 2025 WL 3458802 (E.D. Cal. Dec. 2, 2025). This matter is not substantively distinguishable from other cases, and Respondents rely upon the same legal arguments raised in other cases decided by this Court.

II. FACTUAL BACKGROUND

Respondents concur with the following relevant facts raised by Petitioner: (1) that he is a citizen of India; (2) that he was charged with being an inadmissible alien who has not been admitted into the United States; (3) that he was detained on December 2, 2025, pursuant to 8 § 1225(b)(2). Petitioner

1 filed a habeas petition and TRO motion alleging violations of procedural and substantive due process.
 2 ECF 1, 2. Petitioner's TRO seeks: (1) immediate release; or (2) an individualized bond hearing before
 3 an immigration judge; and (3) an order prohibiting his relocation. ECF 2. Respondents hereby timely
 4 oppose the TRO in compliance with the Court's December 15, 2025, deadline. ECF 5. This TRO is not
 5 currently set for a hearing. *Id.*

6 III. LEGAL STANDARD

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

19 "[I]f a [petitioner] can only show that there are 'serious questions going to the merits'—then a
 20 preliminary injunction may still issue if the 'balance of hardships tips sharply in the [petitioner's] favor,'
 21 and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942
 22 (9th Cir. 2014) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013);
 23 *see also Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

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

of the preliminary injunction test established in *Winter*[.]”).

IV. LEGAL ANALYSIS

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

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

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

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

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

11 According to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C.
 12 § 1229a removal proceedings “*shall be detained.*” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). “The
 13 ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only
 14 in ‘rare and exceptional circumstances,’ . . .” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting
 15 *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *see Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004)
 16 (“It is well established that when the statute’s language is plain, the sole function of the courts—at least
 17 where the disposition required by the text is not absurd—is to enforce it according to its terms.” (quotation
 18 marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says
 19 anything whatsoever about bond hearings.” 583 U.S. at 297.

20 On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N
 21 Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination that he
 22 did not have authority over [a] bond request because aliens who are present in the United States without
 23 admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
 24 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure Hurtado*, 29
 25 I&N Dec. at 220.² The BIA concluded that aliens “who surreptitiously cross into the United States remain

26 ² Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8
 27 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly
 28 in 8 U.S.C. § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747
 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N
 Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA,

1 applicants for admission until and unless they are lawfully inspected and admitted by an immigration
2 officer. Remaining in the United States for a lengthy period of time following entry without inspection,
3 by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous
4 result” that rewards aliens who unlawfully enter the United States without inspection and subsequently
5 evade apprehension for number of years. *Id.*

6 In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the
7 interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at
8 221. The BIA determined that this argument “is not supported by the plain language of the INA” and
9 creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is
10 not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original).
11 The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C.
12 § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw issued
13 subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b)
14 applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is “quite clear”
15 and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually
16 connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171
17 (2016))).

18 Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the
19 Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not
20 overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—
21 in an analogous context—that aliens present without admission and placed into expedited removal
22 proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal
23 proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the BIA held that an alien who illegally crossed
24 into the United States between ports of entry and was apprehended without a warrant while arriving is
25 detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that
26 all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*,

27 _____
28 the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29
I. & N. Dec. at 216.

593 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”).³ *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a—and “[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody status of an alien present without admission.

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

³ Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., *Moore’s Federal Practice* § 134.02[1] [d], p. 134–26 (3d ed.2011)) (providing that “[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case”); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir. 2021) (same), the U.S. District Court for the Northern District of Florida’s decision is instructive here. *Florida* held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either 8 U.S.C. §§ 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention under 8 U.S.C. § 1225(b) meaningless.” *Id.*

[DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]”. “An [IJ] is without authority to disregard the regulations, which have the force and effect of law.” *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

Aliens present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. § 1225(b)(2)(A). This is true even though “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Lemus*, 25 I&N Dec. at 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application for admission [i]s a continuing one”).⁴

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

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) codified the understanding that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at ports of entry. *See* 8 U.S.C. § 1225(a) (1995) (discussing “aliens arriving at ports of the United States”); *id.* § 1225(b) (1995) (discussing “the examining

⁴ Within the Ninth Circuit, not every “applicant for admission” is necessarily requesting permission to enter. *See United States v. Gambino-Ruiz*, 91 F.4th at 989 (citing, *inter alia*, *Torres v. Barr*, 976 F.3d at 924-26 (en banc)). In particular, *Gambino-Ruiz* explained that the court in *Torres* held that certain aliens within the Commonwealth of the Northern Mariana Islands (CNMI) never made an actual application for admission “because they lawfully entered CNMI” and thereafter “the border crossed them” once the INA began to apply in CNMI. *Id.* By contrast Petitioner, like the defendant in *Gambino-Ruiz*, has admitted that he illegally crossed into the United States without entry documents, and is therefore an applicant for admission. ECF 2-4.

immigration officer at the port of arrival”). Relatedly, any alien who was “in the United States” and within certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of deportable aliens included those “who entered the United States without inspection or at any time or place other than as designated by the Attorney General.” *Id.* § 1231(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were “seeking admission” at a port of entry, or had been paroled into the United States. *See id.* §§ 1182(a), 1225(a) (1995). Deportation proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the “important distinction” between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an “entry” within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining “entry” as “any coming of an alien into the United States, from a foreign port or place or from an outlying possession”); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an “entry” into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a “meaningfully interruptive” departure).

Former 8 U.S.C. § 1225 provided that aliens “seeking admission” at a port of entry who could not demonstrate entitlement to be admitted (“excludable” aliens) were subject to mandatory detention, with potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b) (1995). “Seeking admission” in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens arriving at a port of entry.⁵ *See id.* The legacy Immigration and Naturalization Service (“INS”) regulations

⁵ Given Congress’s overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of “seeking admission” to be retained in the new removal scheme. Generally, “[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative and judicial interpretations as well.” *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation “is of little assistance here because, . . . this is not a case in which ‘Congress re-enact[ed] a statute without change.’” *Public Citizen Inc. v. U.S. Dep’t of Health and Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption “of congressional ratification” of a prior statutory interpretation “applies only when Congress reenacts a statute without relevant change.”

1 implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a port of entry had to be
 2 detained without parole if they had “no documentation or false documentation,” 8 C.F.R. § 235.3(b)
 3 (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c)
 4 (1995). With regard to aliens who entered without inspection and were deportable under former 8 U.S.C.
 5 § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other
 6 deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. §
 7 242.2(c)(1) (1995).

8 As a result, “[aliens] who had entered without inspection could take advantage of the greater
 9 procedural and substantive rights afforded in deportation proceedings,’ while [aliens] who actually
 10 presented themselves to authorities for inspection were restrained by ‘more summary exclusion
 11 proceedings.’” *Martinez v. Att’y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (quoting *Hing Sum v. Holder*,
 12 602 F.3d 1092, 1100 (9th Cir. 2010)). “To remedy this unintended and undesirable consequence, the
 13 IIRIRA substituted ‘admission’ for ‘entry,’ and replaced deportation and exclusion proceedings with the
 14 more general ‘removal’ proceeding.” *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA,
 15 defines *all* those who have not been admitted to the United States as “applicants for admission.” IIRIRA
 16 § 302.

17 Moreover, Congress’s use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A)
 18 should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense
 19 is significant in construing statutes.”). By using the present participle “seeking,” 8 U.S.C.
 20 § 1225(b)(2)(A) “signal[s] present and continuing action.” *Westchester Gen. Hosp., Inc. v. Evanston Ins.*
 21 *Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase “seeking admission” “does not include something
 22 in the past that has ended or something yet to come.” *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d
 23 331, 336 (7th Cir. 2019) (concluding that “having” is a present participle, which is “used to form a
 24 progressive tense” that “means presently and continuously” (citing Bryan A. Garner, *Garner’s Modern*
 25 *American Usage* 1020 (4th ed. 2016))). The present participle “expresses present action in relation to the
 26 time expressed by the finite verb in its clause,” *Present Participle*, Merriam Webster,

27 *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs*
 28 *Enforcement*, 543 U.S. 335, 349 (2005)).

1 <http://www.merriamwebster.com/dictionary/present%20participle> (last visited Aug. 7, 2025), with the
 2 finite verb in the same clause of 8 U.S.C. § 1225(b)(2)(A) being “determines.” Thus, when pursuant to 8
 3 U.S.C. § 1225(b)(2)(A) an “examining immigration officer determines” that an alien “is not clearly and
 4 beyond a doubt entitled to be admitted” the officer does so contemporaneously with the alien’s present
 5 and ongoing action of seeking admission. Interpreting the present participle “seeking” as denoting an
 6 ongoing process is consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, 146 F.4th 128, 134
 7 (1st Cir. 2025) (alien inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but “seeking to remain in the
 8 country lawfully” applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th
 9 Cir. 2025) (“USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. §
 10 1255(m) to undergo a medical examination . . .”). Accordingly, just as the alien in *Samayoa* is not only
 11 an alien present without admission but also seeking to remain in the United States, Petitioner in this case
 12 is not only an alien present without admission, and therefore an applicant for admission as defined in 8
 13 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

14 Lastly, Congress’s significant amendments to the immigration laws in IIRIRA support DHS’s
 15 position that such aliens are properly detained pursuant to 8 U.S.C. § 1225(b)—specifically, 8 U.S.C.
 16 § 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who
 17 illegally entered without inspection over aliens arriving at ports of entry. A rule that treated an alien who
 18 enters the country illegally, such as Petitioner, more favorably than an alien detained after arriving at a
 19 port of entry would “create a perverse incentive to enter at an unlawful rather than a lawful location.”
 20 *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as
 21 propounded by the defendant). Such a rule reflects “the precise situation that Congress intended to do
 22 away with by enacting” IIRIRA. *Id.* “Congress intended to eliminate the anomaly ‘under which illegal
 23 aliens who have entered the United States without inspection gain equities and privileges in immigration
 24 proceedings that are not available to aliens who present themselves for inspection at a [POE]’” by enacting
 25 IIRIRA. *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see*
 26 *also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

27 As discussed by the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. at 222-24, during IIRIRA’s
 28 legislative drafting process, Congress asserted the importance of controlling illegal immigration and

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

1. Petitioner’s Due Process Arguments Lack Merit.

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

⁶ 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-Echavarria*’s reasoning as it relates to aliens . . . to whom the entry fiction clearly applies,” such as in this case. *Rodriguez v. Robbins*, 715 F.3d 1127, 1140-41 (9th Cir. 2013).

1 United States and one who has never entered” is a fundamental one that “runs throughout immigration
2 law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

3 Here, Petitioner was never admitted to the United States—he was encountered after illegally
4 entering near a port of entry and was deemed inadmissible because of his entry without inspection and
5 lack of proper documents. For immigration law purposes, he is treated as an applicant for admission,
6 even though he has been physically present within the United States. *Barrera-Echavarria*, 44 F.3d at
7 1450. Petitioner’s due process rights are limited because as an alien who has not effected a legal entry,
8 *i.e.*, has not been admitted into the United States, he is only entitled to “[w]hatever the procedure
9 authorized by Congress is.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)
10 (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also*
11 *Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry “has only those rights regarding
12 admission that Congress has provided by statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015)
13 (for “those . . . who have never technically ‘entered’ the United States . . . procedural due process is
14 simply whatever the procedure authorized by Congress happens to be”) (cleaned up).

15 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
16 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-
17 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien
18 denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where the petitioner has “not
19 ‘technically entered the United States,’ [the Court] examine[s] only whether the government violated the
20 statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th
21 Cir. 2020) (citation omitted). Accordingly, Petitioner is subject to mandatory detention. *See Matter of*
22 *Yajure Hurtado*, 29 I & N Dec. 216, 220 (BIA 2025).

23 2. The *Mathews* Factors Do Not Mandate a Remedy.

24 Petitioner wrongly argues that the multi-factor balancing test of *Mathews v. Eldridge*, 424 U.S.
25 319 (1976) entitles him to release under due process. ECF 2 at 18. *Mathews* does not, however, govern
26 due process claims raised by detained aliens. Indeed, The Ninth Circuit recognizes that the Supreme
27 Court has not adjudicated due process challenges to detention using the *Mathews* factors, despite several
28 opportunities. *See Rodriguez-Diaz v. Garland*, 53 F.4th at 1189, 1206, 1214 (9th Cir. 2022).

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

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

16 The second factor likewise does not assist Petitioner. As discussed above, aliens who have not
17 legally entered the country are only entitled to the due process that Congress has statutorily created.
18 *Mezei*, 345 U.S. at 212; *Angov*, 788 F.3d at 898; *Barrera-Echavarria*, 44 F.3d at 1449; *Shaughnessy*,
19 338 U.S. at 544. “[A]n alien at the threshold of initial entry cannot claim any greater rights under the
20 Due Process Clause.” *Thuraissigiam*, 591 U.S. at 107. Because detention is mandatory, and
21 § 1225(b) only allows release through parole under narrow circumstances, any additional hearings could
22 not provide relief to Petitioner. *See Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018)
23 (holding that “for aliens on the ‘threshold of initial entry,’ due process is whatever procedure has been
24 ‘authorized by Congress,’” and “because the immigration statutes at issue here do not authorize a bond
25 hearing, *Mezei* dictates that due process does not require one here”); *compare Gonzalez-Fuentes v.*
26 *Molina*, 607 F.3d 864, 894 (1st Cir. 2010) (the law “provide[d] a valid, independent basis for the
27 deprivation of liberty” and thus any procedural due process violation could not vindicate petitioner’s
28 liberty interest or justify habeas relief).

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

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

10 Petitioner claims he will suffer irreparable harm from continued detention during her removal
11 proceedings. ECF 2 at 21. As set forth above, Petitioner has not technically entered the United States
12 and is only entitled to the minimal rights and processes that Congress has given him. Petitioner has
13 received those. Immigration laws have long authorized immigration officials to charge aliens as
14 removable from the country, to arrest aliens subject to removal, and to detain aliens pending removal.
15 *Demore*, 538 U.S. at 523-26. Through the INA, Congress created a multi-layered statutory scheme for
16 aliens' detention during removal, including mandatory detention for aliens in Petitioner's position.⁷ *See*
17 8 U.S.C. § 1225(b). "Detention is necessarily a part of [the] deportation procedure." *Carlson*, 342 U.S.
18 at 538. However, Petitioner has violated conditions of release and has a pending immigration hearing.
19 Therefore, he cannot show a risk of irreparable harm from continued detention.

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

21 "The government's interest in efficient administration of the immigration laws" is "weighty,"
22 and "it must weigh heavily in the balance that control over matters of immigration is a sovereign
23 prerogative, largely within the control of the executive and the legislature." *Landon*, 459 U.S. at 34.
24 Further, the government's interest in protecting the public and preventing deportable aliens from fleeing
25 are strong and compelling. *See e.g., Rodriguez Diaz*, 53 F.4th at 1208 (government's interests in
26 "protecting the public from dangerous criminal aliens" and "increas[ing] the chance that, if ordered
27 removed, the aliens will be successfully removed" are "interests of the highest order that only increase
28

1 with the passage of time”).

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

10 **V. WAIVER OF INDEPENDENT BRIEFING ON PRELIMINARY INJUNCTION**

11 The United States does not request an opportunity to independently brief the applicability of a
12 preliminary injunction. All arguments in opposition to a preliminary injunction have been included in
13 this briefing. The United States does not oppose the court ruling on both the motion for a TRO and for a
14 preliminary injunction jointly, in the interests of judicial economy.

15 **VI. WAIVER OF HEARING**

16 The United States does not request a hearing.

17 **VII. CONCLUSION**

18 For the foregoing reasons, Petitioner’s Motion for Temporary Restraining Order and motion for a
19 preliminary injunction should be denied.

20 Dated: December 15, 2025

ERIC GRANT
United States Attorney

21 By: /s/ JESSICA DELANEY
22 JESSICA DELANEY
23 Assistant United States Attorney
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