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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JHON JADER BORNACHERA FLOREZ

Petitioners,

v.

TIMOTHY S. ROBBINS, et. al.

Respondents.

CASE NO. 1:25-CV-01897-TLN-CSK

OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY
INJUNCTION

DATE: December 22, 2025

TIME:

COURT: Hon. Troy L. Nunley

Petitioner Jhon Jader Bornachera Florez was mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1). This Court should deny the temporary restraining order, preliminary injunction, and habeas relief, as petitioner has failed to demonstrate that his detention is unlawful.

On December 19, 2025, this Court ordered Respondents to produce the full A-File. Respondents request the Court reconsider that order. There are no facts in dispute in this case, and the sole question before this Court is a legal one. A-Files can contain documents that are not relevant to the custody determination here, which is based solely on Petitioner's status, and may contain sensitive information that needs to be redacted. That being said, Respondents are working to produce the A-File should the Court not reconsider its order, but will file separately to ensure compliance with the original deadline for an opposition to the TRO.

I. PETITIONER BACKGROUND

Respondents do not contest the relevant facts asserted by the Petitioner.

1 **II. PROCEDURAL BACKGROUND AND COURT ORDER**

2 Petitioner filed his petition for habeas corpus and motion for a temporary restraining order on
3 December 17, 2025. That same day, this Court issued a briefing schedule on the case and ordered the
4 parties to indicate whether: (1) they are amenable to converting the motion for a temporary restraining
5 order into a motion for preliminary injunction; (2) whether they request a hearing on the motion; and (3)
6 whether Petitioner is a member of a certified class.

7 Respondents hereby include all arguments in opposition to both a temporary restraining order
8 and a preliminary injunction in this filing, and do not oppose this Court jointly ruling on the matters, in
9 the interests of judicial economy and efficiency.

10 Respondents waive any right do a hearing and request this Court rule on the submissions of the
11 party.

12 Petitioner is not a member of the class certified in *Maldonado Bautista, et al. v. Santacruz et. al.*,
13 as the basis for his detention is 8 U.S.C. § 1225(b)(1). The certified class expressly excludes individuals
14 detained under Section 1225(b)(1).

15 **III. LEGAL BACKGROUND**

16 **A. The Standard for Temporary Restraining Orders.**

17 Temporary restraining orders are governed by the same standard applicable to preliminary
18 injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111,
19 1126 (E.D. Cal. 2001). Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def.*
20 *Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a
21 “difficult task” in showing that they are entitled to such an “extraordinary remedy.” *Earth Island Inst.*
22 *v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

23 “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the
24 merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
25 equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786
26 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show “serious
27 questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the
28

second and third ... factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

The purpose of a preliminary injunction “is to preserve the status quo and the rights of the parties until a final judgment issues in the cause.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain “a preliminary adjudication on the merits,” but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

B. Statutory Framework for Expedited Removal Proceedings

1. Applicants for Admission

The Immigration and Nationality Act (“INA”) defines an “applicant for admission” as 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 . . .).” 8 U.S.C. § 1225(a)(1); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing INA § 235(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined 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”). Under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of noncitizens are inadmissible, and therefore ineligible to be admitted to the United States, including those “present in the United States without being admitted or paroled[.]” 8 U.S.C. § 1182(a)(6)(A)(i). However long one has been in this country, a noncitizen who is present in the United States but has not been admitted “is treated as ‘an applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

2. Detention Under 8 U.S.C. § 1225

Section 1225 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in the United States who [have] not been admitted” or noncitizens “who arrive[] in the United States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission, including those present without being admitted or paroled (“PWAP”) may be removed from the United States by, *inter alia*, expedited removal under 8 U.S.C. § 1225(b)(1) or removal proceedings

1 before an Immigration Judge under 8 U.S.C. § 1229a. These noncitizens “fall into one of two
 2 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject
 3 to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2)
 4 mandate detention for applicants for admission until certain proceedings have concluded.”)

5 3. Section 1225(b)(1)

6 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
 7 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
 8 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 (“[Congress]
 9 crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making
 10 such claims from the country.”). This provision authorizes immigration officers to order certain
 11 inadmissible noncitizens “removed from the United States without further hearing or review.” Section
 12 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially determined to be
 13 inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. §§
 14 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen
 15 “described in” § 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland
 16 Security—that is, any noncitizen not “admitted or paroled into the United States” and “physically
 17 present” fewer than two years—who is inadmissible under § 1182(a)(7) at the time of “inspection.” *See*
 18 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents).
 19 Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether,
 20 when an officer inspects a noncitizen for admission under § 1225(a)(3), that noncitizen lacks entry
 21 documents and so is subject to § 1182(a)(7). The Attorney General’s or Secretary’s authority to
 22 “designate” classes of noncitizens as subject to expedited removal is subject to his or her “sole and
 23 unreviewable discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass’n*
 24 *v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

25 The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for
 26 expedited removal under § 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited
 27 removal scope to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited*
 28 *Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables the U.S. Department of Homeland

1 Security (“DHS”) “to exercise the full scope of its statutory authority to place in expedited removal,
 2 with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)]
 3 who have not been admitted or paroled into the United States and who have not affirmatively shown, to
 4 the satisfaction of an immigration officer, that they have been physically present in the United States
 5 continuously for the two-year period immediately preceding the date of the determination of
 6 inadmissibility,” who were not otherwise covered by prior designations. *Id.* at 8139–40.

7 Expedited removal proceedings under § 1225(b)(1) include additional procedures if a noncitizen
 8 indicates an intention to apply for asylum¹ or expresses a fear of persecution, torture, or return to the
 9 noncitizen’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that situation, the
 10 noncitizen is given a non-adversarial interview with an asylum officer, who determines whether the
 11 noncitizen has a “credible fear of persecution” or torture. *Id.* §§ 1225(b)(1)(A)(ii), (b)(1)(B)(iii)(II),
 12 (b)(1)(B)(iv), (v); *see also* 8 C.F.R. § 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the
 13 credible fear process). The noncitizen may also pursue *de novo* review of that determination by an
 14 immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the
 15 credible fear process, a noncitizen may consult with an attorney or representative and engage an
 16 interpreter. 8 C.F.R. § 208.30(d)(4), (5). However, a noncitizen subject to these procedures “shall be
 17 detained pending a final determination of credible fear of persecution and, if found not to have such a
 18 fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

19 If the asylum officer or immigration judge does not find a credible fear, the noncitizen is
 20 “removed from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
 21 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer
 22 or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings
 23 under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C.
 24 § 1225(b)(1)(B)(iii)(IV).

25 Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under
 26

27 ¹ Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C.
 28 § 1558(a)(2)(B), except if the noncitizen can demonstrate “extraordinary circumstances” that justify
 moving that deadline. *Id.* § 1558(a)(2)(D).

§ 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under § 1225(b)(1) applies in narrower, statutorily defined circumstances—typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry—and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under § 1225(b)(1) or § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

IV. ANALYSIS AND ARGUMENT

A. Petitioner Cannot Meet the High Bar for Injunctive Relief

1. Under the Plain Text of 8 U.S.C. § 1225, Petitioner Must Be Detained Pending the Outcome of His Removal Proceedings

Petitioner is a noncitizen subject to expedited removal, as he entered the country unlawfully, was apprehended and determined to be inadmissible. *See* 8 U.S.C. § 1225(b)(1)(A)(i). As a noncitizen, subject to the mandatory detention framework of Section 1225(b), Petitioner is not entitled to custody redetermination hearings by immigration judges or pre-deprivation hearings before re-detention. *Jennings*, 583 U.S. at 297 (“neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”).

Just as Petitioner is not entitled to custody redeterminations by statute, his release is not otherwise authorized by statute. *Jennings*, 583 U.S. at 297 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”); *see also Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”).

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

The Supreme Court has never utilized the multi-factor “balancing test” of *Mathews v. Eldridge*,

1 424 U.S. 319, 335 (1976), in addressing due process claims raised by noncitizens held in civil
 2 immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See*
 3 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“[T]he Supreme Court when
 4 confronted with constitutional challenges to immigration detention has not resolved them through
 5 express application of *Mathews*.”) (citations omitted); *id.* at 1214 (“In resolving familiar immigration-
 6 detention challenges, the Supreme Court has not relied on the *Mathews* framework.”) (Bumatay, J.,
 7 concurring). Nor has the Ninth Circuit embraced the *Mathews* test. While leaving open the question of
 8 whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez*
 9 *Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that “*Mathews* remains a flexible test that can
 10 and must account for the heightened governmental interest in the immigration detention context.” *Id.* at
 11 1206.

12 In *Mathews*, the Supreme Court explained that “[p]rocedural due process imposes constraints on
 13 governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning
 14 of the Due Process Clause of the Fifth or Fourteenth Amendment.” 424 U.S. at 332. Yet noncitizens
 15 subject to expedited removal like Petitioners, who were not admitted or paroled into the country, nor
 16 physically present for at least two years on the date of inspection — as a class — lack any liberty
 17 interest in avoiding removal or to certain additional procedures. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). As to
 18 such noncitizens, “[w]hatever the procedure authorized by Congress . . . is due process.” *United States*
 19 *ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *accord Thuraissigiam*, 591 U.S. at 138–139
 20 (“This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S.
 21 soil.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“[A]n alien seeking initial admission to the United
 22 States requests a privilege and has no constitutional rights regarding his application, for the power to
 23 admit or exclude aliens is a sovereign prerogative”); *Knauff*, 338 U.S. at 542 (“At the outset we wish to
 24 point out that an alien who seeks admission to this country may not do so under any claim of right).

25 Thus, noncitizens amenable to expedited removal cannot assert a protected property or liberty
 26 interest in additional procedures not provided by the statute, 8 U.S.C. § 1225. *See Dave v. Ashcroft*, 363
 27 F.3d 649, 653 (7th Cir. 2004). Instead, those noncitizens — including Petitioner — have “only those
 28 rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140.

1 Petitioners are entitled only to the protections set forth by statute, and “the Due Process Clause provides
2 nothing more.” *Thuraissigiam*, 591 U.S. at 140.

3 That said, Respondent acknowledges that courts have applied the *Mathews* factors in similar
4 situations.

5 Courts have held, on multiple occasions, that immigration detention, the economic burdens
6 imposed as a result of detention, and the potential inability to pursue a petition for review may all
7 constitute irreparable harm under the *Mathews* factors. *See, e.g., Salazar*, 2025 WL 2456232; *Castellon*
8 2025 WL 2373425; *Maklad*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025). However, that is a harm that
9 “is essentially inherent in detention,” and therefore “the Court cannot weigh this strongly in favor of”
10 Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24,
11 2018). Further, any alleged harm from the fact of detention alone is insufficient because “detention
12 during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore*
13 *v. Kim*, 538 U.S. 510, 523 (2003); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v.*
14 *Landon*, 342 U.S. 524, 538 (1952).

15 As to the second and third *Mathews* factors, when the government is a party,
16 the balance of equities and public interest merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092
17 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Where a moving party only raises
18 “serious questions going to the merits,” the balance of hardships must “tip sharply” in her favor. *All. for*
19 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v.*
20 *McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

21 Here, the government has a compelling interest in the steady enforcement of its immigration
22 laws. *See, e.g., Demore*, 538 U.S. at 523; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009)
23 (holding that the court “should give due weight to the serious consideration of the public interest” in
24 enacted laws); *see also Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983,
25 at *4 (C.D. Cal. Dec. 20, 2020) (explaining that “the public interest in the United States’ enforcement of
26 its immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at
27 2 (D. Ariz. Jan. 7, 2015) (finding that “the Government’s interest in enforcing immigration laws is
28 enormous”). Indeed, the government “suffers a form of irreparable injury” “[a]ny time [it] is enjoined

1 by a court from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567
2 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted).

3 Petitioner’s claimed harm cannot outweigh this public interest in the application of the law,
4 particularly since courts “should pay particular regard for the public consequences in employing the
5 extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)
6 (citation omitted). Recognizing the availability of a preliminary injunction under these circumstances
7 would permit any noncitizen subject to expedited removal to obtain additional review, circumventing the
8 comprehensive statutory scheme that Congress enacted. That statutory scheme — and judicial authority
9 upholding it — likewise favors the government. While it is “always in the public interest to protect
10 constitutional rights,” if, as here, a petitioner has not shown a likelihood of success on the merits of her
11 claim, that public interest does not outweigh the competing public interest in enforcement of existing
12 laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental
13 interest in applying the established procedures for noncitizens subject to expedited removal, including
14 their lawful, mandatory detention, *see* 8 U.S.C. § 1225(b); *Jennings*, 583 U.S. at 297, is significant.

15 **V. CONCLUSION**

16 For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner’s
17 motion for a temporary restraining order and preliminary injunction and reconsider its previous order to
18 produce the entirety of the A-File.

19
20 Dated: December 22, 2025

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22 By: /s/ JESSICA DELANEY
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