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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 KAIFENG WANG,

12 Petitioner,

13 v.

14 TODD LYONS, et al.,

15 Respondents.  
16

) No. 3:25-cv-10794-WHO

)

) **RESPONDENTS' RESPONSE TO ORDER**  
) **TO SHOW CAUSE**

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1 **I. INTRODUCTION**

2 As a noncitizen subject to expedited removal who has expressed a fear of persecution,  
3 Petitioner’s detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) pending a credible fear  
4 determination. Petitioner had been released on interim parole pursuant to 8 U.S.C. § 1182(d)(5)(A), but  
5 upon expiration of that parole the Department of Homeland Security (“DHS”) redetained him, as  
6 authorized by 8 C.F.R. § 212.5(e), and Petitioner returned to the status he had when he was granted  
7 interim parole. Because Petitioner is physically present in the United States without having been  
8 admitted, he is treated for constitutional purposes as if stopped at the border. Therefore, as regards his  
9 immigration detention, he is entitled only to the process due to him by statute and regulation. Because  
10 Respondents have complied with the process under the applicable statutes and regulations, the Court  
11 should deny Petitioner’s request for a preliminary injunction and dismiss his habeas petition.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 Petitioner is a native and citizen of China who entered the United States without inspection on  
14 November 7, 2024. Declaration of Deportation Officer Jennifer Ramirez (“Ramirez Decl.”) ¶ 6, Exhs. 1,  
15 5. On November 7, 2024, DHS served Petitioner with a Notice and Order of Expedited Removal. *Id.* ¶ 7,  
16 Exhs. 1, 5. On December 18, 2024, DHS granted Petitioner interim parole for a period of one year. *Id.* ¶  
17 8, Exh. 2. On January 21, 2025, Petitioner claimed a fear of return to his country. *Id.* ¶ 10, Exh. 3. DHS  
18 served Petitioner with information on the credible fear interview. *Id.* ¶ 10, Exh. 4. On December 18,  
19 2025, Petitioner’s interim parole expired and DHS detained him at a check-in. *Id.* ¶ 11, Exhs. 2, 5.

20 On December 18, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, and an Ex Parte  
21 Motion for Temporary Restraining Order (“TRO”), against Respondents. ECF Nos. 1 & 2. That same  
22 day, this Court issued a TRO. ECF No. 4. The Court ordered Respondents to immediately release  
23 Petitioner from custody and enjoined and restrained Respondents from re-detaining Wang without  
24 providing him a pre-deprivation hearing before a neutral decisionmaker at which the government  
25 establishes by clear and convincing evidence that detention is appropriate to prevent his flight or to  
26 protect the public. *Id.* at 7. DHS then released Petitioner as ordered by this Court. ECF No. 7.

27 **III. LEGAL BACKGROUND**

28 Section 1225 applies to an “applicant for admission,” defined as an “alien present in the United

1 States who has not been admitted” or “who arrives in the United States.” 8 U.S.C. § 1225(a)(1).<sup>1</sup>

2 “[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those  
3 covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

4 Section 1225(b)(1), known as “expedited removal,” applies to “arriving aliens” and “certain  
5 other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid  
6 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). An alien is subject to expedited removal if, as  
7 relevant here, the alien (1) is inadmissible because he or she lacks a valid entry document; (2) has not  
8 “been physically present in the United States continuously for the 2-year period immediately prior to the  
9 date of the determination of inadmissibility”; and (3) is among those whom the Secretary of Homeland  
10 Security has designated for expedited removal. *Department of Homeland Security v. Thuraissigiam*, 591  
11 U.S. 103, 109 (2020). When Petitioner entered the country, those designated for expedited removal  
12 were, among others, aliens “encountered within 14 days of entry without inspection and within 100 air  
13 miles of any U. S. international land border.” 69 Fed. Reg. 48879 (2004). These aliens are generally  
14 subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A).

15 If an alien placed in expedited removal “indicates an intention to apply for asylum . . . or a fear  
16 of persecution,” immigration officers will refer the alien for a credible fear interview. 8 U.S.C.  
17 § 1225(b)(1)(A)(ii). “If the officer determines at the time of the interview that [the] alien has a credible  
18 fear of persecution . . . the alien shall be detained for further consideration of the application for  
19 asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, does  
20 not express a fear of persecution, or is “found not to have such a fear,” they “shall be detained...until  
21 removed” from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV). In the meantime, “Any  
22 alien subject to the procedures under this clause shall be detained pending a final determination of  
23 credible fear of persecution.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

24 In *Jennings*, 583 U.S. at 296-303, the Supreme Court interpreted 8 U.S.C. § 1225(b). The  
25 Supreme Court stated that, “[r]ead most naturally, §§ 1225(b)(1) and (b)(2)...mandate detention of

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28 <sup>1</sup> This section of the brief uses the term “alien” for the sake of clarity and continuity because that is the  
term of art used by Congress in the relevant statute. The rest of the brief uses the Court’s preferred term  
of “noncitizen,” except when quoting statutes or cases that use the term “alien.”

1 applicants for admission until certain proceedings have concluded.” *Id.* at 297. Neither § 1225(b)(1) nor  
2 § 1225(b)(2) “impose[] any limit on the length of detention” and “neither § 1225(b)(1) nor § 1225(b)(2)  
3 say[] anything whatsoever about bond hearings.” *Id.* The Court added that the sole means of release for  
4 noncitizens detained pursuant to § 1225(b) is temporary parole at the discretion of the Attorney General  
5 under 8 U.S.C. § 1182(d)(5). *Id.* at 300 (“That express exception to detention implies that there are no  
6 other circumstances under which aliens detained under § 1225(b) may be released.”). “In sum, §§  
7 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable  
8 proceedings[.]” *Id.* at 302.

#### 9 **IV. ARGUMENT**

##### 10 **A. Legal Standard**

11 A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted  
12 unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068,  
13 1072 (9th Cir. 2012). The moving party must show that “he is likely to succeed on the merits, that he is  
14 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
15 favor, and that an injunction is in the public interest.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

16 The purpose of a preliminary injunction is to preserve the status quo pending final judgment  
17 rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software,*  
18 *Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A preliminary injunction can take two forms.” *Marlyn*  
19 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). “A prohibitory  
20 injunction prohibits a party from taking action and ‘preserves the status quo pending a determination of  
21 the action on the merits.’” *Id.* (internal quotation omitted). “A mandatory injunction orders a  
22 responsible party to take action,” as Petitioners seek here. *Id.* at 879 (internal quotation omitted). “A  
23 mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is  
24 particularly disfavored.” *Id.* “In general, mandatory injunctions are not granted unless extreme or very  
25 serious damage will result and are not issued in doubtful cases.” *Id.* Where plaintiffs seek a mandatory  
26 injunction, “courts should be extremely cautious.” *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th  
27 Cir. 1994) (internal quotation omitted). The moving party “must establish that the law and facts *clearly*  
28 *favor* [its] position, not simply that [the party is] likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d

1 733, 740 (9th Cir. 2015) (emphasis original).

2 **B. Petitioner Is Subject to Mandatory Detention Under 8 U.S.C.**  
3 **§ 1225(b)(1)(B)(iii)(IV).**

4 Petitioner claims, *inter alia*, that his ongoing detention violates his procedural due process rights  
5 under the Fifth Amendment. ECF No. 4 at 3. Petitioner argues that he has a significant interest in  
6 remaining out of custody, and that the Due Process Clause entitles him to a bond hearing before an  
7 immigration judge prior to any arrest or detention. *Id.* Petitioner asserts that he is subject to 8 U.S.C.  
8 § 1226(a) rather than § 1225(b)(2)(A). However, Respondents do not assert that Petitioner is subject  
9 § 1225(b)(2). Instead, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) is the proper detention authority.

10 Petitioner errs when he claims he “never received a completed Notice and Order of Expedited  
11 Removal.” ECF No. 1 at 20. Agency records confirm that on November 7, 2024, Petitioner was  
12 personally served with a Notice and Order of Expedited Removal. Ramirez Decl. ¶ 7, Exhs. 2, 5. He  
13 signed the form acknowledging receipt. *Id.* Contrary to Petitioner’s assertion, he has never been placed  
14 in removal proceedings under 8 U.S.C. § 1229a. ECF No. 1 at 7. Moreover, Petitioner’s release on  
15 interim parole under 8 U.S.C. § 1182(d)(5)(A) further establishes that he was, and still is, subject to  
16 8 U.S.C. § 1225(b)(1). As explained above, the sole means for release from expedited removal is  
17 through interim parole under 8 U.S.C. § 1182(d)(5)(A). As Petitioner acknowledges, when he was  
18 released from detention on December 18, 2024, it was pursuant to § 1182(d)(5)(A). ECF No. 1 at 2. At  
19 the time of his release, Petitioner was subject to expedited removal under § 1225(b)(1). If Petitioner had  
20 been or were subject to § 1226(a), as he claims, his parole would have been “conditional parole” under  
21 § 1226(a)(2)(B), and not interim parole under § 1182(d)(5)(A). Thus, Petitioner errs when he claims that  
22 he “is not authorized to be in expedited removal.” ECF No. 1 at 20.

23 More specifically, Petitioner is subject to mandatory detention pending a final determination of  
24 credible fear of persecution, per 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Under 8 U.S.C. § 1225(a)(1), an  
25 “applicant for admission” is defined as an “alien present in the United States who has not been admitted  
26 or who arrives in the United States.” As explained above, applicants for admission “fall into one of two  
27 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at  
28 287. Section 1225(b)(1) – the provision relevant here – applies because Petitioner is present in the

1 United States without having been admitted and is covered by the Secretary of Homeland Security's  
2 2004 designation of those noncitizens as subject to expedited removal. *See* 69 Fed. Reg. 48879 (2004).  
3 The expedited removal statute mandates detention while DHS determines whether Petitioner has a  
4 credible fear of persecution in his home country. Here, DHS placed Petitioner in expedited removal  
5 proceedings following his apprehension near the border shortly after his entry without inspection.  
6 Ramirez Decl. ¶ 7, Exhs. 2, 5. Petitioner then expressed a fear of returning to China. Ramirez Decl. ¶ 10,  
7 Exhs. 3, 5. This squarely places Petitioner under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), which states that he  
8 "shall be detained pending a final determination of credible fear of persecution."

9 **C. Petitioner's Right To Due Process Does Not Entitle Him To Procedural Rights  
10 Other Than Those Afforded By Statute.**

11 Respondents do not dispute that Petitioner has a right to due process of law. *See Rodriguez Diaz*  
12 *v. Garland*, 53 F.4th 1189, 1205 (9th Cir. 2022) ("The Fifth Amendment entitles aliens to due process  
13 of law in deportation proceedings.") (quoting *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021)).  
14 However, Respondents dispute Petitioner's characterization of the extent of his due process rights  
15 regarding immigration detention. Petitioner is not owed immediate release or a pre-deprivation hearing  
16 before a neutral decisionmaker at which the government must establish by clear and convincing  
17 evidence that detention is appropriate to prevent his flight or to protect the public. ECF No. 4 at 7.

18 The Supreme Court has been clear that noncitizens similarly situated to Petitioner do not have a  
19 constitutional right to procedures beyond those afforded to them by statute. In *Thuraissigiam*, the  
20 Supreme Court addressed the procedural due process rights of noncitizens like Petitioner, i.e. those  
21 detained shortly after entering the United States without admission that are then placed in expedited  
22 removal. 591 U.S. at 138-40. The Supreme Court stated that these noncitizens have "no entitlement to  
23 procedural rights other than those afforded by statute." *Id.* at 107. The Supreme Court noted that this  
24 principle was not unique to its decision in *Thuraissigiam* but instead was supported by "more than a  
25 century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S.*  
26 *ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*,  
27 345 U.S. 206, 212 (1953); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).<sup>2</sup>

28 \_\_\_\_\_  
<sup>2</sup> Since *Thuraissigiam*, numerous courts have found that noncitizens detained under § 1225(b)(1) lack a  
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1 There is no constitutional rule requiring a finding of flight risk or danger to the community to  
 2 detain, pending removal proceedings, a noncitizen who was not previously admitted. In *Demore v. Kim*,  
 3 538 U.S. 510 (2003), the Supreme Court upheld mandatory detention pending removal proceedings  
 4 under 8 U.S.C. § 1226(c) and rejected the noncitizen’s requested relief of an individualized bond hearing  
 5 to determine whether he posed either a flight risk or a danger to the community. There, the Court held  
 6 that “Detention during removal proceedings is a constitutionally permissible part of that process.” *Id.* at  
 7 531. The Court cited several cases where it upheld the constitutionality of detention pending deportation  
 8 proceedings without requiring a finding of flight risk or danger to the community. *See, e.g., Wong Wing*  
 9 *v. United States*, 163 U. S. 228, 235 (1896) (“We think it clear that detention, or temporary confinement,  
 10 as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens  
 11 would be valid”); *Carlson v. Landon*, 342 U. S. 524, 538-549 (1952) (denying noncitizens release from  
 12 detention despite no finding as to flight risk or dangerousness); *Reno v. Flores*, 507 U.S. 292, 306  
 13 (1993) (“Congress has the authority to detain aliens suspected of entering the country illegally pending  
 14 their deportation hearings.”); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022)  
 15 (“the Supreme Court has also previously upheld immigration detention schemes that offered no  
 16 opportunity for a bond hearing, much less one in which the government bore the burden of proof.”).

17 Petitioner’s reliance on *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), for a claimed due process  
 18 right to a pre-detention hearing on flight risk or danger to the community is mistaken.<sup>3</sup> *See* ECF No. 1 at  
 19 13-14. The Supreme Court’s introduction in the *Zadvydas* opinion cautions: “We deal here with aliens  
 20 who were admitted to the United States but subsequently ordered removed. *Aliens who have not yet*

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 22 due process right to release or a bond hearing after being detained for a certain period of time. *See*  
 23 *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v.*  
 24 *Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579  
 25 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *see also Mendoza-*  
*Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306, at \*2 (S.D. Cal. June 10, 2024);  
*Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at \*3 (S.D. Cal. Apr.

26 25, 2023) (same).  
 27 <sup>3</sup> The Fourth Circuit has held that “the clear takeaway from *Demore* and *Jennings* is that *Zadvydas*  
 28 should not be expanded beyond the context of the indefinite and potentially permanent detention  
 involved there.” *Id.* (cleaned up). The Eighth Circuit agreed in *Banyee v. Garland*, 115 F.4th 928 (8th  
 Cir. 2024), which held that what emerges from *Zadvydas* and *Demore* is “a bright-line rule,” i.e., “the  
 government can detain an alien” — without an “individualized determination” — for as long as  
 deportation proceedings are still ‘pending.’” *Id.* at 933 (quoting *Demore*, 538 U.S. at 527).

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1 *gained initial admission to this country would present a very different question.*” 533 U.S. at 682  
2 (emphasis added). Accordingly, *Zadvydas* is largely inapposite because Petitioner’s case is distinct from  
3 *Zadvydas* in three legally significant ways. First, unlike *Zadvydas* who was admitted then ordered  
4 removed, Petitioner has not gained admission to this country. As a result, Petitioner, unlike *Zadvydas*, is  
5 treated for due process purposes as if stopped at the border. *See Thuraissigiam*, 591 U.S. at 107, 140.  
6 Second, unlike *Zadvydas*, Petitioner is not subject to a final order of removal. In *Zadvydas*, the Court  
7 decided whether noncitizens subject to a final order of removal could be detained indefinitely.  
8 Petitioner’s detention under § 1225(b)(1), however, is clearly *not* indefinite; instead, it has a finite end  
9 point – the conclusion of removal proceedings. *See Demore*, 538 U. S. at 529 (“post-removal-period  
10 detention, *unlike detention pending a determination of removability*...has no obvious termination  
11 point.”) (quoting *Zadvydas*, 533 U.S. at 697) (emphasis added). Petitioner’s finite detention under  
12 § 1225(b)(1) does not raise the same due process concerns as the potentially indefinite detention at issue  
13 in *Zadvydas*. Third, Petitioner’s brief detention does not come close to raising the same concerns of  
14 prolonged detention that motivated the Court’s decision in *Zadvydas*. Petitioner filed his habeas petition  
15 the same day he was detained. The Court in *Zadvydas*, however, held that *six months of detention* is  
16 presumptively constitutional for noncitizens such as *Zadvydas*. In other words, even the due process  
17 protections regarding post-removal detention afforded to noncitizens such as *Zadvydas* who are admitted  
18 to the United States then subsequently ordered removed – which are meatier protections than those  
19 afforded noncitizens who have not yet gained admission such as Petitioner – do not kick in until  
20 detention reaches the six-month mark.

21 In sum, Petitioner is subject to mandatory detention pursuant to § 1225(b)(1)(B)(iii)(IV). As  
22 neither the applicable detention authority nor the Fifth Amendment’s Due Process Clause afford him a  
23 right to immediate release or a pre-deprivation hearing, the Court should reject his claim that his  
24 detention violates the constitution.

25 **D. Petitioner’s Previous Release on Interim Parole Does Not Create A Protected**  
26 **Liberty Interest**

27 Petitioner’s redetention complied with the procedures under 8 U.S.C. § 1182(d)(5)(A) and its  
28 corresponding regulations. Section 1182(d)(5)(A) states that “when the purposes of such parole shall, in

1 the opinion of the Attorney General, have been served the alien *shall forthwith return or be returned to*  
 2 *the custody from which he was paroled* and thereafter his case shall continue to be dealt with in the same  
 3 manner as that of any other applicant for admission to the United States.”<sup>4</sup> (emphasis added). DHS  
 4 paroled Petitioner from custody but, as Petitioner acknowledges, his parole expired on December 18,  
 5 2025 – the day he was redetained. ECF No. 2 at 2. Under 8 C.F.R. § 212.5(e)(1), “Parole shall be  
 6 automatically terminated without written notice...at the expiration of the time for which parole was  
 7 authorized.” Moreover, after a “termination of parole,” “further inspection or hearing shall be conducted  
 8 under [8 U.S.C. § 1225 or § 1229a].” 8 C.F.R. § 212.5(e)(2)(i). Thus, on December 18, 2025,  
 9 Petitioner’s parole from detention automatically terminated and DHS returned him to the custody from  
 10 which he was paroled, i.e. mandatory detention under 8 U.S.C. § 1225(b)(1).<sup>5</sup>

11 The interim parole statute and regulation reflect a “legal fiction,” upheld repeatedly by the  
 12 Supreme Court, that aliens paroled into the United States are legally in the same position as noncitizens  
 13 at the border, regardless of the duration of that parole. *See Thuraissigiam*, 591 U.S. at 139; *Leng May*  
 14 *Ma v. Barber*, 357 U.S. 185, 188-91 (1958); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (terminated parole  
 15 had lasted more than 8 years). “The parole of aliens seeking admission is simply a device through which  
 16 needless confinement is avoided while administrative proceedings are conducted. It was never intended  
 17 to affect an alien’s status, and to hold that petitioner’s parole placed her legally within the United States  
 18 is inconsistent with the congressional mandate, the administrative concept of parole, and the decisions of  
 19 this Court.” *Leng May Ma*, 357 U.S. at 190 (cleaned up). So just as a noncitizen at the border lacks a  
 20 protected liberty interest, so too does Petitioner despite his previous interim parole.

21 Petitioner mistakenly analogizes his claimed liberty interest in remaining out of immigration  
 22 custody following his release on interim parole to the recognized liberty interest of U.S. citizens facing  
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24 \_\_\_\_\_  
 25 <sup>4</sup> For this reason, *Aviles-Mena v. Kaiser*, No. 25-CV-06783-RFL, 2025 WL 2578215 (N.D. Cal. Sept. 5,  
 26 2025) was wrongly decided. The expiration of parole returns Petitioner to the legal status he had when  
 27 he was paroled, i.e. subject to expedited removal and mandatory detention under § 1225(b)(1). The  
 expiration of parole does, in fact, require treating noncitizens as if they had never been paroled in the  
 first place. This is what § 1182(d)(5)(A) commands.

28 <sup>5</sup> Reliance on *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, F. Supp. 3d, 2025 WL 2935630, at \*5  
 (N.D. Cal. Oct. 15, 2025) to support Petitioner’s claimed liberty interest is also misplaced. *Pablo Sequen*  
 dealt with conditional parole under § 1226(a), not interim parole under § 1182(d)(5)(A).

1 redetention. See ECF No. 1 at 7 (citing to *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding  
2 that a parolee has a protected liberty interest in his conditional release)); *id.* at 7-8 (citing to *Hurd v.*  
3 *District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical  
4 confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to  
5 constitutional due process before he is re-incarcerated”). The Supreme Court “has firmly and repeatedly  
6 endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if  
7 applied to citizens.” *Demore*, 538 U.S. at 522 (citing to *Reno v. Flores*, 507 U. S. at 305-306; *Fiallo v.*  
8 *Bell*, 430 U.S. 787, 792 (1977); *Mathew v. Diaz*, 426 U.S. 67, 79-80 (1976); *United States v. Verdugo-*  
9 *Urquidez*, 494 U.S. 259, 273 (1990)). The Ninth Circuit has also acknowledged that it has “not  
10 previously held that cases involving heightened burdens of proof for the deprivation of liberty interests  
11 of U.S. citizens apply coextensively to alien detainees who have been subject to § 1226(a) and its  
12 procedures throughout the period of their detention.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211  
13 (9th Cir. 2022); see also *Miranda*, 34 F.4th 338, 359 & n.9 (9th Cir. 2022) (agreeing that the Supreme  
14 Court's civil commitment cases are inapposite because they “involved detention of United States citizens  
15 whereas § 1226(a) involves detention of aliens awaiting removal hearings”). Thus, the applicable line of  
16 authority is the Supreme Court's immigration cases holding that the process due noncitizens like  
17 Petitioner is limited to the process afforded under the statute.<sup>6</sup>

18 Because Petitioner's release and redetention complied with the relevant statute and regulations,  
19 he has not established a protected liberty interest under the Fifth Amendment. Absent a constitutionally  
20 cognizant liberty interest, the test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) does not apply.

## 21 V. Conclusion

22 In light of the foregoing, Respondents request that the Court deny Petitioner's request for a  
23 preliminary injunction and dismiss his habeas petition.

24  
25 <sup>6</sup> To the extent Petitioner relies on *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011), for the claim  
26 that “due process requires that the government justify re-detention of Petitioner by clear and convincing  
27 evidence that he poses a flight risk or danger,” ECF No. 1 at 13, the Ninth Circuit has cast doubt on  
28 whether *Singh* remains good law. See *Rodriguez-Diaz*, 53 F.4th at 1202 n.4. Petitioner's reliance on  
*Matter of Patel*, 15 I&N Dec. 666 (BIA 1976), for the same claim is also mistaken: *Patel* preceded the  
enactment of the expedited removal statute by two decades and the BIA recognized in *Matter of Valdez-*  
*Valdez*, 21 I&N Dec. 703 (BIA 1997), that *Patel* has been superseded by statute.

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DATED: January 9, 2026

Respectfully submitted,

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