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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 D.L.C.,

13 Petitioner,

14 v.

15 MINGA WOFFORD, *et al.*,¹

16 Respondents.

No. 1:25-cv-01996-DC-JDP

**OPPOSITION TO PETITIONER'S EX PARTE
MOTION FOR TEMPORARY RESTRAINING
ORDER (ECF 2)**

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27 ¹ The official with custody of the petitioner is the proper respondent to a habeas petition.
28 28 U.S.C. § 2242; *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024). Here, Petitioner's custodian is
the Facility Administrator of the Mesa Verde ICE Processing Center, Minga Wofford. *See* ECF 1 ¶ 15.
All other named Respondents in this action should be dismissed.

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND.....	1
III. LEGAL STANDARD	2
IV. ARGUMENT	3
A. Petitioner’s <i>ex parte</i> motion should be denied as untimely.	3
B. Petitioner is not likely to succeed on the merits.	4
1. Petitioner fails to clearly show that he is not subject to mandatory detention under § 1225(b)(1).	4
2. Petitioner has not clearly shown that his detention during removal proceedings violates the Fifth Amendment’s guarantee of substantive due process.	7
3. Petitioner has not clearly shown that his detention during removal proceedings violates the Fifth Amendment’s guarantee of procedural due process.	8
4. Even if Petitioner clearly shows he is entitled to preliminary relief, that relief should be the provision of a hearing regarding the propriety of his detention.	10
5. This Court lacks jurisdiction to issue an order precluding Petitioner’s removal from the United States.	10
C. Petitioner has not shown he is likely to suffer irreparable harm.....	11
D. Petitioner has not shown that the balance of the equities and the public interest favor his immediate release.	11
V. CONCLUSION.....	11

OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner D.L.C. is a citizen of Peru who entered the United States without admission in May 2022. He was taken into custody and released subject to conditions. Thereafter, U.S. Immigration and Customs Enforcement (“ICE”) arrested him on September 17, 2025, and he is presently detained as his removal proceedings go forward.

Petitioner now seeks a temporary restraining order (1) requiring his immediate release; (2) prohibiting his re-detention unless a “neutral adjudicator” determines “by clear and convincing evidence that he is a danger to the community or a flight risk”; and (3) prohibiting his removal from the United States. *See* ECF 2, at 27. But Petitioner is not entitled to such extraordinary, equitable relief. On the contrary, the record shows that (1) Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1); (2) immigration laws have long authorized the detention of noncitizens during removal proceedings without an individualized determination of danger or flight risk, *Demore v. Kim*, 538 U.S. 510 (2003); and (3) this Court lacks jurisdiction to prohibit Petitioner’s removal from the United States, 8 U.S.C. § 1252(g). For these reasons and those further detailed below, Petitioner’s motion for a temporary restraining order should be denied.

II. BACKGROUND

As noted, Petitioner is a native and citizen of Peru. Request for Judicial Notice (“RJN”) Ex. 1, at 1. He entered the United States without inspection near Eagle Pass, Texas, on or about May 7, 2022. *Id.* Ex. 1, at 2. He was placed in expedited removal, but he expressed a credible fear of returning to Peru, so he was placed in removal proceedings under 8 U.S.C. § 1229a to pursue his asylum claim. *See id.* Ex. 1, at 2. He was released subject to conditions under the Department of Homeland Security’s (“DHS”) Alternative to Detention program. *Id.* Ex. 1, at 2; *see* ECF 2-6, at 2.

On September 17, 2025, ICE agents arrested Petitioner in Bakersfield, California. RJN Ex. 1, at 2. He is presently detained at the Mesa Verde ICE Processing Facility as his removal proceedings and asylum application move forward pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), and 8 C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii). *See Matter of M-S-*, 27 I & N Dec. 509, 510 (A.G. 2019) (holding that a noncitizen present without admission, placed in expedited removal, and transferred to 8 U.S.C. § 1229a

1 removal proceedings after establishing a credible fear of persecution or torture is subject to detention
2 under 8 U.S.C. § 1225(b)(1) and is not eligible for release under 8 U.S.C. § 1226(a)).

3 On December 23, 2025, Petitioner filed the instant habeas action pursuant to 28 U.S.C. § 2241,
4 which authorizes any person to claim in federal court that he or she is being held “in custody in violation
5 of the Constitution or laws . . . of the United States,” 28 U.S.C. § 2241(c)(3). ECF 1. Petitioner avers
6 that his detention violates the Due Process Clause of the Fifth Amendment. *See id.* ¶¶ 63–73.

7 Petitioner also moved *ex parte* for a temporary restraining order on December 23, 2025. *See*
8 ECF 2. In his motion, Petitioner seeks an order requiring his immediate release; prohibiting his re-
9 detention unless a “neutral adjudicator” determines “by clear and convincing evidence that he is a
10 danger to the community or a flight risk”; and prohibiting his removal from the United States. *Id.* at 27.

11 **III. LEGAL STANDARD**

12 The standard for issuing a temporary restraining order is “substantially identical” to that for a
13 preliminary injunction. *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th
14 Cir. 2001). Preliminary injunctions are extraordinary remedies “never awarded as of right.” *Winter v.*
15 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “[P]laintiffs seeking a preliminary
16 injunction face a difficult task in proving that they are entitled to this extraordinary remedy.” *Earth*
17 *Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation marks omitted). This
18 burden is aptly described as “heavy.” *Id.* A preliminary injunction requires “substantial proof” and a
19 “clear showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

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

1 **IV. ARGUMENT**

2 **A. Petitioner's *ex parte* motion should be denied as untimely.**

3 “A plaintiff’s delay in seeking relief weighs heavily against granting a TRO or preliminary
4 injunction.” *Portillo v. Aurora Loan Servs., LLC*, No. 13-55, 2013 WL 12119727, at *1 (C.D. Cal.
5 Jan. 4, 2013); *see, e.g., Oakland Tribune, Inc. v. Chronicle Publ’g Co.*, 762 F.2d 1374, 1377 (9th Cir.
6 1985) (“Plaintiff’s long delay before seeking a preliminary injunction implies a lack of urgency and
7 irreparable harm”); *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (“A
8 delay in seeking a preliminary injunction is a factor to be considered in weighing the propriety of
9 relief”); *Hi-Rise Tech., Inc. v. Amatuerindex.com*, No. 07-349, 2007 WL 1847249, at *4 (W.D. Wash.
10 June 27, 2007) (“Such a long delay in seeking relief weighs against granting a temporary restraining
11 order or a preliminary injunction.”).

12 Here, Petitioner waited more than three months to move *ex parte* for a temporary restraining
13 order. He filed his motion the day before a federal holiday and then served the motion when the United
14 States Attorney’s Office was closed. *See* ECF 2, 7. Petitioner offers no explanation for this significant
15 delay in his sworn declaration. *See* ECF 2-2. His attorney’s declaration generally suggests—without
16 citations or data—that there is a “shortage of legal services available to individuals such as Petitioner,”
17 ECF 2-1 ¶ 11, while at the same time referencing “dozens of other attorneys in this District and
18 elsewhere” who are litigating these matters, *id.* ¶ 4. Neither she nor Petitioner attest when Petitioner
19 retained counsel or describe his efforts to do so before moving *ex parte* for a temporary restraining
20 order. *See* ECF 2-1, 2-2. Petitioner’s *ex parte* motion should be denied on that basis alone. *See* E.D.
21 Cal. Local Rule 231(b) (“In considering a motion for a temporary restraining order, the Court will
22 consider whether the applicant could have sought relief by motion for preliminary injunction at an
23 earlier date without the necessity for seeking last-minute relief by motion for temporary restraining
24 order.”); *see also Occupy Sacramento v. City of Sacramento*, No. 11-02873, 2011 WL 5374748, at *4
25 (E.D. Cal. Nov. 4, 2011) (denying temporary restraining order due to 25-day delay).

B. Petitioner is not likely to succeed on the merits.

1. Petitioner fails to clearly show that he is not subject to mandatory detention under § 1225(b)(1).

Section 1226(a) provides for the detention of noncitizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may detain a noncitizen during removal proceedings, release him on bond, or release him on conditional parole.

Although § 1226(a) “conceivably applies to all aliens” in removal proceedings, a different section—§ 1225—governs the detention of those who are “applicants for admission.” 8 U.S.C. § 1225(a)(1); *see Altamirano Ramos v. Lyons*, --- F. Supp. 3d ----, No. 25-09785, 2025 WL 3199872, at *6 (C.D. Cal. Nov. 12, 2025) (applying “the ‘commonplace’ principle of statutory interpretation that ‘the specific governs the general’” (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992))). In turn, § 1225(b)(1) provides that an “applicant for admission” is subject to mandatory detention pending full removal proceedings and the adjudication of any fear-based claims. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), and 8 C.F.R. § 235.3(b)(2)(iii), and (b)(4)(ii); *see also Matter of M-S-*, 27 I & N Dec. at 510.

Section 1225 defines “applicant for admission” to include “[a]n alien present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). This definition adopts the longstanding “entry fiction” doctrine, under which “an alien who is physically present but has not been lawfully admitted into the country is ‘legally considered to be detained at the border and hence as never having effected entry into this country.’” *Altamirano Ramos*, 2025 WL 3199872, at *7 (quoting *Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094, 1097 (9th Cir. 2004)); *Matter of Lemus-Losa*, 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[.]”).²

² By stating that a noncitizen present in the United States without admission “shall be *deemed*” to be an applicant for admission, *see* 8 U.S.C. § 1225(a)(1) (emphasis added), the statute acknowledges the “unconventional” usage of the term consistent with the “entry fiction” doctrine. *Deem*, Black’s Law Dictionary (11th ed. 2019) (“To treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have.”).

1 Here, Petitioner was never admitted into the United States and thus is an “applicant for
 2 admission” under § 1225(a)(1). *See* RJN Ex. 1, at 2. Though initially subject to expedited removal, he
 3 was placed into removal proceedings under 8 U.S.C. § 1229a after establishing a credible fear of
 4 persecution or torture. *See* RJN Ex. 1, at 2. It thus appears that Petitioner is subject to mandatory
 5 detention under § 1225(b)(1). *See Matter of M-S-*, 27 I & N Dec. at 510.³

6 To be sure, this Court has previously applied § 1226(a) rather than § 1225(b) in similar
 7 circumstances. *See Selis-Tinoco v. Noem*, No. 25-01762, 2025 WL 3567862, at *4 (E.D. Cal. Dec. 14,
 8 2025); *Labrador-Prato v. Noem*, No. 25-01598, 2025 WL 3458802, at *4 (E.D. Cal. Dec. 2, 2025).
 9 There, this Court followed “a majority of courts” holding that “section 1226 rather than section 1225 is
 10 the appropriate section to apply in cases in which a noncitizen is already living in the United States.”
 11 *Selis-Tinoco*, 2025 WL 3567862, at *5; *Labrador-Prato*, 2025 WL 3458802, at *4. But “the
 12 overwhelming majority of district courts sometimes get the law very wrong.” *Mejia Olalde v. Noem*,
 13 No. 25-00168, 2025 WL 3131942, at *1 (E.D. Mo. Nov. 10, 2025); *see Altamirano Ramos*, 2025 WL
 14 3199872, at *4 (reconsidering this reasoning because, “after additional research and analysis, the court
 15 has concluded that Petitioner is subject to mandatory detention” under § 1225(b), and that “Petitioner is
 16 not eligible for a bond hearing under 8 U.S.C. § 1226(a)”); *see also Cortes Alonzo v. Noem*, No. 25-
 17 01519, 2025 WL 3208284, at *3 (E.D. Cal. Nov. 17, 2025) (reaching the same conclusion). This Court
 18 should not follow *Selis-Tinoco* or *Labrador-Prato* here for several reasons.

19 *First*, Petitioner is subject to mandatory detention under § 1225(b)(1)—not § 1225(b)(2)(A).
 20 Several district courts have held that § 1225(b)(2)(A) does not apply to noncitizens in the United States
 21 unless they are actively “seeking admission,” but that language does not appear in § 1225(b)(1).
 22 Similarly, under § 1225(b)(2)(A), some district courts have required a finding by an immigration officer
 23 that the noncitizen “is not clearly and beyond a doubt entitled to be admitted,” but that language also
 24 does not appear in § 1225(b)(1).

25
 26 ³ Although it appears that Petitioner was granted conditional parole from May 2022 to May 2023
 27 under 8 U.S.C. § 1182(d)(5)(A), there is no evidence that his parole authorization was extended. *See*
 28 ECF 2-6, at 4; *see also Matter of M-S-*, 27 I & N Dec. at 516–17 (“An alien’s term of parole expires
 ‘when the purposes of such parole . . . have been served,’ at which point the alien must ‘return or be
 returned to . . . custody.’” (quoting 8 U.S.C. § 1182(d)(5)(a))).

1 *Second*, declining to apply § 1225(b) to a noncitizen because he or she “is already living in the
 2 United States” contravenes the “entry fiction” doctrine and the plain text of § 1225(a)(1). That section
 3 makes clear that § 1225(b) applies to a noncitizen “*present in the United States* who has not been
 4 admitted.” 8 U.S.C. § 1225(a)(1) (emphasis added); *see, e.g., Pena v. Hyde*, No. 25-11983, 2025 WL
 5 2108913, at *1–3 (D. Mass. July 28, 2025) (holding that a noncitizen who was never admitted but lived
 6 in the United States and was later detained after a traffic stop “remain[ed] an applicant for admission”
 7 and “his continued detention [was] therefore authorized by § 1225(b)(2)(A)”).

8 Moreover, as the court in *Altamirano Ramos* explained, imposing some geographical distinction
 9 between §§ 1225 and 1226 “creates difficult and improper line drawing exercises for courts and is
 10 inconsistent with the entry fiction doctrine.” 2025 WL 3199872, at *7. For example:

11 [I]f § 1225(a) is interpreted as applying only to aliens at the border (despite no
 12 support in the text for that limitation), then where does the statute’s application
 13 end? One mile from the border? Twenty-five miles? And how quickly must the
 14 alien be apprehended before the statute no longer applies? Within one hour? One
 day? One week? The statute does not address those difficult questions (because it
 is not temporally or geographically limited and instead applies to *any* alien who is
 “present in the United States who has not been admitted”).

15 *Id.* (quoting 8 U.S.C. § 1225(a)(1)). Those questions, in turn, “are not only difficult”—they are “not for
 16 the courts to answer.” *Id.* at *8. They are “questions ‘for the political department of the government,’
 17 which has ‘plenary authority to decide which aliens to admit’ and the ‘procedures to be followed’ in that
 18 admission.” *Id.* (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139, 140 (2020)).

19 At bottom, the distinction between §§ 1225 and 1226 is not the location where a noncitizen is
 20 found or the duration of their presence in the United States. Rather, applying § 1225 instead of § 1226
 21 turns on whether the noncitizen was admitted to the United States at the time of entry. *Matter of Yajure*
 22 *Hurtado*, 29 I. & N. Dec. 216, 218–19 (BIA 2025); *see also Matter of M-S-*, 27 I. & N. at 516
 23 (explaining that “section 235 [8 U.S.C. § 1225] (under which detention is mandatory) and section 236(a)
 24 [8 U.S.C. § 1226(a)] (under which detention is permissive) can be reconciled only if they apply to
 25 different classes of aliens”). This interpretation comports with the Illegal Immigration Reform and
 26 Immigrant Responsibility Act of 1996 (“IIRIRA”), which “added § 1225(a)(1)” to “ensure[] that all
 27 immigrants who have not been lawfully admitted, regardless of their physical presence in the country,
 28 are placed on equal footing in removal proceedings under the INA—in the position of an ‘applicant for

admission.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *see United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (refusing “to interpret the INA in a way that would in effect repeal that statutory fix” in the IIRIRA).

Finally, even though DHS issued Petitioner a form titled “Notice of Custody Determination” that cited 8 U.S.C. § 1226 (*see* ECF 2-6, at 2), the erroneous use of that form does not alter the plain meaning of a federal statute.⁴ *Contra Selis-Tinoco*, 2025 WL 3567862, at *5; *Labrador-Prato*, 2025 WL 3458802, at *4. Indeed, while the “longstanding practice of the government” can “inform [a court’s] determination of what the law is,” this interpretive crutch is proper only where the meaning of a statute is “doubtful and ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024). Here, §§ 1225(a)(1) and 1225(b) are not doubtful and ambiguous. They are “clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status.” *See Yajure Hurtado*, 29 I. & N. Dec. at 226; *see also, e.g., Niz-Chavez v. Garland*, 593 U.S. 155, 159, 169 (2021) (rejecting “the government’s practice of issuing documents labeled notices to appear that failed to include the time and place for the alien’s removal hearing” because the practice, even though longstanding and formalized in regulations, was contrary to the statutory text of 8 U.S.C. § 1229(a)(1) and the IIRIRA).

2. Petitioner has not clearly shown that his detention during removal proceedings violates the Fifth Amendment’s guarantee of substantive due process.

Petitioner avers that the revocation of his release violated the substantive component of the Due Process Clause because “his detention is both punitive and not justified by any legitimate purpose.” ECF 2, at 13:19–13:21. It is well established, however, that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention, or temporary

⁴ Notably, it appears that Petitioner separately received an “Interim Notice Authorizing Parole” under 8 U.S.C. § 1182(d)(5)(A), which is an authorization for “aliens applying for admission to the United States.” *See* ECF 2-6, at 4; *see also* 8 U.S.C. § 1182(d)(5)(A) (“such parole of such alien shall not be regarded as an admission of the alien”); *Matter of M-S-*, 27 I. & N. Dec. at 516–17 (“An alien’s term of parole expires ‘when the purposes of such parole . . . have been served,’ at which point the alien must ‘return or be returned to . . . custody.’” (quoting 8 U.S.C. § 1182(d)(5)(a))).

1 confinement, as part of the means necessary to give effect to the provisions for the exclusion or
2 expulsion of aliens would be valid.”). As the Supreme Court held more than a century ago, “deportation
3 proceedings ‘would be vain if those accused could not be held in custody pending the inquiry into their
4 true character.’” *Id.* (quoting *Wong Wing*, 163 U.S. at 235). The substantive component of the Due
5 Process Clause does not require individualized determinations of dangerousness or flight risk to detain a
6 noncitizen pending removal proceedings. *See Demore*, 538 U.S. at 514, 531.

7 Of course, a noncitizen “could be” entitled to an individualized determination as to flight risk
8 and dangerousness “if the continued detention became unreasonable or unjustified.” *See id.* at 532
9 (Kennedy, J., concurring). Here, however, there is no evidence suggesting that Petitioner’s detention
10 pending the completion of removal proceedings is “‘indefinite’ and ‘potentially permanent.’” *See id.*
11 at 528 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001)); *see also, e.g., Keo v. Warden of the*
12 *Mesa Verde ICE Processing Center*, No. 24-00919, 2025 WL 1029392, at *8 (E.D. Cal. Apr. 7, 2025)
13 (holding that the mandatory detention of a lawful permanent resident for 22 months during removal
14 proceedings was constitutional, and no bond hearing was required, because the removal proceedings had
15 a “definite termination point” and the petitioner’s detention was not indefinite (citing *Jennings v.*
16 *Rodriguez*, 583 U.S. 281, 304 (2018); *Demore*, 538 U.S. at 527, 538)). Petitioner thus has not shown
17 that he is likely to succeed on his substantive due-process claim.

18 **3. Petitioner has not clearly shown that his detention during removal**
19 **proceedings violates the Fifth Amendment’s guarantee of procedural due**
20 **process.**

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

Over the ensuing 50 years, however, the Supreme Court 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, under longstanding precedent, noncitizens who are not admitted 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. As noted, 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*, 538 U.S. at 530–31; *Keo*, 2025 WL 1029392, at *8.

Second, Petitioner has not clearly shown that a hearing on his custody status would “decrease the risk of him being erroneously deprived of his liberty.” ECF 2, at 23. As noted, the record confirms that Petitioner is an “applicant for admission” who was transferred from expedited removal to full removal proceedings after establishing a credible fear of persecution or torture (*see* RJN Ex. 1, at 2), and it thus appears that he is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii); *Matter of M-S-*, 27 I & N Dec. at 510.

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). In addition, “[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent.” *Id.*

4. Even if Petitioner clearly shows he is entitled to preliminary relief, that relief should be the provision of a hearing regarding the propriety of his detention.

As discussed, Petitioner has failed to clearly show that he is entitled to release during his removal proceedings, as it appears that he is subject to mandatory detention under § 1225(b)(1). But even if the Court determines that Petitioner should receive a hearing regarding the propriety of his detention, 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”).

5. This Court lacks jurisdiction to issue an order precluding Petitioner’s removal from the United States.

Insofar as Petitioner seeks to prevent his removal from the United States,⁵ this Court lacks jurisdiction to do so. The Immigration and Nationality Act (“INA”) expressly provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders against any alien under this chapter.*” 8 U.S.C. § 1252(g) (emphasis added). This provision clearly prohibits district courts from exercising injunctive relief to forestall removal via habeas actions. *See Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (holding that the district court could not enjoin removal via a habeas petition).

⁵ *See* ECF 2, at 27 (requesting that the Court order Respondents to “refrain from sending [Petitioner] to any place outside of the United States”).

C. 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. *See supra* Section IV.B. As discussed, moreover, immigration laws have long authorized officials to detain noncitizens pending removal to “assur[e] the alien’s presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699; *see Demore*, 538 U.S. at 523 (removal is “a constitutionally valid aspect of the deportation process”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”).

D. 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)); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of removal orders[.]”). This public interest outweighs Petitioner’s private interest here. *See supra* Section IV.B.3.

V. CONCLUSION

For the above reasons, Petitioner’s motion for a temporary restraining order should be denied.

Dated: December 30, 2025

Respectfully submitted,

ERIC GRANT
United States Attorney

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