IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03040-RBJ

HUGO CERVANTES ARREDONDO,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora Contract Detention Facility,
ROBERT GUADIAN, Field Office Director, Denver, U.S. Immigration and Customs Enforcement,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD LYONS, Director, U.S. Immigration and Customs Enforcement, and
PAMELA BONDI, Attorney General of the United States,

Respondents.

CONSOLIDATED RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (ECF No. 8)

Respondents submit this consolidated response to Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1, the Petition) and Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 8, the Motion). As explained below, the Court should deny the Petition and the Motion.

INTRODUCTION

The Department of Homeland Security (DHS) is detaining Petitioner under a statutory provision, 8 U.S.C. § 1225(b)(2)(A). Noncitizens (referred to as "aliens" in the Immigration and Nationality Act) who are detained under this section, like Petitioner, are ordinarily not eligible for bond hearings. Petitioner claims he should instead be detained under 8 U.S.C. § 1226(a), which

provides for bond hearings in certain circumstances. Because Petitioner believes his detention should be governed by § 1226(a), he requests immediate release or a bond hearing in seven days.

The Court should deny the Petition. Petitioner recently pleaded guilty to a controlled-substances violation, and so his detention is mandatory even if he is correct that § 1226 should apply instead of § 1225. *See* 8 U.S.C. §§ 1226(c)(1)(A), 1182(a)(2)(A)(II).

But even if that were not the case, Petitioner is properly detained under § 1225. The scope of Section 1225 generally, and the scope of § 1225(b)(2) specifically, was explained by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2020). There, the Court explained that under § 1225, "an alien who … 'is present' in this country but 'has not been admitted' is treated as 'an applicant for admission;" that § 1225(b)(2) serves as a "catchall provision that applies to all 'applicants for admission' not covered by § 1225(b)(1)" [which applies to a subcategory of aliens subject to expedited removal]"; and that aliens "covered by § 1225(b)(2)" are subject to detention under § 1225(b)(2)(A). *See Jennings*, 583 U.S. at 287-89. As explained below, Petitioner here fits that definition. Respondents recognize that numerous nonprecedential decisions have reasoned otherwise, resisting the interpretation that an alien who entered the country without being admitted is an "applicant for admission" covered by § 1225(b)(2). But as explained below, a close reading of how the Supreme Court in *Jennings* explained the scope of § 1225—which, unlike all those decisions, is binding on this Court—supports Respondents' view. Section 1225(b)(2)(A) requires detention of an "applicant for admission" if an "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." An applicant for admission includes any alien "present in the United States who has not been

admitted." 8 U.S.C. § 1225(a)(1). Petitioner is properly detained under § 1225(b)(2)(A) because he is an alien present in the United States who has not been admitted.

Petitioner also argues that he is entitled to a bond hearing at which the government bears the burden of proof. If the Court grants Petitioner a bond hearing, the burden of proof should be on Petitioner to demonstrate that he does not present a danger or risk of flight, consistent with well-established Supreme Court precedent affirming the constitutionality of such proceedings.

BACKGROUND

I. Legal background

In the INA, Congress established rules governing when certain aliens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission." An "applicant for admission" is any "alien present in the United States who has not been admitted *or* who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States *after inspection and authorization* by an immigration officer." *Id.* § 1101(a)(13)(A) (emphasis added). All applicants for admission are subject to inspection by immigration officers to determine if they are admissible. *Id.* § 1225(a)(3). So an applicant for admission is an alien who: (1) arrives in the United States; or (2) is present in the United States without having lawfully entered the country after inspection. As the Supreme Court explained in *Jennings*, "[u]nder … 8 U.S.C. § 1225, an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is *treated* as 'an applicant for admission.'" 583 U.S. at 287 (citing 8 U.S.C. § 1225(a)(1)) (emphasis added). Thus, an "applicant for admission" in § 1225

is a term of art that includes a non-citizen who is present in the United States but who has not lawfully entered the country.

As the Supreme Court explained in *Jennings*, such "applicants for admission" fall into different subcategories. *Id.* Two subcategories are described in Section 1225(b)(1). The first subcategory includes those aliens who are arriving and are inadmissible on various grounds. *See* 8 U.S.C. § 1225(b)(1)(A)(i). The second subcategory includes those aliens who, in addition to being inadmissible under various provisions, have "not been admitted or paroled into the United States," and have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] have been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 1225(b)(1)(A)(i), (iii)(II). Aliens within the two subcategories described in § 1225(b)(1) are subject to expedited removal procedures, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings), 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).

But those two subcategories do not encompass all applicants for admission. Section 1225(b)(2) serves as a catchall for all remaining "applicants for admission"—a term, as discussed above, that describes both arriving noncitizens who are inspected at a port of entry and those who are unlawfully present *without* having been admitted. As the Court in *Jennings* described it, "Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." 583 U.S. at 287.

"Aliens who are instead covered by § 1225(b)(2) are detained pursuant to a different process"—the process set forth in § 1225(b)(2)(A). *Id.* at 288. Under § 1225(b)(2)(A), all other

applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" "shall be detained for" removal proceedings under 8 U.S.C. § 1229a. Section 1225(b)(2)(A) thus generally provides for detention, during removal proceedings, for noncitizens who are applicants for admission but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens, or other aliens subject to expedited removal), and are not clearly entitled to be admitted. Section 1225 does not provide a bond hearing for aliens detained under that provision.

In summing up this overview, the Court in *Jennings* recognized that individuals who are treated as a matter of law as "applicants for admission"—even those who fall into the catchall category of § 1225(b)(2), which includes those who were never admitted and have been unlawfully present for more than two years—can be viewed as "seeking admission." *Id.* at 289 ("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).").

A different category of noncitizens may be admitted to the United States (and thus fall outside § 1225) but then later face removal for various reasons. *Id.* at 288 (explaining that aliens may face removal if they "were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission"). The *Jennings* Court explained that such aliens may be detained under a different provision—§ 1226. *Id.* ("Section 1226 generally governs the process of arresting and detaining *that* group of aliens pending their removal.") (emphasis added).

The procedures provided in § 1226 for detention and removal of aliens are different from those provided under § 1225. Whereas § 1225(b) requires mandatory detention, § 1226(a) provides the possibility of release on bond. If the Attorney General issues a warrant, an alien may be arrested

and detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Following arrest, the alien may remain detained or may be released on bond or conditional parole. By regulation, immigration officers can release such an alien if they demonstrate that they "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge (IJ) at any time before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. Section 1226(c), however, requires the Attorney General to take into custody certain defined categories of "criminal aliens" and to detain them during their removal proceedings—that is, they are not able to receive bond hearings. 8 U.S.C. § 1226(c).

II. Factual background

As explained below, Petitioner has not been inspected and admitted to the United States and is thus an applicant for admission.

Petitioner is a native and citizen of Mexico who entered the United States without inspection on an unknown date and location. Ex. 1, Decl. of Michael Ketels ¶¶ 4-6. He has never been admitted or paroled into the United States. *Id.* ¶¶ 7-8. On November 24, 2024, Petitioner was arrested in Denver on charges of drug possession and possession of drug paraphernalia. *Id.* ¶ 9. That case is currently pending. *Id.*

In June 2025, a routine records check by U.S. Immigration and Customs Enforcement (ICE) showed that Petitioner had another recent arrest, in Douglas County, Colorado. *Id.* ¶ 10. On June 26, 2025, Petitioner was convicted in the County Court for Douglas County on one count of Unlawful Use of a Controlled Substance. *Id.* ¶ 12. On the same date, Petitioner was released from

local custody, and ICE took custody of him and transferred him to the Denver ICE Contract Detention Facility. *Id.* ¶ 13. Initially ICE detained Petitioner under 8 U.S.C. § 1226. Subsequently, ICE cancelled Petitioner's detention under § 1226 and now detains him pursuant to 8 U.S.C. § 1225(b). *Id.* ¶ 14.

Also on June 26, 2025, ICE issued a Notice to Appear initiating removal proceedings against Petitioner and charging him with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated. *Id.* ¶ 15.

Petitioner was scheduled for a custody redetermination hearing on July 11, 2025, but he withdrew his request. *Id.* ¶ 17.

On July 30, 2025, Petitioner admitted the allegations and charge in his removal case to an Immigration Judge (IJ) and the IJ sustained the removal charge. *Id.* ¶ 18. Petitioner later requested time to prepare an application for relief from removal. *Id.* ¶ 19. After being granted several extensions, Petitioner submitted his application on August 28, 2025. *Id.* ¶ 21. On September 11 and 25, 2025, Petitioner requested and was granted two extensions of time to submit additional evidence in support of his application for relief from removal. *Id.* ¶¶ 22, 24. Also on September 25, 2025, the IJ held a custody redetermination hearing and denied Petitioner's request for change in custody, finding that she did not have jurisdiction to redetermine Petitioner's custody. *Id.* ¶¶ 24, 25. On October 9, 2025, however, the IJ denied Petitioner's request for a third extension. *Id.* ¶ 26.

Petitioner's removal proceedings remain pending, and his case is scheduled for a merits hearing on November 4, 2025. *Id.* ¶ 27.

III. Procedural background

On September 26, 2025, Petitioner filed the Petition. ECF No. 1. In it, he challenges his detention as violating: (1) the provisions regarding detention in § 1226(a); (2) the regulations implementing § 1226; (3) the APA insofar as he is detained under § 1225; (4) the APA based on Defendants allegedly adopting a policy without any rulemaking or public notice; and (5) due process. *Id.* ¶¶ 71-94.

In brief, he argues that his detention under § 1225 (which provides for mandatory detention) is improper and that he should instead be detained under § 1226 (which provides for the possibility of release on bond). *See generally id.* He seeks immediate release or a bond hearing within seven days. *Id.* at 24 (prayer for relief).

Petitioner filed the Motion on October 4, 2025. ECF No. 8. In the Motion, he reiterates his requests for release or a bond hearing within seven days and for an order preventing his transfer outside the District of Colorado or the United States. *Id.* at 14-15.[1]

The Court ordered Respondents to file a response to the Petition. *See* ECF No. 11 at 4. It further partially granted Petitioner's request for a TRO, ordering Respondents not to transfer Petitioner out of Colorado unless or until the Court or the Tenth Circuit vacates the order. *Id.* at 3.

[1] Respondents note that it appears Petitioner may be included in a proposed class in another case in this District, *Mendoza Gutierrez v. Baltazar*, Case No. 25-cv-02720-RMR. In an Order dated October 17, 2025, Judge Rodriguez enjoined the Respondents in that case from removing members of the proposed class from the United States or transferring them from the District of Colorado during the pendency of that action. *See id.*, ECF No. 33. Judge Rodriguez set a hearing on the Motion for Class Certification for November 21, 2025. *See id.* at 36.

ARGUMENT

I. Petitioner's statutory challenge fails.

A. Under Petitioner's own theory, he is subject to mandatory detention.

Petitioner urges that he is not an "applicant for admission" and thus should not be detained under § 1225. ECF No. 1 ¶¶ 55-70. But he further acknowledges, correctly, that aliens who "are convicted of certain crimes are" still "subject to mandatory detention" under 8 U.S.C. § 1226(c)(1). *Id.* ¶ 35. Among those crimes are "violation[s] of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance." 8 U.S.C. § 1182(a)(2)(A)(II); *id.* § 1226(c)(1)(A) (requiring that the "Attorney General shall take into custody any alien who. . . is inadmissible by reason of having committed any offense covered in section 1182(a)(2)"); *see also id.* § 1226(c)(1)(B) (same for aliens lawfully admitted but who are deportable for having committed controlled-substances offenses).

Here, Petitioner has pleaded guilty to a violation of unlawful use of a controlled substance under Colo. Rev. Stat. § 18-18-404(1). Ex. 1 ¶ 12. Thus, even if Petitioner is correct that he is not subject to detention under § 1225, his detention would still be mandatory under § 1226(c)(1)(A). Nowhere in the Petition or the Motion does he contest this fact, and so the Petition should be denied. *See de Jesus de Jesus v. Wolf*, No. 20-cv-03637-RBJ, 2021 WL 603056, at *3 (D. Colo. Feb. 16, 2021) (denying habeas petition without prejudice where petitioner had been detained under § 1226(c) for approximately three-and-a-half months, approximately the same amount of time Petitioner has been detained here).

B. Petitioner's detention is proper under § 1225(b)(2)(A).

In any event, the plain text of § 1225(b)(2)(A) makes clear that Petitioner falls within its scope. Section 1225(b)(2)(A) mandates detention for an alien "who is an applicant for admission" if they are "not clearly and beyond a doubt entitled to be admitted." An "applicant for admission" is an alien who (1) is "present in the United States who ha[ve] not been admitted" or (2) "who arrives in the United States." *Id.* § 1225(a)(1). In other words, an alien who is present in the United States but has not been inspected or admitted is treated under the statute as an applicant for admission.

Petitioner is therefore an "applicant for admission." Petitioner is present in the United States. He has not been "admitted" (*i.e.*, he has not made a "lawful entry. . . after inspection and authorization by an immigration officer"). 8 U.S.C. § 1101(a)(13)(A); Ex. 1 ¶¶ 7. And he does not argue that he is clearly and beyond a doubt entitled to be admitted. In short, he falls within the scope of § 1225(b)(2)(A).

Petitioner resists this plain reading of § 1225(b)(2)(A). He makes three arguments about why this section should not apply to him: arguments from the text of the INA, the INA's legislative history, and the Government's past practice.[2] But, as described below, none of these arguments overcome the plain reading of the text.

Textual arguments. First, Petitioner makes textual arguments about why § 1225 does not apply to him and why § 1226 does. He argues that § 1225 is limited to those just arriving in the

[2] Petitioner also cites other district courts that have concluded that aliens who enter without inspection and then reside in the United States fall within the scope of § 1226(a) rather than § 1225(b)(2)(A). ECF No. 1 ¶¶ 52-53 (collecting cases); ECF No. 8 at 9-11. Those district courts relied on the same types of arguments Petitioner makes here.

United States. Specifically, he argues that § 1225(b)(2)(A) should be read in a limited way to apply *only* to aliens who are "at a port of entry." ECF No. 1 ¶¶ 59-60; ECF No. 8 at 11 ("Paragraph [1225](b)(2) is similarly limited to people 'seeking admission' when they *arrive* in the United States or very shortly thereafter.").

But that reading of § 1225(b)(2)(A) does not comport with its text or make sense in the context of the whole section. Rather, § 1225 makes clear that "applicants for admission" includes both those just arriving in the United States *and* those who entered without inspection and have been residing here. For example, § 1225(b)(1)(A)(i)—which concerns inadmissibility for specified reasons (*i.e.*, misrepresentation or lack of a valid entry document)—is not limited to aliens "arriving in the United States." Section 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some aliens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have "not been admitted or paroled" and have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Petitioner's argument also disregards that, as the Supreme Court has recognized, § 1225(b)(2) is broader than § 1225(b)(1). In *Jennings v. Rodriguez*, the Court referred to § 1225(b)(2) as a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." 583 U.S. at 287 (emphasis added). Accordingly, § 1225(b)(2) applies *both* to applicants for admission just arriving at the border who do not fall within § 1225(b)(1)(A)(i) *and*

to applicants for admission who have been physically present in the United States but are not covered by § 1225(b)(1)(A)(iii)(II).

Petitioner also points to the phrase "seeking admission" in § 1225(b)(2)(A) as evidence that this section is limited to those aliens who are actively taking some step to gain admission to the United States. ECF No. 1 ¶¶ 42, 60. But that reading ignores the parts of § 1225 indicating that anyone falling within the category of "applicants for admission" is deemed, as a matter of law, to be seeking admission. *See* 8 U.S.C. § 1225(a)(3) ("All aliens . . . who are applicants for admission or *otherwise seeking admission* . . . shall be inspected by immigration officers." (emphasis added)); *id.* § 1225(a)(5) ("An applicant for admission may be required to state. . . the purposes and intentions of the applicant *in seeking admission*. . . ." (emphasis added)).

This interpretation is consistent with the Supreme Court's view that § 1225(b)(2)(A) applies to "*all applicants for admission* not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287 (emphasis added). Indeed, the *Jennings* Court confirmed that all "applicants for admission" are also "seeking admission" by virtue of that status. The Court explained that the "law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289 (emphasis added). But § 1225(b)(1) contains no such "seeking admission" language, and its detention provision applies, in the Attorney General's discretion, even to some aliens who are not "arriving" at the time of their inspection by an immigration officer. *See* § 1225(b)(1)(A)(i) (applying to an "alien. . . who is arriving in the United States *or* is described in clause (iii)" (emphasis added); *id.* § 1225(b)(1)(A)(iii) (describing an alien "who has not affirmatively shown" that they have "been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility").

Petitioner relies on the recent decision in *Garcia Cortes*, 2025 WL 2652880, at *2-3, for the proposition that only applicants for admission who are also "seeking admission" are subject to detention under § 1225(b)(2)(A). But *Garcia Cortes* is factually distinguishable. In that case, the Court ruled that the petitioner was no longer "seeking admission" because he had previously been admitted into the United States on a B-2 visa. *Id.* at *3. Here, however, Petitioner has never been admitted into the United States, *see* ECF No. 8-1 ¶ 1; Ex. 1 ¶ 7, and so he remains an applicant for admission. It may be that Petitioner was not doing any "present-tense action," *Garcia Cortes*, 2025 WL 2652880, at *3 (citation omitted), to obtain admission at the time of his apprehension. But that is simply because he had avoided the necessary "inspection and authorization by an immigration officer" up until then. 8 U.S.C. § 1101(13)(A). A statutory interpretation that would allow applicants for admission to circumvent mandatory detention by evading immigration officers when they enter the country would enshrine in our law "a perverse incentive to enter at an unlawful rather than a lawful location." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

Petitioner also argues that § 1225(b)(2)(A) does not apply to him because § 1226(a) should. First, he urges that § 1226(a) is the "default" rule that should apply to all aliens "pending a decision on whether the alien is to be removed." ECF No. 1 ¶ 39 (citations omitted); ECF No. 8 at 6. As support, he argues that "[t]he plain language of § 1226. . . applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole." ECF No. 1 ¶ 41. As an example, he identifies § 1226(c), which expressly requires mandatory detention for certain categories of aliens, including at least one group of aliens who entered without inspection. *See id.* ¶ 40 (citing 8 U.S.C. § 1226(c)(1)(E)). Petitioner argues that the specific requirement of mandatory detention for a particular category of aliens who entered

without inspection must mean that § 1226(a) applies to all other aliens who entered without inspection. *Id.*; *see also* ECF No. 8 at 6-7. According to Petitioner, deeming him and other aliens who entered illegally as falling under § 1225(b)(2)(A) would render superfluous "multiple portions of the INA." ECF No. 1 ¶ 62.

Petitioner is wrong. As an initial matter, and as noted above, Petitioner is subject to mandatory detention even under § 1226(c). But even if that were not the case, Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain aliens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission. Section 1226 does not negate the more specific provisions in § 1225 governing the detention of applicants for admission. It is well established that if "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than § 1226. It applies only to "applicants for admission," which includes aliens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

To be sure, § 1226(c)(1) mandates detention for a narrow category of aliens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. It requires DHS to take such aliens into custody after their release from criminal custody and detain them. *See Nielsen v. Preap*, 586 U.S. 392, 414-15 (2019) (explaining that § 1226(c)(1)'s "when released" clause clarifies that DHS custody begins "upon release from criminal custody," not before, and that it "exhort[s] [DHS] to act quickly"). The fact that § 1226(c)(1) provides further rules for detention of one category of aliens who entered without inspection does not mean that

§ 1225(b)(2)(A) no longer applies to all other such aliens. Indeed, redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* The Court should not read § 1226 to require courts to ignore the express detention and removal provisions in § 1225.

Nor is there any indication that Congress intended courts to ignore the detention provisions in § 1225. In enacting the Laken Riley Act (which added § 1226(c)(1)(E)), Congress did not alter § 1225(b)(2)(A). *See* PL No. 119-1, 139 Stat. 3 (2025). It is implausible that in the Laken Riley Act, Congress intended—without ever saying so—to displace the authority in § 1225(b)(2)(A) to detain applicants for admission who are present in the United States and have not been admitted.

Finally, Petitioner points to stray language from *Jennings* to bolster his reading of §§ 1225 and 1226. ECF No. 1 ¶¶ 42, 58; ECF No. 8 at 7. In *Jennings*, the Supreme Court addressed whether aliens were entitled to periodic bond hearings during detentions under §§ 1225 and 1226 that became prolonged. 583 U.S. at 291-92. In doing so, the Court suggested that "§ 1225(b) applies primarily to aliens seeking entry into the United States," *id.* at 297, and that § 1226(a) is the "default rule" for aliens "inside the United States," *id.* at 288. But *Jennings* actually confirms that § 1225(b)(2) should apply to aliens who entered without inspection. Specifically, the *Jennings* Court described § 1225(b)(2) as a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." *Id.* at 287 (emphasis added). And neither Congress nor the Court has limited § 1225(b) to those just arriving in the United States.

Legislative history. Petitioner also argues that the legislative history behind §§ 1225 and 1226 supports his position. ECF No. 1 ¶ 64-65. He argues that before Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, 8 U.S.C. § 1252(a) (1994) authorized release on bond for all aliens who were present in the United States when they were detained for deportation proceedings. *Id.* ¶ 64. According to Petitioner, the IIRIRA re-codified the availability of bond hearings for most aliens. *Id.* He points to language in the House Report stating that § 1226(a) "restates the current provisions . . . regarding the authority . . . to arrest, detain, and release on bond an alien." *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229).

But the legislative history weighs in favor of Respondents' interpretation of §§ 1225 and 1226. *See Chavez v. Noem*, No. 25-cv-02325-CAB-SBC, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025). Before the IIRIRA, § 1225 provided for the inspection of aliens only when they were arriving at a port of entry. *See* 8 U.S.C. § 1225(a) (1990) (discussing inspection of all aliens "arriving at ports of the United States"). It required that aliens arriving at a port of entry be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, aliens "in the United States" who "entered without inspection" were deemed deportable under 8 U.S.C. § 1251(a)(1)(B) (1994), and placed in deportation proceedings, where they could request release on bond, *id.* § 1252(a)(1) (1994).

In short, under the pre-IIRIRA regime, whether an alien was placed in exclusion proceedings or deportation proceedings depended on whether they had "entered" the country. But this focus on "entry" "resulted in an anomaly"—"non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were

subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

The IIRIRA sought to address this anomaly "by substituting 'admission' for 'entry' and by replacing deportation and exclusion proceedings with a general 'removal' proceeding." *Id.* Congress thus expanded § 1225 to address not only those who presented themselves at a port of entry. As recodified, it includes *all* applicants for admission—*i.e.*, aliens present in the United States who have not been admitted, as well as those just arriving. The House Judiciary Committee Report confirms Congress intended such a fix when enacting the IIRIRA. According to the Report, the IIRIRA was

> intended to replace certain aspects of the 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. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). The Report also explains that before the IIRIRA, "aliens who ha[d] entered without inspection [were] deportable under section [1251(a)(1)(B)]," but that after the IIRIRA "such aliens will not be considered to have been admitted." *Id.* at 226. The revisions to § 1225 "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country," would be on "equal footing in removal proceedings" as applicants for admission. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (citing 8 U.S.C. § 1225(a)(1)).

If the Court interprets § 1225 in the manner advocated by Petitioner, it would undo the fix that Congress enacted through the IIRIRA. On Petitioner's reading, an alien who enters without inspection would often be entitled to a bond hearing while an alien who presents themselves to

immigration officers at a port of entry would not. Such a reading would recreate the anomalous pre-IIRIRA incentives for those entering the country without inspection, an outcome that the Supreme Court has cautioned against. *See Thuraissigiam*, 591 U.S. at 140 ("The rule advocated by respondent . . . would . . . create a perverse incentive to enter at an unlawful rather than a lawful location.").

Past practice. Finally, Petitioner argues that detaining aliens like him under § 1225(b)(2)(A) would conflict with past practice. Specifically, he points to a 1997 entry about an interim rule in the Federal Register, which states that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." ECF No. 1 ¶ 66 (alterations omitted) (citing Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

This entry from the Federal Register does not support Petitioner's argument for at least two reasons. First, the entry confirms that aliens who are present without having been admitted are "applicants for admission." In stating that these aliens will be treated as eligible for bond "[d]espite" that status, the cited language implicitly acknowledges that the statute does not offer such a right. Instead, the entry reflects an exercise of administrative discretion to offer bond hearings to those who would otherwise not receive them under the statute.

Second, the Federal Register does not change the plain language of the statute. The weight given to agency interpretations must "depend upon their thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those

factors which give it power to persuade." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, the Federal Register entry concerned an interim rule, and the agency provided little analysis to support the reasoning for its statement about granting bond hearings to applicants for admission. *See* 62 Fed. Reg. at 10323. A prior, unadorned statement made by the agency in explaining an interim rule carries little weight.

In sum, Petitioner's arguments all fail to overcome the plain meaning of the statutory text.

II. Petitioner does not have a constitutional right to a bond hearing.

Petitioner claims that he is entitled to a bond hearing as a matter of due process, but he does not explain why. *See* ECF No. 1 ¶¶ 90-94. Arguments that are "inadequately developed to be meaningfully addressed" are "deemed waived." *Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143, 1148 n.3 (10th Cir. 2008). Petitioner has been detained for less than four months, and he does not say how any liberty interest he may have outweighs the public interests in ensuring his appearance at his removal proceedings and protecting the community.

Even if the Court were to engage with Petitioner's constitutional claim, it has no merit. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court explained that aliens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. 538 U.S. at 513. Under the statutory provision at issue there, like the one at issue in this case, Congress mandated detention pending removal proceedings. *See id.*; 8 U.S.C. § 1226(c). The *Demore* Court reasoned that the "definite termination point" of the detention at the end of removal proceedings assuaged any constitutional concern. *See Demore*, 538 U.S. at 529-31.

The same reasoning applies here. Petitioner has been detained for roughly four months as of the date of this submission. His removal proceedings are pending and moving toward a definite endpoint. *See* Ex. 1 ¶¶ 15-27. His detention will conclude with a determination that he is or is not removable, and Congress's decision to require his detention pending that determination is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531 (citing *Wong Wing v. United States*, 163 U.S. 235, 235 (1896)); *see also See de Jesus de Jesus*, 2021 WL 603056, at *3 (denying habeas petition without prejudice where petitioner had been detained under § 1226(c) for approximately three-and-a-half months). As another court in this district has recognized in the context of § 1225 detention, these proceedings are sufficient to satisfy due process. *See* Order, *Bonilla Espinoza v. Ceja, et al.*, No. 25-cv-01120-GPG (D. Colo. May 21, 2025) (ECF No. 11) at 19-25; *id.* at 22 ("[S]o long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible.").

III. Even if the Court orders a bond hearing, it should not order the government to bear the burden of proof.

The Supreme Court has a "longstanding view that the Government may constitutionally detain deportable aliens during the limited time necessary for their removal proceedings." *Demore*, 538 U.S. at 526. This rests, in part, on the fact that "[t]he Government has a compelling interest in ensuring that removable aliens appear for their scheduled removal proceedings and are, in fact, removed." *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211, at *9 (D. Colo. Jul. 2, 2019) (citing *Zadvydas*, 533 U.S. at 690). This compelling interest weighs heavily in favor of placing the burden of proof on the alien in bond hearings. *Cf. Nelson v. Colorado*, 581 U.S. 128, 138 (2017) (finding no legitimate state interest in overturning a requirement for petitioners to bear

the burden of proof against the government). The government should be granted flexibility in establishing the procedural rules for bond hearings particularly where, as here, "any policy toward aliens is vitally and intricately interwoven with contemporaneous polices in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1072 (D. Colo. 2020) (quotations omitted) (quoting *Demore*, 538 U.S. at 522).

Supreme Court precedent supports the constitutionality of imposing the burden of proof in bond hearings on aliens. The Supreme Court has never ruled that shifting the burden of proof to an alien in bond proceedings violates due process. In fact, it has repeatedly suggested otherwise. *Demore* is particularly instructive because the Court rejected a due-process challenge to § 1226(c), which, like § 1225(b)(2), does not provide for any bond hearing. *See* 538 U.S. at 531. Additionally, in *Carlson*, the Court rejected a due-process challenge by aliens detained pending removal proceedings under the predecessor to § 1226(a), reasoning that Congress intended the government's discretionary detention decisions to be treated as "presumptively correct and unassailable except for abuse." *Carlson v. Landon*, 342 U.S. 524, 540 (1952). Even in *Zadvydas*—the only case in which the Supreme Court has implied a due-process right to a bond hearing for an immigration detainee—the Court still placed the burden on the alien to show "that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. Furthermore, the Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings notwithstanding that the government has never borne the burden to justify that detention by clear-and-convincing evidence. *See Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson*, 342 U.S at 538; *Zadvydas*, 533 U.S. at 701.

More recently, in *Jennings*, the Supreme Court concluded that requiring the government to bear the burden of proof at bond hearings under 8 U.S.C. § 1226(a) is "clearly contrary" to the text of that statute. 583 U.S. at 306; *see also Nielson v. Preap*, 586 U.S. 392, 397-98 (2019) (a § 1226(a) detainee "may secure his release *if he can convince* the officer or [IJ] that he poses no flight risk and no danger to the community" (emphasis added)).[3]

In short, neither the INA nor Supreme Court precedent support finding a due-process problem in allocating the burden of proof in a bond hearing to the alien. The government should, therefore, not bear the burden of proof in any bond hearing.

IV. Petitioner is not entitled to a preliminary injunction.

In his Motion, Petitioner seeks emergency injunctive relief pursuant to Federal Rule of Civil Procedure 65. A court may enter such emergency injunctive relief only after the moving party proves: "(1) that she's substantially likely to succeed on the merits, (2) that she'll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party's under the injunction, and (4) that the injunction isn't adverse to the public interest." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted).

---

[3] Petitioner relies on *L.G. v. Choate* to argue that the government should bear the burden of proof at a bond hearing. *See* ECF No. 1 ¶ 70 (citing *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179 (D. Colo. 2024)). But the court in that case based its decision on Supreme Court precedent regarding civil detention for United States citizens while largely ignoring Supreme Court precedent regarding civil detention of non-citizens. *See L.G.*, 744 F. Supp. 3d at 1186. Respondents respectfully disagree with the *L.G.* Court's conclusion. As discussed above, "[t]he Supreme Court has been clear and consistent that the Constitution requires lesser procedural protections for aliens subject to removal." *Basri*, 469 F. Supp. 3d at 1074 (declining to place burden on the government in pre-removal bond proceedings); *see also Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1197 (D. Colo. 2024) (same); *de Zarate v. Choate*, No. 23-cv-00571-PAB, 2023 WL 2574370, at *5 (D. Colo. Mar. 20, 2023) (same).

When a movant seeks a "disfavored injunction," they must meet a heightened standard. *Id.* at 797. An injunction is disfavored when "(1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win." *Id.* When seeking a disfavored preliminary injunction, the moving party must make a "strong showing" as to the likelihood-of-success-on-the-merits and the balance-of-harms factors. *Id.*

Petitioner seeks a disfavored injunction. Petitioner requests that the Court order Respondents to immediately release him from detention—a request to change the status quo. In the alternative, Petitioner requests that Respondents provide him with a bond hearing within seven days—a request that mandates action. Thus, Petitioner must make a strong showing on both the likelihood-of-success and balance-of-harms factors.[4]

A. Petitioner has not established a likelihood of success on the merits.

Request for bond hearing. Petitioner requests either immediate release or, in the alternative, a bond hearing. ECF No. 8 at 14-15. His sole basis for these requests is that his detention should be governed by § 1226(a) rather than § 1225(b)(2). *Id.* at 8-11. For the reasons described above, Petitioner is incorrect. Thus, he has not established a strong likelihood of succeeding on the merits on his request for a bond hearing.

Request for immediate release. Even if the Court were to determine that Petitioner is likely to succeed on his challenge to his detention, the appropriate relief would be to order that Petitioner receive a bond hearing. Section 1226(a) does not require release—it provides DHS the discretion to grant an alien release on bond.

[4] Petitioner also requests that he not be transferred from the District of Colorado or removed during this proceeding, which the Court has already ordered. That request is not subject to the heightened standard.

Indeed, Petitioner has not provided any argument in the Motion about why immediate release rather than a bond hearing would be appropriate relief here. *See Thompson R2-J Sch. Dist.*, 540 F.3d at 1148 n.3 (deeming insufficiently developed argument to be waived). He has therefore forfeited any arguments on this point and has not made a strong showing of likelihood of success on the merits as to this request.

Petitioner also requests that the Court enjoin Respondents from "transferring [him] outside the District of Colorado," ECF No. 8 at 15, which the Court has already granted. ECF No. 11. The Court should lift this order, because it is not necessary in aid of its jurisdiction. *See* 28 U.S.C. § 1651(a). This Court would retain jurisdiction even if Petitioner was transferred out of this district to another facility in the United States. *See Serna v. Commandant, USDB-Leavenworth,* 608 F. App'x 713, 714 (10th Cir. 2015) ("'[I]t is well established that jurisdiction attaches on the initial filing for habeas corpus relief' and 'is not destroyed by a transfer of the petitioner.'" (quoting *Santillanes v. U.S. Parole Comm'n*, 754 F.2d 887, 888 (10th Cir. 1985)). And because DHS has issued a notice to appear in the immigration court, the IJ has jurisdiction over Petitioner's removal. *See* 8 C.F.R. § 1003.14(a). Until the IJ issues a final order of removal, Petitioner cannot be removed from the United States.

B. Petitioner does not establish irreparable harm.

Petitioner argues that the fact of his current detention constitutes irreparable harm. ECF No. 8 at 11-13. To the extent Petitioner points solely to the fact of his detention, that is insufficient. "To constitute irreparable harm, an injury must be certain, great, actual, and not theoretical." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted). If "detention in and of itself constitutes irreparable harm . . . then many if not most habeas

petitioners would be entitled to such relief." *Abshir H.A. v. Barr*, 19-cv-1033 (PAM/TNL), 2019 WL 3292058, at *4 (D. Minn. May 6, 2019), *report and recommendation adopted by Abi v. Barr*, 2019 WL 2463036 (D. Minn. June 13, 2019).

Petitioner also argues that he is suffering irreparable harm because in his absence his partner has had to work harder to make ends meet while also managing a serious health condition. ECF No. 8 at 13. But Petitioner was originally arrested by state authorities after he was charged with unlawful use of a controlled substance. Ex. 1 ¶ 10. Respondents took Petitioner into custody upon his release from local confinement. *Id.* ¶¶ 11, 13; ECF No. 1 ¶ 25. Respondents are sensitive to the hardship Petitioner's family is facing, but that hardship is primarily a result of Petitioner's criminal activity, not Respondents' enforcement of the law.

C. Petitioner has not established that the public interest and balance of equities weigh strongly in his favor.

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States' immigration laws is significant. *See, e.g., id.* at 436. Here, Respondents have a valid statutory basis for detention, *see* 8 U.S.C. §§ 1225(b)(2)(A), 1226(c)(1)(A), and "detention during [removal] proceedings [is] a constitutionally valid aspect of the deportation process," *Demore*, 538 U.S. at 523.

Petitioner argues that granting an injunction would not harm Respondents because it would simply require them to halt an unlawful practice. ECF No. 8 at 14. But Respondents' practice is not unlawful, as explained above. And as the Supreme Court recently indicated, any time that the Government is "enjoined by a court from effectuating statutes enacted by representatives of its

people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation omitted) (Roberts, C.J., in chambers). Enjoining Respondents from carrying out their statutory obligations would harm the Government and, thus, these factors weigh against the Court granting an injunction.[5]

CONCLUSION

For the reasons discussed above, the Court should deny the Petition and the Motion.

Dated: October 24, 2025.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ V. William Scarpato III
V. William Scarpato III
Logan Brown
Assistant United States Attorneys
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0407
Logan.Brown@usdoj.gov
Victor.Scarpato@usdoj.gov

Counsel for Respondents

[5] Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." If the Court grants Petitioner's request for a preliminary injunction, Respondents request that the Court require appropriate security.

CERTIFICATE OF SERVICE

I certify that on October 24, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

John Alan Hathaway
University of Denver Sturm College of Law
2255 East Evans Avenue
Suite 335
Denver, CO 80210
319-530-6588
Email: john.a.hathaway@du.edu

Elizabeth B. Jordan
Denver Law Student Law Office
2255 East Evans Avenue
Suite 335
Denver, CO 80210
303-871-6368
Email: elizabeth.jordan@du.edu

Attorneys for Petitioner

s/ V. William Scarpato III
V. William Scarpato III