IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03049-GPG-TPO

BENJAMIN HERNANDEZ VAZQUEZ,

Petitioner,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT GUADIAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
PAMELA BONDI, Attorney General, U.S. Department of Justice, in her official capacity;

Respondents.

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

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

INTRODUCTION

This case involves a question of statutory interpretation. The Department of Homeland Security (DHS) is detaining Petitioner under a statutory provision, 8 U.S.C.

§ 1225(b)(2)(A), that applies to noncitizens who, like Petitioner, entered the United States without inspection and have never been admitted, and thus are considered applications for admission. 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."

Petitioner claims he is not subject to Section 1225(b)(2)(A) and thus is instead subject to a different provision, 8 U.S.C. § 1226(a), which is a catchall provision that permits detention of aliens. The practical difference between the two sections is that Congress has provided that noncitizens detained under § 1225(b)(2)(A) are ordinarily not eligible for bond hearings, while those detained under § 1226(a) are. Based on the premise that his detention is governed by § 1226(a) (and thus entitles him to a bond hearing), he requests a bond hearing in seven days, or immediate release.

The Court should reject this challenge. Under the Immigration and Nationality Act (INA), Congress has provided courts of appeals—*not* district courts—with authority to review decisions like the one Petitioner seeks to challenge here—whether he is subject to Section 1225(b)(2)(A) or not. Accordingly, this Court lacks jurisdiction to review DHS's decision that Petitioner is subject to § 1225 rather than § 1226. But even if the Court had jurisdiction, it should deny Petitioner's requests for relief, because he is subject to 8 U.S.C. § 1225(b)(2)(A) and thus does not have, as he claims, a right to a bond hearing.

BACKGROUND

I. Legal background

The INA provides rules governing when certain aliens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the inspection and, in some cases, detention and removal of "applicants for admission." Section 1225 defines an "applicant for admission" as 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). Thus, an applicant for admission is an alien who is (1) present in the United States who has not lawfully entered the country or (2) who is arriving in the United States. Per 8 U.S.C. § 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible.

Section 1225(b) is divided into two subparts concerning inspection of applicants for admission. The first subpart, Section 1225(b)(1), describes two categories of applicants for admission who are subject to expedited removal. *Id.* § 1225(b)(1)(A)(i), (iii). Some of these applicants for admission are "arriving," while others have arrived but "have not been admitted or paroled." *Id.* In particular, the first category includes those aliens who are arriving and are inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7).[1] *Id.* § 1225(b)(1)(A)(i). The second category includes those aliens who, in addition to

[1] Sections 1182(a)(6)(c) and 1182(a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

being inadmissible under § 1182(a)(6)(C) or (a)(7), 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). As noted, aliens within the two categories described in § 1225(b)(1) are subject to expedited removal, *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).

The second subpart, Section 1225(b)(2), describes an additional set of applicants for admission who, if they are not clearly entitled to be admitted, will be subject to ordinary removal proceedings. *Id.* § 1225(b)(2)(A). Thus, Section 1225(b)(2) serves as a catchall for all remaining applicants for admission who are not described in Section 1225(b)(1). 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 aliens 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). Section 1225 does not provide a bond hearing for aliens detained under that provision.

For aliens who fall outside the categories identified in § 1225, another provision—§ 1226—provides different procedures for detention pending a removal

determination. Unlike § 1225, § 1226 is not limited to applicants for admission but broadly applies to any alien who may be facing removal.

Specifically, Section 1226(a) provides that 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." Following arrest, the alien may remain detained or (subject to an exception discussed below) may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an alien if they demonstrate that they "would not pose a danger to property or persons" and are "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.

An exception to Section 1226(a)'s grant of authority to release an alien on bond is found in Section 1226(c). That provision requires the Attorney General to take into custody certain defined categories of "criminal aliens" when they are released from other forms of custody (or upon DHS's own initiative) and mandates detaining them during their removal proceedings. 8 U.S.C. § 1226(c). These individuals are generally not entitled to bond hearings.

II. Factual background

As explained below, Petitioner has not been inspected to be admitted to the United States.

Petitioner is a native and citizen of Mexico. Ex. 1, Decl. of Mark Kinsey ¶ 4. In 2003, U.S. Border Patrol encountered Petitioner at or near Eagle Pass, Texas. *Id.* ¶ 5. Border Patrol allowed Petitioner to voluntarily return to Mexico. *Id.* At some point afterward, Petitioner again entered the United States unlawfully. *Id.* ¶ 6. Petitioner has never been admitted or paroled into the United States. *Id.* ¶¶ 7–8.

On July 9, 2025, U.S. Customs and Immigration Enforcement (ICE) encountered Petitioner while he was in custody at the Marion County Jail in Ocala, Florida. *Id.* ¶ 9. ICE determined that Petitioner had unlawfully entered the United States and did not possess valid immigration documents authorizing his presence in the United States. *Id.* ICE issued a warrant for his arrest and, upon his release from state custody, took him into custody under 8 U.S.C. § 1225. *Id.* ¶¶ 10–11. ICE issued a Notice to Appear initiating removal proceedings under 8 U.S.C. § 1229a, charging Petitioner with being inadmissible to the United States as an alien present without being admitted or paroled. *Id.* ¶ 14. On October 14, 2025, Petitioner filed a motion to terminate the removal proceedings; that motion has not been acted upon, and his removal proceedings remain pending. *Id.* ¶¶ 26–27.

III. Procedural background

On September 29, 2025, Petitioner filed the Petition. ECF No. 1. He argues that his detention under § 1225(b)(2) (which provides for mandatory detention) is improper and that he should instead be subject to § 1226(a) (which provides for the possibility of release on bond). *See id.* ¶ 41. He asserts that his detention violates § 1226(a), the INA's implementing bond regulations, the Administrative Procedure Act (APA), and his

due process rights under the Fifth Amendment. *See id.* ¶¶ 40–55. He seeks a writ of habeas corpus directing either his immediate release or that a bond hearing be held within seven days, and an order enjoining Respondents from transferring him outside of the District of Colorado. *Id.* at 16 (prayer for relief).

Two days later, on October 1, 2025, Petitioner filed the Motion. ECF No. 8. In the Motion, he reiterates his requests for immediate release or a bond hearing within seven days, characterizing them now as requests for a temporary restraining order or preliminary injunction. *Id.* at 15. In the motion, as in the Petition, he also requests an order preventing his transfer outside the District of Colorado. *Id.* at 15.

On October 2, 2025, the Court issued a temporary restraining order granting the Motion in part. ECF No. 11. The Court ordered Respondents not to remove Petitioner from Colorado unless or until the order is vacated. *Id.* at 2. The Court also ordered Respondents to show cause why the Petition should not be granted. *Id.* Although the Court did not order Respondents to contemporaneously respond to the Motion, Respondents are filing this consolidated response because their arguments as to the Petition and the Motion largely overlap.

ARGUMENT

I. The Court lacks jurisdiction to hear Petitioner's challenge to the statutory basis for his detention.

Congress has provided aliens with a vehicle to challenge the statutory provision that ICE relies on for removal and detention. Specifically, Congress provided, in the INA, that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Review of a final order

includes review of "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States." *Id.* § 1252(b)(9).

Accordingly, Congress, in §§ 1252(a)(5) and (b)(9), provided noncitizens like Petitioner with a vehicle to challenge the basis on which ICE seeks to detain and remove them—in immigration proceedings and then in the court of appeals. Congress also—in § 1252(b)(9)—deprived district courts of jurisdiction to hear such a challenge. The Supreme Court has explained that § 1252(b)(9) "makes clear that Congress understood the statutory term 'questions of law and fact' to include the application of law to facts." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 230–31 (2020). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction).

The decision that Petitioner is subject to Section 1225(b)(2)(A) is a question of law arising from his removal proceedings. This issue could be reviewed by the immigration court, and ultimately by the appropriate court of appeals.

A court in this district recently held that it has jurisdiction to hear a habeas challenge to § 1225(b)(2) detention. *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880, at *1–2 (D. Colo. Sept. 16, 2025). In doing so, the court relied primarily on an opinion of the Tenth Circuit. *Id.* at *2 (citing *Mukantagara v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113 (10th Cir. 2023)). But the Tenth Circuit's ruling in *Mukantagara* does not show that district courts have jurisdiction to review a decision by ICE about the statutory provision that applies to the noncitizen and permits removal and detention. That case did not involve removal proceedings (to which Section 1252(b)(9) applies); rather, it was addressing the decision of U.S. Citizenship and Immigration Services (USCIS) to terminate a noncitizen's refugee status, which, the court expressly held, did *not* arise from an "action taken. . . to remove an alien from the United States." *Mukantagara*, 67 F.4th at 1115-16 (citation omitted). Here, however, Petitioner's case *does* arise from such an action, because he is being detained for a removal proceeding.

Section 1252(b)(9) thus bars Petitioner's challenge to ICE's determination that Section 1225(b)(2) applies to him. Indeed, Petitioner can raise such a challenge through his immigration court proceedings, and if he is unsuccessful, in the court of appeals. Petitioner has not shown that he is unable to present his challenge in that manner.[2]

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[2] Petitioner thus has not shown that ICE's determination that Section 1225(b)(2) applies to him will be effectively unreviewable through his immigration proceedings. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), Justice Alito, joined by just two other Justices, opined that Section 1252(b)(9) did not bar a challenge to detention under § 1225 where the detention was "prolonged" and thus became "effectively unreviewable." *Id.* at 293. But in that opinion Justice Alito clarified that the parties in that case were "not challenging the decision to detain them in the first place or to seek removal." *Id.* at 294. His opinion thus did not suggest that district courts have authority to review a challenge—like the one Petitioner advances here—to the *initial* determination of ICE to

II. Even if the Court had jurisdiction, Petitioner's statutory challenge fails.

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." The statute defines "applicant[s] for admission" to include aliens who (1) are "present in the United States who ha[ve] not been admitted" or (2) "who arrive[] 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." He 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 ¶¶ 6–9. 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

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seek removal and detain a noncitizen based on the determination that § 1225 applies to the noncitizen. And Petitioner has not shown that his detention has been prolonged. Similarly, in *Nielsen v. Preap*, 586 U.S. 392 (2019), Justice Alito, again writing for two other justices, opined that § 1252(b)(9) did not bar review of a challenge by noncitizens to their detention where they were "not even challenging any part of the process by which their removability will be determined." *Id.* at 402. Here, in contrast, Petitioner *is* challenging a core basis for his removability—whether Section 1225(b)(2)(A) applies to him—and he has not shown that his challenge cannot be presented through his immigration proceedings.

the INA, the INA's legislative history, and the Government's past practice.[3] But, as described below, none of these arguments overcome the plain reading of the text.

Textual arguments. Petitioner argues that the text of § 1225 should be construed not to apply to him, and that because § 1226 would apply to him, § 1225 does not. Neither argument is persuasive.

First, he argues that § 1225 is limited to those just arriving in the United States. Specifically, he argues that § 1225(b)(2)(A) should be read in a limited way to apply *only* to aliens who are "apprehended at the border or port of entry." ECF No. 1 ¶ 16; ECF No. 8 at 10 ("Section 1225(b)(2) is similarly limited to people applying for admission on arrival, but whom (b)(1) does not cover.").

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

[3] 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 ¶¶ 27–28 (collecting cases); ECF No. 8 at 2–3 n.1. Those district courts relied on the same types of arguments Petitioner makes here.

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 § 1225(b)(2) is broader than § 1225(b)(1). Section 1225(b)(2) is titled "Inspection of other aliens." The "other aliens" in the title refers to a category of aliens that is not covered by § 1225(b)(1). Indeed, the Supreme Court has recognized that § 1225(b)(2) refers to a "broader" class of aliens than those described in § 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 ¶ 30. 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). The Court thus recognized that aliens may be viewed as seeking admission based on their existing unlawful presence; after all, § 1225(b)(1) contains no such "seeking admission" language, and its detention provision applies 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 a recent decision in this district, *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). For the reasons set forth above, Respondents respectfully disagree that an alien who is an "applicant for

admission" as a matter of law must also be "seeking admission" upon arrival as a matter of fact to fall within § 1225(b)(2)(A).

But *Garcia Cortes* is also 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, Ex. 1 ¶¶ 6–9, and so he remains an applicant for admission. It may be that Petitioner was not undertaking 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 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).

Second, 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 ¶ 31 (citations omitted); ECF No. 8 at 6. As support, he argues that "the plain language of § 1226 applies to people charged as inadmissible for entering without inspection." ECF No. 1 ¶ 32. 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.* (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 7. According to Petitioner, deeming him and other aliens who entered illegally as falling under § 1225(b)(2)(A) "would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens." ECF No. 8 at 9 (citation omitted).

Petitioner is wrong. Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain aliens for removal proceedings, must be read alongside § 1225, which addresses the detention of applicants for admission *in particular*. Section 1226 does not displace 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)(E) 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)(E) provides specific rules for detention of one category of aliens who entered without inspection does not mean that § 1225(b)(2)(A) must be read as not applying other aliens who entered without inspection.

Put differently, it is true that for a certain subset of aliens—those who entered without inspection and then committed (or may have committed) certain crimes—Congress has now mandated their detention in two separate provisions, both § 1225(b)(2)(A) and § 1226(c)(1)(E). But any potential redundancy in requiring mandatory detention for that subset of aliens does not affect § 1225(b)(2)(A)'s requirement to detain other aliens who entered without inspection. 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 ¶¶ 19, 31. 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. 8 at 12–13. 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.* 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, not Petitioner's. 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, but *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 that 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 (emphasis added). 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 in the Federal Register about an interim rule, which stated 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 ¶ 21 (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)); *see also* ECF No. 8 at 13–14.

This citation from the Federal Register does not support Petitioner's argument for at least two reasons. First, the entry confirmed that aliens who are present without having been admitted are "applicants for admission." In stating that these aliens would be treated as eligible for bond "[d]espite" that status, the cited language implicitly acknowledged that the statute does not offer such a right. Instead, the entry reflected 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. This unadorned statement 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, which shows that § 1225(b)(2) applies to him.

III. 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 ¶¶ 53–56. 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 six 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 ¶¶ 15–6. His detention under § 1225 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)). As this Court has recognized in the context of § 1225 detention, these proceedings are sufficient to satisfy due process.[4] *See* Order, *Bonilla Espinoza v. Ceja*, 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.").

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. The Court has already granted the Motion in part as to Petitioner's request for an order prohibiting his transfer. And, as noted above, the remaining relief requested in the Motion mirrors the relief requested in the Petition. Thus, because the remainder of the Motion asks for the same relief as the Petition, the

[4] Respondents recognize that another Court in this District recently applied the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to assess the process due to an alien detained under § 1225(b)(2). *See Garcia Cortes*, 2025 WL 2652880, at *4. Given the Supreme Court's analysis in *Demore* of a closely analogous context, Respondents respectfully disagree that *Mathews* supplies the correct standard here.

Court need not separately address it, as the Court's ruling on the Petition will render the remainder of the Motion moot.

To the extent a response to the remainder of the Motion is required, the Court should deny it. 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).

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.

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 2, 15. His sole basis for these requests appears to be that his detention should be governed by § 1226(a) rather than § 1225(b)(2). *Id.* at 6–13. For the reasons described above, Petitioner's detention is governed by § 1225(b)(2), not § 1226(a). 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 under § 1225(b)(2) rather than § 1226(a), 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.

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.[5] 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

[5] This request is not for disfavored relief and is not subject to a heightened standard.

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). And because DHS has issued a notice to appear in the immigration court, the IJ has jurisdiction over Petitioner's removal. 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 has not established irreparable harm.

Petitioner argues that the fact of his current detention constitutes irreparable harm. ECF No. 8 at 14. But that cannot be enough. "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 has not established what it is about his individual circumstances that threatens irreparable harm.

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), 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 return to a past practice. ECF No. 8 at 15. But past practice should not be followed if it was contrary to statute. 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.[6]

CONCLUSION

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

Dated: October 16, 2025.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Brad Leneis

[6] 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.

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Brad Leneis
Brad Leneis
U.S. Attorney's Office