IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03120-NYW-CYC

JOSE MANUEL LOA CABALLERO,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity;
ROBERT GAUDIAN, 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;
PAM 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. 6)

Respondents submit this 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. 6, the Motion). As explained below, the Court should deny the Petition and the Motion because Petitioner's detention is authorized by statute and his challenges to his detention are thus unavailing.

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

In the INA, Congress established rules governing when certain noncitizens 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." 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) (emphasis added). 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. So an applicant for admission is a noncitizen who is (1) arriving in the United States or (2) present in the United States who did not lawfully enter the country after inspection.

Section 1225(b)(1) describes two categories of applicants for admission, which together describe some—but not all—of those applicants. The first category includes those noncitizens 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 noncitizens who, in addition to 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

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

continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 1225(b)(1)(A)(i), (iii)(II). Noncitizens 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).

But those two categories do not encompass all applicants for admission. Section 1225(b)(2) serves as a catchall for all remaining applicants for admission. 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 noncitizens, or other noncitizens subject to expedited removal), and are not clearly entitled to be admitted. Section 1225 does not provide a bond hearing for noncitizens detained under that provision.

The two categories of noncitizens described in § 1225(b)(1) and the additional catchall category of noncitizen "applicants for admission" described in § 1225(b)(2) do not encompass all noncitizens who may be subject to removal. (For example, a noncitizen might be lawfully admitted, and then later determined to be subject to removal.) For noncitizens who fall outside the categories in § 1225, another provision—§ 1226—provides procedures for detention and removal. Unlike § 1225, § 1226 is not limited to applicants for admission but broadly applies to all noncitizens facing removal.

The procedures provided in § 1226 for detention and removal of noncitizens are different from those provided for aliens subject to detention under § 1225. Section 1226(a) provides that if the Attorney General issues a warrant, a noncitizen may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." Following arrest the noncitizen generally may remain detained, or may be released on bond or conditional parole. By regulation, immigration officers can release such a noncitizen 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 noncitizen 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) also 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 to detain 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 and admitted to the United States, and thus is an applicant for admission.

Petitioner is a native and citizen of Mexico who entered the United States in July 2006. Ex. 1, Decl. of Shane Blea ¶¶ 4-5. He has never been admitted or paroled into the United States. *Id.* ¶ 6-7. In 2021, he applied for Deferred Action for Childhood Arrivals ("DACA"), but his application remains pending and has not been granted. *Id.* ¶¶ 8, 10.

On September 17, 2025, Immigration and Customs Enforcement ("ICE") determined that Petitioner had entered the country illegally and did not possess valid immigration documentation. *Id.* ¶ 11. On September 18, 2025, 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 a noncitizen present without being admitted or paroled. *Id.* ¶ 14. Petitioner's next hearing date in immigration court is set for October 14, 2025, and his removal proceedings remain pending. *Id.* ¶¶ 17, 19.

III. Procedural background

On October 3, 2025, Petitioner filed the Petition, which 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; and (4) due process. ECF No. 1 ¶¶ 38-53. He argues that he is not subject to § 1225 (which provides for mandatory detention) and that he is instead subject to § 1226 (which provides for the possibility of release on bond). *See generally id.* He seeks a bond hearing within seven days or immediate release, and for an order enjoining Respondents from transferring him outside of the District of Colorado. *Id.* at 14-15 (prayer for relief). In his Motion, he reiterates his requests for release or a bond hearing within seven days and for a Temporary Restraining Oder (TRO) preventing his transfer outside the District of Colorado or the United States and asks that the requested relief be granted on an interim basis. ECF No. 6 at 2. The Court ordered Respondents to respond to the Motion and the Petition and partially granted Petitioner's request for a TRO, ordering Respondents not to transfer Petitioner without further leave of court. ECF No. 7.

ARGUMENT

I. This Court lacks jurisdiction to hear Petitioner's challenge to the determination that Section 1225(b)(2)(A) applies to him.

Congress has provided noncitizens with a vehicle to challenge the statutory provision that ICE relies on for removal. 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). Congress defined such review to include 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]

II. Even if the Court had jurisdiction, Petitioner's statutory challenge fails because he is subject to § 1225(b)(2)(A).

The plain text of § 1225(b)(2)(A) makes clear that Petitioner falls within its scope. Section 1225(b)(2)(A) mandates detention for a noncitizen "who is an applicant for admission" if they are "not clearly and beyond a doubt entitled to be admitted." The statute defines "[a]pplicant for admission" to include noncitizens who (1) are "present in the United States who ha[ve] not been admitted" or (2) "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). In other words, a noncitizen who is present in the United States but has not been inspected or admitted is treated as an applicant for admission.

Petitioner is an "applicant for admission." He is present in the United States, and 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 ¶¶ 5-8. He does

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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 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 just 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.

not argue that he is clearly and beyond a doubt entitled to be admitted. In short, he falls within the scope of Section 1225(b)(2)(A).

Petitioner resists this plain reading of Section 1225(b)(2)(A). He makes three arguments about why this section should not apply to him: arguments from other text of the INA, the INA's legislative history, and the Government's past practice.[3] But, as described below, none of these arguments overcome the text's plain language.

TEXTUAL ARGUMENTS. First, Petitioner makes textual arguments about why § 1225 does not apply to him, and why § 1226 thus does.

The text of § 1225. He argues that § 1225 should be construed as limited to just those newly arriving in the United States. Specifically, he argues that § 1225(b)(2)(A) should be read in a limited way to apply *only* to noncitizens who are "apprehended at the border or port of entry." ECF No. 1 ¶ 15; ECF No. 6 at 9 (arguing that "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)—that it extends only to *new* arrivals—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) is not limited to noncitizens "arriving in the United States" who

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[3] Petitioner cites district court decisions ruling that aliens who enter without inspection and then reside in the United States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A). ECF No. 1 ¶¶ 28-29 (collecting cases); ECF No. 16 at 3 n.1. Those district courts relied on the same types of flawed arguments Petitioner makes here.

are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, Section 1225(b)(1)(A)(i) also applies, through its reference to Section 1225(b)(1)(A)(iii), to some noncitizens 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 § 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 noncitizens that is not covered by § 1225(b)(1). The Supreme Court has expressly recognized that § 1225(b)(2) refers to a "broader" category of noncitizens than those described in § 1225(b)(1). In *Jennings v. Rodriguez*, the Court recognized that § 1225(b)(2) is 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 Section 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 points to the phrase "seeking admission" in § 1225(b)(2)(A) to argue that this section should be interpreted to be limited to noncitizens 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 that indicate that *anyone* falling within the category of "applicants for admission" is to be 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)).

Indeed, the Supreme Court has recognized 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). The Court in *Jennings* confirmed that all noncitizens who are "applicants for admission" are "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. Its detention provision applies, in the Attorney General's discretion, even to some noncitizens 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.* § 1226(b)(1)(A)(iii) (describing a noncitizen "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 *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 that decision did not persuasively explain why a noncitizen who is deemed an "applicant for admission" as a matter of law must be actively "seeking admission" to fall within § 1225(b)(2)(A). Moreover, *Garcia Cortes* is distinguishable. In that case the court explained 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 ¶¶ 4-7, 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 evaded the necessary "inspection and authorization by an immigration officer" up until then. 8 U.S.C. § 1101(13)(A).

The text of § 1226. Petitioner next argues that § 1225(b)(2)(A) does not apply to him because the catchall provision, § 1226(a), should. First, he urges that § 1226(a) is the "default" rule that should apply to all noncitizens "pending a decision on whether the [noncitizen] is to be removed." ECF No. 1 ¶ 30 (citations omitted); ECF No. 6 at 6. As support, he argues that "the plain language of § 1226 applies to people charged as inadmissible for entering without inspection." *Id.* ¶ 31. As an example, he identifies Section 1226(c), which expressly requires mandatory detention for certain categories of noncitizens, including at least one group of noncitizens who entered without inspection. *See id.* (citing 8 U.S.C. § 1226(c)(1)(E)). He argues that the specific requirement of mandatory detention for a category of noncitizens who entered without inspection must mean that § 1226(a) applies to *all* noncitizens who entered without inspection. *Id.*; *see*

ECF No. 6 at 8-9. He argues that deeming noncitizens who entered illegally as falling under § 1225(b)(2)(A) "would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." ECF No. 6 at 8 (citation omitted).

Petitioner's argument contradicts normal rules of statutory interpretation. Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain noncitizens for their removal proceedings, must be read alongside § 1225, which *specifically* addresses the detention of applicants for admission. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. Where "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 noncitizens 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 noncitizens 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 noncitizens 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"). But the fact that § 1226(c)(1)(E) provides rules for detention of a category of noncitizens who entered without inspection and then had criminal-related

conduct does not show that § 1225(b)(2)(A) does not still apply to other such noncitizens who entered without inspection.

Put differently, it is true that for a certain narrow subset of noncitizens—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) (based on their entry without inspection) and § 1226(c)(1)(E) (also based on their criminal-related conduct). But any potential redundancy in requiring mandatory detention for that subset of noncitizens subject to § 1226(c)(1)(E) does not affect § 1225(b)(2)(A)'s general applicability to other noncitizens 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 did Congress signal that courts should ignore the existing scope (and detention provisions) of § 1225 when Congress enacted the Laken Riley Act. That Act added § 1226(c)(1)(E), but did not alter § 1225(b)(2)(A). *See* PL No. 119-1, 139 Stat. 3 (2025). There is no indication that in modifying § 1226 through that Act, Congress intended, without ever saying so, to displace the authority in a separate provision—§ 1225(b)(2)(A)—to detain other applicants for admission.

Finally, Petitioner points to stray language from *Jennings* to attempt to bolster his reading of §§ 1225 and 1226. ECF No. 1 ¶¶ 18, 33. In *Jennings*, the Supreme Court addressed whether noncitizens were entitled to periodic bond hearings during detention 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 noncitizens "inside the United States," *id.* at 288. But *Jennings* actually confirms that § 1225(b)(2) should apply to noncitizens 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. 6 at 13-14. He argues that before Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), another provision—8 U.S.C. § 1252(a) (1994)—authorized release on bond for noncitizens 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 noncitizens. *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 a[noncitizen]." *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. Before the IIRIRA, § 1225 provided for the inspection of noncitizens only when

they were arriving at a port of entry. *See* 8 U.S.C. § 1225(a) (1990) (discussing inspection of all noncitizens "arriving at ports of the United States"). It required that noncitizens arriving at a port of entry be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, noncitizens "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 a noncitizen 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 to include *all* applicants for admission—*i.e.*, noncitizens present in the United States who had 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, a noncitizen who enters without inspection would often be entitled to a bond hearing while a noncitizen 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. But as the Supreme Court has recognized, a statutory interpretation that would allow applicants for admission to avoid mandatory detention simply 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).

PAST PRACTICE. Finally, Petitioner argues that detaining aliens like him under § 1225(b)(2)(A) would conflict with past practice. Specifically, he points to an entry in the Federal Register from 1997 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 ¶ 20 (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. 6 at 13-14.

This citation from the Federal Register does not support Petitioner's argument for at least two reasons. First, the entry appears to acknowledge that noncitizens who are present without having been admitted are "applicants for admission." Thus, the cited language implicitly acknowledges that applicants for admission are not eligible for bond hearings under the statute. Instead, it apparently regarded them as eligible for bond hearings as a matter of administrative discretion, not of statutory interpretation.

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 Enterprises v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, 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 practice by the agency of making such individuals eligible for bond hearings therefore carries little weight in interpreting the text of § 1225.

In sum, none of Petitioner's arguments overcome § 1225's text.

III. Petitioner has not shown that he has a right to a bond hearing.

Petitioner also 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 ¶¶ 50-53. Petitioner does not say how any liberty interest he may have in having been detained for less than a month 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 a different immigration context—noncitizens already ordered removed and indefinitely awaiting their removal—the Supreme Court has explained that detention of less than six months is presumptively constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But in other contexts even this presumptive constitutional limit has been distinguished as unnecessarily restrictive. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court explained that noncitizens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. 538 U.S. at 513. In that case, like this one, Congress mandated detention pending removal proceedings. *See id.*; 8 U.S.C. § 1226(c). The 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 512.

The same is true here. Petitioner has been detained for roughly three weeks as of the date of this submission. His removal proceedings are moving toward a definite endpoint. *See* Ex. 1 ¶¶ 15-17. His detention will conclude with a final order of removal or a denial of the charges against him. Congress's decision to detain him pending removal is a "constitutionally permissible part of [this] process." *See Demore*, 538 U.S. at 531.

Nor has Petitioner shown that he has been denied due process by being denied

procedures where he can challenge the determination that § 1252(b)(2)(A) applies to him. As he will have that opportunity through his immigration proceedings, he has not shown a violation of his rights to procedural due process. See *Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim").

Petitioner has failed to demonstrate that the Fifth Amendment requires any additional process be provided to him.

IV. Petitioner is not entitled to a preliminary injunction.

In his Motion, Petitioner seeks emergency preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65. A court may enter such 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.[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. 6 at 14. His sole basis for these requests appears to be that his detention should be governed by § 1226(a) rather than Section 1225(b)(2). 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 a noncitizen release on bond. It requires nothing more.

Indeed, Petitioner has not provided any argument in the Motion about why 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).

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

Petitioner has not explained why immediate release, rather than a bond hearing, would be the appropriate relief here. 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.

No transfer. Petitioner requests that the Court enjoin Respondents from "transferring [him] outside the District of Colorado," ECF No. 6 at 14, which the Court has granted. ECF No. 7. The Court should lift this order because it is not necessary in aid of its jurisdiction. *See* 28 U.S.C. § 1651(a). The 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). And because Petitioner is not yet subject to a final removal order, he cannot be removed from the United States at this time.

B. Petitioner has not established irreparable harm.

Petitioner argues that his detention is irreparable harm. But he has not identified specific circumstances showing why his continued detention will cause harm that is irreparable. ECF No. 6 at 14-15. 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 & recommendation adopted by Abi v. Barr*, 2019 WL 2463036 (D. Minn. June 13, 2019).

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. 6 at 14. But adherence to a particular practice is not required where a different approach is consistent with the statutory scheme. 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 dismiss or deny the Petition and deny the Motion.

Dated: October 14, 2025.

Respectfully submitted,

PETER MCNEILLY

[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.

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CERTIFICATE OF SERVICE

I certify that on October 14, 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:

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and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ Zeyen J. Wu
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