TODD BLANCHE
U.S. Deputy Attorney General
ALINA HABBA
Acting United States Attorney
Special Attorney
FRANCES BAJADA
DAVID INKELES
Assistant United States Attorneys
970 Broad Street, Suite 700
Newark, New Jersey 07102
Attorneys for Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALESSANDRA DE FATIMA LOMEU, *Petitioner*, v. LUIS SOTO, *in his official capacity as Director/Warden of Delaney Hall Detention Facility*, *Respondents*.	HON. EVELYN PADIN, U.S.D.J. Civil Action No. 25-16589 (EP)

ANSWER TO THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241, OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER, AND RESPONSE TO ORDER TO SHOW CAUSE

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PRELIMINARY STATEMENT

On October 2, 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner for removal proceedings based on her presence in the United States without admission or parole. Petitioner challenges her detention without bond and conditions of confinement at the Delaney Hall Detention Facility under 28 U.S.C. § 2241. Petitioner's detention is lawful under 8 U.S.C. § 1225(b), and comports with due process. The Court also lacks jurisdiction over any conditions-of-confinement claim. But even if such a claim were cognizable through this habeas matter, the claim would be moot because ICE transferred Petitioner from the facility giving rise to the alleged conditions at issue.[1] And although Petitioner filed a motion for a temporary restraining order ("TRO"), seeking immediate release or a prohibition on transfer, the Court should reject that motion for the same reasons Judge Shipp recently dismissed a similar TRO request in *Valeriano v. Soto, et al.*, No. 25-16100, ECF No. 4 (D.N.J. Oct. 1, 2025). Petitioner offers no basis for this Court to conclude otherwise, and she fails to satisfy the factors to justify the extraordinary relief she seeks. For these reasons, discussed more fully below, the Court should dismiss the petition, and deny the TRO motion as well as Petitioner's request for an order to show cause regarding the transfer.

[1] As discussed below, ICE informed this Office that, at 9:21 a.m. on October 16, 2025, ICE booked Petitioner out of Delaney Hall for transfer to the Houston Contract Detention Facility in Texas. This was before the Court entered the text order at ECF No. 4 enjoining Respondents from transferring Petitioner outside this Court's jurisdiction. *See* ECF No. 4.

BACKGROUND

I. Relevant Statutory and Regulatory Background

A. Detention Under 8 U.S.C. § 1225(b)

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to (1) "arriving aliens" and (2) aliens who "ha[ve] not been admitted or paroled into the United States" and have not been "physically present in the United States" for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry …" 8 C.F.R. § 1.2. These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Absent an intent to apply for asylum or a successful demonstration of fear of persecution, the alien is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. Indeed, it "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec.

66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'"). Still, the U.S. Department of Homeland Security ("DHS") has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A).

B. Detention Under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials may detain an alien during removal proceedings, release the alien on bond, or release the alien on conditional parole.[2]

By regulation, ICE can release an alien on a showing that he "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). An alien can also request that an Immigration Judge conduct a custody redetermination hearing before a final order of removal is issued for the alien. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination hearing, the Immigration Judge may continue detention or release the alien on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration

[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

Judges have broad discretion in deciding whether to release on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for Immigration Judges to consider). But an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

C. Removal Proceedings Under 8 U.S.C. § 1229a

Proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the statutory section of the INA in which they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an Immigration Judge. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a proceedings can apply for relief from removal. *See*, *e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). The proceedings are adversarial, allowing a right to counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4).

Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals ("BIA"). 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. And, if the BIA issues a final order of removal, an alien may also seek judicial review at a federal court of appeals through a petition for review. 8 U.S.C. § 1252.

II. Petitioner's Immigration History

Petitioner is a citizen of Brazil who entered the United States near Hidalgo, Texas around June 14, 2005. Ex. A (Notice to Appear). On June 15, 2005, U.S. Customs and Border Protection ("CBP") served her with a Notice to Appear charging her as "an alien present in the United States who has not been admitted or paroled,"

in violation of § 1182(a)(6)(A)(i). *Id.* That same day, CBP issued an I-213, which provided, in relevant part:

> Subject entered the U.S. on 6/14/05, approximately 2 miles west of the Hidalgo, Texas Port of Entry at a location not designated as a port of entry. Subject entered the U.S. at a place not designated as a port of entry by the Attorney General of the U.S. and or the Secretary of Homeland Security, the successor, thus she was not admitted, inspected, or paroled into the U.S. by a U.S. Immigration Official.

Ex. B (Initial I-213). Also on June 15, 2005, Petitioner submitted a Notice of Rights and Request for Disposition, asking for a determination of whether she could remain in the United States. Ex. C (Notice of Rights and Request for Disposition). After Petitioner was processed, and informed that she was required "to provide a valid address or change of address and telephone number . . . so that notification of hearing or other correspondence [could] be mailed to the address provided," CBP released her on her own recognizance "due to lack of camp space," under § 1226. Ex. B (Initial I-213); Ex. D (June 15, 2005 Notice of Custody Determination). Petitioner told CBP that "she was enroute to Melrose, MA." Ex. B (Initial I-213) at 2.

On May 11, 2006, an Immigration Judge in Boston ordered Petitioner removed in absentia. Ex. E (Recent I-213) at 2; *see also* Ex. F (In Absentia Order). On July 20, 2021, an Immigration Judge granted Petitioner's request to reopen her immigration proceedings. Ex. G (July 20, 2021 IJ Order). On March 14, 2025, an I-130 Petition for Alien Relative was filed with U.S. Citizenship and Immigration Services ("USCIS") on behalf of Petitioner. Ex. E at 2. Petitioner filed an application for an adjustment of status with USCIS on May 6, 2025. *Id.*

On October 2, 2025, ICE arrested Petitioner when she reported to be fingerprinted for her I-765 application for Employment Authorization Document. *See* Pet. Ex. B, C. Following the arrest, Petitioner was initially detained at the Delaney Hall Detention Facility until October 16, 2025, when ICE transferred her to the Houston Contract Detention Facility, where she is presently detained.

III. Procedural History

Petitioner filed this action on October 13, 2025, challenging her detention under § 1225(b)(2) and the conditions of confinement at the Delaney Hall Detention Facility. *See* Pet. ¶¶ 42-80. The petition raises three claims. In Counts One and Two, Petitioner argues that her detention is proper only under § 1226(a), and so any detention without a bond hearing under § 1225(b)(2), and while her I-130 petition is pending, violates the Due Process Clause. *See id.* ¶¶ 41-57; *see also id.* at 19-20 (Counts One and Two). In Count Three, she claims the conditions of confinement at Delaney Hall violate the Due Process Clause. *See id.* ¶¶ 58-80; *see id.* at 20 (Count Three). Petitioner seeks immediate release or, in the alternative, a bond hearing. *See id.* at 20-21.

On October 15, 2025, the Court ordered Respondents to answer the petition. *See* ECF No. 2. On the same date, Petitioner filed a motion for TRO. *See* ECF No. 3 ("TRO Motion"). In requesting a TRO, Petitioner asserts that her detention at Delaney Hall will cause her to "suffer irreparable harm due [to] the detention facility" failing to "timely provide her vital blood pressure and ovarian medications" and "provide her with timely and adequate meals." *Id.* at 2. Petitioner also alleges

irreparable harm due to "transfer to a differing facility across the nation." *Id.* In the TRO motion, Petitioner asks the Court to enjoin Respondents from detaining her while the petition is pending and transferring her to a different facility. *Id.* at 3.

According to ICE, on October 16, 2025, at 9:21 a.m., Petitioner was booked out of Delaney Hall en route to the Houston Contract Detention Facility. On October 16, 2025, at 11:57 a.m., the Court issued a text order providing that, "[p]ending a hearing on this matter, Respondents are enjoined from transferring Petitioner outside the Court's jurisdiction," and directing Respondents to file a response to the "conditions of confinement allegations" in the TRO motion by 3:00 p.m. on October 17, 2025, while filing a full answer to the petition and addressing the remaining allegations in the TRO motion by October 22, 2025. *See* ECF No. 4. In addition, on October 17, 2025, the Court ordered Respondents to address Petitioner's motion to show cause as to whether Respondents violated this Court's Order enjoining Respondents from transferring Petitioner out of this Court's jurisdiction by 3:00 p.m. on October 17, 2025. *See* ECF No. 6.

In the interest of judicial economy and efficiently addressing this matter, Respondents respectfully submit this answer to the petition, opposition to the TRO motion, and response to the order to show cause. We start with the latter issue.

ARGUMENT

I. Response to Motion for Order to Show Cause Regarding Transfer

At the outset, the Court ordered Respondents to show cause as to why they did not violate this Court's Order "enjoining Respondents from transferring Petitioner

out of this Court's jurisdiction." ECF No. 6 (citing ECF No. 4). Respondents respectfully submit that they did not violate the Court's order. ICE informed us yesterday that Petitioner "booked out of Delaney [Hall] at 9:21 a.m." on October 16, headed to the Houston Contract Detention Facility in Texas. This departure from Delaney Hall was more than two hours before the Court entered the text order at 11:57 a.m. on October 16, enjoining "Respondents from transferring Petitioner outside this Court's jurisdiction." Additionally, to the extent the Court was concerned that Petitioner's transfer could undermine the Court's jurisdiction, Respondents do not contest that issue. As Judge Shipp recognized in *Valeriano*, and Judge Farbiarz recognized in *Mugliza Castillo*, this Court retains jurisdiction over the petition even after a transfer to another district because Petitioner filed her petition when she was still detained at Delaney Hall, which is in the district of confinement. *See Valeriano*, No. 25-16100, ECF No. 4 at 2 (holding transfer "to a different detention facility would not interfere with this Court's jurisdiction to decide Petitioner's habeas petition or grant Petitioner relief" if petition properly filed in this District (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 440-41 (2004)); *accord Mugliza Castillo*, No. 25-16219 (MEF), ECF No. 6 (D.N.J. Oct. 3, 2025) (denying TRO seeking bar on transfer outside District, recognizing "the Court would not lose jurisdiction here even if transferred."). Thus, we respectfully suggest that Respondents did not violate the Court's order.

II. The Court Should Dismiss the Habeas Petition

Petitioner's detention is lawful under the plain text of the INA because she is correctly considered an "applicant for admission" and subject to detention without

bond under § 1225(b)(2). The detention also comports with due process. And any conditions-of-confinement is subject to dismissal for lack of habeas jurisdiction or on mootness grounds given Petitioner's transfer from Delaney Hall. Respondents respectfully request that the Court dismiss the petition in full.

A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(2)

In Counts One and Two, Petitioner challenges her detention under § 1225(b)(2) on grounds that applying that authority to her violates the Due Process Clause. *See* Pet. ¶¶ 42-57. Petitioner is incorrect as a matter of plain meaning. The text of § 1225(b)(2) is clear: it allows for mandatory detention to any alien "present in the United States who has not been admitted." 8 U.S.C. § 1225(a), (b)(2). Petitioner falls in that category, and her arguments to the contrary are unavailing.

1. The Detention is Lawful Under the Plain Text of the INA

Where, as here, the question is one of statutory interpretation, "we start where we always do: with the text of the statute." *Van Buren v. United States*, 593 U.S. 374, 381 (2021). Section 1225(b)(2) provides, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" pending removal proceedings. Thus, the alien must be: (1) an "applicant for admission"; (2) who is "seeking admission"; and (3) an examining immigration officer has determined the alien "is not clearly and beyond a doubt entitled to be admitted." Petitioner meets these elements.

Petitioner is an "applicant for admission" under the INA. An "applicant for admission" means 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). Here, CBP charged Petitioner 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 by the Attorney General," in violation of § 1182(a)(6)(A)(i). *See* Ex. A. Petitioner meets the definition of an "applicant for admission" under § 1225(a)(1).

Petitioner is also "seeking admission." The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). The phrase "seeking admission" in § 1225(b)(2) must be read in context with "applicant for admission" as defined by § 1225(a). *See Abramski v. United States*, 573 U.S. 169, 179 (2014) (instructing courts to "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose.'" (quotation omitted)). Again, Congress defined 'applicant for admission' under § 1225(a) to include both those who arrive in the United States *and* those present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under § 1225(a)(1). As the BIA has recognized:

> Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . In other words, many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be "seeking admission" under the immigration laws.

Matter of Lemus, 25 I. & N. 734, 743 (BIA 2012). In other words, the phrase "seeking admission" in § 1225(b)(2)(A) includes an "applicant for admission." Therefore, aliens who are "applicants for admission" are also aliens who are "seeking admission."

The words "seeking admission" and "applicant for admission" are not identical. The former is broader than the latter. For example, the INA contemplates that "stowaways" may seek admission by requesting asylum, yet stowaways are excluded from the definition of "applicant of admission." 8 U.S.C. § 1225(a)(2). In addition, an applicant for admission must be physically in the United States, while an alien can "seek admission" in the United States *or* outside of it, such as in an embassy. *See Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting terms have slightly different breadth). That is why, in § 1225(a)(3), immigration officers must inspect all aliens "who are applicants for admission *or otherwise* seeking admission." 8 U.S.C. § 1225(a)(3) (emphasis added).

The relevant phrases play out in a commonsense way in § 1225(b)(2). The subsection begins with a limiting clause: it applies to "any applicant for admission," i.e. those physically present and who can be detained. This avoids the conclusion that § 1225(b)(2) applies to those "seeking admission" from abroad. Having made clear that § 1225(b)(2) applies only to those present, it continues with a second clause mandating detention if the immigration officer finds the "alien seeking admission" is not entitled to it. *See Adamowicz v. I.R.S.*, 552 F. Supp. 2d 355, 367–68 (S.D.N.Y. 2008) ("'[A] limiting clause or phrase ... should ordinarily be read as modifying only

the noun or phrase that it immediately follows.'").

Here, Petitioner is an applicant for admission who is present in the United States without being admitted. She satisfies the second element, "seeking admission," under § 1225(b)(2).

An examining immigration officer charged Petitioner with being inadmissible. Petitioner also meets the final element under § 1225(b)(2), which is that an examining immigration officer determined that she "is not clearly and beyond a doubt entitled to be admitted." Here, an examining officer made that determination when CBP issued a Notice to Appear charging Petitioner with being inadmissible under the INA. *See* Ex. A (citing 8 U.S.C. § 1182(a)(6)(A)(i)).

For the reasons above, Petitioner is an "applicant for admission" under the plain meaning of § 1225(a)(1), and subject to mandatory detention under the text of § 1225(b)(2)(A). *See Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (finding alien properly detained under § 1225(b)(2) because he was present in United States without having been admitted, and thus an applicant for admission under § 1225(a)); *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding detention under § 1225(b)(2) of alien "present in the country but [who] has not yet been lawfully granted admission"); *but see Rivera Zumba v. Bondi,* No. 25-14626 (KSH), 2025 WL 2753496, at *7–9

(D.N.J. Sept. 26, 2025) (holding alien residing in the United States for 20 years was not affirmatively "seeking admission" and therefore not subject to § 1225(b)(2)).

2. The Supreme Court's Decision in *Jennings* and Recent BIA Decisions Support Applying 8 U.S.C. § 1225(b)(2)

Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. The former, not relevant here, applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id*. But the latter provision—§ 1225(b)(2), at issue here—is a "broader … catchall provision" applying to "all applicants for admission not covered by § 1225(b)(1)." *Id*. Here, Petitioner falls within the "catchall provision" in § 1225(b)(2).

The BIA is the highest-level administrative body for interpreting immigration law. It recently adopted this understanding of § 1225(b)(2) in a decision that binds all Immigration Judges and is persuasive authority here. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (interpreting § 1225(b)(2)(A) to require detention of aliens present in the United States without admission); *Matter of Q. Li,* 29 I & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). This Court should "defer to the BIA's

interpretation" because it is not "arbitrary, capricious, or manifestly contrary to the statute." *See Ahmed v. Ashcroft*, 341 F.3d 214, 217 (3d Cir. 2003).

Indeed, the BIA's interpretation of § 1225(b)(2) flows directly from the plain text. As discussed above, § 1225(b) requires ICE to detain aliens "who ha[ve] not been admitted." 8 U.S.C. §§ 1225(a)(1), 1225(b)(2). Aliens "have not been admitted" if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). Here, Petitioner falls into that category because she is present in the United States without admission or parole. *See Jennings*, 583 U.S. at 287 (noting § 1225(b)(2) is a "broader," "catchall provision" that "applies to all applicants for admission not covered by § 1225(b)(1)").

3. Petitioner Cannot Re-Write § 1225's Plain Meaning

At bottom, Petitioner contends that § 1226(a), which allows for the possibility of bond pending removal, provides the sole authority for her detention, and thus any detention under § 1225(b)(2), which generally does not allow bond, violates the Due Process Clause. *See* Pet. ¶¶ 42-57. Petitioner is mistaken for several reasons.[3]

At the outset, § 1225 is much narrower than § 1226; it covers only "applicants for admission," which, again, is a specifically defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not been admitted." 8 U.S.C. § 1225(a). Petitioner fits within that definition. And where, as here, there is any

[3] Petitioner's arguments largely track those accepted by other district courts to have considered this issue. *See* Pet. ¶ 44 (citing cases); *see also Mugliza Castillo*, No. 25-16219 (MEF), ECF No. 11 (D.N.J. Oct. 10, 2025); *Rivera Zumba,* 2025 WL 2753496. For the reasons provided here, Respondents respectfully disagree with those decisions and Petitioner's arguments here.

arguable overlap between two provisions, the "commonplace rule of statutory interpretation is that the specific governs the general, particularly when Congress has targeted specific solutions in the context of a general statute." *Aristy-Rosa v. Attorney Gen.*, 994 F.3d 112, 116 n.4 (3d Cir. 2021) (quotations omitted). The specific detention authority in § 1225 governs over the general authority in § 1226.

Section 1225(b)(2)(A) is not cabined to aliens arriving at U.S. ports of entry, and any such argument ignores half the definition of "applicant for admission." Congress defined an applicant for admission to mean two things: (1) an arriving alien; *or* (2) an alien present without being admitted. *See* 8 U.S.C. § 1225(a)(1). The former is someone "coming or attempting to come into the United States at a port of entry." 8 C.F.R. § 1.2; *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (finding § 235(a) applied to aliens "taken into custody the instant [they] attempted to enter the country (as would have been the case had he arrived at a lawful port of entry)" and those who "succeeded in making it [a short distance] into U. S. territory before [being] caught").

But there is also a second type of person covered under § 1225(b)(2)—an alien present without being admitted—which must mean something else. Petitioner falls in this "broader" or "catchall" category. *See Jennings*, 583 U.S. at 287. He is an alien present in the United States without being admitted within the definition of § 1225(a)(1), so the "catchall provision" in § 1225(b)(2), which "applies to all applicants for admission not covered by § 1225(b)(1)," governs his detention. *Id.*[4]

[4] Even though § 1225(b) requires the detention of both types of applicants for

When the plain text of a statute is clear, that meaning controls, and courts "need not consider … extra-textual evidence" like legislative "history, purpose, and post-enactment practice." *N.L.R.B. v. SW General, Inc.*, 580 U.S. 288, 305 (2017). But to the extent legislative history is at all relevant, it supports Respondents.

Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It "intended to replace certain aspects of the [then] 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." *Id*. In keeping with this, Respondents' reading of § 1225(b)(2) would not put

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admission, immigration officials did not always interpret it that way. Specifically, DHS's predecessor agency, the U.S. Immigration and Naturalization Service ("INS"), read § 1225(b) to apply only to those who have arrived in the United States seeking admission. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (Mar. 6, 1997) ("Despite 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."). Aliens present without admission were detained under § 1226(a). *See id.* As of July 8, 2025, however, ICE has taken the position that all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2). This position accords with the plain language of § 1225(b)(2) and is consistent with recent BIA precedent. *See Matter of Hurtado*, 29 I. & N. Dec. 216; *see also Matter of Q. Li*, 29 I. & N. Dec. 66.

aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Otherwise, aliens who presented at a port of entry would be subject to mandatory detention, but those who crossed illegally, like Petitioner, would be eligible for bond.

The Laken Riley Act ("LRA"), which added § 1226(c)(1)(E) to the statute, does not alter this conclusion. That provision now requires mandatory detention for various types of "inadmissible" aliens, which, according to Petitioner, "makes clear that, by default, such people are afforded a bond hearing under" 8 U.S.C. § 1226(a). *Id.* Respondents disagree. The LRA arose, according to Congress, after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed the law out of concern that the executive branch "ignore[d] its fundamental duty under the Constitution to defend its citizens." *Id.* at H269 (statement of Rep. Roy). One member of Congress noted this redundancy, stating that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims." *Id.* at H278 (statement of Rep. McClintock). The LRA thus reflects a "congressional effort to be doubly sure" that such unlawful aliens are detained. *See Barton v. Barr*, 590 U.S. 222, 239 (2020) (recognizing redundancies in statutory drafting are "common . . . sometimes in a congressional effort to be doubly sure."). That does not change what Congress intended when it passed IIRIRA, which added 8 U.S.C. §§ 1225(a)(1) to the INA. *See* Pub. L. No. 104-208, § 302, 110 Stat. 3009-546; *see also Almendarez-Torres v. United*

States, 523 U.S. 224, 237 (1998) ("These later-enacted laws, however, are beside the point. They do not declare the meaning of earlier law. ... or a change in the meaning of an earlier statute."); *see also S. Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("'[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'") (quoting *United States v. Philadelphia Nat. Bank*, 374 U.S. 321, 348–349 (1963)). In sum, nothing in the LRA requires that the alien who falls under § 1225(b)(2) be treated as an alien detained under § 1226(a).

In the end, Petitioner's argument rests on the notion that § 1225(b) and § 1226(a) are mutually exclusive provisions. They are not. *See Vargas Lopez*, 2025 WL 2780351, at *7-9 (rejecting argument that two provisions apply to distinct groups and concluding alien may properly be detained under § 1225(b)(2) even if also subject to § 1226(a)). Nothing in the text of the INA supports the reading that detention under § 1225(b)(2) and § 1226(a) are mutually exclusive. *See id*. And "the Supreme Court's decision in *Jennings* does not state that § 1225(b) and § 1226(a) apply to distinct groups of aliens." *Id.* at *9 n.5. Here, then, "[e]ven if [Petitioner] might fall within the scope of § 1226(a), he certainly fits," for the reasons discussed above, "within the language of § 1225(b)(2) as well." *Id.* at *9.

For the reasons above, the Court should dismiss the Petition.[5]

[5] If the Court holds that § 1226(a) applies to Petitioner, the appropriate remedy is a bond hearing conducted by an Immigration Judge, not release. *See Valeriano*, No. 25-16100 (MAS), ECF No., at 2 ("As Petitioner acknowledges, even under his reading of the relevant immigration statutes, he is still subject to detention under 8 U.S.C. § 1226(a), albeit with an entitlement to seek bond from an immigration judge. Should Petitioner prevail in this matter, the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which he contends he

B. Petitioner's Detention Does Not Violate the Due Process Clause

Section 1225(b)(2) authorizes Petitioner's detention, and she has received all process required under the Fifth Amendment. Although an applicant for admission who remains in the country unlawfully is entitled to due process rights, those rights are coterminous "only to those rights and protections Congress set forth by statute"; the Due Process Clause "'requires nothing more.'" *See Pena*, 2025 WL 2108913, at *2 (quoting *Thuraissigiam*, 591 U.S. at 140). That is because "the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Thuraissigiam*, 591 U.S. at 139 (cleaned up). Those procedures authorize detention pending removal proceedings, which is a "constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Here, as discussed above, Petitioner is an "applicant for admission" under the plain text of the INA whose detention complies with § 1225(b)(2). "And because Petitioner's detention complies with the relevant statutes, namely Section 1225(b), 'the Due Process Clause provides nothing more.'" *Pipa-Aquise*, 2025 WL 2490657, at *2 (quotation omitted); *see also Thuraissigiam*, 591 U.S. at 138 (recognizing, as to, aliens who have never "been admitted into the country pursuant to law, the decisions

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is entitled under § 1226(a)."); *cf. Barbot v. Warden Hudson Cnty. Corr. Facility,* 966 F.3d 274, 278–79 (3d Cir. 2018); *but see, e.g.*, *Rivera Zumba*, 2025 WL 2753496, at *10–11 (ordering release and "temporarily enjoin[ing] respondents from re-arresting petitioner under . . . 8 U.S.C. § 1226(a) for 14 days after her release").

of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." (quotation omitted)).[6]

C. The Court Lacks Subject-Matter Jurisdiction Over the Claim Challenging Conditions of Confinement

In Count Three, Petitioner challenges the conditions of confinement she has allegedly experienced at the Delaney Hall Detention Facility, including allegations related to temperature, sleeping conditions, the lack of outdoor recreation, the quality and timing of meals, and the handling of medication. *See* Pet. ¶¶ 29-40, 60-80. But this conditions-of-confinement claim is not cognizable in habeas and moot, given Petitioner's transfer from Delaney Hall. The Court should dismiss Count Three for lack of subject-matter jurisdiction.

1. The Court Lacks Jurisdiction Over the Conditions-of-Confinement Claim

Federal courts have jurisdiction over allegations that a petitioner (including an immigration detainee) "is in custody in violation of the Constitution or laws or

[6] Petitioner further argues that ICE violated the Due Process Clause by detaining her while her I-130 and I-485 petitions are pending. *See* Pet. ¶¶ 47-52. But a pending I-130 and I-485 application does not prohibit detention, and Petitioner cites no law to the contrary. Any such assertion would be inconsistent "with decisions of other federal courts which have denied petitions for writs of habeas corpus even where the alien petitioner was the beneficiary of an approved I-130 petition." *Pena*, 2025 WL 2108913, at *2 (collecting cases); *see also Dambrosio v. McDonald*, No. 25-10782, 2025 WL 1070058, at *3 (D. Mass. Apr. 9, 2025) (finding "petitioner's pending [I-485 and I-360] applications do not render his detention [pending removal] illegal"). Indeed, aliens in removal proceedings have an opportunity to seek adjustment of status (i.e., pursuing a I-485 petition) while still detained. *See* 8 U.S.C. § 1255. And 8 C.F.R. 1245.2 specifically provides for consideration of I-485 applications with the immigration court pending removal proceedings. Petitioner cannot show her pending applications before USCIS prohibits detention under the Due Process Clause.

treaties of the United States." § 2241(c)(3); *see Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 324 (3d Cir. 2020). Federal habeas relief, however, is generally limited to when the alleged deprivation "necessarily impacts the fact or length of detention." *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002); *accord Bonadonna v. United States*,446 F. App'x 407, 409 (3d Cir. 2011). Claims challenging conditions of confinement are generally not cognizable through habeas, because they neither attack the duration nor the fact of the detention itself (i.e., whether the terms of detention conflict with the statute or judgment). *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (holding "constitutional claims that merely challenge the conditions of a [detainee]'s confinement … fall outside of that core" habeas jurisdiction).

The Supreme Court has never authorized a conditions-of-confinement claim under 28 U.S.C. § 2241. And the Third Circuit routinely rejects habeas claims based on allegedly unconstitutional conditions of confinement or inadequate medical care as not cognizable under § 2241. *See Folk v. Warden Schuylkill FCI*, No. 23-1935, 2023 WL 5426740, at *2 (3d Cir. 2023) (per curiam) (finding "conditions-of-confinement claim related to the conditions of the facilities or the lack of adequate medical care . . . non-cognizable" under § 2241); *Johnson v. Warden Canaan USP*, 699 Fed. Appx. 125, 126 (3d Cir. 2017) (affirming District Court's reasoning that habeas corpus was "not an available remedy" because "Johnson was challenging the conditions of his confinement rather than the execution of his sentence"); *Leslie v. Att'y Gen. of U.S.*, 363 Fed. Appx. 955, 958 (3d Cir. 2010) (same).

In *Hope*, the Third Circuit concluded that, under the extraordinary circumstances of the COVID-19 pandemic that existed in March 2020, civil immigration detainees could challenge the conditions of their confinement under 28 U.S.C. § 2241 where "the only relief sought—*the only adequate relief for the constitutional claims*—[was] release" from custody. 972 F.3d at 323–35 (emphasis added). But the Third Circuit cabined its holding to the extraordinary circumstances present during the early days of the COVID-19 pandemic, emphasizing that it was "not creating a garden variety cause of action," and questioning "whether a § 2241 claim may be asserted in less serious circumstances." *Id.* at 324, 325 n.5. And absent extreme circumstances, a detainee has other means to pursue adequate relief for allegedly unconstitutional conditions of confinement; for example, through a suit for injunctive relief. *See Davis v. Pa. Dep't of Corr.*, No. 15-587, 2015 WL 5918909, at *4 (W.D. Pa. Oct. 7, 2015) ("[T]he appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." (quotation omitted)).

Post-*Hope*, the Third Circuit has not recognized a "garden variety" conditions-of-confinement claim under § 2241. Instead, courts have read *Hope* as allowing for conditions-of-confinement claims for immigration detainees "'*only in extreme cases*,'" such as those existing during the height of the pandemic. *Cf. Folk*, 2023 WL 5426740, at *1 (emphasis added) (quoting *Hope*, 972 F.3d at 324); *accord Goodchild v. Ortiz*, No. 21-790 (RMB), 2021 WL 3914300, at *15 (D.N.J. Sept. 1, 2021) (noting in the prisoner habeas context that "habeas jurisdiction over conditions of confinement

claim are limited to 'extreme cases' or 'extraordinary circumstances'"). And courts have rejected claims, like Petitioner's here, which seek to expand habeas jurisdiction absent plausible allegations that the conditions present "extreme cases" of "special urgency," such as the situation at issue in *Hope*. *See Folk*, 2023 WL 5426740, at *2 (dismissing § 2241 petition brought by inmate challenging conditions of confinement and alleged denial of medical care as "non-cognizable," post-*Hope*).[7]

In addition to limiting its holding in *Hope* to "extraordinary circumstances," the Third Circuit indicated that a conditions-of-confinement claim under § 2241 may only be appropriate where the sole relief sought is release from custody. *See Hope*, 972 F.3d at 324-25. After all, "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Where the detainee seeks other relief for allegedly unconstitutional

[7] *See also Khan v. Aviles*, No. 23-698 (MCA), 2024 WL 3276773, at *2 (D.N.J. June 10, 2024) (dismissing habeas claims appearing to challenge conditions of confinement and alleging denial of adequate medical care as "insufficient to establish the type of extraordinary circumstances warranting habeas relief"); *Kayian v. Thompson*, No. 23-21623 (KMW), 2024 WL 64777, at *1 (D.N.J. Jan. 5, 2024) (observing that habeas "may generally not be used to raise conditions of confinement challenges," and allegations "asserting inadequate medical care are thus generally not cognizable in a habeas proceeding" (citations omitted)); *Jones v. Merendino*, No. 23-89 (KMW), 2023 WL 8295274, at *3 n.1 (D.N.J. Dec. 1, 2023) ("Outside of certain very limited exceptions wherein emergency conditions might require the release of an incarcerated individual, such as a non-criminal immigration detainee held during a pandemic subjected to high risk of infection, courts in this circuit have been hesitant to recognize a cognizable habeas claim based on a prisoner's conditions of confinement."); *Vendetti v. Ortiz*, No. 21-5193 (NLH), 2022 WL 102250, at *2 (D.N.J. Jan. 11, 2022) (finding no jurisdiction when "the petition has not alleged the [necessary] extraordinary circumstances").

conditions-of-confinement, habeas relief is inappropriate. Indeed, "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." *Davis*, 2015 WL 5918909, at *4 (order adopting report and recommendation) (quotations omitted); *see also Leamer*, 288 F.3d at 542 (recognizing that "when challenge is to a condition of confinement such that a finding in plaintiff's favor would not alter his sentence or undo his conviction," a damages action is appropriate).

Here, the Court should dismiss the conditions-of-confinement claim in Count Three because it would expand habeas jurisdiction in a manner unsupported by Supreme Court and Third Circuit law. Petitioner does not claim that the conditions of confinement at issue "necessarily impact[] the fact or length of [his] detention." *Leamer*, 288 F.3d at 540. The claim challenges the sanitariness, sleeping conditions, and quality of food at Delaney (Pet. ¶¶ 60-68), as well as alleged delays regarding medication (*id.* ¶¶ 69-73). These claims do not attack the legality of the detention itself. They "challenge the conditions of [Petitioner]'s confinement," and as a result, "fall outside of [] core" habeas jurisdiction. *Nelson*, 541 U.S. at 643; *cf. Hope*, 972 F.3d at 324.

Nor does Petitioner plausibly allege facts to support habeas jurisdiction under *Hope*, as the alleged conditions here do not constitute the type of "exceptional circumstances" such that release is the only appropriate remedy. *See* 972 F.3d at 324-25. Instead, the petition alleges conditions that are similar to the "garden-variety" claims which courts have rejected as non-cognizable under § 2241 post-*Hope*.

See Ramos v. Thompson, No. 24-6645 (RMB), 2024 WL 3518125, at *2 (D.N.J. July 24, 2024) (dismissing § 2241 petition for lack of jurisdiction when prisoner alleged failure to diagnose or treat abdominal pain, nausea, blood in urine, painful urination, testicular pain, incontinence and constipation over eleven-month period); *Kayian*, 2024 WL 64777, at *1-2 (same as to prisoner claims alleging denial of walker and medical equipment that petitioner allegedly "need[ed] to properly breathe"); *Ricketts v. Ortiz*, No. 20-7430 (RBK), 2023 WL 2859743, at *5-6 (D.N.J. Apr. 10, 2023) (same as to allegations prisoner had not been issued shoes, and was not allowed to review legal mail or receive personal hygiene); *Perri v. Warden, FCI-Fort Dix*, No. 20-13711 (RBK), 2023 WL 314312, at *7-9 (D.N.J. Jan. 19, 2023) (same as to allegations prisoner housed in unsafe conditions in light of COVID-19 pandemic, and facility lacked adequate cleaning supplies and protective gear, or allow for social distance).[8]

2. The Conditions-of-Confinement Claim is Moot

The "conditions-of-confinement claim related to the conditions" at Delaney Hall "or the lack of adequate medical care" at the facility, are not only "non-cognizable" in a § 2241 habeas action, but, in this case, the claim is moot as well. *See*

[8] This also underscores that, unlike in Hope, release is not the only appropriate remedy for the alleged conditions at issue. As noted above, judicial remedies exist to challenge allegedly unconstitutional conditions of confinement, such as a suit for injunctive relief seeking to modify the conditions at issue. See Davis, 2015 WL 5918909, at *4. For similar reasons, even if the Court were to conclude that jurisdiction is proper to address the conditions-of-confinement claim under § 2241 and Petitioner could establish that he is entitled to relief, *and* that the claim is not moot, the proper remedy for any constitutional violations would not be release from detention, but rather injunctive relief to remedy the allegedly deficient conditions. *See Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982); *see also Newman v. Ala.,* 503 F.2d 1320, 1332-33 (5th Cir. 1974).

Folk, 2023 WL 5426740, at *2 (dismissing inmate's conditions-of-confinement as non-cognizable but also moot given transfer from challenged facility). That is because "an inmate's transfer from the facility complained of generally moots" claims for equitable or declaratory relief seeking to remedy those conditions. *Id.* (quoting *Sutton v. Rasheed*, 323 F.3d 236, 248 (3d Cir. 2003) (per curiam)). And here, Petitioner is no longer detained at Delaney Hall, the "facility complained of" in the petition. *See id.*; *see also Wilcox v. Caldwell*, No. 21-11623 (ESK), 2024 WL 2720462, at *2-3 (D.N.J. May 28, 2024) (finding conditions-of-confinement claim moot when prisoner was transferred from the facility complained of in petition (citing *Sutton*, 323 F.3d at 248; *Mayon v. Capozza*, No. 14-1203, 2015 WL 4955397, at *5 (W.D. Pa. Aug. 19, 2015) ("A prisoner's transfer or release from prison moots his claims for declaratory relief since he is no longer subject to the conditions he alleges are unconstitutional.").

III. The Court Should Deny the TRO

Even if the Court does not dismiss the petition, the Court should still deny the request for a TRO because Petitioner cannot satisfy the factors to obtain relief. Rule 65 of the Federal Rules of Civil Procedure governs the issuance of TROs and preliminary injunctions—either of which is an "extraordinary remedy, which should be granted only in limited circumstances." *Novartis Consumer Health, Inc. v. & Johnson–Merck Consumer Pharm. Co.*, 290 F.3d 578, 586 (3d Cir. 2002). To obtain this extraordinary remedy, Petitioner must demonstrate: (1) a likelihood of success on the merits; (2) that he or she will suffer irreparable harm by denial of the relief; (3) that granting preliminary relief will not result in even greater harm to the

nonmoving party; and (4) that the public interest favors such relief. *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).

The first two factors are "are the most critical." *Relly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (quotations omitted). Moreover, where (as here), a petitioner seeks mandatory injunctive relief disrupting the status quo, such as immediate release from custody, the petitioner must satisfy a "particularly heavy burden" and show a "substantial"—not just reasonable—likelihood of success on the merits and an "indisputably clear" right to relief. *Hope*, 972 F.3d at 320 ; *see also Kim v. Hanlon*, 99 F.4th 140, 155 (3d Cir. 2024) ("[O]ver and above the showing required to maintain the status quo . . . a plaintiff must show a substantial likelihood of success on the merits and that [one's] right to relief is indisputably clear[.]" (quotation omitted)). Petitioner fails to make these showings.

A. Petitioner Is Not Substantially Likely to Succeed on the Merits

As set forth above, Petitioner cannot show a likelihood of success on the merits, much less a substantial likelihood. Counts One and Two fail because Petitioner's detention is lawful under § 1225(b)(2) and comports with due process, *see supra* p. 9-20, while Count Three faces threshold mootness and jurisdictional flaws, *see supra* p. 20-26. For these reasons, even if the Court does not dismiss the petition outright, the Court should nevertheless deny the TRO motion because Petitioner cannot show a "substantial likelihood of success on the merits" or right to relief which is "indisputably clear." *Kim*, 99 F.4th at 155.

B. Petitioner Cannot Establish Irreparable Harm

Petitioner also falls short of establishing that "irreparable injury is likely in the absence of" a TRO. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). In the TRO motion, Petitioner identifies three alleged harms which she argues justify the extraordinary emergent relief she seeks: (1) concerns over receiving "blood pressure and ovarian medications"; (2) the lack of "timely and adequate meals" at Delaney Hall; and (3) the general threat of "transfer to a differing facility across the nation." TRO Motion at 2. But all these alleged harms are too speculative to merit the issuance of a TRO compelling immediate release. *See Moneyham v. Ebbert*, 723 F. App'x 89, 92 (3d Cir. 2018) (explaining irreparable harm must be "actual and imminent, not merely speculative").

Further to the first and second categories, Petitioner ties the alleged harms to her experience at Delaney Hall. *See* TRO Motion at 2 (arguing that "absent the preliminary relief sought, [Petitioner] will suffer irreparable harm due [to] the detention facility" at Delaney Hall). Petitioner was, however, transferred from Delaney Hall, which renders these alleged harms moot. And as to the third category, it is unclear how a general concern regarding transfer to any different facility, without any allegations explaining how that transfer would result in any appreciable or imminent harm, would justify the issuance of a TRO. *See Moneyham*, 723 F. App'x at 92. This is particularly so given that "a transfer of Petitioner to a different detention facility would not interfere with this Court's jurisdiction to decide Petitioner's habeas petition or grant Petitioner relief in the event that [s]he shows an

entitlement to relief." *Valeriano*, No. 25-16100 (MAS), ECF No. 4, at 2. Indeed, Petitioner was transferred from Delaney Hall during the pendency of this litigation, and there is no indication that has in any way "inhibit[ed] [her] ability to litigate [this] case or pursue the relief requested in [this] habeas petition." *Id.*

In the end, Petitioner's request for preliminary injunctive relief in the form of immediate release is also improper because it requests relief that "is actually *greater* than the relief Petitioner" is entitled to under the law. *See id.* at 2. Petitioner has been charged as inadmissible and is in removal proceedings. She is either subject to detention under § 1225(b)(2), as Respondents argue, which is mandatory and generally does not allow for bond, or Petitioner is subject to detention under § 1226(a), which provides for the opportunity to have a bond hearing. Accordingly, should Petitioner prevail on the merits in this matter, "the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which [s]he contends [s]he is entitled to under § 1226(a)." *Valeriano*, No. 25-16100 (MAS), ECF No. 4, at 2.

C. An Injunction Would be Contrary to Public Interest

Where, as here, the government is the responding party, the final two factors—balance of the equities and public interest—merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors weigh against granting a TRO here. There is a significant public interest in enforcement of the immigration laws. *Id.* Here, Petitioner's detention pending removal proceedings is a valid exercise of its authority under the INA. Issuing a TRO seeking immediate release—given the absence of a strong

showing of success on the merits or immediate irreparable harm, and whether other alternative remedies are available (including a bond hearing as contemplated by § 1226(a))—would thwart the public interest in the enforcement of immigration laws. These interests weigh against granting a TRO.

D. The Court Should Require Bond

Rule 65(c) of the Federal Rules of Civil Procedure provides that a court may issue a TRO (or preliminary injunction) "only if the movant gives security" for "costs and damages sustained" by the non-moving party in the event the non-moving party is later found to "have been wrongfully enjoined." "'Although the amount of the bond is left to the discretion of the court, the posting requirement is much less discretionary.'" *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 210 (3d Cir. 1990) (quotations omitted). Earlier this year, the President issued a memo requiring federal agencies to seek security when confronted with suits seeking emergency preliminary injunctive relief. *See* White House Memo, Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c), https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/ (last visited Oct. 17, 2025). In accordance with that memo, to the extent that the Court grants preliminary injunctive relief here, Respondents respectfully request that the Court require Petitioner to provide adequate security.

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the petition.

Respectfully submitted,

TODD BLANCHE
U.S. Deputy Attorney General

ALINA HABBA
Acting United States Attorney
Special Attorney

By: /s/ *David Inkeles*
DAVID INKELES
/s/ *Frances Bajada*
FRANCES BAJADA
Assistant United States Attorneys

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