

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03275-GPG-KAS

DANIEL ORTIZ ROSALES,

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. 8)**

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. 8, the Motion). As explained below, the Court should deny the Petition and the Motion because Petitioner's detention is authorized by statute, and his other challenges to his detention are 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 applicants 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 § 1225(b)(2)(A) and is instead subject to a different provision, 8 U.S.C. § 1226(a), which is a catchall provision that also authorizes detention of certain noncitizens while removal proceedings are pending. 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. ECF No. 1 at 16.

The Court should find that Petitioner is covered by § 1225(b)(2) based on the text of the statute and the interpretation of that statutory provision by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that numerous nonprecedential decisions have reasoned otherwise. But as explained below, a close reading of the Supreme Court’s explanation in *Jennings* of the scope of § 1225 supports Respondents’ view, and the reasoning of many lower court decisions cannot be readily reconciled with the Supreme Court’s interpretation of the statute in *Jennings*.

The Court 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.” The scope of this section was analyzed by the Supreme Court in *Jennings*. At issue in that case was whether noncitizens are entitled to periodic bond hearings during detention under §§ 1225 and 1226 that becomes prolonged. Because in that case (as in this one) “[t]he primary issue [wa]s the proper interpretation of §§ 1225(b), 1226(a), and 1226(c),” 583 U.S. at 289, the Supreme Court’s explanation in *Jennings* of § 1225’s scope should guide the Court’s analysis here.

The *Jennings* Court explained that § 1225 applies to “applicants for admission,” a term of art that applies to aliens who are unlawfully present but were never admitted—even if they have not applied for admission. 583 U.S. at 287. The Court explained that § 1225 applies to an “applicant for admission,” and that this term applies to both (a) an “arriving alien,” as well as (b) an individual who is *present* in this country but has not been admitted. *Id.* 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).

The Court made clear that “applicant for admission” is a term of art. “Under ... 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is present’ in this country

but 'has not been admitted,' is *treated as* 'an applicant for admission.'" 583 U.S. at 287. In other words, an "applicant for admission" is a term of art that covers noncitizens who are present in the country and were never lawfully admitted.

The Court's discussion of "applicant for admission" makes two points clear. First, the term "applicant for admission" does *not* exclude individuals who are in the country but unlawfully present. *Id.* at 287-88. Rather, an "applicant for admission" is a term of art that covers aliens who are present in the country and were never lawfully admitted.

Second, the Court did *not* rule that the term "applicants for admission" is limited to noncitizens who have also actually submitted some type of immigration application. Rather, the Court explained that "an alien who 'is present' in this country but 'has not been admitted' is *treated as* 'an applicant for admission.'" *Id.* at 287 (emphasis added). And the Court further concluded that "[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289. But that statement did not introduce some separate and new "seeking admission" criterion that must exist for a noncitizen to fall within § 1225. This summation reinforces the Court's explanation of the scope of § 1225—that noncitizens who fall within §§ 1225(b)(1) and (b)(2) are, as a matter of law, "treated as" "applicants for admission." *Id.* at 287.

Section 1225(b) applies to *all* applicants for admission, not just arriving aliens or those who unlawfully entered the United States recently. The Court explained that § 1225(b)(1) applies to a few subcategories of individuals: those who are "arriving aliens," and those who have been unlawfully present in the United States for less

than two years. See, e.g., 8 U.S.C. § 1225(b)(1)(iii)(II) (explaining that this subsection generally applies to a noncitizen who cannot show that they have “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”). Noncitizens in those subcategories are subject to a process known as “expedited removal.” *Jennings*, 583 U.S. at 287 (“Aliens covered by § 1225(b)(1) are normally ordered removed ‘without further hearing or review’ pursuant to an expedited removal process.” (quoting 8 U.S.C. § 1225(b)(1)(A)(i))).

The Court then explained that “all” remaining applicants for admission who fall outside that subcategory in § 1225(b)(1) are covered by § 1225(b)(2). It explained 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). For example, a noncitizen who was never admitted and has been unlawfully present in the country for *more* than two years is an “applicant for admission” who falls under the catchall provision of § 1225(b)(2).

Section 1226 provides for detention for *other* categories of aliens subject to removal, such as previously-admitted aliens. 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. A person may be admitted but then face removal after admission. As the Court explained in *Jennings*,

Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses *since admission*. See §§ 1227(a)(1), (2).

583 U.S. at 288 (emphasis added).

In discussing § 1226, the Court did not suggest that this provision applied to the detention of noncitizens who are covered by § 1225. Rather, read in context, it made clear that the detention of noncitizens covered by § 1225 is authorized by § 1225, and that *other* individuals in the country may be detained under § 1226. See 583 U.S. at 289 (“U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).”).

Detention under § 1225 does not grant applicants for admission a right to a bond hearing. The Court in *Jennings* explained that Congress has provided that aliens covered by § 1225(b)(2) generally “shall be detained” during their removal proceedings, with narrow exceptions. 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A)). 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. On the other hand, § 1225 does not provide a bond hearing for noncitizens detained under that provision.

II. Factual background

Petitioner has not been inspected and admitted to the United States, and thus is being treated as an applicant for admission.

Petitioner is a native and citizen of Mexico who entered the United States in July 2006. Ex. 1, Decl. of Edigio Fantauzzi-Perez ¶¶ 4-5. He has never been admitted or

paroled into the United States. *Id.* ¶ 6-7. In 2014, he applied and was approved for the Deferred Action for Childhood Arrivals (“DACA”) program. *Id.* ¶ 8. His participation in DACA ended in 2022, however, and he did not file a renewed application with U.S. Citizenship and Immigration Services. *Id.*

On October 12, 2025, U.S. Immigration and Customs Enforcement (“ICE”) encountered Petitioner and determined that he did not possess valid immigration documentation authorizing him to be in or remain in the United States. *Id.* ¶ 9. The same day, 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.* ¶ 12. Petitioner appeared before an immigration judge on October 23, 2025, and was granted additional time to obtain an attorney. *Id.* ¶ 13. Petitioner’s removal proceedings remain pending, and his next hearing is scheduled for November 7, 2025. *Id.* ¶ 14.

III. Procedural background

On October 16, 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. 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 an order enjoining Respondents from transferring him outside of the District of Colorado. *Id.* at 16 (prayer for relief). In his Motion, he reiterates

his requests for release or a bond hearing within seven days and for a Temporary Restraining Order (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. 8 at 2, 16. 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. 15.

ARGUMENT

I. Petitioner's statutory challenge fails because he is subject to § 1225(b)(2)(A).

As explained above, § 1225(b)(2) applies to "applicants for admission," which include noncitizens who, like Petitioner, entered without inspection and have been present in the United States for more than two years. And 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.

The Supreme Court's explanation in *Jennings* of the scope of § 1225 shows that a noncitizen in Petitioner's position is treated as an "applicant for admission" and is subject § 1225(b)(2). Petitioner is present in the United States but 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 ¶¶ 5-7. He does not argue that he

is clearly and beyond a doubt entitled to be admitted. As a result, his detention without bond is authorized by § 1225(b)(2)(A).

Petitioner resists this reading of § 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. He also relies on numerous nonprecedential opinions that have determined that noncitizens like him are not applicants for admission. None of these arguments are persuasive.

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

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. 8 at 11 (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, as the Court in *Jennings* explained, § 1225 applies to “applicants for admission,” who include *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 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 a catchall that 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). As explained above, the Supreme Court expressly recognized that § 1225(b)(2) refers to a “broader” category of noncitizens than those described in § 1225(b)(1), and applies to all “applicants for admission” who do not fall within § 1225(b)(1). The Court stated 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 ¶¶ 29. But as explained above, the Court in *Jennings* defined who is treated as an “applicant for admission,” and imposed

no additional requirement that the person has filed an application.

Nor does the statute suggest otherwise. Section 1225(b)(1) contains no “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 8 U.S.C. § 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”).

Other parts of § 1225 confirm 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)).

In short, the Court in *Jennings* confirmed that all noncitizens who are “applicants for admission” are “seeking admission” by virtue of that status.

Petitioner relies on *Garcia Cortes v. Noem* for the proposition that only applicants for admission who are also “seeking admission” are subject to detention under § 1225(b)(2)(A). *Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *2-3 (D. Colo. Sep. 16, 2025). 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 ¶¶ 5-8, 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. 8 at 6. As support, he argues that “the plain language of § 1226 applies to people charged as inadmissible for entering without inspection.” ECF No. 1 ¶ 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. 8 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. 8 at 9 (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(c) to require courts to ignore the express scope of § 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 *Jennings* to attempt to bolster his reading of §§ 1225 and 1226. ECF No. 1 ¶¶ 18, 30. On the contrary, as explained above, the full discussion

in Part I.A.1 of the *Jennings* opinion confirms that § 1225(b)(2) applies to noncitizens who entered without inspection and have not been admitted.

LEGISLATIVE HISTORY. Petitioner also argues that the legislative history behind §§ 1225 and 1226 supports his position. ECF No. 8 at 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. 8 at 14-15.

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.

II. Petitioner’s APA claims fail.

The Court lacks jurisdiction to consider an APA claim here. Congress limited the APA to situations where “there is no other adequate remedy in a court that [is] subject to judicial review.” 5 U.S.C. § 704. If the Court were to have jurisdiction over Petitioner’s claim, it would be a habeas claim because Petitioner is challenging the legality of his detention. *J.G.G. v. Trump*, 604 U.S. 670, 673 (2025). Thus, the availability of a habeas claim bars APA jurisdiction.

Even if there were APA jurisdiction, Petitioner’s APA claim fails for the reasons described above. Petitioner is subject to § 1225(b)(2) and that decision is neither contrary to law or arbitrary and capricious.

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. See ECF No. 1 ¶¶ 50-53.

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). 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 less than one month as of the date of this submission. As explained above, that detention is authorized by statute. His removal proceedings are moving toward a definite endpoint. See Ex. 1 ¶¶ 9-13. 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,” the movant 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.¹

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

Request for bond hearing. Petitioner requests either immediate release or, in the alternative, a bond hearing. ECF No. 8 at 15. 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. V. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148 n.3 (10th Cir. 2008) (deeming

¹ 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.

insufficiently developed argument to be waived). 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. 8 at 15, which the Court has granted. ECF No. 15. 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. 8 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. 8 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.²

CONCLUSION

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

² 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.

Dated: November 6, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 6, 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

Zeyen J. Wu