

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FERNANDO ISAIAS CARRANZ CHUQUI,

Petitioner,

v.

25-CV-06614-MAV

STEVEN KURZDORFER, et al.,

Respondents.

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**RESPONDENTS' OPPOSITION TO THE MOTION FOR A PRELIMINARY  
INJUNCTION (ECF NO. 4)**

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Petitioner Fernando Isaias Carranz Chuqui has moved for a preliminary injunction pertaining to claims one, two and five in his Petition. Claim one alleges a violation of Chuqui's substantive due process rights under the Fifth Amendment; Claim two alleges a violation of Chuqui's procedural due process rights under the Fifth Amendment; and, Claim Five alleges a violation of the Immigration and Nationality Act ("INA") as codified at 8 U.S.C. § 1226(a). Chuqui's motion for a preliminary injunction should be denied in its entirety because Chuqui is lawfully detained under 8 U.S.C. § 1225(b)(2) as an applicant for admission, and because the statute mandates his detention, and because there is no private cause of action under the INA.

#### **BACKGROUND FACTS**<sup>1</sup>

Chuqui alleges that he came to the United States in 2021. ECF No. 4-2 at pg. 6. He does not allege that he was ever lawfully admitted or inspected and paroled into the United States. He does not allege that his presence here is lawful by any means whatsoever.

In 2023, Chuqui was granted Special Immigrant Juvenile ("SIJ") classification. ECF No. 4-2 at pg. 7. Such a classification confers no immigration status or benefit, and, indeed, the Notice of Action granting such classification explicitly says as much in capital letters across the top. *See* ECF No. 1-5. Generally speaking, SIJ classification may entitle an alien to a grant of deferred action, which is "an act of administrative convenience to the government which gives some cases lower priority for removal from the United States for a specified

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<sup>1</sup> Given the expedited briefing schedule, the alien file has not been received by this Office yet. As such, the government cannot provide the typical documents and records that would ordinarily be provided in opposition to a habeas petition. Since the Government cannot verify the allegations at issue, the facts here are taken from the Petition and the truth of the facts is not admitted.

period of time.” *Ramos v. Att’y Gen. United States*, No. 25-2946, 2025 WL 2950133, at \*2 (3d Cir. Oct. 17, 2025).

In June 2025, the U.S. Citizenship and Immigration Services (“USCIS”) issued a Policy Alert providing guidance regarding deferred action for SIJs. *See* Policy Alert, dated June 6, 2025; available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf>. The Policy Alert further advises that “USCIS, within its discretion, may terminate deferred action and revoke any associated employment authorization prior to the end of the current validity period.” *Id.* at pg. 2.

In July 2025, Chuqui was arrested by ICE officers due to his unlawful presence in the United States. ECF No. 1-7 at pg. 3; ECF No. 1-8 at pg. 1.

A Termination Notice dated August 12, 2025, was issued to Chuqui advising him that U.S. Citizenship and Immigration Services (“UCIS”) individually reviewed his case and terminated his period of deferred action. ECF No. 1-10 at pg. 1.

## LEGAL BACKGROUND

### Detention under 8 U.S.C. § 1225

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 arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to

expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is “found not to have such a fear,” he is detained until removed. 8 U.S.C. § 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. 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) (“for 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.’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). Still, 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.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

#### Detention under 8 U.S.C. § 1226

Section 1226 provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the

government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.<sup>2</sup> By regulation, immigration officers can release aliens if the alien demonstrates 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 a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *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, the immigration judge may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider). But regardless of the factors immigration judges consider, an alien “who presents a danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38.

#### Standard for the issuance of a preliminary injunction

The decision of whether to grant or deny a preliminary injunction falls within the Court’s sound discretion. *CJ Prod. LLC v. Snuggly Plushez LLC*, 809 F. Supp. 2d 127, 140 (E.D.N.Y. 2011). Because an injunction is “an extraordinary remedy” that may only be awarded “upon a clear showing that the plaintiff is entitled to such relief,” it “is never awarded

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<sup>2</sup> Being “conditionally paroled under the authority of [8 U.S.C.] § 1226(a)” is distinct from being “paroled into the United States under the authority of [8 U.S.C.] § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under 8 U.S.C. § 1255(a)).

as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (“[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.”) (citation omitted); *Rush v. Hillside Buffalo, LLC*, 314 F. Supp. 3d 477, 483-84 (W.D.N.Y. 2018).

Generally, even if the moving party establishes irreparable harm, a court may not grant the requested injunctive relief unless the moving party also establishes either (a) that it is likely to succeed on the merits or (b) that there are “sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships that tips decidedly in favor of the party requesting preliminary relief.” *Charette v. Town of Oyster Bay*, 159 F.3d 749, 754 (2d Cir. 1998). Where, as here, “the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme,” the injunction should be granted “only if the moving party meets the more rigorous likelihood-of-success standard.” *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir. 2000) (citation omitted); *see also Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 424 (2d Cir. 2004) (same).

A party seeking injunctive relief must also show “that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20; *Veramark Techs., Inc. v. Bouk*, 10 F. Supp. 3d 395, 400 (W.D.N.Y. 2014). “Where the government is the opposing party, the final two factors . . . —the balance of the equities and the public interest—merge.” *Jones v. Wolf*, No. 20-CV-361, 2020 WL 1643857, at \*13 (W.D.N.Y. Apr. 2, 2020).

Finally, Petitioner’s request for a preliminary injunction granting him immediate release from custody in immigration detention requests the ultimate relief that he seeks in this matter. As a result of seeking the ultimate relief, Petitioner “must show a clear or substantial

likelihood of success on the merits, and make a strong showing of irreparable harm in addition to showing that the preliminary injunction is in the public interest." *Dzhabrailov v. Decker*, 2020 U.S. Dist. LEXIS 91892, at \*14 (S.D.N.Y. May 26, 2020). As set forth below, Petitioner fails to meet his burden here.

### ARGUMENT

#### **I. THIS COURT SHOULD NOT ENJOIN THE TRANSFER OR REMOVAL OF CHUQUI DURING THE PENDENCY OF THIS CASE**

Respondents rely on the arguments and authorities cited in response to the temporary restraining order (ECF No. 8), and submit that for the same reasons and on the same bases, this Court should not enjoin Chuqui from being transferred to another ICE facility or from being removed from the United States if or when a valid and final order of removal is issued against him.

#### **II. THIS COURT LACKS JURISDICTION TO HEAR THIS CASE UNDER 8 U.S.C. § 1252 AND THUS THE MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE DENIED**

##### **A. 8 U.S.C. § 1252(E)(3) Bars Review Of Chuqui's Claims**

Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction, over Chuqui's challenge to his detention under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021).

Unlike other provisions within 1252(e), section 1252(e)(3) applies broadly to judicial review of section 1225(b), not just determinations under section 1225(b)(1). Compare 8 U.S.C. § 1252(e)(1)(A), (e)(2), with 8 U.S.C. § 1252(e)(3)(A). See *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) (“‘[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’ ... We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.”).

Here, Chuqui challenges the determination, set forth in writing by both the Department of Justice and DHS, that aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). Chuqui thus seeks judicial review of a written policy or guideline implementing § 1225(b), which is covered by § 1252(e)(3)(A)(ii).

#### **B. 8 U.S.C. § 1252(G) Bars Review Of Chuqui’s Claims**

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly “aris[es] from” the decision to commence removal proceedings against an alien. See *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s

decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at \*4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]”) (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at \*6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrani v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) (“[Plaintiff’s] detention necessarily *arises from* the decision to initiate removal proceedings against him.”) (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (“The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien’s detention throughout this process *arises from* the [Secretary]’s decision to commence proceedings[.]” and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). In the Supreme Court’s words, detention pending removal is a “specification” of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”). As such, judicial review of the Chuqui’s claims is barred by § 1252(g).

**C. 8 U.S.C. § 1252(B)(9) Bars Review Of Chuqui's Claims**

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“AADC”). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at \*2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a

“primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”).

Here, Chuqui challenges the decision and action to detain him, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove him from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–

95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Chuqui’s claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, the Chuqui *does* challenge the government’s decision to detain him in the first place. *See, e.g.*, ECF No. 1 at ¶¶ 1, 5-6, 29. Though Chuqui frames his challenge as relating to detention authority, rather than a challenge to DHS’s decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that Chuqui is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss Chuqui’s claims for lack of jurisdiction under § 1252(b)(9). Chuqui must instead present his claims before the appropriate court of appeals because he challenges the government’s decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

**III. CHUQUI IS NOT ENTITLED TO A PRELIMINARY INJUNCTION BECAUSE HE WILL NOT SUFFER IRREPARABLE HARM, IS NOT LIKELY TO SUCCEED ON THE MERITS, AND THE BALANCE OF EQUITIES DOES NOT TIP IN HIS FAVOR**

**A. Chuqui Is Not Likely To Suffer Irreparable Harm**

Chuqui argues that his continued detention may result in irreparable harm. This is incorrect. The statute authorizing Chuqui's detention, 8 U.S.C. § 1225(b), *mandates* that he be detained. 8 U.S.C. § 1225(b)(2)(A). And even if Chuqui were correct that he was detained under § 1226(a)—which he is not—some period of detention is authorized even under that statute. 8 U.S.C. § 1226(a)(1) and (2) (allowing for continued detention of an alien or release on bond); *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (“Detention during removal proceedings is a constitutionally valid aspect of the deportation process.”) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)). Thus, he will not suffer irreparable harm by his continued detention because it is mandated by statute and because detention itself is “a constitutionally valid aspect of the deportation process.”

Additionally, continued detention during removal proceedings is insufficient on its own to constitute irreparable harm. *Hernandez-Hernandez v. Feeley*, 535 F. Supp. 3d 142, 151 (W.D.N.Y. Apr. 21, 2021). Accordingly, the PI should be denied.

**B. Chuqui Is Not Likely To Succeed On The Merits**

Similarly, the PI should be denied because Chuqui is not likely to succeed on the merits. He is lawfully detained under 8 U.S.C. § 1225(b)(2) as an alien who was never lawfully admitted or inspected prior to entering the United States, and, as such, his detention is mandated by statute.

Beginning with the actual and plain language of the text, it is clear that Chuqui is detained under 8 U.S.C. § 1225. Section 1225(a)(1) states that “[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission.” Chuqui does not argue that he has been lawfully admitted, and thus he is an applicant for admission. As noted above, 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. And, regardless of what category they fall under, aliens under § 1225(b) must be detained until proceedings have concluded. *Jennings*, 583 U.S. at 297.

Although Chuqui attempts to distinguish an alien who is “present” from one who is “seeking admission”, the question to be addressed is whether the alien in question was ever lawfully admitted: if he was, he can obviously not be seeking admission; if he was never admitted, and seeks to remain in the United States regardless, then he is obviously seeking admission or an applicant admission (or else he must leave). *See* 8 U.S.C. § 1225(b)(2)(a) referring to an alien “who is an applicant for admission” and “an alien seeking admission” interchangeably. Chuqui essentially tries to create a disparity between *entry* and *admission*. But courts have long recognized the difference between being lawfully admitted and being physically present in the United States without lawful admission. *See, e.g., Augustin v. Sava*, 735 F.2d 32, 36 (2d Cir. 1984) (recognizing the distinction between lawful admission and physical presence or entry into the United States) (citing *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958)). Thus, this argument flies in the face of settled precedent.

Likewise, any argument by Chuqui that the phrase “seeking admission” limits the scope of § 1225(b)(2)(A) is unpersuasive. Courts “interpret the relevant words not in a vacuum, but with reference to the statutory context, ‘structure, history and purpose’.”

*Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The BIA has long recognized that “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 immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of “applicant for admission” in § 1225(a)(1). Applicants for admission includes arriving aliens and aliens present without admission. See 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under §1225(a)(1). See *Lemus*, 25 I. & N. at 743. Congress made clear that all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” See *United States v. Woods*, 571 U.S. 31, 45 (2013).

Importantly, an alternative reading of the statute would also incentive unlawful entry into the United States, and penalize aliens who followed the proper, lawful method of admission. Under such a reading, aliens who present at the border will have limited rights since they never were admitted to the United States. But aliens who unlawfully enter the United States will then—at some nebulous point in time—will no longer be “seeking admission” and will instead have greater rights than an alien following the lawful process. This cannot be. The Supreme Court has long held that “the due process rights of an alien seeking initial entry” are no greater than “[w]hatever the procedure authorized by Congress.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020) (citation omitted). For

unadmitted aliens, like Chuqui, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); accord *Thuraissigiam*, 591 U.S. at 138–140.8 To this end, the Supreme Court has also long applied the so-called “entry fiction” that all “aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139. Indeed, that is so “even [for] those paroled elsewhere in the country for years pending removal.” *Id.* The Supreme Court has applied the entry fiction to aliens with highly sympathetic claims to having “entered” and developed significant ties to this country. See, e.g., *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of relatives for nine years must be “regarded as stopped at the boundary line” and “had gained no foothold in the United States”); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that an alien with 25 years’ of lawful presence who sought to reenter enjoyed “no additional rights” beyond those granted by “legislative grace”). With the backdrop of these cases, it follows that Congress intended for an unlawful entrant who violates immigration laws and evades detection must, once found, be “treated as if stopped at the border.” See *Mezei*, 345 U.S. at 215.

The Board of Immigration Appeals (“BIA”), tasked with determining appeals from immigration courts, has likewise held that aliens present in the United States without being lawfully admitted are applicants for admission. See, e.g., *Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). Indeed, the BIA has pointed to the “legal conundrum” that would result if aliens who were never admitted were not deemed to be seeking admission when encountered within the United States:

The respondent's argument is not supported by the plain language of the INA, and actually creates a legal conundrum. If he is not admitted to the United

States (as he admits) but he is not “seeking admission” (as he contends), then what is his legal status? The respondent provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer “seeking admission,” and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA, 8 U.S.C.A. § 1226(a).

*Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216, 221 (BIA 2025).

Similarly to *Hurtado*, Chuqui’s theory here seeks to create a new class of alien that is neither admitted lawfully but also not seeking admission, and somehow entitled to a bond hearing under an entirely different statutory scheme. There is no basis for this in the law. Chuqui’s interpretation reads “applicant for admission” out of 1225(b)(2)(A). “[O]ne of the most basic interpretive canons” instructs that a “statute should be construed so that effect is given to all its provisions.” *Corley v. United States*, 556 U.S. 303, 314 (2009). “Applicant” is defined as “[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration.” Black’s Law Dictionary (12th ed. 2024). Applying the definition of “applicant” to “applicant for admission,” an applicant for admission is an alien “requesting” admission, defined by statute as “the lawful entry of the alien into the United States after inspection.” 8 U.S.C. § 1101(a)(13)(A).

Additionally, the question of Chuqui’s risk of flight or risk of danger is immaterial. Congress has already decided that aliens like Chuqui who are applicants for admission shall be detained pending removal proceedings against them. 8 U.S.C. § 1225(b)(2)(A) (“[I]n 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 for a proceeding under section 1229a of this title.”). Thus,

Chuqui's invitation to this Court to revisit the question already answered by Congress should be rejected.

Chuqui's argument about re-arrest without procedural due process likewise fails. Supreme Court precedents indicate that aliens who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–140. While aliens who have been admitted may claim due-process protections beyond what Congress has provided even when their legal status changes (*e.g.*, an alien who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that aliens who have “entered the country clandestinely” are entitled to such additional rights. *The Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). Congress has codified that distinction by treating all aliens who have not been admitted—including unlawful entrants who evade detection for years—as “applicants for admission.” 8 U.S.C. § 1225(a)(1). In line with these cases and the statute, Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and aliens who have been admitted to the country are detained under § 1226. It does not matter whether an alien was apprehended “25 yards into U.S. territory” or 25 miles, nor does it matter if he was here unlawfully and evades detection for 25 minutes or 25 years; when an alien has never been admitted to the country by immigration officers, his detention is no different from an alien stopped at the border. *See Thuraissigiam*, 591 U.S. at 139. Thus, Chuqui's arguments about procedural due process fail.

**C. The Balance Of Equities Favor The Government And The Enforcement Of Immigration Laws**

The balance of equities in this case favors the government, again necessitating the denial of the PI. As the Supreme Court has held, when the government “is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (Roberts, C. J., in chambers). This is especially true in the present case where the Supreme Court has recognized that the presence of “millions of individuals illegally in the United States, the myriad ‘significant economic and social problems’ caused by illegal immigration, *Brignoni-Ponce*, 422 U.S., at 878, 95 S.Ct. 2574, and the Government's efforts to prioritize stricter enforcement of the immigration laws enacted by Congress.” *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637, at \*4 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring). Accordingly, the Court should find that the balance of equities tips in the government’s favor, and deny the PI.

**IV. CHUQUI’S FOURTH AMENDMENT RIGHTS WERE NOT VIOLATED**

Chuqui argues that his Fourth Amendment rights were violated by his arrest without a warrant. But immigration statutes explicitly allow for arrest without a warrant. *See* 8 U.S.C. § 1357(a)(2); *see generally* *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637, at \*3 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring) (discussing lesser requirement to stop aliens and likelihood of success by the government regarding an argument like the one raised in this case). Chuqui’s argument about having SIJ status and where he was travelling to or from are immaterial: he is an alien within the United States without lawful status in violation of the law. The fact that he was in a car gives much reason to believe that he would be “likely to escape before a warrant can be obtained for his arrest”. *Id.* Similarly, his argument that there

was no statutory basis to arrest him is without merit. Section 1357 provides such statutory basis. Chuqui's argument that his removal proceedings were dismissed or that he had deferred action do not make his presence legal or make him any less of any alien present in violation of law and subject to arrest without warrant under § 1357.

**V. CHUQUI'S CLAIM UNDER THE INA (CLAIM FIVE) SHOULD BE DENIED BECAUSE THERE IS NO CAUSE OF ACTION FOR AN ALLEGED VIOLATION OF THE INA**

Chuqui's Fifth Claim should be denied because there is no cause of action for allegedly violating the INA. *Farag v. United States Citizenship and Immigration Servs.*, 531 F. Supp. 2d 602, 606-07 (S.D.N.Y. 2008) ("To the extent that he may generally allege a violation of the Immigration and Naturalization Act, that would be insufficient because that statute does not itself create a cause of action"); *Jaskiewicz v. United States Dep't of Homeland Sec.*, 2006 U.S. Dist. LEXIS 85973, at \*11 (S.D.N.Y. Nov. 29, 2006) ("When it comes to legislation, 'the INA does not itself create a cause of action or federally protected right.'"); *Huli v. Way*, 393 F. Supp. 2d 266, 270 (S.D.N.Y. 2005) ("although [petitioner] alleges a violation of the INA, that statute does not itself create a cause of action or federally-protected right or interest in derivative asylum status, just as it does not confer an alien a right to remain in the United States."). "[T]here being no private right of action under the INA in the first instance, the Court lacks subject matter jurisdiction over [Petitioner's first claim for relief] and the claim must be dismissed." *Takamiya v. DNP America, LLC*, 2016 U.S. Dist. LEXIS 97243, at \*9 (S.D.N.Y. July 25, 2016). Accordingly, Chuqui cannot establish a likelihood of success on the merits for his Fifth Claim, and no cause of action exists, such that not only should any injunction be denied with respect to this claim, the claim should be dismissed.

**VI. CHUQUI SHOULD BE REQUIRED TO POST A BOND IF ANY INJUNCTION IS ORDERED**

Federal Rule of Civil Procedure 65(c) requires a court to 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.” Fed. R. Civ. P. 65(c) (emphasis added). Here, any injunction prohibiting the government from transferring Chuqui to another facility or removing him from the country will result in damages to the government from the increased costs associated with detaining him in a facility which may be more expensive than other facilities, and for detaining him while he could or should be removed from the country. Accordingly, Respondents respectfully request that if any injunction is entered that Chuqui be required to post a bond.

**CONCLUSION**

For the foregoing reasons, the motion for a PI should be denied.

MICHAEL DIGIACOMO  
United States Attorney  
Western District of New York

BY: /s/ADAM A. KHALIL  
Assistant United States Attorney  
100 State Street, Suite 500  
Rochester, New York 14614  
(585) 399-3979  
adam.khalil@usdoj.gov

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