IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03788-RMR

GUAN HUANG,

Petitioner,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security;
PAM BONDI, United States Attorney General;
TODD LYONS, Director of United States Immigration and Customs Enforcement;
ROBERT HAGAN[1], Denver Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
JUAN BALTASAR, Warden, Denver Contract Detention Center;
UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

CONSOLIDATED RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (ECF NO. 1) AND EMERGENCY MOTION FOR PRELIMINARY INJUNCTION (ECF NO. 3)

Respondents submit this Response to Petitioner's Writ of Habeas Corpus (ECF No. 1, the Petition) and Emergency Motion for Preliminary Injunction (ECF No. 3, the Motion). As explained below, the Court should deny the Petition and the Motion because Petitioner Guan Huang'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

[1] Robert Hagan is the current Field Office Director and is hereby automatically substituted as a party for Mr. Walker in this case in his official capacity, in accordance with Federal Rule of Civil Procedure 25(d).

Homeland Security (DHS) is detaining Petitioner under Section 235(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1225(b)) that applies to noncitizens[2] who, like Petitioner, entered the United States without inspection and have never been admitted, and thus are treated as "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 being detained under INA § 236 (8 U.S.C. § 1226), entitling him to a bond hearing. *See* ECF No. 1 at 5–6; ECF No. 3 at 2–3. Both § 1225 and § 1226 authorize the detention of certain noncitizens while removal proceedings are pending, but Congress has provided that while noncitizens detained under § 1225(b)(2)(A) are ordinarily *not* eligible for bond hearings, those detained under § 1226(a) are. Based on the premise that Petitioner's detention is governed by § 1226(a), he requests immediate release on parole or a bond hearing within three days. (ECF No. 3 at 10).

The Court should conclude that Petitioner is an applicant for admission within the scope of § 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*. Thus, the Court should deny Petitioner's requests

[2] The INA uses the term "alien," which is defined as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3).

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

A. 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 noncitizens who are "applicants for admission."

The scope of § 1225 was analyzed by the Supreme Court in *Jennings*. At issue in that case was whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. 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. Five key points from *Jennings* are set forth below:

1) Section 1225 applies to "applicants for admission," a term that includes noncitizens who are unlawfully present and never admitted.

Section 1225 provides, in relevant part, that "[a]n alien present in the United States who has not been admitted . . . shall be *deemed* for purposes of this chapter [to be] an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). The *Jennings* Court confirmed that § 1225 applies to "applicants for admission," and that this term applies to *both* (a) an "arriving alien," as well as (b) an individual who is *present* in the United States but has not been "admitted" through a lawful entry at a port of entry.[3]

[3] The INA defines "admission" to mean "lawful entry" after "inspection and authorization by an immigration officer"—such as may occur at a port of entry. *Id.* § 1101(a)(13)(A) (defining "admission" and "admitted" as "the lawful entry of the alien into the United States *after inspection and authorization* by an immigration officer.") (emphasis added).

The Court in *Jennings* recognized that the statute uses the term "applicant for admission" as 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 (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are "treated as"—in the words of § 1225(a)(1), they are "deemed" to be—"applicants for admission."

2) "Applicants for admission" are not limited to noncitizens who have submitted an immigration application.

The *Jennings* Court's discussion of "applicant for admission" as a term of art made clear that the term "applicant for admission" is not limited to noncitizens who have submitted an immigration application. Rather, there are two criteria to be an applicant for admission: "an alien who [1] 'is present' in this country but [2] 'has not been admitted' is *treated as* 'an applicant for admission.'" *Id.* at 287 (emphasis added, marks added).

The Court commented later in its opinion 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 the reference to "aliens seeking admission" did not add a new "seeking admission" criterion for § 1225. Rather, this reference reflected the Court's prior explanation 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.

Indeed, § 1225 elsewhere recognizes that the *status* of being an applicant for admission is one way that a noncitizen may be "seeking admission." It states, "All aliens . . . who are applicants for admission *or otherwise seeking admission* . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). Section 1225 thus confirms that

a noncitizen can seek admission simply by meeting the definition of an "applicant for admission" *or* can "otherwise" seek admission by directly applying for admission.

3) Section 1225(b) applies to *all* applicants for admission, not just arriving aliens or those who unlawfully entered the country recently.

The *Jennings* Court's discussion of § 1225's scope indicates that "applicants for admission" does not somehow *exclude* those who entered without inspection years ago.

The Court explained that § 1225(b)(1)—which provides for the expedited removal of certain noncitizens—applies to two subcategories of "applicants for admission." One subcategory applies to those arriving noncitizens who have been "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287 (citing § 1225(b)(1)(a)(i)). Another subcategory applies to certain noncitizens who are: (1) designated by the Attorney General in her discretion; (2) unlawfully present without being admitted; and (3) recent arrivals. That is, it applies to those who have "not been admitted or paroled into the United States, and . . . ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the alien has 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." *See Jennings*, 583 U.S. at 287; § 1225(b)(1)(A)(iii). Noncitizens in those two subcategories are subject to "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* applicants for admission who fall outside those narrow two subcategories are covered by the *second* subsection of § 1225(b)—*i.e.*, § 1225(b)(2). It described § 1225(b)(2) as a "*catchall* provision that applies to *all*

'applicants for admission' not covered by" § 1225(b)(1)." 583 U.S. at 287 (emphasis added).

Thus, a noncitizen who meets the general definition of applicant for admission (such as an individual who is unlawfully present and has not been admitted) but does not fall within the two § 1225(b)(1) subcategories described above is still an "applicant for admission" who falls under the "catchall" provision of § 1225(b)(2).

4) In § 1225, Congress did not grant applicants for admission a right to a bond hearing.

The Court in *Jennings* recognized that § 1225 does not provide for a bond hearing. It explained that Congress has provided that aliens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. *Jennings*, 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.

5) Section 1226, in contrast, provides for detention, and bond hearings, for *other* categories of noncitizens subject to removal.

The *Jennings* Court recognized that a different statutory provision—§ 1226(a)—governs the detention of other noncitizens, including those who *had* been "admitted." 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). Thus, § 1226(a) extends to those who were admitted.

The Court did *not* suggest that § 1226(a) governs the detention of noncitizens who are covered by § 1225(b)(2). Rather, the Court appeared to recognize that these *two* provisions—1225(b)(2) and 1226(a)—authorize detention for *different* sets of individuals: the detention of noncitizens covered by § 1225 is authorized by § 1225, and *other* individuals in the country not covered by § 1225 may be detained under § 1226:

> 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).

See 583 U.S. at 289. In distinguishing between these detention authorities, the *Jennings* Court did *not* suggest that noncitizens who are properly covered by § 1225 (where Congress has not authorized bond) should instead governed by the detention authority set forth in § 1226(a)—the provision where Congress *has* expressly authorized bond.

B. Factual and Procedural Background

Petitioner is a native and citizen of China who entered the United States without inspection or admission on or around October 1, 2024. *See* Ex. 1, Decl. of Rund ¶¶ 4–5. He has never been admitted or paroled into the Untied States. *Id.* ¶ 5. Thus, he is being treated as an applicant for admission.

1) Petitioner's immigration history.

On October 1, 2024, U.S. Customs and Border Protection ("CBP") agents encountered Petitioner at or near Tecate, California shortly after he illegally crossed the border into the United States. *Id.* ¶ 5. CBP detained Petitioner and processed him for removal proceedings. *Id.* Petitioner was released the next day on his own recognizance due to a lack of detention space and enrolled in ICE's Alternatives to Detention ("ATD") program. *Id.* ¶ 6. That same day, CBP issued a Notice to Appear, initiating removal

proceedings under 8 U.S.C. § 1229a, charging Petitioner with being inadmissible. *Id.* ¶ 7.

Petitioner has since filed written pleadings with the Executive Office of Immigration Review, admitting the allegations and conceding the removal charge in the Notice to Appear. *Id.* ¶ 10. On February 26, 2025, an Immigration Judge ("IJ") issued an order finding Petitioner removable as charged in the NTA. *Id.* ¶ 11.

2) Petitioner's detention pursuant to 8 U.S.C. § 1225(b)(2).

On June 29, 2025, Petitioner was arrested and detained by ICE pursuant to 8 U.S.C. § 1225(b). *Id.* ¶¶ 12–13. Petitioner had accumulated several violations of the ATD program, and ICE terminated Petitioner's enrollment in that program. *Id.* ¶ 12.

Petitioner has repeatedly sought review of his custody. He filed a motion for custody redetermination before an IJ on August 12, 2025. *Id.* ¶ 14. Petitioner appeared before the IJ on August 13, 2025, for a hearing on that motion but withdrew his request for a bond hearing. *Id.* He appeared again before the IJ on October 10 and 14, 2025, wherein the IJ denied all requested relief and ordered Petitioner removed to China. *Id.* ¶ 15. He filed another motion for a custody redetermination hearing before the IJ on October 28, 2025, which was denied after a hearing on November 5, 2025, when the IJ found that he lacked jurisdiction to grant a bond based on the ruling in *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025).[4] *Id.* ¶ 16; ECF No. 2 at 1–3 (Order of the IJ, Petitioner's Ex. A).

Petitioner is seeking review of his removal order. On November 7, 2025, Petitioner filed an appeal of the IJ's decision in removal proceedings with the Board of Immigration Appeals. *Id.* ¶ 17. Petitioner also filed an appeal of the IJ's decision in bond proceedings

[4] *Matter of Q. Li* is a recent BIA decision that interprets § 1225(b)(2)(A). Quoting *Jennings*, the BIA concluded that § 235(b) applies to "aliens seeking entry into the United States." *Id.* at 69.

with the Board of Immigration Appeals ("BIA"). *Id.* As of the time of this submission, both appeals remain pending before the BIA. *Id.*

3) The Petition and Motion.

On November 22, 2025, Petitioner, through counsel, filed an Application for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and an emergency motion for preliminary injunction.[5] *See generally* ECF Nos. 1 and 3. Petitioner challenges his detention as violating his due process rights under the Fifth Amendment of the United States Constitution and the provisions regarding detention in 8 U.S.C. § 1226(a).[6] ECF No. 1 ¶¶ 19–22. As relief, Petitioner requests that the Court (1) enter an order requiring Respondents to release Petitioner on parole, or, to provide Petitioner with a bond hearing; and (2) issue an injunction enjoining Respondents from denying Petitioner his bond based on *Matter of Q. Li.*[7] ECF No. 1 at 7; ECF No. 3 at 10.

ARGUMENT

A. Petitioner is subject to § 1225(b)(2)(A).

As explained above, § 1225(b)(2) applies to "applicants for admission," which includes noncitizens who entered without inspection and have been present in the country

[5] Petitioner did not serve the Petition and Motion on Respondent until December 17, 2025. ECF No. 9.

[6] Petitioner argues that administrative exhaustion is not required. ECF No. 1 ¶ 12; ECF No. 3 at 6–10. Respondents do not contend here that Petitioner would need to further exhaust his administrative remedies before seeking a judicial remedy in this case.

[7] This is essentially a request for the Court to order Petitioner subject to § 1226, rather than § 1225 as that provision was applied by the BIA in *Matter of Q. Li.* 29 I. & N. Dec. 66, 71 (BIA 2025) ("[W]e conclude that the respondent, an applicant for admission who was arrested without a warrant while arriving in the United States and thereafter placed in removal proceedings, is detained under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), until the conclusion of removal proceedings. She is therefore ineligible for bond.").

for more than two years. Here, Petitioner is present in the country 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. 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." Moreover, § 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."

Petitioner does not argue that he is entitled to be admitted, nor does he explain why he does not fall under the ambit of § 1225(b)(2)(A)—stating only in conclusory terms that he was detained pursuant to § 1226 and that Respondents should not apply *Matter of Q. Li*.[8] *See generally* ECF No. 1. On the other hand, the text, legislative history, and Supreme Court precedent all support Respondents' position. The Court should thus find that Portioner is properly detained under § 1225(b)(2)(A).

i. Petitioner was detained pursuant to § 1225(b).

As an initial matter, Respondents disagree with Petitioner's argument that *Matter of Q. Li* and § 1225 do not apply to him because he "was detained pursuant to an administrative arrest warrant under Section 236 of the INA." ECF No. 1 ¶ 17, at 7. Petitioner was actually detained pursuant to § 1225(b). Ex. 1 ¶¶ 12–13. His own exhibits

[8] The Court should not act as Petitioner's attorney or make his arguments for them. *See United States v. Vontress*, No. 22-3119, 2024 WL 5074634, at *4 (10th Cir. 2024) ("[Plaintiff's] cursory statements, without supporting analysis and case law, fail to constitute the kind of briefing needed for us to address his arguments. We decline to make his arguments for him.") (internal citations omitted); *Mitchell v. City of Moore*, 218 F.3d 1190, 1199 (10th Cir. 2000) (explaining that district courts are not obligated to make a party's argument for them and doing so would result in the Court abandoning its neutrality); *Northington v. Jackson*, 973 F.2d 1518, 1521 (10th Cir. 1992) ("[T]he court should not assume the role of advocate.").

belie the fact that he was arrested "pursuant to an administrative warrant." In the IJ Order that is Exhibit A to the Petition, the IJ notes that "Respondent was arrested and detained *without a warrant* while arriving in the United States." ECF No. 2 at 2 (emphasis added). The exhibit that Petitioner uses to support his contention, Exhibit C, is a Form I-830, which is merely a notification that Petitioner had been transferred from one facility to another. *See* ECF No. 2 at 9. In sum, Petitioner's argument—that he should be treated as detained under § 1226 on the ground that he was "detained pursuant to an administrative arrest warrant under Section 236 of the INA"—should be rejected because it is not supported by the record.

ii. The text of the statute supports detention without bond under § 1225.

The text of § 1225. As the *Jennings* Court explained, § 1225 applies to "applicants for admission," a term of art encompassing *both* those just arriving in the United States *and* those who entered without inspection. 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, § 1225(b)(1)(A)(i) also applies, through its reference to § 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).

Moreover, § 1225 includes a catchall, subsection (b)(2), which is broader than

§ 1225(b)(1). As explained above, the Supreme Court expressly recognized that § 1225(b)(2), which refers to a "broader" category of noncitizens than those described in § 1225(b)(1), 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).

Nor is the statute limited to only those *actively* taking steps to gain admission. 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").

In any event, other parts of § 1225 confirm that *anyone* falling within the category of "applicant for admission" is deemed, as a matter of law, to be seeking admission. *See* 8 U.S.C. § 1225(a)(3) ("All aliens . . . who are applicants for admission or *otherwise seeking admission* . . . shall be inspected by immigration officers." (emphasis added)); *id.* § 1225(a)(5) ("An applicant for admission may be required to state. . . the purposes and intentions of the applicant *in seeking admission*. . . ." (emphasis added)).

And, as explained above, the Jennings Court defined "applicant for admission," and imposed no additional requirement that the person has filed an application. In short, the Court in *Jennings* confirmed that all noncitizens who are "applicants for admission" are "seeking admission" by virtue of that status.

The text of § 1226. Petitioner summarily states that he is detained under § 1226(a) while providing no legal argument or authority to support this conclusion. *See generally* ECF No. 1. Petitioner's conclusion 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 without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. It requires DHS to detain such noncitizens after their release from criminal custody. *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). But the fact that

§ 1226(c)(1)(E) provides rules for detention for noncitizens who entered without inspection and then had criminal-related conduct does not negate § 1225(b)(2)(A)'s application to other 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 mandated their detention in two separate provisions: § 1225(b)(2)(A) (based on entry without inspection) and § 1226(c)(1)(E) (based on criminal-related conduct). But any potential redundancy in requiring mandatory detention for those noncitizens 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, Congress intended, without ever saying so, to displace the authority in § 1225(b)(2)(A) to detain other applicants for admission.

iii. The legislative history supports Respondents' position.

Before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

("IIRIRA") 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 such noncitizens be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, noncitizens 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 be eligible for 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.*, all noncitizens arriving or present in the country who had not been lawfully admitted. The House Judiciary Committee Report confirms this intent, stating that the IIRIRA was

> intended to replace certain aspects of the current "entry doctrine," under which illegal aliens who have entered . . . 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)).

Respondents' position is thus in line with the IIRIRA. 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).

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

Petitioner summarily alleges that his detention without a bond hearing violates his due process rights under the Fifth Amendment of the United States Constitution. ECF No. 1 ¶ 19–20. The Court should reject this argument because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), as set forth above, and he has received the process that is required by statute.

First, to show that he has been denied due process, Petitioner would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important rule" that for "foreigners who have never been . . . admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*,

591 U.S. 103, 138 (2020). There, the Court explained that an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* at 140.

Second, Petitioner has not shown any prejudice. He has not shown that he is being denied the ability to challenge in his immigration proceedings the determination that § 1225(b)(2)(A) applies. He thus has not shown a violation of procedural due process. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (rejecting due process claim where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision).

Third, Petitioner's detention has been sufficiently short such that it is presumptively constitutional. He has been detained for 183 days as of the date of this submission. In a different immigration context—noncitizens already ordered removed and indefinitely awaiting their removal—the Supreme Court has explained that detention of up to six months is presumptively constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *see also Demore v. Kim*, 538 U.S. 510, 513 (2003) (ruling that certain criminal noncitizens may be detained during the entire course of their removal proceedings).

The same is true here. Petitioner's removal proceedings are moving toward a definite endpoint. *See* Ex. 1 ¶¶ 14–17. Congress's decision to detain him pending removal is a "constitutionally permissible part of th[is] process." *See Demore*, 538 U.S. at 531.

B. Petitioner is not entitled to a preliminary injunction.

In his Motion, Petitioner seeks emergency preliminary injunctive relief. *See generally* ECF No. 3. Under 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. He 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 three days and enjoin Respondents from denying his bond based on *Matter of Q. Li*—a request that mandates action. Thus, Petitioner must make a strong showing on both the likelihood-of-success and balance-of-harms factors.

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

Petitioner requests either immediate release or, in the alternative, a bond hearing. 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.

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.

2) Petitioner has not established irreparable harm.

Petitioner has not identified specific circumstances showing why his continued detention will cause harm that is irreparable; he identifies only vague and generic "emotional stress" and "physical struggles" caused by detention. *See* ECF No. 3 at 3–5. 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).

3) 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 assumes that the only harm that Respondents would face is the administrative cost associated with bond hearings, and financial concerns cannot be more harmful than "human suffering." ECF No. 3 at 5–6. But 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.[9]

CONCLUSION

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

Dated: December 29, 2025.

Respectfully submitted,

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[9] 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.

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record.

s/ *Winnie D. Wu*