UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-cv-25586-RAR

URSULO MAURICIO LAINEZ BRICENO,

Petitioner,

v.

E.K. CARLTON, in official capacity, Warden, Federal Detention Center, Miami; GARRET RIPA, in official capacity, Field Office Director of Enforcement and Removal Operations, ICE's Miami Field Office; KRISTI NOEM, in official capacity, Secretary, U.S. Department of Homeland Security; TODD M. LYONS, in official capacity, Acting Director of ICE; PAMELA BONDI, in official capacity, U.S. Attorney General.

Respondents.

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RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND RETURN TO PETITIONER'S HABEAS PETITION WITH INCORPORATED MEMORANDUM OF LAW

Respondents[1], by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause [ECF No. 7] and Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction [ECF No. 4]. As set forth fully below, as the Petitioner is properly detained pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2)(A), the Court should deny

[1] Garret Ripa, Kristi Noem, Todd M. Lyons, and Pamela Bondi are not proper defendants and should be dismissed from this action. A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Miami Federal Detention Center ("FDC Miami"), an administrative security federal detention center in Miami, FL. His immediate custodian is E.K. Carlton, Warden of FDC Miami. Accordingly, the only proper Respondent in the instant case is Mr. Carlton in his official capacity, as named.

the Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 [ECF No. 1] ("Petition"), deny the Motion for a Temporary Restraining Order [ECF No. 4] ("Motion"), and dismiss the case.

I. BACKGROUND

Petitioner, Ursulo Mauricio Lainez Briceno, is a native and citizen of Honduras who entered the United States illegally on or about August 1, 2019, without inspection by an immigration officer. Exh. A, 2019 I-213. Petitioner was encountered by Customs and Border Protection (CBP) officers and processed for expedited removal, as Petitioner did not claim to fear persecution or torture if returned to his home country.[2] Exh. A, 2019 I-213; Exh. B, Form I-860, Notice and Order of Expedited Removal; Exh. C, Form I-296, Notice to Alien Ordered Removed/Departure Verification. On or about August 5, 2019, Petitioner was taken into ICE custody. Exh. D, Declaration.

Petitioner subsequently claimed fear of returning to Honduras, and on or about September 4, 2019, United States Citizenship and Immigration Services (USCIS) determined that Petitioner had a credible fear of torture and issued a Notice to Appear (NTA) placing Petitioner in removal proceedings. Exh. D, Declaration; Exh. E, NTA (2019 NTA). In the NTA, Petitioner was charged with inadmissibility under INA §§ 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General; and under 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act (INA), and a valid unexpired passport, or other suitable travel document, or

[2] Petitioner was apprehended within fourteen days of his last entry into the United States and within 100 air miles from the United States/Mexico international boundary. Exh. A, 2019 I-2013.

document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. Exh. E, 2019 NTA.

Petitioner appeared for hearings before an Immigration Judge on October 21, 2019, November 4, 2019, and November 27, 2019. Exh. D, Declaration. Petitioner requested a custody redetermination, and on December 23, 2019, an Immigration Judge ordered Petitioner released from custody under a $5,000.00 bond.[3] Exh. F, Order of the Immigration Judge, December 23, 2019. On or about December 26, 2019, Petitioner was released from ICE custody upon posting a $5,000.00 bond. Exh. G, Form I-830, Notice to EOIR: Alien Address, dated December 26, 2019. On October 5, 2023, an Immigration Judge granted the Department of Homeland Security's motion for discretionary dismissal of proceedings without prejudice. [ECF No. 1-6]. On January 8, 2024, ICE cancelled Petitioner's bond. Exh. H, Notice – Immigration Bond Cancelled.

Almost two years later, on August 14, 2025, Petitioner was encountered by CBP agents following a vehicle stop conducted by the Camden County Sheriff Office in Georgia. Exh. I, Form I-213, Record of Deportable Inadmissible Alien, dated August 14, 2025 (2025 I-213). After determining that he was in the United States illegally, CBP arrested Petitioner and transported him to the Jacksonville Border Patrol Station for processing. Exh. I, 2025 I-213. On August 14, 2025, CBP issued an NTA (2025 NTA) placing Petitioner in removal proceedings, charging him with inadmissibility under INA § 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as

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[3]At the time of Petitioner's removal proceedings, application of the decision of the Board of Immigration Appeals (Board) in *Matter of M-S-*, 27 I&N Dec. 509 (AG 2019), had been enjoined by *Padilla v. U.S. Immigr. & Customs Enf't*, 387 F. Supp. 3d 1219 (W.D. Wash. 2019). On July 29, 2022, the district court issued an order vacating the preliminary injunction following an order of the Ninth Circuit Court of Appeals in *Padilla v. Immigr. & Customs Enf't*, 41 F.4th 1194, 1195 (9th Cir. 2022). *Padilla v. Immigr. & Customs Enf't*, 2022 WL 22248517, No. 18-928 (W.D. Wash. July 29, 2022).

designated by the Attorney General; and under § 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act (INA), and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. [ECF No. 1-7]. On or about August 18, 2025, Petitioner was taken into ICE custody. Exh. D, Declaration.

At a master calendar hearing on September 23, 2025, Petitioner appeared before an Immigration Judge and elected to proceed *pro se.* Exh. D, Declaration. The Petitioner admitted the charges in the 2025 NTA and the Immigration Judge sustained the charges in the 2025 NTA. Exh. D, Declaration. At a master calendar hearing on October 15, 2025, Petitioner was granted additional time to submit documentation. Exh. D, Declaration. At his third master calendar hearing on November 10, 2025, Petitioner, through counsel, requested additional preparation time. Exh. D, Declaration. At his fourth master calendar hearing on December 10, 2025, Petitioner, through counsel, again requested and was granted additional preparation time. Exh. D, Declaration. His next master calendar hearing is scheduled for January 12, 2026. Exh. D, Declaration. Petitioner remains in ICE custody at the Federal Detention Center in Miami, Florida while proceedings are pending, pursuant to INA §235(b)(2)(A). Exh. D, Declaration.

In the Petition and Motion for Temporary Restraining Order and Preliminary Injunction ("Motion"), Petitioner maintains that he is detained pursuant to 8 U.S.C. § 1226(a) and, as a result, he is entitled to a bond hearing. [ECF No. 1 at ¶¶ 76-91; ECF No. 4 at 1]. Petitioner asks this Court to release him and prohibit his re-detention unless the government provides notice and a hearing or order that Respondents provide Petitioner with a bond hearing. Petitioner also seeks an order

from the Court directing Respondents not to transfer Petitioner outside the jurisdiction. *Id.* The Court should decline to grant the relief Petitioner seeks.

II. ARGUMENT

A. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.[4]

Under the plain language of § 1225(b)(2), the Government is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

1. The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien

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[4] Respondents recognize that courts in this District have rejected similar arguments in granting habeas petitions seeking bond hearings. *See, e.g., Perez v. Parra*, Case No. 25-cv-24820 (S.D. Fla.). Nonetheless, Respondents maintain and preserve these arguments for the record in this case. However, in these cases, the courts deciding the habeas petitions have not granted release. Notably, other district courts have agreed with Respondents' position. *See, e.g., Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

In turn, § 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception based upon the duration of the alien's presence in the country or where in the country the alien is located. Therefore, the statute's plain text mandates that the Government detain all "applicants for admission" who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He was "present in the United States," and he has "not been admitted." 8 U.S.C. § 1225(a). Therefore, § 1225(b)(2) mandates Petitioner "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

2. Applicants for Admission under § 1225(b)(2) are seeking to be legally admitted into the United States.

As explained above, Petitioner is an "applicant[] for admission" under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to withdraw their application for admission and depart immediately from the United States, is "seeking admission," i.e., seeking legal authority to remain in the United States.

a. The "seeking admission" clause does not negate or otherwise limit the statutorily defined term "applicant for admission".

Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining 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) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission"—no additional affirmative step is necessary. In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue voluntary withdrawal of the application for admission or voluntary departure.

For example, § 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).5 No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). Accordingly, § 1225(b)

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[5] As § 1225 shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C).

unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

b. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.

As explained above, an "applicant for admission" is "seeking admission" under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that "is not a license to rewrite" § 1225 "contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance" especially when "the arguably redundant words that the drafters employed … are functional synonyms" (alterations accepted and emphasis in original)).

"The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). "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*, 590 U.S. at 239. "[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* Thus, as the Supreme Court explained in *Barton*, "[s]ometimes the better overall reading of a statute contains some redundancy." *Id.*

Moreover, "the surplusage canon … must be applied with statutory context in mind" and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208,

110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

3. Section 1226 Does Not Support Petitioner's Argument.

Petitioner's reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner's detention is controlled by § 1225(b)(2), not § 1226.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While, as explained below, there is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundance because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed "applicants for admission" subject to § 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable, like those who overstay a visa or lawful permanent residents who engage in conduct that renders them removable.6 Thus, section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). Accordingly, § 1226(a) does not control Petitioner's detention.

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6 The detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioner has not committed one of the specified offenses and has not engaged in terrorism-related actions. Accordingly, he is not detained under § 1226(c).

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), which amended portions of § 1226(c). While that amendment adds some overlap between aliens subject to detention under § 1225(b)(2) and § 1226(c), that overlap does not apply to Petitioner, and as explained below, it does not create a redundancy as the amendment does independent work.

The Laken Riley Act provides for mandatory detention for an alien who is "present … without being admitted or paroled"—i.e., is inadmissible under §1182(a)(6)(A)—and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing" one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory detention under § 1225(b)(2). There is no redundancy, however, because the two statutes provide for different forms of release.

4. The Government's Reading Comports with Congressional Intent.

Before 1996, federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the IIRIRA specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly,

the Government's reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099. Accordingly, the INA's prior framework, which distinguished between aliens based on physical "entry," had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("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").

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would … create the very [thing] that Congress designed the Act to avoid").

The Government's reading, on the other hand, is true to Congress's intent and should be adopted.

5. The Government's Reading Accords with *Jennings*.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that § "1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

6. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practice

Any argument that prior agency practice applied § 1226(a) is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

B. Petitioner's Challenge to his "Re-Detention" should be Rejected.

Petitioner argues that where a previous bond determination was made, "redetention is not permitted without demonstrating to a neutral arbiter that there has been a material change in circumstance." [ECF No. 4 at 15-16]. Petitioner principally relies on *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981) and non-binding cases from the Ninth Circuit for this proposition. *Id.* at 14-15, 16, fn. 3. *Matter of Sugay* is not binding on this Court and is factually distinguishable from this case. The primary issue in *Matter of Sugay* was whether the INS District Director had the authority to increase the amount of bond after an immigration judge had lowered bond following a redetermination hearing. *Matter of Sugay*, 17 I&N Dec. at 637-38. By contrast, in this case, Petitioner was released on bond and the bond was subsequently cancelled upon satisfaction; Petitioner was no longer out of custody on the Immigration Judge's bond order. Additionally, in *Matter of Sugay*, the BIA found "without merit counsel's argument that the District Director was without authority to revoke a bond once an alien has a bond redetermination hearing. 8 C.F.R. 242.2(c) clearly states, that "[w]hen an alien, who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the District Director . . ., in which event the alien may be taken into physical custody and detained." *Id.* at 639. To that end, even if Petitioner's bond had not been satisfied and cancelled, section 236(b) of the INA authorizes DHS to "at any time . . . revoke a bond or parole authorized under [1226(a)], rearrest the alien under the original warrant, and detain the alien." *See also* 8 C.F.R. § 1236.1(c)(9).

Further, in April 2019, *Matter of M-S-*, 27 I & N 509 (AG 2019), was decided. There, the Attorney General found that aliens that have a credible fear "shall be detained for further consideration of the application for asylum" (internal quotation marks and citations omitted)). *Matter of M-S-*, 27 I & N Dec. 509, 511 (A.G. 2019). When Petitioner was detained in 2019, he was found to have a credible fear and therefore, was subject to mandatory detention for

consideration of his asylum application under *Matter of M-S-*. However, he was then released on bond in December 2019 when *Matter of M-S-* was enjoined. *Padilla v. U.S. Immigr. & Customs Enf't*, 387 F. Supp. 3d 1219 (W.D. Wash. 2019). Subsequently, on July 29, 2022, the district court issued an order vacating the preliminary injunction following an order of the Ninth Circuit Court of Appeals in *Padilla v. Immigr. & Customs Enf't,* 41 F.4th 1194, 1195 (9th Cir. 2022). *Padilla v. Immigr. & Customs Enf't*, 2022 WL 22248517, No. 18-928 (W.D. Wash. July 29, 2022).

Accordingly, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(A). At present, he has been detained for four (4) months, he admitted the charges of removability against him in the 2025 NTA, and an immigration judge has sustained those charges.

C. Petitioner is not Entitled to a Preliminary Injunction

Temporary restraining orders and preliminary injunctions are "extraordinary and drastic" remedies. *See Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1231 (*quoting United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir. 1983)); *see also Siegel v. Lepore*, 234 F.3d 1163, 1176 (11th Cir. 2000). A party seeking a temporary restraining order or preliminary injunction must establish four elements: (1) a substantial likelihood of success on the merits; (2) irreparable injury that will be suffered unless an injunction issues; (3) that the threatened injury to the movant outweighs the threatened harm an injunction may cause the opponent and (4) that an injunction will not be adverse to the public interest. *Siegel*, 234 F.3d at 1176. A court should not grant the relief unless the movant clearly establishes his burden of persuasion as to all four elements. *Id.*

1. Petitioner cannot Show Substantial Likelihood of Success on the Merits.

While Petitioner styles his Motion as a request for temporary restraining order by seeking the "return to the status quo ante which would be to restore the Petitioner's freedom … granted to him by the government almost six years ago" [ECF No. 4 at 14], in actuality, he asks the Court to

"(1) release him immediately and (2) refrain from re-detaining him unless and until [the government] can prove by clear and convincing evidence to a neutral arbiter that he is a danger or flight risk." [ECF No. 4 at 13]. Finally, Petitioner seeks "an order prohibiting relocation outside of the Southern District of Florida pending final resolution of this litigation." *Id.* at 13. Accordingly, the relief Plaintiff seeks is a mandatory injunction. Therefore, Plaintiff's burden is even higher.

A typical preliminary injunction is prohibitive in nature and seeks simply to maintain the *status quo* pending a resolution of the merits of the case. *See Mercedes–Benz U.S. Int'l, Inc. v. Cobasys, LLC*, 605 F.Supp.2d 1189, 1196 (N.D. Ala. 2009). When a preliminary injunction is sought to force another party to act, rather than simply to maintain the *status quo*, it becomes a "mandatory or affirmative injunction" and the burden on the moving party increases. *Exhibitors Poster Exch. v. Nat'l Screen Serv. Corp.*, 441 F.2d 560, 561 (5th Cir.1971). A mandatory injunction "should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party." *Id; see also Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir.1976) ("Mandatory preliminary relief, which goes well beyond simply maintaining the *status quo*, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party.). Accordingly, a plaintiff seeking such relief bears a heightened burden of demonstrating entitlement to preliminary injunctive relief. *See Verizon Wireless Pers. Commc'n LP v. City of Jacksonville, Fla.*, 670 F.Supp.2d 1330, 1346 (M.D.Fla.2009) (quotation and citation omitted); *Mercedes–Benz*, 605 F.Supp.2d at 1196; *OM Group, Inc. v. Mooney*, 2006 WL 68791, at *8–9 (M.D. Fla. Jan. 11, 2006). Plaintiff cannot meet his burden of showing entitlement to a temporary restraining order or a preliminary injunction. Nor can he meet his even higher burden of showing a clear entitlement under the facts and the law to a mandatory injunction.

Here, as set forth above, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Petitioner has not established that he cannot be detained, and in fact, he has now admitted the charges in the 2025 NTA and the immigration judge has sustained those charges.

The Court should also decline to enjoin Respondents from transferring Petitioner outside of the Southern District of Florida. [ECF No. 4 at 14]. The Court lacks jurisdiction under § 1252(a)(2)(B)(ii) to enjoin Respondents from transferring Petitioner to another district. § 1252(a)(2)(B) states that "no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General" § 1252(a)(2)(B)(ii). Specifically, 8 U.S.C. § 1231(g)(1) falls within the subchapter and states the "Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). *See Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) ("§ 1252(a)(2)(B)(ii) provides that no court has jurisdiction to review any decision or action the Attorney General has discretion to make 'under this subchapter' except for 'the granting of relief under section 1158(a).' 'This subchapter,' which is subchapter II of Chapter 12 of Title 8, covers §§ 1151-1378, including § 1231."). "[T]he place of detention is left to the discretion of the Attorney General." *Kapiamba v. Gonzalez*, No. 07-CV-335, 2007 WL 3346747, 2007 U.S. Dist. LEXIS 82767, *2-3 (W.D. Mich., Nov. 7, 2008) (citing, *Sinclair v. Attorney General of the United States*, 198 Fed. Appx. 218, 222 n. 3 (3rd Cir. 2006) (listing cases). *See also, Marogi v. Jenifer*, 126 F. Supp. 2d 1056, 1066 (E.D. Mich. 2000) ("Congress has placed the responsibility for determining where aliens are to be detained within the sound discretion of the Attorney General").

Similarly, the Court does not have jurisdiction under § 1252(g) to stay a transfer to another detention center when the transfer is undertaken to facilitate a removal. § 1252(g) explicitly states

that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g). *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' Section 1252(g) bars review over 'any' challenge to the execution of a removal order— and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders.").

For these reasons, Petitioner is unlikely to succeed on the merits.

2. Petitioner has Not Established Irreparable Harm.

Petitioner also fails to demonstrate irreparable harm. Preliminary injunctive relief requires showing "imminent" irreparable harm. *Wreal, LLC v. Amazon.com*, 840 F.3d 1244, 1248 (11th Cir. 2016) (quotations and citations omitted). "Indeed, the very idea of a preliminary injunction is premised on the need for speedy and urgent action to protect a plaintiff's rights before a case can be resolved on the merits. *Id.* (citations omitted). The Eleventh Circuit has recognized that "[a] delay in seeking preliminary injunctive relief of even only a few months -- though not necessarily fatal – militates against a finding of irreparable harm." *Id.* (citations omitted); *see also Pals Group, Inc. v. Quiskeya Trading Corp.*, 2017 WL 532299, at *6 (S.D. Fla. Feb. 9, 2017) ("Courts (both in and outside the Eleventh Circuit) have held that unexplained delays of a few months negate any claim of irreparable harm on a preliminary injunction motion"). "Delay, or too much of it indicates that a suit or request for injunctive relief is more about gaining an advantage (either a commercial or litigation advantage) than protecting a party from irreparable harm." *Vialle Group, B.V. v. Green Wing Group, Inc.*, 2016 WL 8678888, at *2 (S.D. Fla. Oct. 26, 2016) (citation omitted).

Here, Petitioner was detained on August 14, 2025. However, the Petition was not filed until December 2025, over three months later. The Petition was characterized as an emergency but does not allege that Petitioner is in immediate danger or presents any emergency. In short, Plaintiff's claims of irreparable harm are categorized as daily suffering from unlawful confinement.[7] [ECF No. 4 at 35]. Petitioner's additional claim that his detention impedes his ability to prepare his asylum case does not rise to the level of irreparable harm. *Id.* Notably, Plaintiff initially filed his asylum application nearly six years ago. Thus, in addition to the timing of the filings, their substance undercuts Petitioner's claim of irreparable harm.

3. The Threatened Injury does not Outweigh the Harm an Injunction Would Cause

The Petition should be denied because Petitioner is legally detained pursuant to 8 U.S.C. § 1225(b)(2)(A) as explained above. Therefore, the threatened injury (legally mandated detention pending removal proceedings) does not overcome the harm granting such injunction would cause. All the more, Petitioner has admitted the charges in the 2025 NTA and an immigration judge has sustained those charges. To be sure, Petitioner is detained to assure his attendance at removal proceedings, and if necessary, by operation of law, his removal from the United States. As such, Petitioner has not identified a legal infirmity to his detention, and the threatened injury to the movant is undercut by the threatened harm such an injunction would cause to disrupt this legal

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[7] To the extent Petitioner challenges conditions of confinement, a habeas corpus petition is not the proper mechanism. The "sole function of habeas corpus is to provide relief from [u]nlawful imprisonment or custody, and it cannot be used for any other purpose." *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979). The Supreme Court has explained that "[c]hallenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus"; however, relief from which is sought based upon the "circumstances of confinement" is available through a civil rights action. *Muhammad v. Close*, 540 U.S. 749, 750 (2004).; *see also Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (a "§ 2241 petition is not the appropriate vehicle for raising an inadequate medical care claim, as such a claim challenges the conditions of confinement, not the fact or duration of that confinement"). The appropriate relief from the conditions of confinement that violate the Constitution is to require the discontinuance or correction of any improper practices, it does not include release from confinement. *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990).

process.

4. The Public Interest is Not Served by Granting Injunctive Relief and the Balance of Equities Tip in Respondents' Favor

Last, the Court should not enjoin Respondents because the public interest and balancing of the equities weigh against granting injunctive relief. A TRO would interfere with Respondents' statutory ability to enforce the immigration laws, which is in the public interest. *See, e.g., Garcia v. Martin*, 379 F. Supp. 3d 1301, 1308 (S.D. Fla. Nov. 18, 2018) (denying a preliminary injunction requesting a stay of removal because an execution of a removal order "is commensurate with the public's interest in enforcing federal law."). "There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (alterations in original); *see Landon v. Plasencia*, 459 U.S. 21, 34 (1982) ("The Government's interest in efficient administration of the immigration laws . . . is weighty."). The government's interests in maintaining the existing removal procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

CONCLUSION

Accordingly, the Court should deny Petitioner's Petition for release and bond hearing, and Motion for Temporary Restraining Order.

Respectfully submitted,

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