IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-3961-GPG

ALMA ROSA RODRIGUEZ RODRIGUEZ,

Petitioner,

v.

JUAN BALTASAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity;
ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity; and
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents.

CONSOLIDATED RESPONSE TO PETITIONER'S VERIFIED PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION (ECF No. 7)

Respondents submit this Response to Petitioner's Verified Petition for Writ of Habeas Corpus (ECF No. 1, the Petition) and Motion for Temporary Restraining Order and/or Preliminary Injunction (ECF No. 7, the Motion). As explained below, the Court should deny the Petition and the Motion because Petitioner's detention is authorized by statute, and her other challenges to her detention are unavailing.

INTRODUCTION

This case involves a question of statutory interpretation. The Department of Homeland Security (DHS) is detaining Petitioner under a statutory provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(A), that applies to noncitizens[1] 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 she is not an applicant for admission subject to § 1225(b)(2)(A) but is instead subject to 8 U.S.C. § 1226(a), another provision that also authorizes detention of certain noncitizens while removal proceedings are pending. *See* ECF No. 1 at 5, 15-16. The practical difference between the two sections is that Congress has provided that noncitizens detained under § 1225(b)(2)(A) are ordinarily *not* eligible for bond hearings, while those detained under § 1226(a) are. Based on the premise that her detention is governed by § 1226(a) (and thus entitles her to a bond hearing), she requests a bond hearing in seven days, or immediate release. ECF No. 1 at 20.

The Court should find 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).

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[1] 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).

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 for relief, because she is subject to 8 U.S.C. § 1225(b)(2)(A) and thus does not have, as she claims, a right to a bond hearing.

Petitioner additionally contends that she is a member of a class recently certified in *Maldonado Bautista v. Noem, et al.*, No. 25-cv-01873-SSS-BFM, __ F.Supp.3d__, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). ECF No. 1 at 19-20. Petitioner argues that the district court in *Maldonado Bautista* granted declaratory relief (bond hearings) to that nationwide class, and thus, the Court should additionally grant her requested relief based on that decision. *Id.* But this Court should not give preclusive effect to the *Maldonado Bautista* court order.

BACKGROUND

I. Legal background

In the INA, Congress established rules governing when certain noncitizens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of 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. The key points from *Jennings* are set forth below:

1. Section 1225 applies to "applicants for admission," a term of art that includes aliens who are unlawfully present but were never admitted. Section 1225 provides in relevant part, "An alien present in the United States who has not been admitted ... shall be *deemed* for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). The *Jennings* Court explained 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 this country but has not been "admitted" through a lawful entry at a port of entry.[2] *Id.*

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 Court's discussion of "applicant for

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[2] 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).

admission" as a term of art made clear that the term "applicant for admission" is not limited to noncitizens who have submitted some type of immigration application. Rather, as the Court explained, 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 Court's reference to "aliens seeking admission" did not add a new "seeking admission" criterion that must exist for a noncitizen to fall within § 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, Section 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 directing applying for admission.

3. Section 1225(b) applies to *all* applicants for admission, not just arriving aliens or those who unlawfully entered the United States recently. The Court's discussion of § 1225's scope indicates that "applicants for admission" does not somehow *exclude* individuals who entered the United States years ago.

The Court explained that the *first* subsection of § 1225(b)—§ 1225(b)(1)—applies to two subcategories of applicants for admission. One subcategory applies to certain arriving noncitizens: those who have been "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." 583 U.S. at 287 (citing § 1225(1)(2)(a)(i). Another subcategory applies to certain noncitizens who are unlawfully present without being admitted, and also are recent arrivals—those who are designated by the Attorney General in her discretion, if the individual "has not been admitted or paroled into the United States, and … has 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* 583 U.S. at 287; § 1225(b)(A)(iii). Noncitizens in those two subcategories are subject to a process known as "expedited removal." 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 in § 1225(b)(1) 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 a bond hearing for noncitizens detained under that provision. It explained that Congress has provided that aliens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a.

5. Section 1226, in contrast, provides for detention, and bond hearings, for *other* categories of noncitizens subject to removal. The Court in *Jennings* recognized that a different statutory provision—§ 1226(a)— governed 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 she or she falls 'within one or more . . . classes of deportable aliens.' § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses *since admission*. See §§ 1227(a)(1), (2).

583 U.S. at 288 (emphasis added). In other words, § 1226(a) extends to noncitizens 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 that *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.

II. Factual background

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

Petitioner is a native and citizen of Mexico who entered the United States in January 2001. Ex. 1 at ¶¶ 4-5 (Declaration of S. Blea). She has never been admitted or paroled into the United States. *Id.* at ¶¶ 6.

On October 1, 2025 U.S. Immigration and Customs Enforcement ("ICE") encountered Petitioner and determined that she did not possess valid immigration

documentation authorizing her to be in the United States. [3] *Id.* ¶ 7. ICE detained Petitioner pursuant to 8 U.S.C. § 1225(b). *Id.* at ¶ 8. The same day, ICE issued a Notice to Appear, however the Executive Office for Immigration Review (EOIR) erred and entered a "failure to prosecute" code in the immigration court system. *Id.* at ¶ 9. On October 9, 2025, the error was discovered and ICE re-issued the Notice to Appear, initiating removal proceedings under 8 U.S.C. § 1229a and charging Petitioner with being inadmissible to the United States as a noncitizen present without being admitted or paroled. *Id.* at ¶ 10.

On October 28, 2025, Petitioner appeared for her initial appearance before the Immigration Judge ("IJ"). *Id.* at ¶ 11.

On November 21, 2025, Petitioner filed a Form I-360 Petition, which remains pending with U.S. Citizenship and Immigration Services (USCIS). *Id.* at ¶ 12.

On December 9, 2025, Petitioner appeared before the IJ for a master calendar hearing. *Id.* at ¶ 13. She conceded the removal charge, and the IJ advised Petitioner to file all application(s) for relief from removal. *Id.* That same day, the IJ also held a custody redetermination hearing. *Id.* The IJ determined that the immigration court lacked jurisdiction to release Petitioner on bond. *Id.*

Petitioner's next hearing in removal proceedings is scheduled for January 15, 2026. *Id.* at ¶ 14.

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[3] Petitioner possessed a counterfeit lawful permanent residency status card. Ex. 1 at ¶ 7.

Procedural background

On December 10, 2025, Petitioner filed the Petition, which argues that she is not subject to § 1225 (which provides for mandatory detention) and that she is instead subject to § 1226 (which provides for the possibility of release on bond). *See generally* ECF No. 1. She challenges her detention as violating (1) the provisions regarding detention in § 1226(a); (2) the regulations implementing § 1226; (3) the Administrative Procedure Act (APA) insofar as she is detained under § 1225; (4) due process; and (5) a court order from a class action pending in the Central District of California, which she contends afforded nationwide declaratory relief to a certified class of which she is a member. ECF No. 1. She seeks a bond hearing within seven days or immediate release, and an order enjoining Respondents from transferring her outside of the District of Colorado. *Id.* at 19 (prayer for relief).

In her Motion, she reiterates her requests for release or a bond hearing within seven days and for a Temporary Restraining Order (TRO) preventing her transfer outside the District of Colorado or the United States, and asks that the requested relief be granted on an interim basis. ECF No. 7. The Court ordered Respondents to respond to the Motion and the Petition and partially granted Petitioner's request for a TRO, ordering Respondents not to transfer Petitioner without further leave of court. ECF No. 11.

ARGUMENT

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

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

present in the United States for more than two years. And Section 1225(b)(2)(A) mandates detention for a noncitizen "who is an applicant for admission" if they are "not clearly and beyond a doubt entitled to be admitted." The statute defines "[a]pplicant for admission" to include noncitizens who (1) are "present in the United States who ha[ve] not been admitted" or (2) "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). In other words, a noncitizen who is present in the United States but has not been inspected or admitted is treated as an applicant for admission.

The Supreme Court's explanation in *Jennings* of the scope of § 1225 shows that a noncitizen in Petitioner's position is treated as an "applicant for admission" and is subject to § 1225(b)(2). Petitioner is present in the United States but has not been "admitted"—*i.e.*, she has not made a "lawful entry. . . after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); Ex. 1 ¶¶ 6-7. She does not argue that she is clearly and beyond a doubt entitled to be admitted. As a result, her detention without bond is authorized by § 1225(b)(2)(A).

Petitioner resists this reading of § 1225(b)(2)(A). She makes three arguments about why this section should not apply to her: arguments from other text of the INA, the INA's legislative history, and the Government's past practice. She also relies on numerous nonprecedential opinions that have determined that noncitizens like her are not applicants for admission. None of these arguments are persuasive.

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

The text of § 1225. Petitioner argues that § 1225 should be construed as limited to just those newly arriving in the United States. Specifically, she argues that § 1225(b)(2)(A) should be read in a limited way to apply to just those noncitizens who are arriving (whether or not at a designated port of arrival). ECF No. 1 at 5.

But that reading of § 1225(b)(2)(A)—that it extends only to *new* arrivals—does not comport with the text of § 1225, or make sense in the context of the whole section. Rather, as the Court in *Jennings* explained, § 1225 applies to "applicants for admission," who include *both* those just arriving in the United States *and* those who entered without inspection and have been residing here. For example, § 1225(b)(1)(A)(i) is not limited to noncitizens "arriving in the United States" who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, Section 1225(b)(1)(A)(i) also applies, through its reference to Section 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have "not been admitted or paroled" and have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Petitioner's argument also disregards that § 1225(b)(2) is a catchall that is broader than § 1225(b)(1). Section 1225(b)(2) is titled "Inspection of other aliens." The "other aliens" in the title refers to a category of noncitizens that is not covered by § 1225(b)(1). As explained above, the Supreme Court expressly recognized that § 1225(b)(2), 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).

Petitioner points to the phrase "seeking admission" in § 1225(b)(2)(A) to argue that this section should be interpreted to be limited to noncitizens who are *actively* taking some step to gain admission to the United States. ECF No. 1 at 6. But as explained above, the Court in *Jennings* defined who is treated as an "applicant for admission," and imposed no additional requirement that the person has filed an application.

Nor does the statute suggest otherwise. Section 1225(b)(1) contains no "seeking admission" language. Its detention provision applies, in the Attorney General's discretion, even to some noncitizens who are not "arriving" at the time of their inspection by an immigration officer. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (applying to an "alien . . . who is arriving in the United States *or* is described in clause (iii)" (emphasis added)); *id.* § 1226(b)(1)(A)(iii) (describing a noncitizen "who has not affirmatively shown" that they have "been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility").

Other parts of § 1225 confirm that *anyone* falling within the category of "applicants for admission" is deemed, as a matter of law, to be seeking admission. *See* 8 U.S.C.

§ 1225(a)(3) ("All aliens . . . who are applicants for admission or *otherwise seeking admission* . . . shall be inspected by immigration officers." (emphasis added)); *id.* § 1225(a)(5) ("An applicant for admission may be required to state. . . the purposes and intentions of the applicant *in seeking admission*. . . ." (emphasis added)).

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

The text of § 1226. Petitioner next argues that § 1225(b)(2)(A) does not apply to her because the catchall provision, § 1226(a), should. First, she urges that § 1226(a) is the "default" rule that should apply to all noncitizens "pending a decision on whether the [noncitizen] is to be removed." ECF No. 1 at 14 (citations omitted). As support, she argues that "the plain language of § 1226 applies to people charged as inadmissible for entering without inspection." *Id.* As an example, she identifies Section 1226(c), which expressly requires mandatory detention for certain categories of noncitizens, including at least one group of noncitizens who entered without inspection. *See id.* (citing 8 U.S.C. § 1226(c)(1)(E)). She argues that the specific requirement of mandatory detention for certain noncitizens who entered without inspection must mean that § 1226(a) applies to *all* noncitizens who entered without inspection. *Id.* She argues that deeming noncitizens who entered illegally as falling under § 1225(b)(2)(A) "would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." ECF No. 7 at 9 (citation omitted).

Petitioner's argument contradicts normal rules of statutory interpretation. Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain

noncitizens for their removal proceedings, must be read alongside § 1225, which *specifically* addresses the detention of applicants for admission. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. Where "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than § 1226. It applies only to "applicants for admission," which includes noncitizens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

To be sure, § 1226(c)(1)(E) mandates detention for a narrow category of noncitizens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. It requires DHS to take such noncitizens into custody after their release from criminal custody and detain them. *See Nielsen v. Preap*, 586 U.S. 392, 414-15 (2019) (explaining that § 1226(c)(1)'s "when released" clause clarifies that DHS custody begins "upon release from criminal custody," not before, and that it "exhort[s] [DHS] to act quickly"). But the fact that § 1226(c)(1)(E) provides rules for detention of a category of noncitizens who entered without inspection and then had criminal-related conduct does not show that § 1225(b)(2)(A) does not still apply to other such noncitizens who entered without inspection.

Put differently, it is true that for a certain narrow subset of noncitizens—those who entered without inspection and then committed (or may have committed) certain crimes—Congress has now mandated their detention in two separate provisions, both

§ 1225(b)(2)(A) (based on their entry without inspection) and § 1226(c)(1)(E) (also based on their criminal-related conduct). But any potential redundancy in requiring mandatory detention for that subset of noncitizens subject to § 1226(c)(1)(E) does not affect § 1225(b)(2)(A)'s general applicability to other noncitizens who entered without inspection. Redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* The Court should not read § 1226(c) to require courts to ignore the express scope of § 1225.

Nor did Congress signal that courts should ignore the existing scope (and detention provisions) of § 1225 when Congress enacted the Laken Riley Act. That Act added § 1226(c)(1)(E), but did not alter § 1225(b)(2)(A). *See* PL No. 119-1, 139 Stat. 3 (2025). There is no indication that in modifying § 1226 through that Act, Congress intended, without ever saying so, to displace the authority in a separate provision—§ 1225(b)(2)(A)—to detain other applicants for admission.

Finally, Petitioner points to *Jennings* to attempt to bolster her reading of §§ 1225 and 1226. ECF No. 1 ¶¶ 18, 30. On the contrary, as explained above, the full discussion in Part I.A.1 of the *Jennings* opinion confirms that § 1225(b)(2) applies to noncitizens who entered without inspection and have not been admitted.

LEGISLATIVE HISTORY. Petitioner also argues that the legislative history behind §§ 1225 and 1226 supports her position. ECF No. 7 at 14. She argues that before Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), another provision—8 U.S.C. § 1252(a) (1994)—authorized release on bond for noncitizens present in the United States when they were detained for deportation proceedings. *Id.* According to Petitioner, the IIRIRA re-codified the availability of bond hearings for most noncitizens. *Id.* She points to language in the House Report stating that § 1226(a) "restates the current provisions . . . regarding the authority . . . to arrest, detain, and release on bond a[noncitizen]." *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229).

But the legislative history weighs in favor of Respondents' interpretation of §§ 1225 and 1226. Before the IIRIRA, § 1225 provided for the inspection of noncitizens only when they were arriving at a port of entry. *See* 8 U.S.C. § 1225(a) (1990) (discussing inspection of all noncitizens "arriving at ports of the United States"). It required that noncitizens arriving at a port of entry be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, noncitizens "in the United States" who "entered without inspection" were deemed deportable under 8 U.S.C. § 1251(a)(1)(B) (1994), and placed in deportation proceedings, where they could request release on bond. *Id.* § 1252(a)(1) (1994).

In short, under the pre-IIRIRA regime, whether a noncitizen was placed in exclusion proceedings or deportation proceedings depended on whether they had "entered" the country. But this focus on "entry" "resulted in an anomaly"—"non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented

themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

The IIRIRA sought to address this anomaly "by substituting 'admission' for 'entry' and by replacing deportation and exclusion proceedings with a general 'removal' proceeding." *Id.* Congress thus expanded § 1225 to address not only those who presented themselves at a port of entry, but to include *all* applicants for admission—*i.e.*, noncitizens present in the United States who had not been admitted, as well as those just arriving. The House Judiciary Committee Report confirms Congress intended such a fix when enacting the IIRIRA. According to the Report, the IIRIRA was:

> "Intended to replace certain aspects of the current "entry doctrine," under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted."

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). The Report also explains that before the IIRIRA "aliens who ha[d] entered without inspection [were] deportable under section [1251(a)(1)(B)]" but that after the IIRIRA "such aliens will not be considered to have been admitted." *Id.* at 226. The revisions to § 1225 "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country," would be on "equal footing in removal proceedings" as applicants for admission. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (citing 8 U.S.C. § 1225(a)(1)).

If the Court interprets § 1225 in the manner advocated by Petitioner, it would undo the fix that Congress enacted through the IIRIRA. On Petitioner's reading, a noncitizen who enters without inspection would often be entitled to a bond hearing while a noncitizen

who presents themselves to immigration officers at a port of entry would not. Such a reading would recreate the anomalous pre-IIRIRA incentives for those entering the country without inspection. But as the Supreme Court has recognized, a statutory interpretation that would allow applicants for admission to avoid mandatory detention simply by evading immigration officers when they enter the country would enshrine in our law "a perverse incentive to enter at an unlawful rather than a lawful location." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

PAST PRACTICE. Petitioner argues that detaining aliens like her under § 1225(b)(2)(A) would conflict with past practice. Specifically, she points to an entry in the Federal Register from 1997 which states that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." ECF No. 1 at 7 (citing Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

This citation from the Federal Register does not support Petitioner's argument for at least two reasons. First, the entry appears to acknowledge that noncitizens who are present without having been admitted are "applicants for admission." Thus, the cited language implicitly acknowledges that applicants for admission are not eligible for bond hearings under the statute. Instead, it apparently regarded them as eligible for bond hearings as a matter of administrative discretion, not of statutory interpretation.

Second, the Federal Register does not change the plain language of the statute. The weight given to agency interpretations must "depend upon their thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, the agency provided little analysis to support the reasoning for its statement about granting bond hearings to applicants for admission. *See* 62 Fed. Reg. at 10323. A prior practice by the agency of making such individuals eligible for bond hearings therefore carries little weight in interpreting the text of § 1225.

NON-BINDING DISTRICT COURT DECISIONS. Petitioner cites to a number of non-binding district court opinions from across the country finding that detention under Section 1225(b)(2)(A) is unlawful under the circumstances presented. Some of the cases cited by Petitioner are distinguishable. For example, Petitioner relies on *Garcia Cortes v. Noem* for the proposition that only applicants for admission who are also "seeking admission" are subject to detention under § 1225(b)(2)(A). *See* ECF No. 1 at 12 (citing *Garcia Cortes v. Noem*, No. 25-cv-02677-CNS, 2025 WL 2652880, at *2-3 (D. Colo. Sep. 16, 2025). But that decision did not persuasively explain why a noncitizen who is deemed an "applicant for admission" as a matter of law must be actively "seeking admission" to fall within § 1225(b)(2)(A). Moreover, *Garcia Cortes* is distinguishable. In that case the court explained that the petitioner was no longer "seeking admission" because she had previously been admitted into the United States on a B-2 visa. *Id.* at *3. Here, however, Petitioner has *never* been admitted into the United States, Ex. 1 at ¶¶ 6-7, and so she

remains an applicant for admission. It may be that Petitioner was not undertaking any "present-tense action," *Garcia Cortes*, 2025 WL 2652880, at *3 (citation omitted), to obtain admission at the time of her apprehension. But that is simply because she evaded the necessary "inspection and authorization by an immigration officer" up until then. 8 U.S.C. § 1101(13)(A).

In sum, none of Petitioner's arguments overcome § 1225's text.

II. Petitioner's APA claims fail.

The Court lacks jurisdiction to consider an APA claim here. Congress limited the APA to situations where "there is no other adequate remedy in a court that [is] subject to judicial review." 5 U.S.C. § 704. Petitioner is challenging the legality of her detention, and thus her claim sounds in habeas. *J.G.G. v. Trump*, 604 U.S. 670, 673 (2025) (holding that where a party's argument challenges the validity of detention, the case must proceed in habeas). The availability of a habeas claim bars APA jurisdiction.

Even if the Court did have jurisdiction over an APA claim here, such a claim would fail for the reasons described above. Petitioner is subject to § 1225(b)(2) and that decision is neither contrary to law or arbitrary and capricious.

III. Petitioner has not shown that she has a right to a bond hearing.

Petitioner also claims that she is entitled to a bond hearing as a matter of due process. *See* ECF No. 1 at 17-18. This argument should be rejected.

First, for Petitioner to show that she has been denied due process, she would need to show that she 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. She has not shown that she has been denied due process by being denied procedures in her immigration proceedings, where she can challenge the determination that § 1252(b)(2)(A) applies to her. As she will have that opportunity through her immigration proceedings, she has not shown a violation of her rights to procedural due process. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim"). As this Court has elsewhere explained in analyzing a due process challenge to immigration detention, "so long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, Civil Action No. 25-cv-01120-GPG (D. Colo. May 21, 2025), ECF No. 11 at 13.

Third, Petitioner's detention has been sufficiently short that it is presumptively constitutional. She has been detained for approximately two months 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 less than six months is presumptively constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In other contexts, even this presumptive constitutional limit has been distinguished as unnecessarily restrictive. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court explained that noncitizens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. 538 U.S. at 513. In that case, like this one, Congress mandated detention pending removal proceedings. *See id.*; 8 U.S.C. § 1226(c). The Court reasoned that the "definite termination point" of the detention at the end of removal proceedings assuaged any constitutional concern. *See Demore*, 538 U.S. at 512.

The same is true here. Petitioner's removal proceedings are moving toward a definite endpoint. *See* Ex. 1 at ¶¶ 19-21. Her detention will conclude with a final order of removal or a denial of the charges against her. Congress's decision to detain her pending removal is a "constitutionally permissible part of [this] process." *See Demore*, 538 U.S. at 531.

Petitioner has failed to demonstrate that the Fifth Amendment requires any additional process be provided to her.

IV. No nationwide declaratory relief entitles Petitioner to a bond hearing or release.

Petitioner last argues that a declaratory judgment from the Central District of California in a class action afforded her the relief she requests, and that Respondents are bound by that judgment and therefore must provide a bond hearing. ECF No. 1 at 18.

Petitioner is correct that in *Maldonado,* the Court granted class certification for a nationwide "Bond-Eligible Class." 2025 WL 3288403, Case No. 25-cv-01873-SSS-BFM (C.D. Cal. November 25, 2025). That class is defined as all noncitizens in the US who have entered without inspection, were not or will not be apprehended upon arrival, and are not or will not be subject to detention under §§ 1226(c), 1225(b)(1), or 1231. *See id.* at *1. Respondents do not dispute that as the class is currently defined, Petitioner is a member.

This Court, however, should not grant preclusive effect to the *Maldonado Bautista* decision (which is now on appeal to the Ninth Circuit), for multiple reasons.

*Firs*t, for a prior judgment to have preclusive effect, the judgment must be "entered by a court of competent jurisdiction." *N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991); *see* Restatement (Second) of Judgments § 1 (1982). Here, the *Maldonado Bautista* court lacked jurisdiction to determine the legality of Petitioner's detention. That court addressed whether class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), and such a challenge to the legality of detention can only be brought in habeas. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Under habeas principles, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). And a habeas petitioner must name his immediate custodian. *Id.* at 435. The *Maldonado Bautista* court thus lacked jurisdiction to determine the legality of the detention of class members like Petitioner confined outside the Central District of California. That court also lacked jurisdiction to grant a declaratory judgment in a class action to determine

a preliminary issue that class members then rely on to seek relief in individual habeas actions. *Calderon v. Ashmus*, 523 U.S. 740 (1998).

Second, while courts have "discretion to determine when [offensive collateral estoppel] should be applied," *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–31 (1979), offensive collateral estoppel is disfavored when applied against the federal government. *See United States v. Mendoza*, 464 U.S. 154, 159 (1984) (recognizing that the federal government's unique position weight against "a broad application of collateral estoppel").

Third, the existence of prior inconsistent judgments weighs against applying issue preclusion. *Parklane Hosiery*, 439 U.S. at 330–31. Some district courts have interpreted 8 U.S.C. § 1225(b)(2) differently from the *Maldonado Bautista* court. *See, e.g.*, *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (citing cases). These varying rulings support not giving the *Maldonado Bautista* judgment preclusive effect. *See* Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28.

Fourth and foremost, the pendency of an appeal to the Ninth Circuit of the district court's *Bautista* decision supports not giving that decision preclusive force at this time. While the mere "pendency of an appeal does not prevent application of the collateral estoppel doctrine," *Ruyle v. Cont'l Oil Co.*, 44 F.3d 837, 846 (10th Cir. 1994), applying preclusive force to a judgment that has been appealed can cause difficulty because a judgment that is reversed "is thereby deprived of all conclusive effect." *United States v. Lacey*, 982 F.2d 410, 412 (10th Cir. 1992). Courts thus should strive to avoid this "evil

result[]." 9 A.L.R.2d 984. When a prior judgment has been appealed, the second court may hold the "disposition in abeyance until the pending appeal [is] resolved." *See Ruyle*, 44 F.3d at 846. Indeed, "strong reasons must be found to justify proceeding with the second action pending appeal from the first judgment." C. Wright, 18A Fed. Prac. & Prod. § 4433. Here, if this Court is inclined to grant collateral estoppel effect to the *Bautista* decision, it should hold its decision in abeyance until the Ninth Circuit rules.

Based on all these factors, this Court should decline to accord the *Bautista* decision preclusive effect here as to Petitioner. Rather, this Court should simply address the proper scope of § 1225(b)(2) based on the analysis set forth above.

V. Petitioner is not entitled to a preliminary injunction.

In her Motion, Petitioner seeks emergency preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65. ECF No. 7. 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. She requests that the Court order Respondents to immediately release her from detention—a request to change the status quo. In the alternative, Petitioner requests that Respondents provide her with a bond hearing within seven days—a request that mandates action. Thus, Petitioner must make a strong showing on both the likelihood-of-success and balance-of-harms factors.[4]

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

Request for bond hearing. Petitioner requests either immediate release or, in the alternative, a bond hearing. ECF No. 7. Her sole basis for these requests appears to be that her 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, she has not established a strong likelihood of succeeding on the merits on her request for a bond hearing.

Request for immediate release. Even if the Court were to determine that Petitioner is likely to succeed on her challenge to her detention under § 1225(b)(2) rather than § 1226(a), the appropriate relief would be to order that Petitioner receive a bond hearing. Section 1226(a) does not require release—it provides DHS the discretion to grant a noncitizen release on bond. It requires nothing more.

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[4] Petitioner also requests that she not be transferred from the District of Colorado or removed during this proceeding, which the Court has already granted. ECF No. 11. That request is not subject to the heightened standard.

Indeed, Petitioner has not provided any argument in the Motion about why release rather than a bond hearing would be appropriate relief here. *See Thompson R2-J Sch. Dist. V. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148 n.3 (10th Cir. 2008) (deeming insufficiently developed argument to be waived). She has therefore forfeited any arguments on this point and has not made a strong showing of likelihood of success on the merits as to this request.

B. Petitioner has not established irreparable harm.

Petitioner argues that her detention is irreparable harm. But she has not identified specific circumstances showing why her continued detention will cause harm that is irreparable. ECF No. 7 at 15. If "detention in and of itself constitutes irreparable harm . . . then many if not most habeas petitioners would be entitled to such relief." *Abshir H.A. v. Barr*, 19-cv-1033 (PAM/TNL), 2019 WL 3292058, at *4 (D. Minn. May 6, 2019), *report & recommendation adopted by Abi v. Barr*, 2019 WL 2463036 (D. Minn. June 13, 2019).

C. Petitioner has not established that the public interest and balance of equities weigh strongly in her favor.

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States' immigration laws is significant. *See, e.g., id.* at 436. Here, Respondents have a valid statutory basis for detention, *see* 8 U.S.C. § 1225(b)(2)(A), and "detention during [removal] proceedings [is] a constitutionally valid aspect of the deportation process," *Demore*, 538 U.S. at 523.

Petitioner argues that granting an injunction would not harm Respondents because it would simply require them to return to a past practice. ECF No. 7 at 14. But adherence to a particular practice is not required where a different approach is consistent with the statutory scheme. And as the Supreme Court recently indicated, any time that the Government is "enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation omitted) (Roberts, C.J., in chambers). Enjoining Respondents from carrying out their statutory obligations would harm the Government and, thus, these factors weigh against the Court granting an injunction.[5]

CONCLUSION

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

Dated: December 26, 2025

PETER MCNEILLY
United States Attorney

s/ Leslie Schulze
Leslie Schulze
Assistant United States Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0131
Email: Leslie.schulze@usdoj.gov

[5] 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.

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Sarah Faville
Hans Meyer
Conor Gleason
Anahi Quezada-Villa
Meyer Law Office, P.C.
1547 Gaylord St.
Denver, CO 80206
T: (303) 831 0817
sarah@themeyerlawoffice.com
hans@themeyerlawoffice.com
conor@themeyerlawoffice.com
anahi@themeyerlawoffice.com

s/ Leslie Schulze
U.S. Attorney's Office