UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RONIL JOSE GONZALEZ CENTENO	:	**No. 3:25-cv-2518**
Petitioner	:	
	:	**(Judge Munley)**
v.	:	
	:	
CRAIG A. LOWE, *et al.*,[1]	:	
Respondents	:	**Filed Electronically**

RESPONDENT'S OPPOSTION TO
PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

This is a habeas action in which Petitioner Ronil Jose Gonzalez Centeno claims his detention is in violation of Due Process, Immigration and Nationality Act (INA), and the Administrative Procedure Act (APA) and seeks immediate release. Doc. 1, Verified Petition for Writ of Habeas Corpus. Petitioner also filed a motion for temporary restraining order and supporting brief arguing, for the first time, that he is a *Bautista* case class member and requesting to be immediately released. Doc. 4, Motion for Temporary Restraining Order; Doc. 4-1, Memorandum of Law in Support.

---

[1] Although Petitioner named several other government officials, the only proper respondent in this case is Craig Lowe, the Warden of Pike County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("In habeas challenges to present physical confinement – 'core challenges' – the default rule is that the proper respondent is the warden of the facility where the prisoner is being held."). Petitioner requests release from confinement. *See* Doc. 1, Verified Petition for Writ of Habeas Corpus.

On January 2, 2026, this Court entered an order directing Respondent to respond to the motion for temporary restraining order by January 13, 2026. Doc. 6, Order at 1 ¶ 3. This opposition brief is filed in accordance with that Order.

Respondent requests that Petitioner's motion for temporary restraining order be denied. Numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to review the Petitioner's claims and preclude this Court from granting the relief he seeks.

Assuming jurisdiction, Petitioner nonetheless fails to demonstrate he is entitled to injunctive relief. Petitioner cannot show a likelihood of success on the merits because he failed to exhaust his administrative remedies, he does not have standing to raise an APA claim, and he improperly raised new and different issues in his preliminary injunction motion.

Alternatively, Centeno also cannot succeed on the merits because *Bautista* has a preclusive effect. Also, it would not be proper to impose *res judicata* effect on a class-wide basis while the declaratory judgment in the *Bautista* case is pending an appeal. Also, Centeno is properly detained under 8 U.S.C. § 1225(b) and is not eligible for release under 8 U.S.C. § 1226(a).

FACTUAL BACKGROUND

The Petitioner is a native and citizen of Venezuela who entered the United States without inspection at an unknown time and location. Exhibit 1, Notice to

Appear, at 1. The Notice to Appear charged Centeno as inadmissible pursuant to INA § 212(a)(6)(A)(i), codified at 8 U.S.C. §1182(a)(6)(A)(i), because he entered the country without being admitted or paroled. *Id.* Petitioner was also charged as removable pursuant to INA § 212(a)(7)(A)(i)(I), codified at 8 U.S.C. §1182(a)(7)(A)(i)(I), because he was not in possession of a valid document as required by the Attorney General. *Id.* at 4.

Petitioner alleges that he was paroled after entering the United States until November 22, 2022. Doc. 1, Verified Petition for Writ of Habeas Corpus, at 2, 24.

On November 26, 2025, ICE Enforcement and Removal Officers took Petitioner into custody and transported him to Pike County Correctional Facility where he is currently detained. Exhibit 2, Notice to EOIR: Alien Address.

Petitioner alleges that he has filed an asylum application. Doc. 1, Verified Petition for Writ of Habeas Corpus, at 2, 24. A master's hearing was scheduled for January 5, 2026, but Petitioner requested additional time to retain an attorney, and his master's hearing was rescheduled for January 26, 2026. Exhibit 3, Notice of Internet-Based Hearing; Exhibit 4, Notice of Internet-Based Hearing.

STATUTORY FRAMEWORK

A. The pre-IIRIRA[2] framework gave preferential treatment to noncitizens unlawfully present in the United States.

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

Prior to 1996, the INA treated noncitizens differently based on whether the noncitizen had physically "entered" the United States. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of [a noncitizen] into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A noncitizen who arrived at a port of entry would be placed

[2] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, a noncitizen who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between noncitizens based on physical "entry" had

> the "unintended and undesirable consequence" of having created a statutory scheme where [noncitizens] 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 noncitizens 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 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") (noncitizens "who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to [noncitizens] who present themselves for inspection").

B. IIRIRA eliminated the preferential treatment of noncitizens unlawfully present in the United States and mandated detention of all "Applicants for Admission."

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). 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 [noncitizen] 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 noncitizens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining [a noncitizen's] status" would be "whether or not the [noncitizen] has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that a noncitizen "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission":

> [A noncitizen] present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including [a noncitizen] who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). All noncitizens "who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the noncitizen may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited "Section 240" proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the [noncitizen] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these noncitizens, the immigration officer shall "order the [noncitizen] removed from the United States without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum … or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the noncitizen "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). A noncitizen processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281,

287 (2018). It requires that those noncitizens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added).[3] *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of [noncitizens] throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While Section 1225(b)(2) does not allow for noncitizens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission" of the noncitizen. *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole … been served," the

[3] Subsection (b)(2) does not apply to (1) noncitizens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) noncitizens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

noncitizen "shall … be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested" noncitizen or release the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[4]

That "default rule," however, does not apply to certain criminal noncitizens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal

[4] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

noncitizens—those who are inadmissible or deportable because the noncitizen (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must detain these noncitizens "when the [noncitizen] is released, without regard to whether the [noncitizen] is released on parole, supervised release, or probation, and without regard to whether the [noncitizen] may be arrested or imprisoned again for the same offense." *Id.*

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) noncitizens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

C. DHS concluded that Section 1225(b)(2) requires detention of all Applicants for Admission.

For many years after IIRIRA, immigration judges treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather

than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

The Board of Immigration Appeals soon adopted this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)'s mandatory detention regime applies to *all* noncitizens who entered the United States without inspection and admission:

> [Noncitizens] … who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission."

29 I. & N. Dec. at 228; *see also id.* at 225 ("Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] … who are present in the United States without admission").

STANDARD OF REVIEW

A preliminary injunction is an extraordinary remedy that should be granted only if a plaintiff demonstrates: "(1) that they are reasonably likely to prevail eventually in the litigation and (2) that they are likely to suffer irreparable injury without relief." *Hope v. Warden York Cty. Prison*, 972 F.3d 310, 319–20 (3d Cir. 2020) (quoting *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 105 (3d Cir. 2013)). If these two threshold showings are made the court can then consider, to the extent relevant, "(3) whether an injunction would harm the

[defendants] more than denying relief would harm the plaintiffs and (4) whether granting relief would serve the public interest." *Id.*

The burden is on the moving party to prove the existence of each of these necessary elements. *See Acierno v. New Castle Cnty.*, 40 F.3d 645, 653 (3d Cir. 1994). Failure to establish any of them renders a preliminary injunction inappropriate. *See Opticians Ass'n of Am. v. Independent Opticians of Am.*, 920 F.2d 187, 192 (3d Cir.1990). Moreover, "when the preliminary injunction is directed not merely at preserving the status quo but, as in this case, at providing mandatory relief, the burden on the moving party is particularly heavy." *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980) (citation omitted).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility

of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party's favor.") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

ARGUMENT

1. Petitioner cannot demonstrate any likelihood of success on the merits

Petitioner cannot meet his burden of demonstrating that he is likely to succeed on the merits. This Court lacks jurisdiction to intervene in his removal proceedings. Additionally, Petitioner failed to exhaust his administrative remedies and lacks standing to bring an APA claim. Moreover, Petitioner raises a new and different claim in his injunction motion, and he cannot amend his Petition in an injunction motion.

Alternatively, Petitioner cannot establish that he is likely to succeed on the underlying merits of his claims for alleged statutory and constitutional violations because even if he is a *Bautista* case class member, *Bautista* has a preclusive effect Also, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2) and his detention does not offend due process.

A. The District Court lacks jurisdiction to intervene in removal proceedings.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction to address his claims. *See Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024); *Finley v.*

United States, 490 U.S. 545, 547-48 (1989). He cannot meet this burden because his claims are jurisdictionally barred under 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a).

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of [a noncitizen] arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any [noncitizen] under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[5] Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of DHS chooses to commence removal proceedings,

[5] Congress initially passed Section 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended Section 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

including the decision to detain a noncitizen pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Petitioner's claims stem from his detention during removal proceedings. That detention arises from the decision to commence such proceedings. *See, e.g.*, *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

As other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against [a noncitizen] when the [noncitizen] is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the [noncitizen] against whom proceedings are commenced and detain that individual until the conclusion of those proceedings."

Id. at *3. "Thus, [a noncitizen's] detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial review of the claim that Petitioner is entitled to bond is barred by Section 1252(g). This Court should deny the Petition for lack of jurisdiction.

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

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

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in

> accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning noncitizens not admitted to the United States].

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

Critically, "[Section] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts

of appeals[.]"). The petition-for-review process before the court of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [a noncitizen] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings against an arriving [noncitizen] and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge

"his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, this Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of Section 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge the government's decision to detain him in the first place. Though Petitioner may attempt to frame this challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain him pending his removal proceedings, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which he is detained is enough to trigger Section 1252(b)(9) because "detention *is* an 'action taken . . . to remove'" a noncitizen. *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9).

Third, § 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B).

Thus, even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings, Congress added this additional jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA.

B. Additionally, Petitioner failed to exhaust administrative remedies.

While the government does not dispute that the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), controls as to the applicability of § 1225(b)(2)—and by extension the availability of a bond hearing—the existence of this decision should not nullify the entire administrative process, nor should it allow an alien in Petitioner's position the ability to skip this process entirely and proceed directly to the district court for immediate review.

The regulatory process Congress created affords Petitioner the opportunity to redress his concerns administratively. Following it would provide the court of appeals a complete record should he ultimately seek review. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) ("exhaustion promotes efficiency, including by

encouraging parties to resolve their disputes without litigation"); *Laguna Espinoza v. Director of Detroit Field Office*, Civ. No. 25-2107, 2025 WL 2878173, at *3 (N.D. Cal. Oct. 9, 2025) (dismissing habeas petition challenging detention under § 1225(b) for failure to exhaust). Petitioner's failure to exhaust should cause this Court to dismiss the habeas Petition in favor of the administrative process.

Exhaustion is particularly appropriate because agency expertise is required as to the applicability of § 1225(b) as opposed to § 1226(a). "[T]he BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, Civ. No. 18-1441, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, Civ. No. 17-1031, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

Waiving exhaustion would also "encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court." *Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. Indeed, exhaustion promotes judicial

efficiency by reserving the courts' resources for matters that cannot be resolved administratively. *MacKay v. U.S. Veterans Admin.*, Civ. No. 03-6089, 2004 WL 1774620, at *4, n. 8 (E.D. Pa. Aug. 5, 2004), *aff'd*, 115 F. App'x 601 (3d Cir. 2004); *Biear v. Att'y Gen. United States,* 905 F.3d 151, 156 (3d Cir. 2018) ("Generally, the law requires exhaustion of administrative remedies before a plaintiff may seek relief in district court."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency").

Because Petitioner has not exhausted his administrative remedies, this matter should be dismissed or stayed.

C. Petitioner does not have standing to bring his Administrative Procedures Act (APA) claim.

Petitioner also does not have standing to bring his APA claim. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that

habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953).)

D. Alternatively, this Court cannot grant a preliminary injunction on a different and new issue raised in the injunction motion but not raised in the Petition.

In the motion for temporary restraining order, for the first time, Petitioner claims he is a member of the *Bautista* class. *See* Doc. 4, Motion for Temporary Restraining Order; Doc. 4-1, Memorandum of Law in Support. Based upon being a *Bautista* class member, he claims that he is entitled to immediate release. Yet, Petitioner failed to allege he was a member of the *Bautista* class in his Petition. *See* Doc. 1, Verified Petition for Writ of Habeas Corpus.

Petitioner cannot amend or supplement his Petition by seeking preliminary injunctive relief. *See Braithwaite v. Phelps,* 602 F. App'x 847, 849 (3d Cir. 2015); *Ball v. Famiglio*, 396 F. App'x 836, 837 (3d Cir. 2010). Additionally, this Court cannot grant a preliminary injunction when Petitioner raises different and new issues

not raised in his Petition. *Kates v. Bledsoe,* 2012 WL 6721065, *1-2 (M.D. Pa. 2012). As such, this Court should not entertain Petitioner's new *Bautista* class member claim.

E. Even if this Court decided to entertain the *Baustista* issue, it does not have any binding effect here.

Even if this Court were to entertain Petitioner's new *Bautist*a issue, it does not have any binding effect here. In the motion for temporary restraining order, Petitioner's argument centers around the applicability of the December 18, 2025 partial final judgment in *Bautista*, 2025 WL 3713982, which did not vacate the BIA's decision in *Hurtado*, but declared that class members are entitled to a bond hearing. But *Bautista* is neither binding on this Court, nor applicable to the Petitioner, and the decision presents no basis for granting the petition. First, the *Bautista* declaratory judgement is void with respect to Petitioner and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. Second, this Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Third, issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings.

1. Under black-letter principles of habeas jurisdiction, the *Bautista* declaratory judgement has no preclusive effect outside the Central District of California and over custodians who are located outside that District.

The *Bautista* class sought a declaratory judgment that class members such as Petitioner were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone. As the Supreme Court made clear just this year, "[r]egardless of whether [] detainees formally request release from confinement," if "their claims for relief necessarily imply the invalidity of their confinement[], their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (internal quotations omitted).

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. First, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. Second, a habeas petitioner must name the petitioner's immediate custodian—i.e., the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction" needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas

relief in a judicial district in which he is not confined and the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. And a "judgment entered without personal jurisdiction over a defendant is void as to that defendant." *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987).

Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the "availability of a habeas remedy in another district ousted us of jurisdiction over an alien's effort to pose a constitutional attack . . . by means of a suit for declaratory judgment"); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress

determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is 'in custody in violation of the Constitution . . . of the United States,' . . . . This specific determination must override the general terms of the declaratory judgment . . . statute.").

Here, the vast majority of *Bautista* class members are confined outside of the Central District of California by immediate custodians who are also outside the Central District of California and have not been named in the lawsuit. Therefore, the *Bautista* court lacked jurisdiction to issue habeas relief to all class members who are confined outside the Central District of California by immediate custodians outside that District, and a court's judgment cannot be binding and preclusive against a party over which it lacked jurisdiction. *Burnham v. Superior Court of Cali.*, 495 U.S. 604, 608 (1990). Indeed, another federal district court has already held that the Bautista declaratory judgment does not have preclusive effect. Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12.

In sum, the *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas is a legal nullity outside that District. At the time of filing this habeas petition, Petitioner is detained in the Commonwealth of Pennsylvania, which is outside the Central District of California. That ends the matter. But if more were needed, Petitioner's immediate custodian is Angela Hoover, and that individual was not a party in the Central District of California;

subjecting the immediate custodian to the judgment of the Central District of California would be inconsistent with the immediate custodian rule. *Padilla*, 542 U.S. at 439-40; *see also Doe v. Garland*, 109 F.4th 1188, 1196 (9th Cir. 2024) (holding immediate custodian and not supervisory ICE Field Office Director should be named in habeas petition).

2. The Court should not give preclusive effect to a declaratory judgment that is on appeal

Even if the *Bautista* declaratory judgment could have preclusive effect outside the Central District of California, that judgment has been appealed to the Ninth Circuit, *Bautista, et al. v. United States Department of Homeland Security*, et al., No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to that judgment or to any underlying legal issues in deciding whether to grant habeas relief in this case.

Courts must exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. Reflexively granting preclusive effect to such judgments could lead to subsequent judgment "from which it may be impossible to obtain relief" even if the first judgment is reversed on appeal. 9 A.L.R.2d 984. Courts should strive to avoid this "evil result[]." *Id.* ("both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences"); *see also* 18A Fed. Prac. & Prod. § 4404 ("Awkward problems can

result from the rule that preclusive effects attach to the first judgment" while that judgment is subject to an appeal); 18A Fed. Prac. & Proc. § 4433 (the rule that a decision is final for the purposes of preclusion while that decision is pending appeal creates "[s]ubstantial difficulties").

This problem can be "avoided . . . by delaying further proceedings in the second action pending conclusion of the appeal in the first action." *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882–83 (9th Cir. 2007) (citing Wright & Miller § 4433). In the circumstances here—and particularly given the constraints of 8 U.S.C. § 1252(f)(1)—it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* 9 A.L.R.2d 984 (the "only one safe way of avoiding conflicting judgments on the same cause . . . [is for] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered").

3. According preclusive effect to the *Bautista* declaratory judgment contravenes other principles of preclusion

Beyond the two most serious problems with giving effect to the *Bautista* declaratory judgment in this case, three more reasons counsel strongly against doing so.

First, under 28 U.S.C. § 2202, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such

judgment." To the extent this Court considers whether to award "further" relief than what the *Bautista* court purported to grant to class members outside the Central District of California, such further relief is neither "necessary [n]or proper." Indeed, the Ninth Circuit—which of course has appellate jurisdiction over the Central District of California—has rejected waiving the district of confinement rule on prudential considerations given the clear congressional mandate limiting habeas jurisdiction to the district of confinement as provided by statute. *Doe*, 109 F.4th at 1199.

Second, the circumstances of this case also counsel against applying issue preclusion against the government. The Supreme Court has "long recognized that 'the Government is not in a position identical to that of a private litigant,' *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates." *United States v. Mendoza*, 464 U.S. 154, 159 (1984). "Government litigation frequently involves legal questions of substantial public importance." *Id.* Thus, although the Supreme Court has held the federal government "may be estopped . . . from relitigating a question" when "the parties to the lawsuits are the same," *id.* at 163, 164, it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation, *see id.* at 162. This is because allowing "nonmutual collateral estoppel against the

government . . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue." *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

For similar reasons, the government should not be precluded from litigating the issue of the proper detention authority here, where the Petitioner was not a named party to the prior *Bautista* litigation, but instead merely a member of a fundamentally flawed nationwide class. In such a circumstance, applying preclusion against the government raises the same concern raised in *Mendoza*—it allows the *Bautista* court's decision to freeze the law for all district courts nationwide, and stymies development of the law. This is particularly so because the *Bautista* court could never grant complete habeas relief to all class members as a result of § 1252(f)(1)—instead, the *Bautista* class action was merely a vehicle for seeking to use the judgment in individual habeas matters such as this one. At minimum, the court should exercise its discretion to decline to employ offensive issue preclusion, as it does in cases where a non-party seeks to invoke preclusion against a private party. *See Syverson v. Int'l Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979)).

The court should also decline to give the *Bautista* declaratory judgment preclusive effect given the existence of several inconsistent judgments from district courts around the country, suggesting that reliance on the adverse judgment in

Bautista would be unfair. *See Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion); *see, e.g.*, *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

Third, it is doubtful that issue preclusion is ever appropriate in the habeas context. For instance, in *Griffin v. Gomez*, the Ninth Circuit held that a prior "class action has no preclusive affect in habeas proceedings." *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998). The court later explained that res judicata and collateral estoppel do not apply to habeas proceedings. *See Clifton v. Attorney General*, 997 F.2d 660, 662 n.3 (9th Cir. 1993) (recognizing that because "conventional notions of finality of litigation have no place" in habeas and the inapplicability of res judicate to habeas is "inherent in the very role and function of the writ.") (quoting Sanders v. United States, 373 U.S. 1, 8 (1963)); *see also Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th

Cir. 1977) ("The doctrines of res judicate and collateral estoppel are not applicable in habeas proceedings."); *Hierens v. Mizell*, 729 F.2d 449, 456 (7th Cir. 1984) ("a decision in another case is not res judicata as to a habeas proceeding.").

In sum, the *Bautista* declaratory judgment has no preclusive effect on this case. Furthermore, the *Bautista* declaratory judgment only provided that class members were entitled to a bond hearing, not immediate release.

F. In the alternative, Section 1225(b)(2) mandates detention of noncitizens, like Petitioner, who are present in the United States without having been lawfully admitted.

Under the plain language of Section 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen 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 Section 1225(b)(2) mandates detention of applicants for admission.

Section 1225(a) defines "applicant for admission" to encompass a [noncitizen] who either "arrives in the United States" or who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not physical entry, but lawful entry after inspection by

immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Thus, a noncitizen who enters the country without permission is and remains an applicant for admission, regardless of the duration of the noncitizen's presence in the United States or the noncitizen's distance from the border.

In turn, Section 1225(b)(2) provides that "a [noncitizen] who is an applicant for admission" "shall be detained" pending removal proceedings if the noncitizen "seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). 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 for the duration of the noncitizen's presence in the country or where in the country he is located. Therefore, the statute's plain text mandates that DHS detain all "applicants for admission" who do not fall within one of its exceptions.

Petitioner falls squarely within the statutory definition. He was "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a). Moreover, Petitioner cannot—and did not—establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]."

2. Section 1225(b)(2)'s reference to noncitizens "seeking admission" does not narrow its scope.

It is undisputed that Petitioner is an "applicant for admission" under Section 1225(b)(2). The statute itself makes clear that a noncitizen who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, a noncitizen like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is "seeking admission" under any interpretation of that phrase particularly since he could only remain in the United States by gaining admission.

a. Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the noncitizen] *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 or voluntary departure.

Section 1225(a) provides that all noncitizens "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 Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *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"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that a noncitizen who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A). 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").

This reading is consistent with the everyday meaning of the statutory terms. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (*to* someone *for* something)"), *with id.* at 1299 ("seek" means "to request, ask for"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980)

("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*") (emphasis added). Likewise, a noncitizen who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") is "seeking admission" to the United States. And that's true even when the noncitizen has been physically present in the country for many years, as that noncitizen can "still be an applicant for *lawful* entry, seeking legal 'admission.'" *Mejia Olalde*, 2025 WL 3131942, at *3. As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, "[i]f Congress meant to say that [a noncitizen] no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Id.* at *4.

None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As Section 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," — not the exclusive way. 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 "seeking admission." *See* 8 U.S.C. § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that a noncitizen who is an "applicant for admission" is "seeking admission," even if the noncitizen is not engaged in some separate, affirmative act to obtain lawful admission.

To be sure, the Government previously operated under a narrower understanding of Section 1225(b)(2)(A), such that noncitizens present in the United States who had entered without admission were instead detained under Section 1226(a). But past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that it deemed incompatible with statutory text. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court therefore must always interpret the statute "as written," *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention of *any* applicant for admission, regardless of whether the applicant is taking affirmative steps toward admission. A "nontextual" practice cannot upend that plain statutory meaning. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government's prior understanding as "nontextual" and unsupported by any "thorough, reasoned analysis").

b. An "applicant for admission" covers a subset of noncitizens "seeking admission." The phrase "in the case of [a noncitizen] who is an applicant for admission," offset at the beginning of Section 1225(b)(2)(A), therefore modifies and narrows the scope of the remaining language—"if the examining immigration officer determines that [a noncitizen] seeking admission is

not . . . entitled to be admitted, the [noncitizen] shall be detained." The structure of the provision indicates that any such redundancy simply serves to make the provision more readable. This is not a case where the additional language serves to limit the provision's scope.

And in any event, "[t]he canon against surplusage is not an absolute rule." *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). "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, 223 (2020). Thus, "[t]he Court has often recognized that sometimes the better overall reading of a statute contains some redundancy." *Id.* For that reason, "the surplusage cannon … must be applied with statutory context in mind," *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and "redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 223.

That is the case here. Under a straightforward reading of the statute, being an "applicant for admission" is "seeking admission." Although that reading may lead to some redundancy in Section 1225(b)(2)(A), that is "not a license to rewrite" Section 1225 "contrary to its text." *Barton*, 590 U.S. at 223; *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("The principle [that drafter do repeat

themselves carries extra weight where … the arguably redundant words that the drafters employed … are functional synonyms"). And that is especially true, where that re-writing would be so clearly contrary to Congress's objective in passing the law.

c. Even if "seeking admission" required some separate affirmative conduct by the noncitizen, an applicant for admission who attempts to avoid removal from the United States, rather than trying to voluntarily depart, is by any definition "seeking admission."

Section 1225(b)(2)(A) applies to a noncitizen who is present in the United States unlawfully, even for years. Although the noncitizen may not have been affirmatively seeking admission during those years of illegal presence, Section 1225(b)(2) is not concerned with the noncitizen's pre-inspection conduct. Rather, the statute's use of present tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the noncitizen's admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the noncitizen is "seeking"—*i.e.*, presently "endeavor[ing] to obtain," American Heritage Dictionary, *supra*, at 1174—admission into the United States; if it were otherwise, the applicant would not attempt to show that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by Section 1225(a)(4), which

authorizes [a noncitizen] to voluntarily "depart immediately from the United States." An applicant who forgoes that statutory option and instead endeavors to prove admissibility and opts for Section 240 removal proceedings—proceedings in which the noncitizen has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted," *id.* § 1229a(c)(2)(A)—is plainly "endeavor[ing] to obtain" admission to the United States. American Heritage Dictionary, *supra*, at 1174.

Other statutory provisions discussed *supra* provide even further support. Congress made clear that any noncitizen "present in the United States who has not been admitted" is "deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1). And the statute's use of "otherwise" when referring to noncitizens "who are applicants for admission or *otherwise* seeking admission," *Id.* § 1225(a)(3), makes clear that all applicants for admission are seeking admission. Accordingly, a noncitizen's presence in the United States without lawful admission is *itself* an act of seeking admission, whether that noncitizen is present in southern Texas or northeastern Pennsylvania.

Petitioner is seeking admission. A contrary view would make mandatory detention turn on the fortuity happenstance of when a noncitizen attempts to prove admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not "presume lightly" that statute's application will turn on "arbitrary" issue of timing). Noncitizens subject to Section 1225(b)(2) must prove admissibility at one

of two stages—first, at the time of inspection, 8 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the noncitizen cannot show admissibility "clearly and beyond a doubt" at the time of inspection, *id.* § 1229a(c)(2)(A) (noncitizen has "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted"). The required showing is the same. Because attempting to show admissibility is the sort of act that demonstrates a noncitizen is "seeking admission," detention is required only of noncitizens who attempt to show admissibility at the time of inspection, but not of those who wait until removal proceedings are commenced. There is "no reason why Congress would desire" the applicability of something so significant as mandatory detention "to depend on the timing" of when a noncitizen attempts to show admissibility, *Wilson*, 503 U.S. at 334—particularly given how susceptible that rule is to manipulation by the noncitizen.

Although the Third Circuit and its sister circuits have not yet ruled on whether a noncitizen like Petitioner may be detained under § 1225(b)(2), district courts in Pennsylvania and New Jersey, including this Court, have ruled contrary to the government's reading of the statute. *See Santana-Rivas*, 2025 WL 3522932, *adopted in part, rejected in part*, 2025 WL 3513152 (M.D. Pa. Dec. 8, 2025); *Patel*, 2025 WL 3516865; *Quispe*, 2025 WL 3537279; *Chimborazo Cunin*, 2025 WL 3542999; *Samassa*, 2025 WL 3653751; *Pate v. McShanel*, 2025 WL 3241212 (E.D. Pa. 2025);

Nidaye v. Jamison, 2025 WL 3229307 (E.D. Pa. 2025); *Kashranov v. Jamison*, 2025 WL 3188399 (E.D. Pa. 2025); *Cantu-Cortes v. O'Neill*, 2025 WL 3171639, at *1-2 (E.D. Pa. 2025). Two district courts, however, have found the Government's arguments persuasive and found in its favor. *See Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying application for temporary restraining order and preliminary injunction because Petitioner could not demonstrate a likelihood of success on the merits because they were applicants for admission under § 1225); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas petition and finding petitioner was lawfully detained under § 1225).

3. Section 1226(c) is not superfluous.

There is no colorable argument that the Government's interpretation of Section 1225(b)(2)(A) renders Section 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* noncitizen pending removal proceedings but provides that the Executive also "may release" the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention authority for the significant group of noncitizens who are *not* "applicants for admission" subject to Section 1225(b)(2)(A)—specifically, noncitizens who have been admitted to the United States but are now removable. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the

specific governs the general"). For example, the detention of any of the millions of [noncitizen] who have overstayed their visas will be governed by Section 1226(a), because those noncitizens (unlike Petitioner) *were* lawfully admitted to the United States.

As described above, Section 1226(c) is the exception to Section 1226(a)'s discretionary detention regime. It requires the Executive to detain any noncitizen who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions "when the [noncitizen] is released" from another entity's custody. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of noncitizens *not* encompassed by Section 1225(b)(2), such as visa overstayers or noncitizen who are lawfully present but have committed certain crimes.

Section 1226(c)(1) requires the Executive to detain noncitizens who *have been admitted* to the United States and are now "deportable." *See* 8 U.S.C. § 1226(c)(1)(B)-(C). By contrast, Section 1225(b)(2) has no application to admitted noncitizens. Next, Section 1226(c)(1) requires detention of noncitizens who are "inadmissible" on certain grounds, *see* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Those provisions, too, sweep more broadly than Section 1225(b)(2), because they cover noncitizens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of any noncitizen "in *and admitted*

to the United States," including any noncitizen "who at the time of entry or adjustment of status was within one or more of the classes of [noncitizens] *inadmissible* by the law existing at the time...") (emphasis added). In this respect, Section 1226(c)(1) applies to admitted noncitizens, who are not covered by Section 1225(b)(2).

Finally, as noted above, Section 1225(b)(2)(A) does "not apply to [a noncitizen] ... who is a crewman," "a stowaway," or "is arriving on land ... from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C). Section 1226(c) would apply to those noncitizens, too, if they were inadmissible or deportable on one of the specified grounds.

Nor does the Government's reading render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal noncitizens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible noncitizens who were admitted in error, as well as those never admitted. That means there is no surplusage, as Section 1225(b)(2) has no application to noncitizens were admitted in error.

To be sure, the Laken Riley Act's application to noncitizens who are inadmissible under § 1182(a)(6)(A)—for being "present ... without being admitted

or paroled"—overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. But again, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 223. And "even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)." *Mejia Olalde*, 2025 WL 3131942, at *4. That is particularly true here, where this portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A), which recognizes that applicants for admission who are "seeking admission" must be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute").

Even so, Sections 1225(b)(2) and 1226(c) use different language that reflects the distinct obligations each section imposes. Section 1226(c), which applies "when [a criminal noncitizen] is released" from another entity's custody, specifies that the "Attorney General shall take into custody" the noncitizen. That provision therefore directs the Executive to take affirmative steps to apprehend covered noncitizens when they are released from state or federal custody. *Id.*; *see Nielson v. Preap*, 586 U.S. 392, 414 (2019) (explaining that "the duty to arrest is triggered[] upon release from criminal custody"). Section 1225(b)(2), by contrast, applies "if an examining

officer determines" that the noncitizen "is not clearly and beyond a doubt entitled to be admitted," and directs that the noncitizen "shall be detained." That distinct language does not itself impose an obligation on the Executive to apprehend such a noncitizen; it applies once an examining officer has encountered an applicant for admission. *Id.* Each provision thus has independent application—one states that the Executive "shall take into custody" certain noncitizens in specified circumstances, insisting that the Executive prioritize certain criminal noncitizens for apprehension; the other states that a noncitizen "shall be detained" once encountered by immigration officials. Because "Section 1226(c) regulates not only *what* the Attorney General must do (take [noncitizens] into custody), but also *when* the Attorney General must do so," while Section 1225 "does not specify a timeline," the Government's reading of Section 1225 "does not render the Laken Riley Act superfluous." *Mejia Olalde*, 2025 WL 3131942, at *4.

Moreover, Section 1226(c) does additional independent work, despite any overlap, by narrowing the circumstances under which noncitizens may be *released* from mandatory detention. Recall that, for noncitizens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for noncitizens who have also committed the offenses or engaged in the

conduct specified in Section 1226(c)(1)(A)-(E). As to those noncitizens, Section 1226(c) *prohibits* their parole and authorizes their release only if "necessary to provide protection to" a witness or similar person and the noncitizen "satisfies the Attorney General that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4). So even as to noncitizens who are already subject to mandatory detention under Section 1225(b)(2), Section 1226(c) is not superfluous: It significantly narrows the Executive's parole power with respect to those noncitizens.

In fact, Congress's desire to further limit the parole power with respect to criminal noncitizens was one of the principal reasons that it enacted the Laken Riley Act. The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal noncitizens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about Section 1225(b)(2)(A)'s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

The statute itself does not contain any such limitation. *See* 8 U.S.C. § 1225(a) (defining applicant for admission as either [a noncitizen "present in the United States who has not been admitted or who arrives in the United States . . . ."). Further, Congress defined *all* noncitizens who are present in the United States without

being admitted as "applicant[s] for admission," regardless of when they entered. *See* 8 U.S.C. § 1225(a)(1). When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that noncitizen (like Petitioner) desires to remain in the United States, he is necessarily "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). Otherwise, the noncitizen must "withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). A noncitizen continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3); *In Re Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (recognizing that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). In other words, an "applicant for admission" is necessarily "seeking admission." *See Rojas v. Olson*, Civ. No. 25-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025); *but see Bethancourt Soto v. Soto*, Civ. No. 25-16200, 2025 WL 2976572, at *6 (D. N.J. Oct. 22, 2025).

4. The Supreme Court's decision in *Jennings* does not undermine the Government's interpretation.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings*, 583 U.S. 281 (2018). *Jennings* reviewed a United States Court of Appeals for the Ninth Circuit decision that applied constitutional avoidance to

"impos[e] an implicit 6-month time limit" on a noncitizen's detention under Sections 1225(b) and 1226. 583 U.S. 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 noncitizens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of Section 1225(b) that "Section 1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

Some lower courts have rejected the Government's interpretation based on language in *Jennings* where the Court described the detention authorities in Section 1225(b) and Section 1226, and in that context summarized Section 1226 as applying to noncitizens "already in the country":

> In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to noncitizens "once inside the United States"). The Government's interpretation is consistent with that language: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of noncitizens who are were admitted into the United States (and so are "in the country") but are now removable. Indeed,

in context, the best reading of that language in *Jennings* is that the discussion refers to noncitizens who are "in and admitted to the United States." 8 U.S.C. § 1227(a). The opinion's reference to noncitizens "present in the country" specifically cites Section 1227(a), which covers only admitted noncitizens. *See* 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority that applies to noncitizens "already in the country." Indeed, the passage's use of the word "certain" conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain language is insufficient to displace the statute's plain text and the manifest congressional purpose. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (explaining that "the language of an opinion is not always to be parsed as though we were dealing with language of a statute," and instead "must be read with a careful eye to context" (citation omitted)). That is especially so as no part of the holding in *Jennings* required it to decide the precise scope of Sections 1225(b) and 1226.

As such, Petitioner remains an applicant for admission as he has not clearly and beyond doubt established that he is entitled to be admitted to the United States. Consequently, he is subject to mandatory detention under § 1225(b)(2) and ineligible for a bond hearing before an immigration judge.

G. Petitioner's temporary detention does not offend Due Process.

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented noncitizens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And Congress directed noncitizens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented noncitizens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. And as explained above, that is the prerogative of the legislative branch serving the interest of the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude [noncitizens] as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove noncitizens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those

accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("Congress has authorized immigration officials to detain some classes of [noncitizens] during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine [a noncitizen's] status without running the risk of the [noncitizen] either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (noncitizens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these noncitizens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining noncitizens during the entire course of their removal proceedings who were convicted of certain crimes. 538 U.S. at 513. In that case, similar to undocumented noncitizens like Petitioner, Congress provided for the detention of certain convicted noncitizens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the

detention, which was the length of the removal proceedings. *Id.* at 512 ("In contrast, because the statutory provision at issue in this case governs detention of deportable criminal [noncitizens] *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the [noncitizens] from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas* was "indefinite" and "potentially permanent," *id.*, at 690–691, 121 S.Ct. 2491, the record shows that § 1226(c) detention not only has a definite termination point, but lasts, in the majority of cases, for less than the 90 days the Court considered presumptively valid in *Zadvydas*.").[6] In light of Congress's interest in dealing with illegal immigration by keeping specified noncitizens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the "*Mathews v. Eldridge* test." *See id. generally*.

Following this precedent, the United States District Court for the District of Massachusetts dismissed a habeas action, finding that it was not a violation of due process to detain a noncitizen during the course of his removal proceedings. *See Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al., Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (highlighting

[6] In 2018, the Court again highlighted the significance of a "definite termination point" for detention of certain noncitizens pending removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018).

the petitioner had been detained for 17 days leading up to the court's decision, far less than other detention times found constitutional in other cases).

Likewise, Petitioner's temporary detention pending his removal proceedings does not violate Due Process. He has been detained for 7 weeks. Petitioner's ample available process in his current removal proceedings demonstrate no lack of procedural due process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal which is a "constitutionally permissible part of that process." *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Moreover, Respondent has an interest in its use of detention, particularly in the context of immigration proceedings, and Congress and Supreme Court have historically agreed. *Id.* (holding "[d]etention during removal proceedings is a constitutionally permissible part of that process.").

H. Alternatively, Respondent requests that this Court order a bond hearing if it is inclined to grant Petitioner's petition.

In the alternative, if this Court is inclined to grant Centeno's Petition, the Respondent respectfully requests that this Court order a bond hearing, rather than outright release. In *Chimborazo Cunin*, another Court within this district granted a similar petition related to detention under 8 U.S.C. § 1225, but found the relief

necessary was limited to a bond hearing. 2025 WL 3542999 at *1-4. Other courts have also followed this rationale. *See, e.g., Gomez, v. Unknown Party*, No. 25-CV-03255, 2025 WL 3269055 (D. Ariz. Nov. 24, 2025); *Roman v. Olson*, No. 25-CV-169, 2025 WL 3268403 (E.D. Ky. Nov. 24, 2025) *Cantu-Cortes v. O'Neill*, No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025). In the event this Court is inclined to grant the petition, the Respondent respectfully requests that the Court order a bond hearing to determine whether the Petitioner is a flight risk or a danger to the community. *See Chimborazo Cunin*, 2025 WL 3542999 at *1.

2. Irreparable harm has not been shown by Petitioner.

To prevail on injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). And as discussed above, detention alone is not an irreparable injury. *See Reyes*, 2021 WL 662659, at *3, *aff'd sub nom. Diaz Reyes*, 2021 WL 3082403 ("[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived."). Here, as explained above, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762 (N.D. Cal. 2019).

3. Balance of equities does not tip in Petitioner's favor.

It is well-settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("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 IIRIRA established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted). The BIA also has an "institutional interest" to protect its "administrative agency authority." *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002).

Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above, Petitioner cannot succeed on the merits of his claims. The balancing of equities and the public interest weigh heavily against granting Petitioner's equitable relief.

CONCLUSION

Respondent respectfully requests that this Court deny the motion for temporary restraining order. Alternatively, if this Court determines that Petitioner can meet his burden of demonstrating he is entitled to injunctive relief, Respondent respectfully requests that this Court direct a bond hearing be held by an immigration judge to determine whether the Petitioner is a flight risk or a danger to the community.

Respectfully submitted,

BRIAN D. MILLER
United States Attorney

/s/ Melissa Swauger
Melissa Swauger
Assistant United States Attorney
PA 82382
1501 North 6th Street
Harrisburg, PA 17102
Tel: (717) 221-4482
Fax: (717) 221-4493
Melissa.Swauger@usdoj.gov

Date: January 13, 2026

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RONIL JOSE GONZALEZ CENTENO	:	**No. 3:25-cv-2518**
Petitioner	:	
	:	**(Judge Munley)**
v.	:	
	:	
CRAIG A. LOWE, *et al.*,	:	
Respondents	:	**Filed Electronically**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on January 13, 2026, she served a copy of the attached

RESPONDENT'S OPPOSTION TO
PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

by electronic service pursuant to Local Rule 5.7 and Standing Order 05-6, & 12.2 to the following individual(s):

Karen L. Hoffman, Esquire @ karen@sellenberglaw.com

/s/ Cristina M. Vazquez
Cristina M. Vazquez
Paralegal Specialist