IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 1:26-cv-113-DDD-KAS

JULIO RODRIGUEZ TALLEDOS,

Petitioner,

v.

KRISTI NOEM. Secretary, U.S. Department of Homeland Security,
PAMELA BONDI. U.S. Attorney General,
JUAN BALTASAR. Warden of Denver Contract Detention Facility,
TODD LYONS. Acting Director, Immigration and Customs Enforcement and Removal Operations,
ROBERT GUADIAN, Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement,

Respondents.

COMBINED RESPONSE TO "PETITION FOR WRIT OF HABEAS CORPUS," ECF No. 1, filed 1/10/26, AND "EMERGENCY MOTION FOR PRELIMINARY INJUNCTION," ECF No. 3, filed 1/10/26

Pursuant to the Court's January 12, 2026, Order (ECF No. 5), Respondents hereby respond to the "Emergency Motion for Preliminary Injunction." ECF No. 3 (Motion). Respondents also respond to the "Petition for Writ of Habeas Corpus." ECF No. 1 (Petition). The responses are combined because the Petition and the Motion rely on the same legal argument and resolving them both together will be more efficient for the Court and the parties.

Petitioner asserts violations of the Immigration and Nationality Act (INA) and the Due Process Clause, alleging that Respondents have unlawfully detained him under 8 U.S.C. § 1225(b)(2) without an opportunity to post bond. *See* ECF No. 1 at 14. He claims he is not

subject to § 1225(b)(2)(A) but is instead subject to 8 U.S.C. § 1226(a). *See id.* Petitioner also claims that he is entitled to relief on the basis of a declaratory judgment issued as part of a partial final judgment in *Bautista v. Santacruz*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ___ F.Supp.3d___, 2025 WL 3713987. *See id.* at 11.

The Petition and Motion should be denied. Petitioner is an "applicant for admission" within the scope of § 1225(b)(2), which makes him subject to mandatory detention under § 1225(b)(2)(A). And his detention is consistent with due process. The Court should deny his requests for relief.

SUMMARY OF ISSUES

This case involves a question of statutory interpretation. The Department of Homeland Security (DHS) is detaining Petitioner under a statutory provision of the INA, 8 U.S.C. § 1225(b)(2)(A), that applies to aliens who, like Petitioner, entered the United States without inspection, have never been admitted, and are thus deemed to be "applicants for admission" by law. Section 1225(b)(2)(A) requires detention of an "applicant for admission" during removal proceedings if an "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted."

Petitioner claims he is not an applicant for admission subject to § 1225(b)(2)(A) but is instead subject to a different provision, 8 U.S.C. § 1226(a), which is a provision that also authorizes detention of certain aliens while removal proceedings are pending. The practical difference between the two sections is that aliens 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 Petitioner's detention is governed by § 1226(a) (entitling him to a bond hearing), he requests a bond hearing or immediate release. *See* ECF No. 1 at 12.

The Court should rule that Petitioner is an applicant for admission within the scope of § 1225(b)(2) and subject to detention under that provision. Respondent's position is supported by the Supreme Court's interpretation of that statute in *Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018) (explaining that "an alien who . . . is present in this country but has not been admitted is treated as an applicant for admission" and that §§ 1225(b)(1) and (b)(2) govern the detention of applicants for admission).

Petitioner also argues that he is a member of a class of individuals detained pursuant to § 1225(b)(2)(A) that was recently certified in *Bautista*, 2025 WL 3713987. Petitioner argues that the district court in *Bautista* not only certified a nationwide class but additionally granted declaratory relief to that class. ECF No. 1 at 4. This Court should not give that district court's order preclusive effect in this case because that district court lacked jurisdiction over Petitioner's habeas claim, collateral estoppel should not be applied against the federal government especially given contrary judgments from other district courts, and the *Bautista* decision is on appeal.

Petitioner also challenges his detention as violating due process. But the Supreme Court has held that detention during removal proceedings does not, without more, violate due process.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico. *See* Exhibit 1 (Declaration of K. Nissen) ¶ 4. He illegally entered the United States in 1995 and has never been inspected and admitted or paroled into the United States. *See id.* ¶ 6. In 2017, he was detained by ICE after a conviction of Driving Under the Influence, removal proceedings were initiated against him, and he was

released from ICE detention on a $10,000 bond. *See id.* ¶¶ 8-13. Those removal proceedings were dismissed without prejudice in 2022. *See id.* ¶ 18. In May 2025, Petitioner was arrested in Teller County for driving under the influence. *See id.* ¶ 19. (ICE does not know the disposition of that case. *See id.* n.2.) Upon release from state custody, ICE arrested him and issued a Notice to Appear, initiating removal proceedings, and charged him with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated). *See id.* ¶ 21. Petitioner is detained pursuant to 8 U.S.C. § 1225(b). *See id.* ¶ 22.

Petitioner had a bond hearing before an immigration judge (IJ) in August 2025. *See id.* ¶ 25. The IJ determined that she lacked jurisdiction to redetermine Petitioner's custody status. *See id.* Alternatively, the IJ found that Petitioner is a danger to the community and, even if she had jurisdiction to redetermine his custody status, she would not set a bond. *See id.* Petitioner appealed the bond decision, and that appeal remains pending. *See id.* ¶ 26.

In October 2025, an IJ held a hearing on his application for cancellation of removal. *See id.* ¶ 27. The IJ denied the application and ordered him removed to Mexico. *See id.* Petitioner appealed that decision, and that appeal remains pending. *See id.* ¶ 28.

Petitioner has not filed an application for asylum or withholding of removal to a specific country. *See id.* ¶ 30.

ARGUMENT

I. Petitioner's detention under § 1225(b)(2)(A) does not violate the INA.

The INA, in 8 U.S.C. § 1225, governs the processes for the detention and removal of aliens who are "applicants for admission." 8 U.S.C. § 1225(a)(1). Petitioner is an "applicant for admission" to which 8 U.S.C. § 1225 applies and is subject to mandatory detention.

That determination is supported by *Jennings*, where the Supreme Court analyzed the scope of § 1225. There, the Supreme Court assessed whether certain aliens are entitled to periodic bond hearings during prolonged detention. In making that assessment, "[t]he primary issue [wa]s the proper interpretation of §§ 1225(b), 1226(a), and 1226(c)." *Jennings*, 583 U.S. at 289. That is the primary issue in this case as well.

A. Section 1225 defines "applicant for admission" to include noncitizens who are unlawfully present and were never admitted.

Section 1225 provides, in relevant part, that "[a]n alien present in the United States who has not been admitted . . . shall be *deemed* for purposes of this chapter [to be] an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). Petitioner fits that definition.

In *Jennings*, the Supreme Court 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, aliens who are present in the country and were never lawfully admitted are "treated as"—*i.e.*, they are "deemed" to be—"applicants for admission."

B. Section 1225(b)(2)(A) is a catchall provision that requires detention of applicants for admission during their removal proceedings.

Most applicants for admission—except for those who fall into two narrow subcategories in § 1225(b)(1)—are covered by § 1225(b)(2). As relevant here, § 1225(b)(2) states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). The *Jennings* Court 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 (emphases added).

The *Jennings* Court then explained that detention is mandatory for those covered by § 1225(b)(2), as that provision "requires detention "for a [removal] proceeding," § 1225(b)(2)(A)" and the "plain meaning" of that provision is "that detention must continue . . . until removal proceedings have concluded, § 1225(b)(2)(A)." *Id.* at 844.

Thus, an alien who (1) meets the general definition of applicant for admission (such as an individual who is unlawfully present and has not been admitted), and (2) does not fall within the two narrow § 1225(b)(1) subcategories, is an "applicant for admission" who falls under the "catchall" provision of § 1225(b)(2) and is subject to mandatory detention during removal proceedings.

Some courts have suggested that § 1225(b)(2)(A) should be limited to those who are "seeking admission." Indeed, Petitioner argues that he is not "seeking admission" because he is already present in the United States. *See* ECF No. 1 at 6.

But this argument is not supported by the statute. The statute makes clear that the *status* of being an applicant for admission is one way that an alien may treated as "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 an alien can seek admission simply by meeting the definition of an applicant for admission *or* can "otherwise" seek admission by directly applying for admission. The Court commented later in *Jennings* 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 *Jennings* Court's earlier discussion of "applicants for admission" made clear there is no additional "seeking admission" element criterion for being an "applicant for admission" subject to mandatory detention under § 1225(b)(2)(A)'s catchall provision. Rather, this reference reflected the Court's prior explanation that aliens who fall within §§ 1225(b)(1) and (b)(2) are, as a matter of law, "treated as" "applicants for admission." *Id.* at 287.

C. Many courts have issued well-reasoned decisions affirming Respondents' interpretation of § 1225.

Numerous courts have agreed with Respondents' interpretation of § 1225. Some have articulated their reasoning in careful detail. *See, e.g.*, *Montoya v. Holt*, No. 25-cv-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *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). As those decisions show, Respondents' position is well supported by the statutory text. Respondents acknowledge that numerous nonprecedential decisions, including several in this district, have ruled otherwise. One of those decisions has

been appealed to the Tenth Circuit. *See Mendoza Gutierrez v. Baltazar*, Civil Action No. 25-cv-02720-RMR (D. Colo.), *appeal filed* (Dec. 15, 2025). Respondents submit that their reading comports best with the statute and the Supreme Court's decision in *Jennings.*

D. No nationwide declaratory relief on § 1225 entitles Petitioner to a bond hearing or release.

Petitioner argues that this Court should rule for him by giving preclusive effect to the declaratory judgment issued as part of a partial final judgment in *Bautista*, 2025 WL 3713987. This Court should not grant preclusive effect to that decision (which is now on appeal), for multiple reasons.

First, 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 *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. *See 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 *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. *See Calderon v. Ashmus*, 523 U.S. 740 (1998).

Second, 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 weighs against "a broad application of collateral estoppel").

Third, the existence of prior inconsistent judgments weighs against applying issue preclusion. *See Parklane Hosiery*, 439 U.S. at 330–31. District courts have interpreted 8 U.S.C. § 1225(b)(2) differently from the *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 *Bautista* judgment preclusive effect. *See* Order, *Calderon Lopez v. Lyons*, ___F.Supp.3d___, 2025 WL 3683918, at **5, 13 (N.D. Tex. Dec. 19, 2025).

Fourth, 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.

E. Petitioner's detention under § 1225(b)(2)(A) does not violate due process.

Petitioner also alleges that his detention without a bond hearing violates his due process rights. *See* ECF No. 1 at 16-17. To the extent he is bringing a procedural-due-process challenge, this argument fails because Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2)(A), as set forth above, and he has received the due process that is set forth by statute. To the extent he is bringing a substantive-due-process challenge, Petitioner has not shown that his detention violates due process, as his detention is during removal proceedings that will have a definite end point, and the Supreme Court has approved such detention.

First, to show that he has been denied procedural due process, Petitioner would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important rule" that for "foreigners who have never been . . . admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). In *Thuraissigiam*, 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. For the reasons set forth

above, Petitioner has not been deprived of any statutory right, as he is properly detained under § 1225(b)(2)(A).

Also, Petitioner has not shown any prejudice from any procedural violation. He has not shown that he is being denied procedures in his immigration proceedings where he can challenge the determination that § 1225(b)(2)(A) applies. He thus has not shown a violation of procedural due process. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where an alien 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 another Court in this District has 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*, No. 25-cv-01120-GPG, ECF No. 11 at 13 (D. Colo. May 21, 2025).

Second, Petitioner has not shown that his detention violates substantive due process. The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). The Court in *Demore* relied on a broad principle: the Court's "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Id.* at 526. Specifically, the Court relied on *Reno v. Flores,* 507 U.S. 292 (1993), where the Court had rejected a due process challenge to the detention of minors during deportation proceedings, *see id.* at 313-14, and on *Carlson v. Landon*, 342 U.S. 524 (1952), where the Court had rejected a due process challenge to detention by noncitizens on the ground

that they did not pose a flight risk, *see id.* at 538. Later, in *Jennings*, the Court observed that the *Demore* Court, in rejecting the due process challenge, had relied on the principle that the detention during removal proceedings has "a definite termination point: the conclusion of removal proceedings." 583 U.S. at 304 (internal marks omitted). As this Court has recognized, "[u]nder *Demore*, the government can detain an alien *without bond* for the entirety of his removal proceedings. The lack of a bond hearing, in other words, doesn't offend the Constitution." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1074 (D. Colo. 2020).

Here, Petitioner has not shown that his detention is unconstitutional. He is detained during his removal proceedings, which will have a definite end point. Those circumstances do not show a substantive-due-process violation under the general principles set forth in *Demore*; nor has Petitioner established violation of a statutory right or prejudice to support a procedural-due-process violation.

II. Petitioner is not entitled to a preliminary injunction.

The Court should deny the Petition for the reasons explained above. That would moot the Motion (as would granting the Petition) and simplify the Court's resolution of the case. If the Court does consider the Motion, the Court should deny it.

In his Motion, Petitioner seeks emergency preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65. *See* ECF No. 3. 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.*

In the Motion, Petitioner seeks relief including: (1) immediate release or a bond hearing within 15 days where the government bears the burden to show dangerousness and flight risk; (2) an injunction preventing Respondents from removing him to a third country to which he does not have a removal order without providing him with constitutionally compliant procedures; and (3) an injunction to prevent Respondents from removing Petitioner from the District of Colorado. *See* ECF No. 3 at 3.

The primary relief Petitioner seeks—immediate release or a bond hearing—is a disfavored injunction because that seeks to alter the status quo or require action. The other relief Petitioner seeks is not disfavored.

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

Request for bond hearing where the government bears the burden of proof. Petitioner requests either immediate release or, in the alternative, a bond hearing. *See* ECF No. 3. His sole basis for these requests appears to be that his detention should be governed by § 1226(a) rather than §1225(b)(2). For the reasons described above, Petitioner's detention is governed by

§ 1225(b)(2), not § 1226(a). Thus, he has not established a strong likelihood of succeeding on the merits on his request for a bond hearing.

As for his request that the government bear the burden of proof at a bond hearing,[1] that fails for at least two reasons. First, he provides no argument to justify the request. *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). Second, it fails as a matter of law. As this Court has previously held in a well-reasoned opinion addressing this issue, "the Fifth Amendment clearly does not require the government to bear the burden of proof in bond proceedings." *Basri*, 469 F. Supp. 3d at 1073-74.

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

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.*, 540 F.3d at 1148 n.3 (deeming insufficiently developed argument to be waived). Thus, he has not made a strong showing of likelihood of success on the merits as to this request.

[1] Petitioner does not seek this relief in his habeas petition.

Third-country removal.[2] Plaintiff also fails to provide any legal argument for this requested relief, so he has not made a strong showing of likelihood of success on the merits as to this request. *See Thompson R2-J Sch. Dist.*, 540 F.3d at 1148 n.3. This relief should also be denied because, "the movant [for a preliminary injunction] must establish 'a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint.'" *Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir. 2010) (citation omitted). He cannot in this case because his habeas claim is based on alleged unlawful detention, and the third-country issue does not relate to detention.

B. Petitioner has not established irreparable harm.

Petitioner argues that his detention is irreparable harm. The fact of his continued detention alone does not suffice. *See Abshir H.A. v. Barr*, 19-cv-1033 (PAM/TNL), 2019 WL 3292058, at *4 (D. Minn. May 6, 2019) ("[I]f detention in and of itself constitutes irreparable harm . . . then many if not most habeas petitioners would be entitled to such relief."), *report & recommendation adopted by Abi v. Barr*, 2019 WL 2463036 (D. Minn. June 13, 2019).

Regarding the burden of proof at the bond hearing, Petitioner has not established irreparable harm because he makes no argument on this point, and so he waives it.

Petitioner also has not established irreparable harm regarding his third-country-removal claim.[3] "To constitute irreparable harm, an injury must be certain, great, actual 'and not theoretical.'" *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). Petitioner

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[2] Petitioner does not seek this relief in his habeas petition.

[3] "In the context of immigration proceedings, a 'third country' refers to a country not previously designated by an immigration judge or by the Department of Homeland Security ("DHS") during the underlying removal proceedings." *Ahrach v. Baltazar*, No. 25-cv-03195-PAB, 2025 WL 3227529, *1 n.5 (D. Colo. Nov. 19, 2025).

offers no evidence that it is likely that he will be removed to a third country without constitutionally compliant procedures to ensure that his right to apply for fear-based relief is protected. Petitioner is a native and citizen of Mexico and makes no allegations that ICE would remove him to any country other than Mexico. Thus, he has not shown that the alleged harm is "certain" rather than simply "theoretical."

In fact, statutes govern third-country removal. A statute, 8 U.S.C. § 1231(b)(2), sets out the procedure ICE follows to remove a noncitizen who is not in the process of arriving to the United States. In general, a noncitizen ordered removed may designate a country to be removed to. 8 U.S.C. § 1231(b)(2)(A). Petitioner has been ordered removed to Mexico. Ex. 1 ¶ 27. That designation may be disregarded in certain circumstances, including if, 30 days after the Attorney General first inquires with the government of that country, that country does not state that it is willing to accept the noncitizen into that country. 8 U.S.C. § 1231(b)(2)(C). In that case, ICE may remove the noncitizen to an alternative country to which he is a subject, national, or citizen as long as that country accepts the noncitizen. 8 U.S.C. § 1231(b)(2)(D). If the noncitizen is not removed to a county under (b)(2)(A), (b)(2)(C), or (b)(2)(D), then ICE may remove the noncitizen to an "additional removal country." 8 U.S.C. § 1231(b)(2)(E).

A regulation governs removal to such a country (or to any country) where the noncitizen may face torture or persecution. Under 8 U.S.C. § 1231(b)(3)(A), the Attorney General "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." The reasonable-fear interview process is undertaken to determine whether a noncitizen subject to a removal order can be removed to a

particular country. *See* 8 C.F.R. § 208.31 (setting forth the steps in the reasonable-fear interview process).

Here, Petitioner has not provided any evidence that these third-country-removal processes would apply to him or might not be followed, so he has not shown the certainty of any irreparable harm. *See Heideman*, 348 F.3d at 1189 (irreparable harm must be "certain" and not "theoretical").

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

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States' immigration laws is significant. *See, e.g.*, *id.* at 436. Here, Respondents have a valid statutory basis for detention, *see* 8 U.S.C. § 1225(b)(2)(A), and "detention during [removal] proceedings [is] a constitutionally valid aspect of the deportation process," *Demore*, 538 U.S. at 523. 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.[4]

[4] 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

CONCLUSION

For the reasons set forth above, the Court should deny the Petition (ECF No. 1) and the Motion (ECF No. 3).

Dated: February 6, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE UNDER DDD CIV. P.S. III(A)(2)

I certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(2).

s/ Timothy Bart Jafek
Timothy Bart Jafek

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restrained." If the Court grants Petitioner's request for a preliminary injunction, Respondents request that the Court require appropriate security.

CERTIFICATE OF SERVICE

I certify that on February 6, 2026, 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 recipients by e-mail:

jason@wisecuplegal.com

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

s/ Timothy Bart Jafek
Timothy Bart Jafek